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SCRU-10-0000012

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

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

ORDER ADOPTING NEW RULE 5 OF
THE HAWAI‘I RULES OF APPELLATE PROCEDURE

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

IT IS HEREBY ORDERED that a new Rule, to be located at Reserved Rule 5 of the Hawai‘i Rules of Appellate Procedure, is adopted by entry of this order, effective January 1, 2022, as follows:

Rule 5. DISQUALIFICATION OR RECUSAL OF AN APPELLATE JUDGE OR JUSTICE.

(a) Motion for disqualification or recusal. A party to any proceeding in the appellate courts may file a motion to disqualify or recuse a judge or justice before whom the case is pending.

(b) Time. The motion must be filed within 10 days after either the document initiating the proceeding in the appellate court is filed or the party discovers new information which, by due diligence, could not have been discovered earlier, that there is reason to believe that any judge or justice should not participate in deciding the case or a matter therein. Except for good cause shown, failure to file the motion by this deadline shall be deemed a waiver of the party’s right to object to the judge or justice’s participation.

(c) Contents. The motion shall concisely state the facts, reasons, and authority for the requested relief, and shall be supported by a declaration or affidavit, and any pertinent exhibits, establishing the asserted facts. The filing party shall, in the same or a separate declaration or affidavit, also declare or aver that the motion is made in good faith and not for purposes of delay.

(d) Determination of motion. Rule 27(c) of these Rules shall not apply to a motion under this Rule. If the judge or justice who is the subject of the motion does not recuse from the case, the relevant appellate court shall resolve the motion. If the judge or justice does not recuse, the judge or justice may file a response to the motion within five days. A substitute judge or justice shall replace the judge or justice who is the subject of the motion, for the limited purpose of resolving the motion.

(e) Only one motion permitted. Only one motion for disqualification or recusal may be filed by each party at each of the appellate courts, unless the party discovers new information, which by due diligence could not have been discovered earlier, that the judge or justice should recuse or be disqualified from hearing the case or a matter therein. Any such subsequent motion or amended motion must be filed within 10 days after the discovery of the new information.

DATED: Honolulu, Hawai‘i, September 27, 2021.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

