

RE: **Proposals to Amend Rules 3 and 4 of the Hawai'i Rules of Appellate Procedure (HRAP)**

PROCESS AND TIMING FOR FILING A NOTICE OF APPEAL

The Supreme Court of Hawai'i seeks public comment regarding proposals to amend Rules 3 and 4 of the Hawai'i Rules of Appellate Procedure. The proposed amendments would clarify the roles of Rule 3, which governs the process of filing a Notice of Appeal, and Rule 4 governing the timing of filing a Notice of Appeal. The proposals are attached hereto.

Comments about the proposed amendments should be submitted, in writing, **no later than Monday, August 20, 2018**, 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
HAWAII RULES OF APPELLATE PROCEDURE (HRAP)
RULES 3(a) and 3(f)**

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

Rule 3. APPEALS - HOW TAKEN.

(a) Filing the notice of appeal. An appeal permitted by law from a court or agency shall be taken by filing a notice of appeal, together with such fees as are established by statute or these rules, with the appellate ~~clerk of the~~ court within the time allowed by Rule 4 of these Rules. ~~Within 7 days after the conventional filing of the notice of appeal, the clerk of the court shall electronically file the notice of appeal with the appellate clerk. A notice of appeal filed through JEFS is deemed filed with the clerk of the court appealed from.]~~ As required by Rule 25 of these Rules and Rules 2.2 and 4.1 of the Hawai'i Electronic Filing and Service Rules, attorneys who are registered users of the Judiciary Electronic Filing System (JEFS) shall electronically file the notice of appeal with the appellate court through JEFS. A self-represented party and an attorney who is exempt from registering as a JEFS User shall conventionally file the notice of appeal with the clerk of the court or agency appealed from. Within 7 days after the conventional filing of the notice of appeal, the clerk of the court or agency appealed from shall electronically file the notice of appeal with the appellate court. If an attorney who is a registered JEFS User erroneously files the notice of appeal with the clerk of the court or agency appealed from, or a notice of appeal that should be conventionally filed with the clerk of the court or agency appealed from is mistakenly submitted to the appellate clerk, the receiving clerk shall note on it the date of receipt and shall electronically file the notice of appeal with the appellate court within 7 days. The date of receipt shall be deemed the date the notice of appeal was filed with the appellate court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

(f) Payment of fees. If the fees are not paid, the clerk of the court or agency where ~~who filed~~ the notice of appeal was filed shall file a notification ~~in~~with the appellate ~~case~~clerk forthwith.

**PROPOSED AMENDMENTS TO
HAWAII RULES OF APPELLATE PROCEDURE (HRAP)
RULES 4(a) and 4(b)**

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

Rule 4. APPEALS - WHEN TAKEN.

(a) Appeals in civil cases.

(1) TIME ~~[AND PLACE OF]~~FOR FILING. When a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order.

A motion for leave to file an interlocutory appeal from an order of the circuit court must be filed within 30 days of the court's entry of the order. If such a motion is filed and granted, then the notice of appeal shall be filed within 30 days after entry of the circuit court's order granting permission for leave to file an interlocutory appeal.

~~[Unless filed electronically, as required by Rule 25 of these Rules and Rules 2.2 and 4.1 of the Hawai'i Electronic Filing and Services Rules, the notice of appeal shall be filed with the clerk of the court or agency from which the appeal is taken. If a notice of appeal is mistakenly submitted to the appellate clerk, the appellate clerk shall note on it the date of receipt and shall electronically file the notice of appeal. The date of receipt by the appellate clerk shall be deemed to be the date the notice of appeal was filed with the clerk of the court or agency appealed from.]~~

~~[When filed electronically, the notice of appeal shall be filed in the appellate case created for that appeal. A notice of appeal filed through JEFS or JIMS is deemed filed with the clerk of the court or agency appealed from.]~~

(b) Appeals in criminal cases.

(1) TIME ~~[AND PLACE OF]~~FOR FILING. In a criminal case, the notice of appeal shall be filed within 30 days after entry of the judgment or order appealed from.

A motion for leave to file an interlocutory appeal from an order of the circuit court must be filed within 30 days of the court's entry of the order. If such a motion is filed and granted, then the notice of appeal shall be filed within 30 days after entry of the circuit court's order granting permission for leave to file an interlocutory appeal.

~~[Unless filed electronically, as required by Rule 25 of these Rules and Rules 2.2 and 4.1 of the Hawai'i Electronic Filing and Service Rules, the notice of appeal shall be filed with the clerk of the court from which the appeal is taken. If a notice of appeal is mistakenly submitted to the appellate clerk, the appellate clerk shall note on it the date of receipt and shall electronically file the notice of appeal. The date of the receipt by the appellate clerk shall be deemed to be the date the notice of appeal was filed with the clerk of the court appealed from.]~~

~~When filed electronically, the notice of appeal shall be filed in the appellate case created for that appeal. A notice of appeal filed through JEFS or JIMS is deemed filed with the clerk of the court appealed from.]~~
