

**"CHAPTER 602
COURTS OF APPEAL**

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Note

As to procedural statutes superseded by the rules of court, see note preceding Title 32.

Chapter and part headings amended by L 1972, c 88, §2(h); L 1979, c 111, pt of §2.

Cross References

Uniform electronic legal material act, see chapter 98.

Law Journals and Reviews

Appellate Caseload in Hawaii. 13 HBJ, no. 3, at 3 (1977).
Remarks on Alternative Proposals to Remedy Appellate Court Congestion in Hawaii. 14 HBJ, no. 2, at 55 (1978).

An Introduction to Hawaii's New Appellate System. 15 HBJ, no. 2, at 47 (1980).

Administering Justice or Just Administration: The Hawaii Supreme Court and the Intermediate Court of Appeals. 14 UH L. Rev. 271 (1992).

Judicial Review and Sexual Freedom. 30 UH L. Rev. 1 (2007).

Electronic Discovery: A Call for a New Rules Regime for the Hawai'i Courts. 32 UH L. Rev. 153 (2009).

"PART I. SUPREME COURT

Cross References

Uniform electronic legal material act, see chapter 98.

Rules of Court

See generally Supreme Court Rules; Hawaii Rules of Appellate Procedure; Hawaii Court Records Rules; Hawaii Electronic Filing and Service Rules.

Law Journals and Reviews

Judicial Review and Sexual Freedom. 30 UH L. Rev. 1 (2007).

§602-1 How constituted. The supreme court, pursuant to section 2 of article VI of the Constitution, shall consist of a chief justice and four associate justices. [L 1892, c 57, §49; am L 1903, c 32, §13; RL 1925, §2221; RL 1935, §3590; RL 1945, §9601; RL 1955, §214-1; am L Sp 1959 1st, c 5, §2(a); HRS §602-1; ree L 1979, c 111, pt of §2]

Cross References

Retirement allowance, see §88-74.

Tenure, removal, retirement, see Const. art. VI, §§3, 5.

Case Notes

Provision of will of filling of vacancies among the trustees by choice of majority of the justices, how interpreted. 23 H. 575 (1917), aff'd 250 F. 145 (1980).

" **§602-2 Salary, supreme court justices.** Effective July 1, 2004, the salary of the chief justice of the supreme court and the salary of each associate justice of the supreme court shall be as last recommended by the judicial salary commission. Effective July 1, 2007, and every six years thereafter, the salary of the chief justice of the supreme court and the salary of each associate justice of the supreme court shall be as last recommended by the commission on salaries pursuant to section 26-56, unless disapproved by the legislature. [L Sp 1959 1st, c 4, §1; am L 1962, c 28, §30a; am L 1965, c 223, §12; Supp, §214-1.5; HRS §602-2; am L 1969, c 127, §10; am L 1975, c 58, §26; ree L 1979, c 111, pt of §2; am L 1982, c 129, §25(1); am L 1986, c 128, §22; am L 1990, c 72, §3; am L 1999, c 65, §4; am L 2000, c 2, §2; am L 2003, c 123, §2; am L 2006, c 299, §7]

Case Notes

Cited: 57 H. 348, 555 P.2d 1329 (1976).

" **§602-3 Absence, disability, etc., of chief justice.** Wherever, by the provisions of any law of the State, any act is required to be performed by the chief justice of the supreme court, the act may (unless otherwise expressly provided) be performed, in case of a vacancy in the office of chief justice, or if the chief justice is ill, absent, or otherwise unable to serve, by an associate justice of the court designated in accordance with the rules of the supreme court. [L 1892, c 72, §4; RL 1925, §2222; RL 1935, §3591; RL 1945, §9602; RL 1955, §214-2; am L Sp 1959 1st, c 5, §2(b); HRS §602-3; am L 1972, c 88, §2(a); ree L 1979, c 111, pt of §2; gen ch 1985]

Cross References

See Const. art. VI, §2.

" **§602-4 Superintendence of inferior courts.** The supreme court shall have the general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses therein where no other remedy is expressly provided by law. [L 1892, c 57, §50; RL 1925, §2223; RL 1935, §3592; RL 1945, §9603; RL 1955, §214-3; HRS §602-4; ree L 1979, c 111, pt of §2]

Law Journals and Reviews

Through the Looking Glass--Finality, Interlocutory Appeals and the Hawaii Supreme Court's Supervisory Powers. 9 UH L. Rev. 87 (1987).

The Application of the Collateral Order Doctrine to Criminal Appeals in Hawai'i. 19 UH L. Rev. 73 (1997).

Case Notes

Applied in disposing of appeal on points of law from an illegal sentence. 13 H. 335 (1901).

Appeals in forma pauperis, powers of supreme court in connection with. See 42 H. 1 (1957); 44 H. 31, 352 P.2d 616 (1959); 44 H. 52, 352 P.2d 629 (1959). But see 26 H. 469 (1922).

Circumstances supplied justification for exercise of court's supervisory jurisdiction and court's power to issue prohibition. 59 H. 224, 580 P.2d 49 (1978).

Supervisory power under section invoked to provide needed guidance on matter of grave public concern. 59 H. 224, 580 P.2d 49 (1978).

Supervisory jurisdiction invoked where submission to warrantless searches apparently standard condition of probation. 67 H. 268, 686 P.2d 1379 (1984).

Supervisory jurisdiction invoked to declare judge personally entering the jury room to answer the jurors' questions improper and prejudicial. 69 H. 204, 738 P.2d 812 (1987).

Supreme court invoked supervisory jurisdiction over district court judge. 71 H. 304, 788 P.2d 1281 (1990).

Exercise of supreme court's supervisory powers was not appropriate in case where defendant was not without remedy expressly provided by law; §641-11 and HRAP rule 4(b) provided defendant opportunity to appeal from final judgment and HRPP rule 40 may have provided defendant opportunity to contest validity of no-contest plea by post-conviction petition. 96 H. 462 (App.), 32 P.3d 106 (2001).

Mentioned: 79 H. 26, 897 P.2d 953 (1995).

" **§602-5 Jurisdiction and powers; filing.** (a) [*Repeal and reenactment on July 1, 2019. L 2016, c 48, §14.*] Except as otherwise provided, the supreme court shall have jurisdiction and powers as follows:

- (1) To hear and determine all questions of law, or of mixed law and fact, which are properly brought before it by application for a writ of certiorari to the intermediate appellate court or by transfer as provided in this chapter;
- (2) To answer, in its discretion, any question of law reserved by a circuit court, the land court, or the tax appeal court, or any question or proposition of law certified to it by a federal district or appellate court if the supreme court shall so provide by rule;
- (3) To exercise original jurisdiction in all questions arising under writs directed to courts of inferior jurisdiction and returnable before the supreme court, or if the supreme court consents to receive the case arising under writs of mandamus directed to public officers to compel them to fulfill the duties of their offices; and such other original jurisdiction as may be expressly conferred by law;
- (4) To issue writs of habeas corpus, or orders to show cause as provided by chapter 660, returnable before the supreme court or a circuit court, and any justice may issue writs of habeas corpus or such orders to show cause, returnable as above stated;
- (5) To make or issue any order or writ necessary or appropriate in aid of its jurisdiction, and in such case, any justice may issue a writ or an order to show cause returnable before the supreme court; and
- (6) To make and award such judgments, decrees, orders and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice in matters pending before it.

(b) All cases addressed to the jurisdiction of the supreme court or of the intermediate appellate court shall be filed with the clerk of the supreme court as provided by the rules of court. The clerk shall maintain the record of each case whether addressed to the jurisdiction of the supreme court or the jurisdiction of the intermediate appellate court. [L 1892, c 57, §51; RL 1925, §2224; RL 1935, §3593; RL 1945, §9604; RL 1955,

§214-4; HRS §602-5; am L 1972, c 88, §2(b); am L 1979, c 111, pt of §2; gen ch 1985; am L 1986, c 199, §1; am L 2004, c 202, §55; am L 2006, c 94, §1; am L 2010, c 109, §1; am L 2016, c 48, §10]

Note

Judiciary report to 2019 legislature on change in judicial proceedings made by L 2016, c 48. L 2016, c 48, §12.

Rules of Court

Certification of questions by federal courts, see HRAP rule 13.

Power of supreme court to preserve status quo or effectiveness of the judgment subsequently to be entered, see HRCF rule 62(g).

Questions of law reserved, see HRAP rule 15.

Writs, see HRAP rule 21.

Law Journals and Reviews

Judicial Legislation in the Supreme Court of Hawaii: A Brief Introduction to the "Known Uncertainty" of the Law. 7 HBJ, no. 2, at 58 (1970).

Judicial Legislation in the Supreme Court of Hawaii: A Brief Introduction to the "Felt Necessities of the Time." 8 HBJ, no. 3, at 77 (1971).

Contemporary Contempt: The State of the Law in Hawaii. I HBJ, no. 13, at 59 (1997).

Through the Looking Glass--Finality, Interlocutory Appeals and the Hawaii Supreme Court's Supervisory Powers. 9 UH L. Rev. 87 (1987).

Reversals of Fortune: The Hawaii Supreme Court, the Memorandum Opinion, and the Realignment of Political Power in Post-statehood Hawaii. 14 UH L. Rev. 17 (1992).

Case Notes

Generally.

The inherent power of the supreme court to make orders "for the promotion of justice" under paragraph (7) required that motorist be given an opportunity to challenge the lifetime revocation of motorist's license where one of the three predicate convictions on which revocation had been based had been set aside; motorist was thus entitled to have district court amend motorist's revocation period pursuant to §286-261 upon the presentation of proof that motorist's driving record no

longer supported the revocation period imposed. 94 H. 232, 11 P.3d 457 (2000).

Section 174C-60 is inconsistent with and cannot stand together with this section and §602-57, as amended by Act 202, L 2004, and was deemed amended by implication, effective July 1, 2006, to authorize appeals from the water commission to the intermediate appellate court, not to the supreme court. 113 H. 52, 147 P.3d 836 (2006).

Counsel fees.

After an appeal has been perfected the supreme court has power to require a husband to advance to a wife necessary attorney's fee in divorce. 25 H. 793, 797 (1921). Section 580-9 applies to the supreme court. 30 H. 61, 65 (1927). Distinguished in 30 H. 80, 90 (1927).

No jurisdiction to award attorneys' fees for services on appeal in probate case. 43 H. 171 (1959).

Cited: 76 H. 396, 879 P.2d 501 (1994).

Jurisdiction.

Where Congress has not expressly set out exclusive jurisdiction, state courts are competent to decide federal claims. 437 F. Supp. 368 (1977).

No original jurisdiction to issue a writ of mandamus directed to individuals, 22 H. 589 (1915); nor in election contests, 15 H. 323 (1903). See also 23 H. 387, 407 (1916).

Supreme court will not determine moot question. See 23 H. 387, 406 (1916); 25 H. 51 (1919); 26 H. 171 (1921); 32 H. 818 (1933); 33 H. 278 (1935); 35 H. 565 (1940).

As to habeas corpus. 26 H. 363 (1922).

Question of jurisdiction of subject matter can be raised for first time on appeal. 36 H. 75 (1942).

Lack of jurisdiction cannot be waived or jurisdiction conferred by agreement of parties. 40 H. 475 (1954); 57 H. 133, 552 P.2d 75 (1976).

Court will not generally decide moot questions of law, but exception is made where questions affect the public interest. 50 H. 379, 441 P.2d 138 (1968); 59 H. 244, 580 P.2d 405 (1978); 62 H. 391, 616 P.2d 201 (1980).

Supreme court does not have original jurisdiction of writ of prohibition directed against prosecutors. 51 H. 589, 465 P.2d 549 (1970).

Supreme court has no original jurisdiction to issue mandamus to an individual. 54 H. 274, 506 P.2d 8 (1973).

Supreme court does not have jurisdiction for an appeal from interlocutory orders of the district courts in criminal cases. 57 H. 133, 552 P.2d 75 (1976).

Court would not entertain application for writ of prohibition on grounds not presented in the trial court. 57 H. 284, 554 P.2d 1128 (1976).

Without a special reason appellate court will not exercise its original jurisdiction in habeas corpus proceedings when relief is available in a lower court. 57 H. 411, 557 P.2d 787 (1976).

Cited as supporting claim that supreme court has jurisdiction to determine validity of constitutional amendment procedures. 60 H. 324, 590 P.2d 543 (1979).

Court had jurisdiction over action seeking to enjoin chief election officer from placing proposed constitutional amendments on election ballot. 73 H. 536, 836 P.2d 1066 (1992).

Jurisdiction properly lies in supreme court to hear and determine appeals from district court judgments after an administrative hearing, pursuant to paragraph (1) and §641-1(a). 75 H. 1, 856 P.2d 1207 (1993).

Where defendant's interlocutory appeal from district court's denial of defendant's motion to dismiss on double jeopardy grounds did not satisfy prerequisites of collateral order exception, supreme court did not have to decide whether exception may apply to appeals from collateral orders of district court. 82 H. 446, 923 P.2d 388 (1996).

Discussed: 875 F. Supp. 680 (1995).

Powers.

Judgment of territorial supreme court, affirmed by U.S. Court of Appeals, was binding on supreme court of Hawaii. 441 F. Supp. 559 (1977).

Inherent power to preserve status quo pending appeal. 18 H. 269, 270 (1907); 42 H. 192 (1957). Granting of injunction to preserve status quo pending appeal. 51 H. 480, 463 P.2d 530 (1969).

Supreme court has no power to amend a so-called record of a district court on appeal. 19 H. 187 (1908).

A motion for such amendment should be presented to the district court. 19 H. 317 (1909); 24 H. 600, 605 (1919).

Mandamus in aid of appellate jurisdiction. 54 H. 294, 506 P.2d 444 (1973).

Under paragraph (7), in the promotion of justice, supreme court has power to reduce fines for civil contempt. 55 H. 386, 520 P.2d 422 (1974).

Judgment vacated for promotion of justice. 56 H. 170, 532 P.2d 391 (1975).

Supreme court cannot disregard jurisdictional defects in an appeal. 57 H. 61, 549 P.2d 477 (1976).

Where circuit court exceeded its authority, writ of prohibition by supreme court held proper remedy. 57 H. 289, 554 P.2d 1131 (1976).

No cross appeal is necessary for appellate court to review a question closely related to a question raised on appeal. 57 H. 599, 561 P.2d 1286 (1977).

Prohibition, when granted, res judicata. 59 H. 224, 580 P.2d 49 (1978).

Prohibition, issuance. 59 H. 237, 580 P.2d 58 (1978); 67 H. 259, 686 P.2d 16 (1984).

Paragraph (7) cited in directing a different judge to hear a case on remand. 59 H. 592, 585 P.2d 1259 (1978).

Standard for issuance of mandamus. 64 H. 307, 640 P.2d 289 (1982).

Where chief justice did not have duty to administer oath of office, mandamus against chief justice did not lie; thus, petition for writ of mandamus denied. 76 H. 273, 874 P.2d 1098 (1994).

Paragraph (7) permits appellate court to modify trial court's judgment of conviction if interests of justice would be promoted. 9 H. App. 263, 833 P.2d 902 (1992).

Mentioned: 74 H. 75, 837 P.2d 776 (1992); 79 H. 26, 897 P.2d 953 (1995).

Rehearing.

Further hearing granted after decision on point not previously argued. 10 H. 338 (1896).

Principles stated as to circumstances under which a motion for a rehearing will be granted. 10 H. 338 (1896); cited 25 H. 776 (1921). See 33 H. 632 (1935); 35 H. 252 (1939); 35 H. 349 (1940); 40 H. 640 (1954); 40 H. 734 (1955); 42 H. 352 (1958); 44 H. 684, 361 P.2d 383 (1961); 47 H. 466, 471, 390 P.2d 737 (1964); 48 H. 149, 151, 396 P.2d 826 (1964); 49 H. 267, 269, 414 P.2d 428 (1966); 49 H. 574, 423 P.2d 437 (1967); 50 H. 40, 429 P.2d 829 (1967).

Question not jurisdictional and not raised by pleadings or in appellant's specifications of error nor in their brief comes too late when presented for first time during oral argument. 25 H. 438, 444 (1920), aff'd 269 F. 751 (1921).

Rehearing denied on immaterial issue, 28 H. 157; but see dissent; 28 H. 208 (1925); 28 H. 383 (1925). See 33 H. 632 (1935); 34 H. 8 (1936); 35 H. 349 (1940); 35 H. 545 (1940); 36 H. 230 (1942); 36 H. 710 (1944); 49 H. 267, 271, note 4, 414 P.2d 428 (1966).

Support money pending appeal.

35 H. 382 (1940).

" **§602-5.5 Judiciary records.** (a) Notwithstanding the provisions of any other law to the contrary, the supreme court shall determine whether, and the extent to which, the judiciary, will create, accept, retain, or store in electronic form any case, fiscal, and administrative records and convert written case, fiscal, and administrative records to electronic records.

(b) Notwithstanding the provisions of section 94-3, the supreme court shall determine the care, custody, and disposition of all judiciary case, fiscal, and administrative records. A record of dispositional activity shall be maintained stating whether a record was retained by the judiciary; transferred to public archives, the University of Hawaii, the Hawaiian Historical Society; or another agency; or destroyed. This record shall be kept on forms specified by the supreme court. One copy of the record shall be filed in the court where the records originated, and the original shall be filed with the administrative director of the courts or an agency designated by the director. [L 1984, c 258, §1; am L 1997, c 58, §1; am L 2002, c 6, §1]

Revision Note

"Hawaiian Historical Society" substituted for "Hawaii Historical Society" pursuant to §23G-15.

Rules of Court

See Hawaii Court Records Rules; Hawaii Electronic Filing and Service Rules.

" **§602-6 [OLD] REPEALED.** L 1972, c 88, §2(h).

§602-6 REPEALED. L 2004, c 202, §80.

" **§602-7 Oaths, subpoenas.** The supreme court may compel the attendance of witnesses and the production of books, papers, documents or tangible things, and any justice may administer oaths. [L 1892, c 57, §52; RL 1925, §2226; RL 1935, §3595; RL 1945, §9606; RL 1955, §214-6; HRS §602-7; am L 1972, c 88, §2(c); ree L 1979, c 111, pt of §2]

Case Notes

Mentioned: 76 H. 273, 874 P.2d 1098 (1994).

" **§602-8 Terms.** The supreme court shall be deemed to be in continuous session. The court shall be deemed always open for filing papers, issuing and returning process, and issuing orders. [L 1892, c 57, §54; am L 1901, c 22, §1; RL 1925, §2227; RL 1935, §3596; RL 1945, §9607; RL 1955, §214-7; HRS §602-8; am L 1972, c 88, §2(d); ree L 1979, c 111, pt of §2; am L 1984, c 106, §1]

" **§602-9 Sessions, where.** The supreme court shall sit in Honolulu; provided that the chief justice may appoint a different place for the sitting of the court, pro tempore. [L 1892, c 57, §55; am L 1901, c 22, §2; RL 1925, §2228; RL 1935, §3597; RL 1945, §9608; RL 1955, §214-8; HRS §602-9; am L 1972, c 88, §2(e); ree L 1979, c 111, pt of §2]

" **§602-10 [OLD] REPEALED.** L 1972, c 88, §2(h).

§602-10 Full court; oral argument; substitute justices.
Parties to a proceeding before the supreme court shall be entitled to consideration by a full court. Oral argument shall be before a full court; provided that in an appropriate case, the court in its discretion may dispense with oral argument. In case of a vacancy, or if a justice of the supreme court is disqualified from sitting in any case pending before the supreme court, is unable to attend, is absent, is recused, or has been excused, the vacancy or the place of such justice may be temporarily filled by a circuit judge designated by the chief justice or by the appointment of a justice who has retired from the supreme court. Such retired justice chosen to serve as substitute justice shall not be actively engaged in the practice of law. A retired justice, when sitting as substitute justice, shall be compensated at a rate of pay of associate justices of the supreme court. When necessary, the court may consist of five circuit judges so designated, or five retired justices so appointed, or any combination of circuit judges and retired justices. After oral argument of a case, if a vacancy arises or if for any other reason a justice is unable to continue on the case, the case may be decided or disposed of upon the concurrence of any three members of the court without filling the vacancy or the place of such justice. [L 1892, c 57, §56; am L 1896, c 12, §1; am L 1903, c 32, §15; am L 1905, c 92, §1; am L 1909, c 14, §1; RL 1925, §2230; RL 1935, §3599; RL 1945,

§9610; RL 1955, §214-10; am L 1963, c 193, §61; HRS §602-11; am L 1972, c 88, §2(f); am L 1974, c 146, §1; am L 1978, c 114, §1; ren L 1979, c 111, pt of §2; am L 2004, c 202, §56; am L 2006, c 94, §1; am L 2010, c 109, §1]

Case Notes

"Cause" in phrase "connection with the said cause" means issue brought to supreme court, not entire case in lower court. 9 H. 354 (1894); 20 H. 553 (1911).

Resignation of justice, though absolute in form, does not under all circumstances at once vacate office. 12 H. 332 (1900).

Duty of justice to sit unless disqualified or unable to sit for reason specified. 17 H. 393 (1906). See 41 H. 270 (1956).

Petition for rehearing must be acted upon by court as constituted when case was decided, if all members thereof are available. 45 H. 440, 369 P.2d 114 (1962).

Change in court no bar to grant of rehearing. 50 H. 40, 429 P.2d 829 (1967).

When no disinterested substitutes can be designated, doctrine of necessity allows interested judges to participate in the case. 57 H. 348, 555 P.2d 1329 (1976).

" **§602-11 Rules.** The supreme court shall have power to promulgate rules in all civil and criminal cases for all courts relating to process, practices, procedure and appeals, which shall have the force and effect of law. Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant, nor the jurisdiction of any of the courts, nor affect any statute of limitations.

Whenever in a statute it is provided that the statute is applicable "except as otherwise provided," or words to that effect, these words shall be deemed to refer to provisions of the rules of court as well as other statutory provisions. [L 1939, c 215, §1; RL 1945, §9614; RL 1955, §214-14; HRS §602-21; am L 1972, c 88, §2(g); ren L 1979, c 111, pt of §2]

Cross References

Constitutional provision, see Const. art. VI, §7.

Rules of Court

See Rules of the Supreme Court; Hawaii Rules of Professional Conduct; Hawaii Revised Code of Judicial Conduct; Hawaii Rules

of Appellate Procedure; Rules of the Intermediate Court of Appeals; Hawaii Rules of Civil Procedure; Hawaii Rules of Penal Procedure; Rules of the Circuit Courts; Hawaii Arbitration Rules; Rules of the District Courts; District Court Rules of Civil Procedure; Rules of the Small Claims Division; Rules of the Family Court; Rules of the Tax Appeal Court; Rules of the Land Court; Hawaii Civil Traffic Rules; Hawaii Probate Rules; Rules Governing Court Reporting; Hawaii Court Records Rules; Hawaii Electronic Filing and Service Rules.

Law Journals and Reviews

A Piece of Mind for Peace of Mind: Federal Discoverability of Opinion Work Product Provided to Expert Witnesses and Its Implications in Hawai'i. 24 UH L. Rev. 859 (2002).

Electronic Discovery: A Call for a New Rules Regime for the Hawai'i Courts. 32 UH L. Rev. 153 (2009).

Case Notes

Reasonable compliance with a rule must be required. 20 H. 39 (1910); 24 H. 711, 713 (1919); 29 H. 802, 803 (1927).

The responsibility of the court to require such compliance is secondary to the duty of the court to maintain the integrity of stipulations approved by and filed with the court. 24 H. 655, 657 (1919).

Family court rules have force and effect of law. 61 H. 167, 598 P.2d 176 (1979).

Cited: 48 H. 290, 300, 401 P.2d 449 (1965).

" **§§602-12, 602-13, and 602-16 REPEALED.** L 1972, c 88, §2(h).

" **§602-21 Renumbered as §602-11.**

" **§§602-22 to 602-24, 602-31 to 602-34, 602-36, and 602-37 REPEALED.** L 1972, c 88, §2(h).

"PART II. INTERMEDIATE APPELLATE COURT

Note

As enacted, the sections in this part were designated §§602-12 to 602-20.

Rules of Court

See generally Rules of the Intermediate Court of Appeals; Hawaii Rules of Appellate Procedure; Hawaii Court Records Rules; Hawaii Electronic Filing and Service Rules.

Law Journals and Reviews

Administering Justice or Just Administration: The Hawai'i Supreme Court and the Intermediate Court of Appeals. 14 UH L. Rev. 271 (1992).

Judicial Review and Sexual Freedom. 30 UH L. Rev. 1 (2007).

§602-51 How constituted. The intermediate appellate court shall consist of a chief judge and five associate judges. The chief judge, who shall be specifically selected, shall supervise the administrative duties of the court. [L 1979, c 111, pt of §3; am L 1992, c 253, §2; am L 2001, c 248, §1]

" **§602-52 Salary.** Effective July 1, 2004, the salary of the chief judge of the intermediate appellate court and the salary of each associate judge shall be as last recommended by the judicial salary commission. Effective July 1, 2007, and every six years thereafter, the salary of the chief judge of the intermediate appellate court and the salary of each associate judge shall be as last recommended by the commission on salaries pursuant to section 26-56, unless disapproved by the legislature. [L 1979, c 111, pt of §3; am L 1982, c 129, §25(2); am L 1986, c 128, §23; am L 1990, c 72, §4; am L 1999, c 65, §5; am L 2000, c 2, §3; am L 2003, c 123, §3; am L 2006, c 299, §8]

" **§602-53 Terms.** The intermediate appellate court shall be deemed always to be in continuous session. The court shall be deemed always open for filing papers, issuing and returning process, and issuing orders. [L 1979, c 111, pt of §3; am L 1984, c 106, §2]

" **[§602-54] Session, where.** The intermediate appellate court shall sit in Honolulu; provided that the chief judge may appoint a different place for the sitting of the court, pro tempore. [L 1979, c 111, pt of §3]

" **§602-55 Panels; substitute judge.** Parties shall be entitled to a hearing before a panel of not less than three intermediate appellate judges. In the event the number of available intermediate appellate judges is insufficient to make up a panel because of vacancy or disqualification, the chief justice of the supreme court may designate circuit judges or retired intermediate appellate judges or retired supreme court justices to temporarily fill such need. A judge serving temporarily shall not be actively engaged in the practice of law. Substitute judges shall be compensated per diem at a rate of pay equivalent to that of associate intermediate appellate judges. [L 1979, c 111, pt of §3; am L 1983, c 244, §1; am L 2006, c 4, §1]

" **[§602-56] Absence, disability, of the chief judge.** Whenever, by the provisions of any law of the State, any act is required to be prepared by the chief judge of the intermediate appellate court, the act may be performed, in case of a vacancy, or illness, absence or disability, by an associate judge designated in accordance with the rules of the supreme court. [L 1979, c 111, pt of §3]

" **§602-57 Jurisdiction.** Notwithstanding any other law to the contrary, the intermediate appellate court shall have jurisdiction, subject to transfer as provided in section 602-58 or review on application for a writ of certiorari as provided in section 602-59:

- (1) To hear and determine appeals from any court or agency when appeals are allowed by law;
- (2) To entertain, in its discretion, any case submitted without suit when there is a question of law that could be the subject of a civil action or proceeding in the circuit court, or tax appeal court, and the parties agree upon the facts upon which the controversy depends; and
- (3) To make or issue any order or writ necessary or appropriate in the aid of its jurisdiction, and in such case, any judge may issue a writ or an order to show cause returnable before the court. [L 1979, c 111, pt of §3; am L 2004, c 202, §57; am L 2006, c 94, §1 and c 145, §1; am L 2010, c 109, §1]

The Lum Court, Land Use, and the Environment: A Survey of Hawai'i Case Law 1983 to 1991. 14 UH L. Rev. 119 (1992).

The Development of Hawai'i's Appellate Courts: An Organizational Perspective. 33 UH L. Rev. 875 (2011).

Case Notes

Section 174C-60 is inconsistent with and cannot stand together with §602-5 and this section, as amended by Act 202, L 2004, and was deemed amended by implication, effective July 1, 2006, to authorize appeals from the water commission to the intermediate appellate court, not to the supreme court. 113 H. 52, 147 P.3d 836 (2006).

Where bankruptcy court remanded the entirety of the adversary proceeding to the circuit court, and petitioner timely appealed to the appellate court the bankruptcy court's good faith determination which had not been modified or set aside by the circuit court and thus remained in effect, since this section gives the appellate court jurisdiction over appeals from the circuit court that are "allowed by law", and §663-15.5(e) authorized an appeal from the good faith determination, the appellate court had jurisdiction over the appeal. 125 H. 186, 256 P.3d 694 (2011).

Court will not decide moot question. 1 H. App. 491, 620 P.2d 765 (1980).

" **§602-58 Application for transfer to the supreme court.**

(a) The supreme court, in the manner and within the time provided by the rules of court, shall grant an application to transfer any case within the jurisdiction of the intermediate appellate court to the supreme court upon the grounds that the case involves:

- (1) A question of imperative or fundamental public importance;
- (2) An appeal from a decision of any court or agency when appeals are allowed by law:
 - (A) Invalidating an amendment to the state constitution; or
 - (B) Determining a state statute, county ordinance, or agency rule to be invalid on the grounds that it was invalidly enacted or is unconstitutional, on its face or as applied, under either the constitution of the State or the United States; or

(3) A sentence of life imprisonment without the possibility of parole.

(b) The supreme court, in a manner and within the time provided by the rules of court, may grant an application to transfer any case within the jurisdiction of the intermediate appellate court to the supreme court upon the grounds that the case involves:

(1) A question of first impression or a novel legal question; or

(2) Issues upon which there is an inconsistency in the decisions of the intermediate appellate court or of the supreme court.

(c) The grant or denial of an application for transfer under subsection (b) shall be discretionary and shall not be subject to further review. Denial of an application for transfer under subsection (b) shall not prejudice a later application for a writ of certiorari. [L 1979, c 111, pt of §3; am L 2004, c 202, §58; am L 2006, c 93, §1 and c 94, §1; am L 2010, c 109, §1]

Law Journals and Reviews

The Development of Hawai'i's Appellate Courts: An Organizational Perspective. 33 UH L. Rev. 875 (2011).

" **§602-59 Review of decision of the intermediate appellate court, certiorari.** (a) After issuance of the intermediate appellate court's judgment or dismissal order, a party may seek review of the intermediate appellate court's decision and judgment or dismissal order only by application to the supreme court for a writ of certiorari, the acceptance or rejection of which shall be discretionary upon the supreme court.

(b) The application for writ of certiorari shall tersely state its grounds, which shall include:

(1) Grave errors of law or of fact; or

(2) Obvious inconsistencies in the decision of the intermediate appellate court with that of the supreme court, federal decisions, or its own decision, and the magnitude of those errors or inconsistencies dictating the need for further appeal.

(c) An application for a writ of certiorari may be filed with the supreme court no later than thirty days after the filing of the judgment or dismissal order of the intermediate appellate court. Upon a written request filed prior to the expiration of the thirty-day period, a party may extend the time for filing an application for a writ of certiorari for no more

than an additional thirty days. Opposition to an application for a writ of certiorari may be filed no later than fifteen days after the application is filed. The supreme court shall determine to accept the application within thirty days after an objection is or could have been filed. The failure of the supreme court to accept within thirty days shall constitute a rejection of the application.

(d) Upon the acceptance of the application, the clerk shall forward the complete file of the case to the supreme court. Supplemental briefs shall be accepted from the parties only upon the request of the supreme court. [L 1979, c 111, pt of §3; am L 1997, c 24, §1; am L 2004, c 202, §59; am L 2006, c 94, §1 and c 149, §1; am L 2010, c 109, §1; am L 2011, c 77, §1]

Note

Applicability of 2011 amendment. L 2011, c 77, §3.

Rules of Court

Writ of certiorari, see HRAP rule 40.1.

Law Journals and Reviews

The Development of Hawai'i's Appellate Courts: An Organizational Perspective. 33 UH L. Rev. 875 (2011).

Case Notes

Where appellate court's amended order denying reconsideration corrected only clerical errors and did not materially alter rights or obligations, entry of amended order did not extend time within which petitioner was required to file application for certiorari under subsection (c) and HRAP rule 40.1(a); petitioner's application for certiorari was thus untimely. 94 H. 297, 12 P.3d 1238 (2000).

Where summary disposition order of the intermediate court of appeals contained no grave errors of law or fact and was not obviously inconsistent with the appellate case law of this State, defendant's application for writ of certiorari dismissed as improvidently granted. 101 H. 127, 63 P.3d 1097 (2002).

" **[§602-60] Subpoenas; oaths.** The intermediate appellate court shall have the power to subpoena and compel the attendance of witnesses from any part of the State and to compel the production of books, papers, documents, or tangible things. Any

judge of the intermediate appellate court may administer oaths.
[L 2008, c 148, §1; am L 2010, c 93, §1]