

Re: Proposal to amend the Hawai'i Rules of Appellate Procedure

*GENDER-INCLUSIVE LANGUAGE*

The Supreme Court of Hawai'i seeks public comment regarding proposed amendments to Rules 11, 12, 25, 43, 45 and Forms 1, 2 and 2a of the Hawai'i Rules of Appellate Procedure to use gender-inclusive language.

The Ramseyer version of the proposed rule amendments are attached. For the rule amendments, the proposed language to be added is underscored, and the language to be deleted is bracketed and stricken as illustrated in this [example].

Comments should be submitted in writing **no later than Monday, December 9, 2024** to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 808-539-4801, by e-mail to [pao@courts.hawaii.gov](mailto:pao@courts.hawaii.gov), or via the [Judiciary website](#).

Attachment.

**PROPOSED AMENDMENTS TO THE  
HAWAI‘I RULES OF APPELLATE PROCEDURE**

[The proposed additional language is underscored; deleted language is bracketed and stricken.]

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**Rule 11. TRANSMISSION OF THE  
RECORD.**

(a) **Duty of appellant.** After the filing of the notice of appeal, the appellant, or in the event more than one appeal is taken, each appellant, shall comply with the applicable provisions of Rule 10 of these Rules and shall take any other action necessary to enable the clerk of the court or agency appealed from to assemble and transmit the record. It is the responsibility of each appellant to provide a record, as defined in Rule 10 of these Rules and the Hawai‘i Court Records Rules, that is sufficient to review the points asserted and to pursue appropriate proceedings in the court or agency appealed from to correct any omission.

(b) **Duty of the Clerk of the Court or Agency.**

(1) Unless otherwise provided, the clerk of the court or agency appealed from shall, within 60 days after the filing of the notice of appeal, assemble, certify, and electronically file an imaged index to the record on appeal and imaged copies of each document filed in the record. The record on appeal shall include a flyleaf with a 3-inch top margin that notes, beginning at the top, the appellate court case number, the title of the appellate court and the cause in full, the case number in the trial court, ADLRO, or agency proceedings, the judgment or order on appeal, the names of all judges or hearing officers who have participated in the case or matter, the names of all parties to the case or matter since the case or matter was initiated, and any name or names, telephone numbers, physical and electronic mail addresses of unrepresented parties and the attorney or attorneys representing each party. The documents in the record on appeal shall be assembled sequentially by filing date. When all documents in the record on appeal, other than exhibits, are available in JIMS, the clerk of the court or agency appealed from need not transmit the physical or imaged documents, but shall file a notification with the appellate clerk that the documents are available in JIMS. If a complete record cannot be transmitted within such a period, the appellate court, for good cause, may extend the time upon stipulation or motion, provided that an imaged copy of any findings of fact and conclusions of law entered after the record on appeal has been transmitted to the appellate clerk shall be electronically filed by the clerk of the court or agency appealed from without further order of the appellate court.

(2) If the notice of appeal is filed without payment of the required fees and the appellant has not obtained an order allowing the appellant to proceed *in forma pauperis*, the clerk of the court or agency appealed from shall not be required to prepare the record on appeal until the required fees are received or an order allowing the party to proceed *in forma pauperis* is obtained.

(3) An imaged record shall provide a bookmark for access to each document or transcript. If any documents, exhibits, and transcripts

filed in the court or agency appealed from are not mentioned in the numbered index, the clerk of the court or agency appealed from shall provide an additional bookmarked index identifying each of them with reasonable definiteness. Physical exhibits other than documents, and such other parts of the record shall not be transmitted by the clerk of the court or agency appealed from unless the clerk [~~he or she~~] is directed to do so by appellate court order.

(4) If a document sealed or designated *in camera* by law or otherwise accorded confidential treatment by law or order of the court or agency appealed from is part of the record on appeal, the sealed or *in camera* document must remain sealed or *in camera* unless the appellate court orders otherwise. An appellate court may unseal a document on application of any party, person or entity, or on its own motion with notice to the parties. Sealed or *in camera* documents filed in an appellate court must be filed separate from the rest of the record on appeal and appropriately designated as sealed or *in camera*. A record filed publicly in the court or agency appealed from and not ordered sealed by that court or agency must not be filed under seal or *in camera* in the appellate court.

**(c) Duty of the Appellate Clerk.**

(1) Upon filing of the flyleaf and index to the record on appeal, the appellate clerk shall serve notice upon all parties to the appeal of such filing. If a flyleaf or index is claimed to be in error, the party claiming error shall pursue appropriate proceedings in the court or agency appealed from to correct it.

(2) When the flyleaf and index to the record on appeal is not filed within the time required, the appellate clerk shall give notice to the appellant 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, including dismissal of the appeal.

**(d) Record for motions for intermediate orders in the appellate courts.** If any party desires to make a motion for any intermediate order in the appellate courts, before the record is transmitted, the clerk of the court or agency appealed from shall electronically transmit to the appellate clerk images of such parts of the original record as any party shall request and designate in writing.

This Rule applies to all motions for intermediate orders including motions for dismissal, for release, for a stay pending appeal, for injunctive relief, or for additional security on the bond on appeal or a supersedeas bond.

**Rule 12. RECEIPT OF THE NOTICE OF APPEAL; FILING OF RECORD.**

**(a) Receipt of the notice of appeal.** Upon receipt of the notice of appeal, a case number shall be systematically assigned to the case. Except as provided below, an appeal shall be listed with the appellate courts under the title given to the action in the court or agency appealed from with the appellant identified as such, but if such title does not contain the name of the appellant, [~~his or her~~] then the appellant's name, identified as such [~~the appellant~~], shall be added to the title. In juvenile and paternity proceedings and whenever otherwise required by law, the

anonymity of the persons or parties involved shall be maintained by the use of fictitious titles and designations as provided by Rule 3(c)(1).

**(b) Filing the record, partial record, or notification.** The appeal is docketed with the Hawai‘i appellate courts on the date of filing of the record, a partial record or upon the clerk of the court’s notification the record on appeal (other than exhibits) is available in JIMS.

**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.

**(b) Service of all documents required.** Copies of all documents filed by any party shall, at or before the time of filing, be served by a party or person acting for that party on all other parties to the proceedings. Service on a party represented by counsel shall be made on counsel.

**(c) Manner of service.** Service may be personal, by conventional mail, or by notice of electronic filing in accordance with the Hawai‘i Electronic Filing and Service Rules. Personal service includes delivery of the copy to a responsible person at the office of counsel. Service by conventional mail is complete on mailing if mailed in the manner provided in subsection (a) above. Electronic service is complete upon issuance of the notice of electronic filing by JEFS or JIMS.

**(d) Proof of conventional service.** Documents presented to the appellate clerk or an ex officio clerk for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date, the manner of service, and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the documents filed. Where computation of the time for a response to a conventionally served document begins with the filing date of that document, a filed copy of the document shall also be conventionally served upon all other parties promptly after filing.

**(e) Acknowledgment of service.** The party served may file, within 5 days after receiving service, an acknowledgment of service setting forth the date and manner of service where the date of service

differs from the date contained in the proof of service attached to the documents conventionally filed.

(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~~] their JEFS User account information.

### **Rule 43. SUBSTITUTION OF PARTIES.**

(a) **Death of a party.** If a party dies after the notice of appeal is filed, or while the proceeding is otherwise pending in a Hawai'i appellate court, that court may substitute the personal representative of the deceased party as a party on motion filed by the representative or by any party. The motion shall be served upon the representative in accordance with the provisions of Rule 25. If the deceased party has no representative, any party may suggest the death on the record, and proceedings shall then be had as that court shall direct. If an appellee dies after entry of the judgment or order in the court or agency appealed from but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution shall be effected in the Hawai'i appellate courts in accordance with this subsection. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by the party's personal representative, or, if the party has no representative, by the party's attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the Hawai'i appellate courts in accordance with this subsection.

(b) **Substitution for other causes.** If substitution of a party in the Hawai'i appellate courts is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subsection (a).

(c) **Public officers; death or separation from office.**

(1) When a public officer is a party to an appeal or other proceeding in the Hawai'i appellate courts in [~~his or her~~] their official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and [~~his or her~~] their successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in [~~his or her~~] their official capacity, the public officer [~~he or she~~] may be described as a party by their [~~his or her~~] official title rather than by name, but the appellate court may require [~~his or her~~] their name be added.

**Rule 45. DUTIES OF APPELLATE CLERKS.**

(a) **General provisions.** No appellate clerk shall practice as an attorney in any court while ~~he or she~~ the appellate clerk continues in office. The office of the appellate clerk with an appellate clerk in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the Chief Justice may provide that the office of the appellate clerk shall be open for specified hours on Saturdays, Sundays, or legal holidays.

(b) **The Docket; calendar; other records required.** The appellate clerk shall maintain a docket, in such form and style as may be prescribed by the Administrative Director of the Courts and shall enter therein each case. The file number of each case shall be noted on the docket. All documents filed with the appellate clerk and all process, orders, and judgments shall be entered chronologically in the docket. Entries shall be brief but shall show the nature of each document filed or judgment or order entered. The entry of an order or judgment shall show the date the entry is made. The appellate clerk shall keep a suitable index of cases contained in the docket.

The appellate clerk, upon receipt of the initial document in any appeal or original proceeding, shall assign to it a number. The appellate clerk shall docket the record in each case when filed in the appellate court and forthwith give notice thereof to the parties. Cross-appeals shall be docketed under the same number as the original appeal.

The appellate clerk shall prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, preference shall be given to appeals in criminal cases and to appeals and other proceedings entitled to preference by law.

The appellate clerk shall keep such other books and records as may be required from time to time by the Administrative Director of the Courts or as may be required by the supreme court.

(c) **Notice of non-final orders.** Immediately upon the entry of a non-final order, the appellate clerk shall serve notice of entry and shall make note of the service in the docket. Where a separate order is not filed, the movant shall notify all other parties of the court's ruling and shall file a copy of the notice.

(d) **Custody of records and documents.** The appellate clerk shall have legal custody of the records and documents of the appellate courts. Conventionally filed documents shall be imaged upon receipt and the paper disposed in accordance with the applicable Records Control Schedule. The electronic document shall be deemed the official and original document thereafter. The appellate clerk shall preserve copies of the briefs and appendices and other documents filed by the parties on microfilm or as electronic documents.

(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 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 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 Rules, including costs related to electronic documents and subscription to Enhanced eCourt Kōkua.

(3) **JEFS USER REGISTRATION.** An active Hawai‘i attorney or a self-represented party may register as a JEFS User without payment of a fee. A registered JEFS User may view and download documents from the JEFS User’s open cases without cost.

(4) **DOCUMENT SUBSCRIPTION.** Any person may subscribe to access and copy single documents from public court records. The subscription shall entitle the subscriber to download one document at a time from any public court record included in JIMS.

(5) Requests for other electronic access, downloading, bulk distribution, or compilations of electronic information and the like shall be directed to the Administrative Director of the Courts. See Rule 10.13 of the Hawai‘i Court Records Rules.

(6) The appellate clerk shall charge the actual cost of mailing copies of any item, provided that a party who is not a JEFS User or represented by a JEFS User shall not be charged for the mailing of the first paper copy of an order, opinion, judgment, or other item entered in the case by the appellate court.

(7) Parties to a pending case who are not JEFS Users or who are not represented by a JEFS User, shall not be charged for the first copy of the appellate court’s order, opinion, judgment, or any other item entered in the case by the appellate court, whether provided on paper or electronically.

(8) A Hawai‘i appellate court, or any judge or justice thereof, may waive costs and fees for good cause shown. In lieu of copying and mailing fees, the Chief Justice may authorize the appellate clerk to provide copies of orders, opinions, or other items to publishing companies in exchange for published materials or research services for the benefit of a Hawai‘i appellate court or the judiciary.

(9) No person or entity shall be permitted to mine JIMS or eCourt Kōkua for data or documents. The Administrative Director is hereby authorized to take such actions as are necessary to protect JIMS and other case management systems from such activity.

**(f) Intermediate Court of Appeals Panels.**

(1) **MERIT PANEL ASSIGNMENT.** The appellate clerk shall assign each appeal or statement of agreed facts to a randomly selected merit panel upon receipt of the last reply brief, upon receipt of a notice the last reply brief will not be filed, or upon expiration of the time when the last reply brief could have been filed.

(2) **MERIT PANEL ASSIGNMENT FOR CONSOLIDATED APPEALS.** If a motion or request to consolidate related appeals is granted, the appellate clerk shall assign the consolidated appeal to the merit panel to which the oldest related appeal was assigned. If no previous merit panel assignment was made, the appellate clerk shall assign the consolidated appeal to a randomly selected merit panel upon receipt of the last reply

brief, upon receipt of a notice the last reply brief will not be filed, or upon expiration of the time when the last reply brief could have been filed.

(3) NOTICE OF PANEL ASSIGNMENT. Upon assignment of a case to a merit panel, the appellate clerk shall notify the Chief Judge and the parties of the identity of the merit panel members.

(4) DESIGNATION OF LEAD JUDGE BY CLERK; WHEN REQUIRED. If the Chief Judge does not notify the appellate clerk of the lead judge's identity within 30 days after entry of the notice of panel assignment, the appellate clerk shall randomly designate the lead judge from among the panel members. The clerk shall not disclose the identity of the lead judge except as required for internal reports approved by the Chief Justice.

(5) RECUSAL, DISQUALIFICATION, OR UNAVAILABILITY. Upon receipt of a judge's notice of recusal or disqualification in any case, or upon receipt of notice from the Chief Judge that a judge assigned to a merit panel has been, is, or may be unavailable due to illness, absence, or disability for a period of more than 30 days, the appellate clerk shall randomly select and assign to the merit panel a judge from the remaining intermediate court of appeals judges who are not known to be recused, disqualified, or otherwise unavailable. If an intermediate appellate judge is not available to substitute because of vacancies, recusals, disqualifications, or illness, absence or disability for a period of more than 30 days, the appellate clerk shall notify the Chief Justice who shall, in turn, designate a substitute from those eligible to serve as substitutes.

(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.



**Form 1. Notice of Appeal to the Intermediate Court of Appeals from a Judgment, Order or Decree of a Circuit/District/Family/Land/Tax Court**

(TITLE OF COURT)  
STATE OF HAWAI'I

A.B., Plaintiff,

v.

C.D., Defendant.

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) TRIAL COURT CASE NO. \_\_\_\_\_  
)  
)  
)  
)  
)  
)

NOTICE OF APPEAL

Notice is hereby given that (appealing party), [~~by and through his or her~~ individually or by and through counsel ~~[its attorney]~~, (name of attorney), pursuant to section (cite relevant section of chapter 641 or other relevant statute), Hawai'i Revised Statutes, and Rule 3 of the Hawai'i Rules of Appellate Procedure (and any other relevant rules and cases), appeals to the Intermediate Court of Appeals of the State of Hawai'i from the (specify whether final or interlocutory and describe judgment/order/decree/decision), filed herein on \_\_\_\_\_, and attached hereto as Exhibit "A" (if required under Hawai'i Rules of Appellate Procedure Rule 3).

DATED: Honolulu, Hawai'i, \_\_\_\_\_.

*Attorney for Appellant*

NOTE: *If appeal is interlocutory, specify statute, rule, or case authorizing it.*

**Form 2. Notice of Appeal to the Intermediate Court of Appeals from a Decision and Order of an Agency, Board, Commission or Officer.**

(TITLE OF AGENCY, ETC.)  
OF THE STATE OF HAWAI'I

A.B., Plaintiff, ) AGENCY DOCKET NO. \_\_\_\_\_  
 )  
 v. )  
 )  
 C.D., Defendant. )  
 \_\_\_\_\_ )

NOTICE OF APPEAL

Notice is hereby given that (appealing party), [~~by and through his or her~~individually or by and through counsel [~~its attorney~~], (name of attorney), pursuant to (section 91-14 or other relevant section) of the Hawai'i Revised Statutes and Rule 3 of the Hawai'i Rules of Appellate Procedure (and any other relevant rules and cases), appeals to the Intermediate Court of Appeals of the State of Hawai'i from the decision and order of the (agency) (specify whether final or interlocutory and describe order), filed herein on \_\_\_\_\_, and attached hereto as Exhibit "A" (if required under Hawai'i Rules of Appellate Procedure Rule 3).

DATED: Honolulu, Hawai'i, \_\_\_\_\_.

*Attorney for Appellant*

NOTE: *If appeal is interlocutory, specify statute, rule, or case authorizing it.*

**Form 2a. Notice of Appeal to the Supreme Court from a Decision and Order of an Agency, Board, Commission or Officer.**

(TITLE OF AGENCY, ETC.)  
OF THE STATE OF HAWAI'I

A.B., Plaintiff, ) AGENCY DOCKET NO. \_\_\_\_\_  
 )  
 v. )  
 )  
 C.D., Defendant. )  
 )  
 \_\_\_\_\_ )

NOTICE OF APPEAL  
(As Related to Act 48)

Notice is hereby given that (appealing party), [~~by and through his or her~~ individually or by and through counsel [~~its attorney~~], (name of attorney), pursuant to (section 91-14 or other relevant section) of the Hawai'i Revised Statutes and Rule 3 of the Hawai'i Rules of Appellate Procedure (and any other relevant rules and cases), appeals to the Supreme Court of the State of Hawai'i from the decision and order of the (agency) (specify and describe), filed herein on \_\_\_\_\_, and attached hereto as Exhibit "A" (if required under Hawai'i Rules of Appellate Procedure Rule 3).

DATED: Honolulu, Hawai'i, \_\_\_\_\_.

*Attorney for Appellant*