

**HAWAI‘I RULES
OF
APPELLATE PROCEDURE**
(SCRU-10-0000012)

**Adopted and Promulgated by
the Supreme Court
of the State of Hawai‘i**

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*Comments and commentary are provided by the rules committee
for interpretive assistance. The comments and commentary express
the view of the committee and are not binding on the courts.*

**The Judiciary
State of Hawai‘i**

HAWAI‘I RULES OF APPELLATE PROCEDURE

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Rule 1. SCOPE OF RULES AND TITLE.

(a) **Scope of rules.** These rules govern all proceedings in the Hawai'i appellate courts except as otherwise provided by statute, Rules of the Supreme Court, or Rules of the Intermediate Court of Appeals.

(b) **Rules not to affect jurisdiction.** These rules shall not be considered to extend or limit the jurisdiction of the Hawai'i appellate courts as established by law.

(c) **Title.** These rules shall be known and cited as the Hawai'i Rules of Appellate Procedure and abbreviated as HRAP.

(d) **Interpretation and enforcement of rules.** These rules shall be read and construed with reference to each other, the Hawai'i Electronic Filing and Service Rules, and the Hawai'i Court Records Rules. Attorneys and *pro se* parties are deemed to be aware of, and are expected to comply with, all of the provisions of these rules.

(e) **Effect of Hawai'i Electronic Filing and Service Rules.** Documents filed and notices given in accordance with the Hawai'i Electronic Filing and Service Rules shall be deemed to comply with the filing, mailing, certified mailing, notice and service requirements of any part of these Hawai'i Rules of Appellate Procedure.

(f) **Effect of Automation on Processes and Procedures.** Duties set out in these rules may be performed by automation.

(Amended December 6, 1999, effective January 1, 2000; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010.)

Rule 2. SUSPENSION OF RULES.

In the interest of expediting a decision, or for other good cause shown, either Hawai'i appellate court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

(Amended effective January 23, 1995; further amended December 6, 1999, effective January 1, 2000.)

Rule 2.1. APPLICABILITY OF OTHER COURT RULES; DEFINITIONS.

(a) **Applicability of other court rules.** The Hawai'i Rules of Civil Procedure, the Hawai'i Rules of Penal Procedure, the District Court Rules of Civil Procedure, the Rules of Circuit Courts, Hawai'i

Family Court Rules, Rules of the Land Court, Rules of the Tax Appeal Court, Rules Governing Court Reporting, the Hawai'i Appellate Conference Program Rules, and other rules of court that may be adopted by the supreme court from time to time are hereby adopted as part of these rules whenever applicable.

(b) **Definitions.** As used in the HRAP:

"agency" means every board, commission, department, council, committee, entity or officer of the State of Hawai'i or its political subdivisions that is authorized by law to adjudicate contested cases or issue declaratory rulings or orders that may be appealed directly to the Hawai'i appellate courts;

"appeal" includes every proceeding in the Hawai'i appellate courts other than an original action;

"appellate clerk" includes any clerk, deputy, or assistant clerk of the Hawai'i appellate courts;

"appellate court(s)" or "Hawai'i appellate court(s)" mean(s) the Hawai'i Supreme Court and the Hawai'i Intermediate Court of Appeals, collectively and individually, but does not include the land or tax appeal courts;

"attach" or "append" means to fasten to a physical document or to submit as a supporting document in JEFS or JIMS;

"civil appeal" means any appeal from a civil case;

"civil case" means any proceeding in the land or tax appeal court, any proceeding before a governmental agency, and any proceeding in the family, circuit or district court other than a criminal case;

"clerk of the court" includes the clerks of each state trial court and, in appropriate cases, the official designated by an agency to prepare the record for appeals;

"docketed" means the record from a court or agency is filed in the appellate courts;

"document" means pleading, motion, exhibit, order, judgment, decree, or other form of written communication or memorialization whether prepared on paper or electronically, including electronic documents, electronic forms, electronic templates, and electronic reports;

Rule 2.1

HAWAI'I RULES OF APPELLATE PROCEDURE

“file” or “filing” means the submission of documents either "conventionally" or "electronically" as defined in the Hawai'i Electronic Filing and Service Rules;

“intermediate court of appeals” means the Hawai'i Intermediate Court of Appeals;

“JEFS” means the Judiciary Electronic Filing System;

“JEFS User” means an individual with a valid JEFS login and password;

“JIMS” means the Judiciary Information Management System, the case management system developed by the Hawai'i Judiciary and implemented by the Hawai'i Supreme Court to record information and documents related to all cases filed in the courts of the State of Hawai'i;

“nominal appellee” means a party who is designated an appellee because it is the agency or court from which appeal is taken or because the party was a party in the court or agency proceeding, but asserts no interest in the outcome of the appeal;

“party” means named plaintiff, defendant, petitioner, respondent, claimant, or intervenor in the court or agency proceeding and anyone who has standing to seek review of the court or agency order or judgment; it does not include witnesses;

“proof of service” means a certificate of service, an acknowledgment of service, a notice of electronic filing, or an affidavit or declaration attesting to service;

“serve” and “service” mean “conventional service” and “notice of electronic filing” as defined in the Hawai'i Electronic Filing and Service Rules;

“supreme court” means the Hawai'i Supreme Court.

(Added December 6, 1999, effective January 1, 2000; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010.)

Rule 3. APPEALS - HOW TAKEN.

(a) **Filing the notice of appeal.** An appeal permitted by law from a court or agency shall be taken by filing a notice of appeal, together with such fees as are established by statute or these rules, with the appellate court within the time allowed by Rule 4 of these Rules. As required by Rule 25 of these Rules and Rules 2.2 and 4.1 of the Hawai'i Electronic Filing and Service Rules, attorneys who are registered users of the Judiciary Electronic Filing System (JEFS) shall electronically file the notice of

appeal with the appellate court through JEFS. A self-represented party and an attorney who is exempt from registering as a JEFS User shall conventionally file the notice of appeal with the clerk of the court or agency appealed from. Within 7 days after the conventional filing of the notice of appeal, the clerk of the court or agency appealed from shall electronically file the notice of appeal with the appellate court. If an attorney who is a registered JEFS User erroneously files the notice of appeal with the clerk of the court or agency appealed from, or a notice of appeal that should be conventionally filed with the clerk of the court or agency appealed from is mistakenly submitted to the appellate clerk, the receiving clerk shall note on it the date of receipt and shall electronically file the notice of appeal with the appellate court within 7 days. The date of receipt shall be deemed the date the notice of appeal was filed with the appellate court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

(b) **Joint or consolidated appeals.** If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal and thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of either of the Hawai'i appellate courts upon the court's own motion, upon motion of a party, or upon stipulation of the parties to the several appeals and approval by the court.

(c) Content of the notice of appeal.

(1) The notice of appeal shall identify the party or parties taking the appeal either in the caption or the body of the notice of appeal. An attorney representing more than one party may fulfill this requirement by describing those parties with such terms as “all plaintiffs,” “the defendants,” “plaintiffs A, B, et al.,” or “all defendants except X.” In a class action, whether or not the class has been certified, it is sufficient for the notice of appeal to name one person qualified to bring the appeal as representative of the class. In cases where fictitious titles are authorized by law, the first and last initials of the party or parties shall be used. In the event that a case involves parties bearing the same initials, middle initials shall be added.

(2) The notice of appeal shall designate the judgment, order, or part thereof and the court or agency appealed from. A copy of the judgment or order shall be attached as an exhibit. Forms 1, 2, and 3 in the Appendix of Forms are suggested forms of notices of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Denomination of the parties. The party appealing shall be denominated the appellant and by the appellant's denomination in the proceeding from which the appeal is taken so that an appellant shall be denominated plaintiff-appellant or petitioner-appellant or defendant-appellant or respondent-appellant. All other parties shall be denominated appellees, and each appellee's denomination in the proceeding from which the appeal is taken shall also be included so that each appellee shall be denominated plaintiff-appellee or petitioner-appellee or defendant-appellee or respondent-appellee. Any appellee who supports the position of an appellant shall meet the time schedule for filing documents that is provided for that appellant.

(e) Service of the notice of appeal.

(1) The appellant shall serve a filed copy of the notice of appeal on each other party. Proof of service shall be filed, with the appellate court, within 7 days after the filing of the notice of appeal.

(2) Additionally, 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 comply with Rule 10(f) of these Rules.

(f) Payment of fees. If the fees are not paid, the clerk of the court or agency where the notice of

appeal was filed shall file a notification in the appellate case forthwith.

(Amended December 6, 1999, effective January 1, 2000; further amended effective January 3, 2000; further amended October 6, 2003, effective January 1, 2004; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010; further amended June 4, 2015, effective July 1, 2015; further amended September 13, 2018, effective January 1, 2019.)

Rule 3.1. CIVIL APPEAL DOCKETING STATEMENT.

(a) Cases for which required. Any party who files a notice of appeal or cross appeal in a civil case shall also file a Civil Appeal Docketing Statement (CADS), except that a CADS shall not be filed in any appeal from, or an original proceeding involving,

(1) a petition for extraordinary relief such as a petition for a writ of mandamus or the like,

(2) a petition for a writ of habeas corpus,

(3) an appeal or petition in which the appellant or petitioner is incarcerated and is seeking relief related to the incarceration,

(4) an appeal or case arising under Rule 40 of the Hawai‘i Rules of Penal Procedure,

(5) questions of law reserved to the Hawai‘i Supreme Court,

(6) revocation of a drivers' license,

(7) a restraining order,

(8) termination of parental rights, or

(9) adjudication of a juvenile as a law violator.

The CADS shall be filed in a form that substantially conforms to Form 6 of the Hawai‘i Rules of Appellate Procedure.

(b) Time for filing. The CADS shall be filed with the notice of appeal. The appellate clerk shall not reject a notice of appeal for which there is no CADS.

(c) Reserved.

(d) Service of the CADS. Any party who files a CADS shall serve a copy of it on all other parties.

(e) **Relationship to Rules 10 and 11.** Upon notice from the appellate clerk that an appeal has been accepted into the appellate mediation program, preparation of transcripts, the record, the statement of jurisdiction, and briefs shall be stayed pending further notification from the appellate clerk, notwithstanding anything to the contrary in Rules 10, 11, and 28 of these Rules. If an appeal is accepted into the appellate mediation program, the appellate clerk shall notify the parties, the clerk of the court from which appeal is taken, and the court reporters. Likewise, the appellate clerk shall notify the parties, the clerk of the court from which appeal is taken, and the court reporters if an appeal is returned to the appeals docket. The appellate clerk's notices may be transmitted by interoffice mail, United States mail, e-mail, notice of electronic filing, or facsimile.

(f) **Sanctions.** Failure to file a CADS may result in sanctions, including dismissal of the appeal.

(Added March 1, 1995, effective March 15, 1995; further amended and effective April 25, 1995; further amended and effective February 26, 1996; further amended December 6, 1999, effective January 1, 2000; further amended November 17, 2000, effective January 1, 2001; further amended November 8, 2007, effective January 1, 2008; further amended August 30, 2010, effective September 27, 2010; further amended September 7, 2011, effective January 1, 2012; further amended June 4, 2015, effective July 1, 2015.)

Rule 4. APPEALS - WHEN TAKEN.

(a) Appeals in civil cases.

(1) **TIME FOR FILING.** When a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order. However, if the notice of appeal is mailed, the notice of appeal shall be deemed timely filed if the mailing is postmarked within the time fixed for filing and is received by the clerk no later than 5 days after the postmarked date. For the purposes of calculating other deadlines in these Rules, the date of filing under this Rule shall be the date the document is received by the clerk.

A motion for leave to file an interlocutory appeal from an order of the circuit court must be filed within 30 days of the court's entry of the order. If such a motion is filed and granted, then the notice of appeal shall be filed within 30 days after entry of the circuit court's order granting permission for leave to file an interlocutory appeal.

(2) **PREMATURE FILING OF APPEAL.** If a notice of appeal is filed after announcement of a decision but before entry of the judgment or order, such notice shall be considered as filed immediately after the time the judgment or order becomes final for the purpose of appeal.

(3) **TIME TO APPEAL AFFECTED BY POST-JUDGMENT MOTIONS.** If any party files a timely motion for judgment as a matter of law, to amend findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment or order, or for attorney's fees or costs, and court or agency rules specify the time by which the motion shall be filed, then the time for filing the notice of appeal is extended for all parties until 30 days after entry of an order disposing of the motion. The presiding court or agency in which the motion was filed shall dispose of any such post-judgment motion by entering an order upon the record within 90 days after the date the motion was filed. If the court or agency fails to enter an order on the record, then, within 5 days after the 90th day, the clerk of the relevant court or agency shall notify the parties that, by operation of this Rule, the post-judgment motion is denied and that any orders entered thereafter shall be a nullity. The time of appeal shall run from the date of entry of the court or agency's order disposing of the post-judgment motion, if the order is entered within the 90 days, or from the filing date of the clerk's notice to the parties that the post-judgment motion is denied pursuant to the operation of the Rule.

The notice of appeal shall be deemed to appeal the disposition of all post-judgment motions that are timely filed after entry of the judgment or order.

The 90-day period shall be computed as provided in Rule 26 of these Rules.

(4) EXTENSIONS OF TIME TO FILE THE NOTICE OF APPEAL.

(A) *Requests for extensions of time before expiration of the prescribed time.* The court or agency appealed from, upon a showing of good cause, may extend the time for filing a notice of appeal upon motion filed within the time prescribed by subsections (a)(1) through (a)(3) of this Rule. However, no such extension shall exceed 30 days past such prescribed time. An extension motion that is filed before the expiration of the prescribed time may be *ex parte* unless the court or agency otherwise requires.

(B) *Requests for extensions of time after expiration of the prescribed time.* The court or agency appealed from, upon a showing of excusable neglect, may extend the time for filing the notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by subsections (a)(1) through (a)(3) of this Rule. However, no such extension shall exceed 30 days past the prescribed time. Notice of an extension motion filed after the expiration of the prescribed time shall be given to the other parties in accordance with the rules of the court or agency appealed from.

(5) ENTRY OF JUDGMENT OR ORDER DEFINED. A judgment or order is entered when it is filed in the office of the clerk of the court.

(b) Appeals in criminal cases.

(1) TIME FOR FILING. In a criminal case, the notice of appeal shall be filed within 30 days after entry of the judgment or order appealed from. However, if the notice of appeal is mailed, the notice of appeal shall be deemed timely filed if the mailing is postmarked within the time fixed for filing and is received by the clerk no later than 5 days after the postmarked date. For the purposes of calculating other deadlines in these Rules, the date of filing under this Rule shall be the date the document is received by the clerk.

A motion for leave to file an interlocutory appeal from an order of the circuit court must be filed within 30 days of the court's entry of the order. If such a motion is filed and granted, then the notice of appeal shall be filed within 30 days after entry of the circuit court's order granting permission for leave to file an interlocutory appeal.

(2) EFFECT OF MOTIONS IN ARREST OF JUDGMENT OR FOR NEW TRIAL. If a timely motion in arrest of judgment under Rule 34 of the Hawai'i Rules of Penal Procedure or for a new trial under

Rule 33 of the Hawai'i Rules of Penal Procedure has been made, an appeal from a judgment of conviction may be taken within 30 days after the entry of any order denying the motion.

(3) ENTRY OF JUDGMENT OR ORDER DEFINED. A judgment or order is entered within the meaning of this subsection when it is filed with the clerk of the court.

(4) PREMATURE NOTICE OF APPEAL. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be deemed to have been filed on the date such judgment or order is entered.

(5) EXTENSIONS OF TIME TO FILE A NOTICE OF APPEAL. Upon showing of good cause, the circuit, district, or family court may, no later than 30 days after the time has expired, on motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision (b). Any such motion that is filed before expiration of the prescribed time may be *ex parte* unless the court otherwise requires.

(Amended July 18, 1984, retroactive to June 1, 1984; further amended October 22, 1985, effective October 22, 1985; further amended December 6, 1999, effective January 1, 2000; further amended May 7, 2001, effective July 1, 2001; further amended June 20, 2006, effective July 1, 2006; further amended February 19, 2009, effective July 1, 2009; further amended August 30, 2010, effective September 27, 2010; further amended December 14, 2011, effective January 1, 2012; further amended June 4, 2015, effective July 1, 2015; further amended March 7, 2016, effective July 1, 2016; further amended September 13, 2018, effective January 1, 2019; further amended July 3, 2019, effective January 1, 2020.)

Rule 4.1. CROSS-APPEALS.**(a) Right of cross-appeal.**

(1) If a timely notice of appeal is filed by a party, any other party may, if allowed by law, file a cross-appeal.

(2) In 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.

(3) In criminal cases, the state or the defendant may file a cross-appeal within the time and under the circumstances permitted by this rule if the appeal is otherwise allowed by law.

(b) Manner and time of filing.

(1) 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. Unless filed electronically, as required by Rule 25 of these Rules and Rules 2.2 and 4.1 of the Hawai'i Electronic Filing and Service Rules, the notice of cross-appeal shall be submitted to the clerk of court. If a notice of cross-appeal is mailed, the notice of cross-appeal shall be deemed timely filed if the mailing is postmarked within the time fixed for filing and is received by the clerk no later than 5 days after the postmarked date. For the purposes of calculating other deadlines in these Rules, the date of filing under this Rule shall be the date the document is received by the clerk. Furthermore, if a notice of cross-appeal is mistakenly submitted to the appellate clerk, the appellate clerk shall note on it the date of receipt and shall electronically file the notice of cross-appeal. The date of the receipt by the appellate clerk shall be deemed to be the date the notice of cross-appeal was filed with the clerk of the court. A notice of cross-appeal filed through JEFS or JIMS is deemed filed with the clerk of the court appealed from.

(2) The notice of cross-appeal shall comport with, and be filed and served in the manner prescribed by Rule 3.

(c) Additional requirements. The cross-appellant shall comply with all rules governing appeals, except that the cross-appellant is not required to order a transcript or file a court reporter's certificate unless the initial appeal is abandoned or dismissed without the record. Otherwise, the cross-appeal proceeds in the same manner as an ordinary appeal.

(d) Abandonment or dismissal of appeal. If the appellant abandons the initial appeal or the appellate court dismisses it, the cross-appeal may nevertheless be prosecuted to its conclusion, if allowed by law. Within 14 days after the entry of the order dismissing the initial appeal, if there is a record to be transcribed, the cross-appellant shall, in accordance with Rule 10(b), serve on each cross-appellee and file with the appellate clerk, a request for transcripts of such parts of the proceedings as the cross-appellant deems necessary that are not already on file.

(e) Extension of time to file cross-appeal. A party seeking an extension of time to take a cross-appeal shall proceed under Rule 4.

(Added December 6, 1999, effective January 1, 2000; further amended August 30, 2010, effective September 27, 2010; further amended April 26, 2011, effective nunc pro tunc September 27, 2010; further amended December 14, 2011, effective January 1, 2012; further amended July 3, 2019, effective January 1, 2020.)

Rule 5. 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 that any judge or justice should not participate in deciding the case or a matter therein. Except for good cause shown, failure to file the motion by this deadline 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. Rule 27(c) of these Rules shall not apply to a motion under this Rule. If the judge or justice who is the subject of the motion does not recuse from the case, the relevant appellate court shall resolve the motion. If the judge or justice does not recuse, the judge or justice may file a response to the motion within five days. 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 disqualification or recusal may be filed by each party at each of the appellate courts, unless the party discovers new information, which by due diligence could not have been discovered earlier, that the 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 after the discovery of the new information.

(Added September 27, 2021; effective January 1, 2022.)

Rule 6. RESERVED.

Rule 7. BOND FOR COSTS ON APPEAL IN CIVIL CASES.

The circuit, district, family, land, and/or tax appeal court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

Rule 8. STAYS, SUPERSEDEAS BONDS, OR INJUNCTIONS PENDING APPEAL.

(a) Motions for stay, supersedeas bond or injunction in the appellate courts. A motion for stay of the judgment or order in a civil appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an

injunction during the pendency of an appeal shall ordinarily be made in the first instance to the court or agency appealed from.

A motion for such relief on an appeal may be made to the appellate court before which the appeal is pending or to a judge thereof, but, if the appeal is from a court, the motion shall show that application to the court appealed from for the relief sought is not practicable, or that the court appealed from has denied an application, or has failed to afford the relief the applicant requested, with the reasons given by the court appealed from for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits, declarations, or other sworn statements or copies thereof. With the motion shall be filed such copies of parts of the record as are relevant. Notice of the motion shall be given to all parties. The motion shall be filed with the appellate clerk and should ordinarily be considered by the appellate court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge or justice of the court. If the motion for such relief is from an agency, the motion shall comply with statutory requirements, if any.

(b) Stay may be conditioned upon giving of bond; proceedings against sureties. Relief available in the appellate courts under this rule may be conditioned upon the filing of a bond or other appropriate security in the court or agency appealed from. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, the bond, stipulation, or undertaking shall comply with applicable statutes, and each surety submits to the jurisdiction of the court or agency appealed from and irrevocably appoints the clerk of the court as the surety's agent upon whom any documents affecting liability on the bond or undertaking may be served. Liability may be enforced on motion in the court or agency appealed from without the necessity of an independent action. The motion and such notice of the motion as the court or agency prescribes may be served on the clerk of the court appealed from, who shall forthwith mail copies to the sureties if their addresses are known.

(c) Stays in criminal cases. Stays in criminal cases shall be had according to law.

(Amended April 13, 1985, effective April 23, 1985; further amended December 6, 1999, effective January 1, 2000; further amended August 30, 2010, effective September 27, 2010.)

**Rule 9. RELEASE IN CRIMINAL CASES
PENDING APPEAL.**

(a) Appeals or relief from orders respecting release prior to a judgment of conviction.

(1) An appeal authorized by law from an order refusing or imposing conditions of release prior to a judgment of conviction shall be determined promptly. Upon the entry of an order refusing or imposing conditions of release, the circuit, district, or family court shall state in writing the reasons for the action taken. As soon as practicable after the filing of the notice of appeal, the appellant shall file a copy of the court's order with the appellate court. The appeal shall be heard without the briefs, unless otherwise ordered by the appellate court upon such documents, affidavits or declarations, transcripts, and copies of portions of the record as the parties may present or the appellate court may require. Any documents filed in accordance with this rule shall be served on all other parties. The appellate court that has jurisdiction over the case or a judge or justice thereof may order the release of the appellant pending the appeal.

(2) Review of orders respecting release prior to a judgment of conviction may be obtained by application for an extraordinary writ pursuant to Rule 21. An application for a writ of habeas corpus shall conform to statute. The appellate court that has jurisdiction over the case or a judge or justice thereof may order the release of the applicant pending the disposition of the application for the extraordinary writ.

(b) Release pending appeal from a judgment of conviction. Application for release after a judgment of conviction shall be made in the first instance in the circuit, district, or family court. If the court refuses release pending appeal, or imposes conditions of release, the court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending a review may be made to the appellate court before which the appeal is pending or to a judge or justice thereof. The application shall be made by filing a written motion with proof of service on all other

parties. It shall be determined promptly upon such documents, affidavits or declarations, transcripts, and copies of portions of the record as the parties shall present or the appellate court may require. Any documents filed in accordance with this rule shall be served on all other parties. The appellate court that has jurisdiction over the case or a judge or justice thereof may order the release of the appellant pending disposition of the motion.

(c) Criteria for release. The decision as to release shall be made according to statute.

(Amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004; further amended August 30, 2010, effective September 27, 2010.)

Rule 10. THE RECORD ON APPEAL.

(a) Composition of the record on appeal.

The record on appeal shall consist of the trial court or ADLRO record, as set out in Rule 4 of the Hawai'i Court Records Rules, or the agency record as defined by statutes or rules governing agency proceedings.

(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 appellant shall transmit the request(s) to prepare transcript to the designated reporter(s) 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:

(i) Name of the judge who or agency that heard the proceedings;

(ii) Name of the reporter who will be required to prepare a transcript pursuant to the request, or if the proceedings were recorded by audio or video recording equipment, the name of the supervising court reporter, or if there is no supervising court reporter, the name of the administrator for the court or agency from which the appeal is being taken;

(iii) Date or dates of the trial or hearing to be transcribed; and

(iv) Portions of the transcript requested.

Unless the 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 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 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 requestor.

(D) *Service required.* The 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.

(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 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 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 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, 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.

(H) *Cancellation of request for transcripts.* If, after a request to prepare a reporter's transcript has been filed but before the court reporter has begun preparation of the transcript, the requesting party decides the transcript is not necessary for the appeal, a written cancellation request, containing the same information as required by subsection (b)(1)(B) of this Rule 10, shall be filed with the appellate clerk and served on all parties. If, within 10 days after service of the request, a party deems the cancelled transcript necessary, the party may, within the following 10 days either order the cancelled transcript or, in the case the appellant has filed the cancellation request, move the appellate court for an order requiring the appellant to withdraw the cancellation request.

(2) **CERTIFICATE THAT NO TRANSCRIPTS TO BE PREPARED.** If the appellant deems it unnecessary to have transcripts prepared, the appellant shall, within 10 days after filing the notice of appeal, file a certificate to that effect with the appellate clerk and serve a copy of the certificate on each appellee.

(3) **DUTY OF APPELLANT IN INSUFFICIENCY OF THE EVIDENCE APPEALS.** If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(4) **NOTICE TO APPELLEE IF FEWER THAN ALL TRANSCRIPTS ARE ORDERED.** Unless transcripts of all oral proceedings have been ordered, the appellant shall, within the 10-day time provided in (b)(1)(A) of this Rule 10, file a statement of the points of error the appellant intends to present on the appeal and shall serve on the appellee a copy of the statement. If, within 10 days after service of the statement, the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall file and serve on the appellant a designation of additional parts to be prepared and included in the record on appeal. Unless within 10 days after service of such designation the appellant has ordered such parts and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the appellate court for an order requiring the appellant to do so.

(c) **Statement of the evidence of proceedings when no report made or when transcript unavailable.** If the reporter refuses, becomes unable, or fails to transcribe all or any portion of the evidence

or oral proceedings after proper request, the party may (i) request that transcription of the reporter's notes be submitted to another reporter for transcription where feasible; or (ii) prepare a statement of the evidence or proceedings from the best available means, including the party's recollection or uncertified transcripts or reporter's notes. The statement shall be served on the opposing party(ies), who may serve objections or propose amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the court or agency appealed from for settlement and approval and as settled and approved shall be included by the clerk of the court appealed from in the record on appeal.

(d) **Agreed statement as the record on appeal.** In lieu of the record on appeal as defined in subsection (a) of this 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.

(e) **Correction or modification of the record.**

(1) If any differences arise as to whether the record truly discloses what occurred in the court or agency appealed from, the differences shall be submitted to and settled by that court or agency and the record made to conform to the truth.

(2) If anything material to any party is omitted from the record by error or accident or is misstated therein, corrections or modifications may be as follows:

(A) by the stipulation of the parties; or

(B) by the court or agency appealed from, either before or after the record is transmitted; or

(C) by direction of the appellate court before which the case is pending, on proper suggestion or its own initiative.

(3) All other questions as to the form and contents of the record shall be presented to the appellate court before which the case is pending.

(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.

(Amended December 6, 1999, effective January 1, 2000; further amended May 7, 2001, effective July 1, 2001; further amended October 6, 2003, effective January 1, 2004; further amended June 20, 2006, effective July 1, 2006; further amended July 11, 2006, effective July 11, 2006; further amended October 28, 2008, effective January 1, 2009; further amended August 30, 2010, effective September 27, 2010; further amended November 8, 2010, effective November 8, 2010; further amended July 15, 2011, effective July 15, 2011; further amended December 14, 2011, effective January 1, 2012; further amended June 22, 2012, effective September 1, 2012; further amended April 12, 2016, effective July 1, 2016.)

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 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.

(Amended December 18, 1985, effective December 18, 1985; further amended January 22, 1987, effective February 1, 1987; further amended January 26, 1987, effective January 26, 1987; further amended June 7, 1994, effective June 7, 1994; further amended December 6, 1999, effective January 1, 2000; further amended May 7, 2001, effective July 1, 2001; further amended October 6, 2003, effective January 1, 2004; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010; further amended February 17, 2016, effective July 1, 2016; further amended January 21, 2025, effective February 14, 2025.)

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, then the appellant's name, identified as such, 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.

(Amended December 6, 1999, effective January 1, 2000; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010; further amended January 21, 2025, effective February 14, 2025.)

Rule 12.1. STATEMENT OF JURISDICTION.

(a) Filing. Within 10 days after the record on appeal is filed each appellant and cross-appellant shall file a statement of jurisdiction. Any appellee contesting jurisdiction may file a statement contesting jurisdiction within the same period.

(b) Length. The statement shall not exceed 10 pages in length exclusive of title page(s), indexes, and the certificate of service.

(c) Content. The statement of jurisdiction shall show the specific statutory or other grounds upon which the jurisdiction of the Hawai'i appellate courts is invoked. The statement shall include, with references to the record on appeal, (i) relevant procedural facts establishing jurisdiction and (ii) relevant filing dates establishing the timeliness of the appeal.

(1) **CIVIL.** In a civil case involving multiple claims or multiple parties, the statement shall specifically set out, with dates and references to the record on appeal, (i) how each claim against each party was resolved or (ii) whether the appealed order or judgment was certified for appeal.

(2) **CRIMINAL.** In a criminal case, the statement shall identify the offense(s) involved in the appeal by statutory section and name, any sentence imposed, and the defendant's custody status in the case on appeal.

(d) Attachment. A copy of the order or judgment shall be attached to the statement.

(e) Sanctions. Failure to file a statement of jurisdiction may result in sanctions, including dismissal of the appeal following notice and a meaningful opportunity to be heard.

(Added November 10, 1993, effective December 15, 1993; amended December 6, 1999, effective January 1, 2000; further amended February 17, 2016, effective July 1, 2016.)

Rule 13. CERTIFICATION OF QUESTION OF HAWAI'I LAW BY FEDERAL COURTS.

(a) When certified. When a federal district or appellate court certifies to the Hawai'i Supreme Court that there is involved in any proceeding before it a question concerning the law of Hawai'i that is determinative of the cause and that there is no clear controlling precedent in the Hawai'i judicial decisions, the Hawai'i Supreme Court may answer the certified question by written opinion.

(b) Contents of certificate. The certificate provided for herein shall contain the title of the Hawai'i Supreme Court and the title of the cause in full, and to the right thereof the words "Certified Question" and the name of the court submitting or approving the submission of the question. The certificate shall also contain a statement of prior proceedings in the case, a statement of facts showing the nature of the cause, the question of law to be answered, and the circumstances out of which the question arises.

(c) Preparation of certificate. The certificate may be prepared by stipulation or as directed by such federal court. When prepared and signed by the presiding judge of such federal court, it shall be certified to the Hawai'i Supreme Court by the clerk of the federal court and under its official seal. The Hawai'i Supreme Court may, in its discretion, require original or copies of all or any portion of the record before the federal court to be filed with the certificate.

(d) Briefs. Briefs conforming to the Hawai'i Rules of Appellate Procedure shall be filed by the parties as ordered by the court.

(e) Deleted.

(Amended June 9, 1986, effective June 9, 1986; further amended December 6, 1999, effective January 1, 2000.)

Rule 14. RESERVED.

Rule 15. RESERVED QUESTIONS.

(a) **From what court.** A circuit court, the land court, the tax appeal court and any other court empowered by statute, may reserve for the consideration of the supreme court a question of law arising in any proceedings before it. Questions may be reserved on motion of any party or on the court's own motion. Reserved questions shall be electronically filed by the clerk of the court.

(b) **Record.** The court reserving the question shall electronically transmit images of as much of the record as may be necessary to a full understanding of the questions reserved to the appellate clerk.

(c) **Disposition.** The supreme court may, in its discretion, return any reserved question for decision in the first instance by the court reserving it.

(Amended December 6, 1999, effective January 1, 2000; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010.)

Rule 16. PLEADINGS IN ORIGINAL ACTIONS FILED IN THE SUPREME COURT.

All pleadings in applications for writs or other relief, filed originally in the supreme court, shall conform to the requirements of Hawai'i Rules of Civil Procedure 7 through 15.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 17. ORIGINAL PROCEEDINGS.

Original actions, including applications for writs or other relief, shall conform to the requirements of any applicable statutes and to such orders as may be entered by the supreme court.

(Amended December 6, 1999, effective January 1, 2000; further amended June 20, 2006, effective July 1, 2006.)

Rule 18. AGREED FACTS; SUBMISSION ON.

(a) **Submission.** As authorized by law, the parties to a dispute that might be the subject of a civil action or proceeding in any court or agency may, without the action of a trial court or agency, agree to submit a case directly to the intermediate court of appeals upon a statement containing the facts upon which the controversy depends, a statement of the question or issues, the contentions of the parties as to

each issue, and the form of judgment that each party requests the intermediate court of appeals to render.

(b) **Good faith.** It must be shown by affidavit or declaration that the controversy is real and that the proceedings are a good faith effort to determine the rights of the parties.

(c) **Disposition.** The appellate court may refuse to entertain a case submitted on agreed facts. If the appellate court entertains the case, the judgment rendered thereon shall be entered and may be enforced as in other cases, subject to the right of a party to move for reconsideration or, if the case is decided in the intermediate court of appeals, apply for a writ of certiorari.

(Added December 6, 1999, effective January 1, 2000; further amended June 20, 2006, effective July 1, 2006.)

Rule 19. RESERVED.**Rule 20. RESERVED.****Rule 21. WRITS OF MANDAMUS OR PROHIBITION DIRECTED TO A JUDGE; WRITS OF MANDAMUS DIRECTED TO A PUBLIC OFFICER; OTHER EXTRAORDINARY WRITS.**

(a) **Writs of mandamus or prohibition directed to a judge.** Application for a writ directed to a judge shall be made by filing a petition with the appellate clerk with proof of service on the respondent judge, all parties to the action in the trial court, and the attorney general. The petition shall contain: (i) a statement of facts necessary to an understanding of the issues presented; (ii) a statement of issues presented and of the relief sought; and (iii) a statement of reasons for issuing the writ.

Copies of any order or opinions or parts of the record that may be essential to an understanding of the matters set forth in the petition shall be attached to the petition.

Upon receipt of the prescribed filing fee, the appellate clerk shall docket the petition and submit it to the supreme court for determination as to whether the writ will be entertained.

(b) Writs of mandamus directed to a public officer. An application for a writ of mandamus directed to a public officer shall be made by filing a petition with the appellate clerk with proof of service on the officer and the attorney general or the chief legal officer of the county, as applicable. The petition shall conform to the requirements of subsection (a) of this rule. Upon receipt of the prescribed filing fee, the appellate clerk shall docket the petition and submit it to the supreme court for a determination as to whether the petition will be entertained. If the court elects to entertain the petition, it will be handled in the same manner as a petition under subsection (a) of this rule.

(c) Denial; order directing answer. If the court is of the opinion that the writ should not be entertained, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the appellate clerk on the respondents and the attorney general or the chief legal officer of the applicable county and, in the case of a writ directed to a judge, on all other parties to the action in the trial court. All parties other than the petitioners shall be deemed respondents for all purposes. Two or more respondents may answer jointly. If the judge named respondent does not desire to appear in a proceeding, the judge may advise the appellate clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The appellate clerk shall advise the parties, the attorney general, or the chief legal officer of the applicable county of the dates on which any required briefs are to be filed and of the date of any oral argument. The proceeding shall be given preference over ordinary civil cases.

(d) Habeas corpus proceedings. Habeas corpus proceedings before the Hawai‘i Supreme Court shall be governed by and conform to statute.

(e) Other extraordinary writs. Application for other extraordinary writs may be made by petition filed with the appellate clerk in conformity with subsection (a) of this rule. Proceedings on such application shall conform, so far as is practicable, to the procedures prescribed in subsections (a), (b) and (c) of this rule.

(Amended December 6, 1999, effective January 1, 2000; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010.)

Rule 22. RESERVED.

Rule 23. CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS.

(a) Transfer of custody. Pending disposition of any habeas corpus proceeding commenced pursuant to statute, before the supreme court or a justice thereof for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this rule. Upon application of a custodian showing any need therefor, the supreme court or a justice thereof may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

(b) Detention or release of prisoner pending disposition of application for habeas corpus. Pending a disposition of an application for habeas corpus pursuant to statute, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be released upon the prisoner's own recognizance, with or without surety, as may appear fitting to the supreme court or the justice to which or to whom the application is made.

(c) Modification of initial order respecting custody. Unless modified by the supreme court or the justice to which or to whom the application is made, the initial order respecting the custody or release of the prisoner and any recognizance or surety taken shall govern pending disposition of the application.

(Amended December 6, 1999, effective January 1, 2000; further amended June 20, 2006, effective July 1, 2006.)

Rule 24. PROCEEDINGS *IN FORMA PAUPERIS*.

(a) **Leave to proceed on appeal *in forma pauperis* from a court or agency determination to the Hawai'i appellate courts.** A motion for leave to proceed on appeal *in forma pauperis* from a court or agency determination shall ordinarily be made in the first instance to the court or agency appealed from.

A party to an action in a court or 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 declaration, showing, in the detail prescribed by Form 4 in 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 is entitled to redress. The 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 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 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 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.

(Amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010; further amended December 21, 2015, effective January 1, 2016; further amended August 4, 2020, effective August 4, 2020.)

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 their JEFS User account information.

(Amended December 6, 1999, effective January 1, 2000; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010; further amended June 4, 2015, effective July 1, 2015; further amended January 21, 2025, effective February 14, 2025.)

Rule 26. COMPUTATION AND EXTENSION OF TIME.

(a) Computation of time. In computing any period of time prescribed by these rules, an order of court, or any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period extends until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, any intervening Saturday, Sunday, or legal holiday shall be excluded in the computation.

(b) Extension of time. The Hawai'i appellate courts, or any judge or justice thereof, for good cause shown upon motion may extend the time prescribed

by these rules for doing any act, or may permit an act to be done after the expiration of such time. Provided however, no court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules.

(c) Additional time after service by mail. Whenever a party is required or permitted to do an act within a prescribed time after service of a document, and the document is served by mail, 2 extra days shall be added to the prescribed period.

(d) Shortening time. A judge or justice for good cause shown may shorten the time for serving or filing a notice of motion or other document incident to an appeal or an original proceeding in the reviewing court. A motion to shorten time shall be made as provided in Rule 27.

(e) Relief from default. 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.

(Amended December 6, 1999, effective January 1, 2000; further amended August 30, 2010, effective September 27, 2010.)

Rule 27. MOTIONS.

(a) Content of motions; response. Unless another form is elsewhere prescribed by these Rules, an application for an order or other relief shall be made by filing a written motion with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion, shall state with particularity the grounds upon which it is based, and shall set forth the order or relief sought. If a motion is supported by a memorandum, affidavit, declaration, or other documents, they shall be served and filed with the motion. Any party may file a written response in opposition to a motion within 5 days after service of the motion, but the appellate court may extend or shorten the time for responding to any motion as provided in Rule 26(b) and (d) of these Rules. No reply to a response will be received unless authorized by the appellate court.

(b) Determination of motions for procedural orders. Notwithstanding Rule 27(a) of this Rule, motions for procedural orders, including motions for extension of time, may be acted upon at any time, without awaiting a response. Pursuant to rule or order of the appellate court, motions for specified types of procedural orders may be disposed of by the appellate clerk. Any party adversely affected by such action, by application to the appellate court, may request reconsideration, vacation, or modification of such action.

(c) Power of a single judge or justice to entertain motions. In addition to authority conferred by rule or law, a single judge or justice may decide any motion before the court on which the judge or justice sits, except that: (i) a single judge or justice may not dismiss or otherwise determine an appeal or other proceeding; and (ii) the Hawai'i Supreme Court may provide by order or rule that any motion or class of motions must be acted upon by it or the intermediate court of appeals. Any party adversely affected by the action of a single judge or justice may, by application to the court on which the judge or justice sits, request reconsideration, vacation, or modification of such action.

(d) Page limits. A motion, other than a motion for reconsideration pursuant to Rule 40 of these Rules, shall not exceed 3 pages, including an abbreviated caption and signature. Memoranda in support or opposition shall not exceed 20 pages, including abbreviated captions and signatures. Only affidavits or declarations and documents necessary for the determination of the motion may be attached.

(Amended December 6, 1999, effective January 1, 2000; further amended August 30, 2010, effective September 27, 2010; further amended October 13, 2015, effective January 1, 2016.)

Rule 28. BRIEFS.

(a) Format, service, and page limitation. All briefs shall conform with Rule 32 of these Rules and, if service is by any means other than a notice of electronic filing, be accompanied by proof of service of 2 copies on each party to the appeal. Except after leave granted, an opening or answering brief shall not exceed 35 pages, and a reply brief shall not exceed 10 pages, exclusive of indexes, appendices, and statements of related cases. If a brief raises ineffective assistance of counsel as a point of error, the appellant shall serve a copy of the brief on the attorney alleged to have been ineffective.

(b) Opening brief. Within 40 days after the filing of the record on appeal, the appellant shall file an opening brief, containing the following sections in the order here indicated:

(1) A subject index of the matter in the brief with page references and a table of authorities listing the cases, alphabetically arranged, text books, articles, statutes, treatises, regulations, and rules cited, with references to the pages in the brief where they are cited. Citation to Hawai'i cases since statehood shall include both the state and regional reporters. Citation to foreign cases may be to only the regional reporters. Where cases are generally available only from electronic databases, citation may be made thereto, provided that the citation contains enough information to identify the database, the court, and the date of the opinion.

(2) (Reserved)

(3) A concise statement of the case, setting forth the nature of the case, the course and disposition of proceedings in the court or agency appealed from, and the facts material to consideration of the questions and points presented, with record references supporting each statement of fact or mention of court or agency proceedings. In presenting those material facts, all supporting and contradictory evidence shall be presented in summary fashion, with appropriate record references. Record references shall include a description of the document referenced, the JIMS or JEFS docket number and electronic page citations, or if a JIMS or JEFS docket number is not available, the document's filing date and electronic page citations within the document. References to transcripts shall include the JIMS or JEFS docket number, the date of the transcript, and the specific electronic page or pages referenced. Lengthy quotations from the record may be reproduced in the appendix. There shall be appended to the brief a copy of the judgment, decree, findings of fact and conclusions of law, order, opinion or decision relevant to any point on appeal, unless otherwise ordered by the court.

(4) A concise statement of the points of error set forth in separately numbered paragraphs. Each point shall state: (i) the alleged error committed by the court or agency; (ii) where in the record the alleged error occurred; and (iii) where in the record the alleged error was objected to or the manner in which the alleged error was brought to the attention of the court or agency. Where applicable, each point shall also include the following:

(A) when the point involves the admission or rejection of evidence, a quotation of the grounds urged for the objection and the full substance of the evidence admitted or rejected;

(B) when the point involves a jury instruction, a quotation of the instruction, given, refused, or modified, together with the objection urged at the trial;

(C) when the point involves a finding or conclusion of the court or agency, either a quotation of the finding or conclusion urged as error or reference to appended findings and conclusions;

(D) when the point involves a ruling upon the report of a master, a quotation of the objection to the report.

Points not presented in accordance with this section will be disregarded, except that the appellate court, at its option, may notice a plain error not presented. If an appellate court, when acting on a case on appeal, contemplates basing the disposition of the case wholly or in part upon an issue of plain error not raised by the parties through briefing, it shall not affirm, reverse, or vacate the case without allowing the parties the opportunity to brief the potential plain-error issue prior to disposition. Lengthy parts of the transcripts that are material to the points presented may be included in the appendix instead of being quoted in the point.

(5) A brief, separate section, entitled "Standard of Review," setting forth the standard or standards to be applied in reviewing the respective judgments, decrees, orders or decisions of the court or agency alleged to be erroneous and identifying the point of error to which it applies.

(6) (Reserved)

(7) The argument, containing the contentions of the appellant on the points presented and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on. The argument may be preceded by a concise summary. Points not argued may be deemed waived.

(8) Relevant parts of the constitutional provisions, statutes, ordinances, treaties, regulations, or rules pertaining to the points of error set out verbatim, unless otherwise provided in the brief. If lengthy, they may be cited and their pertinent text set out in the appendix.

(9) A conclusion, specifying with particularity the relief sought.

(10) AN APPENDIX. Anything that is not part of the record shall not be appended to the brief, except as provided in this Rule.

(11) STATEMENT OF RELATED CASES. A brief statement identifying any related case known to be pending in the Hawai'i courts or agencies. The statement shall include the following: case caption, docket number, and the nature of the relationship. Cases are deemed related if they:

(A) arise out of the same or consolidated cases in the court or agency;

(B) involve a case that was previously heard by the Hawai'i appellate courts;

(C) involve the same parties;

(D) involve the same or closely related issues;

(E) involve the same basic transaction or event; or

(F) have any other similarities of which the appellate courts should be aware.

The statement shall be presented on a separate page, entitled "Statement of Related Cases." The statement shall be the last page in the brief following the appendices, if any. If no other cases are deemed related, a single statement to this effect shall be provided. If appellant identifies a case as related, no other party need duplicate the listing in that party's brief. If appellant learns of a related case after filing the initial brief, appellant shall promptly file a statement.

(c) **Answering brief.** Within 40 days after (1) service of appellant's opening brief, or receipt as evidenced by an acknowledgment of service as provided in Rule 25 of these Rules, whichever is later, or (2) docketing of the appeal, whichever is later, the appellee shall file an answering brief. The brief shall be of like character as that required for an opening brief except that no statement of points shall be required, and no other section is required unless the section presented in the opening brief is controverted. If, after filing the answering brief, appellee learns of a related case that has not been previously identified by any other party, appellee shall promptly file a statement of related cases that conforms with subsection (b)(11) of this Rule.

A nominal appellee need not file an answering brief. The appellate court may require an answering brief if one is deemed useful to its consideration.

(d) **Reply brief.** Within 14 days after service of appellee's answering brief, or receipt as evidenced by an acknowledgment of service as provided in Rule 25(e) of these Rules, whichever is later, the appellant may file a reply brief. The reply brief shall be confined to matters presented in the answering brief. If no reply brief is to be filed, the appellant shall file a notification with the appellate clerk, with service upon all parties, prior to the expiration of the time for filing the reply brief.

(e) **Briefs on reserved questions.** In cases in which a single question has been reserved, the party maintaining the affirmative shall, for the purpose of this Rule, be regarded as the appellant and the party opposing the question as the appellee. So also where there are several questions and one party has the affirmative as to all of them. Where several questions have been reserved as to which a party maintains the affirmative as to some and the negative as to others, the plaintiff shall be regarded as the appellant and the defendant as the appellee, unless, upon application to the appellate court, an order specifying otherwise is issued by the appellate court. Unless otherwise ordered by the appellate court, briefs by the parties shall conform to Rule 28(a), (b), (c) and (d) of these Rules except that points of error and standards of review need not be provided.

(f) **Briefs in original cases.** Unless otherwise ordered by the appellate court, Rule 28(a), (b), (c) and (d) of these Rules shall apply to cases brought originally in the Hawai'i Supreme Court, except that points of error and standards of review need not be provided. For purposes of this Rule, when a case is

brought originally in the supreme court, the party who would be regarded as the plaintiff or petitioner, if the matter were instituted in a trial court, shall be regarded as the appellant, and the opposing party as the appellee.

(g) **Brief of *amicus curiae*.** An *amicus curiae* brief may be filed only by leave of the appellate court. The order granting leave shall fix the time for filing the *amicus curiae* brief and any response thereto. The appellate court may allow or disallow the filing of such brief with or without a hearing. All *amicus curiae* briefs shall comply with the applicable provisions of subsection (b) of this Rule. The attorney general may file an *amicus curiae* brief without order of the court in all cases where the constitutionality of any statute of the State of Hawai'i is drawn into question, provided that the attorney general shall file the brief within 30 days after the filing of the answering brief, or within 30 days after notice was received pursuant to Rule 44 of these Rules, whichever period last expires.

(h) **Briefs on cross appeal.** If there is a cross appeal, separate opening and answering briefs on the cross appeal, and any reply brief relating thereto, shall be filed in addition to the briefs on the primary appeal and shall comply with the applicable requirements of Rule 28(a), (b), (c) and (d) of these Rules.

(i) **Reserved.**

(j) Citation of supplemental authorities.

Parties may, by letter to the appellate clerk, bring to the appellate court's attention pertinent and significant authorities published after a party's brief has been filed, but before a decision. A copy of the letter, setting forth the citations, shall be served at or before the time of filing as provided by Rule 25(b) of these Rules. The letter shall provide references to either the page(s) of the brief or to a point argued orally to which the citations pertain. The letter shall, without argument, state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

(Amended February 20, 1985, effective February 20, 1985; further amended January 22, 1987, effective January 22, 1987; further amended November 10, 1993, effective December 15, 1993; further amended April 5, 1994, effective April 15, 1994; further amended June 23, 1994, effective June 23, 1994; further amended effective October 19, 1994, further amended August 14, 1995, effective October 16, 1995; further amended September 7, 1995, effective October 30, 1995; further amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004; further amended June 20, 2006, effective July 1, 2006; further amended November 8, 2007, effective January 1, 2008; further amended August 30, 2010, effective September 27, 2010; further amended October 13, 2015, effective January 1, 2016; further amended February 17, 2016, effective July 1, 2016; further amended August 30, 2021, effective January 1, 2022.)

Rule 29. EXTENSIONS OF TIME FOR BRIEFS.

(a) By the appellate clerk. Upon timely (1) oral request, or (2) written motion, or (3) letter request by a party, the appellate clerk shall grant one extension of time for no more than 30 days for the filing of an opening or answering brief and no more than 10 days for the filing of a reply brief. The appellate clerk shall note on the record that the extension was granted and the date the brief is due. The requesting party shall notify all other parties that the extension was granted and shall file a copy of the notice in the record. A request is timely only if it is received by the appellate clerk within the original time for filing of the brief.

(b) By the appellate court. Motions for further extensions of time to file briefs shall be made

at least 5 days prior to the due date of the brief and will be approved by a judge or justice only upon good cause shown.

The submission of a request or motion for extension does not toll the time for filing a brief.

(Amended December 6, 1999, effective January 1, 2000; further amended February 17, 2016, effective July 1, 2016.)

Rule 30. BRIEFS NOT TIMELY FILED OR NOT IN CONFORMITY WITH THESE RULES.

When the brief for appellant is not filed within the time required, the appellate clerk shall forthwith give notice to the parties 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 and that the appeal may be dismissed. When the brief of an appellant is otherwise not in conformity with these Rules, the appeal may be dismissed or the brief stricken and monetary or other sanctions may be levied by the appellate court. When the brief of an appellee is not filed within the time required, or is not in conformity with these Rules, the brief may be stricken and monetary or other sanctions may be levied by the appellate court. In addition, the appellate court may accept as true the statement of facts in the appellant's opening brief. When a brief is filed, an appellate court shall not dismiss an appeal, accept as true the statement of facts in the appellant's opening brief, impose a monetary sanction, or strike a brief without an opportunity to resubmit an amended brief, without prior notice to the affected party, and without a meaningful opportunity to be heard.

(Amended December 6, 1999, effective January 1, 2000; further amended May 7, 2001, effective July 1, 2001; further amended August 30, 2010, effective September 27, 2010; further amended June 4, 2015, effective July 1, 2015.)

Rule 31. RESERVED.

Rule 32. FORM OF DOCUMENTS.

(a) Quality and size of documents. All documents and briefs filed in the appellate courts shall be prepared to display, print, and copy in a clear and legible manner. The page set-up shall be formatted for 8-1/2 inch by 11-inch pages with a portrait orientation and, except for the flyleaf, not less than 1-inch margins all around. Such documents shall be filed without covers and, if conventionally filed, without creasing and, except for documents filed by the court, shall include a flyleaf upon which shall be noted, beginning at the top, the case number, the title of the appellate court and the cause abbreviated or in full, the character of the document, and the name or names, telephone numbers, physical and electronic mail addresses, and Hawai'i bar number of the attorney or attorneys representing the party on whose behalf the same is filed, to be used for service, and the names of all judges or hearing officers who have participated in the case or matter. The flyleaf shall have either a 3-inch top margin or a 3-inch-by-3-inch space in the top right corner. Conventionally filed documents shall be submitted on unruled, unglazed, opaque white paper and shall not be bound, stapled, or tabbed.

(b) Quality and style of font. Font size must be the equivalent of standard 12 point pica and yield no more than 14 characters to the inch. Footnotes and quotations shall be in the same font and size as the text. Twelve point Times New Roman, Courier New, or Arial fonts are deemed to satisfy the requirements of this Rule. No attempt shall be made to reduce or condense the print in a manner that would increase the content of the document. Lines shall be double spaced or one and one-half spaced except in headings, quotations, citations, indexes, footnotes, and appendices.

(c) Signature on conventionally filed documents. All conventionally filed documents must be signed in black ink by the party or, if the party is represented, by the party's attorney. The name of the signator shall be typed or printed under the signature. The page on which the signature(s) appear(s) shall contain at least 2 lines of text and/or a notation at the bottom of the page with the following information: case number, case name, and title of document.

(d) Signature on electronically filed documents. Documents filed through JEFS or JIMS shall be signed as provided by the Hawai'i Electronic Filing and Service Rules.

(Amended April 5, 1994, effective April 15, 1994; further amended September 13, 1995, effective September 13, 1995, further amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004; further amended November 8, 2007, effective January 1, 2008; further amended August 30, 2010, effective September 27, 2010; further amended October 13, 2015, effective January 1, 2016; further amended May 10, 2018, effective July 1, 2018.)

Rule 32.1. NUMBER OF COPIES TO BE SUBMITTED.

Whether the original document is filed electronically or conventionally, parties shall mail or deliver to the appellate clerk stapled or otherwise bound paper copies of the specified documents in Appendix A within 1 business day after filing. In all cases, the appellate clerk may direct that a specific number of additional copies be furnished on or before a specified date.

(Added December 6, 1999, effective January 1, 2000; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010.)

Rule 33. HAWAI'I APPELLATE MEDIATION PROGRAM AND APPEAL CONFERENCES.

(a) Appellate Mediation. If an appeal, including any cross-appeal, is selected, attorneys and parties, shall participate in the Hawai'i Appellate Mediation Program established by the Hawai'i Appellate Mediation Program Rules.

(b) Appellate Conference. The appellate court before which the case is pending may direct the attorneys or the self-represented parties to appear before the court or a judge or justice thereof for a conference to consider the simplification of the issues and such other matters as may aid in the disposition of the case by the appellate court. The appellate court or judge or justice shall enter an order that recites the action taken at the conference and the agreements made by the parties as to the matters considered and that limits the issue to those not disposed of by admissions or agreements of the parties. Such order, when entered, shall control the subsequent course of the proceedings, unless modified to prevent manifest injustice.

(Amended December 6, 1999, effective January 1, 2000; further amended September 7, 2011, effective January 1, 2012.)

Rule 34. ORAL ARGUMENT.

(a) In general. Oral argument shall be had in all cases except those in which the appellate court before which the case is pending enters an order providing for consideration of the case without oral argument.

(b) Notice of argument; postponement; request for additional time to argue. The appellate clerk shall advise all parties whether oral argument is to be heard and, if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for the allowance of additional time to argue must be made by motion filed within 10 days of such notification. The request for additional time shall state the reasons the case cannot be presented within the time allotted.

(c) Motion for retention of oral argument. If the appellate court has ordered a case submitted on the briefs, any party may, within 10 days after the mailing of the order, file a motion for retention of oral argument, supported by a statement of reasons. The appellate court may grant or deny such motion, and such grant or denial shall not be subject to review or reconsideration.

(d) Order and content of argument. The appellant is entitled to open and conclude the argument. The opening argument may include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records, or authorities.

(e) Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the appellate court

otherwise directs. If a case involves a cross-appeal, the plaintiff in the trial court or agency action shall be deemed to be the appellant for the purpose of this rule unless the parties otherwise agree or the appellate court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(f) Non-appearance of parties. If the appellee or counsel fails to appear to present argument, the appellate court may hear argument on behalf of the appellant. If the appellant or counsel fails to appear, the appellate court may hear argument from the appellee. If neither party nor counsel appears, the case will be decided on the briefs unless the court shall otherwise order. Sanctions may be assessed against attorneys of record or pro se parties who fail to appear.

(g) Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs. In any such case, the appellate court may require oral argument.

(h) No oral argument by party failing to file brief. If the appellant or the appellee has failed to file an opening or answering brief, as the case may be, oral argument by that party's counsel, or the party, if pro se, will not be heard unless the appellate court directs otherwise.

(i) Use of visual aids at argument; removal. If visual aids are to be used at the argument, counsel or the party, if pro se, shall arrange with the appellate clerk to have them placed in the courtroom before the appellate court convenes on the date of the argument. After the argument, counsel or the party, if pro se, shall cause the visual aids to be removed from the courtroom unless the appellate court otherwise directs. If the visual aids are not reclaimed by counsel or the pro se party within a reasonable time, they shall be destroyed or otherwise disposed of by the appellate clerk.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 35. DISPOSITIONS.

(a) **Class of disposition.** Dispositions may be authored by a designated judge or justice or may be per curiam and may take the form of published or memorandum opinions or dispositional orders.

(b) **Publication.** Memorandum opinions shall not be published. Dispositional orders shall not be published except upon the order of the appellate court. For purposes of this Rule 35, an opinion or order is published when the appellate court designates it for publication in *West's Hawai'i Reports* or the *Pacific Reporter*.

(c) **Citation.**

(1) DISPOSITIONS BEFORE JULY 1, 2008. A memorandum opinion or unpublished dispositional order filed before July 1, 2008 shall not be cited in any other action or proceeding except when the memorandum opinion or unpublished dispositional order (i) establishes the law of the pending case, or (ii) has res judicata or collateral estoppel effect, or (iii) in a criminal action or proceeding, involves the same respondent.

(2) DISPOSITIONS ON OR AFTER JULY 1, 2008. Any disposition filed in this jurisdiction on or after July 1, 2008 may be cited in any proceeding. A party or attorney has no duty to cite an unpublished disposition. Memorandum opinions and unpublished dispositional orders are not precedent, but may be cited for persuasive value; provided that a memorandum opinion or unpublished dispositional order that establishes the law of the pending case or that has res judicata or collateral estoppel effect shall be honored. Notwithstanding any other rule, a copy of a cited unpublished disposition shall be appended to the brief or memorandum in which the unpublished disposition is cited.

(d) **Copy or access provided by appellate clerk.** The appellate clerk shall promptly mail, electronically mail, telefax, or provide an electronic notice of the location of a copy of the opinion or dispositional order to each party.

(e) **Terminology.** When used in an opinion or dispositional order, the word "reverse" ends litigation on the merits, and the phrase "vacate and remand" indicates the litigation continues in the court or agency in accordance with the appellate court's instruction.

(As amended and effective March 11, 1996; further amended December 6, 1999, effective January 1, 2000; further amended April 23, 2008,

effective July 1, 2008; further amended August 30, 2010, effective September 27, 2010.)

Rule 36. ENTRY OF JUDGMENT; PREPARATION, FILING, & SERVICE OF THE JUDGMENT ON APPEAL; EFFECTIVE DATE OF JUDGMENT ON APPEAL; SIGNATURES.

(a) **Entry of judgment.** The filing of the judgment on appeal constitutes entry of judgment.

(b) **Preparation, filing, and service of the judgment on appeal.**

(1) PREPARATION BY THE COURT. After a final decision, other than an order of dismissal, has been filed in an appeal, the court rendering the decision shall prepare and submit to the appellate clerk for filing the judgment on appeal, signed by a judge or justice for the court.

(2) SERVICE OF THE JUDGMENT. Upon the filing of the judgment, the appellate clerk shall serve a file-marked copy of the judgment on each party and on the court or agency from which the appeal was taken.

(c) **Effective date of intermediate court of appeals' judgment.**

The intermediate court of appeals' judgment is effective as follows:

(1) if no application for writ of certiorari is filed,

(A) upon the thirty-first day after entry or

(B) where the time for filing an application for a writ of certiorari is extended in accordance with Rule 40.1(a) of these Rules, upon the expiration of the extension or

(2) if an application for a writ of certiorari is filed,

(A) upon entry of the supreme court's order dismissing or rejecting the application or

(B) upon entry of the supreme court's order or other disposition affirming in whole the judgment of the intermediate court of appeals.

(d) Judgment after supreme court review.

(1) UPON TRANSFER. Upon disposition after transfer from the intermediate court of appeals, the supreme court shall enter judgment in accordance with section (b) of this Rule.

(2) UPON ACCEPTANCE OR REJECTION OF APPLICATION FOR A WRIT OF CERTIORARI. If an application for a writ of certiorari is rejected, the judgment entered by the intermediate court of appeals shall stand. If an application for a writ of certiorari is accepted and the judgment of the intermediate court of appeals is wholly affirmed, the judgment entered by the intermediate court of appeals shall stand. If an application for a writ of certiorari is accepted and the judgment of the intermediate court of appeals is vacated or otherwise modified in whole or in part, a new judgment on appeal shall be entered by the supreme court and is effective upon entry. This subsection does not apply to an application for writ of certiorari of an order of dismissal entered by the intermediate court of appeals.

(e) Signatures. Any order or judgment that is filed electronically bearing a facsimile signature in lieu of an original signature of a judge or clerk has the same effect as if the judge or clerk had affixed the judge's or clerk's signature to a paper copy of the order or judgment and it had been entered on the docket in a conventional manner. For purposes of this rule and any rules of court, the facsimile signature may be either an image of a handwritten signature or the software printed name of the judge preceded by /s/.

COMMENT:

See Rule 41 and its commentary ("the intermediate court of appeals' judgment cannot be effective and jurisdiction cannot revert to the court or agency from which appeal was taken until the time for filing the application has expired or, if an application is filed, the supreme court has rejected or dismissed the application or affirmed the intermediate court of appeals' judgment in whole.")

(Amended December 6, 1999, effective January 1, 2000; Comment added and rule further amended June 20, 2006, effective July 1, 2006; Comment amended November 1, 2006, effective January 1, 2007; further amended August 30, 2010, effective September 27, 2010; further amended December 14,

2011, effective January 1, 2012; further amended October 13, 2015, effective January 1, 2016.)

Rule 37. INTEREST ON JUDGMENTS.

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the circuit or district court. If the judgment is modified or vacated with a direction that a judgment for money be entered in the circuit or district court, the notice and judgment on appeal shall contain instructions with respect to allowance of interest.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 38. DAMAGES AND COSTS FOR FRIVOLOUS APPEALS.

If a Hawai'i appellate court determines that an appeal decided by it was frivolous, it may, after a separately filed motion or notice from the appellate court and reasonable opportunity to respond, award damages, including reasonable attorneys' fees and costs, to the appellee.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 39. COSTS AND ATTORNEY'S FEES.

(a) **Civil costs; to whom allowed.** Except in criminal cases or as otherwise provided by law, if an appeal or petition is dismissed, costs shall be taxed against the appellant or petitioner upon proper application unless otherwise agreed by the parties or ordered by the appellate court; if a judgment is affirmed or a petition denied, costs shall be taxed against the appellant or petitioner unless otherwise ordered; if a judgment is reversed or a petition granted, costs shall be taxed against the appellee or the respondent unless otherwise ordered; if a judgment is affirmed in part and reversed in part, or is vacated, or a petition granted in part and denied in part, the costs shall be allowed only as ordered by the appellate court. If the side against whom costs are assessed has multiple parties, the appellate court may apportion the assessment or impose it jointly and severally.

(b) **Costs for and against the State of Hawai'i.** In cases involving the State of Hawai'i or an agency or officer thereof, if an award of costs against the State is authorized by law, costs shall be awarded in accordance with the provisions of this Rule; otherwise costs shall not be awarded for or against the State of Hawai'i, its agencies, or its officers acting in their official capacities.

(c) **Costs defined.** Costs in the appellate courts are defined as: (1) the cost of the original and one copy of the reporter's transcripts if necessary for the determination of the appeal; (2) the premiums paid for supersedeas bonds or other bonds to preserve rights pending appeal; (3) the fee for filing the appeal; (4) the cost of printing or otherwise producing necessary copies of briefs and appendices, provided that copying costs shall not exceed 20¢ per page; (5) necessary postage, cost of facsimiles, intrastate travel, long distance telephone charges; and (6) any other costs authorized by statute or rule.

(d) **Request for Fees and Costs; Objections.**

(1) A party who desires an award of attorney's fees and costs shall request them by submitting an itemized and verified bill of fees and costs, together with a statement of authority for each category of items and, where appropriate, copies of invoices, bills, vouchers, and receipts. Requests for indigent fees and necessary expenses shall be submitted in a form that substantially complies with Form 7 in the Appendix of Forms and shall be accompanied by a copy of the order appointing counsel. Requests for non-indigent attorney's fees and costs allowed by

statute or contract shall be submitted in a form that substantially complies with Form 8 in the Appendix of Forms. A failure to provide authority for the award of attorney's fees and costs or necessary expenses will result in denial of that request.

(2) A request for fees and costs or necessary expenses is more appropriately filed in the court where the work was performed. A request for an appellate court to award fees and costs or necessary expenses must be filed with the appellate clerk, with proof of service, no later than 14 days after the time for filing a motion for reconsideration has expired or the motion for reconsideration has been decided. An untimely request for fees and costs or necessary expenses may be denied.

(3) Attorneys appointed to represent indigent persons may submit a request for attorney's fees and necessary expenses, as provided by statute, after briefing is completed. Requests for fees and necessary expenses by counsel appointed to represent indigent persons may be held in abeyance until resolution of the case on the merits. If oral argument is had or additional work is performed thereafter, the attorney may submit a request for additional fees and necessary expenses.

(4) Objections to requests for fees and costs must be filed with the appellate clerk, with proof of service, within 10 days after service on the party against whom the fees and costs are to be taxed unless the time is extended by the appellate court. A reply to the objections must be filed with the appellate clerk, with proof of service, within 7 days after service of the objections on the initiating party.

(Amended February 28, 1994, effective February 28, 1994; further amended September 11, 1996, effective October 15, 1996; further amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004; further amended May 12, 2005, effective July 1, 2005; further amended June 20, 2006, effective July 1, 2006; further amended March 2, 2007, effective July 1, 2007; further amended October 13, 2015, effective January 1, 2016.)

Rule 40. MOTION FOR RECONSIDERATION.

(a) **Time.** A motion for reconsideration may be filed by a party only within 10 days after the filing of the opinion, dispositional order, or ruling unless by special leave additional time is granted during such period by a judge or justice of the appellate court involved.

(b) **Contents.** The motion shall state with particularity the points of law or fact that the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. The motion shall be supported by a declaration of counsel to the effect that it is presented in good faith and not for purposes of delay.

(c) **Response; reply argument.** No response to a motion for reconsideration or reply to a response will be received unless requested by the appellate court. There shall be no oral argument on a motion for reconsideration unless ordered by the appellate court.

(d) **Disposition of motion.** The appellate court within 10 days of the filing of a motion for reconsideration, shall either grant or deny such motion. The failure of the appellate court to act within the 10 days shall constitute a rejection. If a motion for reconsideration is granted, the appellate court may, with or without new argument, modify the decision or take such action as may be appropriate.

(e) **Only one motion permitted.** Only one motion for reconsideration may be filed by any party, unless the court modifies the substance of its opinion, dispositional order, or ruling.

(Amended December 6, 1999, effective January 1, 2000.)

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

(a) **Application; when filed; extension of time.**

(1) **APPLICATION; TIME TO FILE.** A party may seek review of the intermediate court of appeals' decision by filing an application for a writ of certiorari in the supreme court. The application shall be filed within 30 days after the filing of the intermediate court of appeals' judgment on appeal or dismissal order, unless the time for filing the application is extended in accordance with this Rule. However, if the application for a writ of certiorari is mailed, the application for a writ of certiorari shall be

deemed timely filed if the mailing is postmarked within the time fixed for filing and is received by the clerk no later than 5 days after the postmarked date. For the purposes of calculating other deadlines in these Rules, the date of filing under this Rule shall be the date the document is received by the clerk.

(2) **REQUEST EXTENDING TIME; TIME TO FILE.** A party may extend the time to file an application for a writ of certiorari by filing a written request for an extension. The request for extension shall be filed no later than 30 days after entry of the intermediate court of appeals' judgment on appeal or dismissal order.

(3) **TIMELY REQUEST; AUTOMATIC EXTENSION; NOTICE.** Upon receipt of a timely written request, the appellate clerk shall grant a 30-day extension of time to file the application for a writ of certiorari. The appellate clerk shall note on the record that the extension was granted. The clerk shall give notice the request is timely and granted.

(4) **NO EXTENSION IF UNTIMELY.** An untimely request shall not extend the time. The clerk shall give notice the request is untimely and denied.

(b) **Discretion of the supreme court.** Acceptance or rejection of an application for a writ of certiorari is a matter within the discretion of the supreme court.

(c) **Denomination of the parties.** The party applying for the writ of certiorari shall be denominated the petitioner; the petitioner's denomination in the appeal and in the trial court or agency shall also be included. All other parties shall be denominated respondents and each respondent's denomination in the appeal and in the trial court or agency shall also be included. Any respondent who supports the position of a petitioner shall meet the time scheduled for filing responsive documents.

(d) **Contents.** The application for a writ of certiorari shall not exceed 12 pages and shall contain in the following order:

(1) A short and concise statement of the questions presented for decision, set forth in the most general terms possible. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Questions not presented according to this paragraph will be disregarded. The supreme court, at its option, may notice a plain error not presented.

(2) A statement of prior proceedings in the case.

(3) A short statement of the case containing the facts material to the consideration of the questions presented.

(4) A brief argument with supporting authorities.

A copy of the challenged opinion, dispositional order, or ruling of the intermediate court of appeals shall be attached as an appendix.

(e) Response; form; extension of time; reply.

(1) **TIME TO FILE; FORM.** 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.

(2) **REQUEST EXTENDING TIME; TIME TO FILE.** A party may extend the time to file a response to an application for a writ of certiorari by filing a written request for an extension. The request for extension shall be filed no later than 15 days after the filing date of the application for a writ of certiorari.

(3) **TIMELY REQUEST; AUTOMATIC EXTENSION; NOTICE.** Upon receipt of a timely written request, the appellate clerk shall grant a 15-day extension of time to file a response to the application for a writ of certiorari. The appellate clerk shall note on the record that the extension was granted. The clerk shall give notice the request is timely and granted.

(4) **NO EXTENSION IF UNTIMELY.** An untimely request shall not extend the time. The clerk shall give notice the request is untimely and denied.

(5) **REPLY.** 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.

(g) Determination. The supreme court shall act upon an application for a writ of certiorari no later than 30 days after a response is or could have been filed. The failure of the supreme court to accept the application within the 30 days shall constitute a rejection of the application. In cases with multiple respondents, the 30-day time period to accept the application for writ of certiorari shall be calculated

from the date the latest timely-filed response is or could have been filed.

(h) No reconsideration of acceptance or rejection of application for a writ of certiorari. Neither acceptance nor rejection of an application for a writ of certiorari shall be subject to a motion for reconsideration in the supreme court. The rejection of an application for certiorari shall be final. However, if an application for certiorari is accepted, the supreme court, at any time prior to final disposition, may sua sponte find certiorari was improvidently granted and may dismiss the certiorari proceeding.

(i) Review by supreme court after acceptance of application for a writ for certiorari. If the supreme court accepts the application for a writ of certiorari, the case shall be decided on the record and the briefs previously filed. The supreme court may limit the question on review, may request supplemental briefs, and may set the case for oral argument. Within 10 days after the acceptance of the application for a writ of certiorari, a party may move in the supreme court for permission to file a supplemental brief. The court may impose restrictions as to length and filing of such brief and any response thereto.

(Added December 6, 1999, effective January 1, 2000; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010; further amended May 25, 2011, effective July 1, 2011; further amended December 14, 2011, effective January 1, 2012; further amended July 29, 2013, effective January 1, 2014; further amended June 4, 2015, effective July 1, 2015; further amended April 12, 2016, effective July 1, 2016; further amended October 12, 2017, effective October 12, 2017; further amended July 3, 2019, effective January 1, 2020; further amended January 12, 2023, effective January 12, 2023.)

Rule 40.2. APPLICATION FOR TRANSFER TO THE SUPREME COURT.

(a) Application; when filed. Any party may file, in the supreme court, an application for transfer of a case within the jurisdiction of the intermediate court of appeals to the supreme court, as allowed by law. An application

(1) for a case under Rule 18 must be submitted with the statement of agreed facts.

(2) for an appeal may be submitted no earlier than 10 days after the filing of the record on appeal and no later than 20 days after the last brief is filed or could have been filed.

(b) Denomination of the parties. The party seeking transfer shall be denominated the petitioner. The petitioner's denomination in the appeal or the agreed statement and in the trial court or agency, if from a trial court or agency, shall also be included. All other parties shall be denominated respondents and each respondent's denomination in the appeal and in the trial court or agency, if from a trial court or agency, shall also be included. Any respondent who supports the position of the petitioner shall meet the time schedule for filing responsive documents.

(c) Contents of the Application. An application for transfer shall contain, in the following order:

(1) A request for transfer to the supreme court,
 (2) A statement of prior proceedings in the case, with citation to the record, if any,

(3) A short statement of relevant facts, with citation to the record, if any,

(4) A statement of the points of error to be raised and argued, with citation to the record, if any, where each point of error was preserved for appeal,

(5) An explanation, not to exceed 10 pages, concerning how the case meets statutory qualifications for transfer to the supreme court, with citation to supporting authority.

(d) Response to the Application. Within the time provided for responding to a motion under Rule 27(a), any other party may file a response to the application.

(e) Oral argument. There shall be no oral argument on an application for transfer unless ordered by the supreme court.

(f) Determination; no reconsideration; no extensions of time. The supreme court shall grant a mandatory application and may grant or deny a discretionary application for transfer no later than the thirtieth day after the filing of the response to the

application or, if no response is filed, within 30 days after the time the response could have been filed. The grant or denial of an application for transfer shall not be subject to a motion for reconsideration. Times for submitting and responding to an application for transfer shall not be extended.

(g) Effect of application. Unless otherwise ordered by the supreme court while an application for transfer is pending, the submission and processing of an application for transfer shall not stay the time in which a party must act under any provision of these rules.

(Added June 20, 2006, effective July 1, 2006; further amended December 16, 2009, effective January 1, 2010; further amended August 30, 2010, effective September 27, 2010; further amended December 14, 2011, effective January 1, 2012.)

Rule 40.3. RECONSIDERATION, TRANSFER, OR CERTIORARI UNNECESSARY FOR EXHAUSTION OF STATE REMEDIES.

For purposes of these rules and except as otherwise provided in Rule 40 of the Hawai'i Rules of Penal Procedure, a motion for reconsideration, an application for transfer, or an application for a writ of certiorari shall not be required to exhaust available state remedies regarding a claim of error. A decision or order upon an appeal in which an issue was raised shall be deemed to have exhausted available state remedies with regard to that issue.

(Added June 20, 2006, effective July 1, 2006; further amended December 14, 2011, effective January 1, 2012.)

**Rule 41. STAY OF
INTERMEDIATE COURT
OF APPEALS JUDGMENT
ON APPEAL**

The timely filing of an application for a writ of certiorari stays finality of the intermediate court of appeals' judgment on appeal unless otherwise ordered by the supreme court. If the application for a writ is dismissed or rejected, the intermediate court of appeals' judgment on appeal is effective upon entry of the order dismissing or rejecting the application for writ. If the application for a writ is accepted, the intermediate court of appeals' judgment on appeal is stayed pending final disposition of the certiorari proceeding in accordance with Rule 36.

COMMENT:

Effective for intermediate court of appeals' judgments on appeal and orders of dismissal entered on or after January 1, 2012, a party has 30 days to file an application for a writ of certiorari, which can be extended for no more than an additional 30 days upon the filing of a written request for extension in accordance with HRAP Rule 40.1(a). The time for filing the application is measured from the date the intermediate court of appeals' judgment on appeal or order of dismissal was filed. Thus, the intermediate court of appeals' judgment cannot be effective and jurisdiction cannot revert to the court or agency from which appeal was taken until the time for filing the application has expired or, if an application is filed, the supreme court has rejected or dismissed the application or affirmed the intermediate court of appeals' judgment in whole.

The supreme court's judgment on appeal is not subject to further state review and is effective upon entry.

(Amended October 19, 1993, effective November 15, 1993; further amended December 6, 1999, effective January 1, 2000; Comment added and rule further amended June 20, 2006, effective July 1, 2006; further amended December 14, 2011, effective January 1, 2012.)

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.

(c) Special requirements for criminal appeals. In a criminal appeal by a defendant, the stipulation or motion for dismissal of the appeal shall be supported by the defendant's affidavit or declaration that reflects a knowing and intelligent understanding of the consequences of the dismissal of the appeal and that the withdrawal is made voluntarily. In circumstances where the defendant cannot be located after a diligent effort, the circumstances of the effort shall be set forth in an affidavit or declaration of counsel in support of the stipulation or motion.

(Amended January 22, 1987, effective February 1, 1987; further amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010; further amended April 12, 2016, effective July 1, 2016.)

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 their official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and 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 their official capacity, the public officer may be described as a party by their official title rather than by name, but the appellate court may require their name be added.

(Amended December 6, 1999, effective January 1, 2000; further amended August 30, 2010, effective September 27, 2010; further amended January 21, 2025, effective February 14, 2025.)

Rule 44. CONSTITUTIONALITY OF STATUTE.

It shall be the duty of a party who draws in question the constitutionality of any statute of the State of Hawai'i in any proceeding in any Hawai'i appellate court to which the State of Hawai'i, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the appellate court, to give immediate notice in writing to the Attorney General of the State of Hawai'i of the existence of said question.

Rule 45. DUTIES OF APPELLATE CLERKS.

(a) **General provisions.** No appellate clerk shall practice as an attorney in any court while 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.

(Amended November 23, 1994, effective December 15, 1994; further amended December 6, 1999, effective January 1, 2000, further amended June 15, 2005, effective July 1, 2005; further amended June 20, 2006, effective July 1, 2006; further amended March 2, 2007, effective July 1, 2007; further amended July 18, 2007, effective January 1, 2008; further amended August 30, 2010, effective September 27, 2010; further amended April 12, 2016, effective July 1, 2016; further amended January 21, 2025, effective February 14, 2025.)

Rule 46. RESERVED.

Rule 47. RESERVED.

Rule 48. RESERVED.

Rule 49. THE COURT.

(a) **Terms of court.** The Hawai'i appellate courts shall be deemed to be in continuous session.

(b) **Signing of orders.** Any justice or substitute justice of the supreme court and any judge or substitute judge of the intermediate court of appeals, may sign any order of the appellate court on which the judge or justice sits relating to any case or proceeding pending before such court.

(c) **Acting chief justice.** In case of a vacancy in the office of the chief justice, or if the chief justice is ill, absent, or otherwise unable to serve, the senior of the associate justices available shall serve temporarily in the chief justice's stead. Seniority for such purpose shall be determined by the length of the current service on the supreme court. The order of seniority among associate justices with equal current service on the court shall correspond to the order in which they were admitted to practice before the supreme court. The associate justices may, upon unanimous agreement, designate from time to time or for a particular case, any one of their number to act as chief justice when the chief justice is for any reason unable to serve. Such designation shall be in writing and filed with the appellate clerk.

(d) **Acting chief judge.** In case of a vacancy in the office of the chief judge, or if the chief judge is ill, absent, or otherwise unable to serve, the senior of the associate judges available shall serve temporarily in the chief judge's stead. Seniority for such purpose shall be determined by the length of the current service on the court. The order of seniority among associate judges with equal current service on the intermediate appellate court shall correspond to the order in which they were admitted to practice before the supreme court. The associate judges may, upon unanimous agreement, designate from time to time or for a particular case, any one of their number to act as chief judge when the chief judge is for any reason unable to serve. Such designation shall be in writing and filed with the appellate clerk.

(f) through (h). Deleted.

(Amended March 25, 1986, effective March 25, 1986; further amended December 6, 1999, effective January 1, 2000.)

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 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.

(b) **Withdrawal with substitution.** A substitution of counsel may be made by filing a notice of withdrawal and substitution. The notice must provide withdrawing counsel's name and substituting counsel's name, physical and electronic mail addresses to be used for service, and telephone number. A notice of withdrawal and substitution of counsel must be signed by the client consenting thereto.

(c) **Discharge.** A client desiring to discharge the client's counsel of record must file a motion requesting leave therefor. The motion must show service upon the attorney. The appellate court may, in its discretion, grant or deny such motion or, where appropriate, remand the case for the filing of a motion to withdraw.

(Amended December 6, 1999, effective January 1, 2000; further amended August 30, 2010, effective September 27, 2010; further amended April 12, 2016, effective July 1, 2016.)

Rule 51. SANCTIONS.

Any attorney of record or party in a case, who fails to comply with any of the provisions of the Hawai'i Rules of Appellate Procedure, the Hawai'i Electronic Filing and Service Rules, or any order of the court shall be subject to monetary or other sanctions by the appellate court before which such case is pending, such sanctions to be levied by order of the appellate court or by order of any judge or justice thereof.

(Added December 18, 1985, effective December 18, 1985; amended December 6, 1999, effective January 1, 2000; further amended May 7, 2001, effective July 1, 2001; further amended June 20, 2006, effective July 1, 2006; further amended August 30, 2010, effective September 27, 2010.)

Rule 52. DECLARATION IN LIEU OF AFFIDAVIT.

In lieu of an affidavit, an unsworn declaration may be made by a person, in writing, subscribed as true under penalty of law, and dated, in substantially the following form:

I, (name of person), declare under penalty of law that the foregoing is true and correct.

DATED: _____.

Signature

(Added September 13, 1995, effective September 13, 1995.)

Rule 53. RESERVED.**Rule 54. NOTICE OF BANKRUPTCY FILING; RELIEF FROM OR TERMINATION OF STAY OF PROCEEDINGS BY FEDERAL DISTRICT OR BANKRUPTCY COURT.**

(a) Notice of appeal; record on appeal; briefing. Whenever a federal district or bankruptcy court terminates or otherwise grants relief from a stay of proceedings that has been entered with respect to a civil case in which an appeal is permitted by law and no notice of appeal has been filed, the provisions of Rule 4 of these Rules shall apply as if the date of termination of, or other grant of relief from, the stay was the date of entry of the judgment appealed from; if a notice of appeal has been filed but the record not yet docketed, provisions of Rules 10, 11, and 12 of these Rules shall apply as if the date of termination of, or other grant of relief from, the stay was the date of filing the notice of appeal; if the record has been filed and briefing has not been completed, the provisions of Rules 28, 29, and 30 of these Rules shall apply as if the date of termination of, or other grant of relief from, the stay was the date of the filing of the last appropriate document.

(b) Notice. If any party has knowledge of a bankruptcy action that stays an appeal, including when a party files for bankruptcy while an appeal is pending, the party with knowledge shall immediately file a notice of bankruptcy with the appellate court. The notice shall include the name of the federal district or bankruptcy court, the case number of the bankruptcy filing, and the date of its initiation. On the termination of, or other grant of relief by the federal district or bankruptcy court from a stay of proceedings pending in the Hawai'i appellate courts, each party with such knowledge shall file a notification thereof with the appellate court within 7 days.

(c) Appellate court action during pendency. The state appellate court shall not consider motions or requests for relief during the pendency of a bankruptcy. Parties claiming that a bankruptcy stay is not in effect shall file in the state appellate court a certified copy of the order of the federal district or bankruptcy court confirming the absence of a stay, or vacating or modifying the stay, or otherwise granting permission for the state case to proceed. *(Added December 6, 1999, effective January 1, 2000; further amended August 30, 2010, effective September 27, 2010; further amended October 23, 2018, effective January 1, 2019; further amended March 1, 2019, effective July 1, 2019.)*

- 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.
- Form 2.** Notice of Appeal to the Intermediate Court of Appeals from a Decision and Order of an Agency, Board, Commission or Officer.
- Form 2a.** Notice of Appeal to the Supreme Court from a Decision and Order of an Agency, Board, Commission or Officer.
- Form 3.** Notice of Appeal to the Circuit Court from a Decision and Order of an Agency, Board, Commission or Officer.
- Form 4.** Affidavit to Accompany Motion for Leave to Appeal *In Forma Pauperis*
- Form 5.** Reserved.
- Form 6.** Civil Appeal Docketing Statement
- Form 7.** Request for Attorney's Fees and Expenses for Indigent Representation
- Form 7a.** Blank Hourly Worksheet (Indigent Representation)
- Form 7b.** Completed Hourly Worksheet (Indigent Representation)
- Form 8.** Request for Attorney's Fees and Expenses for Non-Indigent Representation
- Form 8a.** Blank Hourly Worksheet (Non-Indigent Representation)
- Form 8b.** Completed Hourly Worksheet (Non-Indigent Representation)
- Form 9.** Request for Transcript(s) of Proceedings

Appendix A

The following is a list of the number of paper copies required in addition to the electronic or conventionally filed original document submitted to the Hawai‘i appellate courts. The number does not include those copies the parties need for service or themselves. Additional copies may be requested.

	<u>Supreme Court</u>	<u>ICA</u>
Amicus Curiae Briefs	6	4
Motion for Stay	1	1
Motion to Dismiss	1	1
Motion for Reconsideration	1	1
Opening/Answering/Reply Briefs	6	4
Petition for Writ of Mandamus	1	--
Petition for Writ of Prohibition	1	--
Request for Attorneys’ Fees and Expenses	1	1
Supplemental Briefs	6	4
Verified Bill of Costs	1	1

APPENDIX B
(HRAP Rule 45(e)(1) -- Filing fees)

Appellate Court Case Type	Document Name/Type	Description of Fees and Authorizing Statute/Rule	Fee(s)
Agreed Statement	Submission Upon a Statement of Agreed Fact	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Indigent Services Surcharge HRS § 607-5.7(c)	\$65 from January 1, 2014
Appeal	Notice of Appeal or Cross-Appeal District or District Family Court – Civil	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Notice of Appeal from District Court or District Family Court HRS § 607-4(b)(4)	\$100
		Civil Administrative Fee HRS § 607-4(b)(10)	\$20
		Indigent Services Surcharge HRS § 607-5.7(c)	\$65 from January 1, 2014
Appeal	Notice of Appeal or Cross-Appeal Circuit Court – Civil	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Notice of Appeal from Circuit Court HRS § 607-5(c)(23)	\$100
		Civil Administrative Fee HRS § 607-5(c)(32)	\$50
		Indigent Services Surcharge HRS § 607-5.7(c)	\$65 from January 1, 2014
Appeal	Notice of Appeal or Cross-Appeal District, District Family, Or Circuit Court – Criminal	Appellate Court Filing Fee HRS § 607-6(a)	\$100

Appellate Court Case Type	Document Name/Type	Description of Fees and Authorizing Statute/Rule	Fee(s)
Appeal	Notice of Appeal or Cross-Appeal Agency	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Civil Administrative Fee HRS § 607-5(c)(32)	\$50
		Indigent Services Surcharge HRS § 607-5.7(c)	\$65 from January 1, 2014
Appeal	Notice of Appeal or Cross-Appeal (Others)	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Civil Administrative Fee HRS § 607-5(c)(32)	\$50
		Indigent Services Surcharge HRS § 607-5.7(c)	\$65 from January 1, 2014
Attorney Discipline	Report & Recommendation for Discipline RSCH Rule 2.12A Motion RSCH Rule 2.17 Affidavit for Reinstatement RSCH Rule 2.17 Report Regarding Petition for Reinstatement RSCH Rule 2.19 Petition RSCH Rule 2.20 Petition for Appointment of Trustee RSCH Rule 2.23 Petition for Interim Suspension	Not applicable	None

Appellate Court Case Type	Document Name/Type	Description of Fees and Authorizing Statute/Rule	Fee(s)
Bar Admission	Application for Admission	Bar Application Fee RSCH Rule 1.4(a)	\$500 effective for the February 2014 bar exam and thereafter
	Oath of Attorneys	Attorney Licensing Fee HRS § 605-5	\$10
Certified Question	Certified Question	Appellate Court Filing Fee HRS § 607-6 (a)	\$100
		Indigent Services Surcharge HRS § 607-5.7(c)	\$65 from January 1, 2014
Certiorari Proceedings	Application for a Writ of Certiorari	Not applicable	None
Election Contest	Complaint	Appellate Court Filing Fee HRS § 607-6(a)	\$100
		Indigent Services Surcharge HRS § 607-5.7(c)	\$65 from January 1, 2014
Judicial Discipline	Complaint Letter	Not applicable	None
Miscellaneous	Court Order	Not applicable	None
Other	Petition, general Petition for Writ (Mandamus, Prohibition, Habeas Corpus, etc.)	Appellate Court Filing Fee HRS§ 607-6(a)	\$100
	Petition to Resign and Surrender License	Indigent Services Surcharge HRS § 607-5.7(c)	\$65 from January 1, 2014
Reserved Question	Reserved Question	Not applicable	None
Rules	Proposed Rule Amendments	Not applicable	None
Transfer Proceedings	Application for Transfer	Not applicable	None

HAWAI'I RULES OF APPELLATE PROCEDURE

APPENDIX C

(HRAP Rule 45(e)(2) -- Copying Costs)

1. For single copies of any document in any public record, whether paper or electronic, maintained:		
a.	in or accessed through the appellate clerk's office	\$1.00 for the first page, \$.50 for each additional page
b.	in an off-site storage location	\$5.00 plus per page copying charge
c.	on microfilm – retrieved by the clerk	\$5.00 plus \$1.00 per page
d.	on microfilm – obtained via self-service	\$1.00 per page
2. For faxing of any document in any public record, the applicable copying and retrieval charges in 1. above, plus:		
a.	within Hawai'i	\$2.00 first page, \$1.00 each additional page
b.	outside Hawai'i, within the United States	\$5.00 first page, \$2.00 each additional page
c.	outside the United States	\$10.00 first page, \$ 5.00 each additional page
3. For a single document downloaded through eCourt Kōkua and not subject to an Enhanced eCourt Kōkua subscription		The greater of \$3.00 or 10 cents per page
4. For copy of an audio or video recording		\$10.00
5. Enhanced eCourt Kōkua Subscription:		
a.	government agency	No charge
b.	all others	\$125.00 per quarter or \$500.00 per year
6. For access to view an electronic case record at the Office of the Clerk or at the Office of any ex officio Clerk		No charge
7. For certification of qualification		\$5.00
8. For ex officio filing (in addition to the usual filing fee)		\$10.00
9. For certification under seal of a copy of any document		\$2.00
10. For exemplification		\$4.00