

Electronically Filed  
Supreme Court  
SCRU-10-000012  
04-JUN-2015  
03:33 PM

SCRU-10-000012

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

---

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

---

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

IT IS HEREBY ORDERED that Rules 3, 3.1, 4, 25, 30, and 40.1 of the Hawai‘i Rules of Appellate Procedure are amended, effective July 1, 2015, as follows (deleted material is bracketed and stricken; new material is underscored):

**Rule 3. APPEALS - HOW TAKEN.**

\* \* \*

**(b) Joint or consolidated appeals.** If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal and thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of either of the Hawai‘i appellate courts upon the court’s own motion, upon motion of a party, or upon stipulation of the parties to the several appeals and approval by the court.

\* \* \*

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

(1) The appellant shall serve a filed copy of the notice of appeal on each other party. Proof of service shall be filed, with the appellate court, 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 comply with Rule 10(f) of these Rules.

\* \* \*

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

\* \* \*

(e) **Relationship to Rules 10 and 11.** Upon notice from the appellate clerk that an appeal has been accepted into the appellate mediation program, preparation of transcripts, the record, the statement of jurisdiction, 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 [r]Rules. If an appeal is accepted into the appellate mediation 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 may be transmitted by interoffice mail, United States mail, e-mail, notice of electronic filing, or facsimile.

\* \* \*

**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 [r]Rules and Rules 2.2 and 4.1 of the Hawai'i Electronic Filing and Services Rules, the notice of appeal shall be filed with the clerk of the court or agency from which the appeal is taken. If a notice of appeal is mistakenly submitted to the appellate clerk, the appellate clerk shall note on it the date of receipt and shall electronically file the notice of appeal. The date of receipt by the appellate clerk shall be deemed to be the date the notice of appeal was filed with the clerk of the court or agency. A notice of appeal filed through JEFS or JIMS is deemed filed with the clerk of the court or agency appealed from.

\* \* \*

(3) **TIME TO APPEAL AFFECTED BY POST- JUDGMENT MOTIONS.** If any party files a timely motion for judgment as a matter of law, to amend findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment or order, or for attorney's fees or costs, the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion; provided, that the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion.

The notice of appeal shall be deemed to appeal the disposition of all post-judgment motions that are timely filed after entry of the judgment or order.

The 90-day period shall be computed as provided in Rule 26 of these Rules.

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

(A) *Requests for extensions of time before expiration of the prescribed time.* The court or agency appealed from, upon a showing of good cause, may extend the time for filing a notice of appeal upon motion filed within the time prescribed by subsections (a)(1) through (a)(3) of this [r]Rule. However, no such extension shall exceed 30 days past such prescribed time. An extension motion that is filed before the expiration of the prescribed time may be ex parte unless the court or agency otherwise requires.

(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 [r]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.

\*\*\*

**(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 [r]Rules and Rules 2.2 and 4.1 of the Hawai'i Electronic Filing and Service Rules, the notice of appeal shall be filed with the clerk of the court from which the appeal is taken. If a notice of appeal is mistakenly submitted to the appellate clerk, the appellate clerk shall note on it the date of receipt and shall electronically file the notice of appeal. The date of the receipt by the appellate clerk shall be deemed to be the date the notice of appeal was filed with the clerk of the court. A notice of appeal filed through JEFS or JIMS is deemed filed with the clerk of the court appealed from.

\*\*\*

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

**(a) Registration and Filing.** 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 the appellate clerk or to an ex officio clerk. Physical documents may be submitted by conventional mail addressed to the appellate clerk, but filing shall not be considered timely unless the 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.

\* \* \*

**(f) Contact information.** Each attorney who represents a party before the appellate courts and each self-represented party shall, within 10 days of any change in mailing or business address, telephone number, or electronic mail address, file notice of the change with the appellate clerk and, if a registered JEFS User, update his or her JEFS User account information.

**Rule 30. BRIEFS NOT TIMELY FILED OR NOT IN CONFORMITY WITH THESE RULES.**

When the brief for appellant is not filed within the time required, the appellate clerk shall forthwith give notice to 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 [r]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 [r]Rules, the brief may be stricken and monetary or other sanctions may be levied by 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.]~~ When a brief is filed, an appellate court shall not dismiss an appeal, accept as true the statement of facts in the appellant's opening brief, impose a monetary sanction, or strike a brief without an opportunity to resubmit an amended brief, without prior notice to the affected party, and without a meaningful opportunity to be heard.

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

**(a) Application; when filed; extension of time.**

(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 30 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 [r]Rule.

\* \* \*

**(g) Determination.** The supreme court shall act upon an application for a writ of certiorari no later than 30 days after an objection is or could have been filed. The failure of the supreme court to accept the application within the

30 days shall constitute a rejection of the application. In cases where multiple objections are filed, the 30-day time period to accept the application for writ of certiorari shall be calculated from the date of the latest timely-filed objection.

\* \* \*

DATED: Honolulu, Hawai'i, June 4, 2015.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

