

Glossary

Affidavit. A written statement of facts signed by a person in the presence of an officer authorized to administer oaths, such as a notary public, after the person has first declared under oath that the facts contained in the statement are true. (Compare with definition of "declaration.")

Agency. A board, commission, department, council, committee, entity, or officer of the State of Hawai‘i, or its political subdivisions, that is authorized by law to adjudicate contested cases or issue declaratory rulings that may be appealed directly to an appellate court. See [HRAP Rule 2.1\(b\)](#).

Agency Hearing. A hearing held by an agency immediately prior to judicial review of a contested case as provided in [HRS § 91-14](#). See [HRS § 91-1\(6\)](#).

Appellant. A party who files an appeal from the decision of a district, family, or circuit court, or an agency of the State of Hawai‘i, or its political subdivisions, usually seeking to have the decision reversed or vacated.

Appellate Clerk. Any clerk, deputy, or assistant clerk of the Hawai‘i appellate courts. See [HRAP Rule 2.1\(b\)](#) and [HRS § 606-1\(a\)\(1\) and \(2\)](#).

Appellate Court(s) or Hawai‘i Appellate Court(s). The Hawai‘i Supreme Court and the Hawai‘i Intermediate Court of Appeals, collectively and individually. The term does not include the land or tax appeal courts. See [HRAP Rule 2.1\(b\)](#).

Appellee. All parties to an appeal other than the appellant are referred to as appellees. See [HRAP Rule 3\(d\)](#).

Brief. A document addressed to an appellate court, setting out a party's legal and factual arguments and the authorities supporting those arguments.

Certiorari. A writ issued at the discretion of the Hawai‘i Supreme Court, directing that the Intermediate Court of Appeals deliver the record in a case to the supreme court for its review.

Chief Clerk. The clerk of the Hawai‘i Supreme Court.

Claimant. A party asserting a right or making a demand.

Civil Case. A non-criminal lawsuit in which one party sues another. Examples of civil cases include lawsuits to (1) recover money, real property, or personal property; (2) enforce a contract or obligation; (3) collect damages for injuries due to someone else's fault; (4) protect or enforce a private or civil right; (5) probate a will; or (6) seek a divorce.

Contested Case. A proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing. See [HRS § 91-1\(5\)](#).

Conventional filing or conventionally file. The submission of paper documents and physical exhibits to the clerk for filing in the court record. See [HEFSR Rule 1.1](#).

Conventional service or conventionally serve. Providing a paper document or printed copy of a document to a party, attorney, witness, or others as required by law or rule of court and submitting a certificate to the court attesting to the fact the paper document or printed copy of a document was so provided. See [HEFSR Rule 1.2](#).

Criminal Case. An action brought by the government, seeking to punish a defendant accused of committing a crime or offense in violation of a statute, ordinance, or administrative rule.

Declarant. A person who has made a statement or signed a declaration.

Declaration. A written statement of facts signed by a person, affirming in writing under penalty of law, that the facts contained in the statement are true. Unlike an affidavit, a declaration is not made under oath in the presence of an officer authorized to administer oaths, such as a notary public. See [HRAP Rule 52](#).

Defendant. A party sued in a civil proceeding or accused of committing an offense in a criminal proceeding.

District Court Rules of Civil Procedure (DCRCP). The rules adopted by the Hawai'i Supreme Court that govern the procedure in the district courts of the State in all suits of a civil nature, except those proceedings specified in [DCRCP Rule 81](#). See [DCRCP](#)

Electronic filing or electronically file. (1) The submission of documents by authorized JEFS Users for docketing and storage in JIMS and (2) the conversion and/or transmission of documents by JIMS Users directly into JIMS. (Definitions of "JEFS" and "JIMS" in this Glossary.) See [HEFSR Rule 1.4](#).

Ex Officio. By virtue or because of an office or official position.

Ex Parte. A Latin term meaning "on one side only; by or for one party." The term is used in connection with action taken by a party, such as filing a motion with the court, without notice to the other party(ies) or which the court decides without hearing from the other party(ies). The term is also used to describe communications in which a party to a case, or someone involved with a party,

talks or writes to or otherwise communicates directly with a judge about the issues in a case without the other party's(ies') knowledge. Under the Judicial Code of Conduct, judges may not permit or consider ex parte communications in deciding a case, unless expressly allowed by law.

Hawai'i Court Records Rules (HCRR). The rules adopted by the Hawai'i Supreme Court that govern court and Administrative Driver's License Revocation Office records in the State of Hawai'i. See [HCRR Rule 1](#) .

Hawai'i Electronic Filing and Service Rules (HEFSR). The rules adopted by the Hawai'i Supreme Court that govern the electronic filing and service procedures effective September 27, 2010. See [HEFSR Rule 2.1](#).

Hawai'i Family Court Rules (HFCR). The rules adopted by the Hawai'i Supreme Court that govern the procedure in the family courts of the State in all cases of a civil nature over which the family courts have exclusive, original jurisdiction. See [HFCR Rule 1](#), [HCFR Rule 2](#), and [HFCR Rule 81](#).

Hawaii Revised Statutes (HRS). The official compilation of Hawai'i statutes published by the Hawai'i Revisor of Statutes. See [HRS](#).

Hawai'i Rules of Appellate Procedure (HRAP). The rules adopted by the Hawai'i Supreme Court that govern all proceedings in the Hawai'i appellate courts, except as otherwise provided by statute, Rules of the Supreme Court, or Rules of the Intermediate Court of Appeals. See [HRAP Rule 1\(a\)](#).

Hawai'i Rules of Civil Procedure (HRCPP). The rules adopted by the Hawai'i Supreme Court that govern the procedure in the circuit courts of the State in all cases of a civil nature, except those proceedings specified in [HRCPP Rule 81](#). See [HRCPP](#).

Hawaii Rules of Evidence (HRE). The rules enacted by the Hawai'i Legislature and codified in HRS chapter 626 that govern the admissibility of what is offered as proof into the record of proceedings in the courts of the State. See [HRE](#).

Hawai'i Rules of Penal Procedure (HRPP). The rules adopted by the Hawai'i Supreme Court that govern the procedure in the courts of the State in all cases of a penal (criminal) nature, except those proceedings specified in [HRPP Rule 54](#). The HRPP also applies to criminal cases against adults who are tried in the family courts of the State. See [HFCR Rule 81\(c\)](#).

Interlocutory Appeal. An appeal from an interlocutory order filed prior to a trial court or agency entering its final order or judgment on the entire case.

Interlocutory Order. An order issued by a trial court or agency, addressing some intermediate matter in a case prior to the trial court or agency fully resolving all issues in the case. While most interlocutory orders are not appealable until the case is finally and totally resolved, certain interlocutory orders may be immediately appealable, pursuant to rule, statute, or case law.

Intermediate Court of Appeals (ICA). The Hawai‘i Intermediate Court of Appeals. See [HRS chapter 602, part II](#).

Intervenor. A party who voluntarily enters a pending lawsuit.

In forma pauperis motion. Request to proceed on appeal without being required to prepay filing fees or give security for costs, based on the inability to pay as demonstrated through an affidavit or declaration containing specified information. This motion is ordinarily made first to the trial court or agency appealed from. See [HRAP Rule 24](#).

JEFS. The Judiciary Electronic Filing System. See [HEFSR Rule 1.7](#).

JEFS User. An individual with a valid JEFS login and password. See [HEFSR Rule 1.8](#).

JIMS. The Judiciary Information Management System, the case management system developed by the Hawai‘i Judiciary. See [HEFSR Rule 1.9](#).

Jurisdiction. The legal authority of a court to hear and decide a case. The two major aspects of a court's jurisdiction are: (1) subject-matter jurisdiction, which authorizes a court to hear a particular type of case; and (2) personal jurisdiction, which authorizes a court to subject a party in a proceeding to the court's decisions, rulings, and judgment.

Motion. An oral or written application requesting a court or agency to make a specific ruling or order.

Order. An oral or written command of a court or agency.

Party. The named plaintiff, defendant, petitioner, respondent, claimant, or intervenor in a court or agency proceeding, and anyone who has standing to seek review of a court or agency order or judgment. See [HRAP Rule 2.1\(b\)](#).

Petition. An application filed with a court, asking that the court correct or remedy a wrong or grant a request. A formal written request presented to a court or agency.

Petitioner. A party who presents a petition to a court or agency.

Plaintiff. A party who brings a court action.

Proof of Conventional Service. Documents presented to the appellate clerk or an ex officio clerk for filing must be accompanied by evidence that the document was served on all other parties. Conventional service may be proved by acknowledgment of service by the person served or by a statement of the person making service, certifying the date, manner of service (personal delivery or conventional mail), and the name of the person served. If the time to respond to a conventionally served document begins with the filing date of the document, a filed copy of the document must also be conventionally served on all other parties promptly after filing. See [HRAP Rule 25\(d\), \(e\)](#).

Proof of Electronic Service. Service by electronic means is proved as to all JEFS Users and parties who have consented to receive service by electronic means by the notice of electronic filing automatically generated by JEFS. See [HEFSR Rule 6.3](#).

Pro Se. A person who appears on his or her own behalf in a court or agency proceeding; a person who is not represented by an attorney.

Remand. To send a case back to the court or agency whose judgment or order was appealed, for further action. See [HRAP Rule 35\(e\)](#).

Respondent. A party who answers or opposes a petition.

Reverse. To overturn a court or agency's judgment or order on appeal. A reversal ends a litigation on the merits. See [HRAP Rule 35\(e\)](#).

Rules of the Circuit Courts of the State of Hawai'i (RCCH). The rules adopted by the Hawai'i Supreme Court that govern the practice and procedure in all circuit courts of the State. See [RCCH](#).

Rules of the District Courts of the State of Hawai'i (RDCH). The rules adopted by the Hawai'i Supreme Court that govern the practice and procedure in all district courts of the State. See [RDCH](#).

Rules of the Intermediate Court of Appeals (RICA). The rules adopted by the Hawai'i Supreme Court that govern the procedure in the ICA. See [RICA](#).

Service of Documents. Copies of all documents filed by any party must be served on all other parties to the proceedings at or before the time of filing. Service on a party represented by counsel shall be made on counsel. Service may be accomplished by personal delivery, by conventional mail, or by notice of electronic filing in accordance with the [HEFSR](#). Documents electronically filed must be conventionally served on parties who are not JEFS Users or who have not

consented to electronic service. Please consult [HRAP Rule 25](#) and the [HEFSR Rules 2](#) and [6](#) for more detailed information on whether electronic or conventional service is required as to a particular party or case regarding service.

State. The State of Hawai‘i.

Statute. A law passed by a legislative body, such as the Hawai‘i Legislature.

Supersedeas Bond. "A supersedeas bond is [a] bond required on one who petitions to set aside a judgment or execution and from which the other party may be made whole if the action is unsuccessful." *Enos v. Pacific Transfer & Warehouse, Inc.*, 79 Hawai‘i 452 n.2, 454, 903 P.2d 1273, 1275 n.2 (quoting Black's Law Dictionary at 1437 (6th ed. 1990)).

Supreme Court. The Hawai‘i Supreme Court. See [HRS chapter 602, part I](#).

Transcript. A typed or printed copy, usually prepared by a court reporter, of the word-for-word testimony given orally at a trial or hearing.

Vacate. To nullify, cancel, or invalidate a court or agency's judgment or order. When the ICA vacates a judgment or order that was appealed and remands the case, the litigation continues in the court or agency whose judgment or order was appealed, pursuant to the instruction of the ICA. See [HRAP Rule 35\(e\)](#).

About the Intermediate Court of Appeals (ICA)

1. What is the ICA?

The ICA is an appellate court that is "intermediate" between the Hawai'i trial courts and the Hawai'i Supreme Court. Most cases appealed from a Hawai'i trial court (i.e., district, family, or circuit court) go directly to the ICA to be decided, but there are certain cases that must be appealed directly to the Hawai'i Supreme Court. A party to an appeal before the ICA who wishes to bypass the ICA may apply to transfer the appeal to the supreme court. See [HRS § 602-58](#) and [HRAP Rule 40.2](#).

The ICA consists of a chief judge and five associate judges. See [HRS § 602-51](#).

2. What is the ICA's jurisdiction?

Subject to exceptions, which include cases that must be appealed directly to the Hawai'i Supreme Court and cases transferred from the ICA to the supreme court, the ICA has jurisdiction to: (1) hear and determine appeals from any trial court or agency when appeals are allowed by law; (2) entertain, at its discretion, any case submitted without suit when there is a question of law that could be the subject of a civil action or proceeding in the circuit or tax appeal court and the parties agree upon the facts in controversy; and (3) make or issue any order or writ necessary or appropriate in the aid of its jurisdiction. See [HRS § 602-57](#).

Warning: The question of whether the ICA or the Hawai'i Supreme Court has jurisdiction over an appeal may not be easy to answer. The applicable statutes, rules, and case law should be consulted carefully, and it may be necessary to seek the advice of an attorney.

3. Who and when can I call to ask a question?

The staff of the Chief Clerk's Office is available to answer administrative questions during normal business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, excluding holidays). The staff is not allowed to give legal advice or make specific recommendations on how to pursue or defend against an appeal. Click [here](#) for contact information for the Chief Clerk's Office.

Do not contact the ICA judges or their staff directly. This may constitute an ex parte communication, which is not allowed.

4. When and where does the ICA accept filings for appeals?

Effective September 27, 2010, the rules provide that each attorney who represent a party before the ICA must register as a JEFS User and file documents relating to

appeals electronically through JEFS, unless excused by order of the ICA or supreme court. A party that is not represented by an attorney may conventionally file documents relating to an appeal or register as a JEFS User and electronically file such documents. See [HRAP Rule 25\(a\)](#) and [HEFSR Rules 2.2](#) and [4.1](#). The Chief Clerk's Office accepts conventional filings for both the supreme court and the ICA from 7:45 a.m. to 4:15 p.m., Monday through Friday, excluding holidays. The Chief Clerk's Office is located on the first floor of Ali'iolani Hale, 417 South King Street, Honolulu, Hawai'i 96813-2902. Ali'iolani Hale is the building located behind the King Kamehameha statue. The mailing address is the same as the street address. Electronic filing can be done at any time except when the system is shut down for maintenance.

5. How do weekends and holidays affect filing deadlines?

If the deadline for filing a document falls on a Saturday, Sunday, or state holiday, the document must be filed no later than the next day that is not a Saturday, Sunday, or holiday. See [HRAP Rule 26\(a\)](#). For a list of established state holidays, see [HRS § 8-1](#).

About the ICA Judges

1. How are the ICA judges selected?

The Governor, with the consent of the Senate, fills judge vacancies on the ICA by appointing a person from a list of between four and six nominees presented to the Governor by the Judicial Selection Commission (JSC). See [Hawai'i Constitution, article VI, § 3](#).

2. Which ICA judges will consider the merits of my appeal?

A panel of three ICA judges, randomly selected by the appellate clerk, is assigned to each case to decide the case on the merits (merit panel). See [HRS § 602-55](#), [HRAP Rule 45\(f\)\(1\)](#). If a judge assigned to a merit panel files a notice of disqualification or recusal, or is unavailable due to illness, absence, or disability, the appellate clerk randomly selects a substitute judge from the remaining ICA judges. See [HRAP Rule 45\(f\)\(5\)](#).

3. Which ICA judges will consider motions filed in a case on appeal?

A motions panel consisting of three ICA judges designated by the chief judge considers and determines motions before a merit panel is assigned. The chief judge may designate one or more of the motions panel judges to consider and determine motions that may be acted on by a single judge. Motions filed after a merit panel is assigned are considered and determined by the merit panel. See [RICA Rule 4\(a\)\(ii\)](#).

Beginning an Appeal

1. What is an appeal?

An appeal is a request to an appellate court to review and change the judgment or order of a court or agency appealed from due to alleged error committed by the court or agency. An appeal asks an appellate court to review whether the court or agency appealed from made the right decision or followed the correct procedure in making its decision.

2. Who can appeal?

Generally, only parties to a court or agency proceeding may appeal. A person who is not a licensed attorney may not appeal or file documents with the ICA for another party. This may constitute the unauthorized practice of law and may subject the unlicensed individual to criminal penalties. See [HRS § 605-14](#) and [Hawai'i Rules of Professional Conduct Rule 5.5](#).

A corporation filing an appeal must be represented by a licensed attorney.

3. Which court decisions in a civil case can be appealed?

Generally, appeals in civil cases may be taken only from "*final* judgments, orders, or decrees," see [HRS §§ 641-1\(a\)](#) and [571-54](#); an interlocutory order certified for appeal, see [HRS § 641-1\(b\)](#); a partial judgment certified for appeal, see [HRCF Rule 54\(b\)](#) and [DCRCP Rule 54\(b\)](#); and special classes of decisions, such as collateral orders, that are immediately appealable when entered.

Warning: What constitutes a final judgment, order or decree, or other appealable order is a very complex legal issue. Therefore, the applicable statutes, rules, and case law should be consulted carefully, and it may be necessary to seek the advice of an attorney to determine whether and when a decision is appealable.

4. Which court decisions in a criminal case can be appealed by a defendant?

In circuit and circuit family court criminal cases, a party "aggrieved by the judgment" may appeal to the ICA. "The sentence of the court in a criminal case shall be the judgment." See [HRS §§ 641-11, 571-54](#).

Additionally, a defendant may, under certain circumstances, appeal certain interlocutory orders, decisions, or judgments entered by a circuit court in a criminal case. See [HRS § 641-17](#).

In district and district family court criminal cases, appeals are allowed from "all final decisions and final judgments[.]" See [HRS § 641-12](#).

5. Which agency decisions are appealable directly to the ICA?

Usually, appeals of agency decisions must be filed with the circuit courts. However, there are many exceptions. Certain agency decisions are appealable directly to the Hawai'i Supreme Court and others are appealable directly to the ICA. Examine the statute that authorizes the appeal from the agency decision.

6. Are there rules for filing an appeal?

Yes. All appeals to the ICA must comply with the [Hawai'i Rules of Appellate Procedure \(HRAP\)](#), the [Hawai'i Electronic Filing and Service Rules \(HEFSR\)](#), and the [Hawai'i Court Records Rules \(HCRR\)](#).

7. How do I file an appeal?

A party begins an appeal by filing a Notice of Appeal and paying the required fees. See [HRAP Rule 3](#). Filing a Notice of Appeal informs the trial court or agency that its decision is being appealed, and notifies the other parties that an appeal is being taken.

8. What is a cross-appeal?

If a party files a timely appeal from a decision of a court or agency, any other party may also challenge the same or other appealable decision of the court or agency by filing a cross-appeal. See [HRAP Rule 4.1](#). The appeal and cross-appeal are combined in one appellate case for decision by the ICA. A party who files a cross-appeal is called a "cross-appellant," and a party who responds to the cross-appeal is called a "cross-appellee."

9. Where do I file a Notice of Appeal?

Unless filed electronically, the notice of appeal shall be filed with the clerk of the court or agency from which the appeal is taken. See [HRAP Rule 4\(a\)\(1\)](#) and [4\(b\)\(1\)](#). For both civil and criminal cases, an attorney who represents a party before the appellate courts must register as a JEFS User and electronically file a Notice of Appeal through JEFS, unless excused by order of the ICA or the supreme court. See [HRAP Rule 25\(a\)](#), [HEFSR Rules 2.2](#) and [4.1](#).

10. What should a Notice of Appeal contain?

Pursuant to [HRAP Rule 3\(c\)](#), a Notice of Appeal must generally: (1) identify the party or parties taking the appeal, either in the caption or the body of the Notice of Appeal; (2) designate the judgment, order, or part(s) thereof that the party is

appealing; (3) designate the court or agency appealed from; and (4) attach as an exhibit a copy of the judgment or order being appealed. Sample forms of Notices of Appeal can be found in the appendices to the HRAP (see Appendix [Forms 1](#), and [2](#).)

For most civil cases, a party who files an appeal or cross-appeal must file a Civil Appeal Docketing Statement (CADS) with the Notice of Appeal or Notice of Cross-Appeal. See [HRAP Rule 3.1](#) for the requirements for filing a CADS. A sample CADS form can be found in the appendices to the HRAP (see Appendix [Form 6](#)).

11. When should I file the Notice of Appeal?

Generally, a Notice of Appeal must be filed within 30 calendar days after the court or agency appealed from enters its written judgment or appealable order. If the 30th day falls on a Saturday, Sunday, or holiday, the Notice of Appeal may be filed by the next day that is not a Saturday, Sunday, or holiday. It is essential that the Notice of Appeal be filed within the required time period to avoid losing the right to appeal. See [HRAP Rule 4](#) and [HRAP Rule 26](#).

For trial-court appeals, a judgment or order is entered when it is filed with the clerk of the trial court. For agency appeals, a judgment or order is entered when it is filed with the agency official designated to prepare the record for appeals. See [HRAP Rules 2.1\(b\)](#) ("clerk of the court"), [4\(a\)\(5\)](#), and [4\(b\)\(3\)](#). The appeal period starts when the judgment or appealable order is entered, not when a party learns of its entry.

The timely filing of certain motions may extend the time for filing the Notice of Appeal. See [HRAP Rule 4\(a\)\(3\)](#), [HRAP Rule 4\(b\)\(2\)](#).

12. Is it possible to obtain an extension of time to file a Notice of Appeal?

Yes. For appeals in civil cases, [HRAP Rule 4\(a\)\(4\)](#) contains the requirements that must be satisfied to seek and obtain an extension of time to file a Notice of Appeal. For appeals in criminal cases, [HRAP Rule 4\(b\)\(5\)](#) contains the requirements that must be satisfied to seek and obtain an extension of time to file a Notice of Appeal.

13. Who notifies the other parties that an appeal has been filed?

The appellant is required to notify the other parties that an appeal has been filed. The appellant must serve a filed copy of the notice of appeal on all other parties, and must file proof of such service within 7 days after filing the notice of appeal. See [HRAP Rule 3\(e\)](#), [HRAP Rule 25](#) and [HEFSR Rules 2.2](#), [4.1](#), and [6](#) contain

information on the requirements for electronic or conventional service and for proof of such service.

14. What fees and costs do I need to pay to file my appeal?

The fees and costs for filing an appeal are set forth in [HRS Chapter 607](#) and [HRAP Appendix B and C](#).

15. Are court forms pertinent to an appeal available online?

Yes. Court forms pertinent to an appeal can be found on the Judiciary website under [Self-Help Court Forms](#).

16. Must I have an attorney to file an appeal?

It depends. If you are an individual party, you do not need an attorney to file an appeal. Parties who represent themselves are called "pro se" parties. If you choose to represent yourself, you will still be required to follow the applicable rules. Before deciding to represent yourself on your appeal, you may want to consult with a licensed attorney.

It is important to note that while individuals may proceed pro se by representing themselves, they may not be represented by another person who is not a licensed attorney. Moreover, corporations and other business entities must be represented by a licensed attorney.

17. Am I entitled to be represented by a public defender or a court-appointed attorney for my appeal?

It depends. You may be entitled to be represented by a public defender or a court-appointed attorney for your appeal if you are an indigent person (someone who cannot afford to hire an attorney). Generally, someone who was eligible to be represented by a public defender or a court-appointed attorney at the trial court or agency level will be entitled to such representation on appeal. See, e.g., [HRS chapter 802](#) and [HRS §§ 346-234, 571-87, and 587A-17](#).

18. Will filing an appeal stay (stop the enforcement of or postpone) the judgment or appealable order that I'm appealing?

Generally, the filing of an appeal does not stay a judgment or order.

If you wish to stay a civil judgment or order, you may file a motion with the court or agency appealed from, seeking a stay of the judgment, approval of a supersedeas bond, or an order suspending, modifying, restoring, or granting an

injunction while your appeal is pending. The court or agency appealed from may require you to post a supersedeas bond or other security before granting a stay or injunction. You may also file a motion for a stay, approval of supersedeas bond, or injunction pending appeal with the ICA, but, if the appeal is from a court, you generally must show that you attempted but failed to obtain relief from the court appealed from or it was impracticable to seek relief from that court. See [HRAP Rule 8](#); [HRCP Rule 62](#); and [HRS § 641-3](#).

In a criminal case, the filing of a Notice of Appeal or the giving of oral notice in open court at the time of sentence by the defendant or the defendant's counsel of an intention to take an appeal may, in the discretion of the trial court, operate as a stay of execution of the sentence and thereby suspend the operation of any sentence or order of probation. The trial court may impose conditions upon which a stay is granted. The court may in certain circumstances allow the defendant to be released on bail pending the appeal. See [HRS § 641-14](#), [HRS § 804-4](#) and [HRAP Rules 8](#) and [9\(b\)](#).

The Appellate Process in the Intermediate Court of Appeals (ICA)

1. What is the Record on Appeal?

An appeal is not a new trial, and unless specifically authorized by statute, the ICA will not accept new evidence, exhibits, or other material not presented to the court or agency appealed from. An appeal determines whether the trial court or agency made a mistake in reaching its decision(s) and is decided based on the record developed in the trial court or agency. The record includes: (1) all documents related to the case, including correspondence, submitted for filing in any form; (2) any written jury instructions given or refused; (3) exhibits, including, but not limited to, presentence reports, social work reports, and tangible items, whether admitted into evidence or refused, provided that exhibits marked for identification but never offered shall not be included; (4) court reporters' notes, audio or video recordings of court proceedings, and any transcripts prepared from them; (5) a docket; (6) minutes; and (7) information contained in the electronic case management system. See [HRAP Rule 10](#), [HRAP Rule 11](#), and [HCRR Rule 4](#). It is the appellant's responsibility to provide the ICA with a Record on Appeal that is complete and sufficient for review of the points raised on appeal. See [HRAP Rule 11\(a\)](#).

Unless otherwise provided and except when the documents in the Record on Appeal are available in JIMS, the clerk of the court or agency appealed from automatically assembles, certifies, and electronically files an imaged index to the Record on Appeal and imaged copies of each document filed in the record, within 60 days after the Notice of Appeal is filed. See [HRAP Rule 11](#). Any document filed thereafter with the trial court or agency will not be transmitted to the ICA, unless the ICA so orders. However, transcripts and requested findings of fact and conclusions of law will be electronically filed without further order of the ICA. See [HRAP Rules 10\(b\)](#), [10\(f\)](#), and [11\(b\)\(1\)](#).

In lieu of a Record on Appeal, the parties to an appeal may sign an agreed statement of the case, approved by the court or agency appealed from, that sets forth how the issues presented on appeal arose and were decided and the relevant facts that were alleged and proved or sought to be proved that are essential to the decision of the issues presented. See [HRAP Rule 10\(d\)](#).

2. Why is the Record on Appeal important?

The Record on Appeal is what the ICA looks at in considering the arguments on appeal. If the Record on Appeal does not include parts of the record of the proceedings that are necessary to support the points of error and/or arguments, the ICA may ignore such points and/or arguments. See [HRAP Rule 28](#).

Additionally, the filing of the Record on Appeal with the appellate clerk triggers the appellant's duties to file a statement of jurisdiction and opening brief. See [HRAP Rules 12.1](#) and [28\(b\)](#). Each appellant is responsible for ensuring that the Record on Appeal is sufficient to review the points of error asserted and to pursue appropriate proceedings in the court or agency appealed from to correct any omissions in the Record on Appeal. [HRAP Rule 11\(a\)](#). The statement of jurisdiction and opening brief will be due within 10 and 40 days, respectively, after the Record on Appeal is filed.

3. What is a Statement of Jurisdiction?

A Statement of Jurisdiction is a document that every appellant and cross-appellant must file within ten days after the Record on Appeal is filed. Its purpose is to help the ICA determine at the commencement of an appeal whether it has appellate jurisdiction to consider the appeal. The Statement of Jurisdiction must show the specific statutory or other grounds that give the ICA jurisdiction over the matter, and it must include the relevant procedural facts that establish jurisdiction and the relevant filing dates that establish the timeliness of the appeal. The Statement of Jurisdiction must also include references to the Record on Appeal for all relevant facts and dates. A copy of the judgment or order being appealed must be attached to the Statement of Jurisdiction. See [HRAP Rule 12.1](#).

For civil cases involving multiple claims or parties, the Statement of Jurisdiction shall also show, with dates and references to the Record on Appeal, how each claim against each party was resolved and whether the appealed order or judgment was certified for appeal. See [HRAP Rule 12.1\(c\)\(1\)](#).

For criminal cases, the Statement of Jurisdiction must also identify the offenses involved in the appeal by statutory section and name, any sentence imposed, and the defendant's custody status. See [HRAP Rule 12.1\(c\)\(2\)](#).

4. What if I believe the ICA lacks appellate jurisdiction?

An appellee who contests the ICA's jurisdiction to consider an appeal may file a Statement Contesting Jurisdiction within ten days after the Record on Appeal is filed. See [HRAP Rule 12.1\(a\)](#).

5. Do I need to order transcripts of the proceedings for my appeal?

A transcript shows in writing what evidence and arguments were orally placed before the court or agency appealed from and may be required for a proper review of a case on appeal. Generally, it is the appellant's responsibility to request and pay for any transcript of a trial or hearing that is necessary to decide an appeal. Failure to order relevant transcripts can result in the denial of an appeal.

With respect to court proceedings, when an appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court

appealed from, the appellant is required to request the preparation of transcripts of the proceedings that are necessary for the ICA to properly review the points of error raised on appeal. If an appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant is required to include in the record a transcript of all evidence relevant to such finding or conclusion. See [HRAP Rule 10\(b\)\(1\)](#) and [\(3\)](#).

6. What if I don't want to request any transcripts or only want transcripts of certain proceedings?

An appellant who determines that transcripts of court proceedings are not necessary for his or her appeal must, within ten days after filing the Notice of Appeal: (1) file with the appellate clerk a certificate stating that no transcripts will be prepared, and (2) serve a copy of the certificate on each appellee. See [HRAP Rule 10\(b\)\(2\)](#).

If an appellant does not order transcripts of *all* oral proceedings in the trial court appealed from, the appellant must, within ten days after filing the Notice of Appeal: (1) file with the appellate clerk a statement of the points of error that the appellant intends to present on appeal, and (2) serve a copy of the statement on the appellee. If the appellee believes that other transcripts are necessary for resolution of the appeal, the appellee must, within ten days after service of the statement of the points of error: (1) file with the appellate clerk a list of additional transcripts to be prepared and included in the record, and (2) serve a copy of the list on the appellant. Unless the appellant orders the additional transcripts and so notifies the appellee within ten days after service of the appellee's list, the appellee may, within the following ten days, either (1) order the additional transcripts, or (2) file a motion with the ICA seeking an order requiring the appellant to do so. See [HRAP Rule 10\(b\)\(2\)](#) and [\(4\)](#).

7. When and how do I order transcripts?

Within ten days after filing the Notice of Appeal, the appellant must file with the appellate clerk a request to prepare all transcript(s) that the appellant deems necessary for his or her appeal that are not already on file in the appeal. Each request must be submitted on a form that substantially complies with Form 9 in the HRAP Appendix and must include: (1) the name of the judge or agency that heard the proceedings; (2) the name of the court reporter who is responsible for preparing the transcript of the proceedings, or, if the proceedings were recorded, the name of the supervising court reporter, or, if there is no supervising court reporter, the name of the administrator of the court or agency appealed from; (3) the date(s) of the trial or hearing(s) to be transcribed; and (4) the portions of the transcript requested. See [HRAP Rule 10\(b\)\(1\)](#).

When filing a request, the appellant must, unless exempt from prepayment or deposit requirements, either: (1) submit a declaration that the appellant has

submitted to the court reporter the approximate cost of the transcript fees, as computed by the court reporter at the rate established by the Rules Governing Court Reporting in the State of Hawai'i or at the rate of \$150 for each hour of proceedings to be transcribed; or (2) submit a certificate signed by the court reporter that the fees have been paid or prepayment has been waived. See [HRAP Rule 10\(b\)\(1\)\(B\)](#).

The appellant must serve a filed copy of the request for transcripts and its accompanying documents on all other parties. See [HRAP Rule 10\(b\)\(1\)\(D\)](#).

8. What happens if a requested transcript of a proceeding is not prepared or is not available?

If a court reporter refuses, becomes unable, or fails to prepare the transcripts as requested, the party requesting the transcripts may either (1) request that another court reporter be assigned to prepare the transcripts, or (2) prepare a statement of the evidence or proceedings from the best available means and serve the statement on the opposing party(ies), who may file objections or proposed amendments within ten days after service of the statement. The statement and any objections or proposed amendments to the statement must be submitted to the court or agency appealed from for settlement and approval and as settled and approved, shall be included in the Record on Appeal by the clerk of the court or agency appealed from. See [HRAP Rule 10\(c\)](#).

9. How do I request that findings of fact and conclusions of law be entered?

For some types of cases, the court appealed from may not be required to enter findings of fact and conclusions of law unless and until a Notice of Appeal is filed. See, e.g., [HFCR Rule 52\(a\)](#) and [DCRCP Rule 52\(c\)](#). In cases where the court appealed from is not required to enter findings of fact and conclusions of law prior to the entry of an order, judgment or decree, but is required to do so once a Notice of Appeal is filed, the appellant shall, no later than ten days after filing the Notice of Appeal, file in the court appealed from a request for entry of findings of fact and conclusions of law, naming the judge who tried the case and entered the order, judgment, or decree appealed from. The named judge then has 28 days to enter the requested findings of fact and conclusions of law. See [HRAP Rule 10\(f\)](#).

Agencies typically file findings of fact and conclusions of law automatically upon entry of their decision. See [HRS § 91-12](#).

10. What is a brief?

A brief is a document prepared by a party to an appeal that sets out the party's legal and factual arguments, and the legal authorities supporting those arguments. Briefs are very important because they may be the only opportunity for parties to present their arguments to the ICA. If oral argument is scheduled, a party who has not filed a brief will not have the opportunity to be heard, unless the ICA directs otherwise. See [HRAP Rule 28](#) and [Rule 34\(h\)](#).

Generally, there are three types of briefs on appeal: opening brief, answering brief, and reply brief. Each brief must be filed with the appellate clerk and served upon all parties.

If you are the appellant or cross-appellant, you must file an opening brief which is due within 40 days after the Record on Appeal is filed with the appellate clerk. If you are the appellee or cross-appellee, you must file an answering brief which is due within 40 days after the appellant's or cross-appellant's opening brief is served or is received as evidenced by an acknowledgment of service, whichever is later. An appellant or cross-appellant may file a reply brief that responds to matters presented in the appellee's or cross-appellee's answering brief. The reply brief, or a statement that no reply brief will be filed, is due within 14 days after the answering brief is served or is received as evidenced by an acknowledgment of service, whichever is later. See [HRAP Rule 28](#).

11. What should my brief contain and look like?

The requirements for page set-up, font size, and line spacing are set forth in [HRAP Rules 32](#). Absent permission by the ICA, opening and answering briefs must not exceed 35 pages, and reply briefs must not exceed 10 pages, not counting indexes, appendices, and statements of related cases. An opening brief must generally contain: (1) a subject index and table of authorities; (2) a concise statement of the case, with record references; (3) a concise statement of the points of error, with record references of the alleged errors and objections thereto, if any; (4) applicable standards of review; (5) the argument, with record references and citations to legal authorities; (6) relevant parts of constitutional provisions, statutes, ordinances, treaties, regulations, or rules pertaining to the points of error on appeal; (7) a conclusion, specifying with particularity the relief sought; (8) an appendix; and (9) a statement of related cases. An answering brief shall generally "be of like character as that required for an opening brief." See [HRAP Rules 28](#) and [32](#) for more information on briefs.

Be sure to comply with [HRAP Rule 28](#) and [32](#) when preparing your brief(s). Failure to comply with the requirements for briefs may result in sanctions. See [HRAP Rules 28\(b\)](#) and [30](#).

12. How many copies of my brief should I file and serve?

Whether the original brief is filed electronically or conventionally, parties must mail or deliver to the appellate clerk 4 paper copies of each brief within 1 business day after filing. See [HRAP Rule 32.1](#) and [HRAP Appendix A](#). See [HRAP Appendix A](#) for the required number of copies of other documents to be filed with the appellate clerk. For conventionally served briefs, 2 copies of each brief must be served on each party to the appeal. See [HRAP Rule 28\(a\)](#). For electronically served briefs, the notice of electronic filing automatically generated by JEFS is sufficient to show service on all JEFS Users and parties who have consented to receive service by electronic means.

13. What happens if my brief is due on a weekend or holiday?

When the deadline for filing a document falls on a weekend or holiday, the deadline moves to the next work day. See [HRAP Rule 26\(a\)](#).

14. When is my brief considered filed?

Electronically filed briefs and their appendices are considered filed when a Notice of Electronic Filing is generated.

Conventionally filed briefs and their appendices are considered filed when received in person by the appellate clerk or on the day of mailing if mailed, postage prepaid, via first-class mail (or its equivalent in terms of delivery speed). See [HRAP Rule 25](#). *NOTE:* The rule that the day of mailing is deemed to be the filing date does *not* apply to other documents (besides briefs and their appendices) filed with the appellate clerk, which are considered filed when received by the appellate clerk. See [HRAP Rule 25\(a\)](#).

15. Is it possible to obtain an extension of time for filing my brief?

Yes. According to [HRAP Rule 29](#), if you make a timely request, the appellate clerk shall grant one extension of no more than 30 days for filing an opening or answering brief and no more than ten days for filing a reply brief. The request may be made orally, by written motion, or by letter and must be received by the appellate clerk within the original time for filing the brief. The appellate clerk will note on the record that the extension was granted and the new date the brief is due. The requesting party must notify all other parties that the extension was granted and file with the appellate clerk a copy of the notice.

Any further extensions of time to file a brief must be requested by written motion filed at least 5 days prior to the due date of the brief. The approval of the motion by a judge requires a showing of good cause for the extension.

16. How do I ask the ICA to do something?

Requests to the ICA are made by written motion, with proof of service on all other parties. The motion must state the specific grounds for the motion and the relief or action sought from the court, and it may be supported by a memorandum, affidavit, declaration, or other papers. All supporting documentation must be filed with the motion. A party may oppose the motion by filing a written response in opposition to the motion within five days after service of the motion. Motions, except a motion for reconsideration, have a 3-page limit, and memoranda in support of or in opposition to motions have a 20-page limit. See [HRAP Rule 27](#).

About Oral Argument

1. What is oral argument?

Generally, the ICA decides cases based on the written briefs. On occasion, the ICA will hear oral (spoken) argument. At oral argument, each side to an appeal is given the same amount of time, typically a maximum of 30 minutes, to argue its case, with the appellant allowed to reserve a portion of the allotted time for rebuttal. The ICA judges question each party's attorney(s) (or the parties themselves, if not represented by counsel) about the issues raised on appeal, the evidence presented to the court or agency appealed from, and the requirements of the law. See [HRAP Rule 34](#) for more information on oral argument.

2. Can I request oral argument for my case?

Yes. For those cases that the ICA considers appropriate for disposition without oral argument, an order stating that no oral argument will be held is entered by the court and served on the parties. Within ten days after the conventional mailing or electronic service of the order, any party may file a motion for retention of oral argument, supported by a statement of reasons. The ICA may grant or deny such motion, and the ICA's decision is not subject to review or reconsideration. See [HRAP Rule 34\(c\)](#).

3. Where does the ICA hold its oral arguments?

Generally, oral argument before the ICA is heard in the courtroom of the Hawai'i Supreme Court, located on the second floor of Ali'iolani Hale, 417 South King Street, Honolulu, Hawai'i 96813-2902. Ali'iolani Hale is the building located behind the King Kamehameha statue.

The appellate clerk notifies the parties of the time and place of oral argument and the amount of time each side is allowed to argue. A motion to postpone argument or for extra time to argue must be filed within ten days of such notification. See [HRAP Rule 34\(b\)](#).

The location and time of oral argument, as well as a brief description of the cases being argued, are posted on the Judiciary website.

4. Can I listen to oral argument online?

Digital-audio recordings of recent ICA oral arguments can be found on the Judiciary's website under "[Oral Arguments Recordings Archive](#)" and may also be located by utilizing the search box in the Judiciary's website.

About ICA Decisions

1. How will my appeal be decided?

Under certain circumstances, a motions panel will dismiss an appeal before the parties have completed filing their briefs without deciding the appeal on the merits, that is, without considering the reasons the decision of the court or agency appealed from is being challenged. For example, a motions panel may dismiss an appeal because the ICA lacks jurisdiction to decide the appeal or because the appellant has failed to pursue the appeal by filing an opening brief.

Once the parties have completed the process of briefing the appeal, the appeal is submitted to a merit panel, which is comprised of three randomly selected ICA judges. The merit panel reviews and considers the briefs filed by the parties, relevant records of the court or agency appealed from, and relevant transcripts of proceedings prepared for the appeal. The merit panel decides the case by applying the relevant law to the facts of the case.

2. How will I be notified of the ICA's final decision in my appeal?

Once the ICA's final decision in an appeal is filed, the appellate clerk will promptly notify the parties of the decision. See [HRAP Rule 35\(d\)](#). The ICA's final decision may take the form of a published opinion, memorandum opinion, or dispositional order. See [HRAP Rule 35](#).

After the ICA's final decision is filed (other than an order dismissing the appeal which removes the case from the appellate process without a decision on the merits), the ICA prepares and files with the appellate clerk a Judgment on Appeal, signed by a judge. The appellate clerk serves a filed-marked copy of the Judgment on Appeal on each party and on the court or agency appealed from. See [HRAP Rules 36](#). As noted, a Judgment on Appeal is not filed for appeals that are dismissed by an order of dismissal. See [HRAP Rules 36](#).

3. What can I do if I disagree with the ICA's decision?

If you disagree with the ICA's decision (which includes a decision on the merits and an order dismissing the appeal), you may file a motion for reconsideration in accordance with [HRAP Rule 40](#). The motion for reconsideration must be filed *within ten days after the filing date of the opinion, dispositional order, or ruling*, unless you obtain *within this ten day period* approval by an ICA judge for additional time to file your motion. See [HRAP Rule 40](#).

If you disagree with the ICA's decision, you may also file an Application for Writ of Certiorari in accordance with [HRAP Rule 40.1](#) and [HRS § 602-59](#), requesting

that the supreme court review the ICA's decision. The application must be filed *within thirty days after the ICA's Judgment on Appeal or dismissal order is filed*. Upon a written request filed prior to the expiration of the thirty-day period, a party may extend the time for filing an Application for a Writ of Certiorari for no more than an additional thirty days. See [HRAP Rule 40.1](#) and [HRS § 602-59](#). An untimely request for an extension shall not extend the time to file the Application for Writ of Certiorari. See [HRAP Rule 40.1](#).

4. Where can I view ICA decisions?

ICA decisions (issued since 1998) can be viewed on the Judiciary's website under "[Hawaii Appellate Court Opinions and Orders](#)" and may also be located by utilizing the search box in the Judiciary's website. Published opinions are also printed in the Hawaii Appellate Reports (for opinions from May 1980 to September 1994) or West's Hawai'i Reports (for opinions from September 1994 to present) and in the Pacific Reporter, which are available to the public in the Supreme Court Law Library, 417 South King Street, Honolulu, Hawai'i.

About Attorney's Fees and Costs

1. How can I request an award of attorney's fees and costs for my appeal?

To request attorney's fees and costs, a party must submit an itemized and verified bill of fees and costs, together with a statement of authority for each category of items and, where appropriate, copies of invoices, bills, vouchers, and receipts. See [HRAP Rule 39](#). Providing authority for the request for attorney's fees and costs is necessary to be entitled to an award of fees and costs. See [HRAP Rule 39](#). Requests for fees and costs submitted by court-appointed attorneys for indigent appellants must substantially comply with [HRAP Appendix Form 7](#) and shall be accompanied by a copy of the order appointing the attorney. Requests for fees and costs submitted by attorneys for non-indigent appellants shall be submitted on a form that substantially complies with [HRAP Appendix Form 8](#). See [HRAP Rule 39](#).

In all cases, a request for fees and costs must be filed with the appellate clerk, with proof of service, no later than 14 days after the time for filing a Motion for Reconsideration, see [HRAP Rule 40](#), has expired or such a motion has been decided. See [HRAP Rule 39](#). Objections to such a request must be filed within ten days after the party from whom the fees and costs are sought was served with the request, unless the ICA grants an extension. A reply to the objection must be filed within seven days after service of the objection. See [HRAP Rule 39](#). An untimely request for fees and costs may be denied. See [HRAP Rule 39](#).

2. Who is entitled to an award of costs incurred on appeal?

Generally, in appeals of civil cases: (1) if the appeal or petition is dismissed, costs shall be taxed against the appellant or petitioner; (2) if the judgment being appealed is affirmed or the petition is denied, costs shall be taxed against the appellant or petitioner; (3) if the judgment being appealed is reversed or a petition granted, costs shall be taxed against the appellee or respondent; and (4) if the judgment being appealed is affirmed in part and reversed in part, or is vacated, or if the petition is granted in part and denied in part, costs shall be allowed only as ordered by the ICA. See [HRAP Rule 39](#). In the first three situations, the costs shall be ordered as described unless the ICA "otherwise" orders. Special rules apply to appeals involving the State of Hawai'i or an agency or officer of the State of Hawai'i. See [HRAP Rule 39 \(b\)](#). "Costs" are defined in [HRAP Rule 39\(c\)](#).