

Re: **Draft amendments to the Hawai'i Court Records Rules transmitted to Judiciary Rule Committees**

Public notice is provided that proposed rule amendments to the Hawai'i Court Records Rules have been transmitted to the following Judiciary rules committees:

Standing Committee to Review the Hawai'i Rules of Appellate Procedure;  
Permanent Committee on Rules of Civil Procedure and Circuit Court Civil Rules;  
Permanent Committee on Rules of Penal Procedure and Circuit Court Criminal Rules;  
Permanent Committee on Family Court Rules; and,  
District Court Rules of Civil Rules and Forms Committee.

The Committees have been asked to provide comments by **Thursday, January 8, 2026.**

**For more details on the proposed amendments, please review the enclosed letter. After committee review, it is anticipated that these proposed rule amendments will be released for public comment.**

While the Committees are considering the proposed amendments, the public may also submit public comments on the proposal shared with the Committees. Comments may be submitted 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](mailto:pao@courts.hawaii.gov), or via the [Judiciary website](#).

Attachment.



## **Supreme Court – THE JUDICIARY · STATE OF HAWAI‘I**

417 South King Street · Ali‘iōlani Hale · Honolulu, Hawai‘i · 96813-2943 · Ph: (808) 539-4747 · Fax: (808) 539-4703

**Mark E. Recktenwald**  
CHIEF JUSTICE

Thomas J. Berger  
Brandon H. Ito  
Lynda L. Arakawa  
Nicholas J. Severson  
STAFF ATTORNEYS

September 29, 2025

**VIA EMAIL**

Honorable Lisa M. Ginoza, Chair  
Standing Committee to Review the Hawai‘i  
Rules of Appellate Procedure

**VIA EMAIL**

Honorable James H. Ashford, Chair  
Permanent Committee on Rules of Civil  
Procedure and Circuit Court Civil Rules

**VIA EMAIL**

Honorable Ronald G. Johnson, Chair  
Permanent Committee on Rules of Penal  
Procedure and Circuit Court Criminal Rules

**VIA EMAIL**

Honorable Dyan M. Medeiros, Chair  
Permanent Committee on Family Court Rules

**VIA EMAIL**

Honorable Melanie M. May, Chair  
District Court Rules of Civil Rules and Forms  
Committee

Re: Draft amendments to the Hawai‘i Court Records Rules (HCRR)

Dear Committee Chairs:

Enclosed are draft rule amendments for your consideration (Ramseyer and clean copy).  
The court requests comments back from your committees by **Thursday, January 8, 2026**.

These amendments would delete HCRR 9, and in its place would adopt a new rule (HCRR 12) modeled on the Federal Rules of Civil Procedure (FRCP), Rule 5.2 and Federal Rules of Criminal Procedure, Rule 49.1, with some changes which are intended to make the rule easier to understand.

HCRR 13 is a proposed new rule governing Motions to Seal that is modeled on provisions from U.S. District Court, District of Hawai‘i, Civil Local Rule 5.2, Sealing of Information Filed with the Court, Washington General Rule 15, Destruction, Sealing and Redaction of Court Records, and California Rules of Court, Rules 2.550-2.551.

Honorable Lisa M. Ginoza  
Honorable James H. Ashford  
Honorable Ronald G. Johnson  
Honorable Dyan M. Medeiros  
Honorable Melanie M. May  
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HCRR 14 is a proposed new rule to implement the rehabilitative public policies underlying the expungement sealing provision at HRS § 831-3.2(f), but without actually sealing the entire case file. This new rule would establish a framework for a judge to remove a criminal case from public access on eCourt Kokua/JEFS Subscriber Access. Access to the case file would still be available to the public at the courthouse. In addition, JEFS access would still be available to the appearing attorneys of record. An example of when this rule might be implicated is when a defendant has not actually requested to seal the closed-criminal-case file, but the Attorney General has transmitted an expungement certificate to the court. Cf. Civil Beat Law Ctr. for Pub. Interest, Inc. v. Maile, 117 F.4th 1200, 1210 (9th Cir. 2024) (noting that “the individual privacy interest implicated by a particular record may vary, the State of Hawai‘i’s general interest in protecting the privacy of its citizens cannot justify the categorical, mandatory sealing of every such record” and instead the right must be “asserted by the affected individual” with the court making “pre-closure findings”). Notably, the federal rules already provide for removal and restriction of certain case information from the internet. See FRCP 5.2(c) (restricting internet access to social security appeals and immigration cases).

HCRR 16 is a new rule governing a motion by a non-party to unseal a confidential record. The intent of this new rule is to establish a regular process to address unsealing requests from non-parties, while fully preserving judicial discretion to modify the process in the appropriate circumstance.

HCRR 10 is a new rule to explicitly require the Clerk to maintain a publicly accessible index of cases that are either sealed in their entirety or removed from the internet under HCRR 14. HCRR 10 is modeled on language from Washington General Rule 15(c)(4), 15(h)(3), Destruction, Sealing and Redaction of Court Records. When a case file is sealed, to comply with the procedural requirements underpinning the public’s constitutional right of access to court, a minimum amount of case information should still be made available to the public to explain the total sealing of an otherwise public case file, and to also allow for a later challenge to the total sealing. See generally State v. Rogan, 156 Hawai‘i 233, 573 P.3d 616 (2025); Oahu Publications Inc. v. Ahn, 133 Hawai‘i 482, 507, 331 P.3d 460, 485 (2014); Grube v. Trader, 142 Hawai‘i 412, 422, 420 P.3d 343, 353 (2018). This would include a publicly available copy of the order and findings that sealed the case file, as well as the case number and party names. This new rule would be primarily prospective.

HCRR 7 is reserved for a future rule related to the docketing/filing of search warrants.

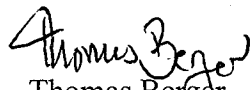
HCRR 15 is reserved for a future rule related to the unsealing of reports by medical examiners filed in a criminal case where a defendant was found not fit to proceed.

Honorable Lisa M. Ginoza  
Honorable James H. Ashford  
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HCRR 18 and HCRR 19 are reserved for future miscellaneous court rules related to court records, including the destruction of court records under the record retention schedule, or the preparation of transcripts by private court reporters when an official court reporter is not available.

If necessary, I am available to discuss. When your committee intends to meet, if you believe it would be beneficial, I would be delighted to join the meeting to answer questions and address any concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas Berger". The signature is fluid and cursive, with the first name "Thomas" and last name "Berger" clearly distinguishable.

Thomas Berger  
Supreme Court Staff Attorney

TJB/tsm

Enclosures: (Ex. A – Ramseyer; Ex. B – Clean)

cc: Mai T. NguyenVan, IT and Systems Director

**PROPOSED RULE AMENDMENTS**

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

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**PROPOSED AMENDMENTS TO HAWAII COURT RECORDS RULES**

**I. SCOPE, PURPOSE, AND CONSTRUCTION**

**Rule 1. SCOPE; PURPOSE AND CONSTRUCTION. [SCOPE]**

**(a) Scope of rules.** These rules govern court records and [ADLRO] Administrative Driver's License Revocation Office (ADLRO) records, unless otherwise specified.

**(b) Purpose and Construction.** These rules establish a uniform system for maintaining, accessing, redacting, and sealing court and ADLRO records. The intent is to ensure accurate recordkeeping, protect information deemed confidential by law, and provide clear procedures for public access to non-confidential court records.

**(c) Organization of the Rules:**

- (1) Part I: Scope, Purpose, and Construction
- (2) Part II: General Rules
- (3) Part III: Public Access
- (4) Part IV: Restricting Access
- (5) Part V: Nonparty Process to Access Confidential Records
- (6) Part VI: Miscellaneous Provisions

**(d) Definitions.** Terms defined in Rule 1 of the Hawai'i Electronic Filing and Service Rules apply to these Rules, as supplemented by Rule 2 of these Rules.

**Rule 2. DEFINITIONS.**

~~**2.1. Accessible** means available to the public for inspection and/or copying.~~

~~**2.2. Account number** means numbers, letters, symbols or combinations thereof that identify financial accounts or instruments. Such property includes, but is not limited to, bank accounts, credit union accounts, credit cards, savings bonds, investment accounts, lines of credit, revolving fund accounts, and the like, but does not include up to the last 4 digits of such accounts, provided that no more than half of the account's digits are disclosed.~~

~~**2.3. Administrative Director** means the Administrative Director of the Courts or others acting on the Administrative Director's behalf.~~

~~**2.4. ADLRO** means the Administrative Driver's License Revocation Office.~~

~~**2.5. Bulk information** means a volume of data from multiple court or ADLRO electronic records.~~

~~2.6. —Business hours~~ are the hours the office of the record custodian is open to conduct public business. Business hours are established pursuant to HRS § 78-1.6. Judiciary offices are open 7:45 a.m. to 4:30 p.m., Monday through Friday, except State holidays.

~~2.7. —Clerk~~ means Clerk of the Supreme Court and the Chief or Deputy Chief Court Administrators of the trial courts and their subordinates who have custody of court records, and, with regard to the ADLRO, the Administrative Director's subordinates, who have custody of ADLRO records.]

~~2.8. —Compiled information~~ means data derived, selected, aggregated, organized, or reformulated from more than one court or ADLRO records and reported.

~~2.9. —Confidential~~ means not accessible, i.e. not available for public inspection and copying. Synonyms include, but are not limited to, protected, restricted, and sealed. Access to confidential documents is governed by Rule 10.4 of these rules.

~~2.10. Designated confidential~~ means presented in accordance with Rule 9 of these rules.

~~2.11. Discrete information~~ means specific data from a particular court or ADLRO record.]

(1) “Confidential record” means a court record that is not publicly accessible, including sealed records, *in camera* records, a court file that is confidential by law, or a court file that was sealed in its entirety by court order.

(2) “Court file” means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated case number(s).

(3) “Court record” means any document maintained in connection with a judicial proceeding, including dockets, minutes, and filings made in the case management system. The term does not include materials maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers. The term also does not include reporter’s transcripts for which the reporter is entitled to receive a fee for any copy under applicable law.

(4) ~~[2.12.]~~ “Docket” means a chronological listing of documents and proceedings for [each] a court file or ADLRO case file [record].

~~[2.13. Document~~ means pleading, motion, exhibit, order, judgment, decree, or other form of written communication or memorialization whether prepared on paper or electronically, including electronic documents, electronic forms, electronic templates, and electronic reports.]

(5) ~~[2.14.]~~ “Electronic record” means an electronic court record [the information and documents maintained for each court or ADLRO case] stored in any of the various Judiciary case management systems and data[-]bases.

~~[2.15. Hearing officer means a person designated by the Administrative Director to adjudicate ADLRO cases.]~~

(6) ~~[2.16.]~~ “*In camera*” means submitted for a judge’s review. Access to *in camera* documents is governed by Rule 11(e) ~~[40.5]~~ of these rules.

(7) “Internet” means the global system of interconnected computer networks that are publicly accessible.

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~~[2.17. Individual means a natural person.]~~

~~2.18. Maintain means to hold, possess, preserve, retain, store, or administratively control.~~

~~2.19. Personal information means social security number, date of birth (except for traffic citations), name of minor children, bank or investment account numbers, and social service reports. To the extent a social security or account number is required in an accessible document, the last 4 digits may be displayed, provided that no more than half of the social security or account digits are disclosed. To the extent a birthdate is required in an accessible document, the birth year may be displayed. Except as provided in Rule 9.1, to the extent the name of a minor is required in an accessible document, the initials of the minor may be displayed. To the extent a complete social security number, account number, birthdate, or name of a minor child is required for adjudication of a case, the complete number or birthdate shall be submitted in accordance with Rule 9.1 of these rules.~~

~~2.20. Protected means not accessible, i.e. not available] for public inspection and copying. Synonyms include, but are not limited to, confidential, restricted, and sealed.]~~

(8) “Lodged.” A lodged record is a record that is temporarily placed or deposited with the court, but not filed for purposes of the record on appeal.

(9) “Records Retention Schedules” refers to orders entered by the Hawai‘i Supreme Court, *In the Matter of the Retention and Disposition of Judiciary Records*, SCMF-11-0000105.

(10) ~~[2.21]~~ “Remote access” means the ability to electronically inspect or copy information from an electronic record on the internet without the need to physically visit the facility where the record is maintained.

(11) ~~[2.22]~~ “Requestor” means any individual or entity who asks to inspect or copy a record.

~~[2.23. Restricted means not accessible, i.e. not available for public inspection and copying. Synonyms include, but are not limited to, confidential, protected, and sealed.]~~

~~2.24. Sealed means not accessible, i.e. not available for public inspection and copying. Synonyms include, but are not limited to, confidential, protected, and restricted.]~~

~~— [2.25. Segregate means to excise, remove, or mask confidential information from a record.]~~

### **COMMENTS**

*Courts generate and maintain many types of information that are not court records and to which access may be restricted by law. Such information is not accessible as court records, even to parties and their attorneys. If parties and their attorneys are entitled to access to any such additional information, separate and independent grounds for that access must exist.*

*Regarding subdivision (7) and the definition of “Internet,” the Judiciary Information Management System (JIMS) has programmatic features that are available on the internet to search for case information by parties, case number, and other criteria, and allow the internet user to access public court records such as filings and minutes entered in the case. The Judiciary platforms that are publicly available on the internet are commonly known as eCourt Kokua and the Judiciary Electronic Filing System (JEFS).*

*The use of the word “Internet” in these Rules does not refer to the functionality of JIMS that is not publicly accessible on the internet, such as any information on JIMS that is only accessible to court staff, or where a court order has restricted access to a court file or court record to be only accessible at the courthouse.*

## **II. GENERAL RULES**

### **Rule 3. DUTY TO MAINTAIN RECORD; CORRECTIONS.**

~~[3.1.]~~ **(a) General Rule.** With respect to court records, the Clerk of each court shall maintain a record of each court case, including a docket, and shall maintain other records as required by statute or rule.

~~[3.2.]~~ With respect to ADLRO records, the Administrative Director shall maintain a record of each ADLRO case, including a docket, and shall maintain other records as required by statute or rule. For ADLRO records, any reference to “Clerk” in these Rules shall mean the Administrative Director’s subordinates, who have custody of ADLRO records.



~~[3.3.]~~ **(b) Authority to correct clerical and e-filing errors.** The Clerk and others authorized by the Clerk may, with such technical assistance as required and without order of a court, correct clerical and e-filer data entry and docketing errors. Examples of clerical and e-filing errors that may be corrected without a court order include, but are not limited to, corrections to data in the following data fields: case type, trial court or agency, trial court or agency case type, designation as confidential, short case title, extended case title, trial court judge(s), trial court or agency case numbers, authorizing or charging statutes, party roles, party and attorney identification, docket codes, document category, document type, and filing party.

~~[Where documents are maintained in an electronic document management system, the Clerk may, with such technical assistance as required and without order of a court retrieve from the document management system or a party and attach to the docket any document that failed to upload or attach to the docket.]~~

The Clerk may retrieve a document from the document management system or a party and attach it to the docket if it failed to upload.

Where documents are maintained in an electronic document management system, the Clerk may, with such technical assistance as required and without order of a court replace incorrect documents that were inadvertently uploaded by parties or that have been corrupted, with the documents that should have been uploaded, and may transfer documents that were filed in a wrong case to the correct case, provided such replacements and transfers are completed within 10 business days following the initial filing and all parties are notified of the replacement or transfer.

The Clerk may delete, transfer or replace documents in any court or ADLRO record to correct a clerical or e-filing error, as provided above. The Clerk shall not delete, transfer, or replace documents in any court or ADLRO record, except as provided above, upon order of the court for which the record is maintained, upon order of the Hawai'i Supreme Court, or in compliance with ~~[Records Control Schedules]~~ the Records Retention Schedules adopted by the Hawai'i Supreme Court.

**(c) Authority to Temporarily Restrict Access.** The Clerk may temporarily seal any document or record or mark any document for *in[-]camera* review pending review and a determination of accessibility by the court ~~[for which the record is maintained or by the Hawai'i Supreme Court].~~

**(d) Certification.** The Clerk may certify a document as a true and correct copy of a document filed in the record of the court.

#### **Rule 4. CONTENT OF COURT RECORDS AND ADLRO RECORDS; INFORMATION DISCREPANCY.**

The record of each case, whether electronic, paper, or a combination thereof, shall include:

- (a)** all documents related to the case, including correspondence, submitted for filing in any form;
- (b)** any written jury instructions given or refused;
- (c)** exhibits, including, but not limited to, presentence reports, social work reports, and tangible items, whether admitted into evidence or refused,

provided that exhibits marked for identification but never offered shall not be included;

(d) court reporters' notes, audio or video recordings of court proceedings, and any transcripts prepared from them;

(e) a docket;

(f) minutes; and

(g) information contained in the electronic case management system; provided that in the event of a discrepancy between information in the case management system and information in a document, the information in the document prevails, unless a court of competent jurisdiction rules to the contrary.

The record of each case shall not include a document submitted for *in camera* review under Rule 13(d) of these Rules that is withdrawn or deleted in response to a court order denying a request to seal the subject document.

### **COMMENTS**

*For purposes of the record on appeal, where a party intends to raise a point of error about the trial court's refusal to allow a record to be filed under seal, it may file a motion with that court to allow a sealed version of the record to be filed on the record for the limited purpose of establishing the record on appeal. See Hawai'i Rules of Appellate Procedure, Rule 10(e), Correction or Modification of the record.*

### **Rule 5. DOCKETING CONFIDENTIAL RECORDS, ~~DOCKETING CONFIDENTIAL DOCUMENTS, EXHIBITS, OR EVIDENCE.~~**

A confidential record [~~document, exhibit, or other evidence~~] shall be listed on the docket in the same manner as other court records. [~~documents, exhibits, or evidence. Access to confidential documents, exhibits, or other evidence is governed by Rule 10.4 of these rules.~~]

### **Rule 6. DOCKETING DOCUMENTS FROM SELF-REPRESENTED PARTIES ON CRIMINAL MATTERS.**

Subject to Rule 9 [8] of these [7]Rules, case related documents received from self-represented criminal defendants, self-represented petitioners under Rule 40 of the Hawai'i Rules of Penal Procedure, or any prisoner shall be dated and stamped "lodged" or "received" by the Clerk, listed on the docket, and transmitted to a judge or hearing officer for consideration.

### **Rule 7. Reserved.**

### **Rule 8 [7]. MAINTENANCE OF ELECTRONIC INFORMATION.**

Information in electronic case management systems, including electronic documents, shall be maintained by the Clerk

(a) in cooperation with the Administrative Director and information technology personnel,

(b) in conformity with data integrity standards established by the Administrative Director, and

(c) in compliance with the Records ~~[Control]~~ Retention Schedules adopted by the supreme court.

**Rule 9 [8]. REJECTION; NOT GENERAL REPOSITORY;  
CONTAMINATED DOCUMENTS.**

~~[8.1.]~~ **(a) Document Form.** The Clerk shall not refuse to file any document solely because it is not presented in proper form. Electronic documents transmitted or submitted to the electronic filing system may be electronically rejected if the document does not meet the electronic filing technical standards established by the Administrative Director.

~~[8.2.]~~ **(b) Not a General Repository.** Neither the Court Administrator's nor the Clerk's Office, nor the ADLRO are general record repositories, and the administrator or Clerk need not accept documents or other items that are not related to a case or that are not otherwise required by law or rule to be kept and/or maintained by the court or ADLRO.

~~[8.3.]~~ **(c) Contaminated Documents.** ~~[The Clerk shall not accept for filing documents that are or appear to be contaminated with bodily fluids, chemicals, or other hazardous materials; provided that such items submitted as exhibits may be accepted if they are properly sealed, prominently marked as hazardous materials, and the Clerk has a means to safely store and maintain the exhibits.]~~ The Clerk may reject documents contaminated with bodily fluids, chemicals, or hazardous materials. If accepted as exhibits, such documents must be sealed, clearly labeled as hazardous, and stored safely. If rejected, the Clerk must:

- (1) return the document to the presenting party; and
- (2) if the case number is identifiable, note on the record that the "Clerk Refused Filing of Contaminated Document" with the date and party's identity.

~~**[Rule 9. PARTIES' RESPONSIBILITY TO PROTECT PERSONAL  
INFORMATION.**~~

~~**9.1. Prohibition; Form.**~~

~~**(a)** Except as provided in this Rule 9 and notwithstanding any other rule to the contrary, a party shall not include personal information in any accessible document filed in any state court or with ADLRO. Required personal information shall be submitted by means of a Confidential Information Form that substantially conforms to HCRR Form 2 of these rules; provided the name and birth date of a minor charged with a traffic infraction may be displayed on the citation and the name of a minor may be displayed in submissions in proceedings under HRS chapter 586 and section 604-10.5. The Confidential Information Form shall be designated confidential, protected, restricted, sealed, or not accessible.~~

~~**(b)** When the identity or age of a non-defendant minor is required to charge a criminal offense or to state a claim, the accessible charging instrument, complaint, information, indictment, or petition shall include the initials and birth year of the minor. When the identity of an account is required to charge a~~

~~criminal offense or to state a claim, the accessible charging instrument, complaint, information, indictment, or petition may include the last 4 digits of the account number, provided not more than half of the account's digits are disclosed, as provided by Rule 2.2 of these rules. A full name, birthdate, or account number shall be submitted on a confidential information form in accordance with section (a) of this rule.~~

~~— **9.2. Maintenance of the Confidential Information Form.** If submitted for a record maintained on paper, each completed confidential information form shall be marked “confidential” and the clerk shall retain the document in a manner that prevents public access to the document.~~

~~— **9.3. Fly Sheet.** A fly sheet that substantially complies with HCRR Form 1 shall be submitted with the completed confidential information form. The flysheet shall be filed in the accessible record, whether the record is maintained on paper or electronically. The fly sheet shall be captioned in accordance with the rules governing the proceeding, titled “CONFIDENTIAL INFORMATION,” and shall include the following: (a) the case name and number; (b) the title of the form; (c) a brief description of the submitted information; (d) the name, address, and telephone number of the individual submitting the personal information; and (e) the statement “confidential information submitted pursuant to Rule 9 of the Hawai‘i Court Record Rules” and any other statute(s), rule(s), or order(s) that make the information confidential.~~

~~— **9.4. Authorized Electronic Filing.** If the flysheet and form are submitted by means of the authorized electronic filing process, the flysheet shall be filed as the lead document; the form shall be designated confidential and the “sealed” and “supporting document” options shall be selected before uploading.~~

~~— **9.5. Sanctions.** The court or hearing officer may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this Rule 9, where the parties or attorneys have not shown good cause for failure to comply, or a good faith attempt to comply with this rule.]~~

[ NEW RULE ]

**Rule 10. DUTY TO MAINTAIN PUBLICLY ACCESSIBLE INDEX:  
CASES SEALED IN ENTIRETY; CRIMINAL COURT FILE  
REMOVED FROM INTERNET.**

(a) **Order to Seal Court File.** When the Clerk receives a court order to seal the entire court file on a case that was originally a publicly accessible case, the Clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered.

(b) **Public Index of Sealed Cases.** The Clerk must maintain a public index at the courthouse for cases that were originally publicly accessible but later sealed. The index includes:

(1) SEALED CASES:

(A) Case number, party names, and “case sealed” notation; and,

(B) Public access to the sealing order and supporting findings.

This Rule does not apply to proceedings that have historically been confidential, including grand jury, adoption, Child Protective Act, or juvenile proceedings.

(2) RESERVED.

(3) EFFECTIVE DATE. This subsection shall take effect on \*\* \*\*, 2025, and applies prospectively. However, the Clerk must include in the public index:

(A) circuit court civil cases sealed in their entirety from November 1, 2006, to \*\* \*\*, 2025;

(B) circuit court criminal cases sealed in their entirety from January 23, 2017, to \*\* \*\*, 2025.

The retrospective index is limited to case number, case type (civil or criminal), and “case sealed” notation.

(c) **Criminal Court File Removed From Internet.** The Clerk shall maintain an index of all criminal cases that are subject to an order entered in accordance with Rule 14 of these Rules. Unless otherwise protected by an order of the court as a case sealed in its entirety, a court file on a criminal case subject to an order entered in accordance with Rule 14 of these Rules, shall be publicly accessible at the courthouse.

### III. PUBLIC ACCESS

#### **Rule 11 [10]. ACCESS TO COURT RECORDS AND ADLRO RECORDS.**

~~[10.1.]~~ (a) ~~[Generally]~~ **General Right of Access by the Public.** Except as otherwise provided by statute, rule, or order, court records and ADLRO records shall be accessible to the public for inspection or copying during regular business hours, subject to priority use by the court, court staff, ADLRO, and ADLRO staff.

Business hours are the hours the office of the record custodian is open to conduct public business. Judiciary offices are open 7:45 a.m. to 4:30 p.m., Monday through Friday, except State holidays.

Closed and archived records shall be accessible within a reasonable time after a request is made, unless the records have been deleted, destroyed, or transferred to another custodian.

If the requested record information or documents are available by remote access without fee, the requestor shall be directed to the access site, and no other action need be taken to comply with the request, provided that, when certified copies of documents are requested, the Clerk shall copy or print the documents from the paper or electronic record and shall physically or electronically certify the copies.

~~[10.2.]~~ (b) **Electronic Records, Manner Provided.** Information from electronic case management systems, including imaged documents, may be made available by electronic or paper means ~~[reports, print outs, electronic files, imaged files, internal or external link to a primary or secondary data base, internet access, or by other means that provide the information or copies of~~

~~documents without compromising the integrity of the electronic case management systems and data bases].~~

**[10.3.] (c) Electronic Records, Custom Request.** When information in an electronic record is requested or sought in a form or in a manner other than the form or manner maintained by the Judiciary and made readily or routinely available, the Judiciary shall make a reasonable effort to provide the information in the form or manner requested or sought; provided that

~~[(a)]~~ (1) direct access to any computer system or data[-]base need not be granted,

~~[(b)]~~ (2) the reporting or transmitting of data and/or the technical and administrative preparation to provide the data will not unreasonably interfere with the Judiciary's operations and/or governmental functions, and

~~[(c)]~~ (3) the requestor pays all charges for programming the computer systems to report the data, run the reports, and/or link and/or transmit the data to the requestor.

**[10.4.] (d) Confidential Records ~~and Documents~~].**

(1) IN GENERAL. Except as otherwise provided by statute or court rule or as ordered by ~~[(a)]~~ the court ~~[that has jurisdiction over a court case,] or [(b)]~~ the Administrative Director or the hearing officer's designee having jurisdiction over an ADLRO case, ~~[(c) the court that has jurisdiction over an appeal from a court or ADLRO case, or (d) the supreme court,]~~ access to confidential records~~[-, documents, exhibits, and information]~~ shall be limited to the court and court personnel in the performance of their duties, the Administrative Director and the Administrative Director's subordinates in the performance of their duties, and the hearing officer ~~[-, attorneys of record, parties to the court or ADLRO case, and duly authorized service providers].~~

(2) AUTHORIZED ACCESS - SEALED RECORDS. A sealed record may be accessed by parties to the case or their attorneys of record, and duly authorized service providers.

(3) UNAUTHORIZED ACCESS TO CONFIDENTIAL RECORDS IS PROHIBITED. Unless authorized by a court, an attorney or person shall not use the JIMS/JEFS database to gain access to a confidential record ~~[information under seal]~~ in cases in which the attorney or person is not a party or an attorney of record, or is otherwise not authorized to access the confidential record.

**[10.5.] (e) Documents or Evidence Submitted for *In Camera* Review.** Until such time as a court of competent jurisdiction orders otherwise, only the judge and the judge's staff, and the appellate courts and the appellate courts' staff, shall have access to documents or evidence submitted for *in camera* review.

**[10.6.] (f) Requests to Inspect or Copy Records; Description; Writing.** Requests to inspect or copy records may be made orally, in writing, or electronically. Requests shall include a reasonable description of the record~~[-]~~ by identifying ~~[including]~~ the name of at least one party, the case number (if known), the case type, and the court or ADLRO office in which the case was filed. The Clerk may request additional information to identify or locate the requested record. The Clerk may require that a request be made in writing or on a form that substantially complies with HCRR Form 1 ~~[3]~~ of these ~~[-]~~ Rules.

**[10.7.] (g) Requests to Inspect or Copy Records; Identification**

**Required.** The Clerk may require the individual requesting a record to provide identification, including a postal mailing address or email address and telephone number.

**[10.8.] (h) Records Shall Not be Removed From Legal Custody;**

**Exceptions.** Records shall not be removed from the legal custody of the Clerk or the Administrative Director except

~~[(a)]~~ (1) upon order of the court or agency for which the record is maintained,

~~[(b)]~~ (2) upon appeal,

~~[(c)]~~ (3) upon order of the supreme court or intermediate court of appeals,

~~[(d)]~~ (4) in accordance with rules governing retention of exhibits and transcripts, or

~~[(e)]~~ (5) in accordance with the Records ~~[(f)]~~Retention ~~[(s)]~~Schedules~~[-adopted by the supreme court].~~

**[10.9.] (i) Duty to Report Damage or Alteration.** If a record is damaged or altered while being accessed, inspected, or copied, the Clerk shall document the damage and report it to the administrative/chief judge, the Clerk, or the Administrative Director who may take such action as is appropriate.

**[10.10.] (j) Time to Make Record Available; Notice.** Upon receipt of a request for an accessible record, the Clerk shall make the record available for inspection and copying within a reasonable time, subject to the court's or ADLRO's priority use of the record and the payment of fees, if any. If the request to inspect or copy cannot be accommodated within 10 business days, the Clerk shall notify the requestor and provide an estimated date when the record will be available for inspection or copying.

If the request is for a confidential record and the requestor is not of the class of persons having a right of access to the confidential record under Rule 11(d)~~[10.4]~~ of these ~~[(f)]~~Rules, the Clerk shall notify the requestor ~~[(forthwith)]~~ promptly that the Clerk cannot provide the record without an order of the court for court records, or an order of the Administrative Director for ADLRO records. No later than ~~[(10)]~~ 30 days after the Clerk's denial of a request for a confidential record, ~~[(the)]~~ a non-party requestor may move for access under Rule 16 of these Rules. ~~[(The Clerk shall notify all parties of the motion. Within 10 days after notice of the motion for access any party may file opposition to the request.)]~~

**[10.11.] (k) Inspection and Copying Fees; Court Records.** Fees for inspecting, copying, and transmitting copies of court records shall be charged in accordance with the provisions of Rule 2.2 of the Rules of the Circuit Courts, Rule 2.2 of the Rules of the District Courts, and Rule 45 of the Hawai'i Rules of Appellate Procedure, although no fee shall be charged to a party, or an attorney properly on the case, for the first certified copy of a document requested through the JEFS system subsequent to the filing of that document. A court may also waive costs and fees for copies of its record when justice so requires. Unless a waiver is granted or an exemption applies, no records or copies of records shall be released until full payment of fees for the current request, and any previous unpaid fees, are received.

~~[10.12.]~~ **(l) Inspection and Copying Fees; ADLRO Records.** Fees for inspecting, copying, and transmitting copies of ADLRO records shall be in accordance with the Judiciary's Schedule of Administrative Fees.

~~[10.13.]~~ **(m) Fees for Electronic Records.** Fees for electronic access, for electronic downloading, bulk distribution, or compilation of electronic information shall be determined by the Administrative Director.

~~[10.14.]~~ **(n) Judiciary Contractors.** Where access to electronic or paper ~~[ease]~~ court records is necessary to the performance of any contract with the Judiciary, the Chief Justice or the Administrative Director may authorize access in accordance with the terms of the contract and applicable law.

~~[10.15.]~~ **Review of Action on Request for Record.** A person or entity may seek review of a denial or grant of access to a record by petitioning the supreme court, in accordance with Rule 21 of the Hawai'i Rules of Appellate Procedure. If the record is confidential, the Clerk of the trial court or ADLRO, upon notice of the petition, shall provide notice of the petition to all parties to the case, shall file a copy of the Clerk's certificate of service on each party, and shall designate the certificate of service as confidential in the record of proceeding before the supreme court.]

~~[10.16.]~~ **(o) Requests for Bulk, Discrete, or Compiled Electronic Information.** Requests for bulk, discrete, or compiled electronic information shall be made to the Administrative Director in accordance with Rules 11(p)-(r) ~~[10.17, 10.18, and 10.19]~~ of these ~~[r]~~ Rules.

~~[10.17.]~~ **(p) Electronic Court and ADLRO Records: Requests for Bulk or Discrete Data and Compiled Information.**

~~[(a)]~~ **(1)** The Administrative Director may grant requests for bulk, discrete, or compiled information from accessible electronic court and ADLRO records or from confidential records, provided

~~[(1)]~~ **(A)** the bulk or discrete data distribution, compiling of information, and/or transmission of data will not unreasonably interfere with the Judiciary's operations and/or governmental functions,

~~[(2)]~~ **(B)** the requestor pays all charges for programming the computers, linking systems, and transmitting the data, in addition to other reasonable costs identified by the Administrative Director, and

~~[(3)]~~ **(C)** when required by law, access is approved by a court of competent jurisdiction. A requestor should not be granted direct access to any production computer system or data[-]base in the usual course. The Administrative Director may take such actions as are necessary to protect the Judiciary's computer systems, data[-]bases, and web sites from automated data mining or other threats to the integrity of the systems.

~~[(b)]~~ **(2)** Requests for bulk or discrete data or compiled information from electronic court and ADLRO records shall be made in writing to the Administrative Director or to the Administrative Director's designee.

~~[(c)]~~ **(3)** Requests for bulk, discrete, or compiled information shall be acted upon or responded to within a reasonable time.

~~[(d)]~~ **(4)** The Administrative Director may approve a request for bulk, discrete, or compiled information upon finding that



~~[(4)]~~ (A) approving the request is consistent with these rules and any statutes that govern access to court records,

~~[(2)]~~ (B) resources and technical capacity are available to prepare the information,

~~[(3)]~~ (C) fulfilling the request is an appropriate use of public resources, and

~~[(4)]~~ (D) distributing or compiling the information will not interfere with the Judiciary's operations and/or governmental functions. In lieu of the process set out in this Rule ~~[40-17]~~, the Administrative Director may require that requests for bulk, discrete, or compiled information be made to, and processed by, the Hawai'i Information Consortium.

~~[(e)]~~ (5) The Administrative Director shall require a requestor to pay reasonable charges to distribute bulk, discrete, or compiled information. A reasonable charge includes charges for programming the computers, linking systems, transmitting the data, and maintenance of the systems providing the data, as well as other costs attributable to the provision of the data in question to the requestor.

~~[(f)]~~ (6) Personal information shall be safeguarded. Except for data transmission to law enforcement agencies, a bulk, discrete, or compiled data distribution shall not contain complete personal information. A bulk, discrete, or compiled data distribution may provide the last four digits of social security numbers, and zip codes of home addresses. The restriction on the release of personal information from court and ADLRO records may be waived only by the Administrative Director or the Administrative Director's designee.

~~[40-18.]~~ (q) **Electronic Court and ADLRO Records: Delivery Methods.**

~~[(a)]~~ (1) ELECTRONIC FORMATS. Administrators or Clerks shall attempt to accommodate requests for information in electronic records or information in electronic format.

~~[(b)]~~ (2) ELECTRONIC DATA TRANSFER. Electronic data transfers of bulk, discrete, or compiled information shall comply with security protocols established by the Administrative Director.

~~[(c)]~~ (3) DIRECT CONNECTION TO JUDICIARY DATA[-]BASES/NETWORK. Requests to directly access data[-]bases, other than access provided to individuals through the Judiciary's website or in the Clerks' offices, shall be referred to the Administrative Director.

~~[(d)]~~ (4) EXTRACTING INFORMATION. The Judiciary need not extract specific information from records maintained in electronic format when the Judiciary does not have the capacity or capability to do so. The Judiciary need not create reports to extract information from electronic resources, but, where such reports exist, the Judiciary shall provide them, unless providing the reports violates another part of these rules, court orders, or other law.

~~[40-19.]~~ (r) **Electronic Court and ADLRO Records: Service Providers.** The Judiciary may provide information through service providers subject to the following conditions:

~~[(a)]~~ (1) CONTRACT COMPLIANCE WITH SECURITY PROTOCOLS. Contracts between the Judiciary and information service providers shall comply with security protocols established by the Administrative Director. Contracts may not

preclude the Judiciary from contracting with other information service providers or providing public access to records.

~~[(b)]~~ (2) REVIEW AND ~~[SEGREGATION]~~ REMOVAL OF RECORDS. Before records are provided to information service providers, the Judiciary ~~[may]~~ shall review, redact, and/or ~~[segregate]~~ remove confidential records to ~~[filter]~~ prevent confidential information from disclosure.

~~[(e)]~~ (3) DISCLAIMER REQUIRED. Contracts with information service providers shall state the Judiciary does not warrant the accuracy, currentness or completeness of the data.

~~[(d)]~~ (4) RELEASE AND INDEMNIFICATION. Any contract with an information service provider shall include a release and indemnification clause,

~~[(+)]~~ (A) releasing the Judiciary and its officers and employees from liability for any information supplied and

~~[(2)]~~ (B) indemnifying the Judiciary and its officers and employees in any lawsuit.

~~[(e)]~~ (5) INSURANCE REQUIRED. All information service providers who contract with the Judiciary shall be required to obtain liability insurance satisfactory to the Judiciary.

~~[(f)]~~ (6) CONFIDENTIALITY. Any contract with an information service provider shall include a provision that agrees to maintain confidentiality in accordance with the terms of the contract.

#### [ NEW RULE ]

### IV. RESTRICTING ACCESS

#### **Rule 12. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT.**

(a) **Redacted Filings.** Unless the court orders otherwise, when a party or non-party files an electronic or paper filing with the court that contains a social-security number, taxpayer-identification number, birth date, the name of a minor, or a financial-account number, the party or non-party making the filing shall redact it to only identify, where relevant, the following information:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) in reference to a minor, a pseudonym;
- (4) the last four digits of the financial-account number.

Records filed with the court are only required to identify the information set forth in subsections (a)(1)-(4) of this Rule, when this information is relevant to an issue or claim in the case. Where information identified on a record, for example, a social security number, is not relevant to any issue or claim in the case, the filer may completely redact this information.

(b) **Exemptions from the Redaction Requirement.** The redaction requirement does not apply to the following:

- (1) a filing covered by subsections (c) or (d);
- (2) the name of a minor may be displayed in submissions in proceedings under HRS chapter 586 and section 604-10.5;

(3) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;

(4) an arrest or search warrant; and,

(5) on a criminal case or traffic infraction case, a charging document or complaint and an affidavit filed in support.

**(c) Filings Made Under Seal.** The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

**(d) Protective Orders.** For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a non-party's remote electronic access to a document filed with the court.

**(e) Option for Additional Unredacted Filing Under Seal.** A party or non-party making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

**(f) Option for Filing a Reference List.** A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

**(g) Waiver of Protection of Identifiers.** A person waives the protection of Rule 12(a) as to the person's own information by filing it without redaction and not under seal.

**(h) Burden is on Filer to Comply with Rule.** The clerk is not required to review documents filed with the court for compliance with this Rule. The responsibility to redact filings rests with counsel and the party or non-party making the filing.

## COMMENTS

*[1] This Rule is modeled on the Federal Rules of Civil Procedure, Rule 5.2 and Federal Rules of Criminal Procedure, Rule 49.1. In general, documents in case files should be made available electronically to the same extent they are available at the courthouse, provided that certain personal data identifiers are not included in the public file. Parties must remember that any information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.*

*[2] While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part*

*of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement, for example a driver's license number, in a particular case. In such cases, protection may be sought under subdivision (c) or (d). Moreover, this Rule does not affect the protection available under other rules, such as Hawai'i Rules of Civil Procedure, Rule 16 and 26(c), or under other sources of protective authority.*

*[3] When necessary to authenticate a redacted record, the party should consider including a declaration that explains the complete redaction on the record. Sample language that could be used in a declaration to explain redactions on an exhibit follows: "Attached as Exhibit A is a true and correct copy of the Driver License for Doe Party with the date of birth completely redacted."*

*[4] Subdivision (a)(3) allows a party to use a pseudonym to identify a minor. Examples of a pseudonym include "Minor #1" or "Minor Child." The use of a gender neutral pseudonym may also be appropriate, and examples include "Alex" or "Avery." Early in the case, the parties are encouraged to agree on the use of a pseudonym to prevent the court from having to sort through conflicting identifiers. A reference list should be filed under seal to identify the minor covered by the pseudonym.*

*[5] Subdivision (c) reflects the interplay between redaction and filing under seal. It does not limit or expand the judicially developed rules that govern sealing. But it does reflect the possibility that redaction may provide an alternative to sealing.*

*[6] Subdivision (d) provides that the court can by order in a particular case for good cause require more extensive redaction than otherwise required by the Rule. Nothing in this subdivision is intended to affect the limitations on sealing that are otherwise applicable to the court.*

*[7] Subdivision (e) allows a person who makes a redacted filing to file an unredacted document under seal.*

*[8] Subdivision (f) allows the option to file a register of redacted information. The term "redacted" is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.*

*[9] Subdivision (g) allows a person to waive the protections of this Rule as to that person's own personal information by filing it unsealed and in unredacted form. One may wish to waive the*

*protection if it is determined that the costs of redaction outweigh the benefits to privacy. If a person files an unredacted identifier by mistake, that person may seek relief from the court.*

*[10] Trial exhibits are subject to the redaction requirements of this Rule only to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with this Rule if and when they are filed as part of an appeal or for other reasons.*

[ NEW RULE ]

**Rule 13. SEALING OF INFORMATION FILED WITH THE COURT.**

**(a) Application.**

(1) This rule applies to court records sealed or proposed to be sealed by court order.

(2) This rule does not apply to court records that are required to be kept confidential by law.

(3) This rule does not apply to confidential discovery records filed or lodged in connection with discovery motions. However, the rule does apply to any discovery materials that are used at trial or submitted as a basis for adjudication of matters other than discovery motions.

**(b) Motion to Seal.**

(1) A party requesting that a record be filed under seal must file a non-hearing motion that:

(A) is filed publicly;

(B) cites legal authority supporting the sealing or redaction and explains how the standard is met;

(C) states whether a redacted version will be filed publicly, or why redaction is not feasible;

(D) includes an affidavit or declaration detailing the efforts made to notify parties of the motion to seal, and whether the other parties agree to the sealing or redaction, or the reason why no attempt was made;

(E) includes a proposed order;

(F) includes a notice of non-hearing motion that specifies the response deadline; and,

(G) is served on all appearing parties on the filing date.

**(c) Service of Motion.** A copy of the non-hearing motion must be served on all parties that have appeared in the case. Unless the court orders otherwise, any party that already has access to the records to be placed under seal must be served with a complete, unredacted version of all papers as well as a redacted version. Other parties must be served with only the public redacted version.

**(d) Procedure for Submission of Records *In Camera*.** In support of the motion to seal, a party may conventionally submit a document for *in camera* inspection in a sealed envelope by hand delivery to the Clerk, or may file the document in electronic form via JEFS with an *in camera* designation.

If the motion is denied, for a document submitted conventionally, the movant shall inform the court within four days of the filing of the order denying the motion whether it wants to withdraw the document or have it filed publicly. If the court does not receive such notification, the Clerk must (1) return the lodged *in camera* record to the moving party if it is in paper form or (2) permanently delete the lodged record if it was filed *in camera* in electronic form.

**(e) Response; Reply.** This rule shall take priority over other court rules that provide a response deadline for a non-hearing motion.

(1) PARTY. A party may file a response within six business days after the service date, or no later than eight business days if the motion is served by mail.

(2) NON-PARTY. A non-party may file an opposition or position statement no later than six business days after the filing date of the motion.

(3) REPLY. The moving party may file and serve a reply memorandum no later than three business days after the service of the response, or five business days after the service date if the response is mailed.

**(f) Discretion of Court.**

(1) SET HEARING. The court may set any non-hearing motion to seal for hearing *sua sponte*, or upon *ex parte* application by a party or non-party that sets forth the reasons on the need for a hearing.

(2) MODIFY BRIEFING SCHEDULE. The court may modify the briefing schedule *sua sponte*, or for good cause upon *ex parte* application by a party or non-party.

(3) APPLICATION PROCESS. An *ex parte* application under this subdivision (f) shall be served on all appearing parties on the day it is submitted to the court, and shall set forth whether the opposing parties or non-parties agree to the requested relief, or why no attempt was made to seek their agreement.

**(g) Redactions.** A court record shall not be sealed when redaction will adequately resolve the issues before the court pursuant to subsection (b) above. In general, the filing party of a paper is responsible for preparing the redacted version of the record.

**(h) Objection Addressed at Hearing.** If an objection is filed in response to a motion to seal, the court should address the objection at a public hearing; provided, the court may partially close the hearing to discuss sealed or privileged information. This rule shall not apply to appellate courts, which may address an objection on the papers submitted.

**(i) Express Factual Findings Required to Seal Records.** The court may order that a record be filed under seal only if it expressly finds facts that establish:

(1) There exists a compelling interest that overcomes the right of public access to the record;

(2) The compelling interest supports sealing the record;

(3) A substantial probability exists that the compelling interest will be prejudiced or harmed if the record is not sealed;

(4) The proposed sealing is narrowly tailored; and

(5) No less restrictive means exist to achieve or protect the compelling interest.

**(j) Content and Scope of the Order.** An order sealing the record must:

(1) Specifically state the facts that support the findings; and

(2) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.

**COMMENT**

*This rule provides a standard and procedures for courts to use when a request is made to seal a record. The standard is based on Oahu Publications Inc. v. Ahn, 133 Hawai‘i 482, 331 P.3d 460, (2014) and Grube v. Trader, 142 Hawai‘i 412, 420 P.3d 343 (2018). These rules apply to civil and criminal cases. They recognize the public’s qualified right of access to court records.*

*As set forth in subsection (a)(2), this rule does not apply to records that courts must keep confidential by law. Examples of*

*confidential records to which public access is restricted by law are records of juvenile proceedings, Hawai‘i Revised Statutes (HRS) § 571-84(a) (2018), adopting proceedings, HRS § 578-15 (Supp. 2024), child protective act proceedings, HRS § 587A-25 (2018), and the initial sealing of certain search warrant matters. E.g., HRS § 803-44.6(d) (Supp. 2016).*

*Subsection (a)(2) excludes from its coverage information or records that are required by state or federal law to be filed under seal in a case. Examples of records which, in general, are confidential by law and may be filed under seal without the need to file a motion to seal include: tax returns, HRS §§ 235-116 (2017), 237-34 (2017); vital statistic records including death certificates, HRS § 338-18 (Supp. 2024); adult probation records, including pre-sentence reports, HRS § 806-73(b) (2014); certificate of merit for civil action arising from sexual offenses, HRS § 657-1.8(d) (Supp. 2025). See also Hawai‘i Family Court Rules, Rule 7.2 (“Document sealed upon filings”).*

*In contrast, where a statute provides that a particular category of information may be confidential, a motion to seal may be filed seeking to preserve this confidentiality in case filings. Examples of such a law includes: HRS § 663-15.5(b) (Supp. 2017) (providing limited protection to confidential settlement terms); Hawai‘i Rules of Evidence 501-513 (2016) (“Privileges”).*

*As set forth in subsection (a)(3), a party may file confidential discovery materials, for example information subject to a protective order or asserted evidentiary privilege, on a discovery motion, such as a motion to compel or to quash, under seal without leave of court. See generally *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984) (recognizing that a protective order, as a type of restraint placed on discovered but not yet admitted information, furthers a substantial government interest unrelated to the suppression of expression and does not require exacting First Amendment scrutiny). To preserve the record on appeal and as set out in Rule 4(a) of the Hawai‘i Court Records Rules, any such record filed on a discovery motion, whether filed under seal or submitted in camera, should be filed on the record as a confidential record.*

*Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute compelling interests that override the public’s right of access such that the record should be sealed. This rule does not attempt to define what may constitute an overriding interest, but leaves this to case law.*

*In seeking to establish a compelling interest, a party may cite that:*

- (1) the sealing or redaction is permitted by statute; or*



(2) *the sealing or redaction furthers an order entered under Hawai‘i Rules of Civil Procedure (HRCP) 12(f) or a protective order entered under HRCP 26(c); or*

(3) *a conviction has been vacated or no conviction was entered, for example, as a result of a dismissal, acquittal, or deferred plea. Cf. HRS § 831-3.2(f) (Supp. 2025) (“Expungement orders”).*

*Under subsection (g), a party to a proceeding is obligated to prepare the redactions. In general, court staff should not be performing redactions of a record.*

*Subsection (h) sets forth a requirement that the court hold a public hearing to address an objection to a motion to seal, which is a procedural requirement set forth in Oahu Publications Inc., 133 Hawai‘i at 507, 331 P.3d at 485.*

*This rule should be read in conjunction with the court’s supervisory powers over its own records and files. See Honolulu Advertiser, Inc. v. Takao, 59 Haw. 237, 239, 580 P.2d 58, 61 (1978). Nothing in this rule is intended to limit the discretion of the court to exercise its supervisory powers over its own records and files. The following are examples of how the court may exercise its discretionary authority in the appropriate case in response to a motion to seal.*

*Example 1. The court stays a final determination on a motion to seal a court record based on non-conviction in a criminal case involving multiple defendants or multiple charges where the case remains active as to one or more of the defendants or charges, until after the proceeding has concluded as to all parties and charges.*

*Example 2. The court enters an interim order that stays any final determination on a motion to seal portions of a record in a criminal case based on a non-conviction until after a party (whether the original filing party of the subject record, or the party moving to seal) has produced redacted versions of the subject record that are covered by the motion to seal, and these redacted versions are filed on the public record.*

[ NEW RULE ]

**Rule 14. ORDER RESTRICTING INTERNET ACCESS TO CRIMINAL CASE FILE OR COURT RECORD.**

(a) In a criminal case, a Qualified Individual may move to restrict access to the entire case file, or to a particular court record, that is publicly accessible on the internet through eCourt Kokua and the JEFS Document Subscriber role.

(b) Qualified Individual means:

(1) a person with a conviction that was vacated;

(2) a person who had a criminal action or proceeding terminated in favor of such person, whether by a finding of not guilty, or dismissal; provided, a person shall not qualify under this subsection where conviction was not obtained

as a result of bail forfeiture, the person absconded from the jurisdiction, or the person was involuntarily hospitalized pursuant to HRS § 706-607, or was acquitted or had charges dismissed pursuant to HRS chapter 704 due to a physical or mental disease, disorder, or defect;

(3) a person who qualifies for relief under HRS § 831-3.2(f).

**(c) Exceptions.** Relief under this rule to restrict access to the entire case file shall not be available to a Qualified Individual where:

(1) the case remains pending as to the Qualified Individual or a co-defendant as to one or more other charges;

(2) a conviction was entered in the case against the Qualified Individual as to one or more charges; or

(3) a conviction was entered as to a co-defendant.

**(d) Order Restricting Internet Access to Entire Criminal Case File.**

Where the court finds a person is a Qualified Individual and none of the exceptions in subsection (c) apply, the court may enter an order that directs the Clerk to restrict public access to a case file by completely removing the case, including all the case information, docket and filings, from the Judiciary's publicly accessible electronic databases that are available on the internet through eCourt Kokua and the JEFS Document Subscriber role. Unless otherwise ordered by the court, public access to any case covered by an order entered pursuant to this Rule shall remain available at the courthouse, including access to all the case information, docket and filings that are not otherwise sealed from public access. For appellate cases, the published opinions shall remain accessible on the "Opinions" page of the Judiciary's website.

**(e) Order Restricting Internet Access to a Court Record.** Where the court finds a person is a Qualified Individual, the court may enter an order that eliminates public internet access to a particular court record on eCourt Kokua and on the JEFS Document Subscriber system, with public access to the record still available at the courthouse. Under this subsection, the court shall not restrict internet access to the docket maintained by the court, any court minutes, or an opinion, order, judgment, or other disposition of the court. As part of an order entered under this subsection, the court may, in the appropriate circumstances, amend the caption to delete reference to the Qualified Individual on any further filings in the case, where the case only remains pending as to a co-defendant, but not as to the Qualified Individual.

**(f)** This Rule supplements any relief a person may qualify for under Rule 13 of these Rules.

#### **COMMENT**

*This rule sets forth a framework and process to obtain a court order removing a case file or court record from electronic access on the internet for Qualified Individuals on a criminal case. This rule is an exception to the general rule that provides the public with internet access to electronic case files of non-confidential cases. See Hawai'i Electronic Filing and Service Rules, Rule 11.2 (providing the public with internet access to electronic case files of non-confidential cases).*

*On-site public access at the courthouses shall be maintained for a case file or record subject to an order entered under this rule. See Hawai‘i Electronic Filing and Service Rules, Rule 11.1 (“On-site access.”).*

*The JEFS Document Subscriber system is a publicly accessible electronic database that has different functionality from the JEFS portal that is utilized by a party or attorney on a particular case. As such, an order entered under this Rule that restricts public internet access to a criminal case file or a court record will not restrict the JEFS access of an attorney on the case who is a registered JEFS Users. The attorney will still be able to access the case file through JEFS, notwithstanding the entry of an order under this Rule.*

[ NEW RULE ]

**Rule 15. Reserved.**

[ NEW RULE ]

## **V. NON-PARTY PROCESS TO ACCESS CONFIDENTIAL RECORDS**

### **Rule 16. NON-PARTY REQUESTS TO UNSEAL CONFIDENTIAL RECORDS**

#### **(a) In General.**

- (1) A confidential record may be accessed by the public only after a court order unseals it or grants access to specific information.
- (2) A non-party who files a motion to unseal a court record shall not be provided with access to a confidential record or non-public case information in a confidential record unless and until an order is entered under subsection (1).

**(b) Motion to Unseal.** A non-party may file a non-hearing motion to unseal a confidential record, including:

- (1) identification of the confidential record;
- (2) legal or factual grounds for unsealing;
- (3) a declaration stating the Clerk denied access or that requesting access would be futile.

#### **(c) Filing and Notice.**

(1) **CONVENTIONAL FILING.** The motion and subsequent filings must be filed conventionally with the Clerk. Attorneys representing non-parties must also file conventionally.

(2) **E-MAIL FILING EXCEPTION.** A non-party may seek permission from the Clerk to submit an electronic copy of any filing on a motion to unseal by e-mail, and the Clerk may accept a filing on a motion to unseal made by a non-party by e-mail, in which case a filed copy of the document shall be transmitted to the non-party after filing.

(3) **CONSENT TO ELECTRONIC NOTICE.** A non-party may consent to receive notice of a response or order filed on a motion to unseal by electronic means by filing as an attachment to the motion to unseal a “Notice of Consent to

Electronic Notice.” The notice shall include the e-mail address where the non-party consents to receive electronic notice.

Where a party has submitted a notice that conforms to the requirements of this Rule, the parties and court shall serve electronic notice on the non-party in lieu of conventional service.

**(d) Docketing.**

(1) PUBLICLY ACCESSIBLE CASE. For a motion to unseal that seeks access to a sealed record of a case file that is otherwise publicly accessible, the motion shall be publicly filed in the case file, unless the court orders otherwise. Supporting information may be sealed or redacted in accordance with these Rules.

(2) CONFIDENTIAL CASE FILE. For a motion to unseal that seeks access to a record filed on a case file that is confidential by statute or prior order entered by the court, unless otherwise directed by the court, the clerk shall create a new public miscellaneous case for the motion, limited to its disposition. Supporting information may be sealed or redacted in accordance with these Rules. The clerk shall file a copy of the motion in the underlying case with a notation directing further filings to the miscellaneous case.

**(e) Notice on Motion to Unseal.**

(1) PUBLICLY ACCESSIBLE CASE FILE. For a motion to unseal that seeks access to a sealed record of a case file that is otherwise publicly accessible, unless otherwise directed by the court, the non-hearing motion shall be conventionally served by the movant on all parties to the proceeding by regular mail postage pre-paid to their last known address, and where a party is represented by counsel, a filed copy of the non-hearing motion shall also be e-mailed to the e-mail address for any counsel of record.

A certificate of service shall be filed in the case to establish that the notice requirements of this Rule have been satisfied.

(2) CONFIDENTIAL CASE FILE. For a motion to unseal that seeks access to a record filed on a case file that is confidential by statute or prior order entered by the court, the Clerk shall be required to notify all parties of the motion by regular mail postage prepaid, or for registered JEFS users by e-mail, and a certificate of service shall be filed by the Clerk under seal in the new miscellaneous case.

(3) WAIVER OF NOTICE REQUIREMENT IN EXCEPTIONAL CIRCUMSTANCES. If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

**(f) Deadlines For Response; Reply; Public Filings.**

The response deadlines in this rule shall take priority over other rules that provide a response deadline for a non-hearing motion.

(1) RESPONSE. Any response shall be filed and served by a party or interested non-party no later than 12 business days after the service date indicated on the certificate of service.

A non-party that filed a motion to unseal will not receive notice of electronic filing, nor will an attorney that represents the non-party. As such, unless the non-party has filed a Notice of Consent to Electronic Service, any response shall be conventionally served on the movant, or if the movant is

represented by an attorney, emailed to the attorney's e-mail address registered with the Hawai'i State Bar Association.

(2) **MEMBERS OF PUBLIC MAY SUBMIT RESPONSE.** Any member of the public may submit a position statement in response to a motion to unseal within the same period established under subsection (f)(1).

(3) **REPLY.** Any reply shall be filed and served no later than five business days after the service of the response.

(4) **PUBLIC FILINGS.** Unless otherwise ordered by the court, any response or reply shall be filed on the public record; provided, information filed in support of the paper may be filed under seal or presented for *in camera* review in accordance with these Rules.

(g) **Judicial Discretion; Hearing; Evidence.** For good cause, the court may modify the deadline and submission requirements set forth in this Rule.

Upon request of a party or *sua sponte*, the court may set a motion to unseal for hearing and may also set an evidentiary hearing on any matter relevant to the disposition of the motion.

(h) **Stay Release of Confidential Records.** The court may stay or temporarily delay the release of confidential records to allow a party a reasonable period to request to reseal specific portions of the unsealed record.

#### **COMMENT**

*Subsection (c) establishes an exception to the requirements of electronic filing by a JEFS User, such as attorneys, that is set forth in the Hawai'i Electronic Filing and Service Rules.*

*Under subsection (d)(2), a "miscellaneous case" is a new case file created solely to handle the motion to unseal when the underlying case is entirely confidential, ensuring public access to the motion while protecting the confidential record.*

*Under subsection (f)(1), a JEFS User that is a party in the underlying case, or an attorney representing a party in the underlying case, should file a response by electronic filing.*

*Under subsection (h), a court may sua sponte stay the release of confidential records, or may delay the effective date of the unsealing to allow a party to file a motion to reseal specific portions of the record in conformance with the requirements of these Rules.*

#### **[ NEW RULE ]**

#### **Rule 17. REVIEW; NON-PARTY REQUEST TO UNSEAL CONFIDENTIAL RECORD.**

A non-party may seek review of an order denying a motion filed by a non-party under Rule 16 of these Rules seeking to unseal a confidential record, by filing a petition with the supreme court in accordance with Rule 21 of the Hawai'i Rules of Appellate Procedure (HRAP) within 30 days after entry of the order denying access to a confidential record.

If the record of the underlying proceeding is confidential, the Clerk of the trial court or ADLRO, upon notice of the petition, shall provide notice of the petition to all parties to the case, shall file a copy of the Clerk's certificate of service on each party, and shall file the certificate of service as an *in camera* document in the record of proceeding before the supreme court.

This rule shall not operate to foreclose any right of appeal that a party may have under applicable law, nor the right of a party or non-party to seek relief under HRAP 21 for other grounds independent of this Rule.

[ NEW RULE ]

**VI. MISCELLANEOUS PROVISIONS**

**Rule 18. Reserved.**

[ NEW RULE ]

**Rule 19. Reserved.**

~~**[HCRR Form 1. Fly Sheet for Document(s) Containing Confidential Information.] Deleted.**~~

~~**[HCRR Form 2. Confidential Information Form.] Deleted.**~~

**HCRR Form [3]-1. Request to Access Court or ADLRO Record.**

\* \* \*

## PROPOSED AMENDMENTS TO HAWAI‘I RULES OF APPELLATE PROCEDURE

### Rule 45. Duties of Appellate Clerks.

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#### (e) Costs and Fees to be Collected by the Appellate Clerk.

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(5) ~~[Requests for other electronic access, downloading, bulk distribution, or compilations of electronic information and the like shall be directed to the Administrative Director of the Courts. See Rule 10.13 of the Hawai‘i Court Records Rules.]~~ Reserved.

## PROPOSED AMENDMENTS TO HAWAI‘I RULES OF CIVIL PROCEDURE

### Form 32-A. Notice of Limited Appearance

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2. A copy of the “Agreement and Consent to Limited Representation” or a substantially similar document between Attorney and Client may be submitted *in camera* to the court ~~[in compliance with Rule 9 of the Hawai‘i Court Records Rules].~~

## PROPOSED AMENDMENTS TO DISTRICT COURT RULES OF CIVIL PROCEDURE

### Form DC59. Notice of Limited Appearance

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2. A copy of the “Agreement and Consent to Limited Representation” or a substantially similar document between Attorney and Client may be submitted *in camera* to the court ~~[in compliance with Rule 9 of the Hawai‘i Court Records Rules].~~

## PROPOSED AMENDMENTS TO RULES OF THE DISTRICT COURTS OF THE STATE OF HAWAI‘I

### Rule 3. Form of Pleadings and Motions

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(b) No flyleaf shall be attached to any document~~[, except as provided by Rule 9 of the Hawai‘i Court Records Rules]~~. If filed conventionally, documents shall be filed without backs. All documents filed shall be neat, clean, legible and free of interlineations.

## PROPOSED AMENDMENTS TO HAWAI‘I FAMILY COURT RULES

### Rule 1. Scope of Rules; Construction, Application, and Interpretation of Rules; Effect of Electronic Filing; Automation

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(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.

**Form 1-A. Notice of Limited Appearance**

\*\*\*

2. A copy of the “Agreement and Consent to Limited Representation” or a substantially similar document between Attorney and Client may be submitted *in camera* to the court ~~[in compliance with Rule 9 of the Hawai‘i Court Records Rules]~~.

**PROPOSED AMENDMENTS TO HAWAI‘I ELECTRONIC FILING AND SERVICE RULES**

**Rule 11. Public Access to Electronic Case Files**

\*\*\*

11.3 Personal Information. JEFS Users shall protect personal information in public records and documents in accordance with ~~[Rule 9 of]~~ the Hawai‘i Court Records Rule.

**PROPOSED RULE AMENDMENTS**  
[Clean Version. Compare Ex. A (Ramseyer)]

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**PROPOSED AMENDED HAWAII COURT RECORDS RULES**

**I. SCOPE, PURPOSE, AND CONSTRUCTION**

**Rule 1. SCOPE; PURPOSE AND CONSTRUCTION.**

(a) **Scope of rules.** These rules govern court records and Administrative Driver's License Revocation Office (ADLRO) records, unless otherwise specified.

(b) **Purpose and Construction.** These rules establish a uniform system for maintaining, accessing, redacting, and sealing court and ADLRO records. The intent is to ensure accurate recordkeeping, protect information deemed confidential by law, and provide clear procedures for public access to non-confidential court records.

(c) **Organization of the Rules:**

- (1) Part I: Scope, Purpose, and Construction
- (2) Part II: General Rules
- (3) Part III: Public Access
- (4) Part IV: Restricting Access
- (5) Part V: Nonparty Process to Access Confidential Records
- (6) Part VI: Miscellaneous Provisions

(d) **Definitions.** Terms defined in Rule 1 of the Hawai'i Electronic Filing and Service Rules apply to these Rules, as supplemented by Rule 2 of these Rules.

**Rule 2. DEFINITIONS.**

(1) "Confidential record" means a court record that is not publicly accessible, including sealed records, *in camera* records, a court file that is confidential by law, or a court file that was sealed in its entirety by court order.

(2) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated case number(s).

(3) "Court record" means any document maintained in connection with a judicial proceeding, including dockets, minutes, and filings made in the case management system. The term does not include materials maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers. The term also does not include reporter's transcripts for which the reporter is entitled to receive a fee for any copy under applicable law.

(4) "Docket" means a chronological listing of documents and proceedings for a court file or ADLRO case file.

(5) “Electronic record” means an electronic court record stored in any of the various Judiciary case management systems and databases.

(6) “*In camera*” means submitted for a judge’s review. Access to *in camera* documents is governed by Rule 11(e) of these rules.

(7) “Internet” means the global system of interconnected computer networks that are publicly accessible.

(8) “Lodged.” A lodged record is a record that is temporarily placed or deposited with the court, but not filed for purposes of the record on appeal.

(9) “Records Retention Schedules” refers to orders entered by the Hawai‘i Supreme Court, *In the Matter of the Retention and Disposition of Judiciary Records*, SCMF-11-0000105.

(10) “Remote access” means the ability to electronically inspect or copy information from an electronic record on the internet without the need to physically visit the facility where the record is maintained.

(11) “Requestor” means any individual or entity who asks to inspect or copy a record.

#### **COMMENTS**

*Courts generate and maintain many types of information that are not court records and to which access may be restricted by law. Such information is not accessible as court records, even to parties and their attorneys. If parties and their attorneys are entitled to access to any such additional information, separate and independent grounds for that access must exist.*

*Regarding subdivision (7) and the definition of “Internet,” the Judiciary Information Management System (JIMS) has programmatic features that are available on the internet to search for case information by parties, case number, and other criteria, and allow the internet user to access public court records such as filings and minutes entered in the case. The Judiciary platforms that are publicly available on the internet are commonly known as eCourt Kokua and the Judiciary Electronic Filing System (JEFS).*

*The use of the word “Internet” in these Rules does not refer to the functionality of JIMS that is not publicly accessible on the internet, such as any information on JIMS that is only accessible to court staff, or where a court order has restricted access to a court file or court record to be only accessible at the courthouse.*

## II. GENERAL RULES

### **Rule 3. DUTY TO MAINTAIN RECORD; CORRECTIONS.**

(a) **General Rule.** With respect to court records, the Clerk of each court shall maintain a record of each court case, including a docket, and shall maintain other records as required by statute or rule.

With respect to ADLRO records, the Administrative Director shall maintain a record of each ADLRO case, including a docket, and shall maintain other records as required by statute or rule. For ADLRO records, any reference to “Clerk” in these Rules shall mean the Administrative Director’s subordinates, who have custody of ADLRO records.

(b) **Authority to correct clerical and e-filing errors.** The Clerk and others authorized by the Clerk may, with such technical assistance as required and without order of a court, correct clerical and e-filer data entry and docketing errors. Examples of clerical and e-filing errors that may be corrected without a court order include, but are not limited to, corrections to data in the following data fields: case type, trial court or agency, trial court or agency case type, designation as confidential, short case title, extended case title, trial court judge(s), trial court or agency case numbers, authorizing or charging statutes, party roles, party and attorney identification, docket codes, document category, document type, and filing party.

The Clerk may retrieve a document from the document management system or a party and attach it to the docket if it failed to upload.

Where documents are maintained in an electronic document management system, the Clerk may, with such technical assistance as required and without order of a court replace incorrect documents that were inadvertently uploaded by parties or that have been corrupted, with the documents that should have been uploaded, and may transfer documents that were filed in a wrong case to the correct case, provided such replacements and transfers are completed within 10 business days following the initial filing and all parties are notified of the replacement or transfer.

The Clerk may delete, transfer or replace documents in any court or ADLRO record to correct a clerical or e-filing error, as provided above. The Clerk shall not delete, transfer, or replace documents in any court or ADLRO record, except as provided above, upon order of the court for which the record is maintained, upon order of the Hawai‘i Supreme Court, or in compliance with the Records Retention Schedules adopted by the Hawai‘i Supreme Court.

(c) **Authority to Temporarily Restrict Access.** The Clerk may temporarily seal any document or record or mark any document for *in camera* review pending review and a determination of accessibility by the court.

(d) **Certification.** The Clerk may certify a document as a true and correct copy of a document filed in the record of the court.

### **Rule 4. CONTENT OF COURT RECORDS AND ADLRO RECORDS; INFORMATION DISCREPANCY.**

The record of each case, whether electronic, paper, or a combination thereof, shall include:

- (a) all documents related to the case, including correspondence, submitted for filing in any form;
  - (b) any written jury instructions given or refused;
  - (c) exhibits, including, but not limited to, presentence reports, social work reports, and tangible items, whether admitted into evidence or refused, provided that exhibits marked for identification but never offered shall not be included;
  - (d) court reporters' notes, audio or video recordings of court proceedings, and any transcripts prepared from them;
  - (e) a docket;
  - (f) minutes; and
  - (g) information contained in the electronic case management system;
- provided that in the event of a discrepancy between information in the case management system and information in a document, the information in the document prevails, unless a court of competent jurisdiction rules to the contrary.

The record of each case shall not include a document submitted for *in camera* review under Rule 13(d) of these Rules that is withdrawn or deleted in response to a court order denying a request to seal the subject document.

#### **COMMENTS**

*For purposes of the record on appeal, where a party intends to raise a point of error about the trial court's refusal to allow a record to be filed under seal, it may file a motion with that court to allow a sealed version of the record to be filed on the record for the limited purpose of establishing the record on appeal. See Hawai'i Rules of Appellate Procedure, Rule 10(e), *Correction or Modification of the record*.*

#### **Rule 5. DOCKETING CONFIDENTIAL RECORDS.**

A confidential record shall be listed on the docket in the same manner as other court records.

#### **Rule 6. DOCKETING DOCUMENTS FROM SELF-REPRESENTED PARTIES ON CRIMINAL MATTERS.**

Subject to Rule 9 of these Rules, case related documents received from self-represented criminal defendants, self-represented petitioners under Rule 40 of the Hawai'i Rules of Penal Procedure, or any prisoner shall be dated and stamped "lodged" or "received" by the Clerk, listed on the docket, and transmitted to a judge or hearing officer for consideration.

#### **Rule 7. Reserved.**

**Rule 8. MAINTENANCE OF ELECTRONIC INFORMATION.**

Information in electronic case management systems, including electronic documents, shall be maintained by the Clerk

- (a) in cooperation with the Administrative Director and information technology personnel,
- (b) in conformity with data integrity standards established by the Administrative Director, and
- (c) in compliance with the Records Retention Schedules adopted by the supreme court.

**Rule 9. REJECTION; NOT GENERAL REPOSITORY;  
CONTAMINATED DOCUMENTS.**

(a) **Document Form.** The Clerk shall not refuse to file any document solely because it is not presented in proper form. Electronic documents transmitted or submitted to the electronic filing system may be electronically rejected if the document does not meet the electronic filing technical standards established by the Administrative Director.

(b) **Not a General Repository.** Neither the Court Administrator's nor the Clerk's Office, nor the ADLRO are general record repositories, and the administrator or Clerk need not accept documents or other items that are not related to a case or that are not otherwise required by law or rule to be kept and/or maintained by the court or ADLRO.

(c) **Contaminated Documents.** The Clerk may reject documents contaminated with bodily fluids, chemicals, or hazardous materials. If accepted as exhibits, such documents must be sealed, clearly labeled as hazardous, and stored safely. If rejected, the Clerk must:

- (1) return the document to the presenting party; and
- (2) if the case number is identifiable, note on the record that the "Clerk Refused Filing of Contaminated Document" with the date and party's identity.

**Rule 10. DUTY TO MAINTAIN PUBLICLY ACCESSIBLE INDEX:  
CASES SEALED IN ENTIRETY; CRIMINAL COURT FILE  
REMOVED FROM INTERNET.**

(a) **Order to Seal Court File.** When the Clerk receives a court order to seal the entire court file on a case that was originally a publicly accessible case, the Clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered.

(b) **Public Index of Sealed Cases.** The Clerk must maintain a public index at the courthouse for cases that were originally publicly accessible but later sealed. The index includes:

- (1) SEALED CASES:
  - (A) Case number, party names, and "case sealed" notation; and,
  - (B) Public access to the sealing order and supporting findings.

This Rule does not apply to proceedings that have historically been confidential, including grand jury, adoption, Child Protective Act, or juvenile proceedings.

- (2) RESERVED.

(3) **EFFECTIVE DATE.** This subsection shall take effect on \*\* \*\*, 2025, and applies prospectively. However, the Clerk must include in the public index:

(A) circuit court civil cases sealed in their entirety from November 1, 2006, to \*\* \*\*, 2025;

(B) circuit court criminal cases sealed in their entirety from January 23, 2017, to \*\* \*\*, 2025.

The retrospective index is limited to case number, case type (civil or criminal), and “case sealed” notation.

(c) **Criminal Court File Removed From Internet.** The Clerk shall maintain an index of all criminal cases that are subject to an order entered in accordance with Rule 14 of these Rules. Unless otherwise protected by an order of the court as a case sealed in its entirety, a court file on a criminal case subject to an order entered in accordance with Rule 14 of these Rules, shall be publicly accessible at the courthouse.

### **III. PUBLIC ACCESS**

#### **Rule 11. ACCESS TO COURT RECORDS AND ADLRO RECORDS.**

(a) **General Right of Access by the Public.** Except as otherwise provided by statute, rule, or order, court records and ADLRO records shall be accessible to the public for inspection or copying during regular business hours, subject to priority use by the court, court staff, ADLRO, and ADLRO staff.

Business hours are the hours the office of the record custodian is open to conduct public business. Judiciary offices are open 7:45 a.m. to 4:30 p.m., Monday through Friday, except State holidays.

Closed and archived records shall be accessible within a reasonable time after a request is made, unless the records have been deleted, destroyed, or transferred to another custodian.

If the requested record information or documents are available by remote access without fee, the requestor shall be directed to the access site, and no other action need be taken to comply with the request, provided that, when certified copies of documents are requested, the Clerk shall copy or print the documents from the paper or electronic record and shall physically or electronically certify the copies.

(b) **Electronic Records, Manner Provided.** Information from electronic case management systems, including imaged documents, may be made available by electronic or paper means.

(c) **Electronic Records, Custom Request.** When information in an electronic record is requested or sought in a form or in a manner other than the form or manner maintained by the Judiciary and made readily or routinely available, the Judiciary shall make a reasonable effort to provide the information in the form or manner requested or sought; provided that

(1) direct access to any computer system or database need not be granted,

(2) the reporting or transmitting of data and/or the technical and administrative preparation to provide the data will not unreasonably interfere with the Judiciary’s operations and/or governmental functions, and

(3) the requestor pays all charges for programming the computer systems to report the data, run the reports, and/or link and/or transmit the data to the requestor.

**(d) Confidential Records.**

(1) IN GENERAL. Except as otherwise provided by statute or court rule or as ordered by the court or the Administrative Director or the hearing officer's designee having jurisdiction over an ADLRO case, access to confidential records shall be limited to the court and court personnel in the performance of their duties, the Administrative Director and the Administrative Director's subordinates in the performance of their duties, and the hearing officer.

(2) AUTHORIZED ACCESS - SEALED RECORDS. A sealed record may be accessed by parties to the case or their attorneys of record, and duly authorized service providers.

(3) UNAUTHORIZED ACCESS TO CONFIDENTIAL RECORDS IS PROHIBITED. Unless authorized by a court, an attorney or person shall not use the JIMS/JEFS database to gain access to a confidential record in cases in which the attorney or person is not a party or an attorney of record, or is otherwise not authorized to access the confidential record.

**(e) Documents or Evidence Submitted for *In Camera* Review.** Until such time as a court of competent jurisdiction orders otherwise, only the judge and the judge's staff, and the appellate courts and the appellate courts' staff, shall have access to documents or evidence submitted for *in camera* review.

**(f) Requests to Inspect or Copy Records; Description; Writing.** Requests to inspect or copy records may be made orally, in writing, or electronically. Requests shall include a reasonable description of the record by identifying the name of at least one party, the case number (if known), the case type, and the court or ADLRO office in which the case was filed. The Clerk may request additional information to identify or locate the requested record. The Clerk may require that a request be made in writing or on a form that substantially complies with HCRR Form 1 of these Rules.

**(g) Requests to Inspect or Copy Records; Identification Required.** The Clerk may require the individual requesting a record to provide identification, including a postal mailing address or email address and telephone number.

**(h) Records Shall Not be Removed From Legal Custody; Exceptions.** Records shall not be removed from the legal custody of the Clerk or the Administrative Director except

- (1) upon order of the court or agency for which the record is maintained,
- (2) upon appeal,
- (3) upon order of the supreme court or intermediate court of appeals,
- (4) in accordance with rules governing retention of exhibits and transcripts,

or

- (5) in accordance with the Records Retention Schedules.

**(i) Duty to Report Damage or Alteration.** If a record is damaged or altered while being accessed, inspected, or copied, the Clerk shall document the damage and report it to the administrative/chief judge, the Clerk, or the Administrative Director who may take such action as is appropriate.



**(j) Time to Make Record Available; Notice.** Upon receipt of a request for an accessible record, the Clerk shall make the record available for inspection and copying within a reasonable time, subject to the court's or ADLRO's priority use of the record and the payment of fees, if any. If the request to inspect or copy cannot be accommodated within 10 business days, the Clerk shall notify the requestor and provide an estimated date when the record will be available for inspection or copying.

If the request is for a confidential record and the requestor is not of the class of persons having a right of access to the confidential record under Rule 11(d) of these Rules, the Clerk shall notify the requestor promptly that the Clerk cannot provide the record without an order of the court for court records, or an order of the Administrative Director for ADLRO records. No later than 30 days after the Clerk's denial of a request for a confidential record, a non-party requestor may move for access under Rule 16 of these Rules.

**(k) Inspection and Copying Fees; Court Records.** Fees for inspecting, copying, and transmitting copies of court records shall be charged in accordance with the provisions of Rule 2.2 of the Rules of the Circuit Courts, Rule 2.2 of the Rules of the District Courts, and Rule 45 of the Hawai'i Rules of Appellate Procedure, although no fee shall be charged to a party, or an attorney properly on the case, for the first certified copy of a document requested through the JEFS system subsequent to the filing of that document. A court may also waive costs and fees for copies of its record when justice so requires. Unless a waiver is granted or an exemption applies, no records or copies of records shall be released until full payment of fees for the current request, and any previous unpaid fees, are received.

**(l) Inspection and Copying Fees; ADLRO Records.** Fees for inspecting, copying, and transmitting copies of ADLRO records shall be in accordance with the Judiciary's Schedule of Administrative Fees.

**(m) Fees for Electronic Records.** Fees for electronic access, for electronic downloading, bulk distribution, or compilation of electronic information shall be determined by the Administrative Director.

**(n) Judiciary Contractors.** Where access to electronic or paper court records is necessary to the performance of any contract with the Judiciary, the Chief Justice or the Administrative Director may authorize access in accordance with the terms of the contract and applicable law.

**(o) Requests for Bulk, Discrete, or Compiled Electronic Information.** Requests for bulk, discrete, or compiled electronic information shall be made to the Administrative Director in accordance with Rules 11(p)-(r) of these Rules.

**(p) Electronic Court and ADLRO Records: Requests for Bulk or Discrete Data and Compiled Information.**

(1) The Administrative Director may grant requests for bulk, discrete, or compiled information from accessible electronic court and ADLRO records or from confidential records, provided

(A) the bulk or discrete data distribution, compiling of information, and/or transmission of data will not unreasonably interfere with the Judiciary's operations and/or governmental functions,

(B) the requestor pays all charges for programming the computers, linking systems, and transmitting the data, in addition to other reasonable costs identified by the Administrative Director, and

(C) when required by law, access is approved by a court of competent jurisdiction. A requestor should not be granted direct access to any production computer system or database in the usual course. The Administrative Director may take such actions as are necessary to protect the Judiciary's computer systems, databases, and web sites from automated data mining or other threats to the integrity of the systems.

(2) Requests for bulk or discrete data or compiled information from electronic court and ADLRO records shall be made in writing to the Administrative Director or to the Administrative Director's designee.

(3) Requests for bulk, discrete, or compiled information shall be acted upon or responded to within a reasonable time.

(4) The Administrative Director may approve a request for bulk, discrete, or compiled information upon finding that

(A) approving the request is consistent with these rules and any statutes that govern access to court records,

(B) resources and technical capacity are available to prepare the information,

(C) fulfilling the request is an appropriate use of public resources, and

(D) distributing or compiling the information will not interfere with the Judiciary's operations and/or governmental functions. In lieu of the process set out in this Rule, the Administrative Director may require that requests for bulk, discrete, or compiled information be made to, and processed by, the Hawai'i Information Consortium.

(5) The Administrative Director shall require a requestor to pay reasonable charges to distribute bulk, discrete, or compiled information. A reasonable charge includes charges for programming the computers, linking systems, transmitting the data, and maintenance of the systems providing the data, as well as other costs attributable to the provision of the data in question to the requestor.

(6) Personal information shall be safeguarded. Except for data transmission to law enforcement agencies, a bulk, discrete, or compiled data distribution shall not contain complete personal information. A bulk, discrete, or compiled data distribution may provide the last four digits of social security numbers, and zip codes of home addresses. The restriction on the release of personal information from court and ADLRO records may be waived only by the Administrative Director or the Administrative Director's designee.

**(q) Electronic Court and ADLRO Records: Delivery Methods.**

(1) ELECTRONIC FORMATS. Administrators or Clerks shall attempt to accommodate requests for information in electronic records or information in electronic format.

(2) ELECTRONIC DATA TRANSFER. Electronic data transfers of bulk, discrete, or compiled information shall comply with security protocols established by the Administrative Director.

(3) **DIRECT CONNECTION TO JUDICIARY DATABASES/NETWORK.** Requests to directly access databases, other than access provided to individuals through the Judiciary's website or in the Clerks' offices, shall be referred to the Administrative Director.

(4) **EXTRACTING INFORMATION.** The Judiciary need not extract specific information from records maintained in electronic format when the Judiciary does not have the capacity or capability to do so. The Judiciary need not create reports to extract information from electronic resources, but, where such reports exist, the Judiciary shall provide them, unless providing the reports violates another part of these rules, court orders, or other law.

(r) **Electronic Court and ADLRO Records: Service Providers.** The Judiciary may provide information through service providers subject to the following conditions:

(1) **CONTRACT COMPLIANCE WITH SECURITY PROTOCOLS.** Contracts between the Judiciary and information service providers shall comply with security protocols established by the Administrative Director. Contracts may not preclude the Judiciary from contracting with other information service providers or providing public access to records.

(2) **REVIEW AND REMOVAL OF RECORDS.** Before records are provided to information service providers, the Judiciary shall review, redact, and/or remove confidential records to prevent confidential information from disclosure.

(3) **DISCLAIMER REQUIRED.** Contracts with information service providers shall state the Judiciary does not warrant the accuracy, currentness or completeness of the data.

(4) **RELEASE AND INDEMNIFICATION.** Any contract with an information service provider shall include a release and indemnification clause,

(A) releasing the Judiciary and its officers and employees from liability for any information supplied and

(B) indemnifying the Judiciary and its officers and employees in any lawsuit.

(5) **INSURANCE REQUIRED.** All information service providers who contract with the Judiciary shall be required to obtain liability insurance satisfactory to the Judiciary.

(6) **CONFIDENTIALITY.** Any contract with an information service provider shall include a provision that agrees to maintain confidentiality in accordance with the terms of the contract.

#### **IV. RESTRICTING ACCESS**

##### **Rule 12. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT.**

(a) **Redacted Filings.** Unless the court orders otherwise, when a party or non-party files an electronic or paper filing with the court that contains a social-security number, taxpayer-identification number, birth date, the name of a minor, or a financial-account number, the party or non-party making the filing shall redact it to only identify, where relevant, the following information:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) in reference to a minor, a pseudonym;
- (4) the last four digits of the financial-account number.

Records filed with the court are only required to identify the information set forth in subsections (a)(1)-(4) of this Rule, when this information is relevant to an issue or claim in the case. Where information identified on a record, for example, a social security number, is not relevant to any issue or claim in the case, the filer may completely redact this information.

**(b) Exemptions from the Redaction Requirement.** The redaction requirement does not apply to the following:

- (1) a filing covered by subsections (c) or (d);
- (2) the name of a minor may be displayed in submissions in proceedings under HRS chapter 586 and section 604-10.5;
- (3) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;
- (4) an arrest or search warrant; and,
- (5) on a criminal case or traffic infraction case, a charging document or complaint and an affidavit filed in support.

**(c) Filings Made Under Seal.** The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

**(d) Protective Orders.** For good cause, the court may by order in a case:

- (1) require redaction of additional information; or
- (2) limit or prohibit a non-party's remote electronic access to a document filed with the court.

**(e) Option for Additional Unredacted Filing Under Seal.** A party or non-party making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

**(f) Option for Filing a Reference List.** A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

**(g) Waiver of Protection of Identifiers.** A person waives the protection of Rule 12(a) as to the person's own information by filing it without redaction and not under seal.

**(h) Burden is on Filer to Comply with Rule.** The clerk is not required to review documents filed with the court for compliance with this Rule. The responsibility to redact filings rests with counsel and the party or non-party making the filing.

## COMMENTS

[1] *This Rule is modeled on the Federal Rules of Civil Procedure, Rule 5.2 and Federal Rules of Criminal Procedure, Rule 49.1. In general, documents in case files should be made available electronically to the same extent they are available at the courthouse, provided that certain personal data identifiers are not included in the public file. Parties must remember that any information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.*

[2] *While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement, for example a driver's license number, in a particular case. In such cases, protection may be sought under subdivision (c) or (d). Moreover, this Rule does not affect the protection available under other rules, such as Hawai'i Rules of Civil Procedure, Rule 16 and 26(c), or under other sources of protective authority.*

[3] *When necessary to authenticate a redacted record, the party should consider including a declaration that explains the complete redaction on the record. Sample language that could be used in a declaration to explain redactions on an exhibit follows: "Attached as Exhibit A is a true and correct copy of the Driver License for Doe Party with the date of birth completely redacted."*

[4] *Subdivision (a)(3) allows a party to use a pseudonym to identify a minor. Examples of a pseudonym include "Minor #1" or "Minor Child." The use of a gender neutral pseudonym may also be appropriate, and examples include "Alex" or "Avery." Early in the case, the parties are encouraged to agree on the use of a pseudonym to prevent the court from having to sort through conflicting identifiers. A reference list should be filed under seal to identify the minor covered by the pseudonym.*

[5] *Subdivision (c) reflects the interplay between redaction and filing under seal. It does not limit or expand the judicially developed rules that govern sealing. But it does reflect the possibility that redaction may provide an alternative to sealing.*

*[6] Subdivision (d) provides that the court can by order in a particular case for good cause require more extensive redaction than otherwise required by the Rule. Nothing in this subdivision is intended to affect the limitations on sealing that are otherwise applicable to the court.*

*[7] Subdivision (e) allows a person who makes a redacted filing to file an unredacted document under seal.*

*[8] Subdivision (f) allows the option to file a register of redacted information. The term “redacted” is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.*

*[9] Subdivision (g) allows a person to waive the protections of this Rule as to that person’s own personal information by filing it unsealed and in unredacted form. One may wish to waive the protection if it is determined that the costs of redaction outweigh the benefits to privacy. If a person files an unredacted identifier by mistake, that person may seek relief from the court.*

*[10] Trial exhibits are subject to the redaction requirements of this Rule only to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with this Rule if and when they are filed as part of an appeal or for other reasons.*

**Rule 13. SEALING OF INFORMATION FILED WITH THE COURT.**

**(a) Application.**

(1) This rule applies to court records sealed or proposed to be sealed by court order.

(2) This rule does not apply to court records that are required to be kept confidential by law.

(3) This rule does not apply to confidential discovery records filed or lodged in connection with discovery motions. However, the rule does apply to any discovery materials that are used at trial or submitted as a basis for adjudication of matters other than discovery motions.

**(b) Motion to Seal.**

(1) A party requesting that a record be filed under seal must file a non-hearing motion that:

(A) is filed publicly;

(B) cites legal authority supporting the sealing or redaction and explains how the standard is met;

(C) states whether a redacted version will be filed publicly, or why redaction is not feasible;

(D) includes an affidavit or declaration detailing the efforts made to notify parties of the motion to seal, and whether the other parties agree to the sealing or redaction, or the reason why no attempt was made;

(E) includes a proposed order;

(F) includes a notice of non-hearing motion that specifies the response deadline; and,

(G) is served on all appearing parties on the filing date.

**(c) Service of Motion.** A copy of the non-hearing motion must be served on all parties that have appeared in the case. Unless the court orders otherwise, any party that already has access to the records to be placed under seal must be served with a complete, unredacted version of all papers as well as a redacted version. Other parties must be served with only the public redacted version.

**(d) Procedure for Submission of Records *In Camera*.** In support of the motion to seal, a party may conventionally submit a document for *in camera* inspection in a sealed envelope by hand delivery to the Clerk, or may file the document in electronic form via JEFS with an *in camera* designation.

If the motion is denied, for a document submitted conventionally, the movant shall inform the court within four days of the filing of the order denying the motion whether it wants to withdraw the document or have it filed publicly. If the court does not receive such notification, the Clerk must (1) return the lodged *in camera* record to the moving party if it is in paper form or (2) permanently delete the lodged record if it was filed *in camera* in electronic form.

**(e) Response; Reply.** This rule shall take priority over other court rules that provide a response deadline for a non-hearing motion.

(1) PARTY. A party may file a response within six business days after the service date, or no later than eight business days if the motion is served by mail.

(2) NON-PARTY. A non-party may file an opposition or position statement no later than six business days after the filing date of the motion.

(3) REPLY. The moving party may file and serve a reply memorandum no later than three business days after the service of the response, or five business days after the service date if the response is mailed.

**(f) Discretion of Court.**

(1) SET HEARING. The court may set any non-hearing motion to seal for hearing *sua sponte*, or upon *ex parte* application by a party or non-party that sets forth the reasons on the need for a hearing.

(2) MODIFY BRIEFING SCHEDULE. The court may modify the briefing schedule *sua sponte*, or for good cause upon *ex parte* application by a party or non-party.

(3) APPLICATION PROCESS. An *ex parte* application under this subdivision (f) shall be served on all appearing parties on the day it is submitted to the court, and shall set forth whether the opposing parties or non-parties agree to the requested relief, or why no attempt was made to seek their agreement.

**(g) Redactions.** A court record shall not be sealed when redaction will adequately resolve the issues before the court pursuant to subsection (b) above.

In general, the filing party of a paper is responsible for preparing the redacted version of the record.

**(h) Objection Addressed at Hearing.** If an objection is filed in response to a motion to seal, the court should address the objection at a public hearing; provided, the court may partially close the hearing to discuss sealed or privileged information. This rule shall not apply to appellate courts, which may address an objection on the papers submitted.

**(i) Express Factual Findings Required to Seal Records.** The court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists a compelling interest that overcomes the right of public access to the record;
- (2) The compelling interest supports sealing the record;
- (3) A substantial probability exists that the compelling interest will be prejudiced or harmed if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve or protect the compelling interest.

**(j) Content and Scope of the Order.** An order sealing the record must:

- (1) Specifically state the facts that support the findings; and
- (2) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.

#### COMMENT

*This rule provides a standard and procedures for courts to use when a request is made to seal a record. The standard is based on Oahu Publications Inc. v. Ahn, 133 Hawai‘i 482, 331 P.3d 460, (2014) and Grube v. Trader, 142 Hawai‘i 412, 420 P.3d 343 (2018). These rules apply to civil and criminal cases. They recognize the public’s qualified right of access to court records.*

*As set forth in subsection (a)(2), this rule does not apply to records that courts must keep confidential by law. Examples of confidential records to which public access is restricted by law are records of juvenile proceedings, Hawai‘i Revised Statutes (HRS) § 571-84(a) (2018), adopting proceedings, HRS § 578-15 (Supp. 2024), child protective act proceedings, HRS § 587A-25 (2018), and the initial sealing of certain search warrant matters. E.g., HRS § 803-44.6(d) (Supp. 2016).*

*Subsection (a)(2) excludes from its coverage information or records that are required by state or federal law to be filed under seal in a case. Examples of records which, in general, are confidential by law and may be filed under seal without the need to file a motion to seal include: tax returns, HRS §§ 235-116 (2017), 237-34 (2017); vital statistic records including death certificates, HRS § 338-18 (Supp. 2024); adult probation records, including*



*pre-sentence reports, HRS § 806-73(b) (2014); certificate of merit for civil action arising from sexual offenses, HRS § 657-1.8(d) (Supp. 2025). See also Hawai‘i Family Court Rules, Rule 7.2 (“Document sealed upon filings”).*

*In contrast, where a statute provides that a particular category of information may be confidential, a motion to seal may be filed seeking to preserve this confidentiality in case filings. Examples of such a law includes: HRS § 663-15.5(b) (Supp. 2017) (providing limited protection to confidential settlement terms); Hawai‘i Rules of Evidence 501-513 (2016) (“Privileges”).*

*As set forth in subsection (a)(3), a party may file confidential discovery materials, for example information subject to a protective order or asserted evidentiary privilege, on a discovery motion, such as a motion to compel or to quash, under seal without leave of court. See generally Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984) (recognizing that a protective order, as a type of restraint placed on discovered but not yet admitted information, furthers a substantial government interest unrelated to the suppression of expression and does not require exacting First Amendment scrutiny). To preserve the record on appeal and as set out in Rule 4(a) of the Hawai‘i Court Records Rules, any such record filed on a discovery motion, whether filed under seal or submitted in camera, should be filed on the record as a confidential record.*

*Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute compelling interests that override the public’s right of access such that the record should be sealed. This rule does not attempt to define what may constitute an overriding interest, but leaves this to case law.*

*In seeking to establish a compelling interest, a party may cite that:*

- (1) the sealing or redaction is permitted by statute; or*
- (2) the sealing or redaction furthers an order entered under Hawai‘i Rules of Civil Procedure (HRCP) 12(f) or a protective order entered under HRCP 26(c); or*
- (3) a conviction has been vacated or no conviction was entered, for example, as a result of a dismissal, acquittal, or deferred plea. Cf. HRS § 831-3.2(f) (Supp. 2025) (“Expungement orders”).*

*Under subsection (g), a party to a proceeding is obligated to prepare the redactions. In general, court staff should not be performing redactions of a record.*

*Subsection (h) sets forth a requirement that the court hold a public hearing to address an objection to a motion to seal, which is a procedural requirement set forth in Oahu Publications Inc., 133 Hawai‘i at 507, 331 P.3d at 485.*

*This rule should be read in conjunction with the court's supervisory powers over its own records and files. See Honolulu Advertiser, Inc. v. Takao, 59 Haw. 237, 239, 580 P.2d 58, 61 (1978). Nothing in this rule is intended to limit the discretion of the court to exercise its supervisory powers over its own records and files. The following are examples of how the court may exercise its discretionary authority in the appropriate case in response to a motion to seal.*

*Example 1. The court stays a final determination on a motion to seal a court record based on non-conviction in a criminal case involving multiple defendants or multiple charges where the case remains active as to one or more of the defendants or charges, until after the proceeding has concluded as to all parties and charges.*

*Example 2. The court enters an interim order that stays any final determination on a motion to seal portions of a record in a criminal case based on a non-conviction until after a party (whether the original filing party of the subject record, or the party moving to seal) has produced redacted versions of the subject record that are covered by the motion to seal, and these redacted versions are filed on the public record.*

[ NEW RULE ]

**Rule 14. ORDER RESTRICTING INTERNET ACCESS TO CRIMINAL CASE FILE OR COURT RECORD.**

(a) In a criminal case, a Qualified Individual may move to restrict access to the entire case file, or to a particular court record, that is publicly accessible on the internet through eCourt Kokua and the JEFS Document Subscriber role.

(b) Qualified Individual means:

(1) a person with a conviction that was vacated;

(2) a person who had a criminal action or proceeding terminated in favor of such person, whether by a finding of not guilty, or dismissal; provided, a person shall not qualify under this subsection where conviction was not obtained as a result of bail forfeiture, the person absconded from the jurisdiction, or the person was involuntarily hospitalized pursuant to HRS § 706-607, or was acquitted or had charges dismissed pursuant to HRS chapter 704 due to a physical or mental disease, disorder, or defect;

(3) a person who qualifies for relief under HRS § 831-3.2(f).

(c) **Exceptions.** Relief under this rule to restrict access to the entire case file shall not be available to a Qualified Individual where:

(1) the case remains pending as to the Qualified Individual or a co-defendant as to one or more other charges;

(2) a conviction was entered in the case against the Qualified Individual as to one or more charges; or

(3) a conviction was entered as to a co-defendant.

(d) **Order Restricting Internet Access to Entire Criminal Case File.**

Where the court finds a person is a Qualified Individual and none of the

exceptions in subsection (c) apply, the court may enter an order that directs the Clerk to restrict public access to a case file by completely removing the case, including all the case information, docket and filings, from the Judiciary's publicly accessible electronic databases that are available on the internet through eCourt Kokua and the JEFS Document Subscriber role. Unless otherwise ordered by the court, public access to any case covered by an order entered pursuant to this Rule shall remain available at the courthouse, including access to all the case information, docket and filings that are not otherwise sealed from public access. For appellate cases, the published opinions shall remain accessible on the "Opinions" page of the Judiciary's website.

**(e) Order Restricting Internet Access to a Court Record.** Where the court finds a person is a Qualified Individual, the court may enter an order that eliminates public internet access to a particular court record on eCourt Kokua and on the JEFS Document Subscriber system, with public access to the record still available at the courthouse. Under this subsection, the court shall not restrict internet access to the docket maintained by the court, any court minutes, or an opinion, order, judgment, or other disposition of the court. As part of an order entered under this subsection, the court may, in the appropriate circumstances, amend the caption to delete reference to the Qualified Individual on any further filings in the case, where the case only remains pending as to a co-defendant, but not as to the Qualified Individual.

**(f)** This Rule supplements any relief a person may qualify for under Rule 13 of these Rules.

#### COMMENT

*This rule sets forth a framework and process to obtain a court order removing a case file or court record from electronic access on the internet for Qualified Individuals on a criminal case. This rule is an exception to the general rule that provides the public with internet access to electronic case files of non-confidential cases. See Hawai'i Electronic Filing and Service Rules, Rule 11.2 (providing the public with internet access to electronic case files of non-confidential cases).*

*On-site public access at the courthouses shall be maintained for a case file or record subject to an order entered under this rule. See Hawai'i Electronic Filing and Service Rules, Rule 11.1 ("On-site access.").*

*The JEFS Document Subscriber system is a publicly accessible electronic database that has different functionality from the JEFS portal that is utilized by a party or attorney on a particular case. As such, an order entered under this Rule that restricts public internet access to a criminal case file or a court record will not restrict the JEFS access of an attorney on the case who is a registered JEFS Users. The attorney will still be able to access the case file through JEFS, notwithstanding the entry of an order under this Rule.*

**Rule 15. Reserved.**

**V. NON-PARTY PROCESS TO ACCESS CONFIDENTIAL RECORDS**

**Rule 16. NON-PARTY REQUESTS TO UNSEAL CONFIDENTIAL RECORDS**

**(a) In General.**

(1) A confidential record may be accessed by the public only after a court order unseals it or grants access to specific information.

(2) A non-party who files a motion to unseal a court record shall not be provided with access to a confidential record or non-public case information in a confidential record unless and until an order is entered under subsection (1).

**(b) Motion to Unseal.** A non-party may file a non-hearing motion to unseal a confidential record, including:

- (1) identification of the confidential record;
- (2) legal or factual grounds for unsealing;
- (3) a declaration stating the Clerk denied access or that requesting access would be futile.

**(c) Filing and Notice.**

(1) **CONVENTIONAL FILING.** The motion and subsequent filings must be filed conventionally with the Clerk. Attorneys representing non-parties must also file conventionally.

(2) **E-MAIL FILING EXCEPTION.** A non-party may seek permission from the Clerk to submit an electronic copy of any filing on a motion to unseal by e-mail, and the Clerk may accept a filing on a motion to unseal made by a non-party by e-mail, in which case a filed copy of the document shall be transmitted to the non-party after filing.

(3) **CONSENT TO ELECTRONIC NOTICE.** A non-party may consent to receive notice of a response or order filed on a motion to unseal by electronic means by filing as an attachment to the motion to unseal a “Notice of Consent to Electronic Notice.” The notice shall include the e-mail address where the non-party consents to receive electronic notice.

Where a party has submitted a notice that conforms to the requirements of this Rule, the parties and court shall serve electronic notice on the non-party in lieu of conventional service.

**(d) Docketing.**

(1) **PUBLICLY ACCESSIBLE CASE.** For a motion to unseal that seeks access to a sealed record of a case file that is otherwise publicly accessible, the motion shall be publicly filed in the case file, unless the court orders otherwise. Supporting information may be sealed or redacted in accordance with these Rules.

(2) **CONFIDENTIAL CASE FILE.** For a motion to unseal that seeks access to a record filed on a case file that is confidential by statute or prior order entered by the court, unless otherwise directed by the court, the clerk shall create a new public miscellaneous case for the motion, limited to its disposition. Supporting information may be sealed or redacted in accordance with these Rules. The clerk shall file a copy of the motion in the underlying case with a notation directing further filings to the miscellaneous case.

**(e) Notice on Motion to Unseal.**

(1) PUBLICLY ACCESSIBLE CASE FILE. For a motion to unseal that seeks access to a sealed record of a case file that is otherwise publicly accessible, unless otherwise directed by the court, the non-hearing motion shall be conventionally served by the movant on all parties to the proceeding by regular mail postage pre-paid to their last known address, and where a party is represented by counsel, a filed copy of the non-hearing motion shall also be e-mailed to the e-mail address for any counsel of record.

A certificate of service shall be filed in the case to establish that the notice requirements of this Rule have been satisfied.

(2) CONFIDENTIAL CASE FILE. For a motion to unseal that seeks access to a record filed on a case file that is confidential by statute or prior order entered by the court, the Clerk shall be required to notify all parties of the motion by regular mail postage prepaid, or for registered JEFS users by e-mail, and a certificate of service shall be filed by the Clerk under seal in the new miscellaneous case.

(3) WAIVER OF NOTICE REQUIREMENT IN EXCEPTIONAL CIRCUMSTANCES. If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

**(f) Deadlines For Response; Reply; Public Filings.**

The response deadlines in this rule shall take priority over other rules that provide a response deadline for a non-hearing motion.

(1) RESPONSE. Any response shall be filed and served by a party or interested non-party no later than 12 business days after the service date indicated on the certificate of service.

A non-party that filed a motion to unseal will not receive notice of electronic filing, nor will an attorney that represents the non-party. As such, unless the non-party has filed a Notice of Consent to Electronic Service, any response shall be conventionally served on the movant, or if the movant is represented by an attorney, emailed to the attorney's e-mail address registered with the Hawai'i State Bar Association.

(2) MEMBERS OF PUBLIC MAY SUBMIT RESPONSE. Any member of the public may submit a position statement in response to a motion to unseal within the same period established under subsection (f)(1).

(3) REPLY. Any reply shall be filed and served no later than five business days after the service of the response.

(4) PUBLIC FILINGS. Unless otherwise ordered by the court, any response or reply shall be filed on the public record; provided, information filed in support of the paper may be filed under seal or presented for *in camera* review in accordance with these Rules.

**(g) Judicial Discretion; Hearing; Evidence.** For good cause, the court may modify the deadline and submission requirements set forth in this Rule.

Upon request of a party or *sua sponte*, the court may set a motion to unseal for hearing and may also set an evidentiary hearing on any matter relevant to the disposition of the motion.

**(h) Stay Release of Confidential Records.** The court may stay or temporarily delay the release of confidential records to allow a party a reasonable period to request to reseat specific portions of the unsealed record.

## COMMENT

*Subsection (c) establishes an exception to the requirements of electronic filing by a JEFS User, such as attorneys, that is set forth in the Hawai‘i Electronic Filing and Service Rules.*

*Under subsection (d)(2), a “miscellaneous case” is a new case file created solely to handle the motion to unseal when the underlying case is entirely confidential, ensuring public access to the motion while protecting the confidential record.*

*Under subsection (f)(1), a JEFS User that is a party in the underlying case, or an attorney representing a party in the underlying case, should file a response by electronic filing.*

*Under subsection (h), a court may sua sponte stay the release of confidential records, or may delay the effective date of the unsealing to allow a party to file a motion to reseal specific portions of the record in conformance with the requirements of these Rules.*

### **Rule 17. REVIEW; NON-PARTY REQUEST TO UNSEAL CONFIDENTIAL RECORD.**

A non-party may seek review of an order denying a motion filed by a non-party under Rule 16 of these Rules seeking to unseal a confidential record, by filing a petition with the supreme court in accordance with Rule 21 of the Hawai‘i Rules of Appellate Procedure (HRAP) within 30 days after entry of the order denying access to a confidential record.

If the record of the underlying proceeding is confidential, the Clerk of the trial court or ADLRO, upon notice of the petition, shall provide notice of the petition to all parties to the case, shall file a copy of the Clerk’s certificate of service on each party, and shall file the certificate of service as an *in camera* document in the record of proceeding before the supreme court.

This rule shall not operate to foreclose any right of appeal that a party may have under applicable law, nor the right of a party or non-party to seek relief under HRAP 21 for other grounds independent of this Rule.

## **VI. MISCELLANEOUS PROVISIONS**

**Rule 18. Reserved.**

**Rule 19. Reserved.**

**HCRR Form 1. Request to Access Court or ADLRO Record.**

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