

## Second Circuit Procedures Regarding Transcript Preparation

Beth Kelly, Supervising Court Reporter in the Second Circuit, has provided a memorandum defining the Second Circuit's procedures and forms for requesting transcripts for an appeal. After the notice of appeal is filed, the appellant's attorney must identify the court reporter(s) to be notified to prepare transcripts and the dates of the transcripts to be obtained. The attorney submits a file-stamped Request for Transcript form to each court reporter within 10 days after filing the notice of appeal. A separate request form must be completed and filed for each individual court reporter involved in the appeal. Upon receipt of a transcript request form, the court reporter will sign and date the request form. All copies will be sent to the Supreme Court for filing and when copies are returned to the court reporter, the reporter will then distribute filemarked copies to all parties.

If the attorney filing the appeal is court-appointed, the attorney should also submit a copy of the order appointing counsel (or a withdrawal and substitution of counsel is applicable) and an Ex Parte Motion for Transcript Fees.

If the attorney filing the appeal is not court-appointed or is not with the Public Defender's Office and is required to pay for the transcripts, the Request For Transcript Cost Estimate form also must be given to each court reporter. The court reporter will then provide the attorney requesting the cost estimate a Deposit Request Form. The attorney may submit the Deposit Request Form together with the deposit to the Clerk of the Court or to the court reporter(s) individually. Deposits should be made within 10 days of *notification* of the amount needed for preparation of the transcripts. Upon receipt of the deposit, the 45 days allowed by Supreme Court for preparation of said transcripts will begin to run. If the transcripts cannot be prepared within 45 days from receipt of deposit, the court reporter will notify counsel and an additional 15 days will be granted without approval of Supreme Court. If the transcript cannot be prepared within 60 days, the court reporter will notify the Supreme Court of the time needed and the reason for the requested extension, with a copy to the attorneys involved.

### SECOND CIRCUIT COURT COURT REPORTER PHONE LIST

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(Rules 10 and 11 of the Hawai'i Rules of Appellate Procedure as amended December 6, 1999, effective as of January 1, 2000, are provided below.)

<b>STATE OF HAWAII</b> CIRCUIT COURT OF THE SECOND CIRCUIT	<b>REQUEST FOR TRANSCRIPT OF PROCEEDINGS FOR RECORD ON APPEAL</b>	CASE NUMBER
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PLAINTIFF	vs.	DEFENDANT
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In connection with the Notice of Appeal filed in this case on the date indicated, the below listed official court reporters are requested to prepare and furnish in the regular order of cases tried, a transcript of the proceedings of this case held on the date indicated.

DATE OF NOTICE OF APPEAL FILED	SPECIFY PORTIONS OF TRANSCRIPT REQUESTED
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NAME OF COURT REPORTER REQUESTED TO PREPARE TRANSCRIPT			
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REPORTER	DATE(S)	REPORTER	DATE(S)
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REPORTER	DATE(S)	REPORTER	DATE(S)
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**NOTE: THOSE EXCEPTED BY HRS SEC. 606-13 MAY DISREGARD THE FOLLOWING PARAGRAPH:**  
 In accordance with HRS Section 606-13 and HRAP Rule 10(b)(1)(B)(ii) a deposit will be made with the Chief Clerk of this circuit satisfactory to the official court reporter or a prepayment made to the official court reporter within 10 days to insure payment on completion of the requested transcript. Upon completion and certification of the transcript by the official court reporter, the clerk shall pay the court reporter the fees earned, from the deposit. Excess fees shall be returned to the depositor.

DATE	ATTORNEY FOR: PLAINTIFF ____ DEFENDANT ____	SIGNATURE
	NAME: _____ FIRM: _____ ADDRESS: _____ PHONE NO.: _____	DEPOSIT MADE: YES ____ NO ____

**RECEIPT OF REQUEST FOR TRANSCRIPT ACKNOWLEDGED:**

DATE	SIGNATURE	

**Circuit Court of the Second Circuit**

**REQUEST FOR TRANSCRIPT COST ESTIMATE**

(For appeal purposes)

Case Number: \_\_\_\_\_

Case Name: \_\_\_\_\_

vs. \_\_\_\_\_

To: \_\_\_ Court Reporter's Name: \_\_\_\_\_

\_\_\_ Audio/Video Section: \_\_\_\_\_

I am requesting an estimate of the cost of a written transcript of the proceeding had on the following dates:

DATE OF PROCEEDING

NAME OF JUDGE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SPECIFY: \_\_\_ Entire Hearing  
\_\_\_ Partial (Specify): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Requested by:

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

\_\_\_\_\_  
Requestor's Signature

\_\_\_\_\_  
Date

Rules 10 and 11 of the Hawai'i Rules of Appellate Procedure as amended December 6, 1999, effective as of January 1, 2000.

Rule 10. THE RECORD ON APPEAL.

(a) Composition of the Record on Appeal. The record on appeal shall consist of the following:

- (1) The original papers filed in the court or agency appealed from;
- (2) written jury instructions given, or requested and refused or modified over objection;
- (3) exhibits admitted into evidence or refused;
- (4) the transcript of any proceedings prepared pursuant to the provisions of Rule 10(b);
- (5) in a criminal case where the sentence is being appealed, a sealed copy of the presentence investigation report; and
- (6) the indexes prepared by the clerk of the court appealed from.

(b) The Transcript of Proceedings.

(1) Request to Prepare Transcript.

(A) When an appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court or agency appealed from, the appellant shall serve on each appellee and file with the clerk of the court appealed from, within 10 days after filing the notice of appeal, a request to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary that are not already on file.

(B) The request shall identify each reporter who will be required to prepare a transcript pursuant to the request and shall, unless the appellant is statutorily exempt from the transcript prepayment or deposit requirement in accordance with statute, be accompanied by either (i) a certificate by each reporter that the fees for the reporter's services have been paid or waived; or (ii) a deposit of the approximate cost of the transcript fees, as computed by the reporter at the rate established by the Rules Governing Court Reporting in the State of Hawai'i. If the request is accompanied by a deposit, the deposit shall be further accompanied by directions to the clerk of the court to use it to pay for the reporter fees when the transcript is complete.

(C) Unless the appellant is exempt from prepaying or making the deposit required, the reporter need not complete the transcript until suitable arrangements for payment have been made.

(D) The appellant shall deliver a file-marked copy of the request and its accompanying documents to the court reporters' office.

(E) If, upon receiving the request, the reporter determines that the prepaid fees or the amounts deposited by the appellant are inadequate to cover the cost of the transcript, the reporter may, within 10 days after receiving the request, file with the clerk of the court and mail to the appellant 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. The appellant shall pay the reporter and shall file a reporter's certificate of payment or deposit within 10 days after the mailing 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, whichever is earlier.

(F) When a transcript is completed, payment of which is to be made by the clerk of the court from the appellant's deposit, the reporter shall bill the appellant at the rate authorized by the Rules Governing Court Reporting in the State of Hawai'i, with a copy to the clerk of the court, and the clerk of the court shall pay the reporter from the funds deposited and promptly refund any excess deposit to the appellant or give notice to the appellant of any additional funds needed. If more than one reporter is producing the transcript, the clerk of the court shall pay promptly each reporter who certifies under penalty of perjury that all of his or her portions of the transcript are completed.

(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 clerk of the court appealed from and serve a copy of the certificate on each appellee.

(3) Duty of the 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 Partial Transcript is Ordered. Unless the entire transcript is to be prepared, 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 court or agency appealed from 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 transmitted by the clerk of the court appealed from within the time provided by Rule 11. It shall contain a copy of the judgment and the notice of appeal 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.

#### 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 provisions of Rule 10(b) and shall take any other action necessary to enable the clerk of the court to assemble and transmit the record. A single record shall be transmitted. The record shall be transmitted to the appellate clerk within 60 days from the filing of the notice of appeal provided that timely ordered transcripts, completed after the record has been transmitted to the appellate clerk, shall be filed with the clerk of the court from which the appeal is taken and the clerk of the court shall transmit them to the appellate clerk as a supplemental record without further order of the court or agency or the appellate court. If the record cannot be transmitted within such a period, the supreme court for good cause may extend the time upon stipulation or motion. When the record is not filed within the time required, the appellate clerk shall give notice to counsel for the appellant or to the appellant when he or she is pro se, 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 the appeal may be dismissed.

(b) Duty of Reporter to Prepare and File Transcript; Notice to Supreme Court; Duty of Clerk to

Prepare Indexes and Transmit the Record. Upon receipt of a request for a transcript, the reporter shall acknowledge the date of receipt on the request, and the expected completion date on the request and shall then transmit the request to the clerk of the appellate court. If the transcript cannot be completed within 45 days of receipt of the request, the reporter shall notify counsel for all parties, or the parties themselves, if pro se, of the new date on which the transcript is expected to be completed, provided that the transcript shall be completed within 60 days of receipt of the request, unless the reporter obtains an additional extension of time from the supreme court. Any such additional extension shall be granted in extraordinary circumstances only. The court reporter shall serve a copy of the extension order upon all parties. In the event of the failure of the reporter to file the transcript within the time allowed, the supreme court may take appropriate action, including the levying of a sanction against the court reporter. Upon completion of the transcript, the reporter shall file it with the clerk of the court from which the appeal is taken and shall notify the appellate clerk. When the record is complete for the purposes of appeal, the clerk of the court from which the appeal is taken shall certify it and transmit it forthwith to the appellate clerk. The clerk of the court from which the appeal is taken shall consecutively number the pages of the court or agency file and shall provide in the file a numbered index of all the pages therein. If any original papers, exhibits, and transcripts filed in the court or agency appealed from are not mentioned in the numbered index, the clerk of the court shall provide an additional index identifying each of them with reasonable definiteness. The clerk of the court shall provide all parties to the appeal with copies of said indexes. If an index is claimed to be in error, the party claiming it to be so is obligated to pursue appropriate proceedings to correct it. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the record shall not be transmitted by the clerk of the court unless he or she is directed to do so by a party or by the appellate clerk. A party must make advance arrangements with the respective clerks for the transportation and receipt of exhibits of unusual bulk or weight.

(c) Temporary Retention of Record in the Court or Agency Appealed From for Use in Preparing Appellate Papers. Notwithstanding the provisions of (a) and (b) of Rule 11, the parties may stipulate, or the court from which the appeal is taken on motion of any party may order, that the clerk of the court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event, the clerk of the court shall certify to the appellate clerk that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the appellate court may order, the appellant shall, in writing, request the clerk of the court to transmit the record.

(d) Retention of the Record in the Court or Agency Appealed From by Order of the Appellate Court. The supreme court may order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted. If the record or any part thereof is required in the court or agency appealed from for its use pending appeal, the court or agency may make an order to that effect, and the clerk of the court shall retain the record or parts thereof subject to the request of the supreme court and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the court or agency shall allow and copies of such parts as the parties may designate.

(e) Stipulation of Parties that Parts of the Record be Retained in the Court or Agency Appealed From. The parties may agree by written stipulation filed in the court or agency appealed from that designated parts of the record shall be retained by the court or agency unless thereafter the appellate court before which the case is pending, or any party, shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(f) Record for Preliminary Hearing 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 from which the appeal is taken shall transmit to the appellate clerk 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.