THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Fourth State Legislature, 2008 Session
Senate Committee on Judiciary and Labor
The Honorable Brian T. Taniguchi, Chair
The Honorable Clayton Hee, Vice Chair

Monday, February 11, 2008, 800 a.m.
State Capitol, Conference Room 325

by
James Branham
Staff Attorney
Supreme Court

Bill No. and Title: Senate Bill No. 2971, Relating to Appellate Jurisdiction.

Purpose: Amends HRS § 641-1 to authorize immediate interlocutory appeals from certain orders regarding injunctions and denials of sovereign, absolute, or qualified immunity.

Judiciary's Position:

The Judiciary opposes Senate Bill No. 2971, Relating to Appellate Jurisdiction. HRS § 641-1(b) already authorizes interlocutory appeals "whenever the circuit court may think [an interlocutory appeal] advisable for the speedy termination of litigation before it." HRS § 641-1(b). The requirement that the circuit court make a finding that an interlocutory appeal will more speedily terminate the litigation is an important gate-keeping function. Senate Bill No. 2971 would amend HRS § 641-1 to authorize additional interlocutory appeals from (1) orders that grant, continue, modify, refuse, or dissolve injunctions, or order that refuse to dissolve or modify injunctions; and (2) orders that deny motions seeking dismissal or judgment for the movant that are based upon sovereign immunity or absolute or qualified immunity.

The supreme court has generally disfavored interlocutory appeals under the following rationale:

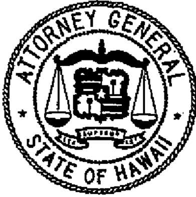
> While recognizing that most interlocutory orders disadvantage or inflict some degree of harm on one of the parties to a litigation, this court must balance that concern against the need for efficient judicial administration, the delay caused by interlocutory appeals, and

> the burden on appellate courts imposed by fragmentary and piecemeal review of the district court's myriad rulings in the course of a typical case. Allowing interlocutory appeals before a final judgment on the merits erodes the deference appellate courts owe to the district judge's decisions on the many questions of law and fact that arise before judgment.

Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998) (quoting with approval the above excerpt from Boughton v. Cotter Corp., 10 3d 746, 748-49 (10th Cir. 1993)).

Senate Bill No. 2971 would burden the appellate courts with an increase in interlocutory appeals and likely delay the resolution of the underlying cases while the appeals are pendng. The bill authorizes the trial court to exercise jurisdiction over the appealed order at the along with the appellate court, thereby increasing the workload of both courts and increasing the chance of inconsistent dispositions. Senate Bill No. 2971 would increase the number of appeals. Senate Bill No. 2971 would force appellate courts to engage in disruptive, fragmentary and piecemeal reviews of trial court rulings that would erode the deference that the appellate courts extend to trial court decisions on the many questions of law and fact that arise prior to the entry of a final judgment. As already stated, if an interlocutory appeal is advisable for the speedy termination of a case, then HRS § 641-1(a) currently authorizes a party to seek the trial court's leave for permission to assert an interlocutory appeal. And even when a trial court denies a party's request for leave to assert an interlocutory appeal under HRS § 641-1(b), "[i]n the exceptional case, parties are not without a remedy. A petition for writ of mandamus is available for extraordinary situations." Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i at 323, 966 P.2d at 635 (footnote omitted). There is no strong reason for amending the interlocutory appeal provisions in HRS § 641-1, and there are several strong reasons for leaving the interlocutory appeal provisions in HRS § 641-1 in their current form.

Thank you for the opportunity to testify on this measure.



TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:
S.B. NO. 2971, RELATING TO APPELLATE JURISDICTION.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Monday, February 11, 2008 **TIME:** 9:00 AM
LOCATION: State Capitol Room Conference Room 016
Deliver to: Committee Clerk, Room 219, 1 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Girard D. Lau, Deputy Attorney General

Chair Taniguchi and Members of the Committee:

The Attorney General strongly supports this bill. The bill adds a new section to chapter 641, Hawaii Revised Statutes, to authorize immediate appeals from certain orders regarding preliminary injunctions, and from denials of sovereign, absolute, or qualified immunity.

Currently, there is no statutory provision authorizing immediate appeals from orders granting or refusing preliminary injunctions. As a consequence, erroneous rulings of lower courts granting or refusing preliminary injunctions may not be immediately reviewable and may cause substantial, often irreparable, injury by the time the orders become final decisions that are reviewable on appeal. The new statute would allow circuit or land court orders granting or denying preliminary injunctions to be subject to immediate appellate jurisdiction, allowing aggrieved parties to seek a stay pending appeal, or other relief. This change would make state court practice consistent with current federal court practice allowing immediate appeals from preliminary orders granting or refusing injunctions. See 28 U.S.C. § 1292(a)(1).

Separately, the State of Hawaii and its officials are protected by the doctrines of sovereign, absolute, and qualified immunity, in part to ensure that qualified individuals are not deterred from

serving in Hawaii government positions. The burdens of being subject to a lawsuit can be substantial, including not only the possibly crushing monetary liability, but the tremendous burdens and expenses of the litigation itself, including discovery and trial, and the fear of the unknown, yet potentially devastating, result. Accordingly, it is important that claims of immunity are decided not only correctly, but also quickly, because forcing state officials to wait until the litigation is over to appeal erroneous denials of claims of immunity irreparably subjects them to the tremendous burdens of the litigation itself. This bill would ensure that denials of motions seeking dismissal or judgment for the defendants on grounds of sovereign, absolute, or qualified immunity would be immediately appealable. This change would make the practice in Hawaii state courts consistent with the practice that already exists in the federal courts. The federal courts have long provided for immediate appeals from denials of sovereign immunity, see Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 147 (1993), and denials of absolute and qualified immunity, see Mitchell v. Forsyth, 472 U.S. 511, 525-30 (1985).

In short, both parts of this bill would make state court practice consistent with existing federal court practice.

The immediate appealability of preliminary injunction rulings protects the public as well as private citizens or entities from the harmful and often irreparable effects of such rulings when they are erroneous.

Allowing immediate appeals of immunity denials would encourage government service, and, by protecting the State and its officials from the needless, but heavy, financial burdens of litigation that should have been terminated at an earlier stage, would save the public substantial taxpayer dollars.

For these reasons, the Attorney General strongly requests that this measure be passed.

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER LAWYERS OF HAWAII (CLH) IN OPPOSITION TO H.B. NO. 2971

February 11, 2008

To: Chairman Brian T. Taniguchi and Members of the Senate Committee on Judiciary and Labor:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Consumer Lawyers of Hawaii (CLH) in opposition to S.B. No. 2971.

The purpose of this bill is to authorize immediate appeals from certain orders regarding injunctions and from denials of sovereign, absolute, or qualified immunity.

This measure as written would result in piecemeal litigation in many cases. Currently, the court can weigh the facts of the situation, case by case, and make a determination as to whether an interlocutory appeal should be allowed. CLH feels that this is the more efficient and fair way to allow an appeal rather than give a party an automatic immediate appeal as a matter of right in the situations mentioned in this bill. We feel that there could be many instances whereby "frivolous" appeals could result.

CLH opposes this bill and request that it not pass out of this committee.

Thank you for the opportunity to testify.