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SCRU-10-0000012

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Matter of the

HAWAI'I RULES OF APPELLATE PROCEDURE

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ORDER AMENDING RULE 4 OF THE  
HAWAI'I RULES OF APPELLATE PROCEDURE

(By: Devens, C.J., McKenna, Eddins, and Ginoza, JJ., and  
Intermediate Court of Appeals Chief Judge Nakasone,  
assigned by reason of vacancy)

IT IS HEREBY ORDERED that Rule 4 of the Hawai'i Rules  
of Appellate Procedure is amended, effective January 1, 2027, as  
follows (deleted material is bracketed and stricken; new  
material is underscored):

**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, except as otherwise provided in this Rule.  
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.

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(3) TIME TO APPEAL AFFECTED BY POST-JUDGMENT MOTIONS. If any party timely files any of the following motions, the time for filing the notice of appeal shall be extended as provided in this Rule 4(a)(3):

(A) for judgment as a matter of law under Hawai'i Rules of Civil Procedure (HRCP) Rule 50(b);

(B) to amend findings or make additional findings under Rule 52(b) of the HRCP, District Court Rules of Civil Procedure (DCRCP), or Hawai'i Family Court Rules (HFCR);

(C) for a new trial, to reconsider, or to alter or amend judgment or appealable order under Rule 59 of the HRCP, DCRCP, or HFCR;

(D) to reconsider under Rule 60(b) of the HRCP, DCRCP, or HFCR, if the Rule 60(b) motion is filed within 30 days of the entry of the judgment or appealable order;

(E) to reconsider under Hawai'i Probate Rules Rule 36(b), if the Rule 36(b) motion is filed within 30 days of the entry of the judgment or appealable order;

(F) for attorney's fees or costs under HRCP Rule 54, if the HRCP Rule 54 motion for attorney's fees or costs is filed within 14 days after entry of the judgment or appealable order; or

(G) in an agency proceeding, a 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 appealable order, or for attorney's fees or costs, if the motion is timely filed pursuant to agency rule or within 30 days of the entry of the judgment or appealable order, whichever is earlier.

~~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 court or agency in which the motion was timely filed shall dispose of the motion by written order filed within 90 days of the filing of the motion. The failure of the court or agency to dispose of the motion by a filed written order within the 90 days shall constitute a denial of the motion, and any order, written or oral, on the motion entered thereafter shall be a nullity.

The time for filing the notice of appeal is extended for all parties as follows:

(i) If the court or agency enters a filed written order on the motion within 90 days after the motion was filed, the notice of appeal shall be filed within 30 days after entry of the filed written order.

(ii) If the court or agency fails to enter a filed written order on the motion within 90 days after the motion was filed, the notice of appeal shall be filed within 120 days after the motion was filed.

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.

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**COMMENT:**

Prior to 2013, HRAP Rule 4(a)(3) stated that, upon the timely filing of specified post-judgment motions, the deadline to file a notice of appeal was extended to “30 days after entry of an order disposing of the motion[.]” However, the rule also stated that this was “provided, that the failure to dispose of [the] motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion.” Thus, the pre-2013 rule established both that a post-judgment tolling motion was “deemed denied” after 90 days and that the deadline to appeal was 30 days after entry of an order disposing of the motion. In *Association of Condominium Homeowners of Tropics at Waikele v. Sakuma*, 131 Hawai‘i 254, 318 P.3d 94 (2013), the Hawai‘i Supreme Court held that a “deemed denial” of a post-judgment tolling motion did not trigger the deadline to file a notice of appeal until an order was entered, pursuant to provisions of HRAP Rules 4(a)(1) and 4(a)(3) then in effect.

In 2016, HRAP Rule 4(a)(3) was amended to require the clerk of the court or agency to enter a notice to the parties that a post-judgment tolling motion is deemed denied within 5 days after the 90th day. Order Amending Rule 4 of the HRAP (eff. July 1, 2016). However, in *Cole v. City & County of Honolulu*, 154 Hawai‘i 28, 543 P.3d 460 (2024), not only did the trial court fail to enter an

order within 90 days of a post-judgment motion, but the clerk of the court failed to enter the required notice as well. Over 5 years after the motion was filed, the trial court entered an order denying the motion. The Hawai‘i Supreme Court held in Cole that the deadline to appeal was 30 days after the late order.

Consequently, as long as HRAP Rule 4(a)(3) requires someone (i.e., the trial court, agency, or the clerk) to file some kind of document for notice that a post-judgment motion has been resolved, the possibility remains that the designated person will fail to do so.

Given this history, the rule has been amended so that notice of a “deemed denial” and resulting trigger of the deadline to file a notice of appeal is not through filing a document but through the rule itself. Litigants should now know when they need to file the notice of appeal simply by reading the rule. The rule now expressly states the time to appeal, depending on whether a filed written order is entered within 90 days of the post-judgment motion or if a court or agency fails to enter an order in that 90-day period.

The new amendments also clarify that the trial court or agency must enter a “filed written order” to dispose of the motion. Thus, anything less than a file-stamped, written order from the court or agency is not sufficient. If such an order is not filed within 90 days of the motion, the motion will be deemed denied.

Furthermore, the new amendments more clearly specify the motions that constitute post-judgment tolling motions under the rule. In Malama Kakanilua v. Director of Department of Public Works, 157 Hawai‘i 280, 576 P.3d 793 (2025), the Hawai‘i Supreme Court held that motions for reconsideration filed pursuant to Hawai‘i Rules of Civil Procedure (“HRCP”) Rule 60(b) were post-judgment tolling motions if they were filed within 30 days of the judgment. The new amendments to the rule incorporate the holding of Malama Kakanilua and provide additional specificity for the motions covered by HRAP Rule 4(a)(3). However, it should be noted that where a deadline to file the post-judgment motion is specified in this rule (e.g., 30 days from the entry of the judgment or appealable order for HRCP Rule 60(b) motions), the deadline is required only for purposes of this rule, and not for any other purposes. Thus, for example, an HRCP Rule 60(b) motion for reconsideration must be filed within 30

days of a judgment or appealable order to extend the time to file a notice of appeal under HRAP Rule 4(a)(3), but for other purposes, the time set forth in HRCF Rule 60(b) applies.

DATED: Honolulu, Hawai'i, July 15, 2026.

/s/ Vladimir P. Devens

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Karen T. Nakasone

