DISSENTING OPINION BY ACOBA, J.

I must respectfully disagree with the majority because the plain language of Hawai'i Revised Statutes (HRS) § 658A-3 (Supp. 2005)[1] dictates that HRS chapter 658A governs inasmuch as (1) under HRS § 658A-3(a), the January 30, 2004 Dispute Prevention & Resolution, Inc. (DPR) "Agreement to Participate in Binding Arbitration" (DPR Arbitration Agreement) is an "agreement to arbitrate" made after July 1, 2002, (2) moreover, pursuant to HRS § 658A-3(b), the DPR Arbitration Agreement may be considered a "record" in which the parties agreed that HRS chapter 658A should govern with respect to the February 24, 2000 two-year contract for prepaid legal services (the Plan Agreement), and (3) in light of the foregoing, HRS § 658A-3(c) does not apply to this case. Accordingly, I would affirm the January 6, 2005 final judgment of the circuit court of the first circuit (the court) confirming an amended arbitration award in favor of applicant-

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[1] HRS § 658A-3 (Supp. 2005) entitled "When chapter applies," states as follows:

> (a) Except as provided in subsection (c), this chapter governs an agreement to arbitrate made on or after July 1, 2002.
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> (b) This chapter governs an agreement to arbitrate made before July 1, 2002, if all the parties to the agreement or to the arbitration proceeding so agree in a record. If the parties to the agreement or to the arbitration do not so agree in a record, an agreement to arbitrate that is made before July 1, 2002, shall be governed by the law specified in the agreement to arbitrate or, if none is specified, by the state law in effect on the date when the arbitration began or on June 30, 2002, whichever first occurred.
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> (c) After June 30, 2004, this chapter governs an agreement to arbitrate whenever made.

(Emphases added.)

appellee United Public Workers, AFSCME, Local 646, AFL-CIO (UPW).

I.

In my view, the majority errs in concluding that the DPR Arbitration Agreement "evinces that there was no 'meeting of the minds' between the parties to create a new binding contract to arbitrate that would replace or supersede the dispute resolution provisions contained in the Plan Agreement." Majority op. at 29-30. To the contrary, the DPR Arbitration Agreement binds the parties to Rule 31 and Rule 35 of the "DPR Arbitration Rules, Procedures & Protocols" (DPR Arbitration Rules) incorporating the procedures of HRS chapter 658A. Thus, HRS chapter 658A rather than HRS chapter 658 must be applied in this case.

II.

Under the February 24, 2000 Plan Agreement, respondent-appellant Dawson International, Inc. (Dawson) was to administer a prepaid legal services plan. As the majority notes, the Plan Agreement contained the following dispute resolution procedures:

> 5.01 Notice of Violation
> Should either party allege a violation of this Agreement, the party alleging the violation shall notify in writing the other party of the alleged violation within thirty (30) days of the alleged violation or within thirty (30) days of realizing the alleged violation.
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> 5.02 Violation Resolution.
> Should the violation not be resolved within thirty (30) days after notification of the violation[,] the resolution procedure as provided in Section 5.03 shall apply.
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> 5.03 Resolution Procedure
> The parties shall submit the violation to mediation before resorting to arbitration. The mediator(s) shall be selected by mutual agreement of the parties.

> In the event the violation is not resolved in mediation[,] the violation shall be submitted to arbitration. Within fifteen (15) days after the conclusion of mediation[,] the parties shall select an Arbitrator by mutual agreement. Negotiations, mediation or arbitration shall be conducted on O'ahu, Hawai'i.

Majority op. at 5 (emphasis added). The majority notes that "[t]he dispute resolution provisions of the Plan Agreement, however, do not specify or make reference to the law that would govern an arbitration proceeding pursuant to the Plan Agreement."[2] Majority op. at 33.

On January 27, 2004, after receiving notice from the DPR that the DPR intended to cancel the scheduled arbitration hearings arising out of the Plan Agreement because Dawson had failed to pay the arbitrator's anticipated fees of $6,000 and return a signed copy of the DPR Arbitration Agreement, UPW's counsel responded. UPW stated in its January 27, 2004 letter, "Despite that UPW has long since already paid its $6,000 share, UPW is willing to also pay Dawson's $6,000 share in order to keep the arbitration hearings in place and to have this matter finally resolved." UPW stated further, "As for Dawson's failure to sign the [DPR Agreement], we respectfully assert that Dawson's signature is but a mere formality and is not necessary in order to go forward [with the arbitration]."

Nevertheless, Dawson subsequently executed the DPR Arbitration Agreement on January 30, 2004. The DPR Arbitration

[2] However, the Plan Agreement specifies, "This Agreement shall be governed by the laws of the State of Hawai'i."

Agreement states in pertinent part as follows:

> By agreement of the parties set forth below, Dispute Prevention & Resolution, Inc. (DPR)/James Paul, Esq. have agreed to conduct a binding arbitration proceeding of the matters in controversy between the parties . . . . The parties, DPR, and James Paul, Esq. agree to follow and abide by the DPR Arbitration Rules, Procedures & Protocols, as established by DPR.
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> Unless the parties' agreement provides otherwise, the Arbitrator must determine all issues submitted to arbitration by the parties and may grant any and all remedies that the Arbitrator determines to be just and appropriate under the law.

(Emphases added.) Regardless of what Dawson's subjective intent or UPW's may have been prior to the execution, once the DPR Arbitration Agreement was signed on August 23, 2003 and January 30, 2004 by UPW and Dawson, respectively, there plainly was a meeting of the minds manifested by the instrument. The DPR Arbitration Agreement constituted an express manifestation of the parties' "agreement to arbitrate" under its terms. See Earl M. Jorgensen Co. v. Mark Constr., Inc., 56 Haw. 466, 470, 540 P.2d 978, 982 (1975) ("The existent of mutual asset or intent to accept is determined by an objective standard. A party's words or acts are judged under a standard of reasonableness in determining whether he [or she] has manifested an objective intention to agree." (Emphases added.)). On its face, the DPR Arbitration Agreement is objective evidence of an "agreement to arbitrate" governed, as "agree[d] by the parties, by the "[DPR Arbitration Rules], as established by DPR."

Further, the agreement is "definite and unambiguous," i.e., by its explicit language, the parties "have agreed to conduct a binding arbitration proceeding" and to "abide by the

DPR Arbitration Rules." See State Farm Fire & Cas. Co. v. Pac. Rent-All, Inc., 90 Hawai'i 315, 324, 978 P.2d 753, 762 (1999) (citation omitted). "The court should look no further than the four corners of the document to determine whether an ambiguity exists." Id. (citation omitted). The DPR Arbitration Agreement contains no terms that "are reasonably susceptible to more than one meaning." Airgo, Inc. v. Horizon Cargo Transport Inc., 66 Haw. 590, 594, 670 P.2d 1277, 1280 (1983) ("A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one meaning." (Citations omitted.)).

Hence, "[i]t is well settled that courts should not draw inferences from a contract regarding the parties' intent when the contract is definite and unambiguous[,]" State Farm Fire & Cas. Co. 90 Hawai'i at 324, 978 P.2d at 762 (citing Hanagami v. China Airlines, Ltd., 67 Haw. 357, 364, 688 P.2d 1139, 1144 (1984)), as it is here. The parties' "disagreement as to the meaning of a contract or its terms does not render clear language unambiguous." Id. (citing State Farm Mut. Auto. Ins. Co. v. Fermahin, 73 Haw. 552, 556, 836 P.2d 1074, 1077 (1992); Hawaiian Ins. & Guar. Co. v. Chief Clerk of the First Circuit Court, 68 Haw. 336, 342, 713 P.2d 427, 431 (1986)).

III.

The majority relies on UPW's January 27, 2004 letter to the DPR in concluding that "it cannot reasonably be said that Dawson manifested an objective intention to agree that the DPR Arbitration Agreement constituted a new agreement to arbitrate."

Majority op. at 30 (internal quotation marks and citation omitted) (emphasis in original). As noted above, in order to prevent the DPR from cancelling the scheduled arbitration hearings, UPW's counsel sent the DPR a letter in which UPW agreed to advance Dawson's share of anticipated arbitration fees. Despite its conclusion, the majority does not indicate how the January 27, 2004 letter, written by UPW to the DPR, could manifest Dawson's intent at the time Dawson executed the DPR Arbitration Agreement on January 30, 2004.

The majority's contention that the January 27, 2004 letter demonstrates that UPW "did not consider the DPR Arbitration Agreement as a new agreement to arbitrate that would displace the dispute resolution provisions" of the Plan Agreement, majority op. at 31, is incorrect inasmuch as any negotiations were integrated into the subsequently executed DPR Arbitration Agreement, and consideration of the January 27, 2004 letter was barred by the parol evidence rule. See discussion infra.

Moreover, the DPR Arbitration Agreement, as discussed supra, constitutes an "agreement to arbitrate" according to HRS § 658A-3(a) or a "record" of such an agreement under HRS § 658A-3(b), as discussed infra, for as the majority itself acknowledges, "[t]he dispute resolution provisions of the Plan Agreement . . . do not specify or make reference to the law that would govern an arbitration proceeding pursuant to the Plan Agreement." Majority op. at 33 (emphasis added). Unlike the

Plan Agreement, the DPR Arbitration Agreement specified the law that would apply, i.e., that HRS chapter 658A would apply. See discussion infra. Accordingly, the DPR Arbitration Agreement did not "merely memorialize[] . . . the selection of an arbitrator as required by section 5.03 of the Plan Agreement," as the majority asserts, majority op. at 31, but specified the law that would govern the arbitration, i.e., HRS chapter 568A -- a condition absent from the Plan Agreement.

This court has explained that "[i]t is . . . well settled that the parol evidence rule is invoked to bar the testimony of prior contemporaneous negotiations and agreements that vary or alter the terms of a written instrument." State Farm Fire & Cas. Co., 90 Hawai'i at 324, 978 P.2d at 762 (citations omitted). The parol evidence rule "is one of substantive law setting forth the well-settled principle that an agreement reduced to writing serves to integrate all prior agreements and negotiations concerning the transaction into the written instrument which then represents the final and complete agreement of the parties." Id. (emphasis added) (citations omitted).

Subsequent to the January 27, 2004 letter, the DPR Arbitration Agreement was signed by both parties. This court has instructed that "[a]s a rule of substantive law, [the parol evidence rule] determines the parties' legally enforceable contractual obligations and precludes consideration of extrinsic evidence to the contrary[,]" such as UPW's January 27, 2004

letter. Id. (citations omitted) (emphasis in original). The DPR Arbitration Agreement was thus "an agreement reduced to writing [that] serve[d] to integrate all prior agreements and negotiations [including the January 27, 2004 letter and] which then represent[ed] the final and complete agreement of the parties." Id. (emphasis added) (citations omitted).[3] Objectively viewed, a written instrument titled "agreement" and signed by both parties to the instrument is the sine qua non of the agreement of the parties involved.[4]

IV.

HRS § 658A-3(a) states, "Except as provided in subsection (c), this chapter governs an agreement to arbitrate made on or after July 1, 2002." As noted before, the DPR Arbitration Agreement is an "agreement to arbitrate." It became the final agreement of the parties when Dawson executed the agreement on January 30, 2004. Hence, it was made after July 1, 2002. Pursuant to the plain language of HRS § 658A-3(a) then,

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[3] As noted above, the DPR Arbitration Agreement states in pertinent part, "By agreement of the parties set forth below, [DPR]/James Paul, Esq. have agreed to conduct a binding arbitration proceeding of the matters in controversy between the parties . . . . The parties, DPR, and James Paul, Esq. agree to follow and abide by the DPR Arbitration Rules, Procedures & Protocols, as established by the DPR." Obviously, the language of the DPR Arbitration Agreement establishes that the parties agreed to a "binding arbitration proceeding" as "set forth" in the DPR Arbitration Agreement.

[4] Therefore, the majority's contention is incorrect insofar as it asserts that "the critical question" is "erroneously ignored" as to whether the DPR Arbitration Agreement constitutes a new valid and enforceable agreement to arbitrate[.]" Majority op. at 36-37 n.19. As discussed above, under an objective standard, the DPR Arbitration Agreement is plainly an "agreement to arbitrate" under HRS chapter 658A.

HRS chapter 658A "governs [because it applies to] an agreement to arbitrate made . . . after July 1, 2002."

When confronted with issues of statutory interpretation, "our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." Honda v. Bd. of Trs. of the Employees' Ret. Sys. of the State, 108 Hawai'i 212, 233, 118 P.3d 1155, 1176 (2005) (internal quotation marks and citation omitted). As we have stated, "[f]ollowing our well-settled approach to statutory interpretation, we look first to the plain language of the statute." Id. at 233, 118 P.3d at 1174 (citing Zanakis-Pico v. Cutter Dodge, Inc., 98 Hawai'i 309, 316, 47 P.3d 1222, 1229 (2002)). Adhering to the plain language of HRS § 658A-3(a), the DPR Arbitration Agreement was made after July 1, 2002, and thus, HRS § 658A-3(a) applies.

V.

Assuming arguendo that the Plan Agreement was the "agreement to arbitrate" and the DPR Arbitration Agreement is not an "agreement to arbitrate," but instead a "record," HRS chapter 658A still governs. HRS § 658A-3(b) states in pertinent part that "[HRS chapter 658A] governs an agreement to arbitrate made before July 1, 2002, if all the parties to the agreement or to the arbitration proceeding so agree in a record." (Emphases added.) A "record" is defined as "information that is inscribed on a tangible medium or that is stored in an electronic or other

medium and is retrievable in perceivable form." HRS § 658A-1 (Supp. 2005). The DPR Arbitration Agreement is a "record" because it contains "information that is inscribed on a tangible medium." Id.

Based on the manifest wording of the January 30, 2004 DPR Arbitration Agreement, the parties "agree[d] to follow and abide by the DPR Arbitration Rules, Procedures & Protocols, as established by DPR." By "agree[ing] to follow and abide by the DPR Arbitration Rules," the parties unambiguously incorporated by reference the DPR Arbitration Rules into the DPR Arbitration Agreement.

In turn, the DPR Arbitration Rules specifically reference HRS chapter 658A. Rule 31 of the DPR Arbitration Rules entitled "Change of Award by the Arbitrator(s)," states that "Parties may apply to the Arbitrator(s) to modify, correct or clarify the Award, pursuant to the procedures specified in the [Revised Uniform Arbitration Act, HRS chapter 658A], Section 20."[5] (Emphasis added.) The requirement of a record aside,

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[5] HRS § 658A-20 (Supp. 2005) entitled "Change of award by arbitrator," provides in relevant part:

> (a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:
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> (1) Upon a ground stated in section 658A-24(a)(1) or (3);
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> (2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
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> (3) To clarify the award.
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> . . . .
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> (d) If a motion to the court is pending under section 658A-22, 658A-23, or 658A-24, the court may submit the claim to the arbitrator to consider whether to modify or correct

(continued...)

because the parties agreed to "follow and abide by the DPR Arbitration Rules," the procedures regarding "Change of award by arbitrator" specified in HRS § 658A-20 arguably apply irrespective of the effective dates of HRS chapter 658 or HRS chapter 658A.

The DPR Arbitration Rules also include Rule 35 entitled "Application of DPR Rules," which states in pertinent part that "[the DPR Arbitration Rules] shall be interpreted and applied in conformity with the applicable arbitration law." (Emphasis added.) When the "record" in the form of the DPR Arbitration Agreement was made on January 30, 2004, the applicable arbitration law was HRS chapter 658A.

In adopting the DPR Arbitration Rules, which included DPR Arbitration Rule 31 and DPR Arbitration Rule 35, the parties manifested their consent that the procedures set forth in HRS chapter 658A controlled changes made to an award by the

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[5](...continued)
the award:

(1) Upon a ground stated in section 658A-24(a)(1) or (3);

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(Emphases added.) HRS § 658A-24(a)(1) (Supp. 2005) provides in relevant part:

> (a) Upon motion made within ninety days after the movant receives notice of the award pursuant to section 658A-19 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 658A-20, the court shall modify or correct the award if:
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> (1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award[.]

(Emphases added.)

arbitrator. Thus, the DPR Arbitration Agreement constitutes a "record" of an agreement by "all the parties to the agreement or to the arbitration proceeding" that HRS chapter 658A regulates the "agreement to arbitrate."[6] HRS § 658A-3(b).

VI.

HRS § 658A-3(c), then, is not applicable. Because HRS chapter 658A applies by virtue of HRS § 658A-3(a) or (b), an analysis under HRS § 658A-3(c) regarding the applicability of HRS chapter 658A is not germane.

VII.

Inasmuch as HRS chapter 658A governs, HRS § 658A-20 applies. The majority does not dispute that HRS § 658A-20 expressly allows a party to request the arbitrator to correct evident mathematical miscalculations in an arbitration award or to clarify the arbitration award. Majority op. at 10-11. The court's remand to the arbitrator was on that basis. Accordingly, I would affirm the court's January 6, 2005 final judgment confirming an amended arbitration award in favor of UPW.

[6] Indeed, the majority concedes that if "the DPR Arbitration Agreement constitutes a new valid and enforceable agreement to arbitrate, . . . [it] supersed[es] the dispute resolution provisions in the Plan Agreement, and trigger[s] the application of HRS chapter 658A." Majority op. at 37 n.19 (emphasis added).