

*CLARIFICATION OF PROCEDURES*

The Supreme Court of Hawai'i seeks public comment regarding proposals to amend Rules 3, 3.1, 4, 25, 30, and 40.1 of the Hawai'i Rules of Appellate Procedure. The proposals clarify procedures of the appellate courts. The proposals are attached hereto.

Comments about the proposed rule should be submitted, in writing, **no later than Monday, April 13, 2015**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary's website at [www.courts.state.hi.us](http://www.courts.state.hi.us).

Attachment

**PROPOSED AMENDMENTS TO  
HAWAI‘I RULES OF APPELLATE PROCEDURE**  
(Deleted material is bracketed and stricken; new material is underlined)

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

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**(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.

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

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**(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 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.

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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.

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

shall be deemed to be the date the notice of appeal was filed with the clerk of the court or agency. A notice of appeal filed through JEFS or JIMS is deemed filed with the clerk of the court or agency appealed from.

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**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.

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**(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 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 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, impose a monetary sanction, or strike a brief without an opportunity to resubmit an amended brief, and without prior notice to the affected party and a meaningful opportunity to be heard.

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

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**(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.

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