

RE: **Proposed Amendment to Rule 40.2(d) of the
Hawai'i Rules of Appellate Procedure**

The Supreme Court of Hawai'i seeks public comment regarding a proposal to amend Rule 40.2(d) to the Hawai'i Rules of Appellate Procedure. The proposed amendment is attached hereto.

Comments about the proposed rule should be submitted, in writing, **no later than Thursday, November 19, 2009**, to the Judiciary Public Affairs Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the [online form](#) on the Judiciary's website at www.courts.state.hi.us.

Attachment

**PROPOSED AMENDMENT TO
HAWAII RULES OF APPELLATE PROCEDURE**
(Deleted material is bracketed and stricken; new material is underlined)

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~~

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