

Re: Proposal to amend the Hawai‘i Rules of Court

Hawai‘i Rules of Penal Procedure
Hawai‘i Rules of Civil Procedure
Rules of the Circuit Courts of the State of Hawai‘i
Hawai‘i Family Court Rules
Rules of the District Courts of the State of Hawai‘i
District Court Rules of Civil Procedure
Rules Expediting Child Protective Appeals; and
Hawai‘i Rules of Professional Conduct.

GENDER-INCLUSIVE LANGUAGE

The Supreme Court of Hawai‘i seeks public comment regarding proposed amendments to the following rules and forms to use gender-inclusive language:

- Hawai‘i Rules of Penal Procedure, Rules 24.1, 25, 28, 32; and 51
- Hawai‘i Rules of Civil Procedure, Rules 4, 6, 36, 37, 43, 69 and Forms 3, 9, 10, 11, 13, 20, 21, 23, and 26
- Rules of the Circuit Courts of the State of Hawai‘i, Rules 6, 15, 17, 18, 21, 31 and Forms B and C-5
- Hawai‘i Family Court Rules, Rules 103 and 118
- Rules of the District Courts of the State of Hawai‘i, Rule 17
- District Court Rules of Civil Procedure, Rule 38 and Forms DC03, DC13, DC22, DC27B, DC36, DC37, DC38, DC40, DC41, DC42, and DC53
- Rules Expediting Child Protective Appeals, Form 2
- Hawai‘i Rules of Professional Conduct, Rules 1.2 *Comment [12]*, 1.8 *Comment [14]*, 1.10 *Comment [10]*, 1.13, 1.14 *Comment [10]*, 1.15, 3.4, 4.2 *Comment [4]*, 6.1 and 6.1 *Comments [1] and [9]*

The Ramseyer version of the proposed rule amendments are attached. For the rule amendments, the proposed language to be added is underscored, and the language to be deleted is bracketed and stricken as illustrated in this [example].

Comments should be submitted in writing **no later than Friday, February 21, 2025** to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 808-539-4801, by e-mail to pao@courts.hawaii.gov, or via the [Judiciary website](#).

Attachment.

**PROPOSED AMENDMENTS TO THE
HAWAI'I RULES OF PENAL PROCEDURE**

[The proposed additional language is underscored; deleted language is bracketed and stricken.]

Rule 24.1. CONDUCT OF A TRIAL.

(a) **Sequence of presentation.** Subject to the orders of the court, which may alter the sequence of presentation of the case when there are numerous parties or for other reasons:

(1) The prosecutor in a criminal case shall have the right to make an opening statement. The defendant shall also have the right to make an opening statement, either immediately after the prosecutor's statement or at the beginning of defendant's case.

(2) After the opening statement or statements, the prosecutor shall produce the evidence in chief.

(3) The defendant may then open the defense and offer evidence in support thereof.

(4) The parties may then respectively offer rebutting evidence only.

(5) When the presentation of evidence is concluded, unless the case is submitted on either side or both sides without argument, the prosecutor shall open the argument; the defendant may then reply; and the prosecutor may conclude the argument, and in conclusion shall confine [~~himself or herself~~] the argument to answering any new matter or arguments presented by the defendant. In the event the defendant has presented an affirmative defense, the court may allow surrebuttal argument but shall confine counsel to answering or otherwise responding to the arguments presented by the prosecutor on the issue of the affirmative defense.

(b) **Fair argument.** In addressing the jury, each party shall be allowed to fully and fairly state the party's theory of the case and the reasons that entitle the party to a verdict.

(c) **Presence of counsel at verdict.** Unless excused by the court, counsel for all parties shall be present upon receiving the verdict of a jury.

(d) **Limitations on number of counsel.** Except by leave of court, only one counsel for each party shall examine and cross-examine the same witness or be heard on any question.

Rule 25. JUDGE; DISABILITY.

(a) **During trial.** If by reason of absence from the State, death, sickness or other disability, including retirement or disqualification, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying that [~~he or she~~] the judge has become familiarized with the record of the trial, may proceed with and finish the trial.

(b) **After verdict or finding of guilt.** If by reason of absence from the State, death, sickness or other disability, including retirement or disqualification, the judge before whom the defendant has been tried is

unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that ~~[he or she]~~ the judge cannot perform those duties because ~~[he or she]~~ the judge did not preside at the trial or for any other reason, ~~[he or she]~~ the judge may grant a new trial.

Rule 28. EXPERT WITNESSES AND INTERPRETERS.

(a) **Expert witnesses.** The court may order the defendant or the prosecution or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless the expert witness consents to act. A witness so appointed shall be informed of ~~[his or her]~~ the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of ~~[his or her]~~ the witness' findings, if any, may thereafter be called to testify by the court or by any party, and shall be subject to cross-examination by each party. The court may determine the reasonable compensation of such a witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

(b) **Interpreters.** The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of such funds as may be provided by law.

Rule 32. SENTENCE AND JUDGMENT.

(a) **Sentence.** After adjudication of guilt, sentence shall be imposed without unreasonable delay. Pending sentence, the court may commit the defendant or continue or alter bail, subject to applicable provisions of law. Before suspending or imposing sentence, the court shall address the defendant personally and afford a fair opportunity to the defendant and defendant's counsel, if any, to make a statement and present any information in mitigation of punishment.

(b) **Notification of right to appeal.** After imposing sentence, the court shall advise the defendant of ~~[his or her]~~ the defendant's right to appeal, of the time within which a notice of appeal must be filed, and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal without paying the filing fee; provided, however, that there shall be no duty on the court to give such advice in any case in which the defendant is represented by an attorney, is convicted on a plea of guilty or nolo contendere, or is convicted of an offense not a felony or a misdemeanor. If the defendant so requests, the clerk shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(c) Judgments.

(1) IN THE CIRCUIT COURT. A judgment of conviction in the circuit court shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk. The filing of the judgment in the office of the clerk constitutes the entry of the judgment.

(2) IN THE DISTRICT COURT. A judgment of conviction in the district court shall set forth the disposition of the proceedings and the same shall be entered on the record of the court. The filing of the written judgment, or in the event of oral judgment, the filing of the written notice of entry of judgment, in the office of the clerk constitutes entry of judgment. The judgment or notice of entry shall be signed by the judge or by the clerk, if the judge so directs.

(d) Withdrawal of Plea. A motion to withdraw a plea of guilty or of nolo contendere may be made before sentence is imposed or imposition of sentence is suspended; provided that, to correct manifest injustice the court, upon a party's motion submitted no later than ten (10) days after imposition of sentence, shall set aside the judgment of conviction and permit the defendant to withdraw the plea. At any later time, a defendant seeking to withdraw a plea of guilty or nolo contendere may do so only by petition pursuant to Rule 40 of these rules and the court shall not set aside such a plea unless doing so is necessary to correct manifest injustice.

Rule 51. EXCEPTIONS UNNECESSARY.

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice [~~him or her~~] the party.

**PROPOSED AMENDMENTS TO THE
HAWAI'I RULES OF CIVIL PROCEDURE**

[The proposed additional language is underscored; deleted language is bracketed and stricken.]

Rule 4. PROCESS.

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

(6) 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 [~~his or her~~] the corporation counsel's or county attorney's deputies.

Rule 6. TIMES.

(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 upon [~~him~~] that party and the notice or paper is served upon [~~him~~] that party by mail, 2 days shall be added to the prescribed period.

Rule 36. REQUESTS FOR ADMISSION.

(b) **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 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved 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~~] that 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 for any other purpose nor may it be used against the party in any other proceeding.

Rule 37. FAILURE TO MAKE OR COOPERATE IN DISCOVERY; SANCTIONS.

(b) Failure to Comply With Order.

(2) SANCTIONS BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting ~~him or her~~ the disobedient party from introducing designated matters in evidence;

(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that ~~he or she~~ they might prevail on the matter, or (D) there was other good reason for the failure to admit.

Rule 43. TAKING OF TESTIMONY.

(c) **Record of excluded evidence.** In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what [~~he~~] the examining attorney expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

Rule 69. EXECUTION.

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in the manner provided by the law of the State. In aid of the judgment or execution, the judgment creditor or [~~his~~] the judgment creditor's successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules for taking depositions.

Form 3. Complaint on a Promissory Note.

1. Allegation of residence of parties.
2. Defendant on or about June 1, 1951, executed and delivered to plaintiff a promissory note (in the following words and figures: [here set out the note verbatim]); [a copy of which is hereby annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1952, the sum of ten thousand dollars with interest thereon at the rate of six percent per annum].
3. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of ten thousand dollars, interest, and costs.

Dated: Honolulu, Hawai'i, _____

Signed: _____

Attorney for Plaintiff

Address: _____

Notes

1. *The pleader may use the material in one of the three sets of brackets. [~~His~~] The pleader's choice will depend upon whether [~~he~~] the pleader desires to plead the document verbatim, or by exhibit, or according to its legal effect.*
2. *Under the rules free joinder of claims is permitted. See Rules 8(e) and 18. Consequently the claims set forth in each and all of the following forms may be joined with this complaint or with each other. Ordinarily each claim should be stated in a separate division of the complaint, and the divisions should be designated as counts successively numbered. In particular the rules permit alternative and inconsistent pleading. See Form 10.*

Form 9. Complaint for Negligence.

1. Allegation of residence of parties.
2. On June 1, 1952, in a public highway called King Street in Honolulu, Hawai‘i, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.
3. As a result plaintiff was thrown down and had [~~his~~] plaintiff's leg broken and was otherwise injured, was prevented from transacting [~~his~~] plaintiff's business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

Notes

Since contributory negligence is an affirmative defense, the complaint need contain no allegation of due care of plaintiff.

Form 10. Complaint for Negligence Where Plaintiff Is Unable to Determine Definitely Whether the Person Responsible Is C. D. or E. F. or Whether Both Are Responsible and Where [His] Plaintiff's Evidence May Justify a Finding of Wilfulness or of Recklessness or of Negligence.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

A. B., Plaintiff,)	Civil No. _____
)	
v.)	
)	COMPLAINT
C. D. and E. F., Defendants.)	
_____)	

1. Allegation of residence of parties.

2. On June 1, 1952, in a public highway called King Street, Honolulu, Hawai'i, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. willfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

3. As a result plaintiff was thrown down and had [his] plaintiff's leg broken and was otherwise injured, was prevented from transacting [his] plaintiff's business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the sum of _____ dollars and costs.

Form 11. Complaint for Conversion.

1. Allegation of residence of parties.

2. On or about December 1, 1952, defendant converted to [his] defendant's own use ten bonds of the _____ Company (here insert brief identification as by number and issue) of the value of ten thousand dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of ten thousand dollars, interest, and costs.

Form 20. Answer Presenting Defenses Under Rule 12(b).

FIRST DEFENSE

The complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that [~~he~~] defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

THIRD DEFENSE

The complaint is time-barred by the applicable statute of limitations and/or statute of repose.

COUNTERCLAIM

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.)

CROSS-CLAIM AGAINST DEFENDANT M. N.

(Here set forth the claim constituting a cross-claim against defendant M. N. in the manner in which a claim is pleaded in a complaint.)

Form 21. Answer to Complaint Set Forth in Form 8, With Counterclaim for Interpleader.

DEFENSE

Defendant admits the allegations stated in paragraph 1 of the complaint; and denies the allegations stated in paragraph 2 to the extent set forth in the counterclaim herein.

COUNTERCLAIM FOR INTERPLEADER

1. Defendant received the sum of ten thousand dollars as a deposit from E. F.
2. Plaintiff has demanded the payment of such deposit [~~to him~~] by virtue of an assignment of it which [~~he~~] plaintiff claims to have received from E. F.
3. E. F. has notified the defendant that [~~he~~] E. F. claims such deposit, that the purported assignment is not valid, and that [~~he~~] E. F. holds the defendant responsible for the deposit.

Wherefore defendant demands:

- (1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.¹

¹Rule 13(h) provides for the court ordering parties to a counterclaim, but who are not parties to the original action, to be brought in as defendants.

- (2) That the court order the plaintiff and E. F. to interplead their respective claims.
- (3) That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.
- (4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.
- (5) That the court award to the defendant its costs and attorney's fees.

Form 23. Motion to Intervene as a Defendant Under Rule 24.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

A. B., Plaintiff,)	Civil No. _____
)	
v.)	
)	MOTION TO INTERVENE AS DEFENDANT
C. D. and E. F., Defendant.)	
)	
E.F., Applicant for Intervention)	
_____)	

MOTION TO INTERVENE AS A DEFENDANT

E. F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in [his] E. F.'s proposed answer, a copy of which is hereto attached and marked Exhibit A, on the ground that [he] E. F. has a prior lien on the property referred to in the complaint and as such has a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action.

Dated: Honolulu, Hawai'i, _____

Signed: _____
Attorney for E. F., Applicant for Intervention

Address: _____

(Contents the same as in Form 19.)

For other grounds of intervention, either of right or in the discretion of the court, see Rules 24(a) and (b). Under Rule 24(c), the motion to intervene must be served upon all parties as provided in Rule 5.

(Rev. __/__/__)

Form 26. Allegation of Reason for Omitting Party.

When it is necessary, under Rule 19(c), for the pleader to set forth in [his] pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

[~~John Doe~~] Doe Defendant named in this complaint is not made a party to this action (because [he] Doe Defendant is not subject to the jurisdiction of this court).

(Rev. __/__/__)

**PROPOSED AMENDMENTS TO THE
RULES OF THE CIRCUIT COURTS OF THE STATE OF HAWAII**

[The proposed additional language is underscored; deleted language is bracketed and stricken.]

Rule 6. WITHDRAWAL OF PAPERS AND EXHIBITS.

The clerk shall permit no pleading or paper to be taken from [~~his~~] the clerk's custody except as provided by Rule 2(d), or as ordered by the judge. Exhibits may be withdrawn on the written approval of a judge against a written receipt therefor, and the party shall file a copy in its place unless otherwise ordered. Unless otherwise ordered by the court, the parties in all civil actions shall withdraw all exhibits not attached to the pleadings, and all interrogatories, answers thereto, and depositions within one year after final judgment. If not so withdrawn, they shall be deemed abandoned and may be disposed of by the clerk.

Rule 15. XPEDITION OF COURT BUSINESS.

a) Required notice. Attorneys shall advise the court promptly if a case is settled. An attorney who fails to give the court such prompt advice may be subject to such discipline as the court deems appropriate.

b) Effect of failure to appear. An attorney who, without just cause, fails to appear when [~~his~~] the attorney's case is before the court on a call or motion or on pre trial or trial, or unjustifiably fails to prepare for a presentation to the court necessitating a continuance, may be subject to such discipline as the court deems appropriate.

Rule 17. CONDUCT OF A TRIAL.

(a) Sequence of presentation. Subject to the orders of the court, which may alter the sequence of presentation of the case when there are numerous parties or for other reasons:

(1) The plaintiff (or the prosecuting officer in a criminal case) shall have the right to make an opening statement. The defendant shall also have the right to make an opening statement, either immediately after the plaintiff's or the prosecuting officer's statement or at the beginning of defendant's case.

(2) After the opening statement or statements the plaintiff or prosecuting officer shall produce the evidence on [~~his~~] their part.

(3) The defendant may then open [~~his or her~~] their defense and offer [~~his or her~~] their evidence in support thereof.

(4) The parties may then respectively offer rebutting evidence only.

(5) When the presentation of evidence is concluded, unless the case is submitted on either side or both sides without argument, the plaintiff or prosecuting officer shall open the argument; the defendant may then reply; and the plaintiff or prosecuting officer may conclude the

argument, and in the conclusion shall confine ~~himself or herself~~ themselves to answering any new matter or arguments presented by the defendant. In the event the defendant has presented an affirmative defense, the court may allow surrebuttal argument but shall confine counsel to answering or otherwise responding to the arguments presented by the plaintiff or prosecuting officer on the issue of the affirmative defense.

(b) Address to jury is not instruction upon the law. In ~~his or her~~ their address to the jury each party shall be allowed to fully and fairly state ~~his or her~~ their theory of the case and the reasons which entitle ~~him~~ the party to a verdict. ~~He or she~~ The party shall not assume to instruct the jury upon the law, in such manner as to encroach upon the function of the court to so instruct the jury.

(c) Instruction to the jury. The court shall instruct the jury in accordance with the provisions of the Hawai'i Rules of Civil Procedure and the Hawai'i Rules of Penal Procedure.

(d) Presence of counsel at verdict. Unless excused by the court, counsel for all parties shall be present upon receiving the verdict of a jury.

(e) Limitations on number of counsel. Except by leave of court:

(1) Only one counsel for each party shall examine and cross-examine the same witness or be heard on any question.

(2) No more than two counsel shall appear for any party on the trial.

(f) Sequence for challenging of jurors. In the challenging of jurors, the following order and sequence shall be observed: the plaintiff, in civil actions, and the State in criminal cases, shall first challenge for cause, after which the defendant shall challenge for cause. After the challenges for cause, if any, have been determined, the State or plaintiff (as the case may be), and the defendant, shall alternately state their peremptory challenges, if any, the State or plaintiff beginning, and the defendant ending. In case there are more than two parties in any case, the order of precedence of their challenges, if not agreed upon by them, shall be determined by the court.

Rule 18. PRE-TRIAL DISCLOSURE AND MARKING OF EXHIBITS.

(a) Disclosures and exhibits. When a pretrial is held, except as and to the extent otherwise ordered by the court:

(1) Each party shall disclose the theory of ~~his~~ their case, including the basic facts that ~~he~~ the party intends to prove and the names and addresses of all witnesses that ~~he~~ the party intends to call.

(2) Each party shall disclose to all others and permit examination of all exhibits which are in ~~his~~ their possession or under ~~his~~ their control and which ~~he~~ the party intends to offer in evidence at the trial.

(3) Unless so disclosed, no exhibits required to be disclosed by paragraph (2) shall be received in evidence at the trial over objection unless the court finds that there was reasonable ground for failing to

disclose such exhibits prior to trial. Objections to receipt of exhibits for violation of this rule shall be made without the presence of the jury.

(4) All exhibits required to be disclosed by paragraph (2), and any other exhibits as may be requested by counsel presenting the same, shall be marked for identification at least one day prior to the trial and shall be listed in any pre-trial order.

(b) **Effect of pre-trial order.** The pre-trial order shall supersede the pleadings where there is any conflict; and shall supplement the pleadings in all other respects.

Rule 21. SUBMISSION OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(a) **Proposed findings and conclusions.** The party who prevails after the presentation of evidence in a jury-waived case shall submit to the court proposed findings of fact and conclusions of law pursuant to Rule 52 of the Hawai'i Rules of Civil Procedure. The party required to prepare such proposed findings of fact and conclusions of law shall have 10 days, unless such time is extended by the court, to draft the same and secure the approval as to form of opposing counsel thereon and deliver the original and 1 copy to the court, or, if not so approved, serve a copy thereof upon each party who has appeared in the action and deliver the original and 1 copy to the court. If the form of the proposed findings of fact and conclusions of law has not been approved, a party served with the proposed findings and conclusions may, within 5 days after service of the proposed findings of fact and conclusions of law, serve and deliver to the court objections and a copy of [~~his~~] their proposed findings and conclusions. The court shall determine the findings of fact and conclusions of law to be entered.

If after the conclusion of all testimony in a jury-waived case, and after the submission thereof, the court does not indicate which party has prevailed in the action, the respective parties involved may be requested to submit proposed findings of fact and conclusions of law.

(b) **Cases maintained as paper records.** The prevailing party shall deliver the original and 1 copy to the court, or, if not so approved, serve a copy thereof upon each party who has appeared in the action and deliver the original and 1 copy to the court.

(c) **Cases maintained in JIMS.** Proposed findings and conclusions shall be submitted in accordance with Rule 9 of the Hawai'i Electronic Filing and Service Rules.

Rule 31. PROCEEDINGS NOT GOVERNED BY HAWAI‘I RULES OF CIVIL PROCEDURE.

(a) **Procedure.** Except as provided by statute or by other rules of court, where a civil proceeding is not governed by the Hawai‘i Rules of Civil Procedure:

(1) The proceeding shall be commenced by petition;

(2) The petition shall be verified by the oath of the petitioner, or someone on [~~his~~] their behalf, deposing to the best of [~~his~~] their knowledge and belief;

(3) Service of the petition and order to show cause and any other process or order shall be made as provided by the Hawai‘i Rules of Civil Procedure;

(4) A return to the petition shall be made within the time ordered by the court, and if it presents an issue of fact shall be supported by oath;

(5) The court may designate and order that any one or more of the Hawai‘i Rules of Civil Procedure shall be applicable in such case.

APPENDIX OF FORMS

FORM B

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

State of Hawai'i
v.
(Petitioner)

DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

I, declare that I am the petitioner in the above entitled case; that in support of my petition to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed?

Yes No

a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.

[Blank lines for answer a]

b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

[Blank lines for answer b]

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment?

Yes No

b. Rent payments, interest or dividends?

Yes No

c. Pensions, annuities or life insurance payments?

Yes No

d. Gifts or inheritances?

Yes No

e. Any other sources?

Yes No

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. _____

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts.)
Yes _____ No _____

If the answer is "yes," state the total value of the items owned.

4. Do you own real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
Yes _____ No _____

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare (**or certify, verify, or state**) under penalty of perjury that the foregoing is true and correct.
Executed on _____ (date).

Signature of Petitioner

CERTIFICATE

hereby certify that the petitioner herein has the sum of \$ _____ on account to [~~his~~] the petitioner's credit at the _____ institution where [~~he~~] the petitioner is confined. I further certify that petitioner likewise has the following securities to [~~his~~] the petitioner's credit according to the records of said _____ institution:

Authorized Officer of Institution

Form C-5. Sample Format for Hearing Motion: NOTICE OF HEARING

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

ABC, INC.,) Civil No. _____
) (Case category, *see* RCCH Rule 3(c)(5))
 Plaintiff,)
) NOTICE OF HEARING AND CERTIFICATE
 vs.) OF SERVICE
)
 XYZ, INC.,)
)
 Defendant.)

NOTICE OF HEARING

TO: Jane Brown
87 King Street
Honolulu, Hawai‘i 96813

Attorney for Defendant XYZ, Inc.

NOTICE IS HEREBY GIVEN that the Motion for Summary Judgment shall come on for hearing before the Honorable _____ (name of judge) _____, Judge of the above-entitled court, in [his/her] the Judge’s courtroom at _____ (address) _____ on _____ (day & date) _____ at _____ (time) _____, or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai‘i, _____ (date) _____.

(signature)
DAVID JONES
Attorney for Plaintiff ABC, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing motion was served on the above-identified parties at their respective addresses by (*hand delivery or depositing the same in the United States mail, postage prepaid*) on _____ (service date) _____.

DATED: Honolulu, Hawai'i, _____ (date) _____.

(signature)
DAVID JONES
Attorney for Plaintiff ABC, Inc.

**PROPOSED AMENDMENTS TO THE
HAWAI'I FAMILY COURT RULES**

[The proposed additional language is underscored; deleted language is bracketed and stricken.]

Rule 103. PLEADINGS.

(a) and (b). Reserved.

(c) Names. Proof of full legal names shall be required in all cases, unless excused by the judge for good cause.

(1) **OF PETITIONERS.** The name of the petitioner or petitioners shall be set forth in the title of the action. Wherever names appear in the pleadings, they shall be written in full and without initials. The name of a ~~[married woman]~~ person legally married or who entered into a civil union shall include ~~[her]~~ the person's first or given name, ~~[her]~~ the person's middle name, if any, ~~[her]~~ the person's ~~[maiden]~~ surname prior to the marriage or civil union, and if ~~[she]~~ the person has assumed it, the surname of ~~[her husband]~~ their partner, and the same procedure shall be required of a widow and of a divorcee who retains the surname of ~~[her]~~ their former ~~[husband]~~ spouse or partner.

(2) **OF INDIVIDUAL.** The title of the action shall not include the name of the individual to be adopted but shall identify the individual only by its sex and date of birth.

In a nonconsent petition, when it is necessary to allege and prove certain grounds which permit dispensing with the consent, the name of the minor child sought to be adopted shall be included in the allegations but not in the title.

(d) Signing of petition. Every petition for adoption shall be signed by the petitioner or petitioners and may be executed under penalty of perjury.

(e) More than one individual in a petition. The filing of one petition for adoption of more than one individual shall be allowed only when the individuals who are born in or out of wedlock are full siblings and all of the individuals are being adopted by the same petitioner or petitioners. Separate petitions shall be filed when the individuals are born out of wedlock to the same mother but different fathers.

(f) - (h). Reserved.

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

(a) Attorney's affidavit or declaration of birth background.

In every adoption where placement through a doctor or other qualified non-agency person, is made of a child with proposed adoptive parents to whom the child bears no relationship, the attorney for the petitioner or petitioners shall, before or at the time of the hearing of the petition, file

an Affidavit or Declaration of Birth Background with the court containing in substance the following information:

- (1) the name and age of the natural mother and the name and age of the natural father, if known;
- (2) the name of the child at birth and the place and date of birth;
- (3) the marital status of the natural mother at the time of the birth of the child;
- (4) the racial backgrounds, physical descriptions, educational backgrounds, occupations, religion and health backgrounds of the natural mother and the natural father;
- (5) special requests of either parent relating to placement, if any;
- (6) whether or not counseling was provided either parent or reason none was obtained;
- (7) the total number of times the attorney saw the natural mother and information regarding the consistency of [~~her~~] the mother's indicated desire to place the child in the manner proposed; and
- (8) if the natural mother is an unmarried minor, the name and relationship of the person endorsing [~~her~~] the natural mother's consent, if an endorsement is made.

(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~~] the natural mother's 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~~] the natural father 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 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.

(c) Foreign adoption placement agency's affidavit or declaration. In an adoption where placement is made of a child through a foreign adoption agency, and the mother's affidavit or declaration, as required by (b) of this Rule, is not obtainable, the foreign adoption

agency, which placed the child, may submit an affidavit or declaration containing the following:

- (1) information the agency possesses relating to the relationship between the natural mother and the natural father;
- (2) how the agency possesses this information;
- (3) whether or not the natural father ever attempted to contact the child while the child was in the custody of the agency; and
- (4) the attempts made by the agency to contact the natural mother to secure the affidavit or declaration required by (b) of this Rule.

The local adoption agency which placed the child with the adoptive parents, in conjunction with the foreign adoption agency, shall submit the affidavit or declaration to the judge for review, together with its report and documents relating to the child to be adopted.

**PROPOSED AMENDMENTS TO THE
RULES OF THE DISTRICT COURTS OF THE STATE OF HAWAII**

[The proposed additional language is underscored; deleted language is bracketed and stricken.]

Rule 17. CONDUCT OF A TRIAL.

(a) Sequence of presentation. Subject to the orders of the court, which may alter the sequence of presentation of the case when there are numerous parties or for other reasons:

(1) The plaintiff (or the prosecuting officer in a criminal case) shall have the right to make an opening statement. The defendant shall also have the right to make an opening statement, either immediately after the plaintiff's or the prosecuting officer's statement or at the beginning of defendant's case.

(2) the plaintiff or prosecuting officer shall produce the evidence on ~~his or her~~ their part.

(3) The defendant may then open the defense and offer evidence in support thereof.

(4) The parties may then respectively offer rebutting evidence only.

(5) When the presentation of evidence is concluded, unless the case is submitted on either side or both sides without argument, the plaintiff or prosecuting officer shall open the argument; the defendant may then reply; and the plaintiff or prosecuting officer may conclude the argument, and in the conclusion shall confine themselves to answering any new matter or arguments presented by the defendant.

(b) Limitations on number of counsel. Except by leave of court:

(1) Only one counsel for each party shall examine and cross-examine the same witness or be heard on any question.

(2) No more than two counsel shall appear for any party on the trial.

**PROPOSED AMENDMENTS TO THE
DISTRICT COURT RULES OF CIVIL PROCEDURE**

[The proposed additional language is underscored; deleted language is bracketed and stricken.]

Rule 38. JURY TRIAL OF RIGHT.

(a) Right preserved. The right of trial by jury as declared by the Constitution of the State of Hawai'i or as provided by a statute shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the case is at issue. Such demand may be indorsed upon a pleading of a party and such demand must include the endorsement "Approved and So Ordered."

Upon such demand, the party demanding a trial by jury shall pay to the clerk of the district court such costs for trial by jury as are payable in the circuit court, and the case shall be transferred to the circuit court. The clerk shall prepare, certify and transmit all of the papers within 20 days after the filing of the demand.

(c) Same: Specification of issues. In the demand a party may specify the issues which [~~he~~] the party wishes tried by jury; otherwise the demanding party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party may demand trial by jury of other issues as provided by the rules of the circuit court.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by that party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

COMMENTS:

Adopts old DCRCP Rule 38 with changes to gender neutral language. Also changes all the language to conform to "trial by jury" and incorporates a current administrative memo/order requiring a line for court approval.

BENCH WARRANT

TWO-SIDED FORM

Form #~~4~~_DC03

IN THE DISTRICT COURT OF THE ____ CIRCUIT
DIVISION
STATE OF HAWAI'I

THE STATE OF HAWAI'I
vs.

Name of ARRESTEE:

Reserved for Court Use

Address of ARRESTEE:

Civil No.

BW No.

Filing Party~~[(ies)]~~/~~[Filing Party(ies)]~~ Attorney ~~[(c)]~~Name,
Attorney Number, Firm Name (if applicable), Address,
Telephone ~~[and Facsimile]~~ Number~~(s)]~~ and email.

Plaintiff~~[(s)]~~

Defendant~~[(s)]~~

Date Bench Warrant Ordered:

BENCH WARRANT

THE STATE OF HAWAI'I:

TO: The Director of ~~[Public Safety]~~ Law Enforcement of the State of Hawai'i, ~~[his/her]~~ any deputy or any police officer or other person authorized by the laws of the State of Hawai'i.

Because above-named person (ARRESTEE) was duly ordered to appear before this Court at the Original Hearing Date and Time stated above, and failed to so appear:

You are commanded to arrest and bring ARRESTEE before the Presiding District Judge of this Court, in ~~[his/her]~~ the judge's Courtroom, on the day and at the time designated by the checked box on the reverse side, then and there to show cause why ARRESTEE should not be found guilty of contempt of court.

UNLESS AUTHORIZED IN WRITING, THIS WARRANT MAY NOT BE EXECUTED BETWEEN THE HOURS OF 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE PUBLIC.

Date: Judge of the above-entitled Court

BAIL SET AT: \$

SEE REVERSE SIDE

COURT DATE AND ADDRESSES:

(space reserved for court addresses)

I am duly authorized by Hawai'i law to serve this Bench Warrant and I executed this Bench Warrant on the following person:

at _____

on this _____ day of _____, 20____.

Date:	Signature of Serving Officer: Print/Type Name: _____ Badge No.: _____
-------	--

For Civil related matters, please call (808) _____ or visit the District Court Service Center at _____.

Americans with Disabilities Act Notice



If you need an accommodation for a disability when participating in a court program, service or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:

- Call (808) _____; or
- Send an email to adarequest@courts.hawaii.gov

The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

**REQUEST FOR RELIEF FROM COURT COSTS;
DECLARATION; ORDER**

IN THE DISTRICT COURT OF THE _____ CIRCUIT DIVISION STATE OF HAWAI'I	
Plaintiff	Reserved for Court Use
Defendant	Civil No.
	Filing Party/Attorney Name, Attorney Number, Firm Name (if applicable), Address, Telephone and Fax Number <u>and</u> Email
	<input type="checkbox"/> Check if you are an attorney representing the filing party <i>pro bono</i>

REQUEST FOR RELIEF FROM COURT FILING FEES

Pursuant to Hawai'i Revised Statutes §607-3, the filing party in this case asks the court to waive the prepayment of court filing fees as set forth in Hawai'i Revised Statutes §607-4(b) because ~~he or she~~ the filing party is unable to pay such costs and provide for ~~his or her~~ their necessities in life.

Please answer the following questions:

1. Are you currently employed? Yes No
 - a. If the answer is Yes,
 - State the amount of your monthly salary/wages: \$ _____
 - Name and address of your employer: _____
 - b. If the answer is No,
 - State the date you were last employed _____
 - Name and address of your former employer: _____
2. Do you rent or own your home?
 - State the amount of your monthly rent/mortgage payment: \$ _____
 - If you rent, do you receive any rent assistance? (Section 8) Yes No
3. Do you own any real estate other than your home?
Yes No
If the answer is Yes, state the total value: \$ _____
4. Do you have any money in any bank account? (Include any funds in prison accounts.)
Yes No
If the answer is Yes, state the total amount: \$ _____

(continued on page 2)

REQUEST FOR RELIEF FROM COURT FILING FEES (continued)

5. Do you own any motor vehicles?
Yes No
6. Do you receive any of the following (check all that apply)?
 Social Security payments (e.g. SSI or SSDI) or Retirement?
 Supplemental Nutrition Assistance Program (SNAP)
 Temporary Aid to Needy Families (TANF) [formerly AFDC]
 Food Stamps (GA)
7. List any persons who depend upon you for financial support. State your relationship to those persons and state how much you contribute to their support.
8. Do you have any other sources of income not listed above?
Yes No
If the answer is Yes, describe what other income you receive.

DECLARATION

I DECLARE UNDER PENALTY OF PERJURY THAT WHAT I HAVE STATED IS TRUE AND CORRECT.

Date:	Signature of Filing Party/Attorney:
	Print/Type Name:

(Reserved For Court Use)

ORDER

Having reviewed the request for relief from costs:

- This request is **GRANTED** court filing fees are waived.
- The request is **DENIED**.

Date:	Judge
-------	-------



Americans with Disabilities Act Notice

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- Call (808) _____; or
- Send an email to adarequest@courts.hawaii.gov

The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

EXEMPLIFICATION

IN THE DISTRICT COURT OF THE _____ CIRCUIT _____ DIVISION STATE OF HAWAI'I	
Plaintiff[(s)]	Reserved for Court Use
Defendant[(s)]	Civil No.
	Filing Party[(ies)]/[Filing Party(ies)] Attorney [(s)]Name, Attorney Number, Firm Name (if applicable), Address, Telephone [and Facsimile] Number[s] and Email

EXEMPLIFICATION

I, _____, the undersigned Clerk of the above-entitled Court, certify that the attached is a full, true, and correct copy of the original document on file.
IN WITNESS I have signed this exemplification and affixed the seal of this Court.

Date:	Clerk of the above-entitled Court
-------	-----------------------------------

I, _____, District Judge of the above-entitled Court, certify that said Court is a Court of Record having a Clerk and Seal; that the court Clerk who signed the foregoing attestation is a duly appointed and qualified Clerk of said Court, and was, at the time of signing the same such Clerk, and as such, duly qualified to execute said certificate of attestation; that the same is in due form according to the laws of the State of Hawai'i; that the signature to said attestation is in the Clerk's genuine handwriting, and that all [his/her] official acts, as such Clerk, are entitled to full faith and credit.
IN WITNESS my signature and the seal of this Court.

Date:	Judge of the above-entitled Court
-------	-----------------------------------

I, _____, Court Administrator of the above-entitled Court, certify that the Honorable Judge, whose name is subscribed to the preceding certificate, was, at the time of signing the same Judge of this Court and was duly commissioned, qualified and authorized by law to execute said certificate, and that [his/her] the Judge's signature to said certificate is genuine. **IN WITNESS** I have signed this exemplification and affixed the seal of this court.

Date:	Court Administrator of the above-entitled Court
-------	---

Americans with Disabilities Act Notice



If you need an accommodation for a disability when participating in a court program, service or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:

- Call (808) _____; or
- Send an email to adarequest@courts.hawaii.gov

The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

JUDGMENT DEBTOR(S)'S MOTION FOR RETURN/RELEASE OF WAGES EXEMPT FROM GARNISHMENT; NOTICE OF MOTION; CERTIFICATE OF SERVICE; GARNISHMENT CALCULATION WORKSHEET; EXHIBIT "A"

TWO-SIDED FORM
Form # DC27B

IN THE DISTRICT COURT OF THE _____ CIRCUIT _____ DIVISION STATE OF HAWAII	
Plaintiff[(s)]	Reserved for Court Use Civil No.
Defendant[(s)]	Filing Party[(ies)]/[Filing Party(ies)] ² Attorney [(c)]Name, Attorney Number, Firm Name (if applicable), Address, Telephone [and Facsimile] Number[s] and Email

JUDGMENT DEBTOR(S)'S MOTION

FOR RETURN/RELEASE OF WAGES EXEMPT FROM GARNISHMENT

Filing Party[(ies)] moves this Court for an Order returning or releasing to the filing party all or a portion of wages which have been garnished because:

1. The amount garnished or withheld was excessive as the Federal Law State Law was more favorable to the filing party.
2. The Garnishee should have deducted \$ _____, rather than \$ _____ according to the Garnishment Calculation Worksheet, Form# DC27C, and a copy of applicable pay stub attached as Exhibit "A".
3. Other (specify) _____.

Date:	Signature of Declarant:
	Print/Type Name:

NOTICE OF HEARING

TO: _____:

Please take notice that this Motion will be heard before the Presiding Judge of this Court in [his/her] the Courtroom, at the address checked on page 2 on _____, _____, 20____, at _____ a.m. or as soon thereafter as parties may be heard.

(continued on reverse side)

SEE AND USE PAGE 2 TO RESPOND TO MOTION

COURT ADDRESS(ES)

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Motion [~~was served at the last known address(es) of the Opposing Party[(ies)] or [Opposing Party(ies)] attorney~~] on all parties or their attorneys [(date) _____] by Hand-delivery or Mail, addressed as follows: [at the following address(es):] _____
Judgment Creditor: _____ Employer/Garnishee _____

Signature of Filing Party[(ies)]/[Filing Party(ies)] Attorney:

Date:

Print/Type Name:

RESPONSE TO MOTION/CERTIFICATE OF SERVICE

- I DO NOT OBJECT to this Motion.
- I DISAGREE with this Motion for the following reasons:

Reserved for Court Use

I have read this Motion, know the contents and verify that the statements are true to my personal knowledge and belief. **I DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT:**

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Response to the Motion [~~was served at the last known address(es) of the Opposing Party[(ies)] or [Opposing Party(ies)] attorney~~] on all parties or their attorneys [(date) _____] by Hand-delivery or Mail, addressed as follows: [at the following address(es):] _____
Judgment Creditor: _____ Employer/Garnishee _____

Date:

Signature of Responding Party[(ies)]/[Responding Party(ies)] Attorney:

Print/Type Name:

Americans with Disabilities Act Notice



If you need an accommodation for a disability when participating in a court program, service or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:

- Call (808) _____; or
- Send an email to adarequest@courts.hawaii.gov

The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

NOTICE OF MOTION

TO _____:
Please take notice that this Motion will be heard by the District Judge of this Court, in ~~his/her~~ the Courtroom, at the address below on (Day): _____, (Date): _____ at (Time): _____, _____.m. or as soon thereafter as parties may be heard.

COURT ADDRESSES

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Motion on all parties or their attorneys by Hand-delivery or Mail, addressed as follows:

Signature of Filing Party/Attorney:

Date:

Print/Type Name:

RESPONSE TO THE MOTION/CERTIFICATE OF SERVICE

- I DO NOT OBJECT** to this Motion.
- I DISAGREE** with this Motion for the following reasons (Attach additional page(s), if necessary):

Reserved for Court Use

I DECLARE UNDER PENALTY OF LAW THAT WHAT I HAVE STATED IS TRUE AND CORRECT.

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Response to the Motion on all parties or their attorneys by Hand-delivery or Mail, addressed as follows:

Signature of Responding Party/Attorney:

Date:

Print/Type Name:

Americans with Disabilities Act Notice



If you need an accommodation for a disability when participating in a court program, service or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:

- Call (808) _____; or
- Send an email to adarequest@courts.hawaii.gov

The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

MOTION FOR DISCOVERY; DECLARATION;
 NOTICE OF MOTION; CERTIFICATE OF SERVICE

TWO-SIDED FORM

Form #11_DC37

IN THE DISTRICT COURT OF THE _____ CIRCUIT _____ DIVISION STATE OF HAWAI‘I	
Plaintiff[(s)] Defendant[(s)]	Reserved for Court Use Civil No. Filing Party[(ies)]/[Filing Party(ies)] Attorney [(s)] Name, Attorney Number, Firm Name (if applicable), Address, Telephone [and Facsimile] Number[(s)] and Email
Trial Date:	Time:
MOTION FOR DISCOVERY Filing Party[(ies)] requests that this Motion be set for hearing on a date and time certain. This Motion is based on the Declaration below and is made pursuant to: <input type="checkbox"/> For Deposition (District Court Rules of Civil Procedure, Rules 30 and 31); or <input type="checkbox"/> For Documents [A]and/[O]r Entry Upon Land For Inspection (District Court Rules of Civil Procedure, Rule 34); or <input type="checkbox"/> For Mental & Physical Examination (District Court Rules of Civil Procedure, Rule 35); or <input type="checkbox"/> To Compel Discovery (District Court Rules of Civil Procedure, Rule 37).	
DECLARATION I have read this Motion, know the contents and verify that the statements are true to my personal knowledge and belief. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAI‘I THAT THE FOLLOWING IS TRUE AND CORRECT: 1. I am the <input type="checkbox"/> Movant or <input type="checkbox"/> associated with Movant as _____; 2. The following are facts why Motion should be granted (attach continuation page, if necessary);	
Date:	Signature of Declarant: Print/Type Name:

MOTDCRY.2XX (Amended 4/18/97)

SEE AND USE REVERSE SIDE TO RESPOND TO MOTION

NOTICE OF MOTION

TO: _____

Please take notice that this Motion will be heard by the District Judge of this Court, in ~~his/her~~ the Courtroom, at the address checked below on _____, _____, 20____ at _____ M., or as soon thereafter as parties may be heard.

COURT ADDRESSES

(space reserved for court addresses)

Mailing address for the above Courts: (space reserved for court mailing address)

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Motion [~~was served at the last known address(es)~~] of the ~~Opposing Party(ies)~~ or [~~Opposing Party(ies)'] attorney~~] on all parties or their attorneys [_____] by Hand-delivery or Mail, addressed as follows: [Postage Prepaid, at the following address(es)]

Date:	Signature of Filing Party[(ies)]/[Filing Party(ies)'] Attorney: Print/Type Name:
-------	---

RESPONSE TO MOTION/CERTIFICATE OF SERVICE

- I DO NOT OBJECT to this Motion.
- I DISAGREE with this Motion for the following reasons:
(Attach continuation page, if necessary).

Reserved for Court Use

I have read this Response, know the contents and verify that the statements are true to my personal knowledge and belief. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAII THAT THE ABOVE IS TRUE AND CORRECT.**

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Response to the Motion [~~was served at the last known address(es)~~] of the ~~Opposing Party(ies)~~ or [~~Opposing Party(ies)'] attorney~~] on all parties or their attorneys [(date) _____] by Hand-delivery or Mail, addressed as follows: [Postage Prepaid, at the following address(es)]

Date:	Signature of Responding Party[(ies)]/[Responding Party(ies)'] Attorney: Print/Type Name:
-------	---

For Civil related matters, please call (808) _____ or visit the District Court Service Center at _____:



Americans with Disabilities Act Notice

If you need an accommodation for a disability when participating in a court program, service or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:

- Call (808) _____; or
- Send an email to adarequest@courts.hawaii.gov

The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

PLAINTIFF(S) DEFENDANT(S)

MOTION TO FOR _____;

DECLARATION; NOTICE OF MOTION; CERTIFICATE OF SERVICE

IN THE DISTRICT COURT OF THE _____ CIRCUIT
_____ DIVISION
STATE OF HAWAI'I

Plaintiff(s)

Reserved for Court Use

Civil No.

Defendant(s)

Filing Party(ies)/[Filing Party(ies)] Attorney [(s)] Name, Attorney Number, Firm Name (if applicable), Address, Telephone [and Facsimile] Number(s) and Email

PLAINTIFF(S) DEFENDANT(S) MOTION

TO FOR _____

Filing Party(ies) requests that this Motion be set for hearing on a date and time certain. This Motion is based on the Declaration below and is made pursuant to:

- Rules of the District Courts of the State of Hawai'i, Rule _____;
- District Court Rules of Civil Procedure, Rule _____;
- Rules of the Small Claims Division of the District Courts, Rule _____; or
- Hawai'i Revised Statutes § _____.

DECLARATION

I have read this Motion, know the contents and verify that the statements are true to my personal knowledge and belief. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAI'I THAT THE FOLLOWING IS TRUE AND CORRECT:**

1. I am the Movant or associated with Movant as _____;
2. The following are facts why Motion should be granted (attach continuation sheet, if necessary);

Date:	Signature of Declarant:
	Print/Type Name:

NOTICE OF HEARING

TO: _____
Please take notice that this Motion will be heard before the Presiding Judge of this Court in [his/her] the Courtroom, at the address checked on the reverse side on _____, _____, 20____, at _____ a.m. or as soon thereafter as parties may be heard.
(continued on reverse side)

COURT ADDRESSES

(space reserved for court addresses)

Mailing address for the above Courts: (space reserved for court mailing address)

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Motion [~~was served at the last known address(es) of the~~
~~Opposing Party(ies) or [Opposing Party(ies)] attorney~~] on all parties or their attorneys [_____] by
 Hand-delivery or Mail, addressed as follows: [~~Postage Prepaid, at the following address(es)~~]

Date:	Signature of Filing Party[(ies)]/[Filing Party(ies)] Attorney: Print/Type Name:
-------	--

RESPONSE TO MOTION/CERTIFICATE OF SERVICE

- I DO NOT OBJECT to this Motion.
- I DISAGREE with this Motion for the following reasons:
(Attach continuation page, if necessary).

Reserved for Court Use

I have read this Response, know the contents and verify that the statements are true to my personal knowledge and belief. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAII THAT THE ABOVE IS TRUE AND CORRECT.**

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Response to the Motion [~~was served at the last known address(es) of the~~
~~Opposing Party(ies) or [Opposing Party(ies)] attorney~~] on all parties or their attorneys
[~~(date)~~ _____] by Hand-delivery or Mail, addressed as follows: [~~Postage Prepaid, at the following address(es)~~]

Date:	Signature of Responding Party[(ies)]/[Responding Party(ies)] Attorney: Print/Type Name:
-------	--

For Civil related matters, please call (808) _____ or visit the District Court Service Center at _____.



Americans with Disabilities Act Notice

If you need an accommodation for a disability when participating in a court program, service or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:

- Call (808) _____; or
- Send an email to adarequest@courts.hawaii.gov

The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

EX PARTE MOTION FOR SERVICE OF PROCESS BY POSTING AND BY CERTIFIED MAIL; DECLARATION; DECLARATION OF PROCESS SERVER; ORDER DIRECTING SERVICE OF PROCESS AND SUMMONING DEFENDANT(S) TO APPEAR (FOR SUMMARY POSSESSION COMPLAINTS ONLY)

IN THE DISTRICT COURT OF THE _____ CIRCUIT _____ DIVISION STATE OF HAWAI'I	
Plaintiff[(s)]	Reserved for Court Use Civil No.
Defendant[(s)]	Filing Party/Attorney Name, Attorney Number, Firm Name (if applicable), Address, Telephone [and Fax] Number[s] <u>and Email</u>
Premises Address: Attempted Service Dates: _____	Other Address(es): Attempted Service Dates: _____
	Complaint Filing Date:
EX PARTE MOTION FOR SERVICE OF PROCESS BY POSTING AND BY CERTIFIED MAIL	
Plaintiff[(s)] request[(s)] that this Motion be granted for the reasons stated in the Declaration below. This Motion is based on the District Court Rules of Civil Procedure, Rule 4(e) and Hawai'i Revised Statutes §666-8.	
DECLARATION	
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT: I am Plaintiff or the attorney for Plaintiff. I caused the Complaint for Summary Possession to be filed on the Complaint Filing Date listed above. Based upon the Declaration of the Process Server below, service by posting and certified mail is necessary as described in Hawai'i Revised Statutes §666-8.	
Date:	Signature of Declarant: Print/Type Name:

SEE PAGE 2

DECLARATION OF PROCESS SERVER

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT: I am a person authorized to serve process in the State of Hawai'i. I have personal knowledge of the statements in this declaration and am competent to testify to these matters. I was engaged by Plaintiff to serve a certified copy of the Complaint for Summary Possession on Defendant. I attempted service on the Attempted Service Dates at the Premises Addresses and Other Addresses listed on page 1, that are the only known addresses for Defendant. I have checked the telephone directory of this circuit and I have not been able to find any other address for Defendant. Despite my efforts, I have not been able to locate and serve Defendant. I am informed and believe that Defendant continues to reside and/or do business in the State of Hawai'i but is avoiding service of process. (Attach continuation page, if necessary).

Date:	Signature of Process Server: Print/Type Name:
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ORDER DIRECTING SERVICE OF PROCESS AND SUMMONING DEFENDANT TO APPEAR

THE STATE OF HAWAI'I

TO THE SHERIFF, OR THE CHIEF OF POLICE OF THIS CIRCUIT, OR THEIR DEPUTY, OR THEIR DULY AUTHORIZED SUBORDINATES IN THIS CIRCUIT OR ANY PERSON AUTHORIZED TO SERVE PROCESS IN THE STATE OF HAWAI'I:

WHEREAS, the Plaintiff has moved this Court for a special Order Directing Service of Process on Defendant by Posting Complaint for Summary Possession on the Premises and by Certified Mail at the Premises Address listed on page 1;

NOW, THEREFORE, YOU ARE COMMANDED to leave certified copies of **this Motion and** the Complaint for Summary Possession with some agent or employee of Defendant, provided an agent or employee can be found upon the premises or elsewhere within the circuit, and also to affix in a conspicuous place upon that certain premises located at Premises Address listed on page 1, certified copies of this Motion and the Complaint for Summary Possession, such posting to be not less than ten (10) days before the return date, and make due return of this Order with what you have done endorsed thereon.

IT IS FURTHER ORDERED that Plaintiff shall send to Defendant, by certified mail, return-receipt requested, certified copies of this Motion and the Complaint for Summary Possession and file in these proceedings a declaration of the certified mailing in the appropriate form.

IT IS FURTHER ORDERED that Defendant shall appear before the Presiding Judge of this Court in his/her the Courtroom, at the address indicated below on _____, _____, 20____ at _____ a.m. to respond to the Complaint for Summary Possession.

*** * * * * THE PROCESS SERVER MUST POST BOTH THIS MOTION * * * * ***
AND THE COMPLAINT FOR SUMMARY POSSESSION

COURT ADDRESS

Mailing address for the Court:

Date:	Judge
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Americans with Disabilities Act Notice



If you need an accommodation for a disability when participating in a court program, service or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:

- Call (808) _____; or
- Send an email to adarequest@courts.hawaii.gov

The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

**MOTION FOR RECONSIDERATION OR NEW TRIAL;
 DECLARATION; NOTICE OF MOTION; CERTIFICATE
 OF SERVICE**

IN THE DISTRICT COURT OF THE _____ CIRCUIT _____ DIVISION STATE OF HAWAI'I	
Plaintiff[(s)]	Reserved for Court Use Civil No.
Defendant[(s)]	Filing Party/Attorney Name, Attorney Number (if applicable), Address, Telephone [and Fax] Number[s] <u>and Email</u>
Trial/Motion Judge:	
MOTION FOR RECONSIDERATION OR NEW TRIAL	
Filing Party requests that this Motion be set for hearing on a date and time certain. This Motion is based on the Declaration below and is made pursuant to:	
<input type="checkbox"/> District Court Rules of Civil Procedure, Rule _____;	
<input type="checkbox"/> New trial under District Court Rules of Civil Procedure, Rule 59.	
DECLARATION	
1. I am <input type="checkbox"/> the Movant or <input type="checkbox"/> associated with the Movant as _____;	
2. The following are facts why the Motion should be granted (Attach additional page(s), if necessary):	
I DECLARE UNDER PENALTY OF LAW THAT WHAT I HAVE STATED IS TRUE AND CORRECT.	
Date:	Signature of Declarant: Print/Type Name:

SEE PAGE 2 FOR NOTICE OF MOTION AND TO RESPOND TO THE MOTION

NOTICE OF MOTION

TO _____:
Please take notice that this Motion will be heard by the District Judge of this Court, in [~~his~~/her] the Courtroom, at the address below on (Day): _____, (Date): _____ at (Time): _____, _____.m. or as soon thereafter as parties may be heard.

COURT ADDRESSES

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Motion on all parties or their attorneys by
 Hand-delivery or Mail, addressed as follows:

Date: _____	Signature of Filing Party/Attorney: _____ Print/Type Name: _____
-------------	---

RESPONSE TO THE MOTION/CERTIFICATE OF SERVICE

- I DO NOT OBJECT** to this Motion.
- I DISAGREE** with this Motion for the following reasons (Attach additional page(s), if necessary):

Reserved for Court Use

I DECLARE UNDER PENALTY OF LAW THAT WHAT I HAVE STATED IS TRUE AND CORRECT.

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Response to the Motion on all parties or their attorneys by Hand-delivery or Mail, addressed as follows:

Date: _____	Signature of Responding Party/Attorney: _____ Print/Type Name: _____
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Americans with Disabilities Act Notice



If you need an accommodation for a disability when participating in a court program, service or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:

- Call (808) _____; or
- Send an email to adarequest@courts.hawaii.gov

The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

**MOTION TO SET ASIDE DEFAULT JUDGMENT
OR DISMISSAL; DECLARATION; NOTICE OF MOTION;
CERTIFICATE OF SERVICE**

TWO-SIDED FORM
Form #[4]_DC42

IN THE DISTRICT COURT OF THE _____ CIRCUIT _____ DIVISION STATE OF HAWAI'I	
Plaintiff[(s)]	Reserved for Court Use
Defendant[(s)]	Civil No.
Filing Party[(ies)]/[Filing Party(ies)] Attorney [(s)] Name, Attorney Number, Firm Name (if applicable), Address, Telephone [and Facsimile] Number[(s)] <u>and Email</u>	
Date of Default, Judgment or Dismissal entered:	

MOTION TO SET ASIDE DEFAULT JUDGMENT or DISMISSAL

Filing Party[(ies)] requests that this Motion be set for hearing on a date and time certain. This Motion is based on the Declaration below and is made pursuant to the District Court Rules of Civil Procedure, Rule _____.

DECLARATION

I have read this Motion, know the contents and verify that the statements are true to my personal knowledge and belief. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAI'I THAT THE FOLLOWING IS TRUE AND CORRECT:**

1. I am the Movant or associated with Movant as _____;
2. The following are facts why the Motion should be granted (attach continuation page, if necessary);

Date:	Signature of Declarant:
	Print/Type Name:

MOTSETSD.2XX (Amended 4/18/97)

SEE AND USE REVERSE SIDE TO RESPOND TO MOTION

NOTICE OF MOTION

TO: _____:

Please take notice that this Motion will be heard by the District Judge of this Court, in ~~his/her~~ the Courtroom, at the address checked below on _____, _____, 20__ at _____ M., or as soon thereafter as parties may be heard.

COURT ADDRESSES

(space reserved for court addresses)

Mailing address for the above Courts: (space reserved for court mailing address)

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Motion [~~was served at the last known address(es) of the~~ Opposing Party(ies) or [Opposing Party(ies)]' attorney] on all parties or their attorneys [_____] by Hand-delivery or Mail, addressed as follows: [Postage Prepaid, at the following address(es)]

Signature of Filing Party(ies)/[Filing Party(ies)]' Attorney:

Date:

Print/Type Name:

RESPONSE TO MOTION/CERTIFICATE OF SERVICE

- I DO NOT OBJECT to this Motion.
- I DISAGREE with this Motion for the following reasons:

Reserved for Court Use

I have read this Response, know the contents and verify that the statements are true to my personal knowledge and belief. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAI'I THAT THE ABOVE IS TRUE AND CORRECT.**

CERTIFICATE OF SERVICE

I certify that on (date): _____ I served a copy of this Response to the Motion [~~was served at the last known address(es) of the~~ Opposing Party(ies) or [Opposing Party(ies)]' attorney] on all parties or their attorneys [(date) _____] by Hand-delivery or Mail, addressed as follows: [Postage Prepaid, at the following address(es)]

Signature of Responding Party(ies)/[Responding Party(ies)]' Attorney:

Date:

Print/Type Name:

Americans with Disabilities Act Notice



If you need an accommodation for a disability when participating in a court program, service or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:

- Call (808) _____; or
- Send an email to adarequest@courts.hawaii.gov

The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

**WRIT OF EXECUTION; EXHIBIT A
(HAWAI'I REVISED STATUTES §651-32)**

TWO-SIDED FORM
Form #**[4]**_DC53

IN THE DISTRICT COURT OF THE _____ CIRCUIT DIVISION STATE OF HAWAI'I	
Plaintiff (s)	Reserved for Court Use
Defendant (s)	Civil No.
	Filing Party (ies) / Filing Party(ies) ² Attorney <input type="checkbox"/> Name, Attorney Number, Firm Name (if applicable), Address, Telephone and Facsimile Number (s) and Email
	Judgment attached as Exhibit A

WRIT OF EXECUTION (HRS §651-32)

THE STATE OF HAWAI'I:

TO: The Director of ~~Public Safety~~ Law Enforcement of the State of Hawai'i, ~~his/her~~ any deputy or any police officer or other person authorized by the laws of the State of Hawai'i.

You are commanded to levy upon the personal property of _____ ("the Judgment Debtor")

if any within the above Circuit and if sufficient cannot be found, then upon Judgment Debtor(s)' real property within the above Circuit, and giving thirty days previous notice as required by law, to sell same, or so much thereof as may be found necessary at public sale, to the highest bidder, in order to satisfy a judgment rendered against ~~him/her~~ Judgment Debtor, on the _____ day of _____, 20____, in favor of _____

_____ for \$ _____, see attached Exhibit A, costs of court inclusive, collecting also the legal interest from date of judgment, and your costs, and expenses of levy, advertisement and sale.

MAKE DUE RETURN to the above-entitled Court of this Writ, with your proceedings and the money collected by you within sixty days from the date of the execution of this Writ.

Date:	Judge of the above-entitled Court
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WRITEXE.2X (Amended 4/18/97)

SEE PAGE 2

I am duly authorized by Hawai'i law to serve this Writ and I executed this Writ on the following person(s):

at _____

on this _____ day of _____, 20__.

Signature of Serving Officer:

Date:

Print/Type Name:

For Civil related matters, please call **(808)** _____ or visit the District Court Service Center at _____.



Americans with Disabilities Act Notice

If you need an accommodation for a disability when participating in a court program, service or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:

- Call (808) _____; or
- Send an e-mail to adarequest@courts.hawaii.gov

The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

If you need help with this document, please contact the District Court Service Center at **PHONE NO.** (808) _____ • or **VISIT** _____.

_____ (d) Investigated to determine if there is a new telephone listing and found none for my client.

_____ (e) Undertook the following additional inquiry into the whereabouts of my client:

4. I am unable to determine the whereabouts of my client.

I hereby declare that the above stated facts are true.

Dated this ___ day of _____, 20__.

[Party's or Attorney's Signature]

[Party's or Attorney's machine printed name]

[Address]

[Telephone No.]

[Fax No.]

[Email Address]

Counsel for Appellant

No. _____

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

HRS CHAPTER 587A (CHILD PROTECTIVE ACT) APPEAL

IN THE INTEREST OF

[INITIALS]

) FC-S No. _____
)
)
) FAMILY COURT OF THE
) [specify circuit] CIRCUIT
)
)
)
)
)

CERTIFICATE OF CONVENTIONAL SERVICE

I certify that a paper copy of the foregoing Counsel's Certificate of Diligent Search was duly served upon Appellee or Appellee's counsel (if represented)

___ in person at _____ [address] _____ on ___ [date] _____.
___ by mail at _____ [address] _____ on ___ [date] _____.
___ by certified mail at _____ [address] _____ on ___ [date] _____.

Dated this ___ day of _____, 20__.

[Party's or Attorney's Signature]

[Party's or Attorney's machine printed name]
Counsel for Appellant

**PROPOSED AMENDMENTS TO THE
HAWAII RULES OF PROFESSIONAL CONDUCT**

[The proposed additional language is underscored; deleted language is bracketed and stricken.]

**Rule 1.2. SCOPE OF REPRESENTATION AND ALLOCATION
OF AUTHORITY BETWEEN CLIENT AND
LAWYER.**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which the objectives are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

COMMENTS:

Criminal, Fraudulent and Prohibited Transactions

[12] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law, or if the lawyer knows ~~[he or she]~~ they cannot comply with client instructions due to the duties imposed by these Rules or other law, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5) of these Rules.

**Rule 1.8. CONFLICT OF INTEREST: PROHIBITED
TRANSACTIONS.**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner which can be reasonably understood by the client;

COMMENTS:

Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen,

particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for ~~his or her~~ the lawyer's own conduct and the firm complies with any condition required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 of these Rules that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

**Rule 1.10. IMPUTATION OF CONFLICTS OF INTEREST:
GENERAL RULE.**

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.9, or 2.2 of these Rules, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

COMMENTS:

Principles of Imputed Disqualification

[10] A transitioning lawyer very well may have no confidential information if the lawyer did no work on the matter at the former firm and the matter was not the subject of discussion with the lawyer generally, for example at firm or working group meetings. The lawyer must search ~~his or her~~ the lawyer's files and recollections carefully to determine whether ~~he or she~~ the lawyer has confidential information. The fact that the lawyer does not immediately remember any details of the former client's representation does not mean that ~~he or she~~ the lawyer does not in fact possess confidential information regarding the matter.

However, even if the lawyer has no confidential information about the representation of the former client, the new firm is disqualified unless all of the screening procedures are followed.

Rule 1.13. ORGANIZATION AS CLIENT.

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(e) A lawyer who reasonably believes that [~~he or she~~] the lawyer has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Rule 1.14. CLIENT UNDER A DISABILITY

(a) When a client's ability to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client

COMMENTS:

Emergency Legal Assistance

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of [~~his or her~~] the lawyer's relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Rule 1.15. PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT OR THIRD PERSON.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property, as a fiduciary. Except as authorized by subsection (b) of this rule, a [The] lawyer shall not commingle such funds or property with ~~[his or her]~~ the lawyer's own or misappropriate such funds or property to ~~[his or her]~~ the lawyer's own use or benefit. Funds shall be kept in a separate account in Hawai'i in accordance with Rule 11 of the Rules of the Supreme Court of the State of Hawai'i, and Rule 4 of the Hawai'i Rules Governing Trust Accounting. Other tangible property owned by a client or third person shall be identified as such, appropriately safeguarded, and a record kept of the item's receipt and disbursement. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of 6 years after the termination of the representation.

Rule 3.4. FAIRNESS TO OPPOSING PARTY AND COUNSEL.

A lawyer shall not:

(d) advise or cause a person to secrete ~~[himself or herself]~~ themselves or to leave the jurisdiction of a tribunal for the purpose of making the person unavailable as a witness therein;

Rule 4.2. COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL.

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

COMMENTS:

[4] In the case of an organization, this Rule prohibits communications by a lawyer for another person or entity concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by ~~[his or her]~~ the agent's or employee's own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(h) of these Rules.

Rule 6.1. PRO BONO SERVICE.

A lawyer should aspire to provide at least 50 hours of pro bono services per year. In fulfilling this responsibility, the lawyer should:

(c) In lieu of providing 50 hours of pro bono service, a lawyer may exercise ~~[his or her]~~ the lawyer's desire to provide pro bono services by contributing at least \$500 each year to the Hawai'i Justice Foundation, or an entity that provides legal services at no fee, or at a significantly reduced fee, to persons of limited means.

COMMENTS:

[1] *Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. This Rule urges all lawyers to provide a minimum of 50 hours of pro bono services annually. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of ~~[his or her]~~ the lawyer's legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.*

[9] *Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Unlike the Model ABA Rule, paragraph (c) expressly allows a lawyer to exercise ~~[his or her]~~ the lawyer's desire to provide pro bono service through annual financial contributions to the Hawai'i Justice Foundation or other qualified entities for the support of organizations that provide free or significantly reduced fee legal services to persons of limited means. While the personal involvement of each lawyer in the provision of pro bono services is generally preferable, such personal involvement may not always be possible. The annual contribution alternative allows a lawyer to provide financial assistance to increase and improve the delivery of pro bono services when a lawyer cannot or decides not to provide pro bono services through the contribution of time. Also, there is no prohibition against a lawyer's contributing a combination of hours and financial support.*
