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SCRU-11-0000582

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
HAWAI‘I FAMILY COURT RULES

ORDER AMENDING THE HAWAI‘I FAMILY COURT RULES
(By: Recktenwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

IT IS HEREBY ORDERED that the Hawai‘i Family Court Rules are amended, effective April 25, 2022, as follows (deleted material is bracketed and stricken, new material is underscored):

**I. SCOPE OF RULES — ONE FORM OF ACTION;
ELECTRONIC FILING**

**Rule 1. SCOPE[=] OF RULES; CONSTRUCTION [AND],
APPLICATION [OF RULES], AND INTERPRETATION
OF RULES; EFFECT OF ELECTRONIC FILING;
AUTOMATION.**

(a) Scope. These [≠]Rules govern the procedures in the family courts of the State in all suits of a civil nature with the exceptions stated in Rule 81 of these [≠]Rules.

(b) Construction and application. These [≠]Rules shall be construed and applied in such manner as will advance the fair, equitable, speedy and inexpensive determination of every action.

(c) Interpretation 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. To the extent that there is any conflict between these Rules, the Hawai'i Electronic Filing and Service Rules, and the Hawai'i Court Records Rules, the Hawai'i Electronic Filing and Service Rules shall prevail. To the extent that there is any conflict between Rule 7.2 of these Rules and Rule 9 of the Hawai'i Court Records Rules, Rule 7.2 of these Rules shall prevail.

(d) 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 these Rules, except when personal service is required by these Rules or by court order.

(e) Effect of automation on processes and procedures. Duties set out in these Rules may be performed by automation.

(f) Definitions. In addition to any definitions stated in these Rules or applicable statutes, see Rule 1 of the Hawai'i Electronic Filing and Service Rules for definitions.

Rule 1.1. REGISTRATION IN JUDICIARY ELECTRONIC FILING AND SERVICE SYSTEM REQUIRED FOR ATTORNEYS IN CASES MAINTAINED IN JUDICIARY INFORMATION MANAGEMENT SYSTEM.

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 1.2. FAMILY COURT CASES MAINTAINED IN JIMS.

All cases filed in Family Court shall be maintained in JIMS except for cases filed under the Child Protective Act (HRS Chapter 587A) and cases filed regarding the adjudication of juvenile offenders (under HRS §571-11(1) and HRS §571-11(2)). All documents for cases maintained in JIMS shall be filed through JEFS or JIMS as appropriate in accordance with the Hawai'i Electronic Filing and Service Rules.

Rule 1.~~4~~3. CLASSIFICATION OF ACTIONS.

(a) Actions in the Family Court are classified as follows and shall be assigned case numbers preceded by one of the following [the] prefixes [indicated]:

- (1) Actions for divorce, separation, and annulment [~~(FC-D)~~] (FDV)
- (2) Actions for civil union divorce, separation, and annulment [~~(FC-CU)~~] (FCU)

(3) Actions for ~~[paternity]~~ parentage [~~(FC-P)~~] filed before January 1, 2021 (FPP)

(4) Actions for parentage filed on or after January 1, 2021 (FPA)

~~[(4)]~~ (5) Actions for an Order of Protection [~~(FC-DA)~~] (FDA)

(6) Actions for a Gun Violence Protective Order (FGV)

~~[(5)]~~ (7) Actions for Orders under the Child Protective Act (FC-S)

~~[(6)]~~ (8) Criminal Prosecutions of Adults [~~(FC-CR)~~] (FFC)

~~[(7)]~~ (9) Adjudication of Juvenile Offenders (FC-J)

~~[(8)]~~ (10) Guardianships of the Person of Minors or Incapacitated Adults [~~(FC-G)~~] (FGD)

~~[(9)]~~ (11) Actions under the Dependent Adult Protective Services Act [~~(FC-AA)~~] (FAB)

~~[(10)]~~ (12) Actions under the Uniform Interstate Family Support Act [~~(UIFS)~~] (FUF)

~~[(11)]~~ (13) Actions under the Uniform Child Custody Jurisdiction and Enforcement Act [~~(UCCJEA)~~] (FUJ)

(14) Actions under the Uniform Reciprocal Enforcement of Support Act (Repealed) (FUF)

~~[(12)]~~ (15) Appeals to the Family Court from the Decisions and Orders of the Office of Child Support Hearings (~~(FC-AP)~~] (FAL)

~~[(13)]~~ (16) Actions for adoption [~~(FC-A)~~] (FAN)

(17) Actions for Termination of Parental Rights which are not brought in an FC-S case (FTM)

~~[(14)]~~ (18) Any other miscellaneous action over which the Family Court has jurisdiction [~~(FC-M)~~] (FFM)

(b) For documents filed in JEFS or JIMS, the prefixes stated above shall be preceded with a number (1, 2, 3, or 5) indicating the Circuit in which the action is proceeding (e.g., 1FDV, 2FDV, 3FDV or 5FDV).

Rule 2.1. COMPLIANCE WITH ~~[THESE]~~ RULES.

The court may impose sanctions for non-compliance with these ~~[#]~~Rules, the Hawai'i Electronic Filing and Service Rules, and/or the Hawai'i Court Records Rules, including but not limited to the sanctions authorized in Rule 37(b)(2) and 89 of these ~~[#]~~Rules.

II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule 3. COMMENCEMENT OF ACTION.

~~[A civil action is commenced by filing a complaint with the court. "Complaint" includes any initial pleading required by statute.]~~

A civil action is commenced by filing with the court a complaint, petition, or registration of an out-of-state order, judgment, or decree under HRS Chapter 576B or HRS Chapter 583A. As used in these Rules, "complaint" includes any

initial pleading required by statute such as petitions, but does not include registrations filed under HRS Chapter 576B or HRS Chapter 583A. For cases filed under HRS Chapter 576B or HRS Chapter 583A, the registration of the out-of-state order, judgment, or decree shall constitute the initial pleading. As used in these Rules, "plaintiff" includes any party initiating a civil action including but not limited to cross-plaintiff(s), petitioner(s), cross-petitioner(s), etc. As used in these Rules, "defendant" includes any party who is responding to a civil action, including but not limited to cross-defendant(s), respondent(s), cross-respondent(s), etc.

Rule 4. PROCESS.

(a) Summons: Issuance. Upon the filing of ~~[the]~~a complaint, the clerk shall forthwith issue a summons and deliver it to the plaintiff for personal service along with the complaint by a person authorized to serve process. Electronic service of a complaint and the accompanying summons shall not be allowed. Upon request of the plaintiff, separate or additional summons shall issue against any defendant~~[-, cross-defendant, or cross-plaintiff].~~

(b) Summons: Form. The summons shall

- (1) be signed by the clerk under the seal of the court,
- (2) contain the name of the court, ~~[and]~~ the names of the parties, and the date when issued,
- (3) be directed to the defendant ~~[or cross-defendant],~~
- (4) state the name, address, telephone number, and electronic mail address of the plaintiff's ~~[or cross-plaintiff's]~~ attorney, if any, otherwise the plaintiff's ~~[or cross-plaintiff's address]~~ address, telephone number, and electronic mail address as long as no order has been filed designating the plaintiff's information as confidential,

- (5) state the time within which ~~[these rules require]~~ the defendant ~~[or cross-defendant]~~ is required to appear and defend~~[-]~~ under these Rules and ~~[shall]~~ notify the defendant ~~[or cross-defendant]~~ that ~~[in case of the defendant's or cross-defendant's]~~ the failure to [do so] appear and defend may result in an entry of default and default judgment [by default will be] being rendered against the defendant [or cross-defendant] for the relief demanded in the complaint, and

- (6) ~~[contain a prohibition against personal delivery of]~~ state that the summons shall be personally served but that it shall not be personally served between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the family or circuit courts permits, in writing on the summons, personal delivery during those hours[-, and].

~~[(7) contain a warning to the person summoned that failure to obey the summons may result in an entry of default and default judgment.]~~

When, under Rule 4(e) of these ~~[r]~~Rules, service is made pursuant to a statute or order, the summons or notice, or order in lieu of summons, shall correspond to that required by the statute or order.

(c) Summons: By whom served. Service shall be made:

(1) ~~[A]~~ anywhere in the State by the sheriff or the sheriff's deputy, by some other person specially appointed by the court for that purpose, or by any person who is not a party and is ~~[not less than]~~ 18 years of age or older; or

(2) in any county by the chief of police of that county or a duly authorized subordinate. Subpoena, however, shall be served as provided in Rule 45 of these ~~[F]~~ Rules.

(d) Summons: Personal service. The ~~[summons and]~~ complaint and the accompanying summons shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than a child or an incompetent person,

(A) by delivering a copy of the summons and of the complaint to the individual personally or in case the individual cannot be found by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or

(B) by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon a child, by delivering a copy of the summons and of the complaint personally

(A) to the parent or parents, custodian, or guardian of the minor or as provided by order of the court and

(B) except as required by statute, if the child is 16 years or over, also to the child~~;~~ ~~and~~.

(3) Upon an incompetent person, by delivering a copy of the summons and of the complaint personally

(A) to the guardian of the incompetent person or to the guardian or conservator of the incompetent person's property, or if the incompetent person is living in an institution, care facility or care home, then to the director or chief executive officer of the institution or owner or operator of the care facility or care home, or if service cannot be made upon either of them, then as provided by order of the court, and

(B) unless the court otherwise orders, also to the incompetent person.

(4) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by mailing a copy to the defendant.

(5) Upon the State, by delivering a copy of the summons and of the complaint to the attorney general of the State, or to the assistant attorney general or to any deputy attorney general who has been appointed by the attorney general.

(6) Upon an officer or agency of the State, by serving the State and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation, the copies shall be delivered as provided in paragraph (4) of this subdivision of this [x]Rule.

(7) Upon a county, as provided by statute or the county charter, or by delivering a copy of the summons and of the complaint to the corporation counsel or county attorney or any of the deputies.

(8) Upon an officer or agency of a county, by serving the county and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation the copies shall be delivered as provided in paragraph (4) of this subdivision of this [x]Rule.

(9) Upon a defendant of any class referred to in paragraph [(1) or (3)](d)(1), (d)(2), or (d)(3) [of this subdivision] of this [x]Rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute.

(e) Summons: Other service.

(1) Whenever a statute or an order of court provides for service upon a party who is not a resident of or found within the State of a summons, or of a notice, or of an order in lieu of summons, service shall be made under the circumstances and in the manner prescribed by the statute or order.

(2) Whenever a statute or an order of court requires or permits service by publication of a summons, or of a notice, or of an order in lieu of summons, any publication pursuant thereto shall be made under the circumstances and in the manner prescribed by the statute or order. Whenever the publication in a newspaper of any summons, process, notice or order is permitted, evidence of such publication shall be given by the affidavit or declaration of the editor, publisher, manager, foreman, clerk or printer of such newspaper, not interested in the suit, action, matter or proceeding to which such publication relates, to which affidavit or declaration shall be attached a copy of such summons, process, notice or order, and which affidavit or declaration shall also specify the dates and times when and the newspaper in which the publication was made. Said affidavit or declaration shall be filed with the clerk before the time fixed for hearing.

(3) Whenever a statute or order of court requires or permits service by posting the pleadings and summons at a courthouse and sending a [certified] copy of the pleadings and summons to the individual's last known address by certified mail with a return receipt requested and a directive to deliver to addressee only[7] (i.e. restricted delivery), service shall be made under the circumstances and in the manner prescribed by the statute or order.

(f) Territorial limits of effective service. All process may be served anywhere within the State and, when a statute or order so provides, beyond the limits of the State.

(g) **Return.** The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to process. Proof of service may also be shown through the filing of an acknowledgment of service by an attorney or party or the filing of an appearance and waiver pursuant to Rule 8(h) of these Rules. When service is made by any person specially appointed by the court, that person shall make an affidavit or declaration of such service.

(h) **Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Rule 5. FILING AND SERVICE OF PLEADINGS AND OTHER ~~[PAPERS]~~DOCUMENTS ON PARTIES.

(a) **Service: When required.** ~~[Every order]~~ Unless otherwise ordered by the Court, every [pleading] document filed subsequent to the original complaint [unless the court otherwise orders, every paper relating to discovery required to be served upon a party unless the court otherwise orders], including 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, form of order, judgment or decree proposed to the court, or other written] communication to the court[, bill of costs, designation of record on appeal, and similar paper] shall be served upon each of the parties[~~, but~~]. Electronic service shall be made on JEFS Users as provided by Rule 6 of the Hawai'i Electronic Filing and Service Rules. Conventional service shall be made on non-JEFS Users as provided in these Rules and Rules 1 and 6 of the Hawai'i Electronic Filing and Service Rules. Unless otherwise ordered by the court, no service needs to 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 a summons in Rule 4 of these [¶]Rules.

(b) **Service of Post-Decree Motions: How made.** ~~[Whenever under]~~ If, after the entry of a judgment, order, or decree finally determining all pending issues and after the expiration of the time for taking an appeal which lies from such judgment, order, or decree, a motion is filed raising new issues, that motion shall be personally served upon the responding party in the same manner as stated in Rule 4 of these [¶]Rules for service of a summons. Service through JEFS or JIMS shall not be permitted.

(c) **Service of All Other Documents: How made.** Except for the service of a complaint and accompanying summons or post-decree motion or a motion filed under Rule 87(b)(2) of these Rules, whenever service of a document is required [~~or permitted~~] to be made upon a party and that party is represented by an attorney, [~~the~~] service shall be made upon the attorney unless service upon the party is ordered by the court. Documents shall be served upon attorneys electronically as provided in Rule 6 of the Hawai'i Electronic Filing and Service Rules. Parties who are JEFS Users shall also be served electronically as provided

in Rule 6 of the Hawai'i Electronic Filing and Service Rules. Service through JEFS or JIMS is complete upon electronic transmission of the Notice of Electronic Filing. Non-JEFS Users shall be served as follows:

(1) Service ~~upon the attorney or~~ upon a party shall be made by delivering a copy to the ~~attorney or~~ party or by mailing it to the ~~attorney or~~ party at the ~~attorney's or~~ party's last known address or, if no address is known, by any other method authorized by Rule 4(e) of these ~~[F]~~Rules.

(2) Delivery of a copy within this ~~[F]~~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 party's office is closed or the party has no office, leaving it at the party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(3) Service by mail is complete upon mailing.

~~(e)~~**(d) Proof of service.** A Proof of ~~[S]~~Service shall be filed to show proof that a pleading or other document was personally served. Proof of Service may be by written acknowledgment of service, by affidavit or declaration of the person making service, by appearance and waiver pursuant to Rule 8(h) or 10(e) of these Rules, or by any other proof satisfactory to the court, unless otherwise provided by these ~~[F]~~Rules, order of the court, or statute. A party who has been prejudiced by failure to receive due notice or to be served, or who has been prejudiced by reason that service was made by mail, may apply to the court for appropriate relief.

(e) Certificate of service. For all documents which are not required to be personally served, a certificate of service shall be filed with the court. For electronically filed documents, the Notice of Electronic Filing shall constitute a certificate of service on JEFS Users in accordance with Rule 6.1 of the Hawai'i Electronic Filing and Service Rules. For documents which are served on non-JEFS Users, a certificate of conventional service shall be filed, indicating the date the document was actually served and the method of service.

~~(d)~~**(f) Filing.** Except as provided in subdivision ~~[(F)]~~**(h)** of this ~~[F]~~Rule, all ~~[papers]~~documents after the complaint required to be served upon a party shall be filed with the court ~~[either]~~ before service ~~[or within a reasonable time thereafter]~~.

~~(e)~~**(g) Filing with the court defined.** The filing of pleadings and other ~~[papers]~~documents with the court as required by these ~~[F]~~Rules shall be made by filing them with the clerk of the court, except that the judge may permit the ~~[papers]~~documents to be filed with 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]~~document presented for that purpose solely because it is not presented in proper form as required by these ~~[F]~~Rules. Proposed findings, conclusions, orders, or judgments submitted for signature shall be ~~[dated and stamped "lodged" or "received" by]~~ attached to a coversheet which includes "Proposed" in the ~~[clerk]~~ title, although the attached document itself shall not include "Proposed" in its title, and shall be filed in accordance with Rule 9 of the

Hawai'i Electronic Filing and [~~transmitted to the court for consideration~~] Service Rules.

~~[(f)](h)~~ **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. In addition the court may at any time, on *ex parte* request or *sua sponte*, order the filing of any discovery material. A certificate of service shall be filed by the party requesting discovery and shall indicate the date the discovery request was actually served and the method of service. A certificate of service shall also be filed by the party responding to the discovery request and shall indicate the date the response was actually served and the method of service.

Rule 5.1. SERVICE OF JUDGMENTS, DECREES, OR ORDERS BY ATTORNEYS.

In addition to the requirements of Rule 5(c) of these Rules, within 2 days after a judgment, decree, or order prepared by an attorney is filed in any case, the preparing attorney shall mail or deliver a copy of the judgment, decree, or order (and a copy of any agreement of the parties referred to therein) to the other party at the other party's last known address if the other party is not represented by an attorney and is not a JEFS User. Proof of mailing or delivery of the copy of the judgment, decree, or order within the 2-day period to the party shall be made by filing a certificate of service consistent with Rule 5(e) of these Rules. Failure to comply with this Rule may be considered as grounds for relief from a final judgment, decree, or order under Rule 60(b)(3) or 60(b)(6) of these Rules. The Notice of Electronic Filing automatically generated by JEFS is sufficient to show service of the order, decree, or judgment on all JEFS Users. A judgment, decree, or order prepared by the court shall be served on parties who are not JEFS Users in accordance with Rule 6.2(b) of the Hawai'i Electronic Filing and Service Rules.

Rule ~~[5.1]~~5.2. NOTICE IN PROCEEDING RELATING TO CHILD IN FOSTER CARE.

In any judicial proceeding held with respect to a child in foster care or pursuant to Chapter 587A of the Hawai'i Revised Statutes, the foster parents, pre-adoptive parents, and/or relative caregivers of the child, or their attorney, shall be duly notified in writing of the proceeding. The petitioning party shall bear the burden of preparing and serving notice. Notice shall include the name of the court and names of the parties, as well as the date, time, location, and nature of the proceeding. Unless otherwise ordered by the court, notice shall be ~~[served]~~ conventionally served (pursuant to Rule 1 of the Hawai'i Electronic Filing and Service Rules and Rules 4 and 5 of these Rules) at least 24 hours before a hearing for temporary foster custody and 48 hours before any other scheduled

proceeding, subject to a shortening of time when a proceeding is set within a shorter time frame. If notice is not conventionally served (pursuant to Rule 1 of the Hawai'i Electronic Filing and Service Rules and Rules 4 and 5 of these Rules), no proceeding shall be held except as ordered by the court upon good cause shown. Failure to provide conventional notice as required herein may result in sanctions pursuant to Rule 89(b) of these Rules.

Rule 6. TIME.

(a) Computation. In computing any period of time prescribed or allowed by these Rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. As used in this Rule, "holiday" includes any day designated as such pursuant to section 8-1 of the Hawai'i Revised Statutes.

(b) Enlargement. When by these Rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court may in its discretion

(1) with or without motion or notice order, upon showing of good cause, the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 52(b), 59(b), (d) and (e) and 60(b) of these Rules and Rule 4(a) of the Hawai'i Rules of Appellate Procedure, except to the extent and under the conditions stated in them.

(c) Reserved.

(d) For motions; affidavits or declarations. A written motion, other than a motion pursuant to Rule 56, 59, and one which may be heard *ex parte*, and notice of the hearing thereof, shall be served not later than 48 hours before the time specified for hearing, provided that whenever a motion which seeks relief *pendente lite* is served on the adverse party by mail in a circuit other than where the motion is filed, such service shall be made not later than 5 days before the time specified for the hearing, unless a different period is fixed by these Rules or by order of the court, and provided further that whenever the motion is served upon the adverse party outside of the State, such service shall be made not later than 20 days before the time specified for hearing, unless different period is fixed by these Rules or by order of the court. Such an order may for cause shown be made on *ex parte* application. When a motion is supported by an attached affidavit or declaration, the affidavit or declaration shall be served concurrently with the motion. A response shall be served not later than the day preceding the hearing, unless the court permits it to be served at some other time.

(e) **Additional time after service by mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other ~~[paper]~~document upon the party and the notice or ~~[paper]~~document is served upon the party by mail, 2 days shall be added to the prescribed period.

(f) **Filing Deadlines.** Documents which are electronically filed through JEFS or JIMS shall be deemed timely filed if they are filed before midnight on the date the document is due, unless there is a specific legal requirement for an earlier deadline or if the presiding judge prescribes a specific filing deadline in a particular case.

III. PLEADINGS AND MOTIONS

Rule 7.1. ~~[FORMATTING]~~ FORM AND FORMATTING OF PLEADINGS, MOTIONS, AND OTHER DOCUMENTS.

(a) **Form.** All pleadings, motions, and other documents to be filed shall be typewritten, printed, photocopied, or otherwise similarly prepared by a duplication process that will produce clear and permanent copies equally legible to printing~~].~~ Conventionally filed documents shall be printed upon unruled, opaque, unglazed white paper of standard quality not less than 13 pound weight, 8 ½ x 11 inches in size with a portrait orientation. Each sheet of text shall have a margin at the top and bottom of 1 inch (except as otherwise provided in paragraph (c) of this ~~[r]~~Rule). Each sheet of text shall have a left-hand and right-hand side margin and each margin shall be not less than 1 inch. The text of all documents shall be printed in black. The type shall be standard 12 point ~~[pica]~~ Times New Roman, Arial, or equivalent. ~~[Copies]~~ For conventionally filed documents, copies, but not originals, may be two-sided~~], and the~~. The lines on each page shall be double-spaced or one and one-half spaced; provided, however, descriptions of real property, and quotations, may be single spaced. All pages shall be numbered consecutively at the bottom ~~[and]~~. Conventionally filed documents shall be firmly bound together at the top~~].~~ Exhibits and exhibits may be fastened to pages of the specified size ~~[and]~~. Documents, when prepared by a machine-copying process, shall be equal to typewritten material in legibility and permanency of image. ~~[Original]~~ Conventional signatures and all other original hand-written entries on documents shall be in black or blue ink. The name of the person signing the pleading, motion, or other document shall be typed or printed in block letters directly below the signature.

(b) **No ~~[flyleaf]~~ blank sheet shall be attached to any pleading, motion, or other document.** No ~~[flyleaf]~~ blank sheet shall be attached to the front or back of any pleading, motion, or other document. All pleadings, motions, or other documents shall be filed without backs and shall be neat, clean, legible and free of interlineations.

(c) **Caption; ~~[F]~~form of first page.** The first page of every pleading, motion, or other document shall contain a caption setting forth the name of the court, the title of the action, the case number, and the name of the pleading,

motion, or other document as described below. The first page of each document 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. The first page of each document shall also have a 1.5 inch bottom margin to accommodate a court certification. The first page of each document, except as provided [hereinbelow] below in (d) shall be in the following form:

(1) The space at the top left of the [center of the] page shall contain the name, attorney number, office address [and], telephone number, facsimile number (if any), and electronic mail address of the attorney for the party on whose behalf the document is filed, or [the name, address and telephone number] of the party if [he/she] the party is [representing himself or herself] not represented by an attorney and if no order has been filed designating the party's information confidential;

(2) [The space at the top right of the center of the page shall be left blank for the use of the clerk of the court;]

[~~(3)~~] Next, [there shall be centered] the name of the court[~~, which~~] shall be centered and not less than 3 inches from the top of the page;

[~~(4)~~](3) Next, the space to the left of the center of the page shall contain the title of the case (which title shall include the names of all of the parties in the initial pleading, but thereafter may be appropriately abbreviated)[~~;~~];

[~~(5)~~](4) In the space to the right of the title to the case, there shall be listed the case number, the title of the document, and the title of each additional document that is attached [~~see~~] as required by (d) below[~~;~~]; and

[~~(6)~~](5) Next, there shall be centered the title of the document itself.

(d) Two or more documents filed together. Except as otherwise provided in this Rule, [W]where 2 or more documents are filed together, only the first page of the first document shall follow all of the requirements of (c) [hereinabove; and in addition thereto, there shall be listed, after the case number and before the centered title of the document, the title of all of the documents that are being filed together. Each document after the first document] above. The top of the first page of each of the subsequent documents shall start with the name of the court and include the case number, the title of the case and the title of [the] that document itself, in the appropriate spaces as set forth in (c) [hereinabove] above. Where a document is electronically filed with attached exhibits, it shall be filed in accordance with Rule 2.3 of the Hawai'i Electronic Filing and Service Rules and each exhibit 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.

(e) Proposed findings, conclusions, orders, or judgments submitted for signature. Proposed findings, conclusions, orders, or judgments which are attached to a coversheet and submitted for signature pursuant to these Rules shall also comply with all of the requirements of (c) above.

(f) Sanctions. The court may impose sanctions for non-compliance with these Rules.

Rule 7.2. DOCUMENTS SEALED UPON FILING.

(a) The following documents shall be sealed upon filing:

(1) Divorce-Action Information/Matrimonial-Action Information/Civil-Union Divorce-Action Information;

(2) Notice/Order to Withhold Income;

(3) Petition for Parentage;

(4) Hawai'i Parentage-Action Information;

(5) Confidential Information Sheet/Form A;

(6) Attachment for Information on Additional Children

(7) Birth certificate;

(8) Marriage certificate;

(9) Death certificate;

(10) DNA-testing results;

(11) Court-ordered professional evaluation;

(12) Custody Investigation and/or Evaluation Reports;

(13) Guardian Ad Litem reports; and

(14) Kokua Kanawai reports.

The forgoing documents shall remain sealed unless otherwise ordered by the court.

(b) In addition to the forgoing, all documents filed in the following case types shall be sealed upon filing:

(1) Involuntary-Hospitalization and/or Medication cases under HRS Chapter 334;

(2) Assisted-Community Treatment cases under HRS Chapter 334;

(3) Adoption cases under HRS Chapter 578; and

(4) Guardianship-of-a-Minor cases under HRS Chapter 560.

Rule 10. MOTIONS.

(a) Form of motions. All motions, except when made during a hearing or trial, shall be in writing, shall state the grounds therefor, shall set forth the relief or order sought, and if involving a question of law shall be accompanied by a memorandum in support of the motion. Every motion, except one entitled to be heard ex parte, shall be accompanied by a notice of hearing or setting for hearing thereof. If a motion requires the consideration of facts not appearing of record, it shall be supported by affidavit or declaration. All written motions shall comply with the requirements of Rule 7.1 of these [¶]Rules.

(d) Response to motions; effect of failure to appear. In addition to the requirements of Rule 7.1 of these [¶]Rules and subsection (c) of this [¶]Rule, any [person]party responding to a motion shall file and serve [his or her]the party's written response pursuant to these rules, unless ordered otherwise by the court. A party who does not oppose or who intends to support a motion, or who desires a continuance, shall give written notification to the court and opposing counsel

pursuant to these rules, unless ordered otherwise by the court. Failure to appear at the hearing may be deemed a waiver of objections to the granting of the motion.

**Rule 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER
[PAPERS]DOCUMENTS; SANCTIONS.**

Every pleading, motion, and other [~~paper~~]document of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address, telephone number, facsimile number (if any), and electronic mail address shall be stated. Any document prepared by an attorney for an unrepresented party shall comply with Rule 11.1(c) of these Rules. A party who is not represented by an attorney shall sign the party's pleading, motion, or other [~~paper~~]document and state the party's address[-], telephone number, facsimile number (if any), and electronic mail address (if any). Documents electronically filed by JEFS Users shall be signed as provided in Rule 5 of the Hawai'i Electronic Filing and Service Rules using "/s/" followed by the typed name of the JEFS User. However, proposed judgments, decrees, and orders which are filed electronically shall only be signed in this manner by the JEFS User who is actually electronically filing the proposed judgment, decree, or order. All other signatures on the proposed judgment, decree, or order shall be an original handwritten signature. Documents which are conventionally filed by non-JEFS Users shall contain handwritten signatures. The name of the person signing the document shall be typed or hand-printed in block letters directly below the signature. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit or declaration. The rule in equity that the averments of an answer under oath must be overcome by the testimony of 2 witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other [~~paper~~]document; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other [~~paper~~]document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other [~~paper~~]document is signed in violation of this [f]Rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other [~~paper~~]document, including a reasonable attorney's fee.

Rule 11.1 LIMITED APPEARANCE AND WITHDRAWAL.

(c) Pleading Prepared for Unrepresented Party.

(1) When an attorney, regardless of whether a formal “Agreement and Consent to Limited Representation” has been entered into, provides limited representation to an unrepresented party by drafting a pleading, written motion, or other [paper]document intended to be filed with the court, but the attorney has not agreed to appear in court or otherwise provide representation regarding that document, the attorney is not required to disclose the attorney’s name on that document. However, the first page of the document must conspicuously contain the following statement, “This document was prepared with the assistance of an attorney.” The unrepresented party must comply with this required disclosure.

If, however, a pleading, motion, or other [paper]document is prepared by an attorney providing limited representation under the auspices of a program sponsored by a nonprofit organization, court, or government, the pleading, motion or other [paper]document need not contain this statement.

(2) An attorney who provides limited representation as described in paragraph (c)(1), above, shall be deemed to have made the certifications set forth in Rule 11 of these Rules.

Rule 20. PERMISSIVE JOINDER OF PARTIES.

(a) Permissive joinder. All persons may join or be joined in one action as parties concerning any right to relief jointly, severally, or in the alternative, in respect of or arising out of property ownership or an issue as to [paternity] parentage, custody, visitation, support, placement, or treatment of a child.

(b) Separate trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claims against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 24. INTERVENTION.

(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action:

(1) when a statute confers an unconditional right to intervene; or

(2) when the applicant claims an interest relating to the property, transaction, or custody, visitation, or parental rights of a minor child which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

IV. DEPOSITIONS AND DISCOVERY

Rule 26. GENERAL PROVISIONS GOVERNING DISCOVERY.

(a) **Discovery methods.** Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things; permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) **Discovery scope and limits.** Unless otherwise limited by order of the court in accordance with these [§]Rules, the scope of discovery is as follows:

(1) **IN GENERAL.** Parties may obtain discovery regarding any matter, not privileged, or otherwise protected by law, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii) and Rule 45.1 of these [§]Rules.

(2) **LIMITATIONS.** By order, the court may alter the limits in these [§]Rules on the number of depositions or the length of depositions under Rule 30 of these Rules and the number of interrogatories under Rule 33 of these [§]Rules. By order, the court may also limit the number of requests under Rule 36 of these [§]Rules. The frequency or extent of use of the discovery methods otherwise permitted under these [§]Rules shall be limited by the court if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c) of these [§]Rules.

(3) **RESERVED.**

(4) **TRIAL PREPARATION: MATERIALS.** A party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this [§]Rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue

hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) of these [¶]Rules apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is

(A) a written statement signed or otherwise adopted or approved by the person making it, or

(B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) TRIAL PREPARATION: EXPERTS.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial.

(B) A party may, through interrogatories and/or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) of these [¶]Rules or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result,

(i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and

(ii) with respect to discovery obtained under subdivision (b)(5)(B) of this [¶]Rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION MATERIALS. When a party withholds information otherwise discoverable under these [¶]Rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the disclosure or discovery not be had;
- (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition after being sealed be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court or file documents for *in camera* review pursuant to Rule 8.2 of the Hawai'i Electronic Filing and Service Rules.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) of these [¶]Rules apply to the award of expenses incurred in relation to the motion.

(d) Sequence and timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

- (1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to
 - (A) the identity and location of persons having knowledge of discoverable matters, and
 - (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that

- (A) the response is in some material respect incomplete or incorrect or
- (B) the response omits information which if disclosed could lead to the discovery of additional admissible evidence.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Discovery conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

- (1) A statement of the issues as they then appear;
- (2) A proposed plan and schedule of discovery;
- (3) Any limitations proposed to be placed on discovery;
- (4) Any other proposed orders with respect to discovery; and
- (5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served no later than 10 days after service of the motion.

Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the court or by the attorney for any party.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a conference authorized by Rule 16 of these [F]Rules.

(g) Signing of discovery requests, responses, and objections.

(1) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by an attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) Consistent with these [F]Rules and warranted by existing law or good faith argument for the extension, modification, or reversal of existing law;

(B) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(2) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Rule 36. REQUESTS FOR ADMISSION.

(a) Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) of these [F]Rules set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

Each matter of which an admission is requested shall be separately set forth, and shall provide reasonably sufficient space for the answer after the question or demand. Two sets of the request for admission shall be served on the adverse party. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

(b) Responses.

(1) The response that includes the written answers and/or objections shall be served on the requesting party within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29 of these [F]Rules. However, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant.

(2) The matter of which an admission is sought is admitted unless the party to whom the request is directed timely serves upon the party requesting the admission a written answer or objection addressed to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An

answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter for which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c) of these [¶]Rules, deny the matter or set forth reasons why the party cannot admit or deny it.

(3) Each answer or objection shall be set forth immediately following the question or demand to which the response is being made. The response that includes the written answers and/or objections shall be signed by the party or by the party's attorney.

(c) Objections to the response. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) of these [¶]Rules apply to the award of expenses incurred in relation to the motion.

(d) Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 of these [¶]Rules governing amendment of a conference order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be served thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining ~~his or her~~ the party's action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against the party in any other proceeding.

VI. TRIALS

Rule 41. DISMISSAL OF ACTIONS.

(a) Voluntary dismissal: Effect thereof.

(1) BY NOTICE OF DISMISSAL; BY STIPULATION. Subject to the provisions of Rule 66 of these [¶]Rules, and of any statute, an action may be dismissed by notice of dismissal or by stipulation as set out respectively in paragraphs (a)(1)(A) and (a)(1)(B) of this [¶]Rule. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice. The notice of dismissal or stipulation shall state the Hawai'i Family Court Rule and subsections pursuant to which the dismissal is filed.

(A) The initiating party, without approval of the court, may file a notice of dismissal at any time prior to service of process, unless an adverse party has already filed a document or appeared in court. Although approval of the court is not necessary for a dismissal under this paragraph (a)(1)(A), any such dismissal shall first be submitted for processing to the family court and shall not be effective until filed by the clerk of court.

(B) After the service of process, or if an adverse party has already filed a document or appeared in court prior to the service of process, a stipulation of dismissal may be submitted to the court. The stipulation shall be signed by all parties unless the signature of a party is waived by the court. The stipulation shall be effective only if approved by the court.

(2) BY ORDER OF COURT ON INITIATING PARTY'S MOTION TO DISMISS. Except as provided in paragraphs (a)(1)(A) and (a)(1)(B) of this [F]Rule, an action shall not be dismissed at the instance of the initiating party save upon order of the court after notice and hearing on a motion to dismiss. The dismissal shall include such terms and conditions as the court deems proper. If a cross-action has been pleaded by an adverse party prior to the service upon the adverse party of the motion to dismiss, the action shall not be dismissed against the objection of the adverse party unless the cross-action can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary dismissal: Effect thereof. For failure of the plaintiff to prosecute or to comply with these [F]Rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the claimant has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff or may decline to render any decree until the close of all the evidence. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this [F]Rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits.

(c) Dismissal of cross-action. The provisions of this [F]Rule apply to the dismissal of any cross-action. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this [F]Rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Reserved.

(e) Dismissal for want of service or prosecution.

(1) A diligent effort to effect service shall be made in all actions and if no service be made within 6 months after an action or post-judgment motion has been filed then, after notice of not less than 10 days to the filing party at ~~the~~ their last known address, the same may be dismissed. Such a dismissal may be set aside and the action reinstated by order of court for good cause shown on *ex parte* motion duly filed in said action within 30 days ~~after~~ of service of the

order of dismissal on JEFS Users through JEFS or within 30 days of mailing of the order of dismissal [~~and notice~~] to the last known address of [the] parties [~~or parties' counsel~~] who are not represented by an attorney and who are not JEFS Users.

(2) In any case in which a final decree, judgment, or order has not been made and filed prior to the expiration of 1 year from the date of the filing of the complaint or post-~~[decree]~~judgment motion in said action, the same may be dismissed unless a trial date has been set or an order has been filed enlarging the time ~~[upon motion and]~~ following a showing of good cause ~~[shown]~~. Such a dismissal may be set aside and the action or motion reinstated by order of court for good cause shown on *ex parte* motion duly filed in said action within 30 days ~~[after]~~ of service of the order of dismissal on JEFS Users through JEFS or within 30 days of mailing of the order of dismissal [~~and notice~~] to the last known address of [the] parties [~~or parties' counsel~~] who are not represented by an attorney and who are not JEFS Users.

(3) RESERVED.

(4) An order of any dismissal and notice pursuant to subsections (e)(1) or (2) of this Rule shall be filed in the record of the case.

Rule 52. FINDINGS AND CONCLUSIONS BY THE COURT.

(a) **Effect.** In all actions tried in the family court, the court may find the facts and state its conclusions of law thereon or may announce or write and file its decision and direct the entry of the appropriate judgment; except upon notice of appeal filed with the court, the court shall enter its findings of fact and conclusions of law where none have been entered, unless the written decision of the court contains findings of fact and conclusions of law. To aid the court, the court may order the parties or either of them to submit proposed findings of fact and conclusions of law, ~~[where the written decision of the court does not contain the findings of fact and conclusions of law,]~~ within 10 days after the filing of the notice of appeal[;] or within 10 days of the filing of a request for entry of findings of fact and conclusions of law under Rule 10(f) of the Hawai‘i Rules of Appellate Procedure, unless such time is extended by the court. Requests for findings are not necessary for purposes of review. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If a decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. For cases maintained in JIMS, proposed findings of fact and conclusions of law shall be submitted in accordance with Rule 9 of the Hawai‘i Electronic Filing and Service Rules and in any other manner ordered by the court. For cases maintained in JIMS, the proposed findings of fact and conclusions of law shall be attached to a coversheet which includes “Proposed” in its title, although the title of the attached findings of fact and conclusions of law shall not include the word “Proposed”. For cases which are not included in JIMS, proposed findings of fact and conclusions of law shall be attached to a coversheet which includes “Proposed” in its title, shall be conventionally filed, and a courtesy copy shall be provided to the Court.

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59 of these [¶]Rules. When findings of fact are made by the court, the question of sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the family court an objection to such findings or has made a motion to amend them or a motion for judgment.

Rule 53. MASTERS.

(b) Compensation. A master (except a volunteer settlement master) shall be compensated as determined by the court, and shall be paid out of any fund or subject matter of the action, which is in the custody and control of the court, or by one or more of the parties themselves, as the court may direct. The master shall not retain [~~his or her~~]the master's report as security for compensation, but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

Rule 56. SUMMARY JUDGMENT.

(e) Form of affidavits or declarations; further testimony; defense required. Supporting and opposing affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all [~~papers~~]documents or parts thereof referred to in an affidavit or declaration shall be attached thereto or served therewith. The court may permit affidavits or declarations to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits or declarations. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or declarations or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

VI. JUDGMENT

Rule 58. PREPARATION AND SIGNING OF JUDGMENTS AND OTHER ORDERS.

(a) **Preparation of judgments and other orders.** Within 10 days~~[;]~~ (or ~~[within]~~ such other time directed by the court~~[;]~~) after entry or announcement of the decision of the court, the attorney or party [identified] designated by the court (“the drafting party”) shall ~~[prepare]~~ draft a proposed judgment, decree, or order in accordance with the decision and attempt to secure thereon the approval of the opposing counsel or party (if ~~[pro-se]~~self-represented) as to form.

(b) **Party approval or objection to form; delivery to Court.** If there is no objection to the form of the proposed judgment, decree or order, the opposing counsel or party (if ~~[pro-se]~~self-represented) shall promptly approve it as to form~~[. If]~~ by affixing a handwritten signature on it. Once the opposing counsel or party approves the proposed judgment, decree, or order [is not approved as to form by the parties within 5 days after a written request for approval] as to form, the drafting party shall attach it to a coversheet which includes “Proposed” in its title, and shall file [and serve the proposed order along] it conventionally or electronically in accordance with [notice] Rule 9 of [service on all parties] the Hawai‘i Electronic Filing and [serve a copy thereof upon each party who has appeared in the action. If any party objects to the form of a proposed judgment, decree or order, that party shall within 5 days after service of the proposed judgment, decree or order, file and serve upon each party who has appeared in the action and deliver to the court:] Service Rules.

~~[(1) a statement of objections and the reasons therefor; and~~

~~(2) the form of the objecting party’s proposed judgment, decree or order.]~~

If a proposed judgment, decree or order is not approved as to form by the opposing counsel or party (if self-represented) within 5 days after a written request for such approval, the drafting party shall file a Notice of Submission of the proposed order which attaches the proposed order as an exhibit. The drafting party shall serve the Notice of Submission on all attorneys and any party who is not represented by an attorney. Service shall be made either through JEFS or conventionally in accordance with Rule 6 of the Hawai‘i Electronic Filing and Service Rules. If the Notice of Submission is conventionally served, a certificate of conventional service shall be filed stating the actual date of service and the method of service used.

If any party objects to the form of the proposed judgment, decree, or order attached to the Notice of Submission, no later than 5 days after service of the Notice of Submission, that party shall file and serve upon each party a Statement of Objections which clearly states the basis for each objection to the proposed judgment, decree, or order. The Statement of Objections shall also attach the objecting party’s own proposed judgment, decree, or order as an exhibit.

In ~~[such]~~the event of an objection to the form of a proposed judgment, decree, or order, the court may schedule a Rule 58 conference or shall proceed to settle the judgment, decree or order. Either party may request a Rule 58 conference. Failure to file and serve objections and a proposed judgment, decree,

or order within the time frame required shall constitute approval as to form of the drafting party's proposed judgment, decree or order.

(c) Court approval; sanctions. If a proposed judgment, decree or order is consistent with the decision of the court, the court shall cause the judgment, decree or order to be entered forthwith. If a proposed judgment, decree or order is not consistent with the decision of the court, the court may require submission of a conforming judgment, decree or order. The court may impose a monetary sanction against a party or attorney who submits a defective or untimely judgment, decree or order.

(d) Request for entry. If the drafting party fails to timely submit a proposed judgment, decree or order to the court, any other party may ~~present a proposed judgment, decree or order to the Court for approval and entry~~ prepare a proposed judgment, decree or order and present it to the drafting party for approval in compliance with subsection (b) above. If the drafting party is presented with a proposed judgment, decree, or order under this subsection and fails to approve it, the party who prepared the proposed judgment, decree, or order may file a Notice of Submission in compliance with subsection (b) above for the court's approval and entry. Any Notice of Submission under this subsection (d) shall include a representation that the party or attorney ordered to prepare the proposed judgment, decree, or order failed to timely prepare and present it as required by subsection (a) above.

(e) No waiver of right to appeal. Approval as to form shall not affect the right, or constitute waiver of the right, of any party to appeal from any judgment, decree, or order issued.

(f) Documents submitted for court's signature pursuant to formal hearing. All documents submitted for the court's signature that are pursuant to formal hearing, shall reflect the exact hearing date or dates and the name of the hearing judge under the case number and character of the document and shall comply with Rule 7.1(c) of these Rules~~the Hawai'i Family Court Rule 7.1(e)~~.

(g) Preparation of stipulated order when provisions on record. If a party or parties are present in court, with or without an attorney, and state for the record that the parties stipulate to the entry of orders, the stipulation shall be reduced to writing ~~[by the attorney or party designated by the court,]~~ by the attorney or party designated by the court within 10 days (or such other time as designated by the court), and shall be approved by all parties and their attorneys, if any, consistent with (b) above unless such a requirement is waived by the court. If a party who was present in court fails or refuses to approve the stipulation and order within 5 days after receipt, the court may approve the stipulation and order without approval of either the party or the party's attorney, if any, provided that the provisions are consistent with the provisions stipulated to in court, and provided that the ~~[attorney or]~~ party or party's attorney, if any, preparing the stipulation and order informs the court ~~[in writing]~~ via a Notice of Submission consistent with (b) above that either the party or the party's attorney, if any, refused or failed to approve the stipulation and order within the 5-day period.

VII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 65. INJUNCTIONS.

(a) Reserved.

(b) Restraining order; notice; hearing; duration. Except as provided in HRS §580-10.5, a [A] restraining order may be granted without notice to the adverse party when it clearly appears from specific facts shown by affidavit or declaration or by the verified complaint [~~or cross-complaint~~] that immediate relief to the applicant is appropriate. Every restraining order granted without notice shall be filed [~~forthwith in~~] with the [~~clerk's office~~] court and entered [~~of~~] in the record, shall be accompanied by an appropriate application for further relief, shall be set for a prompt hearing, and shall be served forthwith upon any party or parties affected by the order. It shall continue in effect until further order of the court. Upon notice to the party who obtained the restraining order without notice, the adverse party may move to advance the hearing.

(c) Security. In all cases, the court, on granting a restraining order or at any time thereafter, may require security or impose such other equitable terms as it deems proper. No such security shall be required of the State or a county, or an officer or agency of the State or a county.

The provisions of Rule 65.1 of these [¶]Rules apply to a surety upon a bond or undertaking under this [¶]Rule.

(d) Form and scope of restraining order. Every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys (to the extent stated in the order), and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Reserved.

Rule 65.1. SECURITY: PROCEEDINGS AGAINST SURETIES.

(a) Security and sureties. Whenever these [¶]Rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any [~~papers~~]documents affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes [~~may~~] shall be conventionally served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known. For purposes of this Rule, the motion and notice of motion shall not be served electronically.

(b) Who may not be surety. No attorney or other officer or employee of the court shall become surety on any bond or undertaking in any action or proceeding in this court, unless authorized by the court.

VIII. APPEALS

Rule 72. APPEAL TO THE FAMILY COURT.

(a) How taken. Where a right of appeal to the family court is allowed by statute, any person or party allowed by statute may appeal from such decision, order or action by filing a notice of appeal in the family court having jurisdiction of the matter. As used in this [~~the~~] Rule, the term “appellant” means any person or party 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 family court of the circuit in which the appellant resides within 30 days of the preliminary ruling or within 30 days after the service of the [~~certified~~] copy of the final decision and order. However, if the notice of appeal is mailed, the notice of appeal shall be deemed timely filed if the mailing is postmarked within the time fixed for filing and is received by the clerk no later than 5 days after the postmarked date. For the purposes of calculating other deadlines in these Rules, [~~that~~] date of filing under this Rule shall be the date the document is received by the clerk.

(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, concurrently with filing the notice of appeal or [~~within~~] no later than 10 days after filing the notice of appeal, [~~prepare and present to~~] file with the clerk of the court either conventionally or through JEFS a [~~designation, that~~] Designation of Record on Appeal (the “Designation”). The Designation shall specify the [~~papers~~] documents, transcripts, minutes, and exhibits (“the designated materials”) that the appellant desires to be filed in the family court in connection with the appeal. [~~The clerk, in the name and under the seal of the court, 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 family 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. The appellant shall serve certified copies of the designation and order and shall make due return of service thereof to the clerk of the court. The family court may compel obedience to the order by any appropriate process.~~]

The appellant shall fill out an Order for Certification and Transmission of the Record form, provided by the family 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 family court no later than 20 days following service of the filed "Order for Certification and Transmission of the Record" or within such further time as may be allowed by the family court. The Order for Certification and Transmission of the Record shall be attached to a coversheet which includes "Proposed" in its title, although the title of the attached Order shall not include the word "Proposed". If the appellant is a JEFS User, the "Proposed Order for Certification and Transmission of the Record" (with the attached Order) shall be filed electronically via JEFS. If the appellant is not a JEFS User, the appellant shall submit the "Proposed Order for Certification and Transmission of the Record" (with the attached Order) to the clerk for conventional filing.

The clerk, in the name and under the seal of the court, shall sign, date, and file the Order for Certification and Transmission of the Record. If the appellant is not a JEFS User, the clerk shall conventionally serve certified copies of the Designation and Order for Certification and Transmission of the Record on the appellant.

The appellant shall serve certified copies of the Designation and the Order for Certification and Transmission of the Record upon the agency and upon all parties and, if serving conventionally, shall file a certificate of conventional service.

The family court may compel obedience to the Order for Certification and Transmission of the Record by any appropriate process.

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

The appellee [for service and return] shall fill out an Order for Certification and Transmission of the Record form, provided by the family court, which shall command the agency to certify and transmit the counter-designated materials to the family court no later than 20 days following service of the filed Order for Certification and Transmission of the Record or within such further time as [provided in Rule 72(d)(1) of these rules] may be allowed by the family court. The Order for Certification and Transmission of the Record shall be attached to a coversheet which includes "Proposed" in its title, although the title of the attached Order shall not include the word "Proposed". If the appellee is a JEFS User, the "Proposed Order for Certification and Transmission of the Record" (with the attached Order) shall be filed electronically via JEFS. If the appellee is not a JEFS User, the appellee shall submit the "Proposed Order for Certification and

Transmission of the Record” (with the attached Order) to the clerk for conventional filing.

The clerk, in the [ease of a designation and order.] name and under the seal of the court, shall sign, date, and file the “Order for Certification and Transmission of the Record”. If the appellee is not a JEFS User, the clerk shall conventionally serve certified copies of the Counter-Designation and Order for Certification and Transmission of the Record on the appellee.

The appellee shall serve certified copies of the Counter-Designation and the “Order for Certification and Transmission of the Record” upon the agency and upon all parties and, if serving conventionally, shall file a certificate of conventional service.

[The family court may compel obedience to the order by any appropriate process.] When the appellee [desiring such additional papers, transcripts, minutes and exhibits] filing the Counter-Designation is the agency which has official custody of the [same] counter-designated materials, 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 either through JEFS or conventionally if the appellant is not a JEFS User.

The family court may compel obedience to the Order for Certification and Transmission of the Record by any appropriate process.

(e) Statement of case. The appellant shall file in the family court, concurrently with the filing of appellant’s designation, a short and plain statement of the case and a prayer for relief. ~~[Certified copies]~~ Copies of such statement shall be conventionally served forthwith upon every appellee who has not yet registered with JEFS in connection with the appeal. The statement shall be treated, as near as may be, as an original complaint and the provision of these ~~[F]~~Rules respecting motions and answers in response thereto shall apply.

(f) and (g) Reserved.

(h) Costs. No appeal shall be heard, and the appeal shall be dismissed, unless the appellant shall pay all costs, if any, including costs for the transcribing of the transcripts, 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.

(j) Reserved.

(k) Judgment. Upon final determination of the appeal, the family 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 family court, the clerk of the court shall ~~[notify]~~ serve the parties and the governmental official or body concerned of the disposition of the appeal in accordance with Rule 77 of these Rules.

IX. FAMILY COURTS AND CLERKS

Rule 77. FAMILY COURTS AND CLERKS.

(a) **Family courts always open.** The family courts shall be deemed always open for the purpose of filing any pleading or other proper ~~[paper]~~document, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and ~~[#]~~Rules.

(b) ~~[Reserved.]~~ **Filing with the clerk of the court.** Documents filed through JEFS or JIMS shall be deemed filed with the clerk of the court.

(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. Any order to show cause, summons, subpoena, application for issuing final process to enforce or execute judgments, or notice issued by the court in connection with any case or cause, may be signed by a clerk of the court. The clerk shall grant, sign, and enter the following orders without further direction by the court, but any orders so entered may be set aside or modified by the court:

(1) **ORDERS EXTENDING TIME.** Orders extending once for 20 days the time within which to file an answer to a complaint if the time originally prescribed to answer or move has not expired.

(2) **ORDERS GRANTING EXTENSION.** Orders extending once for 15 days the time within which to object to or answer interrogatories to a party or object or respond to a request for production of documents if the time to answer such interrogatories or respond to a request for production of documents has not expired and such extension would not violate a prior court order.

Any orders submitted for the clerk's signature shall be attached to a coversheet which includes "Proposed" in the title, although the attached order itself shall not include "Proposed" in its title. JEFS Users shall file the proposed order electronically and non-JEFS Users shall conventionally file the proposed order.

(d) **Service of orders, decrees, and judgments.** Immediately upon the filing of an order, decree, or judgment prepared by the court, the clerk shall conventionally serve a copy of the order, decree, or judgment by mail in the manner provided for in Rule 5 of these Rules upon each self-represented party who is not in default for failure to appear and who is not a JEFS User. The clerk shall note the service by a text-only entry on the docket or by filing a certificate of conventional service. 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 Notice of Electronic Filing automatically generated by JEFS is sufficient to show service of the order, decree, or judgment on all JEFS Users. Orders prepared by attorneys shall be served in accordance with Rules 5(c) and 5.1 of these Rules.

~~(d)~~(e) **"Court" and "family court" defined.** As used in these Rules, the words "court" and "family court" shall mean the family court, the district family court, or a judge of the family court, or a judge of the district family court.

~~[(e)](f)~~ **“Judge” defined.** As used in these [r]Rules, the word “judge” shall mean a judge of the family court or the district family court.

~~[(f)–Reserved.]~~

(g) Costs awarded by the court. In addition to any other costs allowed by statute or rule, the court may award to a prevailing ~~[plaintiff, cross-claimant, or third-party plaintiff]~~ party the actual cost of service of process, whether service is made by a public or private process server, provided the amount shall not exceed the statutory amount(s) allowed for service of process by sheriffs or police officers.

X. MISCELLANEOUS PROVISIONS

Rule 81. APPLICABILITY.

(a) Generally. Part A of these [r]Rules, together with the designated supplements, shall apply to the following proceedings in any family court:

- (1) Matrimonial actions under HRS chapter 580, supplemented by Part B (Rules 90 to 101);
- (2) Adoption proceedings under HRS chapter 578, supplemented by Part C (Rules 102 to 120);
- (3) Child Protective Act proceedings under HRS chapter ~~[587]~~ 587A, except that the Hawai‘i Electronic Filing and Service Rules shall not apply to Child Protective Act proceedings;
- (4) Uniform Interstate Family Support Act proceedings under HRS chapter 576B;
- (5) Uniform ~~[Paternity]~~ Parentage Act proceedings under HRS chapter 584;
- (6) Termination of Parental Rights proceedings under HRS chapter 571, part VI;
- (7) Involuntary hospitalization proceedings under HRS chapter 334;
- (8) Guardianship of Person of Minors and Incapacitated Persons under HRS chapter 560, article V;
- (9) Domestic Abuse Protective Order proceedings under HRS chapter 586;
- (10) Gun Violence Protective Order proceedings under HRS chapter 134, part IV;
- ~~[(10)](11)~~ Uniform Child Custody Jurisdiction Enforcement Act proceedings under HRS chapter 583A;
- ~~[(11)](12)~~ Dependent Adult Protective Services proceedings under HRS chapter 346, part X;
- ~~[(12)](13)~~ Name Changes under HRS chapter 574;
- ~~[(13)](14)~~ Appeals from the Administrative Process for Child Support Enforcement under HRS section 576E-13;
- (15) Assisted Community Treatment proceedings under HRS chapter 334, part VIII;
- ~~[(14)](16)~~ Any other civil cases over which the family court has jurisdiction.

(b) Juvenile cases. Proceedings under HRS sections 571-11(1) and 571-11(2) shall be governed by Part D of these Rules (Rules 121 to 158). The Hawai‘i Electronic Filing and Service Rules shall not apply to juvenile cases.

(c) Criminal cases. Cases for adults charged with the commission of a crime coming within the jurisdiction of the family courts shall be governed by the Hawai‘i Rules of Penal Procedure.

(d) Reserved.

(e) Conflict. To the extent that there is any conflict between these [x]Rules and the Hawai‘i [~~Rules of Civil Procedure, or~~ Electronic Filing and Service Rules, the Hawai‘i Electronic Filing and Service Rules shall prevail. To the extent there is any conflict between these Rules and the Rules of the Circuit Courts, these [x]Rules shall prevail.

(f) Appeals. Rule 4 of the Hawai‘i Rules of Appellate Procedure shall apply to appeals from a family court in proceedings listed in subdivision (a) of this Rule 81.

(g) Depositions and discovery. Chapter V of Part A of these [x]Rules, relating to depositions and discovery, shall apply to proceedings listed in subdivision (a) of this Rule 81 except that in any such proceedings:

(1) the court may by order direct that said Chapter V shall not be applicable to the proceeding if the court for good cause finds that the application thereof would not be feasible or would work an injustice; and

(2) if the proceedings be *ex parte* any deposition therein upon oral examination or upon written questions shall be pursuant to motion and order of court after entry of default pursuant to Rule 55 of these [x]Rules, rather than pursuant to notice as set forth in subdivision (a) of Rule 30 or subdivision (a) of Rule 31 of these [x]Rules, and in any such case the order of court shall, for all purposes relating to said Chapter V, take the place of said notice.

(h) Reserved.

(i) Applicability in general. These Rules shall apply to all actions and proceedings of a civil nature in any family court and to all appeals to the appellate courts in all actions and proceedings of a civil nature in any family court; and for that purpose every action or proceeding of a civil nature in the family court shall be a “civil action” within the meaning of Rule 2 of these [x]Rules.

(j) Reserved.

Rule 86. WITHDRAWAL OF ~~[PAPERS]~~ DOCUMENTS AND EXHIBITS.

~~[The]~~ For pleadings and documents in paper records, the clerk shall not permit ~~[no]~~ any pleading or ~~[paper]~~ document to be taken from ~~[his or her]~~ the clerk’s custody except as otherwise provided in these [x]Rules, or as ordered by the ~~[judge]~~ court. Exhibits may be withdrawn on the oral or written approval of a judge ~~[against a written receipt therefor, and the party shall file a copy of the receipt in its place unless otherwise ordered].~~ Unless otherwise ordered by the court, the parties shall withdraw all exhibits not attached to the pleadings, and

depositions within ~~[one]~~1 year after final judgment. If not so withdrawn, they shall be deemed abandoned and may be disposed of by the clerk.

Rule 87. ATTORNEYS.

(a) Withdrawal of counsel unnecessary. After entry of a judgment, ~~order~~, or decree finally determining all pending issues ~~[in the judgment]~~ and after the expiration of the time for taking an appeal which lies from such judgment, ~~[the] order, or decree, an attorney for a party shall no longer be considered attorney of record [for].~~ In order for the attorney to be removed as attorney of record in JEFS, a notice of withdrawal which contains a certification by the attorney that all requirements of this [purpose. No withdrawal as counsel of record need] subsection (a) have been met shall be filed [for this purpose]. The failure to file such a notice does not constitute an agreement by an attorney to remain attorney of record for a party. If any issue is specifically reserved in any judgment ~~[for further hearing or future determination (as distinguished from reviews of a judgment where no issue is reserved)], order, or decree for future determination and [from issues over which the court has continuing jurisdiction to act by law],~~ a hearing on that issue is scheduled, the attorneys of record for the parties shall continue to be attorneys of record for the service of pleadings relating to those reserved issues, but for no other purpose, until such time as the reserved issues are resolved and until after the expiration of the time for taking an appeal which lies from the judgment or order resulting from the resolution of such reserved issues, unless the withdrawal is expressly approved and allowed by the court.

(b) Court approval of withdrawal necessary. Whenever a party is represented by an attorney at any stage of a proceeding, such attorney may not withdraw as counsel of record without the approval of the court.

(1) WITHDRAWAL AND SUBSTITUTION OF COUNSEL. Such approval may be obtained, without hearing, where there is a withdrawal and substitution of counsel in writing, approved by the party. After a withdrawal and substitution of counsel is approved and filed by the court, the withdrawing attorney shall immediately ~~[deliver a copy to the attorney of record for the adverse party, or if the adverse party is not represented by an attorney, shall]~~ mail a copy to the [adverse] opposing party at the [adverse] opposing party's last known address if the opposing party is not represented by an attorney and is not a JEFS User.

(2) MOTION TO WITHDRAW AS COUNSEL.

(A) Such approval may be obtained after a hearing on a motion to withdraw as counsel, ~~[which]~~ where the motion and notice of the date and time of hearing have been personally served on the client [and the adverse] in the same manner as stated in Rule 4 of these Rules. The attorney seeking to withdraw shall submit a proof of personal service prior to the hearing. The motion and notice of the date and time of hearing shall also be served on the opposing party or the [adverse] opposing party's attorney, if any, and the attorney seeking to withdraw shall submit [proof] a certificate of conventional service [at] if the [hearing] opposing party is not represented by an attorney and is not a JEFS User. A hearing and notification of opposing counsel or party, however, shall not be

required for withdrawal from representations provided under Rule 11.1 of these Rules.

(B) Where personal service of the motion to withdraw as counsel cannot be effected on the client, the motion and notice of the date and time of hearing shall be mailed to the last known address of the client and ~~[shall also be served on the adverse party or the adverse party's attorney, if any, and]~~ the attorney seeking to withdraw shall submit ~~[proof]~~ a certificate of service ~~[at]~~ prior to the hearing.

(C) After a ~~[withdrawal of]~~ motion to withdraw as counsel is granted and ~~[entered]~~ the order permitting withdrawal of counsel is filed, the withdrawing attorney shall immediately mail ~~[or deliver]~~ a copy of the order ~~[permitting withdrawal of counsel]~~ to the ~~[attorney of record for]~~ client at the [adverse] client's last known address and to the opposing party~~[, if any, or shall mail a copy to the adverse party at the adverse]~~ at the opposing party's last known address if the ~~[adverse]~~ opposing party is not represented by an attorney and ~~[shall also mail a copy to the client at the client's last known address]~~ is not a registered JEFS user.

Rule 94.1. SETTLEMENT CONFERENCE; SETTLEMENT CONFERENCE STATEMENT; CONFIDENTIAL SETTLEMENT CONFERENCE LETTER.

(a) **Settlement conference.** A settlement conference may be ordered by the court at any time before trial. Any party may also file a request for a settlement conference at any time prior to trial. A settlement conference shall be subject to the following guidelines:

- (1) Each party to the action shall attend the settlement conference unless excused by the court;
- (2) For each party represented by an attorney, that attorney shall attend the settlement conference and shall be familiar with all aspects of the case prior to the settlement conference;
- (3) Each party and their attorneys, if any, shall have thoroughly evaluated the case;
- (4) The judge conducting the settlement conference may, at the conclusion of said conference, continue said conference to another time and date, and from time to time thereafter for continued settlement negotiations if ~~[he or she]~~the judge has reason to believe a settlement can thereby be effectuated;

(c) **Sanctions.** If a party (whether represented by an attorney or not) or an attorney fail to appear at any settlement conference set by the court, or unjustifiably fails to comply with any requirements enunciated in this Rule, sanctions may be imposed pursuant to Rules 37(b) and 89 of these ~~[r]~~Rules. Such sanctions may include:

- (1) Ordering a party to pay the opposing party's reasonable expenses and attorneys' fees;
- (2) Ordering a change in the trial date of the action;
- (3) Imposing any other sanction as may be appropriate.

**Rule 94.3. PRE-TRIAL CONFERENCE,
PRE-TRIAL DISCLOSURE AND
MARKING EXHIBITS.**

(a) **Disclosures and exhibits.** When a pre-trial conference is held, except as and to the extent otherwise ordered by the court:

(1) Each party shall disclose the theory of ~~[his or her]~~the party's case, including the basic facts that ~~[he or she]~~the party intends to prove and the names and addresses of all witnesses that ~~[he or she]~~the party intends to call.

(2) Each party shall submit to the other party by the exchange date listed in the pre-trial order an Exhibit List and all exhibits which are in ~~[his or her]~~the party's possession or under ~~[his or her]~~the party's control which ~~[he or she]~~the party intends to offer in evidence at the trial.

PART B. MATRIMONIAL OR CIVIL UNION ACTIONS

III. JUDGMENTS AND ORDERS

**Rule 97. ~~[MAILING A COPY OF JUDGMENT OR ORDER.]~~
RESERVED.**

~~[Within 2 days after a judgment or order is filed in any case, the attorney preparing the same shall mail or deliver 2 certified copies of the judgment or order and 2 copies of any agreements of the parties referred to therein to the attorney for the other party in case such party is represented by an attorney, or shall mail or deliver a certified copy of the judgment or order and a copy of such agreement to the other party at the other party's last known address if the other party is not represented by an attorney. Proof of mailing or delivery of the certified copies of the judgment or order within the 2-day period to the attorney for the other party or to the party shall be made to the court forthwith. Failure to comply with this rule may be considered as grounds for relief from the judgment under Rule 60(b)(3) or 60(b)(6) of these rules.]~~

PART C. ADOPTION

II. HEARING

**Rule 112. RESPONSIBILITY OF ATTORNEY AFTER ENTRY
OF DECREE.**

(a) **To obtain new birth certificate for individual.** It shall be the responsibility of the attorney to assist the petitioners in obtaining the amended birth certificate for the individual evidencing the legal relationship of the individual to the adoptive parents.

(b) To distribute copies. The court may authorize, for immigration, naturalization, allotment and other valid purposes, the issuance of copies of findings of fact and conclusions of law and decrees which shall be given to the attorney for forwarding to the adoptive parents. Copies authorized for filing in termination proceedings or with the department of human services or other agency entitled thereto shall be forwarded by the clerk of the court to the attorney unless otherwise ordered.

III. MISCELLANEOUS

Rule 114. DISMISSAL OF ACTIONS.

Notwithstanding Rule 41 of these [f]Rules, an action shall not be dismissed at the petitioner's instance save upon order of the court based on a motion and an affidavit or declaration in support of the motion signed by the petitioner and upon such conditions that the court deems proper. Upon the entry of an order of dismissal, the petitioner shall ~~mail~~ conventionally serve a ~~certified~~ copy of the order of dismissal ~~[to the parents]~~ on any parent, other than the spouse of the petitioner, who is representing themselves and is not a registered JEFS user unless ~~[mailing a copy of the order]~~ service is dispensed with by the court.

Rule 118. AFFIDAVITS OR DECLARATIONS REQUIRED IN DOCTOR AND OTHER THIRD PERSON PLACEMENT CASES, AND WHEN MOTHER'S AFFIDAVIT OR DECLARATION IS REQUIRED.

(b) Natural mother's affidavit or declaration of relationship with natural father. In every adoption in which the child sought to be adopted is born out of wedlock where the natural father who has notice of the birth or expected birth of the child has not given his written consent, in order for the court to determine whether the consent of the natural father is not required or may be dispensed with or whether or not notice of the adoption proceeding must be given to the natural father, the natural mother shall, before the hearing, sign an affidavit or declaration containing the following information regarding her relationship with the natural father:

(1) whether or not the natural father knew about or was told of the pregnancy and/or the birth of the child;

(2) whether or not the natural mother and the natural father cohabited with each other before or after the birth of the child and, if so, for what duration;

(3) whether or not the natural father contributed toward the hospital and medical expenses in connection with the birth of the child and, if so, how much and, if he did not, who did pay such expenses;

(4) whether or not the natural father has contributed toward the support of the child and, if so, to what extent and, if not, who did support said child;

(5) whether or not the natural mother filed any [~~paternity~~] parentage action against the alleged natural father and, if so, whether or not the alleged natural father was adjudicated to be the natural father of the child; and

(6) whether or not the name of father appears on the child's birth certificate. The affidavit or declaration shall be presented to the judge for review prior to the filing of the petition.

DATED: Honolulu, Hawai'i, March 30, 2022.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

