

In the Matter of the Amendment  
of the  
HAWAII RULES OF APPELLATE PROCEDURE

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**AMENDED**<sup>1</sup>

ORDER AMENDING RULE 40.2(d) OF THE  
HAWAII RULES OF APPELLATE PROCEDURE

(By: Moon, C.J., Nakayama, Acoba, Duffy, and Recktenwald, JJ.)

IT IS HEREBY ORDERED that Rule 40.2(d) of the Hawaii Rules of Appellate Procedure is amended, effective January 1, 2010, as follows (deleted material is bracketed and stricken; new material is underscored):

**Rule 40.2. APPLICATION FOR TRANSFER TO THE SUPREME COURT**

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**(d)** ~~Attorney subject to sanctions.~~ Each application for transfer shall be supported by an attorney's (or party's, if *pro se*) declaration or affidavit certifying:

- ~~(1) the declarant or affiant has thoroughly reviewed the record or agreed statement of facts and relevant law;~~
- ~~(2) the declarant or affiant understands he or she is subject to sanctions;~~
- ~~(3) the declarant or affiant is not presenting the application for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;~~
- ~~(4) each point of error to be raised and argued or the legal contentions to be put forth are warranted by existing law or by nonfrivolous argument for the extension, modification, or reversal of existing law; and~~

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<sup>1</sup> The original order was filed on December 10, 2009. This amended order reletters all subsequent paragraphs.

~~\_\_\_\_\_ (5) \_\_\_\_\_~~ each assertion of fact and statement of prior proceedings is supported by the record or the agreed statement of facts.

~~\_\_\_\_\_ (e) \_\_\_\_\_~~ **Response to the Application.** Within the time provided for responding to a motion under Rule 27(a), any other party may file a response to the application.

~~\_\_\_\_\_ (f) \_\_\_\_\_~~ **Oral argument.** There shall be no oral argument on an application for transfer unless ordered by the supreme court.

~~\_\_\_\_\_ (g) \_\_\_\_\_~~ **Determination; no reconsideration; no extensions of time.** The supreme court shall grant a mandatory application and shall accept or reject a discretionary application for transfer no later than the thirtieth day after the filing of the response to the application or, if no response is filed, within 30 days after the time the response could have been filed. The grant, acceptance, denial, or rejection of an application for transfer shall not be subject to a motion for reconsideration. Times for submitting and responding to an application for transfer shall not be extended.

~~\_\_\_\_\_ (h) \_\_\_\_\_~~ **Effect of application.** Unless otherwise ordered by the supreme court while an application for transfer is pending, the submission and processing of an application for transfer shall not stay the time in which a party must act under any provision of these rules.

DATED: Honolulu, Hawaii, December 16, 2009.