CONCURRING OPINION OF ACOBA, J.,
WITH WHOM RAMIL, J., JOINS

I concur in the result reached but on different grounds. In my view, the following general propositions apply in a case of this nature. On appeal from any modification or reversal of a motion in limine ruling, the question before the appellate court is whether any prejudice was suffered by the party that relied on the original ruling, requiring a new trial. When ruling on a motion in limine, the trial court must ascertain whether any determination can appropriately be made before trial. If such can be rendered, the court should so rule. If a decision cannot be rendered, the trial court should so inform the parties on the record, defer determination on the issue until that point in the trial when a resolution can be made, and prohibit reference to the matter pending its ruling. If, after trial has begun, a ruling made pretrial is modified or reversed, the trial court must adopt such measures as will mitigate any resulting prejudice to the parties affected.

In light of these propositions, I disagree with the contention in the answering brief of Defendant-Appellee Jon Betwee (Defendant) that Plaintiffs-Appellants Lou Ann Barcai, et. al. (Plaintiffs) were not justified in relying on the court's order granting their motion in limine, but should have anticipated its reversal:

> The key flaw in Plaintiffs-Appellants' argument is that they erroneously relied on the trial court's ruling on the motion in limine[.] . . .
>
> Since the trial court's initial ruling on the motion in limine is always subject to change until the actual evidence was introduced at trial, . . . Plaintiffs[] made a poor tactical decision to not question jurors as to their feelings concerning a person who had a history of bizarre, violent, and sometimes criminal behavior, albeit, during periods of mental illness.

(Emphasis added.)

Defendant's approach places the responsibility on litigants to second-guess each in limine ruling a trial court makes. In such a setting, the court's order remains subject to question, the precise situation sought to be avoided by obtaining an in limine ruling. If the parties cannot rely on the court's ruling, chaos will result. Inasmuch as parties reasonably expect courts to abide by their decisions on such motions, we should not place the onus on a party to speculate as to whether a particular ruling on a motion in limine will later be reversed by the trial court. For the same reason, we should not engage in a post-trial analysis as to whether such a guess was appropriate or not, as Defendant would apparently invite us to do. Rather than asking whether Plaintiffs' reliance on the court's decision was ultimately right, the proper standard of review to be applied is whether the court's modification or reversal of its ruling resulted in prejudice to Plaintiffs, when Plaintiffs relied on the original in limine determination.

I.

A motion in limine is "'a procedural device which requests a pretrial order enjoining opposing counsel from using certain prejudicial evidence in front of a jury at a later trial.'" State v. Miura, 6 Haw. App. 501, 504, 730 P.2d 917, 920 (1986) (quoting H. Rothblatt & D. Leroy, The Motion in Limine in Criminal Trials: A Technique for the Pretrial Exclusion of Prejudicial Evidence, 60 Ky. L.J. 611, 613 (1972)) (other citations omitted). It is intended to afford the trial courts and the parties the opportunity to resolve, prior to trial, matters that would otherwise obstruct the smooth and orderly progress of the trial:

> The motion in limine affords an opportunity to the court to rule on the admissibility of evidence in advance, and prevents encumbering the record with immaterial or prejudicial matter, as well as providing means of ensuring that privileged material as to which discovery has been allowed by the court will not be used at trial if it is found to be inadmissible.

Kuroda v. Kuroda, 87 Hawai'i 419, 427, 958 P.2d 541, 550 (App. 1998) (quoting 75 Am. Jur. 2d Trial § 94 (1991)) (brackets omitted) (emphasis added); see also Proper v. Mowry, 568 P.2d 236, 240 (N.M. Ct. App. 1977) ("Such a motion is also a useful tool in preventing immaterial matter from encumbering the record. It gives the court an opportunity to rule in advance on the admissibility of evidence." (Internal quotation marks, brackets, and citation omitted.)).

Thus, the motion in limine is intended to establish the parameters for the introduction of evidence at trial. See State

v. Gonsalves, 5 Haw. App. 659, 668, 706 P.2d 1333, 1340 (1985) ("[T]he purpose of a motion in limine is to keep evidence away from the . . . jury[.]"), overruled on other grounds by State v. Kelekolio, 74 Haw. 479, 849 P.2d 58 (1993). It also assists litigants in formulating their trial strategies. See United States v. Yannott, 42 F.3d 999, 1007 (6th Cir. 1994) ("[A] motion in limine . . . allows the parties to consider the court's ruling in formulating their trial strategy." (Citation omitted.)), cert. denied, 513 U.S. 1182 (1995). Further, as one commentator has explained, motions in limine rid the trial process of undue surprises:

> The motion in limine is a comparatively recent legal development. Traditionally, Anglo-Saxon law encouraged the presentation of evidence in an orderly and consecutive manner at a single hearing or trial. Pretrial techniques and bifurcated proceedings were discouraged as both wasteful and unnecessary. However, the federal courts and many state courts eventually found it desirable to develop discovery and other pretrial devices to allow for efficient disposition of complicated lawsuits and to remove the element of surprise from the courtroom.

20 Am. Jur. Trials § 441 (1973) (emphasis added).

II.

As a general matter, parties should be able to rely on a court's in limine rulings. In both civil and criminal cases, courts are vested with authority to dispose of trial-related disputes prior to trial. See Meyer v. City and County of Honolulu, 6 Haw. App. 505, 510 n.8, 729 P.2d 388, 393 n.8 ("[T]he granting or denying of a motion in limine is within the trial court's inherent power to exclude or admit evidence." (Internal

quotation marks, brackets, and citation omitted.)), aff'd in part, rev'd in part by 69 Haw. 8, 731 P.2d 149 (1986); State v. Kealoha, 95 Hawai'i 365, 379, 22 P.3d 1012, 1026 (App. 2000) ("[T]he granting or denying of a motion in limine is within the trial court's inherent power to exclude or admit evidence." (Internal quotation marks and citations omitted.)), cert. dismissed, 95 Hawai'i 365, 22 P.3d 1012 (2001). The rules of civil and penal procedure encourage the use of motions in limine.

For example, Hawai'i Rules of Civil Procedure (HRCP) Rule 16(c)(3), governing pre-trial conferences, advises that courts may conduct such conferences to consider the possibility of obtaining "advance rulings from the court on the admissibility of evidence[.]" Similarly, in the criminal arena, Hawai'i Rules of Penal Procedure (HRPP) Rule 12(b), regarding pretrial motions, explains that "[a]ny defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion." In that regard, "[p]retrial motions and requests must be made within 21 days after arraignment unless the court otherwise directs." HRPP Rule 12(c). Thus, motions in limine are part of a pretrial process intended to resolve issues in advance of trial.

It follows, then, that a ruling on a motion in limine does not require further objection during trial to preserve an issue for appellate review because the matter had been previously raised, argued, and ruled on:

> [O]bjections need not be renewed if the prior ruling on the motion in limine amounted to an unequivocal holding concerning the issue raised. Where a hearing was held, counsel presented legal arguments, and the trial court ruled whether or not the challenged evidence would be admitted at trial, there is no necessity of further objection to preserve such error for appeal.

Lussier v. Mau-Van Dev., 4 Haw. App. 359, 393-94, 667 P.2d 804, 826 (emphasis added) (citations omitted), reconsideration denied, 4 Haw. App. 359, 667 P.2d 804 (1983). In this framework, it is reasonable that parties rely on the rulings made.

Significant to this case is the fact that a ruling that precludes the mention of particular evidence is presumed to be binding for purposes of trial:

> When the trial judge denies a motion to exclude evidence, made in limine, unless he [or she] clearly indicates to the contrary, it is the legal equivalent to an announcement that he [or she] reserves the right to rule on the subject evidence at the time of its offer, and is not a final ruling made in a pre-trial context.
>
> For obvious reasons, the same result does not obtain where the motion in limine is granted. In this instance, the nonmoving party, by virtue of the adverse ruling, is precluded from taking some proposed or anticipated action. To further pursue the very course of action [the non-moving party] is now restrained from pursuing is itself violative of the court's ruling[.]

Baxter v. Surgical Clinic of Anniston, P.A., 495 So. 2d 652, 654 (Ala. 1986) (emphasis added). Hence, where a party is precluded from mentioning a subject, as was the case here, the parties may reasonably expect to rely on that ruling.

III.

In advancing the proposition in his answering brief that Plaintiffs should not have relied on the court's in limine ruling, but should have anticipated its reversal, Defendant relies on Craft v. Peebles, 78 Hawai'i 287, 296, 893 P.2d 138,

147 (1985). Craft is not on point. The trial court there did not enforce its motion in limine ruling because Craft opened the door to testimony which was excluded under the ruling. See id. at 296, 893 P.2d at 147 ("The record indicates that, irrespective of the trial court's in limine ruling, evidence admitted during the plaintiff's case[-]in[-]chief 'opened the door' to the cross-examination regarding her alleged substance abuse."). The case thus stands for the proposition that an in limine ruling need not be enforced in the event the party requesting the limiting order has introduced evidence in violation of the ruling. Plainly that is not the case here. In the instant case, the court reversed its own ruling. Plaintiffs did not invite it.

We recently affirmed the proposition that parties may rely on in limine rulings in Nelson v. University of Hawai'i, 97 Hawai'i 376, 38 P.3d 95 (2001). There, the plaintiff, a former assistant professor at the University of Hawai'i (UH), sued UH, claiming, among other things, sexual harassment and discrimination. The defendants filed a motion in limine to prohibit the plaintiff from mentioning that her contract was not renewed due to retaliation or discrimination. See id. at 381, 38 P.3d at 100. The motion was granted, but during the defendants' case-in-chief, the court admitted into evidence a letter written by a dean to the plaintiff, informing her that her contract would not be renewed. See id. at 383, 38 P.3d at 102.

The plaintiff "objected to the admission of [the] memorandum to [the dean] from the personnel committee regarding its recommendations for nonrenewal, apparently based on the trial court's prior ruling on the motion in limine[.]" Id. Nevertheless, the memorandum was admitted. The plaintiff sought to offer rebuttal evidence "to challenge [the d]efendants' explanation for the nonrenewal of her contract[.]" Id.

The trial court precluded the plaintiff from offering such evidence. See id. We held that the court abused its discretion in doing so, in part because the plaintiff properly relied on the court's in limine ruling:

> Because the trial court's ruling on the motion in limine ostensibly precluded evidence of the 1996 renewal process, we cannot conclude that [the plaintiff] "held back" confirmatory evidence of her case. Moreover, it is unreasonable to suggest that [the plaintiff] should have anticipated that [the d]efendants would present specific evidence of the 1996 contract renewal process -- especially in light of their own motion in limine -- or that they would be allowed, over objection, to introduce the 1996 personnel committee's evaluation of [the plaintiff].

Id. at 385, 38 P.3d at 104 (emphases added). Nelson confirms the proposition that once a trial court makes an in limine ruling, a party is justified in relying on such a ruling.

IV.

A.

A trial court's rulings on motions in limine may be "unequivocal," rendering it illogical for litigants to have to consider whether or not their reliance on such rulings would be considered reasonable upon appellate review, in the event the

ruling is reversed by the trial court. However, Defendant advances the suggestion that pretrial rulings on motions in limine "are always subject to change until the actual evidence [is] introduced at trial." But the question of what is to be reasonably anticipated at trial is at the center of every in limine issue, and assumably is incorporated in the in limine ruling by the court. Motions in limine are brought precisely because the parties anticipate what the evidence will be, and, thus, by virtue of the procedure followed, what is anticipated is already inherent in the court's ruling.

B.

If a trial court cannot appropriately rule until that point in the trial when the disputed evidence may be viewed in context, then I believe the better practice is that the trial court should refrain from rendering a pretrial ruling and defer such ruling for trial. See United States v. Cline, 188 F. Supp. 2d 1287, 1291 (D. Kan. 2002) (stating that although pre-trial "rulings can work a savings in time, cost, effort and preparation, a court is almost always better situated during the actual trial to assess the value and utility of evidence[,]" and, thus, "[t]he better practice is to wait until trial to rule on objections when admissibility substantially depends upon what facts may be developed there" (citing Sperberg v. Goodyear Tire & Rubber Co., 519 F.2d 708, 712 (6th Cir.), cert. denied, 423 U.S. 987 (1975); Hunter v. Blair, 120 F.R.D. 667 (S.D. Ohio 1987));

State v. Dopp, 930 P.2d 1039, 1045-46 (Idaho Ct. App. 1996) (declaring that, "[b]ecause a motion in limine is based on an alleged or anticipated factual scenario, . . . the trial judge will not always be able to make an informed decision regarding the admissibility of the evidence prior to the time the evidence is actually presented at trial[,]" and, thus, "[t]he trial judge, in the exercise of . . . discretion, may decide that it is inappropriate to rule in advance on the admissibility of evidence . . . , but may defer his [or her] ruling until the case unfolds and there is a better record upon which to make his [or her] decision" (citations omitted)).

To do otherwise would invite unnecessary disruption of the trial and, as in this case, an appeal. See Dawson v. State, 581 A.2d 1078, 1087 (Del. 1990) (indicating that delayed rulings are "designed to prevent unnecessary and unwarranted advisory opinions[, because, i]f no advance ruling is made, the parties may decide to abandon their positions for reasons unrelated to the anticipated ruling of the court[and, thus, a] refusal to rule may thus promote judicial economy" (citation omitted)), vacated on other grounds by 503 U.S. 159 (1992). If the trial court must defer ruling on the motion in limine, its decision should be expressly communicated to the parties and placed on the record. See, e.g., HRPP Rule 12(e) ("A motion made before trial shall be determined before trial unless the court orders that it

be deferred for determination at the trial of the general issue[.]")

V.

A.

Rulings on motions in limine can be amended, but only where there is a justifiable reason to do so. See United States v. Bensimon, 172 F.3d 1121, 1127 (9th Cir. 1999) ("[P]arties expect a district court to adhere to its earlier ruling if no facts or circumstances arise to warrant a reversal[.]" (Emphasis added.)); Yannott, 42 F.3d at 1007 ("[W]e hold that the district court may change its ruling on a motion in limine where sufficient facts have developed to warrant the change."); but see Luce v. United States, 469 U.S. 38, 41-42 (1984) ("Indeed even if nothing unexpected happens at trial, the district judge is free, in the exercise of sound judicial discretion, to alter a previous *in limine* ruling." (Emphasis added.))[1]

[1] Luce is not binding upon state courts because it does not address a constitutional issue. See State v. Wickham, 796 P.2d 1354, 1357 (Alaska 1990) ("Since the Luce rule was adopted pursuant to the Supreme Court's advisory power, it is not binding on the states." (Citation omitted.)); Commonwealth v. Richardson, 500 A.2d 1200, 1203 (Pa. Super. Ct. 1985) ("The decision in Luce is not binding on the courts of this Commonwealth because it is a decision based solely on a Federal Rule of Evidence."); People v. Contreras, 485 N.Y.S.2d 261, 263 (N.Y. App. Div. 1985) ("Luce . . . is inapposite, since it interprets Federal law."). Of course, whether the court's exercise of its discretion was "sound" is dependent upon the circumstances of the particular case and is always subject to review.

B.

Once the decision is made to modify or reverse an in limine ruling, the trial court must take such measures necessary and appropriate to prevent prejudice which might result from such action. See Marshall v. Osborn, 571 N.E.2d 492, 496 (Ill. App. Ct. 1991) (finding no abuse of discretion where the trial court reversed its original in limine ruling in part because "the trial court made a conscientious effort to minimize any surprise or potential prejudice by offering to rule before plaintiffs presented their case and by giving them the opportunity to reopen their case after the ruling [reversing the original determination]" (emphasis added)); cf. Swietlowich v. Bucks County, 610 F.2d 1157, 1164 (3d Cir. 1979) (explaining that a trial judge who "decides to change . . . an earlier ruling . . . must also take appropriate steps so that the parties are not prejudiced by reliance on the prior ruling" and finding that "the plaintiff suffered no prejudice at trial . . . since she was fully prepared to meet the limitations defense" (emphases added)); State v. Dowsett, 10 Haw. App. 491, 495, 878 P.2d 739, 742 (1994) ("We hold, therefore, that before the court orders dismissal of a case because of the State's violation of HRPP Rule 16, it must consider whether less severe measures would rectify prejudice caused to the defendant by the violation."), overruled on other grounds by State v. Rogan, 91 Hawai'i 405, 423, n.10, 984 P.2d 1231, 1249 n.10 (1999).

The trial court may allow for additional voir dire of the already-selected jury, cf. State v. Morishige, 65 Haw. 354, 362, 652 P.2d 1119, 1126 (1982) (explaining that trial court conducted individual voir dire of juror during trial, where juror supposedly saw a guard take leg restraints off criminal defendant, and concluding that, based on voir dire results, mistrial was not warranted), or it may order a continuance, cf. Gannett Pac. Corp. v. Richardson, 59 Haw. 224, 234, 580 P.2d 49, 57 (1978) (determining that, where there is a concern that pretrial publicity may taint a jury pool, a continuance "until community passions subside" is a legitimate option).

It may limit or expand the scope of testimony, see Nelson, 97 Hawai‘i at 385, 38 P.3d at 104 (explaining that trial court should have allowed plaintiff to offer rebuttal evidence in response to defendant's evidence which essentially violated its own motion in limine); Kealoha, 95 Hawai‘i at 380, 22 P.3d at 1027 (ruling that court did not abuse its discretion when it admitted information regarding criminal defendant's sale of methamphetamine "only . . . [for] determining Defendant's motive, opportunity, or intent to possess the dangerous drug" (internal quotation marks omitted)), or exclude or allow certain evidence, see Craft, 78 Hawai‘i at 296, 893 P.2d at 147 ("The record indicates that, irrespective of the trial court's in limine ruling, evidence admitted during the plaintiff's case[-]in[-]chief 'opened the door' to the cross-examination regarding her alleged substance abuse.").

It may issue an appropriate cautionary instruction. Cf. Kealoha, 95 Hawai‘i at 380, 22 P.3d at 1027 (determining that court did not abuse its discretion when it allowed evidence of a criminal defendant's sale of methamphetamine at trial, which was coupled with a cautionary instruction to the jury); Gannett Pac. Corp., 59 Haw. at 234, 580 P.2d at 57 (explaining that courts may use "clear and express admonitions to the jury once selected" regarding possible trial publicity).

The foregoing are merely examples of the saving measures a trial court may take in the event it is necessary to modify or reverse a prior in limine ruling. The nature of the remedy employed in a particular case rests, of course, on the specific circumstances involved.

VI.

Based on the considerations above, our task on appeal must be to ascertain whether the court's reversal of its own in limine ruling prejudiced a party in any way, not whether the party should have anticipated a change in the court's ruling. See Bensimon, 172 F.3d at 1125 (determining that, when a court considers the Rule 609(b) balancing test,[2] "the district court must consider any prejudice that will accrue to the defendant as a result of the court's reversal of an earlier in limine ruling"

[2] Federal Rule of Evidence 609(b) prohibits the use of a conviction which is more than ten years old as impeachment "unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect."

and consider whether "the prejudice a defendant might suffer as a result of a reversed ruling is consistent with . . . Rule 609(b)" (citations omitted)); United States v. Cardascia, 951 F.2d 474, 489 (2d Cir. 1991) ("We accept that evidentiary errors and reversed rulings may prejudice a defendant in such a way that he [or she] is denied a fair trial and his [or her] conviction must then be reversed." (Citations omitted.)).

VII.

The question then is whether the court's reversal prejudiced Plaintiffs in the instant case. Prior to trial, Plaintiffs filed a motion in limine to exclude evidence of the decedent's prior bad acts, arguing that "[w]hether [the decedent] was arrested or incarcerated or committed acts that were less than exemplary . . . was irrelevant to whether Defendant . . . was negligent in his treatment."

Defendant's counsel first represented that Defendant did not consider the decedent's prior bad acts when rendering medical treatment. However, Defendant argued such information was relevant to Plaintiffs' claims of false imprisonment and battery:

> [PLAINTIFF'S COUNSEL]: I think there must be some kind of connection between the prior acts and treatment decisions . . . .
>
> . . . .
>
> [DEFENSE COUNSEL]: He is not going to say that he based his treatment on any prior acts. As for the drugs that he gave him and so forth, that was based upon his admission at this time. He is going to say he was aware of his background and his predilection to violence, and that if they are still going to pursue the false imprisonment claims, battery, that this was pertinent on how to treat

> him, and when the nurses called and said he was acting like a wild man --

(Emphases added.) Based on this representation, Plaintiffs' counsel agreed to dismiss the false imprisonment and battery claims:

> THE COURT: . . . What's your basis of your false imprisonment and assault and battery?
> [PLAINTIFFS' COUNSEL]: I was just going to say that I agree to dismiss those claims --
> THE COURT: Then, according to what [defense counsel] is saying that's [sic] becomes irrelevant.
> [PLAINTIFFS' COUNSEL]: That is right, so I'll do that.
> THE COURT: So the claims for false imprisonment and assault and battery are dismissed with prejudice?
> [PLAINTIFFS' COUNSEL]: That's correct. I am agreeing to that.

(Emphases added.) The court granted the motion in limine with the qualification that it would reconsider its ruling if the decedent's family chose to testify about his prior bad acts:

> [DEFENSE COUNSEL]: Well, so the family members are not going to be talking about prior psychiatric episodes?
> THE COURT: I don't know why they would.
> [PLAINTIFFS' COUNSEL]: Well, if they do talk about it, the door will be opened.
> THE COURT: That's the way I look at it. If it is made relevant by something the Plaintiff does, I'll reexamine it.[3]
> [DEFENSE COUNSEL]: Very well.
> THE COURT: So I am going to grant the motion on those prior hospitalizations, bad acts, whatever you want to call them.

(Emphases added.) Following the determination of this and other motions in limine, the court commenced voir dire and the jury was sworn.

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[3] Courts can initially rule on a motion in limine and reverse themselves where, for example, the party seeking to exclude evidence "opens the door" to the evidence initially excluded. See, e.g., Craft, 78 Hawai'i at 296, 893 P.2d at 147 (explaining that court properly reversed its in limine ruling because "evidence admitted during the plaintiff's case[-]in[-]chief 'opened the door' to the cross-examination regarding her alleged substance abuse"); see also supra Part V.

After the motions in limine and voir dire were completed, Plaintiffs' counsel disclosed that their expert would criticize Defendant's diagnosis. Subsequently, however, Plaintiffs withdrew this testimony so as to avoid any discussion of prior bad acts.

The following day, after learning that Plaintiffs' expert witness would criticize Defendant's diagnosis, but before hearing of Plaintiffs' subsequent decision otherwise, defense counsel reversed his prior representation and advised the court that the Defendant had, in fact, considered the decedent's psychiatric history, including "prior bad acts":

> [DEFENSE COUNSEL]: Your Honor, in order for the doctor to make a correct diagnosis and decide on treatment, he has to know the patient's psychiatric history. That is essential. I think it shows he was a good doctor. We want to get into it because that's what a good psychiatrist does. He reviews the prior records.
>
> . . . .
>
> He has to treat -- he has to know what this man did in the past. How bizarre was his behavior[.] . . .
>
> . . . .
>
> THE COURT: All right. [Defense counsel], I just want to get clear. It is your position that [Defendant] is going to testify he read these records and all the prior bad acts, and that was taken into consideration before he treated or during the process of treatment that's at issue here?
>
> [DEFENSE COUNSEL]: Yes, your Honor.

(Emphases added.) The court then reversed its original in limine ruling and allowed evidence of the decedent's past bad conduct to be admitted, evoking surprise from Plaintiffs' counsel:

> THE COURT: I am going to rule that he can go into that. . . .
>
> [PLAINTIFFS' COUNSEL]: Let me just respond in a couple ways. I hear the court's ruling. I am really surprised [defense counsel] has changed the position because he didn't say that yesterday. He said treatment [was] based upon what he showed in the hospital.

(Emphases added.) Plaintiffs' counsel then claimed that his clients had suffered prejudice from the court's new ruling because the jury had already been selected and voir dire questions had been asked with the understanding that prior bad acts were inadmissible. Contending that the court's ruling had placed Plaintiffs in a "horrible" position, counsel argued that his voir dire would have been different, especially with respect to a juror who was a former police official:

> [PLAINTIFFS' COUNSEL]: I understand. The other thing though, Your Honor, more of compelling concern to me is that we did discuss this before voir dire and you did make a ruling on prior bad acts, and on [sic] voir dire the jury based upon your ruling, and if I had known that [defense counsel] would be bringing in all these prior bad acts, I would have gone over that with the jury, and especially because we have a former deputy police chief there, I would have gone over that because it puts my clients' position in a very horrible place. I just don't know how they are going to respond to this.
>
> [DEFENSE COUNSEL]: Your [H]onor, just one point. Before this trial started counsel agreed that the medical record for this admission could go into evidence. That was agreed upon.
>
> THE COURT: That has got all this stuff in it?
>
> [DEFENSE COUNSEL]: Yes, sir.
>
> THE COURT: Anyway, I don't want to hear anymore. You have already made a record.

(Emphasis added.) At the time the court altered its ruling, Plaintiffs had done nothing to "open the door" to the decedent's prior bad acts. Moreover, the court's change in ruling was premised on circumstances other than those it had indicated would warrant such a change. The court did nothing to mitigate any prejudice Plaintiffs may have suffered by their reliance on the court's original decision.

VIII.

As stated supra, Plaintiffs maintained at trial that, had the court ruled as it ultimately did prior to voir dire, they would have questioned the jury venire regarding its view of the decedent's prior bad acts. I believe that the effective preclusion of a party's right to exercise his or her challenges for cause or peremptory challenges, in the absence of effective measures to cure such defect, is ordinarily reversible error. See State v. Carvalho, 79 Hawai'i 165, 174, 880 P.2d 217, 226 (App. 1994) ("[T]he denial or impairment of a defendant's right of peremptory challenge in a criminal case is reversible error not requiring a showing of prejudice."), cert. granted, 77 Hawai'i 373, 884 P.2d 1149 (1994), cert. dismissed, 78 Hawai'i 474, 896 P.2d 930 (1995); Leslie v. Allen-Bradley Co., 513 N.W.2d 179, 181 (Mich. Ct. App. 1994) (in case where trial judge limited plaintiff's number of peremptory challenges, in violation of statute, reversing because "a party need not demonstrate prejudice arising from a claim of defective jury selection, since the requirement would impose an impossible burden" (citation omitted)); cf. Babcock v. Northwest Mem'l Hosp., 767 S.W.2d 705, 709 (Tex. 1989) (in medical malpractice case where trial court initially excluded any discussion of tort reform, and where juror during voir dire volunteered in front of venire his familiarity with advertisements regarding the need for tort reform, holding that trial court abused its discretion by prohibiting questions regarding such reforms because the result was that the plaintiffs

"were denied the opportunity to intelligently exercise challenges"); Fluharty v. Wimbush, 304 S.E.2d 39, 41-42 (W. Va. 1983) ("It is . . . reversible error for a trial judge . . . to . . . limit the questioning of potential jurors as to infringe upon litigant's ability to determine whether the jurors are free from interest, bias[,] or prejudice, or to effectively hinder the exercise of peremptory challenges." (Internal quotation marks and citation omitted.)). Without doubt, the lack of an informed exercise of voir dire undermines the opportunity to obtain an impartial jury:

> To obtain an impartial jury an examination into the qualifications, attitudes and inclinations of jurors before they are impaneled and sworn to try a case is necessary. Only by such examination can the information be obtained to constitute a basis for the exercise of a challenge to exclude from the jury those who might act from prejudice or interest or without qualification to judge soundly[.]

Carr v. Kinney, 41 Haw. 166, 166 (1955) (citation omitted).

However, as Defendant pointed out, Plaintiffs had apparently agreed to the admission of medical records that contained evidence of prior bad acts. Accordingly, evidence of the prior bad acts would have been received in evidence by the admission of such records. Arguably, the court's initial ruling on the motion in limine could have rendered the stipulation defunct, insofar as an objection could have been made to the introduction of the bad acts at the time the medical records were introduced. However, Plaintiffs do not make such an argument on appeal, but merely contend that their "right to informed exercise of peremptory challenges and to challenge jurors for cause were

substantially impaired by the [court]." Without more, I cannot conclude that the change in the in-limine ruling resulted in prejudice to Plaintiffs. Therefore, I am compelled to agree that Plaintiffs were not prejudiced by the reversal of the in limine ruling.