HAWAIʻI RULES OF CIVIL PROCEDURE

(SCRU-11-0000051)

Adopted and Promulgated by the Supreme Court of the State of Hawaiʻi

As amended April 7, 1980
Effective April 7, 1980
With Amendments as Noted

The Judiciary
State of Hawaiʻi

HAWAIʻI RULES OF CIVIL PROCEDURE

Table of Contents

V. DEPOSITIONS AND DISCOVERY

VII. JUDGMENT

APPENDIX OF FORMS

I. SCOPE OF RULES -- ONE FORM OF ACTION

Rule 1. SCOPE OF RULES.

These rules govern the procedure in the circuit courts of the State in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

(Amended December 7, 1999, effective January 1, 2000.)

Rule 2. ONE FORM OF ACTION.

There shall be one form of action to be known as "civil action".

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

Rule 3. COMMENCEMENT OF ACTION.

A civil action is commenced by filing a complaint with the court.

Rule 3.1. COPIES, CIVIL INFORMATION SHEET; ADDITIONAL CLAIMS; AND TRANSFERS FROM DISTRICT COURT.

(a) Original and copies required.

(1) TORT CASES: The original and 2 copies of the initial complaint, or any subsequent affirmative pleading, shall be submitted.

(2) TORT CASES IN WHICH THE INITIAL COMPLAINT, OR SUBSEQUENT AFFIRMATIVE PLEADING, IS ACCOMPANIED BY REQUEST TO EXEMPT CASE FROM THE COURT-ANNEXED ARBITRATION PROGRAM: The original and 2 copies of each document shall be submitted.

(3) NON-TORT CASES: The original and 1 copy of the initial complaint, or any subsequent affirmative pleading, shall be submitted.

(b) Civil information sheet. Any initial civil complaint filed pursuant to Rule 3 of the Hawaiʻi Rules of Civil Procedure shall be accompanied by a civil information sheet that substantially complies with Form 2-A of the Appendix of Forms and shall be completed in full. The original and 2 copies of the civil information sheet shall be submitted.

(c) Additional claims information sheet. Any affirmative pleading filed after the initial complaint is filed shall be accompanied by an additional claims information sheet that substantially complies with Form 2-B of the Appendix of Forms and shall be completed in full. The original and 2 copies of the additional claims information sheet shall be submitted.

(d) Cases transferred from district court.

(1) A civil information sheet shall be submitted for a civil case transferred from the district court to the circuit court. Within 7 days after filing of the notice of docketing, the plaintiff shall submit the civil information sheet.

(2) The plaintiff shall submit to the clerk (A) the original and 1 copy of the civil information sheet, (B) 1 copy of the complaint, and (C) 1 copy of any answer to the complaint.

(Added August 26, 2011, effective January 1, 2012.)

Rule 4. PROCESS.

(a) Summons: Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons. Plaintiff shall deliver the complaint and summons for service to a person authorized to serve process. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) Same: Form. The summons shall

(1) be signed by the clerk, under the seal of the court,

(2) contain the name of the court, the names of the parties, and the date when issued,

(3) be directed to the defendant,

(4) state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address,

(5) state the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint,

(6) contain a prohibition against personal delivery of the summons between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the district or circuit courts permits, in writing on the summons, personal delivery during those hours, and

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

When, under Rule 4(e), service is made pursuant to a statute or rule of court, the summons, or notice, or order in lieu of summons, shall correspond as nearly as may be to that required by the statute or rule.

(c) Same: By whom served. Service of all process shall be made: (1) anywhere in the State by the sheriff or the sheriff's deputy, by some other person specially appointed by the court for that purpose, or by any person who is not a party and is not less than 18 years of age; or (2) in any county by the chief of police or the chief's duly authorized subordinate. A subpoena, however, may be served as provided in Rule 45.

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

(1) Upon an individual other than an infant or an incompetent person, (A) by delivering a copy of the summons and of the complaint to the individual personally or in case the individual cannot be found by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or (B) by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant, by delivering a copy of the summons and of the complaint personally (A) to the guardian of the infant's property or if there is no guardian of the infant's property or service cannot be made upon such guardian then as provided by order of the court and (B) if the infant be of the age of 16 years or over, also to the infant; and upon an incompetent person, by delivering a copy of the summons and of the complaint personally (A) to the guardian of the incompetent's property, or if the incompetent is living in an institution then to the director or chief executive officer of the institution, or if service cannot be made upon either of them, then as provided by order of the court, and (B) unless the court otherwise orders, also to the incompetent person.

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

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

(5) Upon an officer or agency of the State by serving the State and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation, the copies shall be delivered as provided in paragraph (3) of this subdivision of this rule.

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

(7) Upon an officer or agency of a county, by serving the county and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation the copies shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(8) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute.

(e) Same: Other service. Whenever a statute or an order of court provides for service upon a party not an inhabitant of or found within the State, of a summons, or of a notice, or of an order in lieu of summons, service shall be made under the circumstances and in the manner prescribed by the statute or order. Whenever a statute or an order of court requires or permits service by publication of a summons, or of a notice, or of an order in lieu of

summons, any publication pursuant thereto shall be made under the circumstances and in the manner prescribed by the statute or order. The publication of summons pursuant to Hawaiʻi Revised Statutes §§ 634-23, 634-26, and 634-36, shall not include the case caption and shall be in a form that substantially complies with Form 1-A of the Appendix of Forms.

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

(g) Return. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to process. When service is made by any person specially appointed by the court, that person shall make affidavit of such service.

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

(Amended May 15, 1972, effective July 1, 1972; further amended September 14, 1993, effective September 14, 1993; further amended May 12, 1995, effective June 1, 1995; further amended December 7, 1999, effective January 1, 2000; further amended April 25, 2003, effective July 1, 2003; further amended August 26, 2011, effective January 1, 2012.)

Rule 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.

(a) Service: When required. Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, brief or memorandum of law, offer of judgment, bill of costs, designation of record on appeal, and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) Same: How made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court.

(1) Service upon the attorney or upon a party shall be made (a) by delivering a copy to the attorney or party; or (b) by mailing it to the attorney or party at the attorney's or party's last known address; or (c) if no address is known, by leaving it with the clerk of the court; or (d) if service is to be upon the attorney, by facsimile transmission to the attorney's business facsimile receiver.

(2) Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Facsimile transmission means transmission and receipt of the entire document without error with a cover sheet which states the attorney(s) to whom it is directed, the case name and court case number, and the title and number of pages of the document.

(3) Service by mail is complete upon mailing. Service by facsimile transmission is complete upon receipt of the entire document by the intended recipient and between the hours of 8:00 a.m. and 5:00 p.m. on a court day. Service by facsimile transmission that occurs after 5:00 p.m. shall be deemed to have occurred on the next court day.

(4) Service by facsimile transmission shall be confirmed by a certificate of service which declares that service was accomplished by facsimile transmission to a specific phone number, on a specific date, at a specific time.

(c) Same: Numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be

deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. Except as provided in subdivision (f) of this rule, all papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court either before service or within a reasonable time after service. All documents filed with the court shall be previously or contemporaneously served on all parties to the action, except as permitted in subdivision (a) above.

(e) Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him or her, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Any other rule to the contrary notwithstanding, the clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules. Proposed findings, conclusions, orders, or judgments submitted for signature shall be dated and stamped "lodged" or "received" by the clerk and transmitted to the court for consideration.

(f) Nonfiling of discovery materials. A deposition, interrogatory, request for discovery production or inspection, request for documents, request for admissions, and answers and responses thereto shall not be filed automatically with the court; provided that on a motion or at trial any such document shall be filed when offered in evidence or submitted as an exhibit; and further provided that a deposition taken outside this state or a deposition taken by an officer who is discontinuing the occupation of taking depositions shall be promptly filed pursuant to Rule 30(f)(1). In addition the court may at any time, on ex parte request or sua sponte, order the filing of any discovery material.

(Amended May 15, 1972, effective July 1, 1972; further amended March 16, 1984, partly effective March 16, 1984; fully effective May 1, 1984; further amended June 23, 1997 and July 2, 1997, effective August 1, 1997; further amended December 7, 1999, effective January 1, 2000.)

Rule 6. TIMES.

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

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) 52(b), 59(b), (d) and (e) and 60(b) of these rules and Rule 4(a) of the Hawaiʻi Rules of Appellate Procedure, except to the extent and under the conditions stated in them.

(c) Deleted.

(d) For motions; affidavits. A written motion, other than one that may be heard ex parte, and notice of the hearing thereof, shall be served not less than 18 days before the date fixed for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not less than 8 days before the date set for the hearing, unless the court permits them to be served at some other time.

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

(Amended May 15, 1972, effective July 1, 1972, further amended June 29, 1973, effective July 2, 1973, further amended June 22, 1983, effective July 1, 1983, further amended April 23, 1985, effective April 23, 1985; further amended July 26, 1990, effective September 1, 1990; further amended September 11, 1996, effective January 1, 1997; further amended May 15, 1997, effective June 2, 1997; further amended December 7, 1999, effective January 1, 2000.)

III. PLEADINGS AND MOTIONS

Rule 7. PLEADINGS ALLOWED; FORM OF MOTIONS.

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and other papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) Demurrers, pleas, etc., abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 8. GENERAL RULES OF PLEADING.

(a) Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; form of denials. A party shall state in short and plain terms defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if

justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be concise and direct; consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of pleadings. All pleadings shall be so construed as to do substantial justice.

(Amended December 7, 1999, effective January 1, 2000.)

Rule 9. PLEADING SPECIAL MATTERS.

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official document or act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special damage. When items of special damage are claimed, they shall be specifically stated.

(Amended December 7, 1999, effective January 1, 2000.)

Rule 10. FORM OF PLEADINGS.

(a) Caption; names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs; separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Rule 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO THE COURT; SANCTIONS.

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken by the clerk unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) HOW INITIATED.

(A) *By Motion*. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) *On Court's Initiative*. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) NATURE OF SANCTION; LIMITATIONS. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) ORDER. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

(Amended July 26, 1990, effective September 1, 1990; further amended December 7, 1999, effective January 1, 2000.)

Rule 12. DEFENSES AND OBJECTIONS -- WHEN AND HOW PRESENTED -- BY PLEADING OR MOTION -- MOTION FOR JUDGMENT ON THE PLEADINGS.

(a) When presented.

(1) A defendant shall serve an answer within 20 days after being served with the summons and complaint, except when service is made under Rule 4(c) and a different time is prescribed in an order of court under a statute or rule of court.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counter-claim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.

(3) The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action;

(B) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses in motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or preservation of certain defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 13. COUNTERCLAIM AND CROSS-CLAIM.

(a) Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) Permissive counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim exceeding opposing claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim against the state. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State or a county, or an officer or agency of the State or a county.

(e) Counterclaim maturing or acquired after pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) Cross-claim against co-party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate trials; separate judgment. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 14. THIRD-PARTY PRACTICE.

(a) When defendant may bring in third-party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the plaintiff or the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When plaintiff may bring in third party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 15. AMENDED AND SUPPLEMENTAL PLEADINGS.

(a) Amendments before trial.

(1) AMENDING AS A MATTER OF COURSE. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served.

(2) OTHER AMENDMENTS. In all other cases, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A motion or stipulation to amend a pleading shall be accompanied by the proposed amended pleading in Ramseyer formatting (additions underscored and deletions bracketed and stricken). A party filing or moving to file an amended pleading shall reproduce the entire pleading as proposed and shall not incorporate any part of the prior pleading by reference, except with leave of court. If granted or allowed, the amended pleading shall be filed, with Ramseyer formatting removed, and served forthwith.

(3) TIME TO RESPOND. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments during and after trial.

(1) FOR ISSUES TRIED BY CONSENT. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues.

(2) BASED ON OBJECTION AT TRIAL. If evidence is objected to at the trial on the ground that it is not within the issues made by pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation back of amendments. An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000; further amended August 26, 2011, effective January 1, 2012.)

Rule 16. PRE-TRIAL CONFERENCES; SCHEDULING; MANAGEMENT.

(a) Pretrial conferences; objectives. In any action, the court may in its discretion direct lead counsel or other attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and;

(5) facilitating the settlement of the case.

(b) Scheduling and planning. The court shall, after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file motions; and

(3) to complete discovery.

The scheduling order may also include

(4) modifications of the extent of discovery to be permitted;

(5) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(6) any other matters appropriate in the circumstances of the case.

A schedule shall not be modified except upon a showing of good cause and by leave of the court.

(c) Subjects for consideration at pretrial conferences. At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Hawaiʻi Rules of Evidence;

(5) the appropriateness and timing of summary adjudication under Rule 56;

(6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37;

(7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(8) the advisability of referring matters to a master;

(9) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or rule;

(10) the form and substance of the pretrial order;

(11) the disposition of pending motions;

(12) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(13) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(14) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);

(15) an order establishing a reasonable limit on the time allowed for presenting evidence; and

(16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) Final pretrial conference. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) Pretrial orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 16.1. APPEARANCE BY TELEPHONIC OR VIDEO CONFERENCE CALL.

(a) Telephonic or Video Conferencing Call Allowed. Except as otherwise provided by statute or rule, the court should, absent good reason, as determined in the court's discretion, allow any party, to appear by telephonic or video conferencing for any of the following motions, conferences, hearings, or proceedings:

(1) Trial setting conferences;

(2) Status conferences;

(3) Uncontested motions; and

(4) Such other conferences or hearings which the trial court approves.

If, at any time during a motion, conference, hearing or proceeding conducted by telephonic or video conferencing the court determines a personal appearance is necessary by one or more of the parties, the court may continue the matter and require a personal appearance by one or more of the parties.

(b) Telephonic or Video Conferencing Call Not Allowed. Except as otherwise provided by statute or rule of court or as permitted by the court, telephonic or video conferencing shall not be permitted for any of the following:

(1) Trials;

(2) Evidentiary hearings;

(3) Contested motions or matters;

(4) Dispositive motions; and

(5) Settlement conferences.

(c) Arranging Telephonic or Video Conferencing Call.

(1) Any party granted leave to appear by telephonic or video conferencing shall, not less than 48 hours prior to the scheduled hearing or conference, notify all other parties.

(2) Unless otherwise directed by the court, the party who first obtains permission to appear by telephonic or video conferencing call shall be responsible for arranging the telephone conference call with all parties and the telephone conference call operator, if applicable, and ensuring that the call is arranged and ready for court participation at the time appointed for the hearing.

(Added July 29, 2013, effective January 1, 2014; adopted and amended November 14, 2014, effective January 1, 2015.)

COMMENTARY:

The intent of this rule is to promote uniformity in the practices and procedures relating to telephonic and video conferencing for civil matters in the courts of the State. To provide access to justice, promote judicial efficiency and to reduce litigation costs, the courts of the State should permit parties, to the extent feasible, to appear by telephonic or video conferencing as provided by this rule.

IV. PARTIES

Rule 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY.

(a) Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in its own name without joining with it the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Reserved.

(c) Infants or incompetent persons. Whenever an infant or incompetent person has a guardian, whether appointed as to that person or property, such guardian appointed as to property, or if no guardian has been appointed as to property, then such guardian appointed as to that person, may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed guardian that person may sue by that person's next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

(d) Unidentified defendant.

(1) When it shall be necessary or proper to make a person a party defendant and the party desiring the inclusion of the person as a party defendant has been unable to ascertain the identity of a defendant, the party desiring the inclusion of the person as a party defendant shall in accordance with the criteria of Rule 11 of these rules set forth in a pleading the person's interest in the action, so much of the identity as is known (and if unknown, a fictitious name shall be used), and shall set forth with specificity all actions already undertaken in a diligent and good-faith effort to ascertain the person's full name and identity.

(2) Subject to HRS section 657-22, the person intended shall thereupon be considered a party defendant to the action, as having notice of the institution of the action against that person, and as sufficiently described for all purposes, including services of process, and the action shall proceed against that person.

(3) Any party may, by motion for certification, make the name or identity of the party defendant known to the court within a reasonable time after the moving party knew or should have known the name or identity of the party defendant. The motion shall be supported by affidavit setting forth all facts substantiating the movant's claim that the naming or identification has been made in good faith and with due diligence. When the naming or identification is made by a plaintiff, it shall be made prior to the filing of the pretrial statement by that plaintiff, or within such additional time as the court may allow. The court shall freely grant reasonable extensions of the time in which to name or identify the party defendant to any party exercising due diligence in attempting to ascertain the party defendant's name or identity.

(4) When a party defendant has been named or identified in accordance with this rule, the court shall so certify and may make any order that justice requires to protect any party from undue burden and expense in any further proceedings involving the party defendant.

(5) A party defendant who has been named or identified in accordance with this rule may have dismissal of one or more claims against the defendant if the defendant shows in a timely manner that the delay in naming or identifying that defendant has caused that defendant substantial prejudice and if the interests of justice so require.

(Amended May 15, 1972, effective July 1, 1972, further amended July 10, 1984, effective July 10, 1984; further amended July 26, 1990, effective September 1, 1990; further amended December 7, 1999, effective January 1, 2000.)

Rule 18. JOINDER OF CLAIMS AND REMEDIES.

(a) Joinder of claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim may join, either as independent or as alternate claims as many claims, legal or equitable, as the party has against an opposing party.

(b) Joinder of remedies; fraudulent conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION.

(a) Persons to be joined if feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) Determination by court whenever joinder not feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

This page intentionally left blank.

(c) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of class actions. This rule is subject to the provisions of Rule 23.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 20. PERMISSIVE JOINDER OF PARTIES.

(a) Permissive joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

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

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 21. MISJOINDER AND NONJOINDER OF PARTIES.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately by order of the court.

Rule 22. INTERPLEADER.

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this role supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(Amended December 7, 1999, effective January 1, 2000.)

Rule 23. CLASS ACTIONS.

(a) Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class actions maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in conduct of actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(f) Distribution. Prior to the entry of any judgment under subdivision (c)(3) or the approval of any compromise under subdivision (e), the court shall determine the total amount payable to each class member. The court shall set a date when the parties shall report to the court the total amount actually paid to class members. After the report is received, the court shall direct the defendant, by order entered on the record, to distribute the sum of any unpaid residue after the payment of approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements. Unless otherwise required by governing law, it shall be within the discretion of the court to approve the timing and method of distribution of residual funds and to approve the recipient(s) of residual funds, as agreed to by the parties, including nonprofit tax exempt organizations eligible to receive assistance from the indigent legal assistance fund under HRS section 607-5.7 (or any successor provision) or the Hawaiʻi Justice Foundation, for distribution to one or more of such organizations.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000; further amended January 27, 2011, effective July 1, 2011.)

Rule 23.1. DERIVATIVE ACTIONS BY SHAREHOLDERS.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

(Added May 15, 1972, effective July 1, 1972; amended December 7, 1999, effective January 1, 2000.)

Rule 23.2. ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS.

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e). This rule shall not preclude an action brought by or against an unincorporated association pursuant to statute.

(Added May 15, 1972, effective July 1, 1972.)

Rule 24. INTERVENTION.

(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute, ordinance or executive order administered by an officer, agency or governmental organization of the

State or a county, or upon any regulation, order, requirement or agreement issued or made pursuant to the statute, ordinance or executive order, the officer, agency or governmental organization upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

(d) Notice of Claim of Unconstitutionality. A party who draws into question the constitutionality of a Hawaiʻi statute, in any proceeding to which the State of Hawaiʻi, or any agency thereof, or any officer or employee thereof in an official capacity is not a party, shall provide immediate written notice of the constitutional issue to the Attorney General of the State of Hawaiʻi.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000; further amended April 17, 2006, effective July 1, 2006.)

Rule 25. SUBSTITUTION OF PARTIES.

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 120 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public officers; death or separation from office.

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in an official capacity, the officer may be described as a party by official title rather than by name; but the court may require the officer's name to be added.

(Amended May 15, 1972, effective July 1, 1972; further amended July 26, 1990, effective September 1, 1990; further amended December 7, 1999, effective January 1, 2000.)

Rule 25.1. WITHDRAWAL, SUBSTITUTION, AND APPEARANCE OF COUNSEL.

(a) Except as provided in Rule 10(c) of the Rules of the Circuit Courts, withdrawal and substitution of counsel in cases pending before the circuit courts shall be effective only upon the approval of the court and shall be subject to the guidelines of Rule 1.16 of the Hawaiʻi Rules of Professional Conduct and other applicable law.

(b) A withdrawal and substitution of counsel shall:

(1) Cite the relevant authority for the withdrawal and substitution;

(2) Include the signatures of the withdrawing attorney and the substituting attorney;

(3) Include the words "APPROVED AND SO ORDERED" and a line below such words for the signature of the judge;

(4) Indicate the trial date, if any; and

(5) Include the signature of the represented party indicating the represented party's consent to the withdrawal and substitution.

(c) A motion to withdraw as counsel shall be served on the represented party and shall:

(1) Cite the relevant authority for the withdrawal;

(2) Indicate that the represented party has been provided written notice (A) of the represented party's responsibilities under Rule 4 of the Rules of the Circuit Courts, and (B) if the represented party is a corporation, partnership, or other legal entity, that such entity may only appear in the action through counsel admitted to practice in the courts of the State of Hawaiʻi; and

(3) Indicate the represented party's last known address and telephone number.

(d) An attorney who has not made an appearance in a case on behalf of a party in the pleading commencing the action, an answer, or withdrawal and substitution pursuant to Rule 10(c) of the Rules of the Circuit Courts or section (a) this rule, shall upon undertaking representation of a party immediately file a notice of appearance of counsel, which shall include:

(1) the attorney's name, Hawaiʻi bar identification number, office address and telephone number; and

(2) the name of the party represented.

(Added August 26, 2011, effective January 1, 2012.)

V. DEPOSITIONS AND DISCOVERY

Rule 26. GENERAL PROVISIONS GOVERNING DISCOVERY.

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

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) IN GENERAL.

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

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the Court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause considering the limitations of Rule 26(b)(2). The Court may specify conditions for the disclosure of discovery.

(2) LIMITATIONS. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or the length of depositions under Rule 30. By order, the court may also limit the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

(3) INSURANCE AGREEMENTS. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(4) TRIAL PREPARATION: MATERIALS. A party may obtain discovery of documents, electronically stored information, and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) TRIAL PREPARATION: EXPERTS.

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

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

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and (ii) with respect to discovery obtained under subdivision (b)(5)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION MATERIALS. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject

to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition, after being sealed, be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. A party has standing to move for a protective order with respect to discovery directed at a non-party on the basis of annoyance, embarrassment, oppression, or undue burden or expense that the moving party will bear. A non-party from another state from whom discovery is sought may move for a protective order from a court in the state where the discovery is sought or, alternatively, from this Court provided the non-party agrees to be bound by the decision of this Court as to the discovery in question.

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

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

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

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

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that (A) the response is in some material respect incomplete or incorrect or (B) the response omits information which if disclosed could lead to the discovery of additional admissible evidence.

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

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

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

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

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

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

(g) Signing of Discovery Requests, Responses, and Objections.

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

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

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

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

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

(Amended May 15, 1972, effective July 1, 1972; further amended July 26, 1990, effective September 1, 1990; further amended September 11, 1996, effective January 1, 1997; further amended May 7, 2004, effective July 1, 2004; further amended August 29, 2014, effective January 1, 2015.)

Rule 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL.

(a) Before Action.

(1) PETITION. A person who desires to perpetuate testimony regarding any matter that may be cognizable in any court of this State may file a verified petition in the circuit court in the circuit of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (A) that the petitioner expects to be a party to an action cognizable in a court of this State but is presently unable to bring it or cause it to be brought, (B) the subject matter of the expected action and the petitioner's interest therein, (C) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, (D) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and (E) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) NOTICE AND SERVICE. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the State in the manner provided in Rule 4(d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) ORDER AND EXAMINATION. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) USE OF DEPOSITION. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the United States or of the state, territory or insular possession of the United States in which it is taken, it may be used in any action involving the same subject matter subsequently brought in the Hawaiʻi courts in accordance with the provisions of Rule 32(a).

(b) Pending Appeal. If an appeal has been taken from a judgment of a circuit court or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show (1) the names and addresses of the persons to be examined and the substance of the testimony which the party expects to elicit from each; and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

(c) Perpetuation by Action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.

(Amended May 7, 2004, effective July 1, 2004.)

Rule 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN.

(a) Within the United States. Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of this State or of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) In Foreign Countries. Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(Amended May 7, 2004, effective July 1, 2004.)

Rule 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE.

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

(Amended May 15, 1972, effective July 1, 1972; further amended May 7, 2004, effective July 1, 2004.)

Rule 30. DEPOSITIONS UPON ORAL EXAMINATION.

(a) When Depositions May Be Taken; When Leave Required.

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only (A) if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (ii) if special notice is given as provided in subdivision (a)(2)(C) of this rule, or (B) as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) a proposed deposition would result in more than ten depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined already has been deposed in the case; or

(C) a plaintiff seeks to take a deposition before the expiration of the 30 day period specified in Rule 30(a)(1)(A) unless the notice contains a certification, with supporting facts, that the person to be examined is about to leave the State or the United States, or is bound on a voyage to sea, and will be unavailable for examination unless deposed before that time.

(b) Notice of Examination: General Requirements; Method of Recording; Production of Documents, Electronically Stored Information, and Tangible Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents, electronically stored information, and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1), a deposition taken by such means is taken in the circuit and at the place where the deponent is to answer questions.

(8) The notice shall inform the deponent, of the requirements of subsection (e) of this rule in substantially the following form:

> You are hereby notified that you may request a review of the completed transcript or recording of your deposition. You must make this request before the completion of your deposition. If you make such a request, after being notified by the court reporter or other officer taking the deposition that the transcript or recording is available, you will have 30 days to: (1) review the transcript or recording; and (2) if there are changes in form or substance, to sign a statement reciting such changes and the reasons for making them.

Failure to substantially comply with this notice requirement prior to the completion of the deposition shall preclude the use of the transcript or recording until the deponent has been provided 30 days within which to review the transcript or recording, and, if there are changes, to sign a statement reciting them and the reasons therefor. Any changes shall be appended to the transcript or recording.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Hawaiʻi Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this rule.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and Duration; Motion to Terminate or Limit Examination.

(1) Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under Rule 30(d)(4).

(2) Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The court must allow additional time consistently with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination.

(3) If the court finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(4) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the circuit where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Review by Witness; Changes; Signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and Delivery by Officer; Exhibits; Copies.

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer must securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Unless the court orders otherwise, depositions may be destroyed 6 months after the final disposition of the action, including appeal.

Documents, electronically stored information, and tangible things produced for inspection during the examination of the witness must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees

(Amended May 17, 1972, effective July 1, 1972, further amended March 16, 1984, partly effective March 16, 1984, fully effective May 1, 1984; further amended July 26, 1990, effective September 1, 1990; further amended January 16, 1991, effective January 16, 1991; further amended May 7, 2004, effective July 1, 2004; further amended December 30, 2008, effective July 1, 2009; further amended August 3, 2011, effective January 1, 2012; further amended August 29, 2014, effective January 1, 2015.)

Rule 31. DEPOSITIONS UPON WRITTEN QUESTIONS.

(a) Serving Questions; Notice.

(1) After commencement of the action, a party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) a proposed deposition would result in more than ten depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants; or

(B) the person to be examined has already been deposed in the case.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (A) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(Amended May 17, 1972, effective July 1, 1972, further amended March 16, 1984, partly effective March 16, 1984, fully effective May 1, 1984; further amended July 26, 1990, effective September 1, 1990; further amended January 16, 1991, effective January 16, 1991; further amended May 7, 2004, effective July 1, 2004.)

Rule 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS.

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Hawaiʻi Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness resides on an island other than that of the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it

desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken, and, when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Hawaiʻi Rules of Evidence.

(b) Pretrial Disclosures. A party must provide to other parties and promptly file with the court the following information regarding the evidence that it may present at trial other than solely for impeachment: the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony. Unless otherwise directed by the court, this information must be disclosed at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and promptly file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party, and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of that testimony. Objections not so disclosed, other than objections under Rules 402 and 403 of the Hawaiʻi Rules of Evidence, are waived unless excused by the court for good cause. These disclosures must be made in writing, signed, and served.

(c) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (e)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(d) Form of Presentation. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the court for good cause orders otherwise.

(e) Effect of Errors and Irregularities in Depositions.

(1) AS TO NOTICE. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) AS TO DISQUALIFICATION OF OFFICER. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) AS TO TAKING OF DEPOSITION.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(Amended May 15, 1972, effective July 1, 1972; further amended July 26, 1990, effective September 1, 1990; further amended May 7, 2004, effective July 1, 2004.)

Rule 33. INTERROGATORIES TO PARTIES.

(a) Availability. Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 60 in number, counting any subparts or subquestions as individual questions, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2).

(b) Answers and Objections.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b)(1), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(d) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(Amended May 15, 1972, effective July 1, 1972; further amended July 26, 1990, effective September 1, 1990; further amended May 7, 2004, effective July 1, 2004; further amended August 29, 2014, effective January 1, 2015.)

Rule 34. PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION AND TANGIBLE THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES.

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents or electronically stored information (which together include books, papers, writings, drawings, graphs, charts, photographs, sound recordings, images, electronic documents, electronic mail, and other data or data compilations from which information can be obtained, either directly or, if necessary, after conversion by the responding party into a reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth, either by individual item or by category, the items to be inspected and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties. A person not a party to the action may be compelled to produce documents, electronically stored information, and tangible things or to submit to an inspection as provided in Rule 45.

(d) Requests for Production of Documents or Electronically Stored Information. A party may state in its request the form for producing documents or electronically stored information. The response may state an objection to a requested form for producing documents or electronically stored information. If the responding party objects to a requested form, the party must state the form or forms it intends to use. If a request does not specify a form for producing documents or electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in which it is reasonably usable. Absent a showing of good cause, a party need not produce the same documents or electronically stored information in more than one form.

(Amended May 15, 1972, effective July 1, 1972; further amended July 26, 1990, effective September 1, 1990; further amended May 7, 2004, effective July 1, 2004; further amended August 29, 2014, effective January 1, 2015.)

Rule 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS.

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examiner.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

(Amended May 15, 1972, effective July 1, 1972; further amended May 7, 2004, effective July 1, 2004.)

Rule 36. REQUESTS FOR ADMISSION.

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

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

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

(Amended May 15, 1972, effective July 1, 1972; further amended May 7, 2004, effective July 1, 2004.)

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

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) APPROPRIATE COURT. An application for an order to a party may be made to the court in which the action is pending or, on matters related to a deposition, to the court in the circuit where the deposition is being taken. An application for an order to a person who is not a party shall be made to the court in the circuit where the deposition is being, or is to be, taken.

(2) MOTION. If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) EVASIVE OR INCOMPLETE ANSWER OR RESPONSE. For purposes of this subdivision an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(4) EXPENSES AND SANCTIONS.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply With Order.

(1) SANCTIONS BY COURT IN CIRCUIT WHERE DEPOSITION IS TAKEN. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the circuit in which the deposition is being taken, the failure may be considered a contempt of that court.

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

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

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

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

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

(1) A party that without substantial justification fails to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.

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

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

(e) Expenses Against the State. Except to the extent permitted by statute, expenses and fees may not be awarded against the State or a county under this rule.

(f) Failure to Preserve Electronically Stored Information. Absent exceptional circumstances, a court may not impose sanctions under these Rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(Amended May 15, 1972, effective July 1, 1972; further amended May 7, 2004, effective July 1, 2004; further amended August 29, 2014, effective January 1, 2015.)

VI. TRIALS

Rule 38. JURY TRIAL OF RIGHT.

(a) Right preserved. The right of trial by jury as given by the Constitution or a statute of the State or the United States shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue, and (2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party. Where by statute a jury trial is allowed on appeal to the circuit court from the prior determination of any court or administrative body, a trial by jury may be had if demanded in the notice of appeal, and if not demanded in the notice, the appellee may have a trial by jury by filing a demand within 10 days after the case is docketed in the circuit court.

(c) Same: Specification of issues. In its demand a party may specify the issues which it wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

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

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 39. TRIAL BY JURY OR BY THE COURT.

(a) By jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States or the State.

(b) By the court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Advisory jury and trial by consent. In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury. The court, with the consent of the parties, may order a trial with a jury whose verdict shall have the same effect as if trial by jury had been a matter of right.

Rule 40. ASSIGNMENT OF CASES FOR TRIAL.

The circuit courts shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the courts deem expedient. Precedence shall be given to actions entitled thereto by statute.

Rule 41. DISMISSAL OF ACTIONS.

(a) Voluntary dismissal: Effect thereof.

(1) BY PLAINTIFF; BY STIPULATION. An action may be dismissed by the plaintiff without order of court (A) by filing a notice of dismissal at any time before the return date as provided in Rule 12(a) or service by the adverse party of an answer or of a motion for summary judgment, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action, in the manner and form prescribed by Rule 41.1 of these rules. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States, or of any state, territory or insular possession of the United States an action based on or including the same claim.

(2) BY ORDER OF COURT. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary dismissal: Effect thereof.

(1) For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against it.

(2) For failure to prosecute or to comply with these rules or any order of the court, the court may sua sponte dismiss an action or any claim with written notice to the parties. Such dismissal may be set aside and the action or claim reinstated by order of the court for good cause shown upon motion duly filed not later than 10 days from the date of the order of dismissal.

(3) Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of counterclaim, cross-claim, or third-party claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing. The notice of dismissal or stipulation shall be made in the manner and form prescribed by Rule 41.1 of these rules.

(d) Costs of previously-dismissed action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000; further amended December 7, 2005, effective January 1, 2006; further amended November 21, 2006, effective January 1, 2007; further amended August 26, 2011, effective January 1, 2012.)

Rule 41.1. DOCUMENTS DISMISSING AN ACTION OR ANY PART THEREOF PURSUANT TO RULES 41(a)(1)(A), 41(a)(1)(B), AND/OR 41(c) OF THE HAWAIʻI RULES OF CIVIL PROCEDURE.

(a) Presentation of notices of and stipulations for dismissal.

(1) For cases assigned to a judge, the notices of and stipulations for dismissal shall be presented to the assigned judge before filing.

(2) For cases in the Court-Annexed Arbitration Program, the notices of and stipulations for dismissal shall be presented to the assigned judge before filing.

(3) For cases not assigned to a judge, the notices of and stipulations for dismissal shall be presented to the Legal Documents Branch/Section.

(b) Information required in notices of and stipulations for dismissal.

(1) The notices of and stipulations for dismissal shall include the following information:

(A) Below the title of the document

(i) the name of the judge or "none" if the case is not assigned to a judge and

(ii) the trial date or "none" if the trial date has not been set.

(B) In the text of the document

(i) cite the specific subsections of Rule 41of the Hawaiʻi Rules of Civil Procedure applicable to the dismissal and

(ii) if Rule 41(a)(1)(A) is cited, state whether or not the party being dismissed has served an answer or motion for summary judgment.

(2) If the document disposes of the entire action, the document shall be entitled "STIPULATION FOR [OR NOTICE OF] DISMISSAL WITH [OR WITHOUT] PREJUDICE OF ALL CLAIMS AND PARTIES," and shall state in the text of the document "all other claims and parties are dismissed."

(3) If the document dismisses only part of a case

(A) The title of the document shall indicate that it is a partial dismissal and identify the party(ies) and/or claim(s) being dismissed,

(B) The text shall identify the party(ies) and/or claim(s) being dismissed, and

(C) The text shall identify the party(ies) and/or claim(s) that remain in the action or if there are no remaining parties and/or claims such shall be so stated in the text.

(4) Below the signature of counsel, indicate the party(ies) that counsel represents.

(Added August 26, 2011, effective January 1, 2012.)

Rule 42. CONSOLIDATION; SEPARATE TRIALS.

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as given by the Constitution or a statute of the State or the United States.

(Amended May 15, 1972, effective July 1, 1972.)

Rule 43. TAKING OF TESTIMONY.

(a) Form. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by the Hawaiʻi Rules of Evidence, statute, or other rules adopted by the Hawaiʻi Supreme Court.

(b) Presentation of expert testimony. The court may schedule the presentation of all expert testimony during the same phase of the trial.

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

(d) Affirmation in lieu of oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Interpreters. The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

(Amended May 15, 1972, effective July 1, 1972; further amended July 26, 1990, effective September 1, 1990; further amended December 7, 1999, effective January 1, 2000; further amended March 24, 2000, effective July 1, 2000.)

Rule 44. PROOF OF OFFICIAL RECORD.

(a) Authentication.

(1) DOMESTIC. An official record kept within the United States, or any state, district, commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by a deputy, and accompanied by a certificate that the officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of office.

(2) FOREIGN. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (A) admit an attested copy without final certification or (B) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 44.1. DETERMINATION OF FOREIGN LAW.

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Hawaiʻi Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

(Added May 15, 1972, effective July 1, 1972; amended July 26, 1990, effective September 1, 1990; further amended December 7, 1999, effective January 1, 2000.)

Rule 45. SUBPOENA.

(a) For attendance of witnesses; form; issuance. Every subpoena shall be issued by the clerk of the circuit court of the circuit in which the action is pending under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) For production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, electronically stored information, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, electronically stored information, or tangible things. A subpoena may specify the form or forms in which documents or electronically stored information are to be produced.

(c) Service. A subpoena may be served at any place within the State. A subpoena may be served: (1) anywhere in the State by the sheriff or deputy sheriff or by any other person who is not a party and is not less than 18 years of age; or (2) in any county by the chief of police or a duly authorized subordinate. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to such person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the State or a county, or an officer or agency of the State or a county, fees and mileage need not be tendered.

(d) Subpoena for taking depositions; place of examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the clerk of the circuit court of the circuit in which the deposition is to be taken of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, electronically stored information, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of this Rule 45.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A resident of the State may be required to attend an examination only in the county wherein the person resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the State subpoenaed within the State may be required to attend only in the county wherein the person is served with a subpoena, or at such other convenient place as is fixed by an order of court.

(e) Duties in responding to subpoena.

(1) If a subpoena does not specify a form for producing documents or electronically stored information, the person responding shall produce it in a form or forms in which it is ordinarily maintained, or in which it is reasonably usable. Absent a showing of good cause, the person responding need not produce the same documents or electronically stored information in more than one form. The person responding need not provide discovery of documents or electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On a motion to compel discovery or for a protective order, the person responding to a subpoena must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court nevertheless may order discovery from such sources if the requesting party shows good cause. The Court may specify the conditions for the discovery.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, electronically stored information, or tangible things not produced that is sufficient to enable the demanding party to contest the claim.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt of the court from which the subpoena issued.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000; further amended August 29, 2014, effective January 1, 2015.)

Rule 46. EXCEPTIONS UNNECESSARY.

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

(Amended December 7, 1999, effective January 1, 2000.)

Rule 47. JURORS.

(a) Conduct of jury selection. At the discretion of the court, each party may present a "mini-opening statement" to the jury panel. The mini-opening statement shall be limited to a brief statement of the facts expected to be proven prior to the commencement of jury selection. The court shall permit the parties or their attorneys to conduct the examination of each prospective juror. The court may conduct such examination, but in such instance, the court shall permit the parties or their attorneys to supplement the examination by further inquiry.

(b) Alternate jurors. The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impanelled, 2 peremptory challenges if 3 or 4 alternate jurors are to be impanelled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the

other peremptory challenges allowed by law shall not be used against an alternate juror.

(c) Questioning by jury. At the discretion of the court, jurors may be allowed to suggest questions to be asked of witnesses. Each juror question must be in writing and delivered to the court through appropriate court personnel. Upon receipt of a question, the court shall review the propriety of submitting the question to the witness with the parties or their attorneys on the record, but outside the hearing of the jury. If the court deems the question appropriate and subject to the Hawaiʻi Rules of Evidence (HRE), the court may ask the question. The parties shall have an opportunity to examine matters touched upon by any juror question submitted to a witness, subject to the HRE. Any party may object to the asking of a question, but the court may ask the question over any objection after the objection has been placed on the record. The jury shall be pre-instructed about the procedure for asking questions.

(d) Note taking by jurors. Except upon good cause articulated by the court, jurors shall be allowed to take notes during trial. The court's good cause findings need not be written, but must be articulated clearly in a reported proceeding.

(e) Excuse. The court may for good cause excuse a juror from service during trial or deliberation.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000; further amended March 24, 2000, effective July 1, 2000.)

Rule 48. JURIES OF LESS THAN TWELVE -- MAJORITY VERDICT.

The parties may stipulate that the jury shall consist of any number less than 12 or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury. (See section 635-20 of the Hawaiʻi Revised Statutes.)

Rule 49. SPECIAL VERDICTS AND INTERROGATORIES.

(a) Special verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall

return the jury for further consideration of its answers and verdict or shall order a new trial.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 50. JUDGMENT AS A MATTER OF LAW IN JURY TRIALS; ALTERNATIVE MOTION FOR NEW TRIAL; CONDITIONAL RULINGS.

(a) Judgment as a matter of law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) Renewing motion for judgment after trial; alternative motion for new trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment - and may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the court may:

(1) if a verdict was returned:

(A) allow the judgment to stand,

(B) order a new trial, or

(C) direct entry of judgment as a matter of law; or

(2) if no verdict was returned:

(A) order a new trial, or

(B) direct entry of judgment as a matter of law.

(c) Granting renewed motion for judgment as a matter of law; conditional rulings; new trial motion.

(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered shall be filed no later than 10 days after entry of the judgment.

(d) Same: Denial of motion for judgment as a matter of law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000; further amended effective January 3, 2000.)

Rule 51. INSTRUCTIONS TO JURY.

(a) Pre-instruction. Prior to the presentation of evidence, the court may pre-instruct the jury on the elements of the pleaded causes of action and claimed defenses.

(b) Requests. At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests.

(c) Settlement. When requests are filed, counsel shall be entitled to be heard thereon. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. Whenever the court refuses to give any requested instruction, the court shall write the word "refused" in the margin thereof. Whenever the court approves any requested instruction, the court shall write the word "given" in the margin thereof. Whenever the court modifies any requested instruction, the court shall mark the same in such manner that it shall distinctly appear what part is refused and what part is given. Instructions to which no objection is made shall be marked "given by agreement" and no later objection thereto may be made or allowed. Unless the court shall take action pursuant to subdivision (d) of this rule, instructions settled as above set forth shall be read to the jury.

(d) Court's instructions. The court may revise the language of any or all of the requested instructions which are approved by the court in whole or in part pursuant to subdivision (c) of this rule and of any or all of the requested instructions to which no objection is made, and may combine such instructions, with or without any additional instructions which the court shall deem appropriate, in such manner as the court believes will eliminate repetition and will afford to the jury an adequate and understandable charge. If no written requests for instructions are filed the court shall prepare its own instructions. Any revision made and any instructions prepared by the court pursuant to the foregoing provisions shall be reduced by the court to writing, and counsel shall be entitled to be heard thereon. The court shall inform counsel of its proposed action with respect to any such revision made or instructions prepared by the court, and any changes therein made by the court shall be reduced to writing and submitted to counsel prior to their arguments to the jury. Instructions settled as above set forth shall be read to the jury.

(e) Oral comment. The court shall in no case orally qualify, modify or explain to the jury any instruction, whether settled pursuant to subdivision (c) or pursuant to subdivision (d) of this rule. If, during deliberation on its verdict, the jury shall request further instructions, the court may further instruct the jury in accordance with instructions prepared by the court and reduced to writing, first submitting the same to counsel.

(f) Instructions and objections. Except upon good cause articulated by the court, the court shall instruct the jury before the arguments are begun and shall provide to each juror, including alternates, a copy of the jury instructions, to follow along as instructions are read. The court's good cause findings need not be written, but must be articulated clearly in a reported proceeding. The court may, as it deems necessary or appropriate, give additional instructions after arguments are concluded and before the jury retires. No party may assign as error the giving or the refusal to give, or the modification of, an instruction, whether settled pursuant to subdivision (c) or subdivision (d), of this rule, unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(Amended December 7, 1999, effective January 1, 2000; further amended March 24, 2000, effective July 1, 2000.)

Rule 52. FINDINGS BY THE COURT.

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law 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.

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the circuit court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) Judgment on partial findings. If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 53. MASTERS.

(a) Appointment and compensation. The court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain the report as security for compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for filing of the master's report.

(Added July 26, 1990, effective September 1, 1990; amended December 7, 1999, effective January 1, 2000.)

VII. JUDGMENT

Rule 54. JUDGMENTS; COSTS; ATTORNEYS' FEES.

(a) Definition; form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment upon multiple claims or involving multiple parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs; attorneys' fees.

(1) COSTS OTHER THAN ATTORNEYS' FEES. Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the State or a county, or an officer or agency of the State or a county, shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 48 hours' notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

(2) ATTORNEYS' FEES.

(A) Claims for attorneys' fees and related non-taxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of an appealable order or judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) The provisions of subparagraphs (A) and (B) do not apply to claims for fees and expenses as sanctions for violations of rules.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 55. DEFAULT.

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) Judgment. Judgment by default may be entered as follows:

(1) BY THE CLERK. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person.

(2) BY THE COURT. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian, or other such representative who has appeared therein, and upon whom service may be made under Rule 17. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's

representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute.

(c) Setting aside default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment against the state, etc. No judgment by default shall be entered against the State or a county, or an officer or agency of the State or a county, unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.

(Amended December 7, 1999, effective January 1, 2000.)

Rule 56. SUMMARY JUDGMENT.

(a) For claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof. A party seeking recovery under this rule may seek relief at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, provided, however, that a motion seeking relief under this rule shall be served and filed no less than 50 days before the date of the trial unless granted permission by the court and for good cause shown.

(b) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof, provided, however, that a motion seeking relief under this rule shall be filed and served no less than 50 days before the date of the trial unless granted permission by the court and for good cause shown.

(c) Motion and proceedings thereon. The motion shall be filed and served not less than 18 days before the date set for the hearing. The adverse party may file and serve opposing memorandum and/or affidavits not less than 8 days before the date set for the hearing. The moving party may file and serve a reply or affidavit not less than 3 days before the date set for the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by

depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Form of order. Whenever the court on a motion for summary judgment, disposes of one or more but fewer than all claims, involving one or more parties, the order entered must specifically set forth the claim or claims disposed of, and with respect to each such claim, the party or parties in whose favor the disposition is made and the party or parties against whom the disposition is made.

(Amended May 15, 1972, effective July 1, 1972; further amended July 26, 1990, effective September 1, 1990; further amended September 11, 1996, effective January 1, 1997; further amended May 15, 1997, effective June 2, 1997; further amended December 7, 1999, effective January 1, 2000.)

Rule 57. DECLARATORY JUDGMENTS.

The procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate, except that declaratory relief may not be obtained in any controversy with respect to taxes. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

(Amended December 7, 1999, effective January 1, 2000.)

Rule 58. ENTRY OF JUDGMENT.

Unless the court otherwise directs and subject to the provisions of Rule 54 of these rules and Rule 23 of the Rules of the Circuit Courts, the prevailing party shall prepare and submit a proposed judgment. The filing of the judgment in the office of the clerk constitutes the entry of the judgment; and the judgment is not effective before such entry. The entry of the judgment shall not be delayed for the taxing of costs. Every judgment shall be set forth on a separate document.

(Amended July 26, 1990, effective September 1, 1990; further amended January 28, 2010, effective July 1, 2010.)

Rule 59. NEW TRIALS; AMENDMENT OF JUDGMENTS.

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for motion. A motion for a new trial shall be filed no later than 10 days after entry of the judgment.

(c) Time for serving affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On court's initiative; notice; specifying grounds. No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial, for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Motion to alter or amend judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 60. RELIEF FROM JUDGMENT OR ORDER.

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(Amended December 7, 1999, effective January 1, 2000; further amended May 30, 2006, effective July 1, 2006.)

Rule 61. HARMLESS ERROR.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

(a) Automatic stay; exceptions - Injunctions, receiverships, and accountings. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision; (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on motion for new trial or for judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b), or when justice so requires in other cases until such time as the court may fix.

(c) Injunction pending appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay upon appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in favor of the state, etc. When an appeal is taken by or at the direction of the State or a county, or by an officer or agency of the State or a county, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Reserved.

(g) Power of supreme court and intermediate court of appeals not limited. The provisions in this rule do not limit any power of the supreme court or of the intermediate court of appeals or of a justice or judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of judgment as to multiple claims or multiple parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(Amended April 7, 1980, effective April 7, 1980.)

Rule 63. INABILITY OF A JUDGE TO PROCEED.

If 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. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 64. SEIZURE OF PERSON OR PROPERTY.

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the State. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action.

Rule 65. INJUNCTIONS.

(a) Preliminary injunction.

(1) NOTICE. No preliminary injunction shall be issued without notice to the adverse party.

(2) CONSOLIDATION OF HEARING WITH TRIAL ON MERITS. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a) (2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary restraining order; notice; hearing; duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained a temporary restraining order shall proceed with the application for a preliminary injunction and, if that party does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

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

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

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

(e) Civil defense and emergency act cases. This rule shall not modify section 128-29 of the Hawaiʻi Revised Statutes.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

Rule 65.1. SECURITY: PROCEEDINGS AGAINST SURETIES.

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

(Added May 15, 1972, effective July 1, 1972; amended December 7, 1999, effective January 1, 2000.)

Rule 66. RECEIVERS APPOINTED BY COURTS.

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the practice heretofore followed. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

Rule 67. DEPOSIT IN COURT.

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited and withdrawn in accordance with orders of the court.

Rule 68. OFFER OF SETTLEMENT OR JUDGMENT.

At any time more than 10 days before the trial begins, any party may serve upon any adverse party an offer of settlement or an offer to allow judgment to be taken against either party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall, in accordance with the agreement, enter an order of dismissal or a judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, either party may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

(Amended May 15, 1972, effective July 1, 1972; further amended May 25, 1999, effective July 1, 1999.)

Rule 69. EXECUTION.

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

(Amended May 15, 1972, effective July 1, 1972.)

Rule 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the State, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

Rule 71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES.

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

(Amended December 7, 1999, effective January 1, 2000.)

IX. APPEALS

Rule 72. APPEAL TO A CIRCUIT COURT.

(a) How taken. Where a right of redetermination or review in a circuit court is allowed by statute, any person adversely affected by the decision, order or action of a governmental official or body other than a court, may appeal from such decision, order or action by filing a notice of appeal in the circuit court having jurisdiction of the matter. As used in this rule, the term "appellant" means any person or persons filing a notice of appeal, and "appellee" means every governmental body or official (other than a court) whose decision, order or action is appealed from, and every other party to the proceedings.

(b) Time. The notice of appeal shall be filed in the circuit court within 30 days after the person desiring to appeal is notified of the rendering or entry of the decision or order, or of the action taken, in the manner provided by statute.

(c) Service. Promptly after filing the notice of appeal, the appellant shall serve a certified copy thereof upon each appellee.

(d) Record on appeal.

(1) DESIGNATION. The appellant shall, within the time provided for filing the notice of appeal or within such further time, not to exceed 30 days, as may be allowed by the court for good cause shown, prepare and present to the clerk of the circuit court a designation, which shall specify the papers, transcripts, minutes and exhibits which the appellant desires filed in the circuit court in connection with the appeal. The clerk, in the name and under the seal of the circuit court, shall endorse on the designation an order, directed to the official or body whose decision, order or action is appealed from, commanding the latter to certify and transmit such papers, transcripts, minutes and exhibits to the circuit court within 20 days of the date of the order or within such further time as may be allowed by the court. The clerk shall issue certified copies of such designation and order to the appellant for service upon the official or body whose decision, order or action is appealed from and for service upon any other appellee. The appellant shall serve certified copies of the designation and order and shall make due return of service thereof to the clerk of the

circuit court. The circuit court may compel obedience to the order by any appropriate process.

(2) COUNTER DESIGNATION. Any appellee may, within 10 days after service of the designation and statement of the case, prepare and present to the clerk of the circuit court a counter designation, which shall specify additional papers, transcripts, minutes and exhibits which the appellee desires to be filed in the circuit court. The clerk shall endorse thereon an order, as in the case of a designation, and shall issue the order and counter designation to the appellee for service and return as provided in Rule 72(d) (1) in the case of a designation and order. The circuit court may, compel obedience to the order by any appropriate process. When the appellee desiring such additional papers, transcripts, minutes and exhibits has official custody of the same, it shall be sufficient that the appellee file the same and identify the same in an accompanying certificate. A copy of such certificate and of any counter designation shall be served forthwith upon the appellant.

(e) Statement of case. The appellant shall file in the circuit court concurrently with the filing of appellant's designation, a short and plain statement of the case and a prayer for relief. Certified copies of such statement shall be served forthwith upon every appellee. The statement shall be treated, as near as may be, as an original complaint and the provision of these rules respecting motions and answers in response thereto shall apply.

(f) Briefs; oral argument.

(1) BRIEFS; DEADLINES. The opening brief shall be filed within 40 days after the filing of the record on appeal. The answering brief shall be filed within 40 days after service of the appellant's opening brief. Within 14 days after service of the appellee's answering brief, the appellant may file a reply brief. Reply briefs shall be confined to matters presented in the answering brief. If no reply brief is to be filed, the appellant shall notify the clerk and the appellee in writing of the decision not to file a reply brief, prior to the expiration of the time for filing the reply brief.

(2) REQUIREMENTS. The opening, answering, and reply briefs shall be subject to the page limitations set forth in Rule 28(a) of the Hawaiʻi Rules of Appellate Procedure and shall include, at a minimum:

(A) a statement of the questions presented for decision;

(B) a brief statement of the facts (that need not duplicate the statement of the case separately required under Rule 72(e));

(C) a concise argument; and

(D) a conclusion specifying the relief sought.

(3) ORAL ARGUMENT. On the filing of the answering brief, the court shall schedule the matter for oral argument, with argument to take place after the deadline for the reply brief.

(g) Trial by jury. Where by law an appeal may be tried before a jury, the case shall be tried without jury unless any appellant or appellee shall have demanded trial by jury in the manner and within the time provided in Rule 38.

(h) Costs. No appeal shall be heard, and the appeal shall be dismissed, unless the appellant shall pay all costs, if any, and furnish every bond or other security, if any, required by law.

(i) Stay. The filing of a notice of appeal shall not operate as a stay of the decision, order or action appealed from, unless otherwise provided by statute or unless ordered, for good cause shown, by the circuit court.

(j) Reserved.

(k) Judgment. Upon determination of the appeal, the court having jurisdiction shall enter judgment. Such judgment shall be reviewable, or final, as may be provided by law. Promptly after final determination of the appeal in the circuit court or in the appellate court, the clerk of the court finally determining the case shall notify the governmental official or body concerned, of the disposition of the appeal.

(Amended May 15, 1972, effective July 1, 1972; further amended and effective May 8, 1996; further amended May 30, 2006, effective July 1, 2006; further amended August 26, 2011, effective January 1, 2012.)

Rule 73. to 76. DELETED.

X. CIRCUIT COURTS AND CLERKS

Rule 77. CIRCUIT COURTS AND CLERKS.

(a) Circuit courts always open. The circuit courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trials and hearings; orders in chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the circuit; but no hearing, other than one ex parte, shall be conducted outside the circuit without the consent of all parties affected thereby.

(c) Clerk's office and orders by clerk. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

(d) Notice of orders or judgments. Immediately upon entry of a judgment, or an order for which notice of entry is required by these rules, the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of a judgment or order is required by these rules. In addition, immediately upon entry, the party presenting the judgment or order shall serve a copy thereof in the manner provided in Rule 5. Lack of notice of the entry by the clerk or failure to make such service, does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Hawaiʻi Rules of Appellate Procedure. The court may impose appropriate sanctions against any party for failure to give notice in accordance with this rule.

(e) Reserved.

(Amended, May 15, 1972, effective July 1, 1972; further amended April 23, 1985, effective April 23, 1985; further amended November 23, 1994, effective December 15, 1994; further amended effective July 1, 1998; further amended December 7, 1999, effective January 1, 2000; further amended June 15, 2005, effective July 1, 2005.)

Rule 78. MOTION DAY.

Unless local conditions make it impracticable, each circuit court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as the judge considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

(Amended December 7, 1999, effective January 1, 2000.)

Rule 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN.

(a) Civil docket. The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the supreme court, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

(b) Civil judgments and orders. The clerk shall keep, in such form and manner as the supreme court may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

(c) Indices; calendars. Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this rule shall be kept by the clerk under the direction of the court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions".

(d) Other books and records of the clerk. The clerk shall also keep such other books and records as may be required from time to time by the supreme court.

Rule 80. STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE.

(a) Reserved.

(b) Reserved.

(c) Stenographic report or transcript as evidence. Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

XI. GENERAL PROVISIONS

Rule 81. APPLICABILITY.

(a) To what proceedings not applicable. Except as expressly otherwise provided in this Rule 81 or another rule of court, these rules shall not apply to the following proceedings (pursuant to specific provisions of the Hawaiʻi Revised Statutes when cited below) in any circuit court:

(1) Probate proceedings under chapter 560;

(2) Guardianship proceedings under chapter 551;

(3) Ex parte proceedings with respect to the accounts of trustees and guardians under chapter 554;

(4) Proceedings in the family court;

(5) Applications to a circuit court under chapter 658, relating to arbitration, and proceedings thereon prior to judgment;

(6) Habeas corpus proceedings under chapter 660;

(7) Proceedings seeking a writ directed to a court of inferior jurisdiction under section 603-21.7(b);

(8) Proceedings for the forfeiture of bonds under section 709-51, as the same may be renumbered;

(9) Proceedings under section 416-81 relating to the calling of a meeting of a corporation.

(b) Other proceedings. These rules shall apply to the following proceedings except insofar as and to the extent that they are inconsistent with specific statutes of the State or rules of court relating to such proceedings:

(1) Proceedings in the land court under chapter 501;

(2) Eminent domain proceedings;

(3) Actions for partition or to quiet title;

(4) Quo warranto proceedings;

(5) Escheat proceedings under chapter 665;

(6) Proceedings for the forfeiture of property for violation of a statute;

(7) Proceedings under section 325-79 to 325-84 relating to isolation of tubercular persons; proceedings under chapter 333 or chapter 334 relating to commitment, admission, transfer, release, or discharge of any person who is or may be mentally retarded, mentally defective, mentally ill, habituated to the excessive use of drugs or alcohol, or intoxicated; and proceedings under any statute for the commitment, release, or discharge of a person who is or may be not responsible under the criminal laws, or unfit to proceed thereunder, on account of a disease, disorder, or defect;

(8) Actions for the collection of taxes;

(9) Proceedings for enforcement of an order, subpoena, or other power of an administrative agency;

(10) Proceedings concerning voter registration or elections;

(11) Proceedings for the impeachment of a county officer;

(12) Proceedings under: section 92-6, relating to public records; chapter 172, relating to foreclosure of liens for commutation and for expenses of determination of boundaries; chapters 89 and 380, relating to collective bargaining and labor disputes; sections 383-34(d), 383-35, 392-79(d), and 392-80, with respect to reconsideration of a determination upon a claim for unemployment benefits or temporary disability benefits; sections 403-192 and 406-51 to 52, relating to banks and trust companies; sections 467-16 to 467-25, relating to collection of a judgment from the real estate recovery fund; section 480-22(a), relating to consent judgments under chapter 480; sections 515-10(e) and 515-14(c), relating to discriminatory practices; part II of chapter 664, relating to fences; and part III of chapter 664, relating to rights of private way and water rights.

(c) Jury trial in probate proceedings. These rules shall apply to any jury trial in probate proceedings under chapter 560. The demand for jury trial shall be made by motion within the time allowed by the statute.

(d) Jury trial in land court proceedings. These rules shall apply to any jury trial in a circuit court upon appeal from a decision of the land court under chapter 501, subject to the provisions of the third paragraph of section 501-61 with respect to the framing of issues and evidence and related matters in connection with such appeals.

(e) Other appeals to circuit court. These rules shall apply to any proceedings in a circuit court pursuant to appeal to the circuit court from a governmental official or body (other than a court), except as otherwise provided in Rule 72.

(f) Appeals. Rule 4(a) of the Hawai‘i Rules of Appellate Procedure, shall apply to appeals (1) from a circuit court in proceedings listed in subdivision (a) of this Rule 81, other than appeals from a family court, and (2) from the land court.

(g) Depositions and discovery. Chapter V of these rules, relating to depositions and discovery, shall apply to proceedings listed in subdivision (a) of this Rule 81 and proceedings in the land court, except that in any such proceeding: (1) the court may by order direct that said Chapter V shall not be applicable to the proceeding if the court for good cause finds that the application thereof would not be feasible or would work an injustice; and (2) if the proceeding be ex parte any deposition therein upon oral examination or upon written interrogatories shall be pursuant to motion and order of court, rather than pursuant to notice as set forth in subdivision (a) of Rule 30 or subdivision (a) of Rule 31, and in any such case the order of court shall, for all purposes relating to said Chapter V, take the place of said notice.

(h) Order of court. In any proceeding in the land court or listed in subdivision (a) of Rule 81 the court may by order direct that any one or more of these rules, not otherwise applicable to said proceeding pursuant to this Rule 81, shall be applicable to said proceeding.

(i) Applicability in general. Except as otherwise provided in Rule 72 or in this Rule 81, these rules shall apply to all actions and proceedings of a civil nature in any circuit court and to all appeals to the appellate courts in all actions and proceedings of a civil nature in any circuit court; and for that purpose every action or proceeding of a civil nature in the circuit court shall be a "civil action" within the meaning of Rule 2.

(j) References to incompetent person. Under any rule in which reference is made to an incompetent person the term "incompetent person" includes any person, other than an infant, for whom a guardian may be appointed pursuant to statute.

(Amended May 15, 1972, effective July 1, 1972; further amended June 29, 1973, effective July 2, 1973; further amended January 24, 1977, effective February 15, 1977; further amended April 7, 1980, effective April 7, 1980; further amended April 23, 1985, effective April 23, 1985; further amended July 26, 1990, effective September 1, 1990; further amended May 30, 2006, effective July 1, 2006.)

Rule 81.1. MANDAMUS.

The writ of mandamus is abolished in the circuit courts, except when directed to a court of inferior jurisdiction. Relief heretofore available by mandamus may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules. In any action in the nature of mandamus the court may shorten the time prescribed by these rules for pleading or doing any other act.

(Added May 15, 1972, effective July 1, 1972.)

Rule 82. JURISDICTION AND VENUE UNAFFECTED.

These rules shall not be construed to extend or limit the jurisdiction of the circuit courts or the venue of actions therein.

Rule 83. RULES BY CIRCUIT COURTS.

Each circuit court may recommend, from time to time, rules and amendments of rules governing its practice not inconsistent with these rules. Copies of rules and amendments, when promulgated by the supreme court shall be made available to each attorney licensed to practice law in the State. In all cases not provided for by rule, the circuit courts may regulate their practice in any manner not inconsistent with these rules.

(Amended May 15, 1972, effective July 1, 1972.)

Rule 84. FORMS.

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

Rule 85. TITLE.

These rules may be known and cited as the Hawaiʻi Rules of Civil Procedure.

Rule 86. RESERVED.

(Deleted April 7, 1980, effective April 7, 1980.)

APPENDIX OF FORMS

(See Rule 84)

Introductory Statement

1. The following forms are sufficient under these rules. They are limited in number. No attempt is made to furnish a manual of forms. Each form assumes the action to be brought in the First Circuit. The caption should state the circuit in which the action is brought.

2. Except where otherwise indicated each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "Summons." In the caption of the summons and in the caption of the complaint all parties must be named but in other pleadings and papers, it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4(b), 7(b)(2), and 10(a).

3. Each pleading, motion, and other paper is to be signed in the individual name of at least one attorney of record (Rule 11). The attorney's name is to be followed by the attorney's address.

4. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney.

5. Rule 3 of the Rules of the Circuit Courts prescribes additional requirements.

Form 1. Summons.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

A.B., Plaintiff,	)	Civil No._____
	)	
v.	)	
	)	SUMMONS
C.D., Defendant.	)	
	)	

SUMMONS

STATE OF HAWAIʻI

To the above-named Defendant:

You are hereby summoned and required to file with the court and serve upon _____ _____, plaintiff's attorney, whose address is _____ _____, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated: Honolulu, Hawaiʻi, _____

Clerk of Court

(Seal of the Circuit Court)

(This summons is issued pursuant to Rule 4 of the Hawaiʻi Rules of Civil Procedure).

For provisional and final remedies, including attachment, garnishment, etc., see Chapter VIII of these rules.

Form 1-A. Publication of Summons.

IN THE CIRCUIT COURT OF THE (_____) CIRCUIT

STATE OF HAWAIʻI

SUMMONS

TO: (defendant's name)

YOU ARE HEREBY NOTIFIED THAT (plaintiff's name), plaintiff, has filed a (complaint or petition) in Civil No. (case #), wherein plaintiff prays for (state relief sought) against you in the above-entitled court.

(***If applicable, include description of property***)

YOU ARE HEREBY SUMMONED to appear in the courtroom of the HONORABLE (name of judge) at (address), (city), Hawaiʻi, on (date), 20XX, at (time) o'clock (A. or P.) M., or to file an answer or other pleading and serve it before said day upon (name of plaintiff's attorney), plaintiff's attorney, whose address is (address, city, and state). If you fail to do so, judgment by default will be taken against you for the relief demanded in the (complaint or petition).

DATED: (city), Hawaiʻi, (date).

(signature of the clerk)
Clerk of Court

Form 2. Reserved.

Form 2-A. CIVIL INFORMATION SHEET

CIVIL INFORMATION SHEET

I(A). PLAINTIFF(S)

☐ Additional page(s) attached

I(B). DEFENDANT(S)

☐ Additional page(s) attached

II(A). PLAINTIFF'S(S') ATTORNEY (NAME / NUMBER)

☐ Additional page(s) attached

II(B). DEFENDANT'S(S') ATTORNEY (IF KNOWN)

☐ Additional page(s) attached

III. NATURE OF SUIT

- ❑ (101) Contract
- ❑ (201) Motor Vehicle Tort
- ❑ (301) Assault & Battery
- ❑ (302) Construction Defects
- ❑ (303) Medical Malpractice
- ❑ (304) Legal Malpractice
- ❑ (306) Product Liability
- ❑ (399) Other Non-Vehicle Tort
- ❑ (401) Condemnation
- ❑ (501) Foreclosure
- ❑ (511) Agreement of Sale Foreclosure
- ❑ (503) Agency Appeal
- ❑ (504) Declaratory Judgment
- ❑ (599) Other Civil Action
- ❑ (___) Environmental Court

IV. ORIGIN

- ❑ (A). Original Proceeding
- ❑ (B). Transfer from District Court CIV. NO. _____
- ❑ (C). Transfer from another Circuit CIV. NO. _____

V. DEMAND

_____

VI. JURY DEMAND	VII. CLASS ACTION	VIII. REQUEST TO EXEMPT FROM ARBITRATION
❑ YES ❑ NO	❑ YES ❑ NO	❑ YES ❑ NO

IX. RELATED CASE(S)

JUDGE _____

CIVIL NUMBER _____

RESERVED FOR COURT USE

CIV NO _____

X. SIGNATURE OF ATTORNEY OR PARTY _____ DATE _____

1C-P-167 *(Rev. 06/10/15)*

INSTRUCTIONS FOR COMPLETING THE CIVIL INFORMATION SHEET

The civil information sheet and the information it contains neither replace nor supplement the filings, the service pleadings or other documents as required by law, except as provided by the rules of court.

This form is required for the purpose of initiating the civil docket sheet.

Consequently, a civil information sheet is required for each civil complaint filed.

The attorney/party filing a civil complaint shall complete the form as follows:

I. PLAINTIFF(S)/DEFENDANT(S)
List names: last, first, middle initial.
If the plaintiff or defendant is a government agency, indicate the full name.
If the plaintiff or defendant is an official of a government agency, first indicate the agency name and then the official's name and title.
If the space provided is insufficient, attach additional page(s) and check the box so indicating.

II. PLAINTIFF'S(S')/DEFENDANT'S(S') ATTORNEY
Indicate the attorney name and license number.
If the space provided is insufficient, attach additional page(s) and check the box so indicating.

III. NATURE OF SUIT
Place a "✔" in the appropriate box.
If more than one category applies, select the one category that best describes the action.
Do not select more than one category.

For cases arising under Hawaiʻi Revised Statutes, section 604A-2, place a "✔" in the Environmental Court box.

IV. ORIGIN
(A) Original Proceedings: cases originating in the circuit court.
(B) Transfer from District Court: cases transferred from district court under Haw. Rev. Stat. §§ 604-5 (Supp. 2006), 633-31 (1993).
(C) Transfer from another Circuit: cases transferred from another circuit under Haw. Rev. Stat. §§ 603-37, -37.5 (1993)

V. DEMAND
Indicate the remedy being demanded (e.g., damages, preliminary injunction, etc.)

VI. JURY DEMAND
Indicate whether a jury is being demanded.

VII. CLASS ACTION
Indicate whether the action is brought as a class action.

VIII. REQUEST TO EXEMPT FROM ARBITRATION
Indicate whether a "Request to Exempt from Arbitration" is filed.

IX. RELATED CASES
List the civil number and the assigned judge for related pending cases.

X. SIGNATURE OF ATTORNEY OR PARTY
Date and sign the civil information sheet.

(Rev. 06/10/15)

Form 2-B. ADDITIONAL CLAIMS INFORMATION SHEET

ADDITIONAL CLAIMS INFORMATION SHEET

I. **Filing Party/Attorney**	II. **Civil No.**

III. **Case Name**

IV. **Title of Pleading**

V. Does the above pleading **join any additional party** not previously named? _____ Yes _____ No

If "yes," please list **each additional party** below:

	Name(s)	Party Designation
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

❑ Additional page(s) attached.

VI. Does the above pleading **exclude any party** previously named? _____ Yes _____ No

If "yes," please list **each party** who has been **excluded:**

	Name(s)	Party Designation
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

❑ Additional page(s) attached.

VII. Signature of Filing Party/Attorney	**Date**

1C-P-009

INSTRUCTIONS FOR COMPLETING THE ADDITIONAL CLAIMS INFORMATION SHEET

The additional claims information sheet and the information it contains neither replace nor supplement the filings, the service pleadings, or other documents as required by law, except as provided by the rules of court.

This form is required for the purpose of ascertaining the status of parties to the lawsuit.

Consequently, an additional claims information sheet is required for each affirmative pleading filed subsequent to the initial complaint.

The attorney/party filing such affirmative pleading shall complete the form as follows:

I. Filing Party/Attorney

Indicate name, attorney license number, attorney firm name (if applicable), address and telephone number.

II. Civil No.

Indicate the civil number assigned to the case.

III. Case Name

Indicate a brief case title (full caption not necessary). Use of "et al." designation is acceptable.

IV. Title of Pleading

Indicate the exact title of the pleading being filed.

V. Joined Parties and Party Designation

If the space provided is insufficient, attach additional page(s) and check the box so indicating.

Examples of "party designation" are as follows: Additional plaintiff; additional defendant; additional crossclaim-defendant; additional counterclaimant; additional counterclaim-defendant; plaintiff intervenor; defendant intervenor; third-party defendant, etc.

VI. Excluded Parties and Party Designation

Same as Section V above.

VII. Signature of Filing Party/Attorney

Date and sign the Additional Claims Information Sheet.

Form 3. Complaint on a Promissory Note.

1. Allegation of residence of parties.

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

3. Defendant owes to plaintiff the amount of said note and interest.

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

Dated: Honolulu, Hawaiʻi, _____

Signed:_____
Attorney for Plaintiff
Address: _____

Notes

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

Form 4. Complaint on an Account.

1. Allegation of residence of parties.

2. Defendant owes plaintiff ten thousand dollars according to the account hereto annexed as Exhibit A.

Wherefore (etc. as in Form 3).

Form 5. Complaint for Goods Sold and Delivered.

1. Allegation of residence of parties.

2. Defendant owes plaintiff ten thousand dollars for goods sold and delivered by plaintiff to defendant between June 1, 1952 and December 1, 1952.

Wherefore (etc. as in Form 3).

Note

This form may be used where the action is for an agreed price or for the reasonable value of the goods.

Form 6. Complaint for Money Lent.

1. Allegation of residence of parties.

2. Defendant owes plaintiff ten thousand dollars for money lent by plaintiff to defendant on June 1, 1952.

Wherefore (etc. as in Form 3).

Form 7. Complaint for Money Paid by Mistake.

1. Allegation of residence of parties.

2. Defendant owes plaintiff ten thousand dollars for money paid by plaintiff to defendant by mistake on June 1, 1952, under the following circumstances: (here state the circumstances with particularity - See Rule 9(b)).

Wherefore (etc. as in Form 3).

Form 8. Complaint for Money Had and Received.

1. Allegation of residence of parties.

2. Defendant owes plaintiff ten thousand dollars for money had and received from one G. H. on June 1, 1952, to be paid by defendant to plaintiff.

Wherefore (etc. as in Form 3).

Form 9. Complaint for Negligence.

1. Allegation of residence of parties.

2. On June 1, 1952, in a public highway called King Street in Honolulu, Hawaiʻi, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

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

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

Note

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

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

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

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

1. Allegation of residence of parties.

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

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

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

Form 11. Complaint for Conversion.

1. Allegation of residence of parties.

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

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

Form 12. Complaint for Specific Performance of Contract to Convey Land.

1. Allegation of residence of parties.

2. On or about December 1, 1952, plaintiff and defendant entered into an agreement in writing, a copy of which is hereto annexed as Exhibit A.

3. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

4. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of one thousand dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of _____ dollars.

Note

Here, as in Form 3, plaintiff may set forth the contract verbatim in the complaint or plead it, as indicated, by exhibit, or plead it according to its legal effect. Furthermore, plaintiff may seek legal or equitable relief or both even though this was impossible under the system in operation before these rules.

Form 13. Complaint on Claim for Debt and to Set Aside Fraudulent Conveyance Under Rule 18(b).

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

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

1. Allegation of residence of parties.

2. Defendant C. D. on or about _____ executed and delivered to plaintiff a promissory note (in the following words and figures: (here set out the note verbatim)); (a copy of which is hereto annexed as Exhibit A); (whereby defendant C. D. promised to pay to plaintiff or order on _____ the sum of five thousand dollars with interest thereon at the rate of _____ percent per annum).

3. Defendant C. D. owes to plaintiff the amount of said note and interest.

4. Defendant C. D. on or about _____ conveyed all his property, real and personal (or specify and describe) to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands:

(1) That plaintiff have judgment against defendant C. D. for _____ dollars and interest; (2) that the aforesaid conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; (3) that plaintiff have judgment against the defendants for costs.

Form 14. Reserved.

Form 15. Reserved.

Form 16. Reserved.

Form 17. Reserved.

Form 18. Complaint for Interpleader and Declaratory Relief.

1. Allegation of residence of parties.

2. On or about June 1, 1950, plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of ten thousand dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on June 1, 1951, and annually thereafter as a condition precedent to its continuance in force.

3. No part of the premium due June 1, 1951, was ever paid and the policy ceased to have any force or effect on July 1, 1951.

4. Thereafter, on September 1, 1951, G. H. and K. L. died as the result of an accident, in which G. H. and K. L. were involved.

5. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designated as beneficiary of said policy in place of K. L.

6. Each of defendants, C. D., E. F., and X. Y. is claiming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

7. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G. H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

Form 19. Motion to Dismiss, Presenting Defenses of Failure to State a Claim or Lack of Service of Process.

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the State of Hawaiʻi, and (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M. N. and X. Y. hereto annexed as Exhibit A and Exhibit B respectively.

Signed:_____
Attorney for Defendant
Address: _____

Notice of Motion

To: _____
Attorney for Plaintiff

Please take notice that the undersigned will bring the above motion on for hearing before the presiding judge of this court in the Judiciary Building, Honolulu, Hawaiʻi, on the ____ day of _____, ~~1953~~, at _____ o'clock ____ M. or as soon thereafter as counsel can be heard.

Signed:_____
Attorney for Defendant
Address:_____

Note

The above motion and notice of motion may be combined and denominated Notice of Motion. See Rule 7(b).

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

FIRST DEFENSE

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

SECOND DEFENSE

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

THIRD DEFENSE

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

COUNTERCLAIM

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

CROSS-CLAIM AGAINST DEFENDANT M. N.

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

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

DEFENSE

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

COUNTERCLAIM FOR INTERPLEADER

1. Defendant received the sum of ten thousand dollars as a deposit from E. F.

2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E. F.

3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

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

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

(2) That the court order the plaintiff and E. F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

Form 22. Replaced.

Replaced by Forms 22-A and 22-B, May 15, 1972, effective July 1, 1972.

Form 22-A. Summons and Complaint Against Third-Party Defendant.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

A.B., Plaintiff,	)	Civil No. _____
	)	
v.	)	
	)	SUMMONS
C.D., Defendant and Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
E.F., Third-Party Defendant.	)	
	)	

SUMMONS

STATE OF HAWAIʻI

To the above-named Third-Party Defendant:

You are hereby summoned and required to file with the court and serve upon _____ _____, plaintiff's attorney whose address is _____ _____, and upon _____, who is attorney for C. D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff which you may but are not required to answer.

Dated: Honolulu, Hawaiʻi, _____

(Seal of Circuit Court) Clerk of Court

Form 22-A **HAWAIʻI RULES OF CIVIL PROCEDURE**

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

A.B., Plaintiff,	)	Civil No. _____
	)	
v.	)	
	)	THIRD PARTY COMPLAINT
C.D., Defendant and Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
E.F., Third-Party Defendant.	)	
	)	

THIRD-PARTY COMPLAINT

1. Plaintiff A. B. has filed against Defendant C. D. a complaint, a copy of which is hereto attached as Exhibit A.

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D., or upon which A. B. is entitled to recover from E. F. and not from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E.F. for all sums[1] that may be adjudged against defendant C.D. in favor of plaintiff A. B.

[1]Make appropriate change where C.D. is entitled to only partial recovery-over against E. F.

Dated: Honolulu, Hawaiʻi, _____

Signed:_____
Attorney for C. D., Third-Party Plaintiff

Address:_____

Form 22-B. Motion to Bring in Third-Party Defendant.

Defendant moves for leave, as third-party plaintiff, to cause to be served upon E. F. a summons and third-party complaint, copies of which are hereto attached as Exhibit X.

Signed:_____
Attorney for Defendant C. D.
Address:_____

Notice of Motion

(Contents the same as in Form 19. The notice should be addressed to all parties to the action.)

Exhibit X

(Contents the same as in Form 22-A.)

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

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

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

MOTION TO INTERVENE AS A DEFENDANT

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

Dated: Honolulu, Hawaiʻi, _____

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

(Contents the same as in Form 19.)

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

Exhibit A

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

A.B., Plaintiff,	) Civil No. _____
	)
v.	)
	) INTERVENER'S ANSWER
C.D., Defendant.	)
	)
E.F., Intervener	)
	)

INTERVENER'S ANSWER

FIRST DEFENSE

Intervener admits the allegation stated in paragraphs 1 and 4 of the complaint; denies the allegation in paragraphs 2 and 3.

SECOND DEFENSE

That intervener has a valid and existing first lien upon the property described in the complaint and that no disposition of such property should be made without first providing for the satisfaction of the intervener's lien.

Dated: Honolulu, Hawaiʻi, _____

Signed:_____
Attorney for E. F., Intervener

Address:_____

Form 24. Request for Production of Documents, etc., Under Rule 34.

Plaintiff A. B. requests defendant C. D. to respond within _____ days to the following requests:

(1) That defendant produce and permit plaintiff to inspect and to copy each of the following documents:

(Here list the documents either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

(2) That defendant produce and permit plaintiff to inspect and to copy, test, or sample each of the following objects:

(Here list the objects either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

(3) That defendant permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph, test or sample (here describe the portion of the real property and the objects to be inspected).

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

Signed:_____
Attorney for Plaintiff

Address:_____

Form 25. Request for Admissions Under Rule 36.

Plaintiff A. B. requests defendant C. D. within _____ days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request is genuine. (Here list the documents and describe each document.)

2. That each of the following statements is true. (Here list the statements.)

Signed:_____
Attorney for Plaintiff

Address:_____

Form 26. Allegation of Reason for Omitting Party.

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

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

Form 27. Deleted.

Form 28. Reserved.

Form 29. Notice of Appeal From Decision or Order of Governmental Official or Body to the Circuit Court Under Rule 72(a).

(Your name)
(Your address)
(Your telephone number)

IN THE CIRCUIT COURT OF THE (insert the judicial circuit no.) CIRCUIT

STATE OF HAWAIʻI

(Your name),	)	Civil No. _____
	)	
Appellant,	)	Agency Docket/Case No. _____
	)	
v.	)	
	)	NOTICE OF APPEAL TO THE CIRCUIT
(Name of governmental official or agency	)	COURT; STATEMENT OF THE CASE;
whose order or decision is being appealed);	)	EXHIBIT A; DESIGNATION OF RECORD ON
(Name(s) of any other party to the proceeding	)	APPEAL; ORDER FOR CERTIFICATION AND
before the official or agency),	)	TRANSMISSION OF RECORD; CERTIFICATE
	)	OF SERVICE
Appellee(s).	)	
	)	

NOTICE OF APPEAL TO THE CIRCUIT COURT

Notice is hereby given that (Your Name), Appellant above-named, pursuant to section (list statutes that give the right to appeal the order or decision), Hawaiʻi Revised Statutes, and Rule 72 of the Hawaiʻi Rules of Civil Procedure, hereby appeals to the Circuit Court of the (insert the judicial circuit no.) Circuit from the (order or decision) of (Name of governmental official or agency whose order or decision is being appealed) entered on (Date of order or decision). A copy of the (order or decision) is attached as Exhibit A.

DATED: (Name of the City you are in), (State), (Date document is signed).

_____(Your signature)_____
(Print or Type your name here)

Form 29-A. Statement of the Case to Accompany the Notice of Appeal to the Circuit Court.

IN THE CIRCUIT COURT OF THE (insert the judicial circuit no.) CIRCUIT

STATE OF HAWAIʻI

(Your name),	)	Civil No. _____
	)	
Appellant,	)	Agency Docket/Case No. _____
	)	
vs.	)	
	)	STATEMENT OF THE CASE
(Name of governmental official or agency whose order or decision is being appealed); (Name(s) of any other party to the proceeding before the official or agency),	)	
	)	
Appellee(s).	)	
	)	

STATEMENT OF THE CASE

(State the facts)

(State the reasons you are filing the appeal)

(State the result you would like to achieve)

DATED: (Name of the City you are in), (State), (Date document is signed).

_____
(Your signature)

(Print or Type your name here)

Form 29-B. Designation of Record on Appeal to Accompany the Notice of Appeal to the Circuit Court.

IN THE CIRCUIT COURT OF THE (insert the judicial circuit no.) CIRCUIT

STATE OF HAWAIʻI

(Your name),	)	Civil No. _____
	)	
Appellant,	)	Agency Docket/Case No. _____
	)	
vs.	)	
	)	DESIGNATION OF RECORD ON APPEAL
(Name of governmental official or agency whose order or decision is being appealed); (Name(s) of any other party to the proceeding before the official or agency),	)	
	)	
Appellee(s).	)	
	)	

DESIGNATION OF RECORD ON APPEAL

Pursuant to Rule 72(d) of the Hawaiʻi Rules of Civil Procedure, Appellant hereby designates as the Record on Appeal the entire file of the (insert the name of agency that made the decision being appealed) in the above-captioned matter, as defined in section 91-9(e), Hawaiʻi Revised Statutes, including all pleadings, transcripts, and exhibits.

DATED: (Name of the City you are in), (State), (Date document is signed).

_____
(Your signature)
(Print or Type your name here)

Form 29-C. Order for Certification and Transmission of Record to Accompany the Notice of Appeal to the Circuit Court.

IN THE CIRCUIT COURT OF THE (insert the judicial circuit no.) CIRCUIT

STATE OF HAWAIʻI

(Your name), Appellant, vs. (Name of governmental official or agency whose order or decision is being appealed); (Name(s) of any other party to the proceeding before the official or agency), Appellee(s).	Civil No. _____ Agency Docket/Case No. _____ ORDER FOR CERTIFICATION AND TRANSMISSION OF RECORD

ORDER FOR CERTIFICATION AND TRANSMISSION OF RECORD

TO: (Insert name of agency that made the decision being appealed)
(Address of agency)

In accordance with section 91-14(d), Hawaiʻi Revised Statutes, and Rule 72(d) of the Hawaiʻi Rules of Civil Procedure, you are hereby ordered to certify and transmit to this Court, within twenty (20) calendar days of the date of this Order, or within such further time as may be allowed by this Court, the entire record as defined by section 91-9(e), Hawaiʻi Revised Statutes, and as set forth in the Designation of Record on Appeal. Any request to enlarge time shall be submitted to the Court prior to the expiration of the above 20-day period.

DATED: (Name of the City the Court is in), (Name of State), _____.

_____
CLERK OF THE ABOVE-ENTITLED COURT

Form 29-D. Certificate of Service to Accompany the Notice of Appeal to the Circuit Court. (Mail a copy of all the documents submitted to the Court to each of the Appellees listed)

IN THE CIRCUIT COURT OF THE (insert the judicial circuit no.) CIRCUIT

STATE OF HAWAIʻI

(Your name),	)	Civil No. _____
	)	
Appellant,	)	Agency Docket/Case No. _____
	)	
vs.	)	
	)	CERTIFICATE OF SERVICE
(Name of governmental official or agency whose order or decision is being appealed); (Name(s) of any other party to the proceeding before the official or agency),	)	
	)	
Appellee(s).	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the document within was served by depositing a copy of the same in the U.S. mail, postage prepaid to the following:

(Insert name of agency that made the decision being appealed)
(Address of agency)

(Insert name(s) and address(es) of each Appellee, or if the Appellee has an attorney, the name and address of the Appellee's attorney)

DATED: (Name of City you are in), (Name of State you are in), (Date of mailing).

(Your signature)
(Print or Type your name here)

Form 30. Suggestion of Death Upon the Record Under Rule 25(a)(1).

A. B. (describe as a party, or as executor, administrator, or other representative or successor of C. D., the deceased party) suggests upon the record, pursuant to Rule 25(a)(1), the death of C. D. (describe as party) during the pendency of this action.

Form 31. Garnishee Summons and Order.

STATE OF HAWAIʻI CIRCUIT COURT OF THE FIRST CIRCUIT	**GARNISHEE SUMMONS AND ORDER** (***For use in the First Circuit Only***)	CASE NUMBER

PLAINTIFF	DEFENDANT
GARNISHEE (Name and Address)	PLAINTIFF'S ATTORNEY (Name and Address) _____ JUDGMENT AMOUNT DUE _____ DATE OF JUDGMENT ORDER

TO: ANY OFFICER IN HAWAIʻI AUTHORIZED TO MAKE SERVICE
You are COMMANDED to leave a true and attested copy of this Summons and Order with each garnishee named above.

TO: GARNISHEE: You, as garnishee, are **required EITHER** to appear in court **OR** to file a disclosure with the court.

Appearance: You must appear personally before the Judge presiding in the case designated above, at the location indicated immediately below:

☐ **777 Punchbowl Street** **or** ☐ **1111 Alakea Street,**

Honolulu, Hawaiʻi, 96813, at 9:00 a.m. You must appear at the court designated above on the first TUESDAY that occurs more than 20 days after the day you were served, provided the Tuesday is not a holiday. If it is a holiday, you must appear the next Tuesday that is not a holiday.

Written Disclosure: You must file your written disclosure in the First Circuit, State of Hawaiʻi, **and** serve a copy of it on the plaintiff or the plaintiff's attorney, within 20 days counting from the day after you were served. Your disclosure **must** be made under Oath. It **must** state whether, at the time of service:
(a) You had any goods or effects of the Defendant in your possession, and if so, their nature, amount, and value; OR
(b) You were indebted to the Defendant, and if so, the nature and amount of the debt; OR
(c) You had any monies of the Defendant in your possession for safekeeping and, if so, the amount thereof.

* * * * * * * * * * * * *

Regardless of whether you choose to appear or file a disclosure, you, as garnishee, are HEREBY ORDERED to hold and secure from the time of service of this summons, and until further ordered by the court, an amount of money equal to 120% of the amount of the judgment indicated above, including costs and interest. *See* H.R.S. Chapters 652 & 653 as amended.

*SEE REVERSE, REGARDING FEDERAL WAGE GARNISHMENT LAW, FOR APPLICABLE RESTRICTIONS.
You may also wish to obtain "Garnishee Information" (Form 1DC27) on the Judiciary's website or from a court clerk.

DATE ISSUED	CLERK	

In accordance with the Americans with Disabilities Act and other applicable State and Federal laws, if you require a reasonable accommodation for a disability, please contact a disabilities accommodations coordinator at the relevant court or email adarequest@courts.hawaii.gov at least ten (10) working days prior to your hearing or appointment date.

H.R.S. Section 652-1, which governs the garnishee process, states the garnishee shall withhold, immediately upon the service of process, a portion of the salary, stipend, commissions, wages, annuity or net income under a trust (included under the term "wages" as provided by law) remaining after the deduction of any other amounts required by law to be withheld, as follows: five percent of the first $100 per month, ten percent of the next $100 per month, and twenty percent of all sums in excess of $200 per month, or the equivalent portion of the above amount per week, whether then or thereafter to become owing.

H.R.S. Section 652-9 states the garnishee may be provided a hearing before a judge, if the plaintiff is given proper notice. Therefore, if a garnishee desires such a hearing, the garnishee may apply to the district judge or any judge of the court from which the summons issued, and the judge, having caused the plaintiff to be given reasonable notice, shall proceed to take the deposition of the garnishee, and shall then make any and all appropriate orders, at any time *before* the appointed time for the hearing on the garnishee summons and order. The completion of such a deposition by the garnishee shall fulfill the summons. If it appears there are conflicting claims to (1) any funds held for safekeeping, or (2) any debt or goods or effects in the garnishee's hands, then any time after the summons is served the garnishee may be permitted, upon order of the judge, to pay into the court any such funds held for safekeeping, debts, goods, or effects. The garnishee may deduct reasonable costs and attorney's fees allowed by the judge before depositing the funds or effects. The garnishee will thereupon be discharged. Regardless of whether the garnishee makes such payment into the court, any garnishee may, if there are conflicting claims to any such funds or effects, make application to the court for an interpleader order, and the judge shall thereupon make any and all just and reasonable orders.

NOTE: (1) "Wages" includes salary, stipend, commissions, wages, annuity or net income or portion of net income under a trust.
(2) No pension to which any person is entitled from the State of Hawaiʻi or any municipal subdivision thereof, shall be subject to taxes nor to garnishment, attachment, or execution upon or in any suit, action, or proceeding at law instituted by any person or by the State of Hawaiʻi or by any municipal subdivision thereof. (H.R.S., Section 653-3).

IMPORTANT NOTICE REGARDING FEDERAL WAGE GARNISHMENT LAW.
The garnishment restrictions of Title III of the Consumer Credit Protection Act (15 U.S.C. 1673) provide that no court of the United States or of any State may make, execute, or enforce any order or process which provides for the garnishment of the aggregate disposable earnings of any individual for any pay period in an amount which is in excess of the following:

EFFECTIVE JULY 2009

Weekly	Bi-Weekly	Semi-Monthly	Monthly
$217.50 or less:	$435.00 or less:	$471.25 or less:	$942.50 or less:
None	None	None	None
More than $217.50 but less than $290.00:	More than $435.00 but less than $580.00:	More than $471.25 but less than $628.33:	More than $ 942.50 but less than $1,256.66:
Amount above $217.50	Amount above $435.00	Amount above $471.25	Amount above $942.50
$290.00 or more:	$580.00 or more:	$628.33 or more:	$1,256.66 or more:
Maximum 25%	Maximum 25%	Maximum 25%	Maximum 25%

NOTE: These restrictions do not apply in the case of (1) Court orders for the support of any person; (2) Court orders under Chapter XIII of the Bankruptcy Act; and (3) Any debt due for any State or Federal tax. The amount of disposable earnings exempt from garnishment must be paid to the employee or garnishee on the regular pay day for the pay period in which the wages were earned.

"Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

The above language is for informational purposes only.
Please refer to the applicable Federal and Hawaiʻi law for any changes or updates.