

RE: **Proposal to Amend Rule 107 and Commentary of the Hawai‘i Probate Rules**

REGARDING SURETY BONDS AND SIGNATORY REQUIREMENTS
IN CONSERVATORSHIP ACCOUNTS

The Supreme Court of Hawai‘i seeks public comment regarding a proposal to amend Rule 107 of the Hawai‘i Probate Rules and accompanying Commentary, in order to align the Rule with actual practice in conservator and probate matters, including market realities in the banking and surety-bond markets. The proposal is attached hereto.

Comments about the proposed amendment should be submitted, in writing, **no later than Friday, April 3, 2020**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the [Judiciary’s website](#).

Attachment

**PROPOSED AMENDMENT TO THE
HAWAI‘I PROBATE RULES**

(Deleted material is bracketed and stricken; new material is underlined)

Rule 107. DEPOSIT AND INVESTMENT OF FUNDS.

(a) Bond.

(1) The court may require a guardian of the property to furnish a bond to insure the guardian's faithful discharge of all duties according to law, with sureties as it shall specify. The bond shall be in an amount determined by the court. The court in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

(2) For conservatorships, the court may require a conservator to furnish bond in an amount as set forth in HRS § 560:5-415. If the court has required the conservator to furnish bond and the value of the estate in the conservator's control significantly increases or decreases, the court may order an appropriate adjustment in the amount of bond at the time of the conservator's regular accounting.

COMMENTARY:

*Rule 107(a)(1) of this Rule reflects the language of former
HRS §560:5-411.*

(c) Deposit of Funds. Unless otherwise ordered by the court, the conservator shall establish [~~two~~] accounts for the conservatorship funds as follows:

(1) Such amount or amounts approved by the court for regular expenses of the protected person and the conservator may be deposited in an interest-bearing checking or savings account with a federally-insured financial institution located in the State of Hawai‘i in the name of the conservator as conservator of the protected person, the signature of only the conservator being necessary for withdrawal purposes.

(2) The balance [~~(or all)~~] of the funds of the conservatorship estate [~~shall~~] may be deposited in a [~~n~~] separate interest-bearing checking and/or savings account with a federally-insured financial institution located in the State of Hawai‘i in the name of the conservator as conservator of the protected person[; ~~with the signature of both the conservator and the conservator's attorney (or any member of the law firm representing the conservator) being valid for withdrawal purposes~~]. The attorney for the conservator shall be responsible for ensuring that the accounts of the conservatorship are established as required by this [~~r~~] Rule. [~~Where a corporate fiduciary is appointed conservator, or where an attorney is appointed as conservator, the court may order that funds may be maintained in a single account requiring the signature of only the fiduciary.~~]

COMMENTARY:

This rule allows a conservatorship to have [two]2 accounts: one for regular approved expenditures [~~requiring only the conservator's signature,~~] and another to hold all other funds [~~requiring, which may be accessed by one of two signatures, that of the conservator and the conservator's attorney (or any member of the law firm representing the conservator).~~]. The rule requires [~~the~~]conservatorship accounts to be interest-bearing (unless otherwise ordered by the court), so that maximum advantage can be had to the estate. All such accounts must be in a federally-insured financial institution in the State of Hawai'i to ensure the court has jurisdiction over the funds.

Where the funds of the conservatorship are so large as to exceed the insured amount provided by the financial institution, the court may order that additional accounts be maintained at additional financial institutions, so as to provide the maximum insurance on deposits possible. Where the conservatorship funds are so large that multiple accounts are required, however, the conservator may suggest to the court that a more formal and flexible investment policy be adopted, allowing funds to be invested in securities or mutual funds.

[~~Because corporate fiduciaries are generally adequately insured or bonded, and where an attorney is appointed who has malpractice insurance covering the attorney's role as a conservator, the court may dispense with the two-signature requirement.~~]

(e) Setting Forth Plan in Petition. All budgets, investment plans, and account arrangement plans must be set forth in the petition by which the plan is proposed to the court. Every petition for appointment of a conservator shall set forth a proposed investment plan consistent with this [r]Rule.

COMMENTARY:

By requiring the petitioner to think out the overall plan of investment, distribution, and administration prior to the filing of the petition, Rules 107 and 108 of this Rule will lead to better fiduciary administration and greater efficiency in the courts by shortening the time needed for court review and evaluation of the conservatorship plans. A budget is required by statute. HRS § 560:5-403(b)(9).