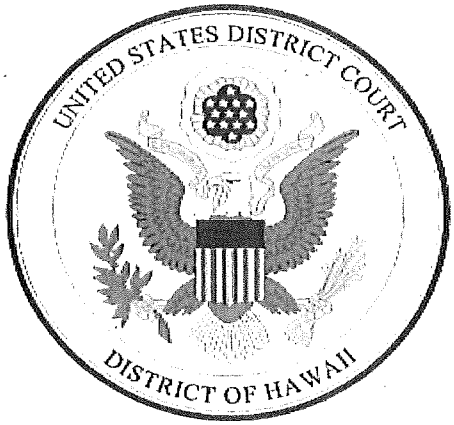
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII



REPRESENTING YOURSELF
IN
FEDERAL COURT IN HAWAI'I

Rev 05/2013

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I. INTRODUCTION

This handbook is intended to assist the person who represents himself/herself in litigation. Those who proceed without counsel are *pro se*, a Latin phrase that means "for yourself." The purpose of this handbook is to provide pro se litigants with practical and informative reference material related to litigation at the United States District Court, District of Hawaii exclusively.

This handbook in only a guide. It does not:

- answer all questions regarding federal civil practice and is not a substitute for statutes, rules and case law;
- take the place of the Federal Rules of Civil Procedure or the Local Rules of this court; or
- relieve any party from the responsibilities of complying with any obligation imposed by law.

All parties are responsible for researching and complying with the law. It is important to understand that employees of the Clerk's Office and judicial staff are prohibited from giving legal advice to any litigant.

Court staff cannot:

- Interpret rules, statutes or other law, or interpret any substantive matters contained in pleadings or orders;
- Recommend a course of action;
- Predict a decision of a judge;
- Interpret the meaning or effect of any Court order or judgment; or
- Assist or do legal research.

II. GENERAL INFORMATION

Documents may be filed in this Court with the Clerk's Office in person or by mail at:

United States District Court
Clerk's Office
300 Ala Moana Blvd. Room C-338
Honolulu, Hawaii 96850

The Clerk's Office is open to the public from 8:30 a.m. to 4:00 p.m. Monday through Friday, except Prince Kuhio Day, King Kamehameha Day, Admissions Day and federal holidays. The telephone number is (808) 541-1300. When the Clerk's Office is closed, a "drop box" located directly outside the Courthouse is available for receiving documents for filing. Perfected documents placed in the drop box and date stamped after office hours will be stamped as filed when placed in the "drop box".

An original and two (2) copies of all motions, memoranda, briefs, and other supporting documents must be filed on 8 ½ x 11 inch white paper in accordance of Local Rule 10.2. A copy of every document filed or sent to the Clerk's Office must also be served on the opposing party or counsel. A copy of any document filed with the Clerk's Office should be kept by the filer for their records.

III. RULES AND PROCEDURES FOR FILING A CASE IN DISTRICT COURT

All case participants are equally subject to the rules of procedure for any court a case is filed. The federal courts are governed by the Federal Rules of Civil Procedure (Fed. R. Civ. P.) http://www.law.cornell.edu/rules/frcp/index.html and the Federal Rules of Criminal Procedure (Fed. R. Cr. P.) http://www4.law.cornell.edu/uscode/18, as well as Federal Rules of Evidence, Appeals, etc. Parties may refer to Black's Law Dictionary or other similar reference material for clarification. Such materials may be found at the library or online.

In the United States District Court for the District of Hawaii, all procedures are governed not only by the federal rules of procedure, but also by the Local Rules of Practice for the United States District Court for the District of Hawaii http://www.hid.uscourts.gov/misc/lrfinal6-2003.pdf. The numbering system of the Local Rules coincides with the numbering system of the federal rules, for easy reference.

IV. HOW TO START A NEW CASE

A. Filing a Complaint

The plaintiff is the party who brings the lawsuit by filing a complaint. The original signed complaint and two identical copies for the court plus additional copies for service and your records should be submitted together with:

1. a completed civil cover sheet, which can be obtained from the Clerk's Office or on-line at www.hid.uscourts.gov
2. an original and two copies of a summons, and
3. the $400.00 filing fee unless the plaintiff is applying to proceed *In Forma Pauperis* (IFP), a legal term derived from the Latin phrase 'in the form of a pauper', i.e. someone who is without the funds to pursue the normal costs of a lawsuit. Local Rule 10.2 explains in detail the format in which the complaint must be filed. If the plaintiff cannot afford to prepay the $400.00 filing fee, the plaintiff may apply to proceed In Forma Pauperis without prepayment of fees. This does not automatically waive other costs such as copying, which will be charged at $.50 per page, if it is done by the Court.

The requirements for prisoners seeking to waive prepayment of fees differ from those who are not incarcerated. Prisoners should carefully read the instructions attached to the Court's form. The Clerk's Office will accept a complaint without the filing fee if, at the time the case is filed, the plaintiff files the appropriate application. The forms are available upon request from the Clerk's Office. If the application to waive prepayment of fees is denied, the entire filing fee must be paid before the case will proceed. If the filing fee is not paid within a specified period of time, the case could be dismissed. In addition, the Court is required to dismiss the complaint if the Court finds the facts contained therein are not factual.

B. Contents of the Complaint

A complaint should contain the following information:

1. **Name of the court**
   United States District Court for the District of Hawaii
2. **Plaintiff's name, address, and telephone number**
   Place this information at the top left hand corner of the first page of the complaint. It is mandatory that the Clerk's Office and opposing party be informed of your current address and telephone number during the entire

lawsuit. This information should be included on the first page of **all documents** filed.

3. **Full names of ALL defendants**
   On the complaint; "*et al.*" may not be used to describe defendants; each defendant must be listed by name.
4. **Title of the pleading and all attached documents**
   ie. Complaint, Exhibits: A-E, Certificate of Service

EXAMPLE

Plaintiff name
Plaintiff address
Plaintiff telephone number

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Plaintiffs' Complete Names (List All)	)	
	)	Civil No. _____
vs.	)	Complaint; (List All Attached Documents)
Defendants' Complete Names (List All)	)	
_____	)	

5. **The jurisdiction or reason the case is being filed in federal court**
   Jurisdiction is the authority of a court to hear and decide certain cases. For a court to render a valid judgment, it must have jurisdiction over the subject matter or the person or entities involved. A federal court is authorized to hear disputes that fall into the following four categories:
   - questions involving the United States Constitution,
   - questions of federal law (as opposed to state law),
   - the United States is a party,

- and disputes between residents of different states (known as diversity of citizenship) where the amount in controversy is more than $75,000.

6. **A short and plain statement of the claim**
   Describe the facts as if briefly telling someone what happened. Describe how each and every defendant, by name, erred or caused injury. The complaint should not contain legal arguments or citations. An attempt to use legalese (legal jargon) is not necessary.
7. **A demand for the relief requested**
   State a relief that the judge can order.
8. **Jury demand** (optional)
   If a jury trial is sought, the demand for a jury shall be placed conspicuously on the first page of the complaint.
9. **The Plaintiff's original signature**
   This may not be a photocopy.

NOTE:
Rule 11 requires all papers to be signed by the attorney (if party is represented) or by the filer (if party is pro se). The paper must also state the signer's address, e-mail address, and telephone number. Refer to Federal Rules of Civil Procedure Rule 11 for sanctions.

The Court is required to dismiss a complaint under 28 U.S.C. §§ 1915 and 1915A, if the Court determines that the action is (i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

C. Service of the Complaint

Each defendant must be notified of the lawsuit through service of a summons and a copy of the complaint or via waiver of service forms. The plaintiff is responsible for this "service of process." Summons and waiver forms can be obtained from the Clerk's Office and on-line. After a non-prisoner properly completes the summons form, the Clerk's Office will officially issue the summons.

Detailed provisions on how to serve the defendant are contained in Rule 4 of the Federal Rules of Civil Procedure. The service of process requirements can be satisfied in one of three ways:

1. **Personal Service**: The summons and complaint must be served by a person over eighteen years old and who is not a party to the case. Private process servers do this for a fee. The name of the person who serves the summons and complaint, the name of the person served, and the date and time of service must be recorded on the summons form. If this section of the summons is not filled out, service is not complete. The original summons form with the completed "return of service" must be returned to the court. Generally, a defendant must file an answer or otherwise respond to the complaint within 20 days of service of process, and 60 days if the defendant is a federal government agency, unless otherwise ordered by the Court.

2. **Waiver of Service**: Rule 4 permits a defendant to waive personal service of process. This means that the defendant agrees to respond to the complaint without being officially "served" with it. The waiver of service of process forms are available from the Clerk's Office and on-line, and must be mailed to the defendant with a copy of the complaint. If the defendant completes and returns the waiver, the burden of personal service and expenses associated with it will be spared. However, the time within which the defendant must answer is increased to 60 days. With some exceptions, if the defendant fails to waive service, defendant will be responsible for the costs of service.

3. **Service by the U.S. Marshal**: If a judge approves an application to waive prepayment of fees, the judge may direct the U.S. Marshal to serve the summons and complaint. The summons will not be issued until the judge enters an order directing service. Upon the issuance of the summons, the plaintiff must provide the U.S. Marshals Service ample copies of the complaint, summons and waiver of service forms.

   A Completed "Form USM-285" for each defendant for service is required by the U.S. Marshals. The form may be obtained from the Clerk's Office. A *current* mailing address for the defendant is needed. If certified mail is unsuccessful, the Marshal will attempt personal service. Therefore, any information that would help serve a defendant personally should be put in the remarks section of the form. This includes place and address of work; physical residence address in addition to any P.O. Box (since no one can be personally served at a post office box); phone numbers for work and/or residence; and any other information that might help locate the defendant for service.

Service of process must be completed within 120 days after the filing of the complaint. It is the plaintiff's responsibility to see that the complaint is served. If the complaint is not served within 120 days, the case may be dismissed.

D. Civil Cover Sheet

On the civil cover sheet, the plaintiff provides the information to the Clerk's Office necessary to properly open the case. It must have plaintiff's original signature, and must be included with the complaint. This form may be obtained from the Clerk's Office and on-line.

V. WHEN A CASE IS AT ISSUE

Once the defendant(s) have been served with a copy of the complaint, the defendant(s) must file an answer or some other response within a specified time. Each defendant is required to provide a copy of the answer or response to the plaintiff. Once each defendant has filed a response to the complaint, the case is considered at issue. When a case is at issue, the court may conduct a Rule 16 Scheduling Conference and enter an order scheduling deadlines.

A. Referral/Consent to a Magistrate Judge

Magistrate judges are appointed by this Court to assist in the management of cases. Magistrate judges may perform a full range of duties, including holding jury and non-jury trials, with consent of the parties. Cases before magistrate judges may proceed on a faster track. Consent is given when a Consent to Exercise of Jurisdiction by a United States Magistrate Judge form is signed and filed. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge assigned the case.

B. Motions

If requesting the Court to do something related to the case, a motion must be filed. DO NOT write a letter or send a motion directly to the judge. Multiple or frivolous motions can result in sanctions by the Court. Only parties to an action before this Court may file motions.

The caption of a motion looks much like a complaint, except that all the defendants do not need to be listed. The case caption may list the first named defendant, and "*et al.*" on a motion. Be specific and concise about what is being requested so the Court can understand the request. Also, briefly state any law relevant to that request, if available. Attach any documents that support the motion. Use only relevant portions of lengthy documents, so that the judge reads only what is necessary to make a decision. Provide proof that the documents are what they claim to be. The party submitting the documents must declare under penalty of perjury that the documents are true and correct copies, and must say where the party obtained the documents.

The original document must be signed by the filer and submitted with two copies to the Clerk's Office. All documents must be served on the opposing parties at or before the time it is filed, except the initial complaint. Include a certificate of service stating the date a copy of the document was mailed, postage prepaid, to the opposing party or the party's attorney, and the address to which it was mailed. A certificate of service may be written in the following form at the end of the

document:

EXAMPLE

I hereby certify that a copy of the above (name of document) was served upon (name of opposing party or counsel) by (mail/fax/handdelivery) at _____(address)_____on ___(date)_____.

_____
(Signature of person servicing)

Any objection to a motion, called an **opposition**, shall be served and filed not less than 18 days prior to the date of hearing of the motion. Otherwise, the opposing party is considered to have **waived** any objections. The party who filed the motion may file a reply in support of their motion not less than 11 days prior to the date of hearing. The reply must respond only to arguments raised in the opposition, and may not present new arguments. Local Rule 7.1 explains the requirements for filing and responding to motions in this Court.

C. Discovery

Discovery is the name given procedures for obtaining facts and information about the case from the opposing party before trial. The rules regarding discovery, Rules 26 through 37 of the Federal Rules of Civil Procedure, are complex. Rule 26 describes the mandatory exchange of information between parties. Rule 37 outlines the recourse and sanctions for failure to make disclosures.

Ordinarily the Court does not get involved in the request and/or exchange of discovery. If the parties have a discovery dispute, they should first make a good faith effort to resolve the dispute between themselves. If they are unable to reach agreement, a party may then move to **compel** discovery. The motion to compel must include a certified statement, in the first paragraph of the motion, that the party has made a **good faith effort** to obtain the information or material without court action. Very often, discovery disputes are heard by a magistrate judge. Sanctions can be awarded against parties who abuse the discovery process.

D. Dispositive Motions

Dispositive motions are motions that dispose of the case before trial. Two common types of dispositive motions are motions to dismiss and motions for summary judgment.

1. **Motion to Dismiss** (Federal Rule of Civil Procedure Rule 12(b)):
A defendant may move to dismiss a complaint for a variety of reasons. Some common grounds for dismissal are lack of jurisdiction over the subject matter (including failure to exhaust administrative remedies) and failure to state a claim upon which relief may be granted. A motion to dismiss is addressed to defects in the complaint, for example: the plaintiff may actually have a valid claim, but may not have properly stated it in the complaint. When a motion to dismiss is granted, the Court may provide an explanation of the defects in the complaint and give the plaintiff an opportunity to correct them.

2. **Motion for Summary Judgment** (Federal Rule of Civil Procedure 56):
A motion for summary judgment is a request for an order of judgment without trial in favor of the party requesting summary judgment. Summary judgment is a method for promptly disposing of claims in which there are **no genuine issues to be tried** or in which only a question of law is involved, which avoids unnecessary trials. A motion for summary judgment presents facts that are not in dispute, and argues that these facts entitle the moving party to judgment as a matter of law. If summary judgment is not opposed, the Court may, but is not required to, grant the motion.
Any party who opposes the motion for summary judgment shall file and serve with their opposing papers a separate document containing a concise statement that:
   1. Accepts the facts set forth in the moving party's concise statement; or
   2. Sets forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

   Focus of the Concise Statement. When preparing the separate concise statement, a party shall reference only the material facts which are absolutely necessary for the court to determine the limited issues presented in the motion for summary judgment and each reference shall contain a citation to a particular affidavit, deposition, or other document which supports the party's interpretation of the material fact. Documents referenced in the concise statement shall not be filed in their entirety. Instead, the filing party shall extract and highlight only the relevant portions of each referenced document. Photocopies of extracted pages, with appropriate identification and highlighting will be adequate.

The party moving for summary judgment must prove two things: (1) that there is no genuine issue of material fact; and (2) that the party is entitled to judgment as a matter of law. On the other hand, if the opposing party shows there is a genuine issue of material fact or that the moving party is not entitled to judgment as a matter of law, summary judgment will not be granted, and the parties may proceed to trial.

E. JUDGMENT AND NOTICES OF APPEAL

Final judgment will be entered upon the return of a jury verdict or following a decision by the Court. Appeals from decisions of the judges of the District of Hawaii are heard by the United States Court of Appeals for the Ninth Circuit, headquartered in San Francisco, California. A notice of appeal must be filed here in U.S. District Court. The Federal Rules of Appellate Procedure describe the requirements for filing an appeal. The appeal must be filed within the time limits in Federal Rule of Appellate Procedure 4. The time to file an appeal begins to run when the final order or judgment is entered on the docket. The filing fee for an appeal is $ 455.00.

VI. FORMS INDEX

Forms to be used by Civil Litigants: http://www.hid.uscourts.gov/forms/civil.htm

- Civil Cover Sheet ..... JS 44
- Summons in a Civil Action ..... AO 440
- Subpoena in a Civil Case ..... AO 88
- Application to Proceed Without Prepayment of Fees and Affidavit ..... AO 240
- Notice, Consent and Order to Proceed before a United States Magistrate Judge ..... AO 85
- Waiver of Service ..... AO-398-399 Package
- Exhibit and Witness List ..... AO 187

Forms to be used by Prisoner Pro Se Litigants:

- Instructions for Filing a Prisoner Civil Rights Complaint in the United States District Court for the District of Hawaii ..... HI 1983 Inst
- Prisoner Civil Rights Complaint Form ..... 1983 FORM
- Instruction Sheet for Prisoner IFP Form ..... IFP Info
- Application to Proceed In Forma Pauperis by a Prisoner ..... IFP Form
- Petition for Relief From a Conviction or Sentence By a Person in State Custody - Petition Under 28 U.S.C. §2254 ..... AO241
- Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody - Motion Under 28 U.S.C. §2255 ..... AO243

VII. SERVICE PURSUANT TO RULE 4

NOTICE TO PARTIES

REGARDING SERVICE PURSUANT TO RULE 4 OF THE FEDERAL RULES OF CIVIL PROCEDURE

WAIVER OF SERVICE OF SUMMONS

Rule 4(d) provides that a plaintiff may request that a defendant waive personal service of the complaint and summons, as required by Fed. R. Civ. P. 4(e)(2), by notifying the defendant that an action has been commenced and requesting that the defendant waive *personal* service of the summons and accept service of the complaint by mail.

To request such a waiver, a plaintiff may send a notice of the commencement of an action, titled "Notice of a Lawsuit and Request to Waive Service of a Summons" (AO398 form), a "Waiver of the Service of Summons" (AO399 form), and a copy of the endorsed complaint to the defendant by first class or certified mail. The plaintiff must also provide a prepaid means for the defendant to return the waiver form.

EFFECT OF WAIVER OF SERVICE OF SUMMONS

When the defendant timely signs the waiver of service of summons and it is filed with the court, the action proceeds as if service of the summons and complaint had been personally made, rather than by mail. By agreeing to waive service of the summons, the defendant is allowed **sixty [60] days** to file an answer to the complaint, as calculated from the date the notice and request for waiver of service was sent, rather than the twenty [20] days allowed after personal service is effected. *See* Fed. R. Civ. P. 4(d)(3) and Rule 12(a)(1)(B). **The defendant does not waive any objection to venue or jurisdiction of the court over the person by agreeing to waive service of the summons.**

If a waiver is not timely returned, or a defendant refuses to waive service, plaintiff is required to serve the summons and complaint as specified in Fed. R. Civ. P. 4(c) and 4(e). A defendant who fails to waive service of summons after a proper request has been made will be assessed the costs incurred to effect personal service on that defendant. *See* Fed. R. Civ. P. 4(d)(2).

Copies of the "Notice of a Lawsuit and Request to Waive Service of a Summons" (AO398), and the "Waiver of the Service of Summons" (AO399), are available from the Clerk of the United States District Court for the District of Hawaii and on the court's website: http://www.hid.uscourts.gov.

UNITED STATES DISTRICT COURT

for the

District of Hawaii

_____ *Plaintiff*	)	
v.	)	Civil Action No.
_____ *Defendant*	)	

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: _____

(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within _____ days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____

_____
Signature of the attorney or unrepresented party

_____
Printed name

_____
Address

_____
E-mail address

_____
Telephone number

UNITED STATES DISTRICT COURT

for the

District of Hawaii

_____ *Plaintiff*	)	
v.	)	Civil Action No.
_____ *Defendant*	)	

WAIVER OF THE SERVICE OF SUMMONS

To: _____
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

_____
Signature of the attorney or unrepresented party

_____
Printed name of party waiving service of summons

_____
Printed name

_____
Address

_____
E-mail address

_____
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

VIII. LINKS

United States District Court, District of Hawaii -
http://www.hid.uscourts.gov/

- Local Rules
- Forms
  - Employment Discrimination Complaint
  - Waiver of Service - AO-398, AO-399 and Instructions
  - Summons in a Civil Case
  - Exhibit and Witness List
  - Civil Cover Sheet
- Court Frequently Asked Questions
- Schedule of Fees

Federal Rules of Civil Procedure -
http://www.law.cornell.edu/rules/frcp/index.html

Federal Rules of Criminal Procedure -
http://www4.law.cornell.edu/uscode/18

Federal Rules of Evidence -
http://www.law.cornell.edu/rules/fre/index.html

United States Court of Appeals for the Ninth Circuit - http://www.ca9.uscourts.gov/

IX. SCHEDULE OF FEES

United States District Court –District of Hawaii

Effective –December 1, 2013

Admission of New Attorney	$225.00
Appeal, Notice of	***$505.00**
Appeal from Magistrate to District Judge	$37.00
Apostille	$21.00
Civil Filing Fee - Complaint or Notice of Removal	$400.00
Certification	$11.00
Certificate of Good Standing	$18.00
Certificate of Judgment	$11.00
Copy Fees (per page)	$ 0.50
Duplicate Certificate of Admission	$18.00
Exemplification	$21.00
Filing or Indexing of Misc.Papers	$46.00
Microfilm/Microfiche of Court Records	$ 6.00
Petition for Writ of Habeas Corpus 28:2241; 28:2254	$ 5.00
Power of Attorney	$46.00
Pro Hac Vice	$300.00
Registering Judgment from Another District	$46.00
Retrieval of FRC Records	***$64.00**
Return Check Fee (NSF)	$53.00
Search of Records (per name or item searched)	$30.00
Audio Duplication	$30.00

*** Fee Change.**
FRC Retrieval fee for each additional box is $39.00

X. GLOSSARY OF TERMS

Admissible Evidence: The oral, written or physical items that the Court allows to be introduced at trial to prove a case.

Admission: A Discovery (information gathering) tool by which one party to the lawsuit asks another party to admit or deny the truth of certain important facts.

Affidavit: A written statement of facts made under oath in the presence of a notary public.

Answer: A responsive pleading which is filed by the Defendant to the lawsuit in response to the complaint.

Appeal: A pleading request to a higher court to review the decision of a trial court after the trial.

Appellant: The party who files an appeal.

Appellee: The party against whom an appeal is taken, that is, the party that prevailed in the lower court from which the appeal is taken.

Appellate Jurisdiction: The jurisdiction of one court to review the decisions of other (lower) courts. The United States District Court has limited appellate jurisdiction in some cases over decisions of the bankruptcy court and decisions of Magistrate Judges. Appellate jurisdiction is generally limited to determining questions of law; that is, did the lower court apply the law correctly. Questions of fact are determined by the lower court and are generally taken as true unless unsupported by the evidence.

Arbitration: A way of dispute resolution, in which a neutral third party (arbitrator) hears from both sides to a dispute and makes a decision. Arbitration can avoid delay and high costs of settling a dispute in a court.

Bench Trial: Trial conducted before a judge and without a jury.

Brief: A written statement of the case, including important facts of the case, a statement of questions of law involved, and the arguments and legal authorities relied upon. A brief is usually submitted in connection with an application, motion, trial, or appeal.

Cause: Facts/evidence supporting claim(s) for relief.

Cause(s) of Action: The fact(s) which give rise to a claim of relief against another party; they are stated in the complaint (lawsuit).

Claim: The assertion that is made in the complaint (lawsuit) of a right to property or money from the other party to the lawsuit.

Complaint: The first pleading filed with the Court (the lawsuit). It contains: (1) a statement of the Court's jurisdiction over the parties, such as "diversity of citizenship" jurisdiction for federal courts (lawsuit between citizens of different states), and the subject matter (facts); (2) a statement of claims/causes of action against the Defendant(s); and (3) request(s) for relief, such as monetary damages. Examples of complaints are available for viewing at the Clerk's Office.

Consolidation of Actions: The act of combining several causes of action into one trial when the actions involve the same parties and substantially the same issues and defenses.

Contempt of Court: An act or failure to act which the Court believes obstructs its administration of justice. A Court has the power to punish by fine or imprisonment such contempt of its authority.

Counterclaim: A claim/cause of action stated by the Defendant(s) against the Plaintiff(s), and is either

contained in Defendant(s)' answer or is a separate pleading.

Court Clerk: An officer of the court who files pleadings, motions, judgments, etc., and keeps records of court proceedings.

Court of Appeals: An intermediate appellate court created by Congress. There are thirteen courts of appeal. In general, courts of appeals are geographic; that is, courts of appeal have appellate jurisdiction over district courts located within the geographic jurisdiction of the court. Hawaii is part of the Ninth Circuit, headquartered in San Francisco. Appeals from civil and criminal decisions of the district court are taken in the first instance to the Court of Appeals. In most cases, the parties have an appeal of right to the Court of Appeals -- the Court of Appeals must hear the appeal of a final order or judgment of the district court. Defendant: The party from whom a plaintiff seeks relief in a civil lawsuit, or the accused in a criminal action.

Court Reporter: A person who records testimony at Court proceedings or depositions; transcript of record is available to the parties.

Cross-claim: Any claim stated in a pleading by one party against a co-party.

Damages: Monetary compensation sought or recovered in the Court by any person who has been injured by the action of another. Damages may be collected for personal injury, property damage, etc.

De Novo: Literally, anew. The tribunal will review the matter as though it were being decided for the first time, and will substitute its own judgement for that of the lower tribunal.

Default Judgment: A judgment entered against the Defendant(s) for failure to file an answer or otherwise respond to the Plaintiff's complaint.

Defendant: The party in the complaint (lawsuit) against whom the claim/cause of action is brought.

Defense: A denial or answer offered by the Defendant(s) to diminish or defeat Plaintiff's cause(s) of action.

Deposition: A method of discovery which allows a party to ask questions of a party opponent (such as the Defendant) or a witness under oath, and the questions and answers are recorded in the presence of a court reporter.

Directed Verdict: A verdict entered by the jury at the direction of the trial judge when a party either has proved its case or has failed to present enough evidence to prove its case.

Discovery: A process of obtaining information from a party opponent (such as the Defendant) prior to trial. Discovery includes Interrogatories, Requests for Production of Documents, Admissions, and Depositions. The purpose of discovery are to: (1) obtain and preserve information concerning the claims/causes of action; (2) clarify the factual and legal issues that are in dispute; and (3) obtain information that will lead to evidence admissible in court.

Dismissal: An order disposing of a motion or lawsuit without going through trial.

District Court: The United District Court is the general trial court in the Federal judicial system. There is at least one district court in each state. Hawaii is a single district state.

District Court Judges: United States district court judges are appointed by the President of the United States subject to the advice and consent of the Senate. Once sworn into office district court judges hold office "during good Behavior," that is, for life, and may be removed from office only upon impeachment by the House of Representatives and conviction by the Senate.

Diversity of Citizenship: The basis of federal jurisdiction over cases between citizens of different states (such as when the Plaintiff is from Hawaii and the Defendant is from California), or between a citizen of a state and

an alien (anyone who is not a citizen or national of the United States).

Docket: A formal record containing brief entries of all court proceedings and filed documents.

Equity or Equitable Relief: Any relief other than monetary damages. Equitable relief has its own unique rules (called "maxims") and is designed to provide relief for a wrong or injury when common law relief (money) is either inadequate or unavailable. One of the maxims of equity is: "No injury shall be without a remedy." Equity attempts to do what is fair under all the circumstances and is an area where trial judges have a significant amount of discretion. An example of equitable relief is an injunction prohibiting a person from doing some act. The parties are *not* entitled to a jury as a matter of right when the relief involved is equitable; however, at the discretion of the court an advisory jury may be empaneled as a trier of fact.

Evidence: A broadly inclusive term that encompasses anything that tends to prove or disprove a fact in controversy. Examples of evidence include testimony, pictures, and documents. Evidence may be anything that is capable of being sensed by one of the five senses, as long as it logically tends to prove or disprove a disputed issue of fact and is not otherwise inadmissable under the rules of evidence.

Exhibit: Any physical evidence presented to the court other than testimony by a witness. Exhibits include but are not necessarily limited to: documents; records; physical objects; photographs; audio and video recordings; charts; maps; and depositions.

Expert Witness: A witness who testifies about special knowledge of a subject. Expert witnesses usually are used to help the jury understand difficult and technical subjects which the average person is not familiar with.

Federal Courts: The courts of the United States, as distinguished from the courts of individual states. There are three levels of federal courts: the District Courts (such as the Hawaii District Court), the Courts of Appeals (such as the 9th Circuit Court in San Francisco, CA), and the Supreme Court in Washington, DC.

Federal Question Jurisdiction: The basis of federal jurisdiction over cases in which what is in dispute is the meaning or application of something in the Constitution of the United States (such as civil rights violation of privacy, etc.), Acts of Congress, or treaties.

In Forma Pauperis (IFP): A Latin phrase for "in the manner of a pauper." IFP allows a person without the funds to pursue a lawsuit without paying the court filing fees. Either an IFP application must be submitted, or the payment of the filing fees received, otherwise the case could be dismissed. For civil cases brought in the District Court of Hawaii, if the application for IFP is granted, the filing fees and service fees are waived, however, photocopying fees are still assessed.

In Personam Jurisdiction: This is jurisdiction over the "person" of the parties. Generally *in personam* jurisdiction is dependent upon the presence of the party within the jurisdictional area of the court; or, if not physically present, that the party have some substantial, meaningful contacts with the state so as not to offend the traditional notions of due process, justice, and fair play. When the court exercises *in personam* jurisdiction, it can command the parties to do an act or pay money and may command others, such as the United States Marshal, to assist it in enforcing its commands if a party refuses to do so voluntarily.

In Rem Jurisdiction: Jurisdiction over the subject of the dispute, *i.e.*, over the "thing," usually an item of property physically within the geographic jurisdiction of the court, either physically or constructively. The defendant in the action is the property, not a person. Examples of *in rem* jurisdiction are libel actions in admiralty against a vessel, quiet title actions to property within the jurisdiction, or over a marital community. When a court exercises *in rem* jurisdiction, it can affect rights, title and/or ownership of the subject ("thing"), even as to parties over whom the court does not have personal (*in personam*) jurisdiction.

Injunction: A court order prohibiting a party from doing a particular act. The party must apply for the issuance of an injunction and show sufficient cause.

Interrogatories: A discovery tool of written questions to obtain information relevant to the case served on a party opponent (such as the Defendant) or a witness.

Judge: An office held by an individual invested by law with the authority to preside over a legal proceeding. The judge decides issues of law, and in a jury trial, determines what evidence will be presented to the jury and instructs the jury on the law. In a trial without a jury, the judge also functions as the trier of fact.

Judgment: The official and authentic decision of a court of justice upon the rights and claims of parties to an action or suit submitted to the court for determination.

Judicial Officer: Synonymous with judge. This term had its origins when magistrate judges were called "magistrates" and bankruptcy judges "bankruptcy referees." The term judicial officer was used as a generic term to include magistrates and bankruptcy referees. It is an obsolete term gradually being phased out of usage.

Justice: Justice is a term that is incapable of universal definition. It has different meanings to different people: what is one person's "justice" may be another's "injustice." One may say that justice is served when the parties have received a full, fair, and open hearing before an unbiased tribunal.

Jurisdiction: The power of a court to make decisions about matters brought before it. Courts are generally classified as being either courts of general jurisdiction or courts of limited jurisdiction. A court of general jurisdiction is a court that is empowered to hear any type of matter unless specifically precluded by law. The Hawaii Circuit Court is an example of a court having general jurisdiction. A court of limited jurisdiction may hear only specified matters; the United States District Court is a court of limited or specified jurisdiction. In general, the United States District Courts may decide only those matters that directly involve federal law or the United States Constitution, to the extent that Congress has conferred that power. Jurisdiction over state law issues is limited to (1) diversity jurisdiction, where the plaintiff and defendant are residents of two different states and the disputed amount is greater than $75,000, or (2) the court's pendant jurisdiction, where a matter involving a federal question may include questions of state law as well, such as an action brought under federal civil rights law which may also involve violations of state civil rights laws. Jurisdiction can also be measured in geographic terms.

Jury: A panel of individuals drawn from the general public for the purpose of determining disputed issues of fact.

Legal Relief or Relief at Law: Legal relief or relief at law is limited to monetary compensation for a loss. Any other form of relief is equitable in nature.

Magistrate Judge: A judicial office created by act of Congress. Magistrate judges are appointed to a seven-year term by the District Court Judges. In Hawaii, magistrate judges are selected by use of a merit selection committee that screens candidates and makes a recommendation to the judges. Magistrate judges perform many judicial functions, particularly pretrial matters in both civil and criminal cases, under the supervision of the District Court Judges, usually by "referral." Magistrate judges also try Class B and C misdemeanors, infractions, and, with the consent of the defendant, Class A misdemeanors. Magistrate judges may also try civil cases with the consent of the parties.

Motion: A method of bringing an issue before the court for a decision between the time the case is filed and the trial. Motions cover a variety of matters, ranging from changing the time by which an act is to be performed, to seeking dismissal of the action before trial.

Plaintiff: The party who files a lawsuit, that is, the person who seeks to recover from another monetary damages or some form of equitable relief, such as to make another either do or stop doing an act.

Pleading: A document which contains formal allegation(s) by the parties involved in a case concerning their claims or defenses, such as a complaint, an answer to a complaint, a motion, etc.

Pre-trial Conference: Meeting between the parties to a lawsuit presided over by a Magistrate or a Judge prior to trial in order to narrow the issues to be tried, discuss trial logistics and possible settlement, and resolve any other matters.

Privileged Matter: Confidential communications between persons in certain relationships, such as the attorney-client, doctor-patient, and priest-confessor. Such confidential communications are usually protected from discovery.

Production of Documents: A discovery tool which enables a party to a lawsuit to inspect documents another party or nonparty has in its possession or control.

Remand: After an appeal, when an appellate court such as the 9th Circuit Court sends back a case to the trial court for further deliberation.

Removal: The transfer of a case from one Court to another. Removal is usually done when the Plaintiff's complaint is filed in the state Court, but presents a basis for federal court jurisdiction, and the Defendant wants the lawsuit instead be resolved in the federal court.

Scheduling Conference: Meeting of the attorneys and unrepresented parties before a Magistrate Judge to discuss the merits of the case, set hearing dates and possible settlement. At the end of such conference, the Magistrate Judge enters a Scheduling Conference Order which sets forth deadlines for many events, such as the discovery cut-off date, pre-trial motions cut-off date, trial date, etc.

Service of Process: The required notification by personal delivery, mail, or publication of pleadings (such as complaints and motions) to a person that is involved in some action or proceeding. In Hawaii, a deputy sheriff is usually hired to served the complaint on a Defendant.

Settlement: A compromised or satisfaction between the opposing parties in a civil case before final judgment. A settlement ends the lawsuit and must be approved by the Court.

Statute of Limitation: Any law that states the time by which the Plaintiff must bring an action or lose the right to do so. If a complaint is filed after the statute runs, the case will be dismissed.

Stipulation: An agreement between opposing parties in a case as to some relevant issues.

Subject Matter Jurisdiction: The power of the court to decide the matter that is brought before it. Examples of subject matter jurisdiction are matters of admiralty or family law (such as divorce or adoption). The United District Court may exercise subject matter jurisdiction over admiralty cases but not matters involving divorce or adoption. While a party may voluntarily submit to *in personam* jurisdiction, the parties may not create subject matter jurisdiction by consent; that is, a divorce case could not be heard in the U.S. District Court even if both parties consented.

Subpoena: A written order (called a writ) that requires a witness to appear and give testimony or produce documents at a specified time and place. Subpoenas are also issued to command the person to whom it is directed to testify before the grand jury Subpoena *duces tecum*: (for documents): used to command a person to produce books, papers, documents, or other objects.

Subpoena *ad testificandum*: (for testimony): used to command a person to attend and give testimony at a specified place and time.

Summary Judgment: Judgment rendered by the Court in response to a motion filed by a party who claims that there is no dispute about the important facts, thus making it unnecessary to send the case to a jury or bench trial.

Summons: A written notice accompanying a complaint (lawsuit), usually served by sheriff on the Defendant, that the Defendant is a party to a lawsuit or other Court action.

Supreme Court of the United States: The highest federal court. Although it has limited original jurisdiction, it generally exercises appellate jurisdiction over all lower federal courts and over state courts concerning issues of federal statutory law or the U.S. Constitution. Appeals from the Court of Appeals are taken to the Supreme Court. The Supreme Court hears a limited number of cases each year, based upon a "rule of four": except in those rare instances where an appeal of right exists, four justices must vote to hear a case.

Trial: An examination and determination before a Court of the issues and facts between parties to a lawsuit.

Trial Courts: Trial courts are where actions begin in the judicial system. A legal action ("lawsuit") is filed in the trial court, which determines the facts and applies the law to those facts to either grant or deny a party relief, in a civil action, or to find a party guilty or not-guilty, in a criminal action.

Venue: The geographical location where the trial takes place. In the federal Courts, the term means the district in which the lawsuit is brought. To decide the proper venue for civil cases, the Court usually considers where the action happened, or where the parties to the lawsuit live or do their business.

Verdict: The decision or finding after trial made by a jury or a judge.

Voir Dire: An examination prior to a trial by the Court and/or the attorneys or parties of prospective jurors to determine their qualifications and suitability to serve as jurors.

With(out) Prejudice: When a lawsuit is dismissed with prejudice, that means the same lawsuit cannot be brought to a Court again, dismissal without prejudice, on the other hand, allows the same lawsuit to be brought again.