

RE: **Proposal to Amend Form 4 and Rule 24 of the Hawai'i Rules of Appellate Procedure**

APPLYING FOR PERMISSION TO PROCEED
IN FORMA PAUPERIS IN THE APPELLATE COURTS

The Supreme Court of Hawai'i seeks public comment regarding a proposal to amend Form 4 and Rule 24 of the Hawai'i Rules of Appellate Procedure, in order to clarify, simplify, and improve the process for applying for permission to proceed *in forma pauperis* in the appellate courts. The proposals are attached hereto.

Comments about the proposed amendments should be submitted, in writing, **no later than Monday, May 4, 2020**, 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](#).

Attachment

Form 4. [~~Affidavit~~Declaration to Accompany Motion for Leave to Appeal ~~in~~In Forma Pauperis.

IN THE (INTERMEDIATE COURT OF APPEALS or SUPREME COURT)
STATE OF HAWAII

A.B., Plaintiff,) TRIAL COURT OR AGENCY CASE NO.
)
v.) _____
)
C.D., Defendant.)
)
_____)

~~[AFFIDAVIT]~~DECLARATION IN SUPPORT OF MOTION FOR LEAVE
TO PROCEED ON APPEAL IN FORMA PAUPERIS

~~[STATE OF HAWAII]~~)
)
) [SS:]
COUNTY OF _____)
_____)

I, _____ [~~being first duly sworn, depose and say~~] hereby declare that I am the _____ in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor[;] I state that, because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor[;] and that I believe I am entitled to redress.[; ~~and that the issues which I desire to present on appeal are the following:~~]

[~~(list issues)~~]

I further [~~state~~]declare that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true, under penalty of perjury.

1. HAVE YOU REQUESTED TO PROCEED *IN FORMA PAUPERIS* IN THE TRIAL COURT OR AGENCY IN THE CASE NUMBER SET FORTH ABOVE?

- a. If the answer is yes, proceed to question 2.
- b. If the answer is no, explain why, then proceed to question 2:

[+]2. ARE YOU PRESENTLY EMPLOYED?

- a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
- b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

[2]3. HAVE YOU RECEIVED WITHIN THE PAST [~~TWELVE~~]12 MONTHS ANY INCOME FROM A BUSINESS, PROFESSION OR OTHER FORM OF SELF-EMPLOYMENT, OR IN THE FORM OF RENT PAYMENTS, INTEREST, DIVIDENDS, GOVERNMENT BENEFITS (for example, welfare, food stamps, Social Security, workers' compensation, or unemployment benefits) OR OTHER SOURCES?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past [~~twelve~~]12 months.

[3]4. DO YOU OWN ANY CASH OR CHECKING OR SAVINGS ACCOUNT?

a. If the answer is yes, state the total value of the items owned.

[4]5. DO YOU OWN ANY REAL ESTATE, STOCKS, BONDS, NOTES, AUTOMOBILES, OR OTHER VALUABLE PROPERTY (EXCLUDING ORDINARY HOUSEHOLD FURNISHINGS AND CLOTHING)?

a. If the answer is yes, describe the property and state its approximate value.

[5]6. [~~LIST~~]PROVIDE THE NUMBER OF PERSONS WHO ARE DEPENDENT UPON YOU FOR FINANCIAL SUPPORT[~~AND STATE YOUR RELATIONSHIP TO THOSE PERSONS.~~];

#. _____

7. PROVIDE THE NUMBER OF PERSONS IN YOUR HOUSEHOLD:

#. _____

I understand that a false statement or answer to any questions in this [~~affidavit~~]declaration will subject me to penalties for perjury.

DATED: _____, Hawai'i, _____.

Signature of Declarant

Subscribed and sworn to before me
Notary Public, State of Hawai'i

Printed Name of Declarant

~~My commission expires:~~

[] Application granted.

[] Application denied for the following reason:

[~~] Appeal is not taken in good faith.]~~

[] Applicant does not meet financial qualifications.

[] Other:

Judge/Justice of the above-entitled court

**PROPOSED AMENDMENTS TO THE
HAWAII RULES OF APPELLATE PROCEDURE**

(Deleted material is bracketed and stricken; new material is underlined)

Rule 24. PROCEEDINGS IN FORMA PAUPERIS.

(a) Leave to proceed on appeal in forma pauperis from a trial ~~[the circuit, district, family, land, environmental, or tax appeal]~~ court or ~~[from an]~~ agency determination to the Hawai'i appellate courts. A motion for leave to proceed on appeal in forma pauperis from ~~[the circuit, district, family, land, environmental, or tax appeal]~~ a trial court~~;~~ or ~~[from an]~~ agency determination~~;~~ shall ordinarily be made in the first instance to the court or agency appealed from.

A party to an action in the trial~~[circuit, district, family, land, environmental, or tax appeal]~~ court~~;~~ or ~~[before an]~~ administrative agency who desires to proceed on appeal in forma pauperis may file in the appellate court a motion for leave to so proceed. The motion shall be accompanied by a~~n~~ ~~affidavit or~~ declaration, showing, in the detail prescribed by Form 4 in ~~[of]~~ the Appendix of Forms of these Rules, the party's inability to pay the required filing fees or to give security for costs and~~;~~ the party's belief that the party~~[he or she]~~ is entitled to redress, ~~and a statement of the issues that the party intends to present on appeal~~. ~~[If the appeal is from a court,]~~ T~~[t]~~he motion shall show that application to the court or agency appealed from for the relief sought is not practicable, or that the court or agency appealed from has denied an application, or has failed to afford the requested relief, with the reasons given by the court or agency appealed from for its action. A party who has filed such a motion may file ~~[his or her]~~ the notice of appeal without being required to prepay the filing fees. If the motion is granted, the party may proceed with the appeal without prepayment of fees or costs or the giving of security therefor.

(b) Effect of prior leave to proceed in forma pauperis.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in a court or agency in forma pauperis, or who has been permitted to proceed as one who is financially unable to obtain adequate defense in a criminal case, may proceed on appeal in the same action in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the court or agency ~~[shall certify that the appeal is not taken in good faith or shall]~~ finds that the party is otherwise not entitled so to proceed, in which event the court or agency shall state in writing the reasons for such ~~[certification or]~~ finding.

(c) Effect of denial of motion for leave to proceed in forma pauperis.

If the motion to proceed in forma pauperis is denied the movant shall, within 10 days after the denial of such a motion, pay all unpaid filing fees and shall give security for costs. Failure of the unsuccessful movant to pay the unpaid filing fees or to give security for costs shall not affect the validity of the appeal, but is ground for such action as the appellate court having jurisdiction over the appeal deems appropriate, and may include dismissal of the appeal.