

NO. CAAP-18-0000958

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS,  
EXCLUSIVE REPRESENTATIVE FOR BARGAINING UNIT 12, POLICE,  
Plaintiff-Appellant/Cross-Appellee, v. CITY AND COUNTY OF  
HONOLULU, Defendant-Appellee/Cross-Appellee, and  
HONOLULU CIVIL BEAT, INC., Intervenor-Defendant-Appellee/  
Cross-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 17-1-1433)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION  
(By: Reifurth, Presiding Judge, Chan and Hiraoka, JJ.)

Upon review of the record, it appears that we lack appellate jurisdiction over the appeal and cross-appeal from the Honorable Virginia Lea Crandall's November 16, 2018 judgment in appellate court case number CAAP-18-0000958. Although the November 16, 2018 judgment was an appealable final judgment pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (2016) and Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994), Plaintiff/Appellant/Cross-Appellee State of Hawai'i Organization of Police Officers (SHOPO) did not file its December 18, 2018 notice of appeal within thirty days after entry of the November 16, 2018 judgment, as

Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required for a timely appeal.

With respect to the attempt by Intervenor-Defendant/Appellee/Cross-Appellant Honolulu Civil Beat, Inc. (Honolulu Civil Beat) to assert a cross-appeal, HRAP Rule 4(a)(2) authorizes that "[i]n 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." (Emphasis added). Furthermore, HRAP Rule 4.1(b)(1) requires that "[a] notice of cross-appeal 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." Because SHOPO's December 18, 2018 notice of appeal was untimely, HRAP Rule 4.1(a)(2) did not authorize Honolulu Civil Beat to assert a cross-appeal by filing a notice of a cross-appeal within fourteen days after service of SHOPO's notice of appeal pursuant to HRAP Rule 4.1(b)(1). Under the circumstances, Honolulu Civil Beat could obtain appellate review of the November 16, 2018 judgment only by asserting a standard appeal within the time prescribed for a notice of appeal under HRAP Rule 4(a)(1). Similar to SHOPO and its untimely notice of appeal, Honolulu Civil Beat failed to file its December 20, 2018 notice of cross-appeal within thirty days after entry of the November 16, 2018 judgment, as HRAP Rule 4(a)(1) required for a timely appeal.

The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules."); HRAP Rule 26(e) ("The reviewing court for good cause shown may relieve a party from a

default occasioned by any failure to comply with these rules, except the failure to give timely notice of appeal.").

Therefore, it is hereby ordered that the appeal and cross-appeal in appellate court case number CAAP-18-0000958 are dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 22, 2019.

Presiding Judge

Associate Judge

Associate Judge