

IN THE SUPREME COURT OF THE STATE OF HAWAII

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In the Matter of the Amendment  
of the  
HAWAII RULES OF APPELLATE PROCEDURE

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ORDER AMENDING HAWAII RULES OF APPELLATE PROCEDURE

(By: Moon, C.J., Nakayama, Acoba, Duffy, and Recktenwald, JJ.)

IT IS HEREBY ORDERED that Rules 1, 2.1, 3, 3.1, 4, 4.1, 8, 9, 10, 11, 12, 15, 21, 24, 25, 26, 27, 28, 30, 32, 32.1, 35, 36, 40.1, 40.2, 42, 43, 45, 50, 51, 54, Forms 1 to 4 and 6 to 9, and Appendix A of the Hawaii Rules of Appellate Procedure are amended, effective September 27, 2010, as attached hereto (deleted material is bracketed and stricken; new material is underscored).

IT IS FURTHER ORDERED that Appendices B and C, attached hereto, are added to the Hawaii Rules of Appellate Procedure, effective September 27, 2010.

DATED: Honolulu, Hawaii, August 30, 2010.

## HAWAII RULES OF APPELLATE PROCEDURE

### Rule 1. SCOPE OF RULES AND TITLE.

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**(d) Interpretation and enforcement of rules.** These rules shall be read and construed with reference to each other, the Hawai i Electronic Filing and Service Rules, and the Hawai i Court Records Rules. Attorneys and pro se parties are deemed to be aware of, and are expected to comply with, all of the provisions of these rules.

**(e) Effect of Hawai i Electronic Filing and Service Rules.** Documents filed and notices given in accordance with the Hawai i Electronic Filing and Service Rules shall be deemed to comply with the filing, mailing, certified mailing, notice and service requirements of any part of these Hawai i Rules of Appellate Procedure

**(f) Effect of Automation on Processes and Procedures.** Duties set out in these rules may be performed by automation.

### Rule 2.1. APPLICABILITY OF OTHER COURT RULES; DEFINITIONS.

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**(b) Definitions.** As used in the HRAP:

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"attach" or "append" means to fasten to a physical document or to submit as a supporting document in JEFS or JIMS;

\* \* \*

"document" means pleading, motion, exhibit, order, judgment, decree, or other form of written communication or memorialization whether prepared on paper or electronically, including electronic documents, electronic forms, electronic templates, and electronic reports;

\* \* \*

"file" or "filing" means the submission of documents either "conventionally" or "electronically" as defined in the Hawai i Electronic Filing and Service Rules.

\* \* \*

JEFS means the Judiciary Electronic Filing System;

\* \* \*

JEFS User means an individual with a valid JEFS login and password;

\* \* \*

JIMS means the Judiciary Information Management System, the case management system developed by the Hawai i Judiciary and implemented by the Hawai i Supreme Court to record information and documents related to all cases filed in the courts of the State of Hawai i;

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~~["papers" include pleadings, exhibits, documents and appendices;]~~

\* \* \*

proof of service means a certificate of service, an acknowledgment of service, a notice of electronic filing, or an affidavit or declaration attesting to service;

\* \* \*

"serve" and "service" mean "conventional service" and "notice of electronic filing" as defined in the Hawai i Electronic Filing and Service Rules;

### **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 clerk of the court within the time allowed by Rule 4. Within 7 days after the conventional filing of the notice of appeal, the clerk of the court shall ~~[transmit a copy of]~~ electronically file the notice of appeal ~~[to the appellate clerk]~~ with the appellate court. A notice of appeal filed through JEFS is deemed filed with the clerk of the court appealed from. 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.

\* \* \*

#### **(c) Content of the notice of appeal.**

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~~[(3) The notice of appeal shall have affixed to it proof that service of the notice was made on all parties to the appeal in the manner required by paragraph (c) of this rule. The clerk of the court shall permit a notice of appeal to be filed without the proof of service, but the person who filed the notice of appeal shall file the proof of service within seven days after the filing of the notice of appeal.]~~

\* \* \*

**(d) Denomination of the parties.** The party appealing shall be denominated the appellant and by the appellant's denomination in the proceeding from which the appeal is taken so that an appellant shall be denominated plaintiff-appellant or petitioner-appellant or defendant-appellant or respondent appellant. All other parties shall be denominated appellees, and each appellee's denomination in the proceeding from which the appeal is taken shall also be included so that each appellee shall be denominated plaintiff-appellee or petitioner-appellee or defendant-appellee or respondent-appellee. Any appellee who supports the position of an appellant shall meet the time schedule for filing ~~[papers]~~ documents that is provided for that appellant.

#### **(e) Service of the notice of appeal.**

(1) The appellant shall serve ~~[by mail or delivery;]~~ a filed ~~[=marked]~~ copy of the notice of appeal on ~~[counsel of record for]~~ each other party ~~[, or, if a party is~~

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~~not represented by counsel, to the party at the party's last known address]. Proof of service shall be filed, with the appellate court, ~~[or agency promptly]~~ within 7 days after the filing of the notice of appeal.~~

(2) Additionally, in all actions 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 ~~[serve, by mail or delivery, a file-marked copy of the notice of appeal on the judge who entered the order, judgment, or decree, together with a file-marked copy of the request for entry of the required findings of fact and conclusions of law, as set forth in Rule 10. The clerk of the court shall include the findings of fact and conclusions of law in the record transmitted to the appellate clerk.]~~ comply with Rule 10(f).

**(f) Payment of fees.** If the fees are not paid, the clerk of the court who filed the notice of appeal shall ~~[notify]~~ file a notification with the appellate clerk ~~[in writing]~~ forthwith.

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### **Rule 3.1. CIVIL APPEAL DOCKETING STATEMENT**

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**(b) Time for filing.** The CADS shall be filed with the notice of appeal. The appellate clerk ~~[of the court from which the appeal is taken]~~ shall not reject a notice of appeal for which there is no CADS.

**(c) ~~[Number of copies.~~** Any person filing a CADS shall submit an original and two copies.] Reserved

**(d) ~~[Transmission and s]~~ Service of the CADS.** ~~[The clerk of the court shall transmit two copies of the CADS, along with the notice of appeal, to the appellate clerk.]~~ Any party who files a CADS shall serve a copy of it on all other parties.

**(e) Relationship to Rules 10 and 11.** Upon notice from the appellate clerk that an appeal has been accepted into the appellate conference program, preparation of transcripts, the record, and briefs shall be stayed pending further notification from the appellate clerk, notwithstanding anything to the contrary in Rules 10, 11, and 28 of these rules. If an appeal is accepted into the appellate conference program, the appellate clerk shall notify the parties, the clerk of the court from which appeal is taken, and the court reporters. Likewise, the appellate clerk shall notify the parties, the clerk of the court from which appeal is taken, and the court reporters if an appeal is returned to the appeals docket. The appellate clerk's notices ~~[shall be in writing and]~~ may be transmitted by interoffice mail, United States mail, e-mail, or facsimile.

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### Rule 4. APPEALS - WHEN TAKEN.

#### (a) Appeals in civil cases.

(1) TIME AND PLACE OF 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.

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 [~~filed with~~] submitted to the appellate clerk, the appellate clerk shall note on it the date of receipt and shall [~~transmit the notice to the clerk of the court appealed from~~] 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. A notice of appeal filed through JEFS or JIMS is deemed filed with the clerk of the court appealed from.

\* \* \*

#### (4) EXTENSIONS OF TIME TO FILE THE NOTICE OF APPEAL.

\* \* \*

(B) Requests for extensions of time after expiration of the prescribed time. The court or agency appealed from, upon a showing of excusable neglect, may extend the time for filing the notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by subsections (a)(1) through (a)(3) of this rule. However, no such extension shall exceed 30 days past the prescribed time. Notice of an extension motion filed after the expiration of the prescribed time shall be given to the other parties in accordance with the rules of the court or agency appealed from.

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#### (b) Appeals in criminal cases.

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

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 [~~filed with~~] submitted to the appellate clerk, the appellate clerk shall note on it the date of receipt and shall [~~transmit the notice to the clerk of the court appealed from~~] 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. A notice of appeal filed through JEFS or JIMS is deemed filed with the clerk of the court appealed from.

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### Rule 4.1. CROSS-APPEALS.

#### (a) Right of cross-appeal.

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(2) In civil cases involving multiple-party plaintiffs or defendants, if one party files a timely notice of appeal, any other party, whether on the same or opposite side as the party first appealing, may file a notice of cross-appeal [~~against all or any of the other parties to the case as well as against the party who first appealed. If the cross-appeal operates against a party not affected by the first appeal or in a manner different from the first appeal, that party may file a further cross-appeal as if the cross-appeal affecting that party had been the first appeal~~].

\* \* \*

#### (b) Manner and time of filing.

(1) The cross-appellant shall file with the clerk of the court appealed from a notice of cross-appeal and pay the filing fee within 14 days after the notice of appeal is served on the cross-appellant, or within the time prescribed for filing the notice of appeal, whichever is later. If a notice of cross-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. A notice of appeal filed through JEFS or JIMS is deemed filed with the clerk of the court appealed from.

\* \* \*

(d) **Abandonment or dismissal of appeal.** If the appellant abandons the initial appeal or the appellate court dismisses it, the cross-appeal may nevertheless be prosecuted to its conclusion, if allowed by law. Within 14 days after the entry of the order dismissing the initial appeal, if there is a record to be transcribed, the cross-appellant shall, in accordance with Rule 10(b), serve on each cross-appellee and file with the appellate clerk [~~of the court appealed from~~], a [~~notice to prepare a reporter's~~] request for transcripts of such parts of the proceedings as the cross-appellant deems necessary that are not already on file.

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### Rule 8. STAYS, SUPERSEDEAS BONDS, OR INJUNCTIONS PENDING APPEAL.

\* \* \*

(b) **Stay may be conditioned upon giving of bond; proceedings against sureties.** Relief available in the appellate courts under this rule may be conditioned upon the filing of a bond or other appropriate security in the court or agency appealed from. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, the bond, stipulation, or undertaking shall comply with applicable statutes, and each surety submits to the jurisdiction of the court or agency appealed from and irrevocably appoints the clerk of the court as the surety's agent upon whom any [~~papers~~] documents affecting liability

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on the bond or undertaking may be served. Liability may be enforced on motion in the court or agency appealed from without the necessity of an independent action. The motion and such notice of the motion as the court or agency prescribes may be served on the clerk of the court appealed from, who shall forthwith mail copies to the sureties if their addresses are known.

\* \* \*

### **Rule 9. RELEASE IN CRIMINAL CASES PENDING APPEAL.**

#### **(a) Appeals or relief from orders respecting release prior to a judgment of conviction.**

(1) An appeal authorized by law from an order refusing or imposing conditions of release prior to a judgment of conviction shall be determined promptly. Upon the entry of an order refusing or imposing conditions of release, the circuit, district, or family court shall state in writing the reasons for the action taken. As soon as practicable after the filing of the notice of appeal, the appellant shall file a copy of the court's order with the appellate court. The appeal shall be heard without the briefs, unless otherwise ordered by the appellate court upon such ~~[papers]~~ documents, affidavits or declarations, transcripts, and copies of portions of the record as the parties may present or the appellate court may require. Any ~~[papers]~~ documents filed in accordance with this rule shall be served on all other parties. The appellate court that has jurisdiction over the case or a judge or justice thereof may order the release of the appellant pending the appeal.

\* \* \*

#### **(b) Release pending appeal from a judgment of conviction.**

Application for release after a judgment of conviction shall be made in the first instance in the circuit, district, or family court. If the court refuses release pending appeal, or imposes conditions of release, the court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending a review may be made to the appellate court before which the appeal is pending or to a judge or justice thereof. The application shall be made by filing a written motion with proof of service on all other parties. It shall be determined promptly upon such ~~[papers]~~ documents, affidavits or declarations, transcripts, and copies of portions of the record as the parties shall present or the appellate court may require. Any ~~[papers]~~ documents filed in accordance with this rule shall be served on all other parties. The appellate court that has jurisdiction over the case or a judge or justice thereof may order the release of the appellant pending disposition of the motion.

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### **Rule 10. THE RECORD ON APPEAL.**

**(a) Composition of the record on appeal.** The record on appeal shall consist of the ~~[following:~~

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- ~~\_\_\_\_\_ (1) the documents filed in the court or agency appealed from;~~
- ~~\_\_\_\_\_ (2) written jury instructions given, or requested and refused or modified over objection;~~
- ~~\_\_\_\_\_ (3) exhibits admitted into evidence or refused;~~
- ~~\_\_\_\_\_ (4) the transcripts prepared for the record on appeal;~~
- ~~\_\_\_\_\_ (5) in a criminal case where the sentence is being appealed, a sealed copy of the presentence investigation report; and~~
- ~~\_\_\_\_\_ (6) the indexes prepared by the clerk of the court appealed from.] trial court or ADLRO record, as set out in Rule 2.19 and Rule 4 of the Hawai i Court Records Rules, or the agency record as defined by statutes or rules governing agency proceedings.~~

### **(b) The transcript of proceedings.**

#### (1) REQUEST TO PREPARE TRANSCRIPT.

(A) When to request. When an appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court or agency appealed from, the appellant shall file with the appellate clerk [of the court appealed from], within 10 days after filing the notice of appeal, a request or requests to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary that are not already on file. A request for transcripts of audiotapes or videotapes may list more than one tape on the request. The appellate clerk shall transmit the request(s) to prepare transcript to the designated reporter(s), the clerk of the court appealed from, and the supervising court reporter.

(B) Form of request. Each request shall be submitted on a form that substantially complies with Form 9 of the Appendix of Forms and shall contain the following information:

\* \* \*

#### (iv) Portions of the transcript requested.

Unless the appellant is statutorily exempt from the transcript prepayment or deposit requirement, each request shall be accompanied by either a certificate by the reporter being required to prepare a transcript that the ~~[fees for] reporter[']s services have]~~ has been paid or has waived prepayment; or a declaration that the party ordering the transcript has submitted to the court reporter a deposit of the approximate cost of the transcript fees, as computed by the reporter in advance in writing, at the rate established by the Rules Governing Court Reporting in the State of Hawai i; or a declaration that the party ordering the transcript has submitted to the court reporter a deposit of the approximate cost of the transcript fees, as computed in advance in writing at the rate of \$150 for each hour of proceedings to be transcribed. [If a request is accompanied by a deposit, the deposit shall be further accompanied by directions to the clerk of the court to use it to pay for the reporter's fees when the transcript is complete.]

\* \* \*

(C) Payment or Deposit for Transcript. Unless the appellant is exempt from the transcript payment or deposit requirement or the reporter has waived



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such requirement, a reporter need not commence preparation of the transcript until the required deposit or transcript prepayment has been made to the court reporter. If the appellant files a request for transcript without prepaying the transcript fees, making the required deposit, or obtaining the reporter's waiver of prepayment or deposit, the reporter shall, within [~~eleven (11)~~] days from the date of the filing of the request for transcripts, [~~notify the appellate court in writing~~] file a notification with the appellate clerk that prepayment, deposit, or waiver of prepayment or deposit for the transcripts was not made. A copy of the notice shall also be served on [~~counsel for~~] the party requesting the transcript.

\* \* \*

(D) Service required. [~~The appellant shall, within 5 days of filing a request for transcripts, either or mail a file-marked copy of the request and its accompanying documents to the reporter who is being required to prepare a transcript, or deposit a file-marked copy of the request and its accompanying documents in the reporter's court jacket.~~] [~~A request for transcripts of audiotapes or videotapes may list more than one tape on the request, provided that a separate copy of each request for each tape is provided to the supervising court reporter.~~] The appellant shall serve [~~also deliver or mail~~] a filed[~~-marked~~] copy of the request for transcripts and its accompanying documents [~~to~~] on [~~counsel for~~] all other parties[~~, or the parties themselves, if pro se~~].

(E) Expected completion date; time limitations. Upon receipt of a request for a transcript, the reporter shall [~~time stamp or otherwise~~] acknowledge the date of receipt on the request, indicate the expected completion date on the request, and then [~~transmit~~] electronically file a copy of the acknowledged request [~~to~~] in the appellate record [~~the clerk of the appellate court~~] and shall serve a copy on [~~counsel for~~] all parties[~~, or the parties themselves, if pro se~~]. If the transcript cannot be completed within 45 days after the filing of the notice of appeal, the reporter shall notify [~~counsel for~~] all parties[~~, or the parties themselves, if pro se,~~] of the new date on which the transcript is expected to be completed, provided that the transcript shall be completed within 60 days after the filing of the notice of appeal, unless the reporter obtains an additional extension of time from the appellate court. Any such additional extension shall be granted upon demonstration by the court reporter that good cause for the extension exists. [~~The court reporter shall serve a copy of the extension order upon counsel for all parties or the parties themselves, if pro se.~~] In the event of the failure of the reporter to file the transcript within the time allowed, the appellate court may take appropriate action, including the levying of a sanction against the court reporter. Upon completion of each transcript and receipt of payment, the court reporter shall file the transcript through JEFS and shall designate the document as the "Transcript of proceedings held on <date>."

(F) Inadequate payment or deposit. If, upon receiving a request for a transcript, the reporter determines that the prepaid fees or the amounts deposited by the appellant with the court reporter are inadequate to cover the cost of the transcript, the reporter shall, within 10 days after receiving the request, file with

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the appellate clerk [~~of the court~~] and [~~mail or deliver to the~~] serve upon the appellant an estimate or revised estimate of the total cost of the transcript and a notice of the additional amount required to be paid or deposited with the court reporter. The appellant shall pay the reporter and shall file a reporter's certificate of payment [~~or deposit~~] with the appellate clerk within 10 days after [~~the mailing~~] service of the reporter's notice. The reporter shall continue to work on the transcript until the prepaid fees or initial deposit are earned or until the expiration of the time allowed to make the additional payment or deposit.

(G) Filing the Transcript in the Appellate Case. [~~When a transcript is completed, payment of which is to be made by the clerk of the court from the appellant's deposit, the reporter shall bill the appellant at the rate authorized by the Rules Governing Court Reporting in the State of Hawaii, with a copy to the clerk of the court, and the clerk of the court shall pay the reporter from the funds deposited and promptly refund any excess deposit to the appellant or give notice to the appellant of any additional funds needed.~~] Upon completion of each transcript and receipt of payment, the court reporter shall file the transcript through JEFS and shall designate the document as the "Transcript of proceedings held on <date>."

(H) Cancellation of request for transcripts. If, after a request to prepare a reporter's transcript has been filed but before the court reporter has begun preparation of the transcript, the requesting party decides the transcript is not necessary for the appeal, a written cancellation request, containing the same information as required by subsection (b)(1)(B) of this Rule 10, shall be filed with the appellate clerk [~~court or agency from which the appeal has been taken~~] and served on [~~counsel for~~] all [~~other~~] parties[, ~~or the parties themselves, if pro se~~]. If, within 10 days after service of the request, [~~counsel or~~] a party[, ~~if pro se,~~] deems the cancelled transcript necessary, [~~he or she~~] the party may, within the following 10 days either order the cancelled transcript or, in the case the appellant has filed the cancellation request, move [~~in~~] the appellate court [~~or agency appealed from~~] for an order requiring the appellant to withdraw the cancellation request.

\* \* \*

(2) CERTIFICATE THAT NO TRANSCRIPTS TO BE PREPARED. If the appellant deems it unnecessary to have transcripts prepared, the appellant shall, within 10 days after filing the notice of appeal, file a certificate to that effect with the appellate clerk [~~of the court appealed from~~] and serve a copy of the certificate on each appellee.

\* \* \*

(4) NOTICE TO APPELLEE IF FEWER THAN ALL TRANSCRIPTS ARE ORDERED. Unless transcripts of all oral proceedings have been ordered, the appellant shall, within the 10-day time provided in (b)(1)(A) of this Rule 10, file a statement of the points of error the appellant intends to present on the appeal and shall serve on the appellee a copy of the statement. If, within 10 days after service of the statement, the appellee deems a transcript of other parts of the

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proceedings to be necessary, the appellee shall file and serve on the appellant a designation of additional parts to be prepared and included in the record on appeal. Unless within 10 days after service of such designation the appellant has ordered such parts and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the appellate court [~~or agency appealed from~~] for an order requiring the appellant to do so.

\* \* \*

**(d) Agreed statement as the record on appeal.** In lieu of the record on appeal as defined in subsection (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the court or agency appealed from and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. The statement, together with such additions, deletions, and modifications as the court or agency may consider necessary to truthfully and fully present the issues raised by the appeal, shall be approved by the court or agency appealed from and shall then be certified as the record on appeal and [~~transmitted~~] electronically filed by the clerk of the court appealed from within the time provided by Rule 11. [~~H~~] The statement shall contain a copy of the judgment [~~and the notice of appeal~~] or appealable order with its filing date. The statement shall be accompanied by a list of such exhibits admitted in evidence or rejected as the parties desire to have transmitted on appeal.

\* \* \*

**(f) Request for findings of fact and conclusions of law.** In all actions 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 10 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 action and entered the order, judgment, or decree being appealed. The appellant shall attach a filed [~~marked~~] copy of the notice of appeal to the request. The named judge shall enter the requested findings of fact and conclusions of law within 28 days after the request has been filed. To aid the court, the court may order the parties or either of them to submit proposed findings of fact and conclusions of law after the filing of the request.

### Rule 11. TRANSMISSION OF THE RECORD.

**(a) Duty of appellant.** After the filing of the notice of appeal, the appellant, or in the event more than one appeal is taken, each appellant, shall comply with the applicable provisions of Rule 10[~~(b)~~] and shall take any other action necessary to enable the clerk of the court to assemble and transmit the record. It is the responsibility of each appellant to provide a record, as defined in Rule 10[~~(a)~~] and the Hawai i Court Records Rules, that is sufficient to review

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the points asserted and to pursue appropriate proceedings in the court or agency from which the appeal is taken to correct any omission.

### **(b) Duty of the Clerk of the Court.**

(1) Unless otherwise provided, the clerk of the court shall, within 60 days ~~[from]~~ after the filing of the notice of appeal, assemble, certify, and electronically file an [transmit to the appellate clerk a single] imaged index to the record on appeal and imaged copies of each document filed in the record.~~[-, provided that] [w]~~ When all documents in the record on appeal, other than exhibits, are available in JIMS ~~[electronic format and accessible]~~, the clerk of the court need not transmit the physical or imaged documents, but shall ~~[notify]~~ file a notification with the appellate clerk ~~[in writing]~~ that the ~~[physical documents will not be transmitted]~~ documents are available in JIMS. If a complete record cannot be transmitted within such a period, the appellate court, for good cause, may extend the time upon stipulation or motion, provided that ~~[transcripts completed after the record has been transmitted to the appellate clerk and]~~ an imaged copy of any findings of fact and conclusions of law entered after the record on appeal has been transmitted to the appellate clerk~~[-]~~ shall be ~~[transmitted by the clerk of the court as a supplemental record]~~ electronically filed by the clerk of the court without further order of the appellate court.

(2) If the notice of appeal is filed without payment of the required fees and the appellant has not obtained an order allowing the appellant to proceed in forma pauperis, the clerk of the court shall not be required to prepare the record on appeal until the required fees are received or an order allowing the party to proceed in forma pauperis is obtained.

(3) ~~[In preparing the record on appeal, the clerk of the court shall consecutively number the pages of the court or agency file and shall provide in the file a numbered index of all the pages therein, provided that when an electronic or]~~ An imaged record shall provide[s] a navigation pane or frame for access to each document or transcript~~[-, the clerk need not separately number the pages]~~. If any documents, exhibits, and transcripts filed in the court or agency appealed from are not mentioned in the numbered index, the clerk of the court shall provide an additional index identifying each of them with reasonable definiteness. ~~[Documents of unusual bulk or weight, p]~~ Physical exhibits other than documents, and such other parts of the record shall not be transmitted by the clerk of the court unless he or she is directed to do so by appellate court order.

### **(c) Duty of the Appellate Clerk.**

(1) Upon the filing of the index to the record on appeal, the appellate clerk shall ~~[provide]~~ serve notice upon all parties to the appeal ~~[with copies of the record index]~~ of such filing. If an index is claimed to be in error, the party claiming it to be so is obligated to pursue appropriate proceedings in the court from which the appeal is taken to correct it.

(2) When the index to the record on appeal is not filed within the time required, the appellate clerk shall give notice to ~~[counsel for]~~ the appellant~~[-, or to the appellant, if the appellant is pro se,]~~ that the matter will be called to the

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attention of the appellate court on a day certain for such action as the appellate court deems proper, including dismissal of the appeal.

~~(d) [Temporary retention of record in the court or agency appealed from for use in preparing appellate papers. Notwithstanding the provisions of (a) and (b) of Rule 11, the parties may stipulate, or the court from which the appeal is taken on motion of any party may order, that the clerk of the court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event, the clerk of the court shall certify to the appellate clerk that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the appellate court may order, the appellant shall, in writing, request the clerk of the court to transmit the record.]~~

~~(e) Retention of the record in the court or agency appealed from by order of the appellate court. The appellate court may order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted:~~

~~——— If the record or any part thereof is required in the court or agency appealed from for its use pending appeal, the court or agency may make an order to that effect, and the clerk of the court shall retain the record or parts thereof subject to the request of the appellate court and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the court or agency shall allow and copies of such parts as the parties may designate.]~~

~~(f) Stipulation of parties that parts of the record be retained in the court or agency appealed from. The parties may agree by written stipulation filed in the court or agency appealed from that designated parts of the record shall be retained by the court or agency unless thereafter the appellate court before which the case is pending, or any party, shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.]~~

~~(g) Record for preliminary hearing in the appellate courts. If any party desires to make a motion for any intermediate order in the appellate courts, before the record is transmitted, the clerk of the court from which the appeal is taken shall electronically transmit to the appellate clerk images of such parts of the original record as any party shall request and designate in writing.~~

This rule applies to all motions for intermediate orders including motions for dismissal, for release, for a stay pending appeal, for injunctive relief, or for additional security on the bond on appeal or a supersedeas bond.

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### Rule 12. RECEIPT OF THE NOTICE OF APPEAL ~~[BY THE APPELLATE COURTS]~~; FILING OF RECORD.

(a) **Receipt of the notice of appeal ~~[by the appellate courts]~~.** Upon receipt of the notice of appeal, ~~[the appellate clerk shall thereupon assign an appellate court]~~ a case number shall be systematically assigned to the case. Except as provided below, an appeal shall be listed with the appellate courts under the title given to the action in the court or agency appealed from with the appellant identified as such, but if such title does not contain the name of the appellant, his or her name, identified as the appellant, shall be added to the title. In juvenile and paternity proceedings and whenever otherwise required by law, the anonymity of the persons or parties involved shall be maintained by the use of fictitious ~~[names]~~ titles and designations as provided by Rule 3(c)(1).

(b) **Filing the record, partial record, or ~~[certificate]~~ notification.** ~~[Upon receipt of the record or the partial record, or the clerk of the court's certificate, or the certified copy of the docket entries, the appellate clerk shall immediately give notice to all parties of the date on which it was filed.]~~ The appeal is docketed with the Hawaii appellate courts on the date of filing of the record, a partial record~~], clerk of the court's certificate, or certified copy of the docket entries;~~ or ~~[when]~~ upon the clerk of the court ~~]~~ [notifies] notification ~~[the appellate clerk the]~~ the record on appeal (other than exhibits) is available in ~~[electronic format]~~ JIMS.

\* \* \*

### Rule 15. RESERVED QUESTIONS.

(a) **From what court.** A circuit court, the land court, the tax appeal court and any other court empowered by statute, may reserve for the consideration of the supreme court a question of law arising in any proceedings before it. Questions may be reserved on motion of any party or on the court's own motion. Reserved questions shall be electronically filed by the clerk of the court.

(b) **Record.** The court reserving the question shall electronically transmit images of as much of the record as may be necessary to a full understanding of the questions reserved to the appellate clerk. ~~[Certified copies may be transmitted in lieu of the original documents].~~

\* \* \*

### Rule 21. WRITS OF MANDAMUS OR PROHIBITION DIRECTED TO A JUDGE; WRITS OF MANDAMUS DIRECTED TO A PUBLIC OFFICER; OTHER EXTRAORDINARY WRITS.

\* \* \*

(b) **Writs of mandamus directed to a public officer.** An application for a writ of mandamus directed to a public officer shall be made by filing a

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petition with the appellate clerk [~~of the supreme court~~] with proof of service on the officer and the attorney general or the chief legal officer of the county, as applicable. The petition shall conform to the requirements of subsection (a) of this rule. Upon receipt of the prescribed filing fee, the appellate clerk shall docket the petition and submit it to the supreme court for a determination as to whether [~~it~~] the petition will be entertained. If the court elects to entertain the petition, it will be handled in the same manner as a petition under subsection (a) of this rule.

\* \* \*

### **Rule 24. PROCEEDINGS IN FORMA PAUPERIS.**

**(a) Leave to proceed on appeal in forma pauperis from the circuit, district, family, land or tax appeal court or from an agency determination to the Hawai i appellate courts.** A party to an action in the circuit, district, family, land or tax appeal court, or before an administrative agency who desires to proceed on appeal in forma pauperis shall file in the appellate court [~~or agency~~] a motion for leave to so proceed, together with an affidavit or declaration, showing, in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay the required filing fees or to give security for costs, the party's belief that he or she is entitled to redress, and a statement of the issues that the party intends to present on appeal. A party who has filed such a motion may file his or her notice of appeal without being required to prepay the filing fees. If the motion is granted, the party may proceed with the appeal [~~without further application to the appellate courts and~~] without prepayment of fees or costs [~~in any court or agency~~] or the giving of security therefor. [~~If the motion is denied, the court or agency appealed from shall state in writing the reasons for the denial. The court or agency appealed from shall promptly provide the appellate clerk with a filed copy of its order granting or denying the motion.~~]

\* \* \*

**(c) [~~Motion for leave to proceed in forma pauperis before the appellate court.~~** If a motion for leave to proceed on appeal in forma pauperis is denied by the court or agency, or if the court or agency certifies that the appeal is not taken in good faith or finds that the party is otherwise not entitled to proceed in forma pauperis, the clerk of the court shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the appellate court within 10 days after service of the notice of the action of the court or agency. The motion shall be accompanied by a copy of the affidavit or declaration filed in the court or agency, or by the affidavit or declaration prescribed in the first paragraph of this subsection if no affidavit or declaration has been filed in the court or agency, and by a copy of the statement of reasons given by the court or agency for its action.

**—(d) Effect of denial of motion for leave to proceed in forma pauperis.** If the [~~court or agency has~~] motion to proceed in forma pauperis is

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denied ~~[a party the authority to proceed on appeal in forma pauperis, then]~~ the movant shall, within 10 days after the denial of such a motion, ~~[filed in the appellate court or, if no such motion is filed in the appellate court, within 10 days after the expiration of the time to file such a motion in the appellate court, the movant shall]~~ pay all unpaid filing fees and shall give security for costs. Failure of the unsuccessful movant to pay the unpaid filing fees or to give security for costs shall not affect the validity of the appeal, but is ground for such action as the appellate court having jurisdiction over the appeal deems appropriate, ~~[which]~~ and may include dismissal of the appeal.

### **Rule 25. REGISTRATION, FILING, AND SERVICE.**

**(a) Registration and Filing.** ~~[Papers]~~ Unless excused by order of the supreme court or the intermediate court of appeals, each attorney who represents a party before the appellate courts shall register as a JEFS User and file all documents through JEFS. A self-represented party may register as a JEFS User for the self-represented party's case. A party who is not a JEFS User shall submit documents to [with] the appellate clerk or [with] to an ex officio clerk[-; as provided by statute]. [Filing may be accomplished] Physical documents may be submitted by conventional mail addressed to the appellate clerk, but filing shall not be considered timely unless the [papers] documents are received by the clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if mailed by First Class Mail or other class of mail that is at least as expeditious, postage prepaid. If a motion requests relief that may be granted by a single judge or justice, the judge or justice may permit the motion to be filed and shall note thereon the date of filing and shall thereafter transmit it to the appellate clerk.

**(b) Service of all [papers] documents required.** Copies of all ~~[papers]~~ documents filed by any party shall, at or before the time of filing, be served by a party or person acting for that party on all other parties to the proceedings. Service on a party represented by counsel shall be made on counsel.

**(c) Manner of service.** Service may be personal, ~~[or]~~ by conventional mail, or by notice of electronic filing in accordance with the Hawai'i Electronic Filing and Service Rules. Personal service includes delivery of the copy to a responsible person at the office of counsel. Service by conventional mail is complete on mailing if mailed in the manner provided in subsection (a) above. Electronic service is complete upon issuance of the notice of electronic filing by JEFS or JIMS.

**(d) Proof of conventional service.** ~~[Papers]~~ Documents presented to the appellate clerk or an ex officio clerk for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date, the manner of service, and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the [papers] documents filed. Where computation of the time for



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a response to a conventionally served ~~[the]~~ document ~~[served]~~ begins with the filing date of that document, a filed ~~[=marked]~~ copy of the document shall also be conventionally served upon all other parties promptly after filing.

**(e) Acknowledgment of service.** The party served may file, within 5 days after receiving service, an acknowledgment of service setting forth the date and manner of service where the date of service differs from the date contained in the proof of service attached to the ~~[papers]~~ documents conventionally filed.

### Rule 26. COMPUTATION AND EXTENSION OF TIME.

\* \* \*

**(c) Additional time after service by mail.** Whenever a party is required or permitted to do an act within a prescribed time after service of a ~~[paper]~~ document, and the ~~[paper]~~ document is served by mail, 2 extra days shall be added to the prescribed period.

**(d) Shortening time.** A judge or justice for good cause shown may shorten the time for serving or filing a notice of motion or other ~~[paper]~~ document incident to an appeal or an original proceeding in the reviewing court. A motion to shorten time shall be made as provided in Rule 27.

\* \* \*

### Rule 27. MOTIONS.

**(a) Content of motions; response.** Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a written motion with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds upon which it is based, and shall set forth the order or relief sought. If a motion is supported by a memorandum, affidavit, declaration, or other ~~[papers]~~ documents, they shall be served and filed with the motion. Any party may file a written response in opposition to a motion within 5 days after service of the motion, but the appellate court may extend or shorten the time for responding to any motion as provided in Rule 26(b) and (d).

\* \* \*

**(d) Page limits.** A motion, other than a motion for reconsideration pursuant to Rule 40, shall not exceed ~~[three]~~ 3 pages, including an abbreviated caption and signature. Memoranda in support or opposition shall not exceed ~~[twenty]~~ 20 pages, including abbreviated captions and signatures. Only affidavits or declarations and ~~[papers]~~ documents necessary for the determination of the motion may be attached.

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### Rule 28. BRIEFS.

**(a) Format, service, and page limitation.** All briefs shall conform with Rule 32 and, if service is by any means other than a notice of electronic filing, be accompanied by proof of service of ~~[two]~~ 2 copies on each party to the appeal. Except after leave granted, an opening or answering brief shall not exceed 35 pages, and a reply brief shall not exceed 10 pages, exclusive of indexes, appendices, and statements of related cases. If a brief raises ineffective assistance of counsel as a point of error, the appellant shall serve a copy of the brief on the attorney alleged to have been ineffective.

\* \* \*

**(d) Reply brief.** Within 14 days after service of appellee's answering brief, or receipt as evidenced by an acknowledgment of service as provided in Rule 25(e), whichever is later, the appellant may file a reply brief. The reply brief shall be confined to matters presented in the answering brief. If no reply brief is to be filed, the appellant shall ~~[notify the appellate clerk and the appellee in writing of that decision]~~ file a notification with the appellate clerk, with service upon all parties, prior to the expiration of the time for filing the reply brief.

\* \* \*

**(j) Citation of supplemental authorities.** Parties may, by letter to the appellate clerk, bring to the appellate court's attention pertinent and significant authorities published after a party's brief has been filed, but before a decision. A copy of the letter, setting forth the citations, shall be served at or before the time of filing as provided by Rule 25(b). The letter shall provide references to either the page(s) of the brief or to a point argued orally to which the citations pertain. The letter shall, without argument, state the reasons for the supplemental citations. ~~[The parties shall provide 7 copies of each letter for the supreme court or 5 copies of each letter for the intermediate court of appeals, depending on the appellate court before which the appeal is pending.]~~ Any response shall be made promptly and shall be similarly limited.

\* \* \*

### Rule 30. BRIEFS NOT TIMELY FILED OR NOT IN CONFORMITY WITH RULE.

When the brief for appellant is not filed within the time required, the appellate clerk shall forthwith give notice to ~~[counsel for]~~ the parties that the matter will be called to the attention of the appellate court on a day certain for such action as the appellate court deems proper and that the appeal may be dismissed. When the brief of an appellant is otherwise not in conformity with these rules, the appeal may be dismissed or the brief stricken and monetary or other sanctions may be levied by the appellate court. When the brief of an appellee is not filed within the time required, or is not in conformity with these rules, the brief may be stricken and monetary or other sanctions may be levied by

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the appellate court. In addition, the appellate court may accept as true the statement of facts in the appellant's opening brief. Any party who may be adversely affected by application of this rule may submit a memorandum, affidavits, or declarations setting forth the reasons for non-conformance with these rules.

\* \* \*

### **Rule 32. FORM OF ~~[PAPERS]~~ DOCUMENTS.**

**(a) Quality and size of ~~[papers]~~ documents.** All ~~[papers]~~ documents and briefs filed in the appellate courts shall be ~~[printed, photocopied, typewritten or otherwise]~~ prepared ~~[in print]~~ to display, print, and copy in a clear and legible manner ~~[on unruled, unglazed, opaque white paper]~~. The page[s] set-up shall be formatted for 8-1/2 inch[es] by 11 inch[es] pages with a portrait orientation and, except for the flyleaf, not less than 1 inch margins all around. ~~[Each sheet shall have a margin at the top and bottom of not less than 1 inch and on the left-hand side of not less than 1 inch.]~~ Such ~~[papers]~~ documents shall be filed without covers and, if conventionally filed, without creasing ~~[the same]~~ and, except for ~~[opinions, orders, certificates, and other items]~~ documents filed by the court, shall include a flyleaf upon which shall be noted ~~[in the order named]~~, beginning at the top, the case number, the title of the appellate court and the cause abbreviated or in full, the character of the document, and the name or names, ~~[addresses and the]~~ telephone numbers, physical and electronic mail addresses of the attorney or attorneys representing the party on whose behalf the same is filed to be used for service, and the names of all judges or hearing officers who have participated in the case or matter. The flyleaf shall have a 3 inch top margin. ~~[Immediately below the title of the document, a space shall be left for the file mark of the appellate clerk. No originals of such papers, except printed briefs, shall be perforated or permanently bound. Copies, except printed briefs, shall be bound or stapled at the upper left-hand corner. Copies, but not originals, may be two-sided.]~~ Conventionally filed documents shall be submitted on unruled, unglazed, opaque white paper and shall not be bound, stapled, or tabbed.

**(b) Quality and style of ~~[print]~~ font.** ~~[If typed, the print]~~ Font size must be the equivalent of standard 12 point pica ~~[or equivalent]~~ and yield no more than 14 characters to the inch. ~~[If printed, whether in proportional or non-proportional fonts, the print must yield no more than 14 characters to the inch.]~~ Footnotes and quotations shall be ~~[typed or printed]~~ in the same font and size as the text. Twelve point Times New Roman, Courier New, or Arial fonts ~~[will be]~~ are deemed to satisfy the requirements of this rule. No attempt shall be made to reduce or condense the print in a manner that would increase the content of the document. ~~[All print, including all copies, shall be clear and legible, and the lines]~~ Lines shall be double spaced or one and one-half spaced except in headings, quotations, citations, indexes, footnotes, and appendices.

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**(c) Signature on conventionally filed documents.** All ~~[original]~~ conventionally filed documents ~~[filed with the appellate court]~~ must be signed in black ink by the party or, if the party is represented, by the party's attorney. The name of the signator shall be typed or printed under the signature. The page on which the signature(s) appear(s) shall contain at least ~~[two]~~ 2 lines of text and/or a notation at the bottom of the page with the following information: case number, case name, and title of document.

**(d) Signature on electronically filed documents.** Documents filed through JEFS or JIMS shall be signed as provided by the Hawai i Electronic Filing and Service Rules.

### Rule 32.1. NUMBER OF COPIES ~~[REQUIRED]~~ TO BE ~~[FILED]~~SUBMITTED.

~~[The original of all documents shall be filed with the appellate clerk and copies shall be submitted as follows:~~

~~————~~ **(a) Opening, answering, and reply briefs.** Parties shall submit 6 copies of each brief filed for the supreme court and 5 copies of each brief filed for the intermediate court of appeals. The clerk may request additional copies.

~~————~~ **(b) Other documents.** For a listing of the number of copies required for specific documents, see Appendix A. All other documents require six copies if filed in the supreme court and four copies if filed in the intermediate court of appeals:

~~————~~ **(c) Where directed by the appellate clerk.]** Whether the original document is filed electronically or conventionally, parties shall mail or deliver to the appellate clerk stapled or otherwise bound paper copies of the specified documents in Appendix A within 1 business day after filing. In all cases, the appellate clerk may direct that a specific number of additional copies be furnished on or before a specified date.

### Rule 35. DISPOSITIONS.

\* \* \*

**(d) [Mailing]Copy or access provided by appellate clerk.** The appellate clerk shall promptly mail, ~~[or]~~ electronically mail, telefax, or provide an electronic notice of the location of a copy of the opinion or dispositional order to each party. ~~[all parties a copy of the opinion or dispositional order.]~~

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**Rule 36. ENTRY OF JUDGMENT; PREPARATION, FILING, & SERVICE OF THE JUDGMENT ON APPEAL; EFFECTIVE DATE OF JUDGMENT ON APPEAL; SIGNATURES.**

\* \* \*

**(b) Preparation, filing, and service of the judgment on appeal.**

(1) PREPARATION BY THE COURT. After a final decision, other than an order of dismissal, has been filed in an appeal, the court rendering the decision shall prepare and submit to the appellate clerk for filing the judgment on appeal, signed by a judge or justice for the court.

(2) SERVICE OF SUPREME COURT JUDGMENT. [~~Upon the filing of the judgment, the appellate clerk shall serve a file-marked copy of the judgment on each party and on the court or agency from which the appeal was taken. Service may be by personal delivery mail, or, upon request, by email, facsimile, or placement in the court jacket of the party's counsel. Service on a party represented by counsel shall be made on counsel.~~] A judgment of the supreme court shall be served by the appellate clerk on each party and on the court or agency from which the appeal was taken at the time of filing.

(3) SERVICE OF INTERMEDIATE APPELLATE COURT JUDGMENT. A judgment of the intermediate appellate court shall be served by the appellate clerk (a) on each party at the time of filing and (b) on the court or agency appealed from on the earliest of the ninety-first day after the judgment was filed or the entry of a supreme court order dismissing or rejecting an application for a writ of certiorari.

\* \* \*

**(d) Judgment after supreme court review.**

\* \* \*

(2) UPON ACCEPTANCE OR REJECTION OF APPLICATION FOR A WRIT OF CERTIORARI. If an application for a writ of certiorari is rejected, the judgment entered by the intermediate court of appeals shall stand. If an application for a writ of certiorari is accepted and the judgment of the intermediate court of appeals is wholly affirmed, the judgment entered by the intermediate court of appeals shall stand. If an application for a writ of certiorari is accepted and the ~~[disposition]~~ judgment of the intermediate court of appeals is vacated or otherwise modified in whole or in part, a new judgment on appeal shall be entered by the supreme court and is effective upon entry.

**(e) Signatures.** Any order or judgment that is filed electronically bearing a facsimile signature in lieu of an original signature of a judge or clerk has the same effect as if the judge or clerk had affixed the judge's or clerk's signature to a paper copy of the order or judgment and it had been entered on the docket in a conventional manner. For purposes of this rule and any rules of court, the facsimile signature may be either an image of a handwritten signature or the software printed name of the judge preceded by /s/.

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### Rule 40.1. APPLICATION FOR WRIT OF CERTIORARI IN THE SUPREME COURT.

(a) **Application; When Filed.** No later than 90 days after filing of the intermediate court of appeals judgment on appeal or dismissal order, any party may [~~apply in writing to the supreme court for~~] file an application for a writ of certiorari in the supreme court.

\* \* \*

(c) **Denomination of the parties.** The party applying for the writ of certiorari shall be denominated the petitioner; the petitioner's denomination in the appeal and in the trial court or agency shall also be included. All other parties shall be denominated respondents and each respondent's denomination in the appeal and in the trial court or agency shall also be included. Any respondent who supports the position of a petitioner shall meet the time scheduled for filing responsive [~~papers~~] documents.

\* \* \*

### Rule 40.2. APPLICATION FOR TRANSFER TO THE SUPREME COURT

(a) **Application; when filed.** Any party may [~~apply in writing to the supreme court~~] file, in the supreme court, an application for transfer of a case within the jurisdiction of the intermediate court of appeals to the supreme court, as allowed by law. An application

(1) for a case under Rule 18 must be submitted with the statement of agreed facts.

(2) for an appeal may be submitted no earlier than 10 days after the filing of the record on appeal and no later than 20 days after the last brief is filed or could have been filed.

\* \* \*

(b) **Denomination of the parties.** The party seeking transfer shall be denominated the petitioner. The petitioner's denomination in the appeal or the agreed statement and in the trial court or agency, if from a trial court or agency, shall also be included. All other parties shall be denominated respondents and each respondent's denomination in the appeal and in the trial court or agency, if from a trial court or agency, shall also be included. Any respondent who supports the position of the petitioner shall meet the time schedule for filing responsive [~~papers~~] documents.

\* \* \*

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### Rule 42. DISMISSAL.

(a) **Dismissal before the appeal is docketed.** If an appeal has not been docketed, the appeal shall be dismissed [~~by the court or agency from which appeal is taken~~] upon the filing [~~in that court or agency~~] of a stipulation for dismissal signed by all the parties. Upon motion and notice by the appellant, the appellate court [~~or agency from which appeal is taken~~] may dismiss the appeal upon terms fixed by the court [~~or agency~~]. [~~Counsel for the appellant, or the appellant, if pro se, shall, within 72 hours after the entry of an order dismissing an appeal made by the court or agency appealed from, file a certified copy of the order with the appellate clerk.~~]

\* \* \*

### Rule 43. SUBSTITUTION OF PARTIES.

(a) **Death of a party.** If a party dies after the notice of appeal is filed, or while the proceeding is otherwise pending in a Hawaii i appellate court, that court may substitute the personal representative of the deceased party as a party on motion filed by the representative or by any party [~~with the appellate clerk~~]. The motion [~~of a party~~] shall be served upon the representative in accordance with the provisions of Rule 25. If the deceased party has no representative, any party may suggest the death on the record, and proceedings shall then be had as that court shall direct. If [~~a party against whom an appeal may be taken~~] an appellee dies after entry of the judgment or order in the court or agency appealed from but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution shall be effected in the Hawaii i appellate courts in accordance with this subsection. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by the party's personal representative, or, if the party has no representative, by the party's attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the Hawaii i appellate courts in accordance with this subsection.

\* \* \*

### Rule 45. DUTIES OF APPELLATE CLERKS.

\* \* \*

(b) **The Docket; calendar; other records required.** The appellate clerk shall maintain a docket, in such form and style as may be prescribed by the Administrative Director of the Courts and shall enter therein each case. [~~Cases shall be assigned consecutive file numbers.~~] The file number of each case shall be noted on the docket. All [~~papers~~] documents filed with the appellate clerk and all process, orders, and judgments shall be entered chronologically in the docket. Entries shall be brief but shall show the nature of each [~~paper~~] document filed or judgment or order entered. The entry of an order or judgment shall show the date

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the entry is made. The appellate clerk shall keep a suitable index of cases contained in the docket.

The appellate clerk, upon receipt of the initial ~~[paper]~~ document in any appeal or original proceeding, shall assign to it a number ~~[and shall forthwith give notice thereof to the parties]~~. The appellate clerk shall docket the record in each case when filed in the appellate court and forthwith give notice thereof to the parties. Cross-appeals shall be docketed under the same number as the original appeal.

The appellate clerk shall prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, preference shall be given to appeals in criminal cases and to appeals and other proceedings entitled to preference by law.

The appellate clerk shall keep such other books and records as may be required from time to time by the Administrative Director of the Courts or as may be required by the supreme court.

**(c) Notice of non-final orders.** Immediately upon the entry of a non-final order, the appellate clerk shall serve notice of entry and shall make note of the service in the docket. Where a separate order is not filed, the movant shall notify all other parties of the court's ruling and shall file a copy of the notice.

**(d) Custody of records and ~~[papers]~~ documents.** The appellate clerk shall have legal custody of the records and ~~[papers]~~ documents of the appellate courts. Conventionally filed documents shall be imaged upon receipt and the paper disposed in accordance with the applicable Records Control Schedule. The electronic document shall be deemed the official and original document thereafter. ~~[The appellate clerk shall not permit any original record or paper to be taken from his or her custody except as authorized by orders or instructions of a Hawai i appellate court or any judge or justice thereof.] [Original papers transmitted as the record on appeal or review shall upon disposition of the case, be returned to the court or agency from which they were received.]~~ The appellate clerk shall preserve copies of the briefs and appendices and other ~~[papers]~~ documents filed by the parties on microfilm or as electronic documents.

**(e) Costs and fees to be collected by the appellate clerk.** ~~[The appellate clerk shall collect costs and fees provided by Chapter 607 of the Hawai i Revised Statutes except that the appellate clerk shall collect the amounts specified herein as follows:~~

- ~~\_\_\_\_\_~~ 1. For copies of any document in any public record maintained by the clerk:
  - ~~\_\_\_\_\_~~ a. in the appellate clerk's office:
    - ~~\_\_\_\_\_~~ i. \$1.00 for the first page
    - ~~\_\_\_\_\_~~ ii. \$.50 for each additional page
  - ~~\_\_\_\_\_~~ b. in an off-site storage location:
    - ~~\_\_\_\_\_~~ \$5.00 plus usual copying charge
  - ~~\_\_\_\_\_~~ c. on microfilm:



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- ~~i. \$5.00 when provided by the appellate clerk plus \$1.00 per page~~
- ~~ii. \$1.00 per page when obtained via self-service~~
- ~~2. For faxing of any document in any public record, the applicable charges plus:~~
- ~~i. within Hawai i: \$2.00 first page, \$1.00 each additional page~~
- ~~ii. outside Hawai i, within the United States: \$5.00 first page, \$2.00 each additional page~~
- ~~iii. outside the United States: \$10.00 first page, \$5.00 each additional page~~
- ~~3. For copies of audio or video tapes, electronic copy of any document: \$10.00~~
- ~~4. For any expedited or rush requests (copy(ies) provided within 4 hours if request received before noon):~~
- ~~\$10.00 plus all other applicable charges~~
- ~~5. Certification of qualification: \$5.00~~
- ~~6. Appellate Court filing fee: \$100.00~~
- ~~7. Ex officio filing (in addition to the usual filing fee): \$10.00~~
- ~~8. Certification under seal of a copy of a pleading or other paper subsequent to the initial filing of the pleading or paper, except the record on appeal: \$2.00~~
- ~~9. Exemplification: \$4.00.~~
- ~~10. Parties to a pending case shall not be charged for the first copy of the appellate court's order, opinion, judgment, or any other item entered in the case by the appellate court, whether provided on paper or electronically.~~
- ~~11. The appellate clerk shall charge the actual cost of mailing copies of any item, provided that parties to a pending case shall not be charged for the mailing of the first paper copy of an order, opinion, judgment, or other item entered in the case by the appellate court.~~
- ~~12. A Hawai i appellate court, or any judge or justice thereof, may waive costs and fees for good cause shown. In lieu of copying and mailing fees, the Chief Justice may authorize the appellate clerk to provide copies of orders, opinions, or other items to publishing companies in exchange for published materials for the benefit of a Hawai i appellate court or the judiciary.]~~

Except as exempted by statute or ordered by the appellate court, the appellate clerk shall collect costs and fees required by Chapter 607 of the Hawai i Revised Statutes or other statutes and this rule, as set out in Appendices B and C of these rules.

(1) FILING AND DOCKETING FEES. The appellate clerk or the clerk of the court shall collect the filing and docketing fees for each case type upon the filing of the documents listed in Appendix B attached to these rules.

(2) COST FOR COPIES OF CASE DOCUMENTS, REPORTS AND RECORDINGS. The appellate clerk shall assess and collect fees for copies of case documents, reports, and recordings as listed in Appendix C attached to these rules, including

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costs related to electronic documents and subscription to Enhanced eCourt K kua.

(3) JEFS USER REGISTRATION. An active Hawai i attorney or a self-represented party may register as a JEFS User without payment of a fee. A registered JEFS User may view and download documents from the JEFS user s open cases without cost.

(4) DOCUMENT SUBSCRIPTION. Any person may subscribe to access and copy single documents from public court records. The subscription shall entitle the subscriber to download one document at a time from any public court record included in JIMS.

(5) Requests for other electronic access, downloading, bulk distribution, or compilations of electronic information and the like shall be directed to the Administrative Director of the Courts. See Rule 10.13 of the Hawai i Court Records Rules.

(6) The appellate clerk shall charge the actual cost of mailing copies of any item, provided that a party who is not a JEFS User or represented by a JEFS User shall not be charged for the mailing of the first paper copy of an order, opinion, judgment, or other item entered in the case by the appellate court.

(7) Parties to a pending case who are not JEFS Users or who are not represented by a JEFS User, shall not be charged for the first copy of the appellate court s order, opinion, judgment, or any other item entered in the case by the appellate court, whether provided on paper or electronically.

(8) A Hawai i appellate court, or any judge or justice thereof, may waive costs and fees for good cause shown. In lieu of copying and mailing fees, the Chief Justice may authorize the appellate clerk to provide copies of orders, opinions, or other items to publishing companies in exchange for published materials or research services for the benefit of a Hawai i appellate court or the judiciary.

(9) No person or entity shall be permitted to mine JIMS or eCourt K kua for data or documents. The Administrative Director is hereby authorized to take such actions as are necessary to protect JIMS and other case management systems from such activity.

### **(f) Intermediate Court of Appeals Panels.**

\* \* \*

~~[(4) JUDGES COPIES OF DOCUMENTS. Upon assignment of a case to a merit panel, the appellate clerk shall forward the judges copies of the record index, briefs, and other documents to the Chief Judge.]~~

~~(5)~~(4) DESIGNATION OF LEAD JUDGE BY CLERK; WHEN REQUIRED. If the Chief Judge does not notify the appellate clerk of the lead judge s identity within 30 days after entry of the notice of panel assignment, the appellate clerk shall randomly designate the lead judge from among the panel members. The clerk shall not disclose the identity of the lead judge except as required for internal reports approved by the Chief Justice.

## HAWAII RULES OF APPELLATE PROCEDURE

~~[(6)]~~(5) RECUSAL, DISQUALIFICATION, OR UNAVAILABILITY. Upon receipt of a judge's notice of recusal or disqualification in any case, or upon receipt of notice from the Chief Judge that a judge assigned to a merit panel has been, is, or may be unavailable due to illness, absence, or disability for a period of more than 30 days, the appellate clerk shall randomly select and assign to the merit panel a judge from the remaining intermediate court of appeals judges who are not known to be recused, disqualified, or otherwise unavailable. If an intermediate appellate judge is not available to substitute because of vacancies, recusals, disqualifications, or illness, absence or disability for a period of more than 30 days, the appellate clerk shall notify the Chief Justice who shall, in turn, designate a substitute from those eligible to serve as substitutes.

### **Rule 50. WITHDRAWAL, DISCHARGE, OR SUBSTITUTION OF APPELLATE COUNSEL.**

\* \* \*

(b) **Withdrawal with substitution.** A substitution of counsel may be made by filing a notice of withdrawal and substitution. The notice must provide withdrawing counsel's name and substituting counsel's name, physical and electronic mail addresses to be used for service, and telephone number. A notice of withdrawal and substitution of counsel must be signed by the client consenting thereto.

\* \* \*

### **Rule 51. SANCTIONS.**

Any attorney of record or party in a case, who fails to comply with any of the provisions of the Hawaii Rules of Appellate Procedure, the Hawaii Electronic Filing and Service Rules, or any order of the court shall be subject to monetary or other sanctions by the appellate court before which such case is pending, such sanctions to be levied by order of the appellate court or by order of any judge or justice thereof.

\* \* \*

## HAWAII RULES OF APPELLATE PROCEDURE

### **Rule 54. LIFTING OR TERMINATION OF STAY OF PROCEEDINGS BY FEDERAL BANKRUPTCY COURT.**

**(a) Notice of appeal; record on appeal.** Whenever a federal bankruptcy court lifts or terminates a stay of proceedings that has been entered with respect to a civil case in which an appeal is permitted by law and no notice of appeal has been filed, the provisions of Rule 4 shall apply as if the date of lifting or termination of the stay was the date of entry of the judgment appealed from; if a notice of appeal has been filed but the record not yet docketed, provisions of Rules 10, 11, and 12 shall apply as if the date of lifting or termination of the stay was the date of filing the notice of appeal; if the record has been filed and briefing has not been completed, the provisions of Rules 28, 29, and 30 shall apply as if the date of lifting or termination of the stay was the date of the filing of the last appropriate document.

**(b) Notice.** On the lifting or termination by the bankruptcy court of a stay of proceedings pending in the Hawai i appellate courts, each party shall file a [~~written~~] notification thereof with the appellate court within 7 days.

\* \* \*

**HAWAII RULES OF APPELLATE PROCEDURE**

**Appendix of Forms**

**Form 1. Notice of Appeal to the Intermediate Court of Appeals from a Judgment, Order or Decree of a Circuit/District/Family/Land/Tax Court.**

(TITLE OF COURT)  
STATE OF HAWAII

A. B., Plaintiff,	) [ <del>LOWER CASE NO.</del> ]
	) <u>TRIAL COURT CASE NO.</u>
v.	)
	) [NOTICE OF APPEAL]
C.D., Defendant	)
_____	)

**NOTICE OF APPEAL**

Notice is hereby given that (appealing party), by and through his or her or its attorney, (name of attorney), pursuant to section (cite relevant section of chapter 641 or other relevant statute), Hawai i Revised Statutes, and Rule 3 of the Hawai i Rules of Appellate Procedure (and any other relevant rules and cases), appeals to the Intermediate Court of Appeals of the State of Hawai i from the (specify whether final or interlocutory and describe judgment/order/decree/decision), filed herein on \_\_\_\_\_, and attached hereto as Exhibit "A" (if required under Hawai i Rules of Appellate Procedure Rule 3).

DATED: Honolulu, Hawai i, \_\_\_\_\_.

*Attorney for Appellant*

NOTE: *If appeal is interlocutory, specify statute, rule, or case authorizing it.*

**HAWAII RULES OF APPELLATE PROCEDURE**

**Form 2. Notice of Appeal to the Intermediate Court of Appeals from a Decision and Order of an Agency, Board, Commission or Officer.**

(TITLE OF AGENCY, ETC.)

OF THE

STATE OF HAWAII

A.B., Plaintiff,	)	<u>AGENCY</u> DOCKET NO. _____
	)	
v.	)	<del>[NOTICE OF APPEAL]</del>
	)	
C.D., Defendant.	)	
_____	)	

NOTICE OF APPEAL

Notice is hereby given that (appealing party), by and through his or her or its attorney, (name of attorney), pursuant to (~~[cite]~~ section 91-14 or other relevant section) of the Hawaii Revised Statutes and Rule 3 of the Hawaii Rules of Appellate Procedure (and any other relevant rules and cases), appeals to the Intermediate Court of Appeals of the State of Hawaii from the decision and order of the (agency) (specify whether final or interlocutory and describe order), filed herein on \_\_\_\_\_, and attached hereto as Exhibit "A" (if required under Hawaii Rules of Appellate Procedure Rule 3).

DATED: Honolulu, Hawaii, \_\_\_\_\_.

*Attorney for Appellant*

NOTE: *If appeal is interlocutory, specify statute, rule, or case authorizing it.*

**HAWAII RULES OF APPELLATE PROCEDURE**

**Form 3. Notice of Appeal to the Circuit Court from a Decision and Order of an Agency, Board, Commission or Officer.**

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ CIRCUIT  
STATE OF HAWAII

A.B., Plaintiff,	)	<u>AGENCY DOCKET NO.</u> _____
	)	
v.	)	
	)	<del>[NOTICE OF APPEAL]</del>
C.D., Defendant.	)	
_____	)	

NOTICE OF APPEAL

Notice is hereby given that (appealing party), by and through his attorney, (name of attorney), pursuant to (cite 91-14 or other relevant section), Hawai i Revised Statutes, and Rule 72 of the Hawai i Rules of Civil Procedure (and any other relevant rules and cases), appeals to the Circuit Court of the First Circuit from the decision and order of the (agency) (specify whether final or interlocutory and describe order), filed herein on \_\_\_\_\_, and attached hereto as Exhibit "A" .

DATED: Honolulu, Hawai i, \_\_\_\_\_.

*Attorney for Petitioner*

**HAWAII RULES OF APPELLATE PROCEDURE**

**Form 4. Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis [~~for Filing in the Respective Lower Court/Agency~~].**

[~~(LOWER COURT/AGENCY)~~]  
IN THE (INTERMEDIATE COURT OF APPEALS or SUPREME COURT)  
 STATE OF HAWAI I

A.B., Plaintiff, ) TRIAL COURT OR AGENCY CASE NO.  
 ) \_\_\_\_\_  
 v. )  
 )  
 C.D., Defendant. )  
 )  
 \_\_\_\_\_ )

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE  
 TO PROCEED ON APPEAL IN FORMA PAUPERIS

STATE OF HAWAI I )  
 )  
 ) SS.  
 )  
 COUNTY OF \_\_\_\_\_ )  
 \_\_\_\_\_ )

I, \_\_\_\_\_ being first duly sworn, depose and say that I am the \_\_\_\_\_ in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor; I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

(list issues)

I further state that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. ARE YOU PRESENTLY EMPLOYED?
  - a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
  - b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.



**HAWAII RULES OF APPELLATE PROCEDURE**

- 2. HAVE YOU RECEIVED WITHIN THE PAST TWELVE MONTHS ANY INCOME FROM A BUSINESS, PROFESSION OR OTHER FORM OF SELF-EMPLOYMENT, OR IN THE FORM OF RENT PAYMENTS, INTEREST, DIVIDENDS, OR OTHER SOURCE?
  - a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.
  
- 3. DO YOU OWN ANY CASH OR CHECKING OR SAVINGS ACCOUNT?
  - a. If the answer is yes, state the total value of the items owned.
  
- 4. DO YOU OWN ANY REAL ESTATE, STOCKS, BONDS, NOTES, AUTOMOBILES, OR OTHER VALUABLE PROPERTY (EXCLUDING ORDINARY HOUSEHOLD FURNISHINGS AND CLOTHING)?
  - a. If the answer is yes, describe the property and state its approximate value.
  
- 5. LIST THE PERSONS WHO ARE DEPENDENT UPON YOU FOR SUPPORT AND STATE YOUR RELATIONSHIP TO THOSE PERSONS.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

*Notary Public, State of Hawai i*

My commission expires:

- Application granted.
- Application denied for the following reason:
  - Appeal is not taken in good faith.
  - Applicant does not meet financial qualifications.

*Judge/Justice of the above-entitled court*

# HAWAII RULES OF APPELLATE PROCEDURE

## Form 6

IN THE  
(Court or Agency From Which Appeal is Taken)

**CIVIL APPEAL DOCKETING STATEMENT**  
[or Use By The Appellate Conference Program]

**INTERNAL USE ONLY**

PLEASE ~~[TYPE OR PRINT]~~ ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE		<del>[Lower]</del> Trial Court/Agency Docket Number:		
		Is this a Cross-Appeal? ____ Yes ____ No		
		Has this matter previously been before the Hawai i Appellate Courts? ____ Yes ____ No If yes, state when: Case Name: [SE] Docket Number:		
CHECK AS MANY AS APPLICABLE				
<del>[JURISDICTION]</del>		<del>[LOWER]</del> TRIAL COURT/AGENCY DISPOSITION		
<del>1. LOWER COURT/AGENCY</del>	<del>2. APPELLATE</del>	1. STAGE OF PROCEEDINGS	<del>2. TYPE OF JUDGMENT/ORDER APPEALED</del>	<del>[3]2. RELIEF</del>
<del>( ) Statutory</del> <del>( ) Other Grounds</del> <del>_____ (specify)</del>	<del>( ) Final Decision of Lower Court / Agency</del> <del>( ) Interlocutory Decision</del> <del>( ) Other (Specify)</del>	( ) Pre-Trial ( ) During Trial ( ) After Trial	<del>( ) Default Judgment</del> <del>( ) Judgment/Court Decision</del> <del>( ) Dismissal/Jurisdiction</del> <del>( ) Judgment/Jury Verdict</del> <del>( ) Dismissal/Merits</del> <del>( ) Summary Judgment</del> <del>( ) Judgment NOV</del> <del>( ) Declaratory Judgment</del> <del>( ) Directed Verdict</del> <del>( ) Other (Specify)</del>	( ) Damages: Amount Sought: \$ _____ Amount Granted: \$ _____ <del>( ) Injunctions</del> <del>_____ ( ) Preliminary</del> <del>_____ ( ) Permanent</del> <del>_____ ( ) Granted</del> <del>_____ ( ) Denied</del> ( ) Other (Specify)

**HAWAII RULES OF APPELLATE PROCEDURE**

~~[BRIEF]~~ DESCRIPTION OF NATURE OF ACTION AND RESULT ~~[BELOW]~~ IN THE TRIAL COURT OR AGENCY:

ANTICIPATED ISSUES PROPOSED TO BE RAISED ON APPEAL:

~~[MAY THE MEDIATOR CONTACT THE TRIAL JUDGE TO DISCUSS THE CASE?~~

\_\_\_\_\_ Yes \_\_\_\_\_ No]

## HAWAII RULES OF APPELLATE PROCEDURE

[BASED ON YOUR PRESENT KNOWLEDGE:

1. Does this appeal involve a question of first impression or present a novel legal question?

\_\_\_\_\_ Yes \_\_\_\_\_ No

2. Does this appeal involve a question of state or federal constitutional interpretation?

\_\_\_\_\_ Yes \_\_\_\_\_ No

3. Does this case raise a question of law regarding the validity of a state statute, county ordinance, or agency regulation?

\_\_\_\_\_ Yes \_\_\_\_\_ No

4. Does this case involve issues upon which there is an inconsistency in the decisions of the Intermediate Court of Appeals or the Supreme Court?

\_\_\_\_\_ Yes \_\_\_\_\_ No

5. Will the determination of this appeal turn on the interpretation or application of particular case or statute?

\_\_\_\_\_ Yes \_\_\_\_\_ No If Yes, provide:

—Case name/statute:

—Citation:

—Docket Number, if unreported:]

DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:

\_\_\_\_\_ Likelihood of a motion to expedite the appeal.

[ \_\_\_\_\_ Multiple parties on either side for whom joint briefing is possible.

\_\_\_\_\_ Likelihood of motions to intervene on appeal.

\_\_\_\_\_ Likelihood of motions to file *amicus* briefs.]

\_\_\_\_\_ Likelihood of motions to stay appeal pending resolution of a related case. Identify case name, docket number, and court or agency:

\_\_\_\_\_ Other procedural complexities. If so, please identify them:

Appellants Names:
-------------------

<p>COUNSEL FOR APPELLANTS:</p> <p>NAME:</p> <p>ADDRESS:</p> <p>TELEPHONE (    )</p> <p>EMAIL:</p>	<p>TRIAL COUNSEL FOR APPELLANT(S) (If different from appeal counsel)</p> <p>NAME:</p> <p>ADDRESS:</p> <p>TELEPHONE (    )</p> <p>EMAIL:</p>
---	---

## HAWAII RULES OF APPELLATE PROCEDURE

I CERTIFY THAT A COPY OF THIS CIVIL APPEAL DOCKETING STATEMENT [~~WAS SUBMITTED TO THE CLERK OF THE LOWER COURT/AGENCY AND THAT IT~~] WAS SERVED ON EACH PARTY/COUNSEL SHOWN ON THE ATTACHED SERVICE LIST.

Signature

Date

REMEMBER TO ATTACH COPIES OF (1) THE ORDER/JUDGMENT APPEALED FROM, (2) ANY WRITTEN OPINION OR FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORTING THE ORDER/JUDGMENT, AND (3) PROOF OF SERVICE ON ALL OTHER PARTIES TO THE TRIAL COURT OR AGENCY PROCEEDINGS [BELOW] (WITH TELEPHONE NUMBERS AND EMAIL ADDRESSES)

HAWAII RULES OF APPELLATE PROCEDURE

Form 7

NO. \_\_\_\_\_

IN THE (SUPREME COURT or INTERMEDIATE COURT OF APPEALS) OF THE STATE OF HAWAII

IN RE ATTORNEYS' FEES AND NECESSARY EXPENSES FOR Defendant-Appellant. [ER:] TRIAL COURT CASE NO.

REQUEST AND DECLARATION OF COUNSEL

In accordance with Hawaii Rules of Appellate Procedure (HRAP) Rule 39(d), I, Defendant-Appellant's attorney, request compensation for necessary and authorized expenses and attorneys' fees incurred on appeal on Defendant-Appellant's behalf and, in conjunction herewith aver, as follows:

1. I was appointed to represent Defendant-Appellant by order of the court of the circuit, on which order is attached as Appendix A.

2. I request reimbursement for necessary and authorized expenses as follows:

Table with 3 columns: Expense, Amount, Authority. Includes rows for itemized expenses and a TOTAL EXPENSES row.

A true and correct itemized accounting of these necessary expenses, including relevant invoices and receipts, is attached as Appendix B.

**HAWAII RULES OF APPELLATE PROCEDURE**

3. I have expended the following hours in attorney work for this appeal and, pursuant to Hawaii Revised Statutes §\_\_\_\_\_, request amounts as follows:

	<u>Activity</u>	<u>Hours</u>	<u>@ \$</u>	<u>Amount</u>
a.	Correspondence, Interviews and Conferences	_____	@ \$_____	\$_____
b.	Obtaining & Reviewing Records	_____	@ \$_____	\$_____
c.	Legal Research	_____	@ \$_____	\$_____
d.	Drafting	_____	@ \$_____	\$_____
e.	Oral Argument (In-court)	_____	@ \$_____	\$_____
f.	Other (Specify) _____	_____	@ \$_____	\$_____
TOTAL FEES		_____		\$_____

Attached hereto as Appendix C are hourly worksheets, prepared in accordance with HRAP Form 7 and contemporaneously with the work performed as noted thereon and truthfully reflecting the amount of work actually performed in the representation of the Defendant-Appellant.

I, \_\_\_\_\_, declare under penalty of law, as provided by HRAP Rule 52, that the foregoing is true and correct.

DATED: \_\_\_\_\_

\_\_\_\_\_

**HAWAII RULES OF APPELLATE PROCEDURE**

**Form 7a. BLANK HOURLY WORKSHEET (Indigent Representation)**

Appellate Case Number: \_\_\_\_\_

Case Name: \_\_\_\_\_

Date	Brief Description of Activity	Correspondence Interviews & Conferences	Obtaining & Reviewing Records	Legal Research	Drafting	Oral Argument (In-court)	Other (Specify)
	Sub-Total for this page						
	GRAND TOTAL						



## HAWAII RULES OF APPELLATE PROCEDURE

Form 7b. COMPLETED HOURLY WORKSHEET (Indigent Representation)

Appellate Case Number: 12345  
 Case Name: State v. Doe

Date	Brief Description of Activity	Correspondence Interviews & Conferences	Obtaining & Reviewing Records	Legal Research	Drafting	Oral Argument (In-court)	Other (Specify)
1/1/00	review file/draft notice of appeal		.25		.25		
1/2/00	confer w/ ct. rpt. re: transcripts	.5					
1/2/00	call ct. re: amended judgment	.3					
2/3/00	prepare statement of jurisdiction				.5		
3/5/00	review record on appeal		2.0				
3/29/00	review transcripts		8.0				
4/1/00	draft statement of the case				2.1		
4/2/00	draft statement of the case				2.3		
4/3/00	research/draft standards of review			.3	.5		
4/15/00	research issues for appeal			2.0			
5/3/00	draft opening brief				4.0		
5/5/00	draft opening brief				4.0		
6/10/00	review answering brief						1.5
6/11/00	draft reply brief				1.5		
6/12/00	teleconference w/ client	.2					
	Sub-Total for this page	1.0	10.25	2.3	14.7		1.5
	GRAND TOTAL	1.0	-10.25	2.3	14.7		1.5

**HAWAII RULES OF APPELLATE PROCEDURE**

**Form 8**

NO. \_\_\_\_\_

IN THE (SUPREME COURT or INTERMEDIATE COURT OF APPEALS)  
OF THE STATE OF HAWAII

_____ ,	)	_____ NO. _____
	)	
Plaintiff- _____ ,	)	
	)	
v.	)	
_____ ,	)	
	)	
Defendant- _____ .	)	
_____	)	

**REQUEST AND DECLARATION OF COUNSEL**

In accordance with Hawaii Rules of Appellate Procedure (HRAP) Rule 39(d), I, \_\_\_\_\_, attorney for \_\_\_\_\_, request compensation for costs and attorneys fees and, in conjunction herewith aver, as follows:

1. (Appellant or Appellee) \_\_\_\_\_ prevailed in this appeal.

2. I request reimbursement for necessary and authorized costs as follows:

	<u>Item</u>	<u>Amount</u>	<u>Authority</u>
a.	_____	\$ _____	_____
b.	_____	\$ _____	_____
c.	_____	\$ _____	_____
d.	_____	\$ _____	_____
	TOTAL COSTS	\$ _____	

A true and correct itemized accounting of these costs, including relevant invoices and receipts, is attached as Appendix A.

**HAWAII RULES OF APPELLATE PROCEDURE**

3. I have expended the following hours in attorney work and, pursuant to Hawaii Revised Statutes §\_\_\_\_ or \_\_\_\_\_, am entitled to charge the following amounts for this appeal:

<u>Activity</u>	<u>Hours</u>	<u>@ \$</u>	<u>Amount</u>
a. Correspondence, Interviews and Conferences	_____	@ \$ _____	\$ _____
b. Obtaining & Reviewing Records	_____	@ \$ _____	\$ _____
c. Legal Research	_____	@ \$ _____	\$ _____
d. Drafting	_____	@ \$ _____	\$ _____
e. Oral Argument (In-court)	_____	@ \$ _____	\$ _____
f. Other (Specify) _____	_____	@ \$ _____	\$ _____
TOTAL FEES		_____	\$ _____

Attached hereto as Appendix B are hourly worksheets, prepared in accordance with HRAP Form 8 and contemporaneously with the work performed as noted thereon and truthfully reflecting the amount of work actually performed in the representation of (Appellant or Appellee) \_\_\_\_\_.

Additional information [including the language of the contract authorizing attorneys' fees] and authority [including appropriate case authority] supporting my request for costs and attorneys' fees is included in the memorandum of law attached hereto.

I, \_\_\_\_\_, declare under penalty of law, as provided by HRAP Rule 52, that the foregoing is true and correct.

DATED: \_\_\_\_\_

\_\_\_\_\_



## HAWAII RULES OF APPELLATE PROCEDURE

**Form 8b. COMPLETED HOURLY WORKSHEET (Non-Indigent Representation)**

Appellate Case Number: 12345

Case Name: State v. Doe

Date	Brief Description of Activity	Correspondence Interviews & Conferences	Obtaining & Reviewing Records	Legal Research	Drafting	Oral Argument (In-court)	Other (Specify)
1/1/00	review file/draft notice of appeal		.25		.25		
1/2/00	confer w/ ct. rpt re: transcripts	.5					
1/2/00	call ct. re: amended judgment	.3					
2/3/00	prepare statement of jurisdiction				.5		
3/5/00	review record on appeal		2.0				
3/29/00	review transcripts		8.0				
4/1/00	draft statement of the case				2.1		
4/2/00	draft statement of the case				2.3		
4/3/00	research/draft standards of review			.3	.5		
4/15/00	research issues for appeal			2.0			
5/3/00	draft opening brief				4.0		
5/5/00	draft opening brief				4.0		
6/10/00	review answering brief						1.5
6/11/00	draft reply brief				1.5		
6/12/00	teleconference w/ client	.2					
	Sub-Total for this page	1.0	10.25	2.3	14.7		1.5
	GRAND TOTAL	1.0	10.25	2.3	14.7		1.5

# HAWAII RULES OF APPELLATE PROCEDURE

## Form 9

<p style="text-align: center;"><b>STATE OF HAWAII</b>                  In the _____ Court                  of the _____ Circuit  <u>INTERMEDIATE COURT OF APPEALS</u>                  or  <u>SUPREME COURT</u>                  [(or name of agency)]</p>	<p style="text-align: center;"><b>REQUEST FOR TRANSCRIPT(S) OF PROCEEDINGS</b></p> <p style="text-align: center;"><input type="checkbox"/> Check here if request is for Record on Appeal</p>	Trial Court/Agency Case Number:  Appellate Case Number:	
<p style="text-align: center;">vs.</p>	Requestor's Name: Firm (if applicable): Address: Phone No.: Fax No.: Email address: Attorney for: <input type="checkbox"/> Plaintiff/Petitioner <input type="checkbox"/> Defendant/Respondent <input type="checkbox"/> Other (specify):		
<b>PROCEEDINGS RECORDED BY:</b> <input type="checkbox"/> Court Reporter <input type="checkbox"/> Check here if proceedings are confidential. (See below) <input type="checkbox"/> Electronic Recorder		Name of Court Reporter (if applicable):  (Please complete a separate request for each court reporter)	
Date(s) of proceeding(s)	Type of proceeding (e.g. trial, motion, sentencing, etc.)	Portion of proceeding for which transcript is being requested	Name of Judge/Hearing Officer/Agency
Date notice of appeal filed:	<b>Is a Court Reporter's Certificate of Prepayment or Waiver of Payment attached, or is a deposit of fees being made?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
Date transcript(s) needed:	If a deposit of fees is made, I direct the clerk of the court to use the deposit to pay the court reporter's fees upon completion of the transcript.		
Requestor's signature: _____		Date: _____	
<b><del>REQUEST FOR TRANSCRIPT OF CONFIDENTIAL PROCEEDINGS IS APPROVED.</del></b>			
Judge's signature: _____		Date: _____	
<b>ACKNOWLEDGMENT AND RECEIPT</b>		For official use only	
Date request received:	Estimated completion date:		
Court reporter's signature: _____			



In accordance with the Americans with Disabilities Act, and other applicable State and Federal laws, if you require an accommodation for a disability when working with a court program, service, or activity please contact the Chief Clerk, Supreme Court Clerk's Office at PHONE NO. 539-4919, FAX 539-4928, or TTY 539-4853 at least ten (10) working days before your proceeding, hearing, or appointment date.

# HAWAII RULES OF APPELLATE PROCEDURE

## General Instructions for Requesting Transcripts of Trial Court Proceedings for Appeal Purposes

*Note: Please refer to Rule 10 of the Hawai i Rules of Appellate Procedure for the specific requirements for requesting transcripts for appeal purposes.*

1. Use a separate request form for each court reporter being asked to transcribe proceedings. You may list on one form multiple dates of proceedings to be transcribed by the same court reporter.
  2. Use a separate request form to request transcripts of electronically-recorded proceedings from the supervising court reporter for a court, or if there is none, the administrator of the court whose proceedings are to be transcribed. You may list multiple dates of proceedings to be transcribed on one form.
  - ~~3. If you are requesting transcripts of a confidential proceeding, please note that you will need to obtain the approval signature of a judge of that court. See Rule 25 of the Rules of the Circuit Court which states, The official reporter shall not furnish a transcript of a confidential proceeding without the court's written approval, unless authorized by law.~~
  - ~~4.3. Within 10 days after filing a notice of appeal, you must file the request for transcripts with the appellate clerk. [with the Legal Documents Section of the court you are appealing from the original and necessary copies of each request for transcripts.] The request must be accompanied by one of the following (unless you are statutorily exempt from the transcript prepayment or deposit requirement by HRS   606-13):~~
    - a. a certificate ~~[by the]~~ from each named court reporter ~~[being required to prepare the transcript]~~ that the fees for the reporter's services have been paid or waived;
    - b. a deposit with the court reporter of the approximate cost of the transcript fees, as computed by the court reporter in advance in writing at the rate established by the Hawai i Rules Governing Court Reporting; or
    - c. a deposit with the court reporter of the approximate cost of the transcript fees, as computed in advance in writing at the rate of \$150 for each hour of proceedings to be transcribed.
  - ~~5. Within 5 days of filing a request for transcripts, you must either deliver or mail the required number of file-marked copies of the request for transcripts and accompanying documents to the court reporter/supervising court reporter/court administrator being requested to prepare the transcripts. In the alternative, you may deposit the required number of file-marked copies of the request for transcripts and accompanying documents in the court jacket (folder) of the individual court reporter being asked to prepare a transcript, or in the court jacket (folder) for requests for transcripts of family court proceedings or electronically-recorded proceedings.~~
- ~~The following are the required number of file-marked copies of a request for transcripts and its accompanying documents that you must provide to the court reporter, supervising court reporter, or court administrator being requested to prepare transcripts:~~

For non-family court proceedings recorded by court reporter	3 + no. of opposing parties/attorneys
For family court proceedings	4 + no. of opposing parties/attorneys
For electronically-recorded proceedings	1 for each audiotape/ videotape/compact disk to be transcribed + no. of opposing parties/attorneys

]

## HAWAII RULES OF APPELLATE PROCEDURE

### APPENDIX A

The following is a list of the number of paper copies required in addition to the electronic or conventionally filed original document submitted to the Hawaii appellate courts [~~for filing~~]. The number does not include those copies the parties need for service or themselves. Additional copies may be requested.

	<u>Supreme Court</u>	<u>ICA</u>
[Affidavit/Declaration of Counsel (when filed separately)]	6	4]
Amicus Curiae Briefs	6	5 <u>4</u>
[Application for Writ of Certiorari]	11	--]
[Application for Transfer]	11	--]
[Briefs on Reserved Questions]	6	--]
[Citation of Supplemental Authorities]	7	5]
[Motion to Appear Pro Hac Vice]	1	1]
<u>Motion for Stay</u>	<u>1</u>	<u>1</u>
Motion to Dismiss	6 <u>1</u>	4 <u>1</u>
[Motion to Extend Time to Docket the Record on Appeal]	1	1]
[Motion to Extend Time to File Briefs]	1	1]
[Motion to Proceed In Forma Pauperis]	1	1]
[Motion to Remand]	1	1]
[Motion to Supplement the Record on Appeal]	1	1]
[Motion for Leave to File Amicus Curiae Brief]	1	1]
Motion for Reconsideration	[6] <u>1</u>	[4] <u>1</u>
[Motion for Retention of Oral Argument]	6	4]
Opening/Answering/Reply Briefs	6	[5] <u>4</u>
[Petition for Writ of Habeas Corpus]	6	--]
Petition for Writ of Mandamus	[6] <u>1</u>	--
Petition for Writ of Prohibition	[6] <u>1</u>	--
Request for Attorneys' Fees and Expenses	[7] <u>1</u>	[6] <u>1</u>
[Statement of Jurisdiction]	6*	5]
[Stipulation to Dismiss Appeal]	7	5]
[Stipulation to Vacate and Remand]	7	5]
Supplemental Briefs	6	[5] <u>4</u>
Verified Bill of Costs	[7] <u>1</u>	[6] <u>1</u>
[Other Documents]	6	4]

[\*if case gets transferred to HSC.]



**HAWAII RULES OF APPELLATE PROCEDURE**

**APPENDIX B**

(HRAP Rule 45(e)(1) -- Filing fees)

<b>Appellate Court Case Type</b>	<b>Document Name/Type</b>	<b>Description of Fees and Authorizing Statute/Rule</b>	<b>Fee(s)</b>
Agreed Statement	Submission Upon a Statement of Agreed Fact	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Indigent Services Surcharge HRS § 607-5.7(b)	\$25
Appeal	Notice of Appeal or Cross-Appeal District or District Family Court	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Notice of Appeal from District Court or District Family Court HRS § 607-4(b)(4)	\$100
		Civil Administrative Fee HRS § 607-4(b)(10)	\$20
		Indigent Services Surcharge HRS § 607-5.7(b)	\$25
Appeal	Notice of Appeal or Cross-Appeal Circuit Court	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Notice of Appeal from Circuit Court HRS § 607-5(c)(23)	\$100
		Civil Administrative Fee HRS § 607-5(c)(32)	\$50
		Indigent Services Surcharge HRS § 607-5.7(b)	\$25
Appeal	Notice of Appeal or Cross-Appeal Agency	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Civil Administrative Fee HRS § 607-5(c)(32)	\$50
		Indigent Services Surcharge HRS § 607-5.7(b)	\$25

## HAWAII RULES OF APPELLATE PROCEDURE

Appellate Court Case Type	Document Name/Type	Description of Fees and Authorizing Statute/Rule	Fee(s)
Appeal	Notice of Appeal or Cross-Appeal (Others)	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Civil Administrative Fee HRS § 607-5(c)(32)	\$50
		Indigent Services Surcharge HRS § 607-5.7(b)	\$25
Certiorari proceedings	Application for a Writ of Certiorari	Not applicable	None
Transfer proceedings	Application for Transfer	Not applicable	None
Attorney Discipline	Report & Recommendation for Discipline RSCH Rule 2.12A Motion RSCH Rule 2.17 Affidavit for Reinstatement RSCH Rule 2.17 Report Regarding Petition for Reinstatement RSCH Rule 2.19 Petition RSCH Rule 2.20 Petition for Appointment of Trustee RSCH Rule 2.23 Petition for Interim Suspension	Not applicable	None
Bar Admission	Application for Admission	Bar Application Fee RSCH Rule 1.4(a)	\$300
	Oath of Attorneys	Attorney Licensing Fee HRS § 605-5	\$10

## HAWAII RULES OF APPELLATE PROCEDURE

Appellate Court Case Type	Document Name/Type	Description of Fees and Authorizing Statute/Rule	Fee(s)
Certified Question	Certified Question	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Indigent Services Surcharge HRS § 607-5.7(b)	\$25
Election Contest	Complaint	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Indigent Services Surcharge HRS § 607-5.7(b)	\$25
Judicial Discipline	Complaint Letter	Not applicable	None
Miscellaneous	Court Order	Not applicable	None
Other	Petition, general	Appellate Court Filing Fee HRS § 607-6(a)	\$100
	Petition for Writ (Mandamus, Prohibition, Habeas Corpus, etc.)	Indigent Services Surcharge HRS § 607-5.7(b)	\$25
	Petition to Resign and Surrender License		
Reserved Question	Reserved Question	Not applicable	None
Rules	Proposed Rule Amendments	Not applicable	None

## HAWAII RULES OF APPELLATE PROCEDURE

### APPENDIX C

(HRAP Rule 45(e)(2) -- Copying Costs)

1. For single copies of any document in any public record, whether paper or electronic, maintained:		
a.	in or accessed through the appellate clerk s office	\$1.00 for the first page, \$ .50 for each additional page
b.	in an off-site storage location	\$5.00 plus per page copying charge
c.	on microfilm - retrieved by the clerk	\$5.00 plus \$1.00 per page
d.	on microfilm - obtained via self-service	\$1.00 per page
2. For faxing of any document in any public record, the applicable copying and retrieval charges in 1. above, plus:		
a.	within Hawai i	\$2.00 first page, \$1.00 each additional page
b.	outside Hawai i, within the United States	\$5.00 first page, \$2.00 each additional page
c.	outside the United States	\$10.00 first page, \$ 5.00 each additional page
3. For a single document downloaded through eCourt Kokua and not subject to an Enhanced eCourt Kokua subscription		The greater of \$3.00 or 10 cents per page
4. For copy of an audio or video recording		\$10.00
5. Enhanced e-Court Kokua Subscription:		
a.	government agency	No charge
b.	all others	\$125.00 per quarter or \$500.00 per year
6. For access to view an electronic case record at the Office of the Clerk or at the Office of any ex officio Clerk		No charge