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SCRU-10-000012

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the Amendment
of the
HAWAI‘I RULES OF APPELLATE PROCEDURE

ORDER AMENDING THE HAWAI‘I RULES OF APPELLATE PROCEDURE
(By: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.)

IT IS HEREBY ORDERED that Rules 4, 4.1, 10, and 40.2 of the Hawai‘i Rules of Appellate Procedure are amended, effective January 1, 2012, as follows (deleted material is bracketed and stricken; new material is underscored):

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.

Unless filed electronically, as required by Rule 25 of these rules and Rules 2.2 and 4.1 of the Hawai‘i Electronic Filing and Service Rules, t[~~F~~]he notice of appeal shall be filed with the clerk of the court from which the appeal is taken. If a notice of appeal is mistakenly submitted to the appellate clerk, the

appellate clerk shall note on it the date of receipt and shall electronically file the notice of appeal. The date of 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.

* * *

(b) Appeals in criminal cases.

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

Unless filed electronically, as required by Rule 25 of these rules and Rules 2.2 and 4.1 of the Hawai'i Electronic Filing and Service Rules, t[he] notice of appeal shall be filed with the clerk of the court from which the appeal is taken. If a notice of appeal is mistakenly submitted to the appellate clerk, the appellate clerk shall note on it the date of receipt and shall electronically file the notice of appeal. The date of the receipt by the appellate clerk shall be deemed to be the date the notice of appeal was filed with the clerk of the court. 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.

* * *

(b) Manner and time of filing.

(1) ~~[The cross-appellant shall file with the clerk of the court appealed from a]~~ A notice of cross-appeal [and pay the filing fee] shall be filed 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. Unless filed electronically, as required by Rule 25 of these rules and Rules 2.2 and 4.1 of the Hawai'i Electronic Filing and Service Rules, the notice of cross-appeal shall be submitted to the clerk of the court. 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 cross-appeal. The date of the receipt by the appellate clerk shall be deemed to be the date the notice of cross-appeal was filed with the clerk of the court. A notice of cross-appeal filed through JEFS or JIMS is deemed filed with the clerk of the court appealed from.

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Rule 10. THE RECORD ON APPEAL.

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(b) The transcript of proceedings.

(1) REQUEST TO PREPARE TRANSCRIPT.

* * *

(E) *Expected completion date; time limitations.* Upon receipt of a request for a transcript, the reporter shall acknowledge the date of receipt on the request, indicate the expected completion date on the request, and then electronically file a copy of the acknowledged request in the appellate record and shall serve a copy on all parties. If the transcript cannot be completed within 45 days after the filing of the notice of appeal, the reporter shall notify all parties 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. 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 or JIMS and shall designate the document as the "Transcript of proceedings held on <date>."

...

(G) Filing the Transcript in the Appellate Case.

Upon completion of each transcript and receipt of payment, the court reporter shall file the transcript through JEFS or JIMS and shall designate the document as the "Transcript of proceedings held on <date>."

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Rule 40.2. APPLICATION FOR TRANSFER TO THE SUPREME COURT

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(f) Determination; no reconsideration; no extensions of time. The supreme court shall grant a mandatory application and [~~shall accept or reject~~] may grant or deny a discretionary application for transfer no later than the thirtieth day after the filing of the response to the application or, if no response is filed, within 30 days after the time the response could have been filed. The grant[~~,-acceptance,]~~ or denial[~~,-or-rejection]~~ of an application for transfer shall not be subject to a motion for reconsideration. Times for submitting and responding to an application for transfer shall not be extended.

...

IT IS HEREBY FURTHER ORDERED that Rules 36, 40.1, and the Comment to Rule 41 of the Hawai'i Rules of Appellate Procedure are amended, effective January 1, 2012, to apply to Intermediate Court of Appeals' judgments or dismissal orders filed on or after January 1, 2012, as follows (deleted material is bracketed and stricken; new material is underscored):

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

(a) **Entry of judgment.** The filing of the judgment on appeal constitutes entry of judgment.

(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] THE JUDGMENT.** [~~A judgment of the supreme court shall be served by~~] 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[~~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.~~]

(c) **Effective date of intermediate court of appeals' judgment.**

The intermediate court of appeals' judgment is effective as follows:

(1) if no application for writ of certiorari is filed,

(A) upon the [ninety-first] thirty-first day after entry or

(B) where the time for filing an application for a writ of certiorari is extended in accordance with HRAP Rule 40.1(a), upon the expiration of the extension or

(2) if an application for a writ of certiorari is filed,

(A) upon entry of the supreme court's order dismissing or rejecting the application or[;]

(B) upon entry of the supreme court's order or other disposition affirming in whole the judgment of the intermediate court of appeals.

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

(a) Application; when filed; extension of time. ~~[No later than 90 days after filing of the intermediate court of appeals' judgment on appeal or dismissal order, any party may file an application for a writ of certiorari in the supreme court.]~~

(1) APPLICATION; TIME TO FILE. A party may seek review of the intermediate court of appeals' decision by filing an application for a writ of certiorari in the supreme court. The application shall be filed within thirty days after the filing of the intermediate court of appeals' judgment on appeal or dismissal order, unless the time for filing the application is extended in accordance with this rule.

(2) REQUEST EXTENDING TIME; TIME TO FILE. A party may extend the time to file an application for a writ of certiorari by filing a written request for an extension. The request for extension shall be filed no later than 30 days after entry of the intermediate court of appeals' judgment on appeal or dismissal order.

(3) TIMELY REQUEST; AUTOMATIC EXTENSION; NOTICE. Upon receipt of a timely written request, the appellate clerk shall extend the time for filing the application to the sixtieth day after entry of the intermediate court of appeals judgment or dismissal order. The appellate clerk shall note on the record that the extension was granted. The clerk shall give notice the request is timely and granted.

(4) NO EXTENSION IF UNTIMELY. An untimely request shall not extend the time. The clerk shall give notice the request is untimely and denied.

Commentary to Rule 41

COMMENT:

Effective [July 1, 2006] for intermediate court of appeals' judgments on appeal and orders of dismissal entered on or after January 1, 2012, a party has ~~[90]~~ 30 days to file an application for a writ of certiorari, which can be extended for no more than an additional 30 days upon the filing of a written request for extension in accordance with HRAP Rule 40.1(a). The time for filing the application is measured from the date the intermediate court of appeals' judgment on appeal or order of dismissal was filed. Thus, the intermediate court of appeals' judgment cannot be effective and jurisdiction cannot revert to the court or agency from which appeal was taken until the time for filing the application has expired or, if an application is filed, the supreme court has rejected or dismissed the application

or affirmed the intermediate court of appeals' judgment in whole.

The supreme court's judgment on appeal is not subject to further state review and is effective upon entry.

IT IS FINALLY ORDERED that current Rules 36 and 40.1 of the Hawai'i Rules of Appellate Procedure shall remain in effect until April 1, 2012 and shall apply to certiorari applications concerning Intermediate Court of Appeals' judgments or dismissal orders filed before January 1, 2012.

DATED: Honolulu, Hawai'i, December 14, 2011.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna

