Fabius Mendoza, Deceased
Shawn L.M. Benton
Li-Ann Yamashiro
Fabius Mendoza, Courtesy Copy

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAIʻI

FABIUS MENDOZA, Claimant-Appellee, vs. HBM ACQUISITIONS, LLC, Employer-Appellant, and ISLAND INSURANCE COMPANY, LTD., Insurance Carrier-Appellant, and SPECIAL COMPENSATION FUND, Appellee.	CASE NO.: AB 2023-123(M) DCD No.: 7-18-01186 D/A: July 23, 2018 Dec 30 2025, 9:44 am FILED akw Labor and Industrial Relations Appeals Board

ORDER HOLDING CASE IN ABEYANCE AND NOTICE OF INTENTION TO DISMISS APPEAL FILED BY FABIAN MENDOZA

On May 15, 2023, Timothy P. McNulty, Esq., who was the attorney for Claimant FABIUS MENDOZA ("Claimant"), filed a "Certification of Vital Record" from the State of California, dated May 8, 2023, confirming that Claimant died **January 1, 2023**.

A hearing before the Director of Labor and Industrial Relations ("Director") was held at the Disability Compensation Division ("DCD"), Maui District Office on August 2, 2023. At that DCD hearing, Mr. McNulty appeared and stated that he does not represent Claimant (now, "Decedent") and that he

did not represent the Decedent's Estate. Mr. McNulty informed the DCD/Director that Decedent died due to non-industrial causes. Mr. McNulty further represented that there existed no dependent children or grandparents that fit the definition of "dependents."

On August 16, 2023, the Director issued a Decision Supplemental to Award Dated 12/6/2018 ("Supplemental Decision").

On August 30, 2023, **Fabian Mendoza** filed an appeal of the Director's Supplemental Decision with the Labor and Industrial Relations Appeals Board ("Board"). **Fabian Mendoza** claimed that he was the twin brother of Decedent. **Fabian Mendoza** alleged that "decendent [sic] Fabius Medoza [Decedent] was contributing a substantial portion of the living expense to claimant (Fabian Mendoza, decendent's [sic] twin brother) at the time of his injury [July 23, 2018]." **Fabian Mendoza** further stated that he was "released from a California Prison after 30 years of incarceration."

On September 5, 2023, Employer HBM ACQUISITIONS, LLC and Insurance Carrier ISLAND INSURANCE COMPANY, LTD. (collectively, "Employer") filed an appeal of the Director's Supplemental Decision.

On September 7, 2023, the Director provided **Fabian Mendoza** with a Form WC-5A Dependents' Claim for Workers' Compensation.

On November 2, 2023, the Board issued an Order to Show Cause which ordered the parties to show cause as to why **Fabian Mendoza**'s August 30, 2023 appeal should not be dismissed for failure to establish his standing to file an appeal of the Director's Supplemental Decision and/or his authority to

file an appeal of the Director's Supplemental Decision on behalf of Decedent. A hearing on this matter was scheduled before the Board on November 30, 2023.

On November 30, 2023, the Board held a hearing on its November 2, 2023 Order to Show Cause. Shawn L.M. Benton, Esq. appeared on behalf of Employer, and William N. Crowell, Esq. appeared on behalf of the SPECIAL COMPENSATION FUND ("SCF"). **Fabian Mendoza** did not appear at the November 30, 2023 hearing.

To date, the Board's record does not reflect any communication from **Fabian Mendoza** since August 31, 2023 when **Fabian Mendoza** resubmitted his appeal of the Director's Supplemental Decision.

To date, no court-appointed personal representative or special administrator of Claimant's estate has appeared in this appeal.

To date, no WC-5A claim has been filed.

The following legal authorities are relevant:

> "A deceased person cannot be a party to a legal proceeding, and the effect of death is to suspend the action as to the decedent until his legal representative is substituted as a party." *Bagalay v. Lahaina Restoration Foundation*, 60 Haw. 125 (1978) (citations omitted.)
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> "As a general rule, the authority of counsel to proceed with a case is terminated upon the death of the party being represented . . . but the courts can pass upon questions raised and listen to suggestions as to their disposal from an attorney who is an officer of the court . . . ." *Id.*
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> " . . . an heir of an undistributed estate, who has not been judicially appointed as the

personal representative of a decedent's estate, is not a 'proper party' for substitution . . . ." *Roxas v. Marcos*, 89 Haw. 91 (1998), (analyzing the application of HRCP Rule 25(a)(1) and citations omitted).

"The majority rule in other jurisdictions is that only judicially appointed representatives may be substituted for a decedent party." *Id.* (Citations omitted.)

§ 12-47-25, LAB Rules: "Upon motion and for good cause shown, the board may order substitution of parties, except that in the case of a party's death, substitution may be ordered without filing a motion."

§ 371-4(k), HRS: "The board may make or issue any order or take other appropriate steps as may be necessary to enforce its rules and orders and to carry into full effect the powers and duties given to it by law."

§ 560:1-302(a), HRS: "To the full extent permitted by the Constitution and except as otherwise provided by law, the court has jurisdiction over all subject matter relating to: (1) Estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons . . . ."

§ 560:3-103, HRS: "Except as otherwise provided in article IV, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters."

§ 560:3-105: "Persons interested in decedents' estates may apply to the registrar for determination in the informal proceedings provided in this article, and

> may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article. The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates, subject to the laws of this State, are to be administered, expended, and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent."
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> § 560:3-703(c): "Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at the decedent's death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as the decedent had immediately prior to death."

The Board's order herein is consistent with the common law principle that "if a party dies before a verdict or decision is rendered, the action abates as to him and must be dismissed unless it is revived by substitution of a personal representative." *Bagalay*, 60 Haw. 135 (emphasis added). Our Hawai'i Supreme Court has made it clear that it is improper to continue legal proceedings because a "deceased person cannot be a party to a legal proceeding, and the effect of death is to suspend the action as to the decedent until his legal representative is substituted as a party." *Id.* (Emphasis added.)

In this respect, the order that follows is consistent with and mindful of practice and precepts of common law.

This order concerns ascertaining the identity of a possible person who may be substituted for a party who is now deceased. The Board's order, herein, is consistent with the procedure undertaken by the Intermediate Court of Appeals of the State of Hawai'i ("ICA") in *City and County of Honolulu v. Sharon Black*, CAAP-11-0000748, (Haw. App. 2013), wherein a self-represented appellant died after filing an opening brief at the ICA. Although *Black* is not a published decision and is of limited precedential value, it is noteworthy that in its effort to ascertain the identity of a proper person to substitute for the deceased appellant, the ICA placed the onus on the appellee to confirm with the court whether a special administrator or personal representative had been appointed to represent the appellant's estate and to give the personal representative or special administrator, if any, notice: (1) of the pending appeal, copies of the opening brief, and copies of the answering brief; (2) that s/he must enter an appearance to indicate the estate's plan to continue with the appeal within the time frame specified by the ICA; and (3) that failure to do so in a timely manner may result in the dismissal of the appeal. The ICA also ordered the appellee to file a declaration indicating compliance with the foregoing.

Just as the ICA placed the onus on the appellee to confirm whether a personal representative had been appointed and to provide relevant notice of and documents pertaining to the pending appeal to the court, the Board, by

way of this order, orders **Employer and the SCF** to do the same.[1] The reasonableness of the ICA in effecting such a procedure is apparent. The Employer and the SCF, as the remaining parties to this appeal, are the only parties that have a vested interest in resolving the appeal, whether by dismissal or decision.

Further, the Board's order for Employer and the SCF to assist in ascertaining the identity of a person who may be lawfully substituted for a party who is now deceased requires only a quick, electronic search because that person must be appointed by the circuit court. *See generally*, HRS Chapter 560, Uniform Probate Code. Because the person who may be lawfully substituted for Claimant can be approved only by Hawai'i's Circuit Court, a search (electronic[2] or otherwise) of the Hawai'i State Judiciary court records will quickly reveal if a special administrator or personal representative has been appointed.

The Board's order herein will be published on the Board's website for at least 180 days. The inherent capabilities of the internet allow this order and notice to reach a world-wide public audience because the order and notice will be available for viewing 24 hours a day, 7 days a week, for as long as it is

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[1] The Board is quasi-judicial in nature; thus, where there exists no statutory authority or specific guidance regarding the exact manner by which an appeal to the Board should be handled upon the death of a party, as here, a reasonable course of action is to seek guidance from higher courts and established rules.

[2] E.g., eCourt* Kokua: http://jimspss1.courts.state.hi.us:8080/eCourt/ECC/ECCDisclaimer.iface;jsessionid=0F58DB78EAA3F8907C968D76149C0FAF

posted. Further, an internet search of Claimant's name will yield instant retrieval of this order and notice, available for review without incurring any subscription costs or membership.[3]

Publication of the Board's order herein provides additional notice beyond what the ICA or the court rules provide. In *Black*, the ICA did not publish a notice of intent to dismiss before dismissing the appellant/decedent's appeal. Rather, the ICA noted that no one representing appellant/decedent's estate moved to substitute as a party for appellant/decedent and ordered the appeal dismissed. Similarly, there is no publication requirement in Rule 25(a)(1) of the Hawai'i Rules of Civil Procedure, which states that "[i]f a party dies and the claim is not thereby extinguished," "[u]nless the motion for substitution is made not later than 120 days after the death is suggested. . . the action shall be dismissed as to the deceased party."

Being fully advised in the premises,

IT IS HEREBY ORDERED that the above-captioned appeal be held in abeyance until **Wednesday, April 29, 2026**, pending the Board's receipt of a written appearance by a court-appointed personal representative or special administrator of Claimant's estate. Such appearance is to be made on or before **Wednesday, April 29, 2026**. Extensions by the Board may be granted upon

[3] Publication via the Board's website is far superior to placement of a legal notice publication in a newspaper of general circulation, where the notice may only appear once in each of 2 successive weeks, on random dates and, perhaps, on a Sunday, and may only be available to subscribers of that particular newspaper publication.

good cause shown or at the discretion of the Board.

If the Board does not receive any of the above-referenced, written appearances on or before **Wednesday, April 29, 2026** and no extension of this deadline is granted by the Board, IT IS HEREBY ORDERED that **Employer and the SCF** will have until **Tuesday, May 19, 2026** to confirm, in writing, whether or not a special administrator or personal representative of Claimant's estate was appointed on or before **Wednesday, April 29, 2026** and by describing, at minimum, its search result(s) of the Hawai'i State Judiciary court records (e.g., eCourt* Kokua),and:

1. If a special administrator or personal representative of Claimant's estate was not appointed on or before **Wednesday, April 29, 2026**, **Employer and the SCF** shall file a declaration with the Board that confirms this, on or before **Tuesday, May 19, 2026**.

2. If a special administrator or personal representative of Claimant's estate has been appointed, **Employer and the SCF** shall, on or before **Tuesday, May 19, 2026**:

    a. Provide the special administrator or personal representative with written notice of the appeal herein, any and all Pretrial Orders pertaining to this appeal, and this Order Holding Case in Abeyance;

    b. Give notice to the special administrator or personal representative that, on or before **Monday, June 29, 2026**, the special administrator or personal representative must enter an appearance in this appeal and indicate whether the estate plans to substitute in as a party to the appeal; and

    c. File a declaration with this Board that confirms compliance with this order and includes the identity and contact information of the special administrator or personal representative of Claimant's estate.

IT IS FURTHER ORDERED that Employer shall be responsible for

providing appropriate and timely publication/notice of its pleadings, correspondence, documents, and/or materials filed with the Board, as may be required by law, as long as there exists no court-appointed personal representative or special administrator of Claimant's estate and until such time as Employer's appeal is dismissed by the Board.

YOU ARE HEREBY NOTIFIED that **Fabian Mendoza**'s appeal may be dismissed after **Wednesday, April 29, 2026**, unless **Fabian Mendoza** files with the Board a copy of the Letters of Administration entered by the appropriate Probate Court of the State of Hawaii, confirming that he is the court-appointed personal representative or special administrator of Claimant's Estate. Extensions by the Board may be granted upon good cause shown or at the discretion of the Board.

Dated: Honolulu, Hawai'i, Dec 30 2025

DAMIEN A. ELEFANTE, Chair

MARIE C.L. LADERTA, Member

HARRY YEE, Member

A digital copy of this order will also be posted on the Board's website and will remain on the Board's website for at least 180 days from the date of filing.

Fabius Mendoza
For Claimant-Appellee

Shawn L.M. Benton, Esq.
For Employer/Insurance
Carrier-Cross-Appellant

Li-Ann Yamashiro, Esq.
For Special Compensation
Fund-Appellee

Fabian Mendoza, courtesy copy

A certified copy of the foregoing was served upon the above-captioned parties or their legal representatives on the date of filing noted above.

Order mailed: Dec 30 2025

LABOR APPEALS BOARD - 830 PUNCHBOWL ST, RM 404, HONOLULU, HI 96813 - (808)586-8600

If you need a language interpreter or if you need an auxiliary aid/service or other accommodation due to a disability, please contact the Board at (808) 586-8600 and/or dlir.appealsboard@hawaii.gov as soon as possible, preferably at least ten (10) business days prior to your hearing or conference date. Requests made as early as possible have a greater likelihood of being fulfilled. If a request is received after the reply date, the Board will try to obtain the interpreter, auxiliary aid/service, or accommodation, but the Board cannot guarantee that the request will be fulfilled.

Upon request, this notice is available in alternate/accessible formats such as large print, Braille, or electronic copy.

Equal Opportunity Employer/Program
Auxiliary aids and services are available
upon request to individuals with disabilities.
TDD/TTY Dial 711 then ask for (808) 586-8600

Fabius Mendoza v. HBM Acquisitions, LLC, et al.; AB 2023-123(M); Order Holding Case in Abeyance and Notice of Intention to Dismiss Appeal Filed by Fabian Mendoza

This certifies that the foregoing is a full, true, and correct copy of the original on file in this office.

/s/ *A. Watanabe for LIRAB*