

RE: **Hawai'i Court Records Rules**
 Hawai'i Electronic Filing and Service Rules

The Supreme Court of Hawaii seeks public comment regarding proposals of the Hawaii Court Records Rules and Hawaii Electronic Filing and Service Rules.

The Judiciary is planning to implement electronic filing for all cases in the appellate courts and for criminal cases in the trial courts in the year 2010. Civil electronic filing should launch before or during 2012.

The Hawaii Court Records Rules would govern access to court records in both hard copy and electronic form. The Hawaii Electronic Filing and Service Rules sets forth procedures by which court documents should be electronically submitted.

Comments about the proposed rules should be submitted, in writing, **no later than March 8, 2010**, to the Judiciary Public Affairs Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the [online form](#) on the Judiciary's website at www.courts.state.hi.us.

Attachment

**Proposed
HAWAII COURT RECORDS RULES**

Rule 1. SCOPE. These rules govern court and ADLRO records, unless otherwise specified.

Rule 2. DEFINITIONS.

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

2.2 Account number means numbers, letters, symbols or combinations thereof that identify tangible or intangible property. Such property includes, but is not limited to, bank accounts, credit union accounts, credit cards, savings bonds, investment accounts, lines of credit, revolving fund accounts, and the like.

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

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

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

2.6 Business hours are the hours the office of the record custodian is open to conduct public business. Business hours are established pursuant to HRS § 78-1.6.

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

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

2.9 Confidential means not accessible. Synonyms include, but are not limited to,

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protected, restricted, and sealed.

2.10 Discrete information means specific data from a particular court or ADLRO record.

2.11 Docket means a chronological listing of documents and proceedings for each court or ADLRO record.

2.12 Documents mean pleadings, motions, exhibits, orders, judgments, decrees, or other forms of written communication or memorialization traditionally provided to, or created by, the court or ADLRO on paper or electronically, including electronic documents, electronic forms, electronic templates, and electronic reports filed by or with the court or ADLRO by way of conventional or electronic methods.

2.12 Electronic record means the information and documents maintained for each court or ADLRO case in any of the various Judiciary case management systems and data bases.

2.13 Hearing officer means a person designated by the Administrative Director to adjudicate ADLRO cases.

2.14 In camera means submitted solely for a judge's review.

2.15 Individual means a natural person.

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

2.17 Personal information means data used to identify or locate an individual or entity, personal assets, income, or debts, and in which the individual or entity has a significant privacy interest. Personal information includes, but is not limited to, social security numbers, dates of birth, names of minor children, bank or investment account statements, financial records, property inventories, medical and health records, social service reports, and the like.

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2.18 Protected means not accessible. Synonyms include, but are not limited to, confidential, restricted, and sealed.

2.19 Record means the information and documentation of the processes for the exercise of judicial or ADLRO authority, including the documents and process categories set out in Rule 4 of these rules.

2.20 Remote access means the ability to electronically inspect or copy information from an electronic record without the need to physically visit the facility where the record is maintained.

2.21 Requestor means any individual or entity who asks to inspect or copy a record.

2.22 Restricted means not accessible. Synonyms include, but are not limited to, confidential, protected, and sealed.

2.23 Sealed means not accessible. Synonyms include, but are not limited to, confidential, protected, and restricted.

2.24 Segregate means to excise, remove, or mask confidential information from a record.

2.25 Submitted under seal means presented in accordance with Rule 9 of these rules.

Rule 3. DUTY TO MAINTAIN RECORD.

3.1 With respect to court records, the clerk of each court shall maintain a record of each court case, including a docket, and shall maintain other records as required by statute or rule.

3.2 With respect to ADLRO records, the Administrative Director shall maintain a record of each ADLRO case, including a docket, and shall maintain other records as required by

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statute or rule.

Rule 4. CONTENT OF COURT AND ADLRO RECORDS.

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

- (a) all documents related to the case, including correspondence, submitted for filing in any form,
- (b) any written jury instructions given or refused;
- (c) exhibits, including, but not limited to, presentence reports, social work reports,, and tangible items, whether admitted into evidence or refused, provided that exhibits marked for identification but never offered shall not be included;
- (d) court reporters' notes, audio or video recordings of court proceedings, and any transcripts prepared from them;
- (e) a docket;
- (f) minutes¹; and
- (g) information contained in the electronic case management system.

Rule 5. DOCKETING SEALED DOCUMENTS, EXHIBITS, OR EVIDENCE.

A document, exhibit, or other evidence that is sealed, made confidential by rule, order or statute, or otherwise protected from public disclosure shall be listed on the docket in the same manner as other documents, exhibits, or evidence. Access to sealed documents, exhibits, or other evidence is governed by Rule 10.4 of these rules.

¹ Pursuant to HRS § 604-17, minutes are part of each district court's record. I am aware that we have case law saying minutes are not part of a circuit court record and there is some consensus minutes are not reliable. Because minutes are part of the district court's record by statute, I have included them here, but the section could be more specific ("district court minutes") or could be eliminated.

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Rule 6. DOCKETING PROPOSED DOCUMENTS SUBMITTED FOR SIGNATURE.

Except as provided in Rule 9 of the Hawai‘i Electronic Filing and Service Rules, proposed findings, conclusions, orders, or judgments submitted for signature shall be dated and stamped "lodged" or "received" by the clerk, listed on the docket, and transmitted to a judge or hearing officer for consideration. Judgments or orders shall be filed only at the direction of a judge, hearing officer, or as otherwise authorized by law or rule of court.

Rule 7. ELECTRONIC INFORMATION.

Information in electronic case management systems, including imaged documents, shall be maintained by the Clerk (A) in cooperation with the Administrative Director^[2] and information technology personnel, (B) in conformity with data integrity standards established by the Administrative Director, and (C) in compliance with the Records Control Schedules adopted by the supreme court.

Rule 8. REJECTION; NOT GENERAL REPOSITORY.

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

8.2 Not a General Repository. Neither the Court Administrator’s nor the Clerk’s Office, nor the ADLRO are general record repositories, and the administrator or clerk need not accept documents or other items that are not related to a case or that are not otherwise required

² The Administrative Director is included because centralized electronic record systems are maintained by ITCD, an administrative division under the direction of the Administrative Director. The Clerk is the legal custodian of such records, but they can be maintained only in cooperation with ITCD.

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by law or rule to be kept and/or maintained by the court or ADLRO.

Rule 9. PARTIES’ RESPONSIBILITY TO PROTECT PERSONAL INFORMATION AND ACCOUNT NUMBERS.

9.1 Prohibition; Required Form. Except as provided in this Rule 9, in cases initiated after <date> and notwithstanding any other rule to the contrary, a party shall not include personal information or account numbers in any accessible document filed in any state court or with ADLRO. Personal information shall be submitted under seal by means of a Confidential Information Form or a Sealed Financial Account Numbers Form that substantially conforms to either HCRR Form 1 or HCRR Form 2 of these rules.

9.2 Sealed Envelope. The completed paper form containing personal information shall be placed in a 9" x 12" envelope (or larger) and sealed.

9.3 Fly Sheet. A fly sheet that substantially complies with HCRR Form 3 of these rules shall be appended to the front of the sealed envelope. The fly sheet shall be captioned in accordance with the rules governing the proceeding, titled “CONFIDENTIAL INFORMATION,” and shall include the following: (A) the case name and number; (B) the title of the form used (*i.e.*, Confidential Information Form or Sealed Financial Account Numbers Form); (C) the title(s) or description of the submitted item(s); (D) the name, address, and telephone number of the individual submitting the personal or financial information under seal; and (E) the statement “submitted under seal, pursuant to Rule 9 of the Hawai‘i Court Record Rules” and any other statute, rule, or order that makes the item confidential, protected, sealed, or restricted.

9.4 Authorized Electronic Filing. If the flysheet and form are submitted by means of the authorized electronic filing process, the flysheet shall be filed as the lead document; the

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form shall be designated for submission under seal and filed as the supporting document.

9.5 Sanctions. The court or hearing officer may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this Rule 9.

Rule 10. ACCESS TO COURT AND ADLRO RECORDS.

10.1 Generally. Except as otherwise provided by statute, rule, or order, court and ADLRO records shall be accessible during regular business hours, subject to priority use by the court, court staff, ADLRO, and ADLRO staff. Closed and archived records shall be accessible within a reasonable time after a request is made, unless the records have been deleted, destroyed, or transferred to another custodian. If the requested record information or documents are available by remote access without fee, the requestor shall be directed to the access site, and no other action need be taken to comply with the request, provided that, when certified copies of documents are requested, the clerk shall copy or print the documents from the paper or electronic record and shall physically or electronically certify the copies.

10.2 Electronic Records, Manner Provided. Information from electronic case management systems, including imaged documents, may be made available by electronic or paper reports, print outs, electronic files, imaged files, internal or external link to a primary or secondary data base, internet access, or by other means that provide the information or copies of documents without compromising the integrity of the electronic case management systems and data bases.

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

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access to any computer system or data base need not be granted, (B) the reporting or transmitting of data and/or the technical and administrative preparation to provide the data will not unreasonably interfere with the Judiciary's operations and/or governmental functions, and (C) the requestor pays all charges for programming the computer systems to report the data, run the reports, and/or link and/or transmit the data to the requestor.

10.4 Restricted Records and Documents.

Unless otherwise ordered by (A) the court that has jurisdiction over a court case, (B) the Administrative Director or the hearing officer's designee having jurisdiction over an ADLRO case, (C) the court that has jurisdiction over an appeal from a court or ADLRO case, or (D) the supreme court, access to restricted records, documents, exhibits, and information shall be limited to the court and court personnel in the performance of their duties, the Administrative Director and his or her subordinates in the performance of their duties, the hearing officer, attorneys of record, and parties to the court or ADLRO case.

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

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

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Form 4 of these rules.

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

10.8 Records Shall Not be Removed From Legal Custody; Exceptions. Records shall not be removed from the legal custody of the Clerk or the Administrative Director except (A) upon order of the court or agency for which the record is maintained, (B) upon appeal, (C) upon order of the supreme court or intermediate court of appeals, (D) in accordance with rules governing retention of exhibits and transcripts, or (E) in accordance with retention schedules adopted by the supreme court.

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

10.10 Time to Make Record Available; Notice. Upon receipt of a request for an accessible record, the Clerk shall make the record available for inspection and copying within a reasonable time, subject to the court's or ADLRO's priority use of the record and the payment of fees, if any. If the request to inspect or copy cannot be accommodated within 10 days, the Clerk shall notify the requestor and provide an estimated date when the record will be available for inspection or copying. If the request is for a restricted record and the requestor is not of the class of persons having a right of access to the restricted record under Rule 10.4 of these rules, the Clerk shall notify the requestor forthwith that the Clerk cannot provide the record without an order of the court for court records, or an order of the Administrative Director for ADLRO

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records.

10.11 Inspection and Copying Fees; Court Records. Fees for inspecting, copying, and transmitting copies of court records shall be charged in accordance with the provisions of Rule 2.2 of the Rules of the Circuit Courts, Rule 2.2 of the Rules of the District Courts, and Rule 45 of the Hawai‘i Rules of Appellate Procedure. A court may waive costs and fees for copies of its record when justice so requires. Unless a waiver is granted or an exemption applies, no records or copies of records shall be released until full payment of fees for the current request, and any previous unpaid fees, are received.

10.12 Inspection and Copying Fees; ADLRO Records. Fees for inspecting, copying, and transmitting copies of ADLRO records shall be in accordance with the Judiciary’s Schedule of Administrative Fees.

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

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

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

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seal, in the record of proceeding before the supreme court.

10.16 Requests for Bulk, Discrete, or Compiled Electronic Information. Requests for bulk, discrete, or compiled electronic information shall be made to the Administrative Director in accordance with Rules 10.17, 10.18, and 10.19 of these rules.

10.17 Electronic Court and ADLRO Records: Requests for Bulk or Discrete Data and Compiled Information.

(a) The Administrative Director may grant requests for bulk, discrete, or compiled information from accessible electronic court and ADLRO records or from restricted records, provided (1) the bulk or discrete data distribution, compiling of information, and/or transmission of data will not unreasonably interfere with the Judiciary's operations and/or governmental functions, (2) the requestor pays all charges for programming the computers, linking systems, and transmitting the data, and (3) when required by law, access is approved by a court of competent jurisdiction. A requestor should not be granted direct access to any production computer system or data base in the usual course. The Administrative Director may take such actions as are necessary to protect the Judiciary's computer systems, data bases, and web sites from automated data mining.

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

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

(d) The Administrative Director may approve a request for bulk, discrete, or compiled information upon finding that (1) approving the request is consistent with these rules and any

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statutes that govern access to court records, (2) resources and technical capacity are available to prepare the information, (3) fulfilling the request is an appropriate use of public resources, and (4) distributing or compiling the information will not interfere with the Judiciary's operations and/or governmental functions. In lieu of the process set out in this Rule 10.17, the Administrative Director may require that requests for bulk, discrete, or compiled information be made to, and processed by, the Hawai'i Information Consortium.

(e) The Administrative Director shall require a requestor to pay reasonable charges to distribute bulk, discrete, or compiled information.

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

10.18 Electronic Court and ADLRO Records: Delivery Methods.

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

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

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

(d) EXTRACTING INFORMATION. The Judiciary need not extract specific information

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

10.19 Electronic Court and ADLRO Records: Service Providers.

The Judiciary may provide information through service providers subject to the following conditions:

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

(b) **REVIEW AND SEGREGATION OF RECORDS.** Before records are provided to information service providers, the Judiciary may review, redact, and/or segregate records to filter information protected from disclosure.

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

(d) **RELEASE AND INDEMNIFICATION.** Any contract with an information service provider shall include a release and indemnification clause, (A) releasing the Judiciary and its officers and employees from liability for any information supplied and (B) indemnifying the Judiciary and its officers and employees in any lawsuit.

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

(f) **CONFIDENTIALITY.** Any contract with an information service provider shall include a

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provision that agrees to maintain confidentiality of restricted information in accordance with the terms of the contract.