

RE:           **Proposal for a New Rule of the Hawai‘i Rules of Appellate Procedure**

**ESTABLISHING PROCEDURES GOVERNING MOTIONS FOR  
RECUSAL AND DISQUALIFICATION IN THE APPELLATE COURTS**

The Supreme Court of Hawai‘i seeks public comment regarding a proposal to promulgate a new Rule of the Hawai‘i Rules of Appellate Procedure, to establish procedures to govern motions for the recusal or disqualification of an appellate judge or justice.

Comments about the proposed amendments should be submitted, in writing, **no later than Tuesday, September 7, 2021**, 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

**PROPOSED NEW RULE OF THE  
HAWAI‘I RULES OF APPELLATE PROCEDURE**  
(Rule number to be determined at a later date.)

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**Rule \*. DISQUALIFICATION OR RECUSAL OF AN APPELLATE  
JUDGE OR JUSTICE.**

**(a) Motion for disqualification or recusal.** A party to any proceeding in the appellate courts may file a motion to disqualify or recuse a judge or justice before whom the case is pending.

**(b) Time.** The motion must be filed within 10 days after either the document initiating the proceeding in the appellate court is filed, or the party discovers new information, which by due diligence could not have been discovered earlier, that there is reason to believe the judge or justice should not participate in deciding the case or a matter therein, whichever is later. Except for good cause shown, failure to do so shall be deemed a waiver of the party’s right to object to the judge or justice’s participation.

**(c) Contents.** The motion shall concisely state the facts, reasons, and authority for the requested relief, and shall be supported by a declaration or affidavit, and any pertinent exhibits, establishing the asserted facts. The filing party shall, in the same or a separate declaration or affidavit, also declare or aver that the motion is made in good faith and not for purposes of delay.

**(d) Determination of motion.** Notwithstanding Rule 27(c) of these Rules, the judge or justice who is the subject of the motion shall either recuse from the case or, without ruling on the motion, refer the motion to the relevant appellate court for decision. If the judge or justice does not recuse, the judge or justice may file a response to the motion. A substitute judge or justice shall replace the judge or justice who is the subject of the motion, for the limited purpose of resolving the motion.

**(e) Only one motion permitted.** Only one motion for recusal or disqualification may be filed by any party, unless the party discovers new information, which by due diligence could not have been discovered earlier, that a judge or justice should recuse or be disqualified from hearing the case or a matter therein. Any such subsequent motion or amended motion must be filed within 10 days of the discovery of the new information.