

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 RULES OF THE
HAWAI‘I RULES OF APPELLATE PROCEDURE

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rules 10, 40.1, 42, 45, and 50 of the Hawai‘i Rules of Appellate Procedure is amended, effective July 1, 2016, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 10. THE RECORD ON APPEAL.

(b) The transcript of court 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 appealed from, the appellant shall file with the appellate clerk, 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 in the appeal. A request for transcripts of audiotapes or videotapes may list more than one tape on the request. The ~~[appellate clerk]~~ appellant 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, and shall demonstrate in the record that transmission was accomplished either by the automated JEFS notice of electronic filing or certificate of service.

(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:

Unless the [appellant] requestor 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 reporter 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.

(C) *Payment or Deposit for Transcript.* Unless the [appellant] requestor is exempt from the transcript payment or deposit requirement or the reporter has waived 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] requestor 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 11 days from the date of the filing of the request for transcripts, 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 the [party requesting the transcript] requestor.

(D) *Service required.* The [appellant] requestor shall serve a filed copy of the request for transcripts and its accompanying documents on all other parties.

(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 JMS 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] requestor 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 the appellate clerk and serve upon the [appellant] requestor 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] requestor shall pay the reporter and shall file a reporter's certificate of payment with the appellate clerk within 10 days after 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.* 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>[:]" and enter the date of the transcribed proceeding in the Notes field for the corresponding JEFS or JIMS docket entry.

(d) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subsection (a) of this [r]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 electronically filed by the clerk of the court appealed from within the time provided by Rule 11 of these Rules. The statement shall contain a copy of the judgment 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 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. Upon showing of good cause, the appellate court may, on motion and notice made by the clerk of the court or a party, extend the time to file findings of fact and conclusions of law.

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

(e) **Response; form; reply.** Within 15 days after the filing of an application for a writ of certiorari, any other party to the case may, but need not, file and serve a brief written response, not to exceed 12 pages, containing a statement of reasons why the application should not be accepted. Within 7 days after a response is filed any party may, but need not, file and serve a reply to the statement of reasons set forth in the response. The reply shall not exceed 5 pages.

(f) **Oral argument.** There shall be no oral argument on an application for a writ of certiorari unless requested by the supreme court. If oral argument is requested by the supreme court, the petitioner is entitled to open and conclude argument.

Rule 42. DISMISSAL.

(a) **Dismissal before the appeal is docketed.** If an appeal has not been docketed, the appeal shall be dismissed upon the filing of a stipulation for dismissal signed by all the parties and approved by the appellate court. Upon motion and notice by the appellant, the appellate court may dismiss the appeal upon terms fixed by the court.

(b) **Dismissal in the appellate courts.** If the parties to a docketed appeal or other proceeding sign and file a stipulation for dismissal, specifying the terms as to payment of costs, and pay whatever fees are due, the case shall be dismissed upon approval by the appellate court, but no mandate or other process shall issue without an order of the court. Upon motion and notice, the appellate court may dismiss the appeal upon terms fixed by the appellate court.

Rule 45. DUTIES OF APPELLATE CLERKS.

(e) **Costs and fees to be collected by the appellate clerk.** 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 [r]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 [r]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 [r]Rules, including costs related to electronic documents and subscription to Enhanced eCourt Kōkua.

(g) Ex officio filing. The appellate clerk shall be *ex officio* clerk of all the courts of records and, as such, may accept documents for filing and issue summons returnable in all such courts. A party that files documents *ex officio* with the appellate clerk shall forward the *ex officio*-filed documents to the appropriate court of record.

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

(a) Withdrawal. An attorney desiring to withdraw as counsel of record must file a motion requesting leave therefor. The motion must show that [~~prior~~] notice of the motion was given by service upon the attorney's client. The notice must provide, if available, the client's physical and electronic mail address to be used for service, and telephone number. The appellate court may, in its discretion, grant or deny such motion or, where appropriate, remand the case for filing of a motion to withdraw.

DATED: Honolulu, Hawai'i, April 12, 2016.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

