

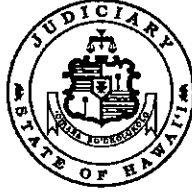
## JUDtestimony

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**From:** Karen.T.Takahashi@courts.state.hi.us  
**Sent:** Wednesday, February 09, 2011 1:28 PM  
**To:** JUDtestimony  
**Subject:** Judiciary testimony for HB299, Relating to Courts of Appeal - House Judiciary Committee, 2/11/11 @2:00pm in CR325  
**Attachments:** HB299(JUD).pdf  
**Importance:** High

Please find attached the State of Hawaii Judiciary's testimony for House Bill No. 299, Relating to Courts of Appeal, which is being heard by the House Committee on Judiciary on Friday, 2/11/11 at 2:00 p.m. in Conference Room 325.

Thanks,  
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## *The Judiciary, State of Hawaii*

**Testimony to the House Committee on Judiciary**  
Representative Gilbert S.C. Keith-Agaran, Chair  
Representative Karl Rhoads, Vice Chair

Friday, February 11, 2011, 2:00 p.m.  
State Capitol, Conference Room 325

by  
Elizabeth Zack  
Intermediate Court of Appeals Attorney

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**Bill No. and Title:** House Bill No. 299, Relating to the Courts of Appeal.

**Purpose:** To shorten the time to file an application for writ of certiorari.

### **Judiciary's Position:**

The Judiciary strongly supports this bill, which is part of the Judiciary's 2011 legislative package. The bill amends Hawaii Revised Statutes (HRS) Section 602-59 by shortening the time period to file an application for writ of certiorari with the Hawaii Supreme Court from 90 days to 30 days, with an extension of up to an additional 30 days upon request. The bill will serve to expedite the finality of judgments on appeal, especially in cases in which no application for writ of certiorari is filed.

Prior to July 1, 2006 (the effective date of the new appellate system), the time period for filing an application for writ of certiorari with the Hawaii Supreme Court was 30 days from the filing of the decision of the Intermediate Court of Appeals (ICA). When the new appellate system went into effect, the time period for filing an application for writ of certiorari was increased to 90 days from the ICA's filing of its judgment or dismissal order. The Hawaii Rules of Appellate Procedure (HRAP) were amended to reflect this expanded filing deadline. *See* HRAP Rules 36 and 41. Thus, the ICA's judgment presently becomes effective on the 91st day after entry, if no application for writ of certiorari is filed. If a timely application is filed, unless the supreme court otherwise orders, the finality of the ICA's judgment is stayed until the supreme court enters an order dismissing or rejecting the application or accepts the application and determines the certiorari proceeding. *See* HRAP Rules 36, 41.



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Although a certiorari application is actually filed in less than half of the cases decided by the ICA, the ICA's judgment on appeal does not become effective until ninety days has passed in every case in which no certiorari application is filed. In addition, most certiorari applications, which the supreme court must determine whether to accept within a fairly short time after filing (45 days at the most), are rejected by the supreme court. By substantially delaying the effective date of the ICA's judgment, especially in cases in which no certiorari application is filed, the 90-day filing period may have significant adverse consequences for litigants. For example, an incarcerated criminal defendant who has won a reversal of his/her conviction by the ICA may be required to remain in prison until the ICA's judgment becomes effective. In family court cases involving the termination of parental rights, a child seeking to be adopted may be required to wait 90 days before an ICA judgment affirming the termination of parental rights becomes effective. The 90-day filing period may also result in prolonging the time that a civil litigant who prevailed before the ICA may be required to wait before taking action based on the ICA's judgment.

Shortening the time for filing an application for writ of certiorari to 30 days after the entry of the ICA's judgment or dismissal order would serve to reduce the adverse consequences resulting from the delay in the ICA's judgment becoming effective. The 30-day time period proposed by this bill is consistent with the time period for bringing an appeal in the first instance. *See* HRAP Rule 4. Where a party needs additional time to file a certiorari application, this bill would permit an extension of no more than 30 additional days upon the written request of the party. Allowing an extension, upon request, of up to 30 additional days to file the certiorari application is consistent with the procedure for a party to seek additional time to file an appellate brief. *See* HRAP Rule 29(a).

The bill as proposed by the Judiciary had an effective date of January 1, 2012. We asked for this delayed effective date because if the bill was passed, conforming amendments to the Hawaii Rules of Appellate Procedure would be required in order to implement the new law. The bill as introduced, however, contains an effective date of July 1, 2011, which will not give the Judiciary sufficient time to make the necessary conforming amendments to the Hawaii Rules of Appellate Procedure. We therefore request that House Bill No. 299 be amended to reflect an effective date of January 1, 2012.

We respectfully request passage of House Bill No. 299 with an amended effective date of January 1, 2012. Thank you for the opportunity to provide testimony on this bill.