



*THE JUDICIARY, STATE OF HAWAII*

**Testimony to the Twenty-Fourth Legislature, 2008 Session**

Senate Committee on Judiciary and Labor  
The Honorable Brian T. Taniguchi, Chair  
The Honorable Clayton Hee Vice Chair

Tuesday, March 25, 2008, 9:30 a.m.  
State Capitol, Conference Room 016

by  
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**AMENDED TESTIMONY**

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**Bill No. and Title:** House Bill No. 2697, H.D. 1, Relating to the Intermediate Appellate Court.

**Judiciary's Position:**

The Judiciary strongly supports this bill, which is part of the Judiciary's 2008 legislative package. This bill amends Hawaii Revised Statutes (HRS) chapter 602, part II to grant the Intermediate Appellate Court, also known as the Intermediate Court of Appeals (ICA), statutory authority to subpoena witnesses, and compel the attendance of witnesses and the production of books, papers, documents, or tangible things. The bill also authorizes any ICA judge to administer oaths.

We respectfully request that the Committee amend Section 3 of the House Draft to provide that the bill will take effect upon approval.

In 2004, the structure of the appellate court system in Hawai'i was altered, and effective July 1, 2006, and the ICA became a "pass-through" court responsible for hearing nearly all trial court and agency appeals in Hawai'i. See Act 202, 2004 Haw. Sess. L. 949. Under the new structure, the ICA has jurisdiction to "hear and determine appeals from any court or agency when appeals are allowed by law[.]" See HRS § 602-57(1) (Supp. 2006).



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Some of the statutes that now provide for direct appeals to the ICA permit the introduction of new evidence on appeal. See HRS §§ 232-21 ("the appellate court may permit any party to introduce, or, of its own motion, may require the taking of, additional evidence material to the matter in dispute"), 386-88 ("No new evidence shall be introduced in the appellate court, except that if evidence is offered that is clearly newly discovered evidence and material to the just decision of the appeal, the court may admit the evidence."), and 664-9 ("The intermediate appellate court . . . may permit the introduction of new evidence that could not with due diligence have been obtained before[.]").

For the ICA to effectively carry out its new functions, it is essential that it have authority to subpoena and compel the attendance of witnesses and compel the production of books, papers, documents, or tangible things. It is also essential that ICA judges have authority to administer oaths.

It is noteworthy that all Hawai'i courts except the ICA have express statutory authority to administer oaths, subpoena and compel the attendance of witnesses, and compel the production of books, papers, documents, or tangible things. See HRS §§ 602-7 (supreme court); 603-21.9(a),(b), and (c) (circuit courts); 604-7(a) and (b) (district courts); and 571-8.5(a)(1) and (2) (family courts). Additionally, state and county boards and commissions that conduct evidentiary hearings are vested with similar powers to subpoena witnesses and administer oaths. See HRS § 92-16. This bill grants the ICA the same powers that other courts and adjudicatory boards and commissions already have.

We respectfully request passage of this bill with the proposed amendment that the bill will take effect upon approval.

Thank you for the opportunity to provide testimony on this measure.