

RE: **Proposed Amendment to Rule 5(b) Commentary of the
Hawai'i Probate Rules**

POTENTIAL DOUBLE SIGNATURE REQUIREMENT

The Supreme Court of Hawai'i seeks public comment regarding a proposal to amend the Commentary to Rule 5(b) of the Hawai'i Probate Rules. The proposal would eliminate a potential "double signature" requirement seemingly created by the Commentary . The rule and proposed commentary are attached hereto.

Comments about the proposed Commentary should be submitted, in writing, **no later than Tuesday, June 14, 2016**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary's website.

Attachment

**PROPOSED AMENDMENTS TO
HAWAI‘I PROBATE RULES**

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

Rule 5. SIGNING OF DOCUMENTS.

(b) Signing by Attorneys. Except as required by statute or by rule, any petition, application, response, objection, memorandum or other substantive document of a party represented by an attorney (including documents signed by an attorney) shall be signed by the attorney of record in the attorney's individual name. The signature of an attorney constitutes a certificate by the attorney that the attorney has read the submittal; that to the best of the attorney's knowledge, information, and belief, there is good ground to support it; and that it is not being presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a submittal is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the proceeding may proceed as though the submittal had not been served. For willful violation of this rule, an attorney may be subjected to an appropriate sanction. Similar action may be taken if scandalous or indecent matter is inserted. The attorney's name shall be typed or legibly printed directly below the attorney's signature.

COMMENTARY:

This clarifies the role of the attorney in the preparation and presentation of documents. An attorney, by signing any petition, application, response, objection, memorandum or other substantive document, and filing it with the court, is certifying [Whether or not the attorney signs any substantive document as counsel for a party, the attorney must also verify] that the attorney understands and has complied with this Rule 5[(b)]. Therefore, if any attorney signs any substantive document as counsel for a party, a separate Rule 5(b) certification is not required. [A suggested form of verification follows:

HAWAII PROBATE RULE 5(b) CERTIFICATION

NAME OF ATTORNEY
Attorney for [Party]