

Electronically Filed
Supreme Court
SCRU-13-0000071
26-SEP-2019
09:09 AM

SCRU-13-0000071

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
HAWAI‘I PROBATE RULES

ORDER AMENDING THE HAWAI‘I PROBATE RULES

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rules 1, 4, 48, 50, 81, and 103 of the Hawai‘i Probate Rules are amended, effective October 28, 2019, as follows:

Rule 1. SCOPE OF RULES; INTERPRETATION; ELECTRONIC FILING; AUTOMATION.

(a) Scope of Rules. These [r]Rules govern the procedure in the circuit courts of the State of Hawai‘i in all probate, conservatorship, guardianship, trust, legal representation for no fault benefits, and determination of death proceedings, and more particularly proceedings arising under [~~HRS~~]Hawai‘i Revised Statutes Chapters 531 [Probate: Jurisdiction and Procedure], 532 [Descent of Property], 533 [Dower and Curtesy], 535 [Specific Performance of Deceased's Contracts to Convey Real Estate], 551 [Guardians and Wards], 551A [Office of the Public Guardian], 551D [Uniform Durable Power of Attorney Act] but only to the extent of issues arising from or between the attorney in fact and an incapacitated or deceased principal, 553A [Uniform Transfers to Minors Act], 554 [Trusts and Trustees; Accounts], 554A [Uniform Trustees' Powers Act], 554B [Uniform Custodial Trust Act], 554C [Uniform Prudent Investor Act], 556 [Uniform Fiduciaries Act], 557A [Uniform Principal and Income Act], and 560 [Uniform Probate Code] except Article V, Parts 2 and 6, and Section 603-21.6 [Probate Jurisdiction]. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding.

(b) Interpretation and Enforcement of Rules. These Rules shall be read and construed with reference to each other, the Hawai‘i Electronic Filing and Service Rules, and the Hawai‘i Court Records Rules.

(c) Effect of Hawai‘i Electronic Filing and Service Rules. Documents filed and notices given in accordance with the Hawai‘i Electronic Filing and Service Rules shall be deemed to comply with the filing, mailing, certified mailing, notice and service requirements of any part of these Rules.

(d) Effect of Automation on Process and Procedures. Duties set out in these Rules may be performed by automation.

COMMENTARY:

These [r]Rules encompass all matters arising under Titles 29, 30, and 30A of the Hawai‘i Revised Statutes, with [five]5 exceptions:

- Chapter 551A [Office of the Public Guardian] comes within the scope of the circuit court and the family court.

- Disputes involving powers of attorney where the issues do not relate to the fiduciary relationship between the principal and agent or to the effect of the disability or death of the principal or agent. Disputes involving third parties arising from transactions in which a power of attorney was used shall, except in cases described above, be considered civil actions not subject to these [r]Rules. These [r]Rules also do not cover issues relating to a Durable Power for Health Care Decisions, which is within the jurisdiction of the family court.

- Chapter 555 [Employee's Trusts], because that chapter is limited in its scope to definitional sections and a specific waiver of the Rule Against Perpetuities.

- Chapter 558 [Land Trusts], because that chapter does not establish a true fiduciary relationship, but is more in the order of a conveyancing and title-holding statute, and therefore should fall within the Hawai‘i Rules of Civil Procedure.

- Parts 2 and 6 of Article V, Chapter 560, because those sections fall within the jurisdiction of the family court. [HRS §]Hawai‘i Revised Statutes Section 560:5-106(3) allows consolidation of protective and guardianship proceedings relating to the same person.

Note that these [r]Rules clearly apply to trust proceedings. Prior to these [r]Rules, some practitioners argued that a trust proceeding was a civil action requiring a complaint, summons, and answer. In 1995, these [r]Rules brought trust proceedings in line with the procedural rules applicable to probates and what was then known as guardianship of the property.

Subsections (b) through (d) of this Rule account for the effects of electronic filing and service as well as automation.

Rule 4. FORMAT OF DOCUMENTS.

(a) Compliance with Rules of the Circuit Courts. The form of pleadings, affidavits, and memoranda, and method of filing, shall comply with Rules 2 and 3 of the Rules of the Circuit Courts of the State of Hawai'i.

COMMENTARY:

The Rules of the Circuit Courts of the State of Hawai'i technically apply to probate proceedings at this time, but those rules are primarily focused on the conduct of litigation, and so should be made inapplicable. [~~Circuit Court~~] Rule 2 of the Rules of the Circuit Courts of the State of Hawai'i, having to do with the mechanics of filing documents, and Rule 3, having to do with the actual format of pleadings, are incorporated by reference to achieve consistency in the filing of documents received by the court, and to eliminate the need for documents receiving clerks to check more than one set of rules for filing requirements.

(b) Stapling and Punching of Conventionally Filed Documents. All original documents prepared for conventional filing shall be perforated at the top with a standard two-hole punch. Documents of 10 pages or less shall be secured by a single staple in the upper left corner of the document. Documents of more than 10 pages shall not be stapled, but shall be fastened with paper fasteners through the two-hole punch perforations.

COMMENTARY:

This [r]ule is of minimal burden to the attorneys, but makes document handling less burdensome on the court staff.

(c) Size of Paper, Folding Oversized Documents to Fit. All documents presented to the court for conventional filing shall not exceed 8 and 1/2 inches by 11 inches in size. Any exhibits, documents, or wills that exceed those measurements shall be folded in such a way that come within these restrictions, and any photocopies of any such documents shall likewise be folded or reproduced on letter-size paper in such a manner that the entire contents of the original document are visible and legible on the copy.

COMMENTARY:

This complies with current court policy, but expands the reference to copies to allow documents to be reduced through a photocopying process to fit on a letter-sized paper, so long as the copy is complete and legible.

(d) Notation of Hearing Time. Every pleading filed for which a hearing date has been previously assigned shall include under the case number on the first page of the pleading a notation of the date, time, and anticipated presiding judge for the hearing.

COMMENTARY:

This [r]Rule will assist the court in processing documents, particularly when courtesy copies have been delivered to the judge's chambers.

Rule 48. DELEGATION OF POWERS TO CLERK AND DEPUTY CLERKS.

(a) Permissible Delegation. In addition to duties and powers exercised as registrar in informal proceedings, the court by written order may delegate to the clerk or deputy clerks any one or more of the following duties, powers, and authorities to be exercised under the supervision of the court:

- (1) to set a date for hearing on any matter and to vacate any such setting;
- (2) to issue letters or subpoenas;
- (3) to certify copies of documents filed in the court;
- (4) to correct any clerical error in documents filed in the court;
- (5) to transfer a will to another jurisdiction pursuant to Rule 74 of these

Rules;

(6) to enter estate closing orders in supervised and formal proceedings, if there is no objection to entry of such order by any interested person; or

(7) to direct the refiling of a document in conformance with Rules 50, 100, 125, 141, or 151 of these Rules without negating the effective date of the filing for purposes of the statute of limitations or other applicable deadlines.

(b) Entry of Orders. The clerk shall enter and file all orders made and proceedings had by the clerk or deputy clerks in the permanent record of the case to which the order or proceeding pertains.

(c) Vacation and Effect of Orders. Any interested person affected by an order entered or an action taken under the authority of this [r]Rule may have the matter heard by the court by filing a petition for hearing within [~~ten~~]10 days after entry of the order or taking of the action. Upon filing of a petition, the order or action in question shall be vacated and the petition placed on the calendar of the court for the next available hearing date, and the matter shall then be heard by the judge. The court may, within the same [~~ten~~]10-day period, vacate the order or action on the court's own motion. If a petition for hearing by the court is not filed within the [~~ten~~]10-day period, or the order or action is not vacated by the court on its own motion within such period, the order or action of the clerk or deputy clerks shall be final as of its date subject to normal rights of appeal. The acts, records, and orders of the clerk or deputy clerks not vacated pursuant to the foregoing provision shall have the same force, validity, and effect as if made by a judge.

(d) Updating of Letters. A fiduciary at any time may request upon payment of the appropriate fee that the clerk of the court issue updated copies of the letters previously issued to the fiduciary and currently in effect, and the clerk shall certify on the face of the updated letters that they are still in full force and effect if more than ~~three (3)~~ years from the date the letters were originally issued has not elapsed or any renewal period has not expired.

COMMENTARY:

The fact and date of filing of a document subsequently refiled under Rule 48(a)(7) of this Rule will be maintained in the court record and may preserve any applicable statute of limitations. The definition of "Letters" in [HRS §] Hawai'i Revised Statutes Section 560:1-201 provides that letters testamentary and letters of administration are effective for only ~~three (3)~~ years, unless renewed for good cause. Rule 48(d) of this Rule has been revised to reflect this limitation.

Rule 50. INITIAL PLEADINGS.

(a) Case Numbers. The clerk shall assign a P. No. to each probate case matter directly related to the administration of a deceased's estate. Each party presenting a document regarding the same administration of the estate of that deceased shall use the same P. No., and immediately below the P. No. on all documents shall note the type of proceeding (Small Estate, Informal, Supervised, Will Deposit, Demand for Notice, No Fault, Determination of Death) to which the pleading applies; the notation may change as the status of the proceeding changes.

COMMENTARY:

This [r] Rule changes the Rules of the Circuit Courts of the State of Hawai'i in defining the types of case filings allowed. Case filing designations S.E., W.D., D.N., and the like will be eliminated in favor of using a P. No. for all proceedings relating to a deceased's estate. By assigning a P. No. to a particular deceased upon the filing of an initial pleading with respect to that deceased and then requiring all later filings of any nature relating to that deceased to use the same P. No., the court can be assured of having all pleadings relating to a particular deceased in one file. In addition, assigning a P. No. upon the filing of a Demand for Notice or Will Deposit will lessen the chance that the Demand or Will is missed, because the court staff will not have to cross-index case numbers or check different classes of cases when a probate proceeding is initiated. Finally, using one case number throughout the administration of a deceased's estate will eliminate burdensome procedures and confusion when the proceeding changes form, such as when a small estate is converted into an informal probate, or an informal into a supervised. In the case of a proceeding relating

to a testamentary trust, all filings shall use the same P. No. or E. No. used in the proceedings relating to a deceased's estate. E. No. refers to cases initiated as equity proceedings.

The second part of the rule, requiring a notation of the type of proceeding at the point the document is filed, conforms to civil court practice and assists the court staff and parties to readily identify the status and nature of the estate. The wording of the case caption may also change as the character of the proceeding changes, for example from "In the Disappearance of John Doe, born January 1, 1920" to "Estate of John Doe, Deceased."

(b) Identification of Beneficiaries and Heirs. The party preparing any petition shall list the names and addresses, to the extent known, of all heirs at law of the deceased and of all beneficiaries entitled to take under a will presented for probate and its codicils. If the heirs at law are other than the spouse or reciprocal beneficiary, descendants, or parents of the deceased, the petitioner shall affirmatively state that the deceased left no such survivors. The petitioner shall ~~attach to~~ submit with the petition a copy of the death certificate for the beneficiary named in the will, who died before the deceased, or any other evidence, by affidavit or otherwise, to establish that the beneficiary is dead. If a beneficiary of an estate dies after the deceased but prior to the commencement of the proceeding, the petition shall identify such beneficiary's estate, or the successor beneficiary, as the case may be, as the appropriate party and shall notify such beneficiary's personal representative, if any. Alleged illegitimate children of a male deceased of whom the petitioner or applicant is aware shall also be identified and given notice of the commencement of the proceeding.

COMMENTARY:

This [r]ule is intended to clarify the status of beneficiaries and heirs on the face of the petition and to establish why a particular person is not being considered a beneficiary of the estate. Contingent beneficiaries who will not take because the contingency giving rise to their right to take did not occur need not be given notice. (For example, where a will leaves the residuary estate to Joe, but if Joe does not survive the testator, to Bill, and Joe survives the testator, then Bill need not be given notice as his rights never vest. But if the contingency has not been settled at the time of the filing of the petition, then the contingent beneficiary must be given notice.)

The committee considered the rights of beneficiaries named in a prior will but found no statutory or common law right to notice to such possible parties solely to enable them to bring a will contest. [~~HRS §~~] Hawai'i Revised Statutes Section 560:3-403(a) specifically limits the class of individuals entitled to notice of the commencement of a probate proceeding. Extending a notice right to persons named in a

prior will raises many questions of whether an alleged prior will is the immediately prior will, and all the proof and capacity questions raised with the will presented for probate.

If a vested beneficiary dies prior to the filing of the petition or application, then the estate of the beneficiary shall be named as the beneficiary and given notice. If a probate estate has not been started for the deceased beneficiary, the petitioner is under no obligation to commence probate proceedings on behalf of the deceased beneficiary, but the petitioner should undertake reasonable efforts to notify known relatives of the deceased beneficiary of the vested interest.

The last sentence of the rule requires notice to those persons known to the petitioner or applicant to be alleged illegitimate children of a male deceased, so that those persons will have an early opportunity to take action to prove their relationship. In most cases, the actual determination of paternity will have to be made by the family court, but identifying the potential children should lead to more expedient and final settlement of the estate.

(c) Informal Probate Information Sheet. Any informal application that seeks probate of a will, determination of intestacy, or appointment of a personal representative shall be accompanied by a completed informal probate information sheet, in form acceptable to the registrar.

COMMENTARY:

To help the registrar determine whether advance notice will be required in informal applications, an informal probate information sheet that summarizes the nature of the proceeding must be filed.

(d) Flag Sheet. A flag sheet shall be presented pursuant to Rule 81 of these Rules for any hearing on a petition that seeks admission of a will to probate, adjudication of intestacy, or appointment of a personal representative.

COMMENTARY:

A reference to the flag sheet requirement of Rule 81 of these Rules is added for clarity.

Rule 81. FLAG SHEETS REQUIRED.

An original and 2 copies of flag sheets in substantially the same form as set forth in Appendix A herein, containing the information sought therein, shall be presented to the clerk of the court for all hearings to admit a will to probate, to adjudicate intestacy, to appoint a personal representative, to confirm the sale of real property, to determine an elective share, and to approve the final accounts

of the personal representative. These flag sheets shall conform to the requirements of Rule 4 of these Rules and shall be presented to the court no later than 10 days prior to the scheduled hearing. While flag sheets may be submitted through the Judiciary Electronic Filing System, [F]flag sheets submitted conventionally shall not be file-marked as a pleading, but shall be date-stamped by the clerk and placed in the court file for reference. Failure to present a required flag sheet in time shall cause the hearing to be continued to the next available date. Where the facts of the case as set forth in the flag sheet change after submission of the flag sheet to the court, an amended flag sheet shall be presented.

COMMENTARY:

This [r]Rule makes flag sheets mandatory in all probate proceedings in all circuits. Conventionally submitted [The] flag sheets are not filed as pleadings but are date-stamped as having been received by the clerk to eliminate the chance for lost documents and to provide a clear record. The flag sheet is normally placed in the court's file for ready reference by the judge and court staff. Sample flag sheets are available at the court and may be available on-line.

Rule 103. FLAG SHEETS.

An original and 2 copies of flag sheets in substantially the same form as set forth in Appendix A herein, containing the information sought therein, shall be presented to the clerk of the court for all hearings to appoint a conservator, to appoint a conservator and a guardian for an incapacitated adult, to compromise a tort claim on behalf of a minor or incapacitated person, and to confirm the sale of real property. These flag sheets shall be presented to the court no later than 10 days prior to the scheduled hearing. While flag sheets may be submitted through the Judiciary Electronic Filing System, [F]flag sheets submitted conventionally shall not be file-marked as a pleading but shall be date-stamped by the clerk and placed in the court file for reference. Failure to present a required flag sheet in time shall cause the hearing to be continued to the next available date. Where the facts of the case as set forth in the flag sheet change after submission of the flag sheet to the court, an amended flag sheet shall be presented.

COMMENTARY:

This rule makes flag sheets mandatory in all conservatorship and guardianship proceedings in all circuits. Conventionally submitted [The] flag sheets are not filed as pleadings but are date-stamped as having been received by the

clerk, to eliminate the chance for lost documents and to provide a clear record. The flag sheet is normally placed in the court's file for ready reference by the judge and court staff.

DATED: Honolulu, Hawai'i, September 26, 2019.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

