IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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| APRIL S. STREMEL,<br><br>Plaintiff,<br><br>vs.<br><br>JONATHAN L. STREMEL,<br><br>Defendant. | 1DV181006111<br><br>ORDER RE: DEFENDANT'S (1) MOTION TO SANCTION ATTORNEY DAVID HAYAKAWA FOR RULES VIOLATIONS FILED 9/28/21, and (2) MOTION FOR RELIEF FROM JUDGMENT FILED 1/20/22<br><br>Hearing<br>Date: March 17, 2022<br>Time: 10:30 a.m.<br>Judge: Hon. Elizabeth Paek-Harris |

ORDER RE: DEFENDANT'S (1) MOTION TO SANCTION ATTORNEY DAVID HAYAKAWA FOR RULES VIOLATIONS FILED 9/28/21, and (2) MOTION FOR RELIEF FROM JUDGMENT FILED 1/20/22

On March 17, 2022, the Court held a hearing on the (1) Motion to Sanction Attorney David Hayakawa for Rules Violations filed on September 28, 2021 ("Motion for Sanctions"), and (2) Motion for Relief From Judgment filed on January 20, 2022. Both Motions were filed by Defendant JONATHAN L. STREMEL ("Mr. Stremel").

Present at the hearing were Plaintiff APRIL S. STREMEL ("Ms. Stremel"), represented by her attorney David M. Hayakawa, Esq. ("Mr. Hayakawa"), and Mr. Stremel, *pro se*.

After due consideration of the reliable and credible evidence presented including assessing and weighing the credibility of the witnesses and exhibits presented, due consideration of the argument of counsel and Mr. Stremel, taking judicial notice of the

records and files herein, and application of the relevant law, THIS COURT HEREBY FINDS AND ORDERS[1]:

## I. MOTION FOR SANCTIONS

Mr. Stremel's motion alleged a violation of Rule 10.4 of the Hawaii Court Records Rules ("HCRR") by Mr. Hayakawa for providing an unredacted copy of the Decision and Order Re: Divorce Trial, filed herein on August 11, 2021 ("Decision & Order") to a third-party investigative journalist, Kevin Knodell. For the reasons stated below, Mr. Stremel's Motion for Sanctions is **DENIED**.

The record shows that there were two articles authored by Mr. Knodell and published in Civil Beat about Mr. Stremel and his legal issues: (a) the original article that was published on January 29, 2021 before trial, and (b) the follow-up article that was published on August 31, 2021 after the entry of the Decision & Order. *See* Mr. Stremel's Exhibits A and C admitted into evidence. In the follow-up article, Mr. Knodell stated that the Court "granted the divorce between [Mr.] Stremel and his wife and ordered them to share legal custody of their son after rejecting all allegations of family violence, according to court documents." *See* Mr. Stremel's Exhibit A admitted into evidence. Further, Mr. Knodell included a quote from the Decision & Order regarding the Court's finding that Mr. "Stremel's 'testimony lacks credibility in most respects, particularly as it pertains to his allegations of domestic violence and abuse.'" *See* Mr. Stremel's Exhibit A admitted into evidence. Neither article included any "Personal Information" as defined by HCRR Rule 2.19.

At the hearing, Mr. Hayakawa admitted that after receiving a copy of the Decision & Order from the Court, he provided an unredacted copy to Mr. Knodell after Mr. Knodell called him to discuss the Decision & Order. The parties dispute how Mr. Knodell first became aware of the Court's Decision & Order. However, the Court finds this disputed fact to be irrelevant to Mr. Stremel's Motion for Sanctions.

HCRR Rule 10.4 states in pertinent part, "[e]xcept as otherwise provided by statute or court rule or as ordered by (a) the court that has jurisdiction over a court case

[1] The Court's ruling in this matter shall not be construed as all of the Court's findings of fact and conclusions of law. Instead, the Court addresses some salient points herein.

. . . **access** to confidential records, documents, exhibits, and information shall be limited to the court and court personnel in the performance of their duties . . . attorneys of record, [and] parties to the court . . . case[.]" (emphasis added). Here, the Court properly provided a copy of the Decision & Order to Mr. Hayakawa, and Mr. Stremel's attorney, Fred I. Waki, Esq., who were attorneys of record. The issue is whether Mr. Hayakawa violated HCRR Rule 10.4 by further disseminating the Decision & Order to a third-party after he properly received it from the Court.

The Court finds that Mr. Hayakawa did not violate HCRR Rule 10.4 as Mr. Stremel contends. The Court filed its Decision & Order as "Confidential" because it contained the full name and birthdate of the parties' child, which constitutes "Personal Information" pursuant to HCRR Rule 2.19. There was no other "Personal Information" in the Decision & Order. The Decision & Order is not a record that is required to be kept confidential by a separate court order, or by statute, such as records in a child protection proceeding under Hawaii Revised Statutes ("HRS") §587A. Therefore, the Court finds that Mr. Hayakawa did not violate HCRR Rule 10.4. HCRR Rule 10.4 merely governs the public's access to court records in the court's possession, and it does not prevent parties or their attorneys from providing the document to others, unless addressed by statute or separate court order.

In contrast, Mr. Stremel violated HCRR Rule 9.1(a), which states "[e]xcept as provided in this Rule 9 and notwithstanding any other rule to the contrary, a party shall not include personal information in any accessible document filed in any state court[.]" In Mr. Stremel's Motion for Relief From Judgment, he included the full name of Judge Paek-Harris's minor child in his argument. *See* Motion for Relief From Judgment at p. 18. Pursuant to HCRR Rule 9.5, "[t]he court ... may impose appropriate monetary or other sanctions upon parties . . . who do not comply with this Rule 9, where the parties or attorneys have not shown good cause for failure to comply, or a good faith attempt to comply with this rule."

The Hawaii Supreme Court has held that it is appropriate for courts to promptly issue an order that a violation of the HCRR resulting from the inclusion of Personal Information be remedied. *Oahu Publications Inc. v. Takase*, 139 Hawaii 236, 386 P.3d

873 (2016). The Supreme Court further concluded the proper relief is to immediately order that all documents that contain Personal Information, including the record on appeal be sealed. *Id.* The sealing order should state the reasons for sealing, provide notice of the right to object to the sealing, and direct that a redacted version be filed as a publicly accessible document." *Id.*

No sanction shall be imposed on Mr. Stremel as he is *pro se*, and this is his first known violation of HCRR Rule 9. Nevertheless, the Court hereby orders that the Motion for Relief From Judgment be immediately sealed as Mr. Stremel improperly included Personal Information in violation of HCRR Rule 9.1(a). The parties are hereby placed on notice of their right to object to the sealing, the original Motion for Relief From Judgment shall be sealed pursuant to this Order, and a redacted version shall be filed by the Court that complies with HCRR Rules 2.19 and 9.[2]

## II. MOTION FOR RELIEF FROM JUDGMENT

Mr. Stremel's Motion for Relief From Judgment seeks to vacate the Court's (a) Decision & Order, and (b) the Divorce Decree entered on October 29, 2021 ("Decree") pursuant to Rule 60(b)(2) of the Hawaii Family Court Rules ("HFCR"). For the reasons stated below, Mr. Stremel's Motion for Relief From Judgment is **DENIED**.

### A. Mr. Stremel Failed to Satisfy the Requirements for HFCR Rule 60(b)(2) Relief.

Under HFCR Rule 60(b)(2), the Court may relieve a party from any or all of the provisions of a final judgment, order or proceeding based on newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under HFCR Rule 59(b) or to reconsider under HFCR Rule 59(e), provided:

> The evidence meets the following **requirements**: (1) it must be previously undiscovered even though due diligence was exercised; (2) it must be admissible and credible; and (3) it must be of such material and controlling nature as will probably change the outcome and not merely cumulative or ending only to impeach or contradict a witness.

*LaPeter v. LaPeter*, 144 Hawaii 295, 308, 439 P.3d 247, 260 (2019) (citing *Omerod v. Heirs of Kaheananui*, 116 Hawaii 239, 277, 172 P.3d 983, 1021 (2007)) (emphasis

[2] The Court will re-file the Motion for Relief From Judgment under a coversheet after it redacts the pleading for personal and confidential information pursuant to HCRR Rules 2.19 and 9.

added). The movant must satisfy **all three requirements**. *Kawamata Farms, Inc. v. United Agri Products*, 86 Hawaii 214, 259, 948 P.2d 1055, 1100 (1997); *Deponte v. Ulupalakua Ranch, Ltd.*, 49 Hawaii 672, 672-73, 427 P.2d 94, 95 (1967); *Clement v. Cartwright*, 7 Hawaii 676, 678 (1889); *Matsumoto v. Asamura*, 5 Hawaii 628, 706 P.2d 1311 (App. 1985). The Hawaii Supreme Court affirmed a trial court's denial of a motion for new trial under Rule 60(b)(2) where the appellant could have obtained the evidence by diligent search prior to the conclusion of trial. *Deponte v. Ulupalakua Ranch, Ltd.*, 49 Hawaii 672, 672-73, 427 P.2d 94, 95 (1967).

Mr. Stremel claims to have found newly discovered evidence that proves (a) an "ongoing decades long friendship" between Judge Paek-Harris and Mr. Hayakawa, (b) that Judge Paek-Harris's spouse has a "friendship" and alleged business relationship with Mr. Hayakawa, and (c) that Judge Paek-Harris has "a potential economic interest" (with no specific allegation). However, Mr. Stremel failed to show that the alleged newly discovered evidence satisfies all of the requirements for HFCR Rule 60(b)(2) relief.

1. Mr. Stremel failed to satisfy the requirement of HFCR Rule 60(b)(2) that his alleged discovered evidence was "new," or previously undiscovered even though due diligence was exercised

Judge Paek-Harris disclosed the nature of her relationship with Mr. Hayakawa to Mr. Stremel prior to trial which was discoverable, and **not** new evidence. Furthermore, Mr. Stremel had ample time prior to the conclusion of trial to exercise due diligence regarding the nature and degree of the relationship between Judge Paek-Harris and Mr. Hayakawa. While Judge Paek-Harris's spouse and Mr. Hayakawa do not have a friendship or business relationship that would warrant disqualification, Mr. Stremel could have discovered the evidence he claims is "new" by exercising due diligence as the information was publicly available.

a. Judge Paek-Harris disclosed the nature of her relationship with Mr. Hayakawa to Mr. Stremel prior to trial which was not "new" and also discoverable by exercising due diligence

Mr. Stremel acknowledged in his Declaration filed on January 20, 2022 ("1/20/22 Declaration") that prior to trial, Judge Paek-Harris "disclosed that she shared office space with Howard Luke, Esq. when Mr. Hayakawa was an Associate for Mr.

Luke," and the Court ultimately found it could "be fair and impartial in this case and proceed with trial." Judge Paek-Harris's relationship with Mr. Hayakawa was not "newly discovered." Judge Paek-Harris disclosed this information to Mr. Stremel on more than one occasion prior to trial.

Judge Paek-Harris first disclosed her relationship with Mr. Hayakawa of sharing offices together around 2009 and 2010 to Mr. Stremel's attorney at a pretrial conference on January 28, 2021, requested that Mr. Stremel's attorney discuss the disclosure with Mr. Stremel, and notify the Court if Mr. Stremel had any objections before trial. Mr. Stremel's attorney notified the Court the next day that Mr. Stremel did not have any objections.

Four days after the pretrial conference, and prior to starting trial, Judge Paek-Harris restated the disclosure of her relationship with Mr. Hayakawa on record. Both Mr. Stremel's attorney and Mr. Stremel expressly stated on record with no qualification that Mr. Stremel had no objections to the disclosure, and Judge Paek-Harris proceeding as the trial judge. Since Judge Paek-Harris disclosed her relationship with Mr. Hayakawa to Mr. Stremel and his attorney both before and prior to starting the trial, Mr. Stremel failed to show how this relationship is "newly discovered."

While Mr. Stremel claimed that the nature and degree of "an ongoing decades long friendship" between Judge Paek-Harris and Mr. Hayakawa is "new," he still failed to satisfy the requirement that the alleged information could not have been discovered by exercising due diligence. The trial in Mr. Stremel's case spanned the course of almost five months as it started on February 1, 2021, and did not conclude until June 29, 2021. Mr. Stremel had at least four days to exercise due diligence regarding the nature and degree of Judge Paek-Harris's relationship with Mr. Hayakawa before trial when he was represented by an attorney, five months before the evidentiary portion of the trial concluded, and another month before the Court entered its Decision & Order. Yet, Mr. Stremel failed to do so despite his unfounded allegations in his 1/20/22 Declaration that "dozens of people . . . know Dave and Liz are friends," "[m]ost people in the legal community know that Dave and Liz and (sic) are super good friends and have been for decades," and "[t]hey are really good friends, everybody knows that." Therefore, by Mr.

Stremel's own admissions, Judge Paek-Harris disclosed her relationship with Mr. Hayakawa to Mr. Stremel prior to trial, which was not "new," and the nature and degree of the relationship, assuming Mr. Stremel's allegations to be true (which the Court denies), clearly could have been discovered by exercising due diligence.

b. Mr. Stremel's allegation that his newly discovered evidence proves a friendship and business relationship between Judge Paek-Harris's spouse and Mr. Hayakawa could have been discovered by exercising due diligence

Mr. Stremel argued that Judge Paek-Harris failed to disclose her spouse's alleged friendship and business relationship with Mr. Hayakawa as evidenced by (i) Mr. Hayakawa "following" Judge Paek-Harris's spouse's public Instagram account, and "liking" his public social media photos, and (ii) a publicly published online newspaper article regarding Pearl Ultralounge. First and foremost, Mr. Stremel submitted no evidence to show that Judge Paek-Harris had any knowledge of Mr. Hayakawa publicly "following" her spouse on Instagram, and "liking" her spouse's public photos.

Second, Mr. Stremel failed to show that he could not have discovered this alleged "friendship" between Judge Paek-Harris's spouse and Mr. Hayakawa by exercising due diligence prior to trial. All of Mr. Stremel's "newly discovered evidence" was publicly available. Mr. Stremel attached to his Motion for Relief From Judgment Judge Paek-Harris's "First Amended Financial Disclosure Statement" which was publicly filed on September 14, 2020, more than four months **before** trial. The Statement plainly states that her spouse's name is "Douglas I. Harris" ("Mr. Harris"). Mr. Stremel also attached to his Motion for Relief From Judgment copies of social media posts showing Mr. Hayakawa "follows" Mr. Harris on Instagram, and "likes" various photos Mr. Harris posts. Mr. Stremel admits through his own handwritten notes on one of the posts that it is dated "January 28, 2021 Same day as Rule 16 Conference 72 hours **before** trial" (emphasis added). Mr. Stremel testified at the hearing that he obtained the social media posts himself, printed them, and that they were public and available, which is how he accessed the information.

Third, Mr. Stremel attached an article from Pacific Business News dated March 12, 2009, titled "Investors sue for control of Pearl Ultralounge" to prove that Mr. Harris

and Mr. Hayakawa had a business relationship. First, the newly discovered evidence does not prove that The Harris Agency was an investor in Pearl Ultralounge or formally involved in a lawsuit involving Mr. Hayakawa. Second, Mr. Stremel's "newly discovered" online newspaper article is not only dated almost 12 years ago, it was publicly available, and clearly could have been discovered by exercising due diligence prior to trial. Therefore, Mr. Stremel failed to satisfy the requirement of HFCR Rule 60(b)(2) that his newly discovered evidence about Judge Paek-Harris's spouse and Mr. Hayakawa's "friendship" and alleged business relationship could not have been discovered by exercising due diligence as all of it was publicly available.

2. Mr. Stremel failed to satisfy the requirement of HFCR Rule 60(b)(2) that his alleged newly discovered evidence is admissible and credible

Even if Mr. Stremel could not have discovered by exercising due diligence his evidence that Judge Paek-Harris and Mr. Hayakawa allegedly had "an ongoing decades long friendship" prior to trial, he failed to satisfy the requirement of HFCR Rule 60(b)(2) that the evidence is admissible and credible. Mr. Stremel's newly discovered evidence consists of two witnesses, whose names he requested be filed "confidentially" in the record, who allegedly "came forward very recently and stated to my attorney and I that Judge Paek-Harris have (sic) been 'very close friends' with David Hayakawa 'for decades.'"

No witnesses appeared at the hearing to testify in support of Mr. Stremel. There is no Declaration from one of the alleged witnesses, just her alleged hearsay statements contained in Mr. Stremel's 1/20/22 Declaration. This, of course, does not constitute admissible evidence. While Mr. Stremel attached a Declaration from the second witness to his Motion for Relief From Judgment, the Declaration is also inadmissible hearsay. Therefore, Mr. Stremel failed to satisfy the requirement of HFCR Rule 60(b)(2) that the alleged newly discovered evidence is admissible.

Additionally, even if Mr. Stremel could not have discovered the public social media posts of Judge Paek-Harris's spouse through due diligence prior to trial, he failed to satisfy the requirement of HFCR Rule 60(b)(2) that the evidence is credible. Since the posts Mr. Stremel attached to his Motion for Relief From Judgment were public and

not private, this means **anyone** could "follow" or "like" his social media posts, **without** Judge Paek-Harris's spouse's knowledge or consent. Thus, Mr. Stremel's allegation that "following" a person's public social media website, or "liking" a publicly accessible photo proves a "friendship," without more, simply isn't credible.

More importantly, Mr. Hayakawa confirmed at the hearing that he has no "friendship" with Judge Paek-Harris's spouse. Mr. Hayakawa testified that he is "friends" on social media with over 2,000 people, and he is known to click "like" on every photo that comes across his screen. Mr. Hayakawa represented that he was merely an "acquaintance" of Mr. Harris known through Judge Paek-Harris, that he was not "friends" with him, and that he had no recollection of ever meeting with Mr. Harris alone.

Further, Mr. Hayakawa also represented at the hearing that he never had any business relationship with Judge Paek-Harris's spouse or his business, The Harris Agency, that he was never involved with Pearl Ultralounge other than having hosted fundraisers at the venue, and that he had never been a party to a lawsuit or involved in any legal discussions relating to Pearl Ultralounge. None of Mr. Stremel's "evidence" showed any nexus between Mr. Harris, The Harris Agency, Mr. Hayakawa and/or Pearl Ultralounge. These representations further undermine the credibility of Mr. Stremel's newly discovered "evidence." Therefore, Mr. Stremel failed to satisfy the requirement of HFCR Rule 60(b)(2) that his alleged newly discovered evidence is admissible and credible.

3. Mr. Stremel's alleged newly discovered evidence would not probably change the outcome of the trial

The Hawaii Supreme Court held that under HFCR 60(b)(2) the newly discovered evidence "must be of such material and controlling nature as will probably change the outcome and not merely cumulative or ending only to impeach or contradict a witness." *LaPeter v. LaPeter*, 144 Hawaii 295, 308, 439 P.3d 247, 260(2019) (citing *Omerod v. Heirs of Kaheananui*, 116 Hawaii 239, 277, 172 P.3d 983, 1021 (2007)). Even if a different trial judge were assigned to Mr. Stremel's case, the outcome would not probably change.

At the hearing, Mr. Stremel complained that the Court erred in finding no family violence occurred by Ms. Stremel against him, and that Mr. Stremel was not credible in his claim. However, the issues of credibility are for the trier of fact. And, even if a different judge were to hear Mr. Stremel's testimony, other evidence existed which undermined Mr. Stremel's credibility.

Moreover, Mr. Stremel's own exhibits received into evidence at the hearing reflect that in 2018, a panel of military officials **rejected** Mr. Stremel's allegations of abuse by Ms. Stremel. *See* Exhibits A and C admitted into evidence. The record also shows that a different Judge of the First Circuit Family Court, Judge Steven M. Nakashima, **denied** Mr. Stremel's request for an Order for Protection against Ms. Stremel, and instead **granted** Ms. Stremel's request for an Order for Protection against Mr. Stremel. *See* Order Dissolving the Temporary Restraining Order filed on August 22, 2018 entered on January 14, 2019 in 1DA181001965 and Order for Protection entered on January 14, 2019 in 1DA181002018. Judge Nakashima also did not enter any findings of family violence in the parties' domestic abuse case. Therefore, it is unlikely that Mr. Stremel's claim of newly discovered evidence would probably change the outcome of the trial, particularly with Judge Paek-Harris's finding of no family violence.

B. There is no Basis for Judge Paek-Harris to Recuse Herself

The Hawaii Supreme Court held that "a judge owes a duty **not** to withdraw from a case - howevermuch his personal feelings may incline him to do so - where the circumstances do not **fairly** give rise to an appearance of impropriety and do not **reasonably** cast suspicion on his impartiality." *State v. Ross*, 89 Hawaii 371, 381, 974 P.2d 11, 21 (1998) (emphasis added). The court evaluating a claim of judicial bias starts with the premise that judges are presumed to be unbiased. *Id.* at 378, 974 P.2d at 18. This presumption can be rebutted by a showing of a disqualifying interest, "[b]ut the burden of establishing a disqualifying interest rests on the party making the assertion." *Kondaur Capital Corp. v. Matsuyoshi*, 150 Hawaii 1, 21, 496 P.3d 479, 498 (2021) (quoting *Sifagaloa v. Bd. of Trs. of Emps.Ret.Sys.*, 74 Hawaii 181, 189, 840 P.2d 367, 371 (1992)).

As for disqualification based on the appearance of impropriety, the test for disqualification "is an objective one, based **not** on the beliefs of the petitioner or the judge, but on the assessment of a reasonable impartial onlooker apprised of all the facts." *Kondaur Capital Corp. v. Matsuyoshi*, 150 Hawaii 1, 21, 496 P.3d 479, 498 (2021) (quoting *Ross*, 89 Hawaii at 380, 974 P.2d at 20) (emphasis added). The issue is "whether the conduct would create in **reasonable** minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is **impaired**." *Id.* (emphasis added). "[A] judge whose disqualification is sought must take the facts alleged as true, but can pass upon whether they are legally sufficient." *Ross,* 89 Hawaii at 377, 974 P.2d at 17.

In this case, Mr. Stremel has failed to meet his burden. Both Mr. Stremel and his attorney expressly stated and confirmed on record that Mr. Stremel had no objection to Judge Paek-Harris proceeding as the trial judge after her disclosure that she had shared offices with Mr. Hayakawa for over a year around 2009 and 2010. Mr. Stremel testified under oath at the hearing "when it was brought up that you [Judge Paek-Harris] and David [Hayakawa] shared a space I said on the record 'as long as that's all it is, is the office space sharing then we have no objections, objections (sic).'" However, the record contains no such qualification stated by Mr. Stremel on February 1, 2021. As a result, Mr. Stremel effectively **waived** any potential conflict between Judge Paek-Harris and Mr. Hayakawa, **without** any conditions or qualifications.

Notwithstanding, even assuming all of the facts alleged by Mr. Stremel in his 1/20/22 Declaration to be true, Judge Paek-Harris's impartiality could not be reasonably questioned creating an appearance of impropriety requiring her recusal. First, Mr. Stremel's only Declaration from a witness cites to merely two alleged incidents. One incident occurred 12 years ago where the witness alleged that Judge Paek-Harris "introduced me to her good friend David Hayakawa at a social event I hosted for the legal community" in 2010, and they "arrived to the social event together as well as left the event together." The only other allegation is that in December 2020 the witness called Mr. Hayakawa for a family law attorney referral, and when Mr.

Hayakawa asked her how she knew him she said "Liz, or Libby introduced us," and Mr. Hayakawa said "[o]h yeah. Okay."

There are no other alleged facts Mr. Stremel presented to prove a "decades long friendship" between Judge Paek-Harris and Mr. Hayakawa beyond what Judge Paek-Harris had already previously disclosed to him prior to trial. Therefore, even if assuming Mr. Stremel's and his witness's allegations to be true, they do not **reasonably** create an appearance of impropriety that would require disqualification, especially in light of Judge Paek-Harris's disclosure that she and Mr. Hayakawa had a relationship by sharing offices for over a year.[3]

Second, Mr. Stremel alleged that Mr. Hayakawa and Judge Paek-Harris's spouse have a "friendship" on public social media. Mr. Stremel attached approximately 67 photos to his Motion for Relief From Judgment. However, **none** of the photos depict Judge Paek-Harris or Mr. Harris with Mr. Hayakawa. There are no other alleged facts. Even if assuming Mr. Stremel's allegations to be true, at most they show an acquaintanceship between Judge Paek-Harris's spouse and Mr. Hayakawa, which in and of itself does not **reasonably** create an appearance of impropriety requiring disqualification.[4]

Third, Mr. Stremel alleged that Judge Paek-Harris's spouse and Mr. Hayakawa had a business relationship as they were both involved in a lawsuit with Pearl Ultralounge. Even assuming Mr. Stremel's allegations to be true, any "business relationship" between Judge Paek-Harris's spouse and Mr. Hayakawa would clearly be *de minimis* and at most, negligible. While Mr. Hayakawa confirmed he was not involved in any lawsuit with Pearl Ultralounge, there is no allegation by Mr. Stremel that Pearl

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[3] While there is no formal advisory opinion on point issued by the Hawaii Commission on Judicial Conduct, the American Bar Association ("ABA") issued a "Formal Opinion 488" on September 5, 2019 titled "Judges' Social or Close Personal Relationships with Lawyers or Parties as Grounds for Disqualification or Disclosure" ("ABA Formal Opinion 488"). The ABA Formal Opinion recognized that not all friendships between judges and lawyers appearing before them require judges' disqualification, and that judicial ethics authorities agree that judges need not disqualify themselves in many cases in which a party or lawyer is a friend.

[4] According to the ABA Formal Opinion 488, a judge has no obligation to disclose his or her acquaintance with a lawyer or party to other lawyers or parties in a proceeding, unless a judge chooses to do so. Based on the ABA Formal Opinion, a judge's **spouse's** acquaintanceship with a lawyer would also not require disclosure, let alone disqualification.

Ultralounge or Judge Paek-Harris's spouse had any interest in his case. Hence, the alleged business relationship, even if true, would not require disqualification.

Fourth, while Mr. Stremel contended that Judge Paek-Harris had a "potential financial interest" in this case, he provided no specific allegations. Consequently, there are no alleged facts for the Court to assume to be true. Mr. Stremel did raise arguments relying on inadmissible hearsay that Judge Paek-Harris was both a prior and current employee at The Harris Agency, that The Harris Agency sued Pearl Ultralounge for money owed, and that Mr. Hayakawa was closely involved in lawsuits concerning Pearl Ultralounge. However, these allegations still do not show that Judge Paek-Harris had any financial interest in Mr. Stremel's case, and lack credibility. Therefore, Mr. Stremel's argument failed to show that Judge Paek-Harris had a "potential financial interest" that would cause a conflict in this case warranting disqualification.

The Hawaii Supreme Court has found that "bad appearances alone do not require disqualification ... [r]eality controls over uninformed perception." *Id.* at 380, 974 P.2d at 20. Further, the Hawaii Supreme Court stated:

> [I]n the real word, "possible temptations" to be biased abound. Judges are human; like all humans, their outlooks are shaped by their lives' experiences. It would be unrealistic to suppose that judges do not bring to the bench those experiences and the attendant biases they may create. A person could find something in the background of most judges which in many cases would lead that person to conclude that the judge has a "possible temptation" to be biased. But not all temptations are created equal. We expect – even demand – that judges rise above these potential biasing influences, and in most cases we presume judges do.

*Id.* at 381, 974 P.2d at 21. Here, Mr. Stremel failed to establish actual bias or prejudice against him, or the appearance of impropriety warranting disqualification, even assuming all of the conclusory allegations in his 1/20/22 Declaration to be true about Judge Paek-Harris's alleged friendship with Mr. Hayakawa, or that of her spouse with Mr. Hayakawa. Therefore, there is no basis for Judge Paek-Harris to recuse herself.

C. Mr. Stremel Improperly Uses Disqualification and Threats to Judge-Shop

Judges should **not** allow litigants to use disqualification motions as a means of judge-shopping, which Mr. Stremel is clearly attempting to do in this case because of his

disagreement with the Decision & Order. The Court notes that after Judge Paek-Harris entered the Decision & Order which Mr. Stremel seeks to vacate, she also subsequently entered an Order Granting/Denying in Part Motion and Declaration to Modify Child Support filed on February 16, 2022 ("Order to Modify Child Support") following a motion filed by Mr. Stremel, which Mr. Stremel does **not** seek to vacate. The hearing on Mr. Stremel's Motion to Modify Child Support was held **after** he filed his Motion for Relief From Judgment. Therefore, Mr. Stremel claims disqualification of Judge Paek-Harris only with orders that he disagrees with, but not with other orders.

The Hawaii Supreme Court stated that "while the principle that 'justice must satisfy the appearance of justice exhorts judges to 'hold the balance nice, clear and true,' it does **not** invite any party concerned about or dissatisfied with the outcome of a case to seek a different judge. *Ross*, 89 Hawaii at 381, 974 P.2d at 21. Additionally, the Hawaii Supreme Court emphasized "[w]e have long recognized . . . that petitioners may not predicate their claims of disqualifying bias on adverse rulings, even if the rulings are erroneous." *Id.* at 381, 974 P.2d at 21.

Here, the record expressly shows that both parties were dissatisfied with the outcome of the trial, and a reasonably prudent person would conclude that both parties obtained a fair trial. At the hearing on Mr. Stremel's Motion for Relief From Judgment, Ms. Stremel offered to **stipulate** in part to vacate the custody provisions of the Decision & Order and Decree. Mr. Hayakawa noted that the Court ruled in favor of Mr. Stremel on the biggest issue at trial when it denied Ms. Stremel's request to relocate away from Hawaii with the parties' child, and the Court had ruled in favor of Mr. Stremel when it denied Ms. Stremel's request for sole physical custody. The Court hereby **DENIES** Ms. Stremel's request to stipulate in vacating the custody provisions of the Decision & Order.

Finally, Mr. Stremel attempted to improperly influence the Court at the hearing when he stated, "either you grant me the relief and we have another judge do another trial . . . or I can go to the media with all of this . . . I can go to the media with all of the pictures of your kids, and your family because you chose not to recuse yourself, you chose to put your family out there." Simply put, the Court will not allow threats of any kind to influence its decisions.

## III. CONCLUSION

For all of the foregoing reasons, Mr. Stremel's Motion for Sanctions and Motion for Relief From Judgment are **DENIED**.

DATED: Kapolei, Hawai'i, July 19, 2022.

HON. ELIZABETH PAEK-HARRIS
JUDGE OF THE ABOVE-ENTITLED COURT