

**Electronically Filed
Intermediate Court of Appeals
CAAP-24-0000746
29-SEP-2026
07:58 AM
Dkt. 112 MO**

NOS. CAAP-24-0000746, CAAP-24-0000747, and CAAP-25-0000665

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

CAAP-24-0000746

IN THE MATTER OF THE TSUGIO KURIHARA REVOCABLE LIVING TRUST
DATED AUGUST 21, 1997, AS AMENDED AND RESTATED

CAAP-24-0000747

IN THE MATTER OF THE TSUGIO KURIHARA REVOCABLE LIVING TRUST
DATED AUGUST 21, 1997, AS AMENDED AND RESTATED

and

CAAP-25-0000665

IN THE MATTER OF THE TSUGIO KURIHARA REVOCABLE LIVING TRUST
DATED AUGUST 21, 1997, AS AMENDED AND RESTATED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1TR161000036)

MEMORANDUM OPINION

(By: Leonard, Presiding Judge, Hiraoka and Guidry, JJ.)

At issue is a dispute between self-represented
Beneficiary/Successor Trustee/Respondent/Petitioner-Appellant
Douglas Kurihara (**Douglas**), self-represented Beneficiary/
Petitioner/Respondent-Appellant Ted Kurihara (**Ted**), and

Petitioners/Respondents-Appellees Natasha R. Shaw (**Shaw**) and Gale L.F. Ching (**Ching**) (together, the **Attorneys**) regarding attorneys' fees and costs that Douglas incurred in the underlying case. Douglas filed a notice of appeal in case no. CAAP-24-0000746. Ted filed notices of appeal in case nos. CAAP-24-0000747 and CAAP-25-0000665. We consolidated Douglas and Ted's appeals, which were taken from the Circuit Court of the First Circuit's (**probate court**) August 27, 2025 Final Judgment,¹ entered in case no. 1TR161000036.²

I. BACKGROUND

A. Surcharge Petition

Douglas and Ted are sibling beneficiaries of the "Restatement of the Tsugio Kurihara Revocable Living Trust Agreement" (the **Trust**).³ In February 2016, Ted initiated case no. 1TR161000036 by filing a Petition for Instructions regarding the Trust. The sole asset of the Trust is a parcel of real property located in Waimanālo, Hawai'i that was sold in 2019 (the **Trust Property**).

¹ Case nos. CAAP-24-0000746 and CAAP-24-0000747 were prematurely filed prior to entry of the Final Judgment.

² The Honorable R. Mark Browning (**Judge Browning**), Jeannette H. Castagnetti (**Judge Castagnetti**), and Kevin T. Morikone (**Judge Morikone**) presided over the probate court proceedings below. Judge Morikone entered the Final Judgment.

³ Douglas and Ted are also beneficiaries of the Kaoru Shimotsu Kurihara Revocable Living Trust Agreement Dated August 21, 1997, as amended and restated (**Kaoru Trust**), which is the subject of a separate probate proceeding docketed as case no. 1TR171000202.

In January 2020, Ted filed a civil complaint in case no. 1CCV-20-0000030 against Douglas and other defendants alleging, among other things, that Douglas was unjustly enriched by retaining rents paid by tenants on the Trust Property. Douglas subsequently entered into an "Attorney-Client Engagement and Fee Agreement" (**Fee Agreement**) with the Attorneys. The Attorneys agreed to "assist [Douglas] in all trust litigation to include alternative dispute resolutions surrounding the [Trust and Kaoru Trust] in relation to [Douglas'] beneficial trust share of the [Trust and Kaoru Trust]." Douglas agreed to compensate the Attorneys on a "hybrid basis," in which Douglas would pay discounted hourly rates, and "an additional twenty percent (20%) contingency fee upon all recoveries."

The Attorneys thereafter filed Douglas' April 30, 2020 "Petition for Accounting, for Distribution of Trust Assets, for Removal and Surcharge of [Ted] as Successor Trustee of the [Trust], for Constructive Trust and for Other Equitable Relief" (**Surcharge Petition**). The Surcharge Petition alleged, inter alia, that Ted failed to exercise his fiduciary duties as trustee and had breached various trust duties. Douglas requested that the probate court award him the attorneys' fees and costs incurred in the filing of the Surcharge Petition.

The probate court appointed a Master to consider the issues related to Ted's trustee compensation and costs. The Master's Report was filed on November 10, 2020.

On March 8, 2021, the probate court entered its "Order and Findings of Fact [(FOFs)] Regarding [the Surcharge Petition]" (**Surcharge Order**), which granted in part, and denied in part, the Surcharge Petition, and adopted recommendations from the Master's Report that awarded Douglas a beneficiary distribution and attorneys' fees and costs. The probate court also entered its "Judgment on [the Surcharge Order]" (**Surcharge Judgment**).

On March 10, 2021, Shaw emailed Douglas to acknowledge receipt of a check from the Master in the total amount of \$88,387.33, which was deposited into Shaw's Client Trust Account. Shaw explained that the distribution would be "used to pay for trust administration costs and expenses" and attorneys' fees, and that the remaining funds would be used to "[p]rosecute" Ted, file tax returns, and pay any outstanding taxes and trust-related expenses. (Emphasis omitted.)

B. Ted's 2021 Appeal and Supersedeas Bond

In April 2021, Ted filed an appeal with this court, docketed as case no. CAAP-21-0000275, challenging the Surcharge

Order and Surcharge Judgment.⁴ Ted obtained a supersedeas bond in the amount of \$480,800 (**appeal bond**), and, in August 2021, Ted filed a "Petition to Approve Supersedeas Bond and Order a Stay of All Proceedings Relating to the Enforcement of the Judgment Pending a Decision on Appeal or, Alternatively, Sua Sponte Approve the Supersedeas Bond and Order a Stay of All Proceedings Relating to the Enforcement of the Judgment" (**Bond/Stay Petition**). The probate court did not rule on Ted's Bond/Stay Petition.

C. Kaoru Trust Case Settlement Term Sheet

In December 2022, Douglas, Ted, and other beneficiaries signed a Settlement Term Sheet, in which the Kaoru Trust beneficiaries agreed to a distribution of the Kaoru Trust assets and the dismissal of case no. 1TR171000202. The Settlement Term Sheet, inter alia, directed Ted to pay Douglas \$300,000, and identified Ching as counsel for Douglas.

D. Dispute Between Douglas and the Attorneys

In April 2023, Douglas informed Ching by letter that he was terminating their legal relationship effective immediately. Douglas also submitted a "Request for Court Orders and Ethics Violation Complaint and Objection to Petition by [Ching]," in which he requested that the probate court order the

⁴ This court entered a November 13, 2024 summary disposition order in case no. CAAP-21-0000275 affirming the Surcharge Judgment.

surety, Surety One, Inc., to transfer his \$300,000 settlement check directly to him. Douglas alleged that the Attorneys filed the Surcharge Petition "based on allegations they knew to be false," and that "[t]he [Surcharge] Petition was MALICIOUS, made up of falsehoods with no input from [Douglas]." Douglas thereafter moved to proceed pro se, and for Ching to be removed as his attorney; the probate court denied Douglas' request.

In May 2023, Ching filed the "Petition to Withdraw as Counsel and to Enforce [the Fee Agreement] Against Former Client [Douglas] in His Individual, Beneficiary Capacities of the [Trust] and [Kaoru Trust] and Successor Trustee of the [Trust]" (**Ching's Withdrawal/Enforcement Petition**), which asked the probate court to permit Ching to withdraw as counsel.⁵ Ching also requested that the probate court: (1) find that the Fee Agreement was entered into in good faith and enforceable as a matter of law; (2) order Douglas to compensate the Attorneys "as per the terms of the [Fee Agreement]"; and (3) award and approve the Attorneys' fees and costs.

The probate court granted in part and denied in part Ching's Withdrawal/Enforcement Petition. On August 23, 2023, it entered the signed "Minute Order Re: [Ching's Withdrawal/Enforcement Petition]" (**Withdrawal/Enforcement Minute Order**), in

⁵ Shaw earlier filed a Withdrawal and Substitution of Counsel for Douglas, which the probate court approved, leaving Ching as sole counsel for Douglas.

which it found the Settlement Term Sheet, filed in case no. 1TR171000202, to be valid and enforceable. It ordered that all amounts payable to Douglas pursuant to the Settlement Term Sheet be paid to and held by the probate court pending resolution of the fee dispute, allowed Ching to withdraw, and ordered that the remaining matters regarding payment of fees and costs shall be arbitrated pursuant to the terms of the Fee Agreement.

On September 15, 2023, the probate court entered its "Order Granting in Part and Denying in Part [Ching's Withdrawal/Enforcement Petition]," which incorporated the rulings from the Withdrawal/Enforcement Minute Order.

On October 20, 2023, Douglas filed his "Ex Parte Petition Regarding Petition for Accounting; 1) for Sanctions Against [the Attorneys] for Malicious Prosecution and Misappropriation of Trust Funds; 2) for Order Ordering the Return of the [Trust] Funds Misappropriated by [the Attorneys]; 3) for Order, Ordering [the Attorneys] to Provide the [Trust] Bank Statement and Canceled Checks Documenting the Receipt and Distribution of the Trust Funds That Were in Their Custody; 4) for Order, Ordering [Ching] to Provid[e] Copies of All Communication with [Ted's then-counsel John Remis (**Remis**)] Between Jan 1, [2023] and May 1, 2023" (**Misappropriation Petition**). (Footnotes omitted.)

The Misappropriation Petition asked the probate court to, among other things: (1) return to Douglas "the \$88,387.[3]3 of [Trust] funds that [the Attorneys] [allegedly] misappropriated in 2021 in violation of Judge Browning's order that their attorney fees were not to be paid for by the [Trust] funds in their custody"; and (2) "release to [Douglas] the [Trust] bank statements and canceled checks . . . documenting the receipt and distribution of the Trust Assets in the amount of [\$88,387.33] held in their custody since March 2021."

In November 2023, Douglas filed an emergency petition seeking to recuse Judge Browning, and alleging that Judge Browning abused his judicial discretion by failing to sanction the Attorneys for the alleged misappropriation of Trust fund moneys and alleged malicious prosecution. The probate court denied Douglas' petition.⁶

E. Surety Petition

On January 5, 2024, arbitrator Mahilani Hiatt filed the "First Amended Final Award of the Arbitrator" (**Arbitration Award**). (Footnote omitted.) The Arbitration Award awarded the Attorneys their contingency fee, general excise tax pursuant to the Fee Agreement and Settlement Term Sheet, attorneys' fees and costs, and prejudgment interest.

⁶ Douglas appealed the probate court's ruling to this court in case no. CAAP-23-0000684. In July 2025, this court dismissed the appeal for lack of jurisdiction.

On February 6, 2024, Ching filed a "Petition for Order Directing Surety to Make Payment to the Clerk of the First Circuit Court and Other Relief" (**Second Surety Petition**).⁷ Douglas thereafter petitioned the probate court to refer the "malicious petition for accounting" and "misappropriation" matters to the civil court for resolution, order the Attorneys to provide copies of the Trust's bank statements and cancelled checks to Douglas, and dismiss the Second Surety Petition. (Formatting altered.) The probate court denied Douglas' petitions.

On October 2, 2024, the probate court entered its "Order Regarding [Ching's Second Surety Petition]" (**October 2, 2024 Surety Order**), which ordered Surety One, Inc. to pay \$300,000 of Ted's appeal bond to the Clerk of the First Circuit Court and refund the remaining amount in the appeal bond directly to Ted.

The probate court entered a signed October 12, 2024 "Court's Minute Order" regarding the Second Surety Petition (**October 12, 2024 Minute Order**) that granted in part, and denied in part, the Second Surety Petition. The probate court confirmed the Arbitration Award, and ordered the Clerk of the

⁷ The probate court summarily denied Ching's first surety petition, i.e., the December 18, 2023 "Ex Parte Petition for Order Directing Insurer to Make Payment to Clerk of the First Circuit Court."

Court to "make payable to [the Attorneys], the amounts awarded pursuant to the [Arbitration Award]."

Douglas and Ted prematurely appealed from the October 2, 2024 Surety Order, the October 12, 2024 Minute Order, and an October 17, 2024 "Proposed Judgment on [the October 12, 2024 Minute Order]," creating case nos. CAAP-24-0000746 and CAAP-24-0000747.

F. Show Cause Petition

On January 24, 2025, Ching filed a "Petition Against [Ted], [Remis], and [Douglas] to Show Cause, Enforce the Court's Order, for Sanctions, and for Other Equitable Relief" (**Show Cause Petition**).

In April 2025, Judge Castagnetti recused herself from the underlying action, and the case was reassigned to Judge Morikone.

In June 2025, Douglas filed a "Petition to Dismiss [the April 30, 2020 Surcharge Petition]," and a "(Proposed) Order Setting Date, Place[,] and Time to Hear the [Petition to Dismiss the April 30, 2020 Surcharge Petition]," which was denied by the probate court. Douglas also filed an "Ethics Violation Report and Request for Judicial Action" requesting that the probate court vacate multiple orders, strike Ching's "improper pleadings," refer the Attorneys to the Office of Disciplinary Counsel, refer Judge Castagnetti to the Commission

on Judicial Conduct, and "[p]rovide [FOFs] under [Hawai'i Rules of Civil Procedure (**HRCP**)] Rule 52(a) regarding the misappropriation and fabrication allegations."

On July 11, 2025, the probate court filed the "Order and [FOFs] Regarding [the October 12, 2024 Minute Order]" (**2025 Surety Order**), and the "Judgment on [the 2025 Surety Order]" (**2025 Surety Judgment**). Judge Morikone signed both the 2025 Surety Order and the 2025 Surety Judgment "For: Judge Jeannette H. Castagnetti."

In July 2025, Ted petitioned the probate court to vacate the 2025 Surety Judgment, and to dismiss the entire action. Douglas filed a "Motion for Relief from Judgment or Order Pursuant to [HRCP] Rule 60(b) and Hawai'i Probate Rules [(**HPR**)] Rule 36."

The probate court subsequently filed a series of orders (the **Show Cause Orders**) granting in part, and denying in part, the Show Cause Petition. Ted and Douglas filed multiple petitions to disqualify Judge Morikone and to vacate or stay the execution of the Show Cause Orders and the 2025 Surety Judgment. The probate court converted these petitions into non-hearing motions and summarily denied them in its August 27, 2025 "Order Denying Dockets 848, 850, 872, 874, 880, 886, and 911" (**Order Denying Dockets**).

The probate court entered its Final Judgment on August 27, 2025. Ted timely appealed from the Final Judgment, creating case no. CAAP-25-0000665, which challenged the 2025 Surety Judgment and Show Cause Orders.

II. Points of Error

In case no. CAAP-24-0000746, Douglas raises the following points of error, contending that the probate court erred by: (1) "permitting any deviation" from the Surcharge Order; (2) permitting the withdrawal of Trust funds, which "violates the explicit directive for proper, personal payment" as ordered in the Surcharge Order; (3) "fail[ing] to condemn the intentional deviation evidenced by the unauthorized withdrawal"; and (4) "[p]ermitting the misappropriation of [T]rust funds" in violation of fiduciary duties.

In case no. CAAP-24-0000747, Ted raises the following points of error, contending that the probate court erred: (1) in entering the October 2, 2024 Surety Order; (2) in approving the October 2, 2024 Surety Order despite repeated allegations of the Attorneys' malice and misappropriation of Trust fund moneys; (3) by violating Ted and Douglas' constitutional rights "by failing to grant hearings on reports of [the Attorneys' alleged misconduct]"; (4) "by failing to take appropriate action" on such reports in violation of Hawai'i Revised Code of Judicial Conduct (**HRCJC**) Rule 2.15; (5) "by suppressing evidence (Trust's

canceled checks) and interfer[ing] with the [probate court's] ability to adjudicate in a fair and objective manner"; and (6) by approving the October 12, 2024 Minute Order.

In case no. CAAP-25-0000665, Ted raises the following points of error, contending that the probate court erred: (1) "by issuing judicial orders" after Judge Castagnetti recused, in violation of Hawaii Revised Statutes (**HRS**) § 601-7 (2016), various provisions of the HRCJC, and the Fourteenth Amendment; (2) in entering the 2025 Surety Judgment and the Show Cause Orders, without corresponding FOFs and conclusions of law (**COLs**), in violation of HRCJP Rule 52(a); (3 & 6) in refusing "to conduct evidentiary hearings despite multiple requests addressing attorney misconduct" and "fail[ing] to investigate, adjudicate, or refer the misconduct" in violation of the HRCJC and the Hawai'i Rules of Professional Conduct (**HRPC**); (4) in "den[ying] or dismiss[ing] petitions and pleadings alleging attorney misconduct [and] judicial misconduct . . . without hearings and without [FOFs]"; (5) by "rel[ying] on [Ching's] unauthorized filings and the . . . October 12, 2024 Minute Order when issuing the [2025 Surety Judgment] and [Show Cause Orders]"; (7 & 8) by entering the October 12, 2024 Minute Order and 2025 Surety Judgment, which were based on allegedly "unauthorized filings" by Ching; (9) by "suppressing material evidence" such as "canceled trust checks" which were "primary

evidence of misappropriation"; (10) by ignoring and refusing to investigate or act on formal complaints alleging attorney misconduct and judicial participation; (11) in "fail[ing] to adjudicate substantiated allegations of fraud"; (12) by "continu[ing] [to] adjudicat[e] the [Surcharge Petition] after [Douglas] formally moved to dismiss it"; and (13) because "[t]he cumulative denial of hearings, suppression of evidence, reliance on allegedly fabricated judicial orders, and issuance of orders without [FOFs]" violated Ted's rights under the Fourteenth Amendment of the U.S. Constitution.

III. Discussion

Upon careful review of the record, briefs, and relevant legal authorities, and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Douglas and Ted's contentions of error as follows. We consolidate and renumber the various points raised for purposes of our analysis.

A. Douglas and Ted's Requests for Evidentiary Hearings

Ted contends that the probate court erred by denying his requests for evidentiary hearings, in violation of HPR Rule 20 and constitutional due process, when it did not grant hearings for, or refer to the civil trials calendar, the issues of whether the Attorneys misappropriated Trust assets and whether the Attorneys improperly filed the Surcharge Petition.

HPR Rule 20. Pursuant to HPR Rule 20, the probate court "by written order may retain a contested matter on the regular probate calendar or may assign the contested matter to the civil trials calendar of the circuit court." "[T]he probate court commits structural error when it does not enter its HPR Rule 20(a) order retaining the case before holding a hearing on the contested matter or deciding the petition." In re Revocable Living Tr. of Gonsalves, Dated Feb. 25, 2015, No. CAAP-24-0000003, 2026 WL 880568, at *1 (Haw. App. Mar. 31, 2026) (SDO) (citations omitted).

The record reflects that Douglas' petitions alleging attorney misconduct were either uncontested or filed on an ex parte basis, such that Douglas requested that it be decided "without notice or hearing." See HPR Rule 23. Douglas and Ted also alleged attorney misconduct in their oppositions to Ching's Withdrawal/Enforcement Petition and Second Surety Petition. The probate court issued HPR Rule 20 orders, in which it found the Withdrawal/Enforcement Petition and Second Surety Petition to be contested matters which it retained under HPR Rule 20.

On this record, we conclude that the probate court did not violate HPR Rule 20.

Constitutional rights. Ted contends that the probate court violated Douglas and Ted's constitutional right to a hearing on their allegations of misconduct. "This court reviews

questions of constitutional law de novo, under the right/wrong standard and, thus, exercises its own independent constitutional judgment based on the facts of the case." In re Guardianship of Carlsmith, 113 Hawai'i 236, 239, 151 P.3d 717, 720 (2007) (cleaned up).

The Fourteenth Amendment of the U.S. Constitution and article I, section 5 of the Hawai'i State Constitution both provide that "[n]o person shall be deprived of life, liberty[,] or property without the due process of law." "[P]rocedural due process of law requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant liberty interest." Id. (cleaned up). We note that, "due process is flexible and calls for such procedural protections as the particular situation demands." Id. at 239-40, 151 P.3d at 720-21 (citation omitted).

The record reflects that Douglas and Ted appeared at the June 6, 2024 and September 19, 2024 hearings on Ching's Second Surety Petition, and that the probate court afforded Douglas, who was self-represented, considerable time to discuss his allegations of misappropriation and coercion.

Douglas and Ted had notice of, and participated in, the underlying proceedings. On this record, we conclude that Ted failed to demonstrate that he and Douglas were denied due process.

B. Alleged attorney misappropriation of Trust fund moneys

Douglas contends that the probate court erred in allowing the Attorneys to "misappropriate" funds from the Trust to satisfy their fees and costs. Douglas' contention lacks merit.

Relevant here, the Surcharge Order and Surcharge Judgment awarded Douglas trust distributions and surcharge payments from Ted as partial satisfaction of Douglas' beneficiary distribution. After the Master's fees were deducted, Douglas' remaining award from his trust distribution amounted to \$88,387.33. A check for this amount was conveyed to the Attorneys, and the Attorneys applied this amount towards the satisfaction of the fees and costs that Douglas had incurred.

The Fee Agreement between Douglas and the Attorneys states that "[a]ll proceeds of [Douglas'] case shall be deposited into [the Attorneys'] trust account for disbursement and distribution in accordance with the provisions of this [Fee] Agreement." Douglas agreed to "receive the remaining amount of the litigation recovery after . . . [the Attorneys'] fees, general excise tax and costs [were] paid."

On this record, the probate court did not err in determining that the Attorneys did not misappropriate funds from the Trust.

C. Surcharge Petition

Ted appears to challenge the probate court's conclusion that "Douglas has not presented evidence that the [Surcharge] Petition was brought forth in bad faith or without consent." We review the probate court's COLs de novo under the right/wrong standard. Marvin v. Pflueger, 127 Hawai'i 490, 495, 280 P.3d 88, 93 (2012).

In Bank of Hawaii v. Kunimoto, the Hawai'i Supreme Court defined bad faith as "actual or constructive fraud or a neglect or refusal to fulfill some duty . . . not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive." 91 Hawai'i 372, 390, 984 P.2d 1198, 1216 (1999) (citations omitted).

In Yoneji v. Yoneji, this court explained that "[a] frivolous claim has been defined as a claim so manifestly and palpably without merit, so as to indicate bad faith on the pleader's part such that argument to the court was not required." 136 Hawai'i 11, 21, 354 P.3d 1160, 1170 (App. 2015) (cleaned up).

The Attorneys' filing of the Surcharge Petition was not in bad faith and/or frivolous. The Attorneys acknowledged Ted's trustee report by attaching it to the Surcharge Petition; in so doing, they argued that Ted's report was insufficient and not in compliance with Hawai'i law. The Surcharge Petition was

supported by the Declaration of Beneficiary Douglas Kurihara, in which Douglas set forth, under the penalty of perjury, the misconduct that Ted allegedly committed.

The Attorneys' filing of the Surcharge Petition was not, moreover, without Douglas' consent. Douglas' Fee Agreement with the Attorneys stated that "[Douglas] hire[d] [the Attorneys] to assist [Douglas] in all trust litigation to include alternative dispute resolutions surrounding the [Trust and Kaoru Trust] in relation to [Douglas'] beneficial trust share of the [Trust and Kaoru Trust]." Consistent with the terms of the Fee Agreement, the Attorneys' filing of the Surcharge Petition resulted in a Trust distribution in Douglas' favor.

On this record, we conclude that Ted's contentions lack merit.

D. Alleged HRCJC violation

Ted contends that the probate court violated multiple HRCJC rules, including HRCJC Rule 2.15,⁸ when it "fail[ed] to

⁸ HRCJC Rule 2.15 states, in relevant part,

(b) A judge having knowledge that a lawyer has committed a violation of the [HRPC] that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer shall inform the appropriate authority.

. . . .

(continued . . .)

take appropriate action on reports of Malicious Prosecution and Misappropriation of Trust funds."⁹

In light of sections III.B and III.C., supra, in which we concluded that Douglas failed to establish that the Attorneys misappropriated Trust funds and/or "[m]alicious[ly]" filed the Surcharge Petition, we further conclude that the probate court did not err in not taking any action on the "reports of Malicious Prosecution and Misappropriation of Trust funds."

E. Request for production of Trust bank statements and cancelled checks

Ted contends that "[t]he [probate court] erred by suppressing" material evidence, namely by not requiring the Attorneys to produce copies of the Trust's cancelled checks and bank statements, which they claim were necessary "for the court to adjudicate claims of Misappropriation of Trust funds." We review Ted's contention under the abuse of discretion standard.

⁸(. . . continued)

(d) A judge who receives credible information indicating a substantial likelihood that a lawyer has committed a violation of the [HRPC] shall take appropriate action.

(Asterisks omitted.)

⁹ We note that the probate court and this court do not have authority to determine whether an attorney has violated the HRPC. See Off. of Disciplinary Couns. v. Zenger, 156 Hawai'i 183, 192, 572 P.3d 656, 665 (2025) ("[The Hawai'i Supreme Court] determines whether attorneys violate the HRPC."); HRPC Rule 8.5(a) ("A lawyer admitted, specially admitted, or granted limited admission to practice in the State of Hawai'i is subject to the disciplinary authority of the Hawai'i Supreme Court and the Disciplinary Board of the Hawai'i Supreme Court[.]").

Tr. Created Under the Will of Damon, 140 Hawai'i 56, 68, 398 P.3d 645, 657 (2017) ("[The] probate court has the discretion to decide whether a probate matter is transferred to the civil trials calendar, or whether to retain the matter and permit discovery[.]").

It appears that Ted, who did not timely petition the probate court to order the Attorneys' production of checks and bank statements, may not have properly preserved the issue of whether the probate court should have ordered the Attorneys to produce the Trust's cancelled checks and bank statements. However, even assuming that he did, the probate court did not abuse its discretion by not requiring the Attorneys to produce the cancelled checks and bank statements.

Douglas and Ted contend that the cancelled checks and bank statements are evidence "documenting the receipt and distribution of the Trust Assets in the amount of \$88,[387.33] held in [the Attorneys'] custody since March 2021." Production of the cancelled checks and bank statements is not necessary, however, to prove the "receipt and distribution" of the \$88,387.33. The Attorneys do not dispute that they received the \$88,387.33 that was awarded by the probate court's Surcharge Order. We therefore conclude the probate court did not abuse its discretion by not requiring the Attorneys to provide the cancelled checks and bank statements.

F. The October 2, 2024 Surety Order

Ted contends that Ching lacked standing to file his Second Surety Petition, that the Second Surety Petition is barred by res judicata, and that the probate court lacked jurisdiction over the appeal bond. We address each of Ted's contentions in turn.

Standing. Ted contends that Ching lacked standing to file his Second Surety Petition because the probate court permitted Ching to withdraw from representing Douglas before Ching filed his Second Surety Petition. We review whether a party has standing de novo. In re Est. of Damon, 109 Hawai'i 502, 510, 128 P.3d 815, 823 (2006). "[S]tanding is a prudential concern regarding whether the party seeking a forum has alleged a sufficient personal stake in the outcome of a controversy as to justify the exercise of the court's remedial powers on the party's behalf." Tax Found. of Haw. v. State, 144 Hawai'i 175, 188, 439 P.3d 127, 140 (2019) (citation omitted).

Ted does not contend that Ching failed to meet the three-part test for whether a party has standing;¹⁰ he contends

¹⁰ The three-part test asks:

(1) has the [party] suffered an actual or threatened injury as a result of the [opposing party's] conduct; (2) is the injury fairly traceable to the defendant's actions; and (3) would a favorable decision likely provide relief for [the party's] injury.

(continued . . .)

that Ching lacks standing because Ching was no longer representing Douglas when he filed the Second Surety Petition.

"Hawai['i recognizes the right of a discharged attorney who served under a contingent fee agreement to assert a charging lien for costs advanced and reasonable attorney fees against his former client's recovery in the case." Hoddick, Reinwald, O'Connor & Marrack v. Lotsof, 6 Haw. App. 296, 304, 719 P.2d 1107, 1113-14 (App. 1986) (cleaned up). Pursuant to HRS § 507-81 (2018),

- (a) An attorney has a lien upon:
 - (1) Actions, suits, and proceedings after commencement of the action or arbitration proceeding;
 - (2) Judgments, decrees, orders, settlements, and awards entered by the court or an arbitrator in favor of the client; and
 - (3) Any proceeds paid in satisfaction of the judgment, decree, order, settlement, or award.

. . . .

- (k) Attorneys have the same right and power over actions, suits, proceedings, judgments, decrees, orders, settlements, and awards to enforce their liens as their clients have for the amount due thereon to them.

Under the Fee Agreement, Ching had a lien "for any sums owing to [him] for any unpaid costs, or Attorney's fees, at the conclusion of Attorney's services." That lien "attach[ed] to any recovery [Douglas] may obtain." And "[t]he effect of such a lien is that [Ching] may be able to compel payment of

¹⁰(. . . continued)
Sierra Club v. Haw. Tourism Auth., 100 Hawai'i 242, 250, 59 P.3d 877, 885 (2002) (cleaned up).

fees, general excise taxes and costs from any such fund recovered on behalf of [Douglas] even if [Ching] [was] discharged before the end of the Matter."

We conclude that Ted failed to demonstrate Ching's lack of standing.

Res judicata. Ted contends that the Second Surety Petition is barred by res judicata. "By definition, the doctrine of res judicata only applies to new suits: It is inapplicable in a continuation of the same suit." PennyMac Corp. v. Godinez, 148 Hawai'i 323, 327, 474 P.3d 264, 268 (2020) (citations omitted)). Here, there is only one suit, and the Second Surety Petition was filed in that proceeding; res judicata does not apply.

Jurisdiction. Ted contends that the probate court lacked jurisdiction over the appeal bond because it did not approve Ted's Bond/Stay Petition.

HPR Rule 46(c) states that "[e]ach surety on a bond presented to the court submits itself to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served," and "[t]he surety's liability may be enforced on petition without the necessity of an independent action."

Here, Ted obtained a supersedeas bond -- i.e., the appeal bond -- and presented it to the probate court. Surety One, Inc., as the surety on the presented bond, "submit[ted] itself to the jurisdiction of the [probate] court." See HPR Rule 46(c). The filing of a notice of appeal did not divest the probate court of jurisdiction over the appeal bond. The probate court retained jurisdiction to enforce the judgment or to approve a supersedeas bond to stay a judgment. See Sakatani v. Murakami, No. CAAP-10-0000106, 2012 WL 2878131, at *1 (Haw. App. July 13, 2012) (SDO).

On this record, we conclude that the probate court retained jurisdiction over the appeal bond.

G. Judicial recusal

Ted contends that the probate court erred in entering various orders following Judge Castagnetti's recusal and Judge Morikone's alleged "disqualification."

Orders entered "[f]or" Judge Castagnetti. Ted first contends that the probate court erred in entering orders that were "endorse[d]" by Judge Castagnetti following her recusal from the case.

Here, the record reflects that Judge Morikone entered the 2025 Surety Judgment pursuant to the 2025 Surety Order, which Judge Morikone signed "[f]or: Judge Jeannette H. Castagnetti."

"[A] successor judge may complete the formal acts necessary to conclude the litigations such as entering formal judgment, issuing injunctions, awarding costs, and hearing post[-]trial motions . . . where a complete and final decision has been rendered by the disabled judge." In re Jud. Determination of Death of Elwell, 66 Haw. 598, 601, 670 P.2d 822, 824 (1983) (cleaned up). Pursuant to HRCF Rule 63, "[i]f a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties." (Emphasis added.)

Here, it is not clear from the record whether the probate court "certif[ied] [its] familiarity with the record and determin[ed] that the proceedings in the case may be completed without prejudice to the parties."¹¹ We vacate the 2025 Surety Order and 2025 Surety Judgment and remand with instructions for the probate court to conduct an HRCF Rule 63 analysis, and, if appropriate, to make the necessary certification.

Judge Morikone's Further Orders. Ted further contends that the probate court erred when Judge Morikone entered orders after he allegedly "became disqualified upon the filing of a

¹¹ The record on appeal does not contain transcripts for hearings over which Judge Morikone presided, and neither the 2025 Surety Order nor the 2025 Surety Judgment include the necessary certification.

federal civil-rights complaint and an Emergency Petition for Judicial Disqualification." "The Hawai'i Supreme Court has adopted the abuse of discretion standard for reviewing a judge's denial of a motion for recusal or disqualification." Chen v. Hoeflinger, 127 Hawai'i 346, 354, 279 P.3d 11, 19 (App. 2012) (cleaned up).

Pursuant to HRS § 601-7(b) (2016), "[w]henever a party to any suit, action, or proceeding, civil or criminal, makes and files an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice . . . against the party . . . the judge shall be disqualified from proceeding therein." However, "[d]isqualification is not automatic simply because a party files an affidavit. The affidavit must state the facts and the reasons for the belief that bias or prejudice exists and must be sufficient for a sane and reasonable mind to fairly infer bias or prejudice." Chen, 127 Hawai'i at 362, 279 P.3d at 27 (cleaned up). The party asserting personal bias or prejudice has the burden of establishing the disqualifying interest. Sifagaloa v. Bd. of Trs. of Emps.' Ret. Sys. of Haw., 74 Haw. 181, 192, 840 P.2d 367, 372 (1992).

Here, it appears that Ted sought Judge Morikone's disqualification or recusal after Ted named Judge Morikone as a defendant in a 42 U.S.C. § 1983 action "arising from the same

operative facts" as the underlying case. Ted does not cite any evidence "tending to show bias on the part of [Judge Morikone]." See Chen, 127 Hawai'i at 362, 279 P.3d at 27. Ted has therefore failed to meet his burden of establishing that Judge Morikone's disqualification is warranted pursuant to HRS § 601-7.

Having established that HRS § 601-7 does not apply, we "must determine whether due process required recusal." See id. (citation omitted). HRCJC Rule 1.2 instructs that judges shall avoid "impropriety" and/or "the appearance of impropriety." A judge shall recuse where, inter alia, "[t]he judge has a personal bias or prejudice for or against a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding." HRCJC Rule 2.11(a)(1) (asterisk omitted). That being said,

a judge owes a duty not to withdraw from a case—however much his personal feelings may incline him to do so—where the circumstances do not fairly give rise to an appearance of impropriety and do not reasonably cast suspicion on his impartiality.

TSA Int'l Ltd. v. Shimizu Corp., 92 Hawai'i 243, 254, 990 P.2d 713, 724 (1999) (citation omitted).

We conclude that the mere fact that Ted filed a lawsuit against Judge Morikone, in the absence of any evidence of Judge Morikone's alleged bias, did not disqualify Judge Morikone from presiding over this case. See In re Martin-Trigona, 573 F. Supp. 1237, 1243 (D. Conn. 1983) ("[I]t is clear

that a judge is not disqualified . . . merely because a litigant sues or threatens to sue him." (cleaned up)); United States v. Grismore, 564 F.2d 929, 933 (10th Cir. 1977). The probate court did not err in entering orders, approved by Judge Morikone, after Ted filed a federal lawsuit naming Judge Morikone as a defendant.

H. Findings of Fact

Ted contends that the probate court erred in issuing the 2025 Surety Judgment, Show Cause Orders, and Order Denying Dockets without entering corresponding FOFs. We consider Ted's contentions in turn.

2025 Surety Judgment. The 2025 Surety Judgment was entered pursuant to the 2025 Surety Order, which contained the probate court's FOFs and COLs. Ted's contention therefore lacks merit as to the 2025 Surety Judgment.

Show Cause Orders. The record reflects that the probate court found the Show Cause Petition to be a contested matter, and retained it pursuant to HPR Rule 20. HPR Rule 20(d) permits parties to request that the probate court order any of the HRCF rules to be applicable in the contested matter. Although the probate court retains discretion not to adopt any and all rules requested, it "must exercise its discretion to do so with regard to what is right and equitable under the circumstances and the law." In re Elaine Emma Short Revocable

Living Tr. Agreement Dated July 17, 1984, 147 Hawai'i 456, 469, 465 P.3d 903, 916 (2020) (cleaned up). And "[i]n a contested case, particularly where the outcome may depend on factual determinations about the credibility of extrinsic evidence, such a refusal would likely be inequitable and an abuse of discretion." Id.

Here, Douglas asked the probate court to issue written FOFs and COLs. The probate court did not enter FOFs with regard to its orders granting in part, and denying in part, the Show Cause Petition. Nor does it appear that the probate court expressly denied Douglas' request for written FOFs and COLs. We are therefore unable to meaningfully review whether the probate court acted within the permissible scope of its discretion. We therefore vacate the Show Cause Orders. On remand, the probate court is instructed to reenter appropriate orders, and, pursuant to HPR Rule 20(d), to either enter corresponding FOFs or to explain why it is denying Douglas' request for FOFs.

Order Denying Dockets. Ted appears to further contend that the probate court erred in entering its August 27, 2025 Order Denying Dockets, which summarily denied seven petitions -- earlier converted by the probate court into non-hearing motions -- filed by Douglas and Ted as docket nos. 848, 850, 872, 874, 880, 886, and 911. Many of the foregoing petitions appear to be requests for relief from judgment or a stay of execution. A

trial court is not ordinarily required to enter FOFs when disposing of such motions. See HRCF Rule 52(a) ("[FOFs] and [COLs] are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivisions (b) and (c) of this rule." (emphasis added)).

We therefore affirm in part the Orders Denying Dockets, to the extent it summarily denied the petitions requesting relief from judgment or a stay of execution of the judgment. However, in light of our conclusion, supra, that the Show Cause Orders must be vacated, we likewise vacate in part the Order Denying Dockets to the extent that it summarily denied Ted's requests to vacate or stay the execution of the Show Cause Orders.

I. October 12, 2024 Minute Order

Ted contends that the October 12, 2024 Minute Order was "fabricated," contains "misleading statements," and misinterprets Douglas' arguments and claims. There is no evidence of fabrication or misleading statements. And the record reflects that the probate court, in the interest of promoting access to justice, liberally interpreted self-represented litigant Douglas' pleadings. Ted's contentions lack merit.

J. Petition to Dismiss Surcharge Petition

Ted contends that the Surcharge Petition ceased to be a "live controversy" following Douglas' Petition to Dismiss the Surcharge Petition, and that the probate court therefore erred in continuing to "adjudicate" the Surcharge Petition. The Surcharge Petition was filed on April 30, 2020. The Surcharge Order and Surcharge Judgment were entered on March 8, 2021. Four years later, on June 4, 2025, Douglas filed his Petition to Dismiss the Surcharge Petition.

To the extent Douglas' Petition to Dismiss the Surcharge Petition could be construed as a petition for relief from order, pursuant to HPR Rule 36, it is untimely. HPR Rule 36(b)(1), (2), and (3) require that a petition be filed within a year of the Surcharge Order and Surcharge Judgment. HPR Rule 36(b)(4), (5), and (6) require that a petition be filed "within a reasonable time." Douglas does not explain how filing the Petition to Dismiss the Surcharge Petition *four years* after the Surcharge Order and Surcharge Judgment were entered is reasonable.

We conclude that the probate court did not err in continuing the proceedings after Douglas filed the Petition to Dismiss the Surcharge Petition.

IV. Conclusion

For the foregoing reasons, we affirm in part and vacate in part the Order Denying Dockets and August 27, 2025 Final Judgment. We affirm the October 2, 2024 Surety Order. We vacate the 2025 Surety Order, 2025 Surety Judgment, and Show Cause Orders. We also vacate the Order Denying Dockets to the extent that it summarily denied Ted's requests to vacate or stay the execution of the Show Cause Orders. We remand for further proceedings consistent with this memorandum opinion.

Pursuant to Hawai'i Rules of Appellate Procedure Rule 34(c), Ted's August 31, 2026 Motion for Retention of Oral Argument and Douglas' September 1, 2026 Motion for Retention of Oral Argument are denied.

DATED: Honolulu, Hawai'i, September 29, 2026.

On the briefs:	/s/ Katherine G. Leonard Presiding Judge
Douglas Kurihara, Self-represented Beneficiary/ Successor Trustee/Respondent/ Petitioner-Appellant.	/s/ Keith K. Hiraoka Associate Judge
Ted Kurihara, Self-represented Beneficiary/Petitioner/ Respondent-Appellant.	/s/ Kimberly T. Guidry Associate Judge
Gale L.F. Ching, for Petitioners/ Respondents-Appellees.	