

Re: Proposal to Amend Rule 20 and Rule 41 of the Hawai‘i Probate Rules

*CLARIFYING THE DISPOSITION OF CONTESTED MATTERS, AND
TIMING ON REQUEST FOR FEES*

The Supreme Court of Hawai‘i seeks public comment regarding proposed amendments to Rule 20 and Rule 41 of the Hawai‘i Probate Rules. The amendments seek to clarify and reflect the actual practice of the Probate Court in contested matters.

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

Comments should be submitted in writing **no later than Tuesday, June 30, 2026** to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 808-539-4801, by e-mail to pao@courts.hawaii.gov, or via the [Judiciary website](#).

Attachment.

**PROPOSED AMENDMENTS TO THE
HAWAI'I PROBATE RULES**

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

Rule 20. DISPOSITION OF CONTESTED MATTERS.

(a) ~~[Assignment.]~~ **Ruling, Trial, Discretion to Assign to Civil Trials Calendar.** ~~[The court by written order may retain]~~ When a contested matter [on the regular probate calendar or may assign] comes before the court, the court may rule upon the contested matter based upon the pleadings filed in the matter, any evidence presented, and any arguments made by counsel at the hearing. In addition, the court, in its discretion, may continue the hearing, may set further hearings, or may set status conferences, in order to obtain the information the court needs to make its ruling. Where the court determines that a further evidentiary hearing or a trial is advisable, the court, in its discretion, may conduct the evidentiary hearing or trial in probate court, or instead may assign either the entire contested matter, or particular issues arising in the contested matter, to the civil trials calendar of the circuit court for resolution.

COMMENTARY:

This rule divides contested matters into ~~[two]~~ three classes: (1) those that the probate court will resolve ~~[and]~~ based upon the pleadings filed and arguments made at hearing, without a trial; (2) those that the court ~~[will refer]~~ determines are best resolved through a further evidentiary hearing or trial conducted in probate court; and (3) those that the court determines are best resolved through a trial on the entire contested matter, or an evidentiary hearing on certain issues arising in the contested matter, conducted on the regular civil trials calendar. In pursuit of the efficient administration of justice, most matters will be ruled upon by the probate court based upon the pleadings filed in the matter and on any arguments made by counsel at the hearing. In cases where the probate court determines that it would benefit from having information that it cannot obtain in hearings, such as more extensive discovery or oral testimony of witnesses, the probate court may set the matter for further evidentiary hearing or trial. If the contested matter is to be tried in probate court, the court will determine the procedures to be followed (See subsection 20(b) below). Due to the probate court's time constraints, the court has the discretion to assign the contested matter, or certain issues arising in the contested matter, to the civil trials calendar. It is anticipated that the probate court will assign to civil trials the more complex and time consuming cases that may require extensive discovery, although the court may retain such ~~[a]~~ cases if it ~~[involves technical~~

issues that are within the experience and expertise of the probate court (and therefore involve less time and effort to educate a trial judge). By requiring a written order of assignment, which would ideally be a preprinted form, a clear record is created, and the court then has the opportunity to decide what procedures will be used if the contested matter is retained. (See Rule (d) below.)] chooses to do so. For instance, the court may use as a guideline for assigning a contested matter to the civil trials calendar whether trial will take more than one-half day.

[(b) — Guideline for Assignment. The court may use as a guideline on whether to assign a contested matter to the civil trials calendar the expected length of the hearing and whether it will take more than one-half day. The court may also assign other matters to the civil trials calendar, with or without the stipulation of the parties, and the court, at the request of all parties, may retain on the probate calendar a contested matter that would otherwise be assigned to the civil trials calendar, if the court determines the matter can be handled more efficiently and effectively. When the court assigns a contested matter to either calendar, the court may set a status conference date, which the court clerk will note in the order assigning the contested matter, or in a separate status conference order.]

(b) Procedures in Retained Contested Matters. Whenever the court retains jurisdiction of a contested matter as a probate proceeding, the court, in its discretion, may determine that any one or more of the Hawai'i Rules of Civil Procedure and/or the Rules of the Circuit Courts will be applicable in such matter.

COMMENTARY:

[This rule provides standards for assigning contested matters to either the probate calendar or the civil trials calendar, with a great deal of flexibility built in. The flexibility is essential, considering the great difference in procedures available and the likelihood that a civil trial would take many months to get scheduled. A status conference date may be set at the same time the assignment is made, to prevent further delay in hearing the matter.]

This rule allows the court to adopt any of the Rules of Civil Procedure or Rules of the Circuit Court to govern the conduct of the contested matter. It is anticipated that most, if not all, of the rules regarding discovery, summary judgment, trial testimony, and pretrial practices will be adopted. Contested matters in probate court do not automatically give rise to the right to discovery, and in cases where there is no trial, the court does not need to specifically address the issue. Other issues not in dispute, in a matter, including regular settlement or administration of the probate, trust, conservatorship, or guardianship,

will continue to the extent possible without regard to the contested issues in the matter.

(c) [Effect of] Assignment to Civil Trials Calendar. The Hawai'i Rules of Civil Procedure and the Rules of the Circuit Courts will apply to all contested matters assigned to the civil trials calendar. However, no right to jury trial ~~[shall be]~~is created by assignment to the civil trials calendar where such a right does not exist in the underlying proceeding. Unless otherwise ordered by the court, when a matter is assigned to the civil trials calendar, then for all procedural purposes, the party objecting to the petition shall be considered the plaintiff, the objection is to be treated as a complaint, and the complaint shall be deemed to have been filed on the date of the assignment to the civil trials calendar.

COMMENTARY:

This rule makes clear that a contested matter assigned to civil trials is to be treated the same as, and be subject to the same rules as, a normal civil action. However, because the right to jury trial is limited under the Uniform Probate Code, assignment of a contested matter to civil trials does not thereby give rise to a right to jury trial.

The party who files the objections in a matter shall be considered the plaintiff, unless otherwise ordered by the court, for purposes of the civil procedural rules, but not necessarily for substantive issues as to the burden of proof or burden to go forward.

~~(d) Procedures in Retained Contested Matters.~~ Whenever the court retains jurisdiction of a contested matter as a probate proceeding, the court in the order of assignment may, at the request of the parties, designate and order that any one or more of the Hawai'i Rules of Civil Procedure and/or the Rules of the Circuit Courts shall be applicable in such matter.]

~~COMMENTARY:~~

~~— This rule allows the court to adopt any of the Rules of Civil Procedure or Rules of the Circuit Court to govern the conduct of the contested matter. It is anticipated that most, if not all, of the rules regarding discovery, summary judgment, trial testimony, and pretrial practices will be adopted. Currently, contested matters in probate do not clearly give rise to the right to discovery, and it is rare for the court to specifically address the issue. Other issues not in dispute, and regular settlement or administration of the probate, guardianship, or trust estate, shall continue to the extent possible without regard to the contested matter.]~~

~~(e)~~(d) Effect on Underlying Matter. The designation of an issue as a contested matter and the assignment thereof to the civil trials calendar or the probate calendar shall not affect the underlying proceeding, and the proceeding shall continue to the extent that such administration is not inconsistent with the issues being contested.

~~(f)~~(e) Appeals. An order resolving the issues in a contested matter shall be reduced to judgment in accordance with Rule 34 of these rules and may be appealed as provided therein.

COMMENTARY:

This rule is to clarify that orders disposing of an issue are appealable; this is so that contested issues can be resolved quickly and a proceeding terminated as soon as possible.

~~(g)~~(f) Termination of Assignment. When the contested matter is finally resolved, whether by settlement, final unappealed order, or disposition on appeal, the assignment shall terminate and all matters relating to the proceeding shall thereafter be controlled by these rules.

COMMENTARY:

This rule is to make clear the assignments of contested matters are limited in scope to the ~~[matter]~~issues actually contested, and the use of other rules or procedures not within the scope of these rules terminates when the contested matter is concluded.

Rule 41. EVIDENCE AND NOTICE.

Whenever there is an objection to the fees of a fiduciary or attorney, or court approval of such fees is sought for any reason, the fiduciary or attorney whose fees are at issue shall file an affidavit, setting forth the amount and basis of calculation of the fees sought and any costs advanced which are to be reimbursed, ~~[at the same time as any petition seeking approval of such fees or any response to a petition objecting to such fees]~~ no later than 72 hours prior to the hearing. The affidavit should specifically detail the charges for the services and costs rendered to the date of the affidavit and the anticipated charges and costs to complete the matter through preparation, processing, and service of the order. Any interested person may file with the court and serve on the petitioner or its counsel an objection to the fees and costs requested no later than 24 hours prior to the hearing.

COMMENTARY:

Under the new probate code, the fees of an attorney or fiduciary are not subject to court review unless a party objects to the fees and review is sought. This revised rule requires that, whenever court approval of fiduciary or ~~[attorneys']~~ attorney fees is sought (either because a party objects or because a party wants such fees to be court-approved), an affidavit of the person whose fees are at

issue must be filed with the initial petition or response, as the case may be. Where the work for which the fees are sought is not yet completed (such as in petitions for approval of accounts or for confirmation of sales), the affidavit should [~~be~~] set forth an estimate of the fees to be incurred through the conclusion of the hearing.