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SCRU-10-000012

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 THE HAWAI‘I RULES OF APPELLATE PROCEDURE

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rules 24(a), 27, 28, 32, 36, and 39 of the Hawai‘i Rules of Appellate Procedure are amended, effective January 1, 2016, as follows (deleted material is bracketed and stricken; new material is underscored):

**Rule 24. PROCEEDINGS *IN FORMA PAUPERIS*.**

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

A party to an action in the circuit, district, family, land or tax appeal court, or before an administrative agency who desires to proceed on appeal *in forma pauperis* ~~shall~~ may file in the appellate court a motion for leave to so proceed. ~~The motion shall be accompanied by~~, ~~together with~~ an affidavit or declaration, showing, in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay the required filing fees or to give security for costs, the party's belief that he or she is entitled to redress, and a statement of the

issues that the party intends to present on appeal. If the appeal is from a court, 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 requested relief, with the reasons given by the court appealed from for its action. A party who has filed such a motion may file his or her 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.

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**Rule 27. MOTIONS.**

**(a) Content of motions; response.** Unless another form is elsewhere prescribed by these [r]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 [r]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.

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**(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.

**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.

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**(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 [r]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 [r]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 [r]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.

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**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 a 3 inch top margin. 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 [r]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.

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

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**(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 ~~[HRAP]~~ 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 [r]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.

**Rule 39. COSTS AND ATTORNEY'S FEES.**

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**(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 [r]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.

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**(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.

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DATED: Honolulu, Hawai'i, October 13, 2015.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

