

RE: **Proposed Amendment to Rule 40.1 of the Hawai'i Rules of Appellate Procedure**

ALLOWING EXTENSIONS FOR FILING
RESPONSES TO APPLICATION FOR WRITS OF CERTIORARI

The Supreme Court of Hawai'i is seeking comments on proposed amendments to Rules 40.1(e) and 40.1(g) of the Hawai'i Rules of Appellate Procedure. The proposed amendments implement changes to HRS section 602-59(c) enacted by the Legislature during its 2017 session by the passage of Act 112.

The amendments to HRAP Rule 40.1(e) will allow the clerk to grant automatic 15-day extensions to deadlines for filing responses to an application for a writ of certiorari, if the request is timely.

The amendments to HRAP Rule 40.1(g) reflect changes in terminology contained in Act 112. The proposed amendments are attached.

Insofar as the Supreme Court has determined that good cause exists for a shortened period of comment, as the passage of Act 112 creates a need for expedited recognition of the act's provisions in the rules of court, comments about the proposed changes shall be submitted in writing no later than **Monday, October 2, 2017** by mail to the Judiciary Communications and Information Office at 417 South King Street, Honolulu, Hawai'i 96813, by facsimile to 539-4801, or via the Judiciary's website.

Attachment

**PROPOSED AMENDMENTS TO
HAWAII RULES OF APPELLATE PROCEDURE**

(Deleted material is bracketed and stricken; new material is underlined)

**Rule 40.1. APPLICATION FOR WRIT OF CERTIORARI IN THE
SUPREME COURT.**

(e) Response; form; extension of time; reply.

(1) TIME TO FILE; FORM. Within 15 days after the filing of an application for a writ of certiorari, any other party to the case may, but need not, file and serve a brief written response, not to exceed 12 pages, containing a statement of reasons why the application should not be accepted.

(2) REQUEST EXTENDING TIME; TIME TO FILE. A party may extend the time to file a response to an application for a writ of certiorari by filing a written request for an extension. The request for extension shall be filed no later than 15 days after the filing date of the application for a writ of certiorari.

(3) TIMELY REQUEST; AUTOMATIC EXTENSION; NOTICE. Upon receipt of a timely written request, the appellate clerk shall grant a 15-day extension of time to file a response to the application for a writ of certiorari. The appellate clerk shall note on the record that the extension was granted. The clerk shall give notice the request is timely and granted.

(4) NO EXTENSION IF UNTIMELY. An untimely request shall not extend the time. The clerk shall give notice the request is untimely and denied.

(5) REPLY. Within 7 days after a response is filed any party may, but need not, file and serve a reply to the statement of reasons set forth in the response. The reply shall not exceed 5 pages.

(g) Determination. The supreme court shall act upon an application for a writ of certiorari no later than 30 days after a[n] [objection] response is or could have been filed. The failure of the supreme court to accept the application within the 30 days shall constitute a rejection of the application. In cases where multiple [objections] responses are filed, the 30-day time period to accept the application for writ of certiorari shall be calculated from the date of the latest timely-filed [objection] response.
