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SCRU-11-000051

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

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In the Matter of the  
HAWAI‘I RULES OF CIVIL PROCEDURE

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**SECOND AMENDED<sup>1</sup>**

**ORDER AMENDING THE HAWAI‘I RULES OF CIVIL PROCEDURE**

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

IT IS HEREBY ORDERED that Rules 1, 3.1, 5, 10, 11, 30, 72, and 77 of the Hawai‘i Rules of Civil Procedure are amended, and new Rule 1.1 is adopted, effective *nunc pro tunc* October 28, 2019, as follows:

**Rule 1. SCOPE OF RULES; INTERPRETATION AND ENFORCEMENT; EFFECT OF ELECTRONIC FILING; AUTOMATION.**

**(a) Scope of rules.** These [r]Rules govern the procedure in the circuit courts of the State in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81 of these Rules. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

**(b) Interpretation and enforcement of rules.** These Rules shall be read and construed with reference to each other, the Hawai‘i Electronic Filing

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<sup>1</sup> The Hawai‘i Rules of Civil Procedure (HRCP) were amended by an order filed on October 4, 2019, and by an amended order filed on October 29, 2019. This instant second amended order is to correct footnote 1 of the October 29, 2019 amended order to indicate that the sentence “Any document prepared by an attorney for an unrepresented party shall comply with Rule 11.1(c) of these Rules,” is in fact being restored to HRCP Rule 11(a), not HRCP Rule 11.1(a), in the October 4, 2019 order.

and Service Rules, the Hawai'i Court Records Rules, and the Rules of the Circuit Courts of the State of Hawai'i.

**(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 processes and procedures.** Duties set out in these Rules may be performed by automation.

**(e) Definitions.** See Rule 1 of the Hawai'i Electronic Filing and Service Rules for definitions.

**Rule 1.1. REGISTRATION REQUIRED.**

As provided by Rule 4 of the Hawai'i Electronic Filing and Service Rules, unless exempted by the court, each attorney representing a party to a case maintained in the Judiciary Information Management System (JIMS) shall register as a Judiciary Electronic Filing and Service System (JEFS) User and shall file all documents electronically. An unrepresented party may register as a JEFS User for the case in which the unrepresented party is an individual party.

**Rule 3.1. [~~COPIES,~~] CIVIL INFORMATION SHEET; ADDITIONAL CLAIMS; AND TRANSFERS FROM DISTRICT COURT.**

**(a) [~~Original and copies required.~~**

~~\_\_\_\_\_ (1) TORT CASES: The original and 2 copies of the initial complaint, or any subsequent affirmative pleading, shall be submitted.~~

~~\_\_\_\_\_ (2) TORT CASES IN WHICH THE INITIAL COMPLAINT, OR SUBSEQUENT AFFIRMATIVE PLEADING, IS ACCOMPANIED BY REQUEST TO EXEMPT CASE FROM THE COURT ANNEXED ARBITRATION PROGRAM: The original and 2 copies of each document shall be submitted.~~

~~\_\_\_\_\_ (3) NON TORT CASES: The original and 1 copy of the initial complaint, or any subsequent affirmative pleading, shall be submitted.~~

**(b) Civil information sheet.** Any initial civil complaint filed pursuant to Rule 3 of the Hawai'i Rules of Civil Procedure shall be accompanied by a civil information sheet that substantially complies with Form 2-A of the Appendix of Forms and shall be completed in full. The ~~[original and 2 copies of the]~~ civil information sheet shall be ~~[submitted]~~ filed upon the filing of the complaint.

**(c)(b) Additional claims information sheet.** Any affirmative pleading filed after the initial complaint is filed shall be accompanied by an additional claims information sheet that substantially complies with Form 2-B of the Appendix of Forms and shall be completed in full. The ~~[original and 2 copies of the]~~ additional claims information sheet shall be ~~[submitted]~~ filed upon the filing of any affirmative pleading.

**(d)(c) Cases transferred from district court.**

~~[(+)]~~ A civil information sheet shall be submitted for a civil case transferred from the district court to the circuit court. Within 7 days after filing of the notice of docketing, the plaintiff shall ~~[submit]~~ file the civil information sheet.

~~[(2) The plaintiff shall submit to the clerk (A) the original and 1 copy of the civil information sheet, (B) 1 copy of the complaint, and (C) 1 copy of any answer to the complaint.]~~

**Rule 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.**

**(a) Service: When required.** Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, brief or memorandum of law, offer of judgment, bill of costs, designation of record on appeal, and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4 of these Rules.

**(b) Same: How made.** Whenever under these [r]Rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court.

Unless served in accordance with Rule 6 of the Hawai'i Electronic Filing and Service Rules, documents shall be served as follows:

(1) Service upon the attorney or upon a party shall be made (a) by delivering a copy to the attorney or party; or (b) by mailing it to the attorney or party at the attorney's or party's last known address; or (c) if no address is known, by leaving it with the clerk of the court~~;~~ ~~or (d) if service is to be upon the attorney, by facsimile transmission to the attorney's business facsimile receiver].~~

(2) Delivery of a copy within this [r]Rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. ~~[Facsimile transmission means transmission and receipt of the entire document without error with a cover sheet which states the attorney(s) to whom it is directed, the case name and court case number, and the title and number of pages of the document.]~~

(3) Service by mail or through JEFs or JIMS is complete upon mailing or electronic transmission of the Notice of Electronic Filing, respectively. ~~[Service by facsimile transmission is complete upon receipt of the entire document by the intended recipient and between the hours of 8:00 a.m. and 5:00 p.m. on a court day. Service by facsimile transmission that occurs after 5:00 p.m. shall be deemed to have occurred on the next court day.]~~

~~———— (4) — Service by facsimile transmission shall be confirmed by a certificate of service which declares that service was accomplished by facsimile transmission to a specific phone number, on a specific date, at a specific time.]~~

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**(d) Filing.** Except as provided in subdivision (f) of this [r] Rule, if served conventionally upon a non-JEFS User, all papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court either before service or within a reasonable time after service. All documents filed with the court shall be previously or contemporaneously served on all parties to the action, either electronically through JEFS or, for non-JEFS Users, conventionally, except as permitted in subdivision (a) above.

**(e) Filing with the court defined.** The filing of pleadings and other papers with the court as required by these [r]Rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with ~~[him or her]~~the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Any other rule to the contrary notwithstanding, the clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these [r]Rules. ~~[Proposed findings, conclusions, orders, or judgments submitted for signature shall be dated and stamped "lodged" or "received" by the clerk and transmitted to the court for consideration.]~~

**(f) Nonfiling of discovery materials.** A deposition, interrogatory, request for discovery production or inspection, request for documents, request for admissions, and answers and responses thereto shall not be filed automatically with the court; provided that on a motion or at trial any such document shall be filed when offered in evidence or submitted as an exhibit. ~~[; and further provided that a deposition taken outside this state or a deposition taken by an officer who is discontinuing the occupation of taking depositions shall be promptly filed pursuant to Rule 30(f)(1).]~~ In addition the court may at any time, on ex parte request or sua sponte, order the filing of any discovery material.

#### **Rule 10. FORM OF PLEADINGS.**

**(a) Caption; names of parties.** Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a) of these Rules. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. The first page of the pleadings shall have either a 3-inch top margin or a 3-inch-by-3-inch space in the top right corner, to accommodate an electronic file stamp.

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**Rule 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO THE COURT; SANCTIONS.**

(a) **Signature.** Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is [~~pro se~~]unrepresented, shall be signed by the party. Documents filed through JEFS or JIMS shall be signed as provided by Rule 5 of the Hawai'i Electronic Filing and Service Rules. Any document prepared by an attorney for an unrepresented party shall comply with Rule 11.1(c) of these Rules. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken by the clerk unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) **Representations to court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) of this Rule has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) of this Rule or are responsible for the violation.

(1) HOW INITIATED.

(A) *By Motion.* A motion for sanctions under this [r]Rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b) of this Rule. It shall be served as provided in Rule 5 of these Rules, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) of this Rule and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) of this Rule with respect thereto.

(2) NATURE OF SANCTION; LIMITATIONS. A sanction imposed for violation of this [r]Rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B) of this Rule, the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2) of this Rule.

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) ORDER. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this [r]Rule and explain the basis for the sanction imposed.

(d) **Inapplicability to discovery.** Subdivisions (a) through (c) of this [r]Rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37 of these Rules.

### **Rule 30. DEPOSITIONS UPON ORAL EXAMINATION.**

#### **(a) When Depositions May Be Taken; When Leave Required.**

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only (A) if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e) of these Rules, except that leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (ii) if special notice is given as provided in subdivision (a)(2)(C) of this [r]Rule, or (B) as provided in paragraph (2) of this Rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45 of these Rules.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2) of these Rules, if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) a proposed deposition would result in more than ~~ten~~10 depositions being taken under this [r]Rule or Rule 31 of these Rules by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined already has been deposed in the case; or  
(C) a plaintiff seeks to take a deposition before the expiration of the 30 day period specified in Rule 30(a)(1)(A) of these Rules unless the notice contains a certification, with supporting facts, that the person to be examined is about to leave the State or the United States, or is bound on a voyage to sea, and will be unavailable for examination unless deposed before that time.

**(b) Notice of Examination: General Requirements; Method of Recording; Production of Documents, Electronically Stored Information, and Tangible Things; Deposition of Organization; Deposition by Telephone.**

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(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 of these Rules and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 of these Rules for the production of documents, electronically stored information, and tangible things at the taking of the deposition. The procedure of Rule 34 of these Rules shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these [r]Rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this [r]Rule and Rules 28(a), 37(a)(1), and 37(b)(1) of these Rules a deposition taken by such means is taken in the circuit and at the place where the deponent is to answer questions.

(8) The notice shall inform the deponent, of the requirements of subsection (e) of this [r]Rule in substantially the following form:

You are hereby notified that you may request a review of the completed transcript or recording of your deposition. You must make this request before the completion of your deposition. If you make such a request, after being notified by the court reporter or other officer taking the deposition that the transcript or recording is available, you will have 30 days to: (1) review the transcript or recording; and (2) if there are changes in form or substance, to sign a statement reciting such changes and the reasons for making them.

Failure to substantially comply with this notice requirement prior to the completion of the deposition shall preclude the use of the transcript or recording until the deponent has been provided 30 days within which to review the transcript or recording, and, if there are changes, to sign a statement reciting them and the reasons therefor. Any changes shall be appended to the transcript or recording.

**(c) Examination and Cross-Examination; Record of Examination; Oath; Objections.** Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Hawai'i Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this [r]Rule.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

**(d) Schedule and Duration; Motion to Terminate or Limit Examination.**

(1) Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under Rule 30(d)(4) of these Rules.

(2) Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to [~~one~~]1 day of [~~seven~~]7 hours. The court must allow additional time consistently with Rule 26(b)(2) of these Rules if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination.

(3) If the court finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons



responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(4) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the circuit where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c) of these Rules. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) of these Rules apply to the award of expenses incurred in relation to the motion.

**(e) Review by Witness; Changes; Signing.**

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) of this Rule whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

**(f) Certification and Delivery by Officer; Exhibits; Copies.**

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer must securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and must promptly send it to the attorney or the unrepresented party who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Unless the court orders otherwise, depositions may be destroyed 6 months after the final disposition of the action, including appeal.

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**Rule 72. APPEAL TO A CIRCUIT COURT.**

**(a) How taken.** Where a right of redetermination or review in a circuit court is allowed by statute, any person adversely affected by the decision, order or action of a governmental official or body other than a court, may appeal from such decision, order or action by filing a notice of appeal in the circuit court having jurisdiction of the matter. As used in this [r]Rule, the term "appellant" means any person or persons filing a notice of appeal, and "appellee" means every governmental body or official (other than a court) whose decision, order or action is appealed from, and every other party to the proceedings.

**(b) Time.** The notice of appeal shall be filed in the circuit court within 30 days after the person desiring to appeal is notified of the rendering or entry of the decision or order, or of the action taken, in the manner provided by statute.

**(c) Service.** Promptly after filing the notice of appeal, the appellant shall serve a certified copy thereof upon each appellee.

**(d) Record on appeal.**

(1) DESIGNATION. The appellant shall, within the time provided for filing the notice of appeal (or within such further time, not to exceed 30 days, as may be allowed by the court for good cause shown), ~~[prepare and present to]~~ file with the clerk of the circuit court a [designated] Designation of Record on Appeal (the “designation”), which shall specify the papers, transcripts, minutes and exhibits (“the designated materials”) [which] that the appellant desires to be filed in the circuit court in connection with the appeal.

The appellant shall fill out an “Order for Certification and Transmission of the Record” form, provided by the circuit court, which shall command the governmental official or body whose decision, order or action is appealed from (the “agency”), to certify and transmit the designated materials to the circuit court within 20 days of the date of the “Order for Certification and Transmission of the Record” or within such further time as may be allowed by the circuit court.

If the appellant is a JEFS User, the appellant shall cause the “Order for Certification and Transmission of the Record” to be electronically issued and certified via JEFS. [shall endorse on the designation an order, directed to the official or body whose decision, order or action is appealed from, commanding the latter to certify and transmit such papers, transcripts, minutes and exhibits to the circuit court within 20 days of the date of the order or within such further time as may be allowed by the court. The clerk shall issue certified copies of such designation and order to the appellant for service upon the official or body whose decision, order or action is appealed from and for service upon any other appellee.]

If the appellant is not a JEFS User, [T]he clerk, in the name and under the seal of the circuit court, shall date and sign the “Order for Certification and Transmission of the Record” and shall issue certified copies of the designation and order.

The appellant shall serve certified copies of the designation and ~~[order]~~ “Order for Certification and Transmission of the Record” upon the agency and upon all parties and shall [make due return of service thereof to the clerk of the circuit court] file with the clerk of the circuit court a certificate of service reflecting such service.

The circuit court may compel obedience to the order by any appropriate process.

(2) COUNTER DESIGNATION. Any appellee may, within 10 days after service of the designation and statement of the case, ~~[prepare and present]~~ file with [to] the clerk of the circuit court a Counter-Designation of Record on Appeal (the “counter-designation”), which shall specify additional papers, transcripts, minutes and exhibits (the “counter-designated materials”) [which] that the appellee desires to be filed in the circuit court in connection with the appeal. [The clerk shall endorse thereon an order, as in the case of a designation, and shall issue the order and counter designation to the appellee for service and

~~return as provided in Rule 72(d) (1) in the case of a designation and order.] The~~ appellee shall fill out an “Order for Certification and Transmission of the Record” form provided by the circuit court, which shall command the agency to certify and transmit the counter-designated materials to the circuit court within 20 days of the date of the “Order for Certification and Transmission of the Record” or within such further time as may be allowed by the circuit court.

If the appellee is a JEFS User, the appellee shall cause the “Order for Certification and Transmission of the Record” to be electronically issued and certified via JEFS.

If the appellee is not a JEFS User, the clerk, in the name and under the seal of the circuit court, shall date and sign the “Order for Certification and Transmission of the Record” and shall issue certified copies of the counter-designation and order.

The circuit court may~~;~~ compel obedience to the order by any appropriate process. When the agency is the counter-designating appellee ~~[appellee desiring such additional papers, transcripts, minutes and exhibits has official custody of the same]~~, it shall be sufficient that the appellee agency file the ~~[same]~~ counter-designated materials and identify the same in an accompanying certificate. A copy of such certificate and of any counter-designation shall be served forthwith upon the appellant.

The appellee shall serve certified copies of the counter-designation and “Order for Certification and Transmission of the Record” upon the agency and upon all other parties and shall file with the clerk of the circuit court a certificate of service reflecting such service.

**(e) Statement of case.** The appellant shall file in the circuit court concurrently with the filing of appellant's designation, a short and plain statement of the case and a prayer for relief. Certified copies of such statement shall be served forthwith upon every appellee. The statement shall be treated, as near as may be, as an original complaint and the provision of these ~~[r]~~ Rules respecting motions and answers in response thereto shall apply.

**(f) Briefs; oral argument.**

(1) **BRIEFS; DEADLINES.** The opening brief shall be filed within 40 days after the filing of the record on appeal. The answering brief shall be filed within 40 days after service of the appellant’s opening brief. Within 14 days after service of the appellee’s answering brief, the appellant may file a reply brief. Reply briefs shall be confined to matters presented in the answering brief. If no reply brief is to be filed, the appellant shall notify the clerk and the appellee in writing of the decision not to file a reply brief, prior to the expiration of the time for filing the reply brief.

(2) **REQUIREMENTS.** The opening, answering, and reply briefs shall be subject to the page limitations set forth in Rule 28(a) of the Hawai’i Rules of Appellate Procedure and shall include, at a minimum:

- (A) a statement of the questions presented for decision;
- (B) a brief statement of the facts (that need not duplicate the statement of the case separately required under Rule 72(e) of this Rule);
- (C) a concise argument; and
- (D) a conclusion specifying the relief sought.

(3) ORAL ARGUMENT. On the filing of the answering brief, the court shall schedule the matter for oral argument, with argument to take place after the deadline for the reply brief.

(g) **Trial by jury.** Where by law an appeal may be tried before a jury, the case shall be tried without jury unless any appellant or appellee shall have demanded trial by jury in the manner and within the time provided in Rule 38 of these Rules.

(h) **Costs.** No appeal shall be heard, and the appeal shall be dismissed, unless the appellant shall pay all costs, if any, and furnish every bond or other security, if any, required by law.

(i) **Stay.** The filing of a notice of appeal shall not operate as a stay of the decision, order or action appealed from, unless otherwise provided by statute or unless ordered, for good cause shown, by the circuit court.

(j) **Reserved.**

(k) **Judgment.** Upon determination of the appeal, the court having jurisdiction shall enter judgment. Such judgment shall be reviewable, or final, as may be provided by law. Promptly after final determination of the appeal in the circuit court or in the appellate court, the clerk of the court finally determining the case shall notify the governmental official or body concerned, of the disposition of the appeal.

#### **Rule 77. CIRCUIT COURTS AND CLERKS.**

(a) **Circuit courts always open.** The circuit courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules. Documents filed through JEFS or JIMS are deemed filed with the clerk of court.

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(c) **Clerk's office and orders by clerk.** The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable [~~of course~~] by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

(d) **Notice of orders or judgments.** Immediately upon entry of a judgment, or an order for which notice of entry is required by these [r]Rules, the clerk shall conventionally serve a notice of the entry by mail in the manner provided for in Rule 5 of these Rules upon each unrepresented party who is not in default for failure to appear and who is not a JEFS User or who has not consented to electronic service.~~and~~ The clerk shall [make a] note the service by a text-only entry [in] on the docket [of the mailing] or by filing a certificate of conventional service. Such mailing is sufficient notice for all purposes for which notice of the entry of a judgment or order is required by these [r]Rules. In addition, immediately upon entry, the party presenting the judgment or order shall serve a copy thereof in the manner provided in Rule 5 of these Rules. Lack of notice of the entry by the clerk or failure to make such service, does not affect

the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Hawai'i Rules of Appellate Procedure. The court may impose appropriate sanctions against any party for failure to give notice in accordance with this [r]Rule. The electronic filing of the judgment or order shall serve as notice of entry of the judgment or order for registered JEFS Users.

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DATED: Honolulu, Hawai'i, October 31, 2019.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

