The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair

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State Capitol, Conference Room 325

by
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Bill No. and Title: House Bill No. 2191, Relating to Appellate Jurisdiction.

Purpose: Amends appellate jurisdiction of the supreme court and the intermediate appellate court to conditions as they existed prior to July 1, 2006. Reestablishes criteria for assigning appeals. Reestablishes requirement that most appeals be filed with the supreme court instead of the intermediate appellate court. Eff. 7/1/2019.

Judiciary's Position:

The Judiciary respectfully opposes this bill.

In 2004, the Judiciary submitted a proposal to the Hawai‘i State Legislature to restructure the appellate courts so that all appeals would go directly to the ICA. Under the system in place at the time, there was a recurring and persistent backlog of appeals, near elimination of oral argument in both appeals and original proceedings at the Supreme Court, and delay in resolution of appeals and other matters. Prior to the final enactment of the changes, the Legislature directed the formation of the Appellate Review Task Force to recommend to the Hawai‘i Legislature proposed statutory changes to ensure the smooth transition to the present appellate process. Based upon the recommendations of the Appellate Review Task Force, the 2006 legislature adopted and approved the present system of appellate review. All appeals are filed directly with the ICA and litigants may seek transfer to the supreme court by filing an Application for Transfer or may seek review of final decisions of the ICA by filing an application for a writ of certiorari. In 2016, the Legislature implemented a change through Act 48 to provide that appeals from certain agency contested case proceedings must be filed directly with the supreme court. Apart from that change and some other minor changes, the appellate process has remained the same.

The Judiciary continues to believe that the appellate system in place since 2006 is the best structure for appellate review.

When the Judiciary originally submitted its proposal in 2004, Hawai‘i was one of only five states with an ICA that required all direct appeals to be filed with the supreme court and then be assigned to an ICA. The other states were Idaho, Iowa, Mississippi, and Oklahoma. Upon legislative approval of the proposal for all appeals to be filed directly to the Intermediate Court of Appeals, Hawai‘i joined the vast majority of other states with ICAs, which include, among others, California, Colorado, Oregon, Washington, New York, New Jersey, and Massachusetts. Returning Hawai‘i to the past system would be counterproductive and a waste of judicial resources. Under the pre-2006 system, the review process for assigning appeals to either the supreme court or the ICA required that significant judicial, professional, and clerical staff resources be dedicated to review every appeal that is briefed to determine whether the appeal meets the criteria for assignment to the supreme court or the ICA. These resources, especially the judicial resources, are better used for resolving cases pending before the courts of appeals and handling the other work of the supreme court. In addition to work related to appeals, the supreme court has other important duties involving attorney discipline matters, judicial discipline matters, original proceedings, certified questions from the federal court, reserved questions from the trial courts, and statewide rule amendments.

The present process has a number of options to accelerate the process for review when needed. For cases where litigants believe direct review by the supreme court is warranted, litigants can file applications to transfer cases to the supreme court, thereby bypassing review by the ICA. Within the last three years, the supreme court has received between 22 to 25 applications each year for review, and the court has granted approximately half of the applications.

Moreover, the supreme court’s internal procedures are flexible enough to allow the court to implement procedures to enhance appellate review for certain types of cases when the need arises. For example, recognizing the importance of appeals taken from family court decisions issued in Child Protective Act cases, HRS chapter 587A, the supreme court instituted an expedited briefing schedule for such appeals. With the implementation of the expedited briefing schedule, these type of cases are resolved quickly by the ICA and litigants seldom seek further review by the supreme court.

Finally, as noted above, Act 48 now provides for appeals from administrative agencies directly to the supreme court in certain categories of cases. These include appeals from decision issued in contested case proceedings before the Commission on Water Resource Management, the Land Use Commission, the Public Utilities Commission, the Hawai‘i Community Development Authority, and cases involving conservation districts.

In sum, over the last 12 years, since its implementation, the present appellate process has proved to be an efficient way to resolve appellate cases. The current structure is the choice of

the vast majority of jurisdictions that have intermediate courts of appeals or the equivalent. Moreover, as noted above, Hawai‘i has implemented steps to ensure flexibility so that certain types of cases can be prioritized when necessary. While we are always open to suggestions for improvement, a reversion to the pre-2006 system–with its inherent inefficiencies–would be a step backward.

Thank you for the opportunity to testify on this measure.