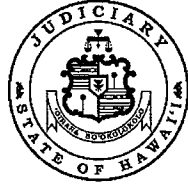


**SB2149**



## *The Judiciary, State of Hawaii*

### **Testimony to the Senate Committee on Judiciary and Government Operations**

The Honorable Brian T. Taniguchi, Chair  
The Honorable Dwight Y. Takamine, Vice Chair

Wednesday, February 10, 2010, 9:30 a.m.  
State Capitol, Conference Room 016

by  
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**Bill No. and Title:** Senate Bill No. 2149, Relating to the Intermediate Appellate Court.

**Purpose:** To permanently establish the express authority of intermediate appellate court judges to subpoena witnesses, compel the production of evidence, and administer oaths.

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

The Judiciary strongly supports this bill, which is part of the Judiciary's 2010 legislative package. This bill deletes the June 30, 2010, repeal date of Act 148, 2008 Session Laws of Hawai'i. Act 148 amended Hawai'i Revised Statutes (HRS) chapter 602, part II to grant judges of the Intermediate Court of Appeals (ICA) the express statutory authority to subpoena and compel the attendance of witnesses, to compel the production of books, papers, documents, or tangible things, and to administer oaths.

In 2004, the structure of the appellate court system in Hawai'i was changed, and effective July 1, 2006, the ICA became a "pass-through" court responsible for hearing nearly all trial court or agency appeals in Hawai'i. See Act 202, 2004 Haw. Sess. L. 939-40. Under this new structure, the ICA generally has jurisdiction "[t]o hear and determine appeals from any court or agency when appeals are allowed by law[.]" See HRS § 602-57(1) (Supp. 2008).

The new pass-through system increased the ICA's caseload. In addition, some of the statutes that now provide for direct appeals to the ICA permit the ICA to receive or require new evidence on appeal. See e.g., HRS § 232-21 (Supp. 2008) ("[T]he 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."); HRS § 386-88 (Supp. 2008) ("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."); HRS § 664-9 (Supp. 2008) ("The intermediate appellate court . . . may permit the introduction of new evidence that could not with due diligence have been obtained before[.]").

It is important for ICA judges to have clear authority to subpoena witnesses, compel the production of evidence, and administer oaths. These are powers that ICA judges must have to fully carry out all of their responsibilities. However, until the enactment of Act 148, ICA judges did not have the express statutory authority to subpoena witnesses, compel the production of books, papers, documents, or tangible things, or administer oaths. In contrast, all Hawai'i courts except the ICA had 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 (1993) (supreme court); HRS § 603-21.9 (1993) (circuit courts); HRS § 604-7 (1993) (district courts); and HRS § 571-8.5 (2006) (family courts). Additionally, state and county boards and commissions that conduct evidentiary hearings were also vested by statute with similar powers to subpoena and administer oaths to witnesses. See HRS § 92-16 (1993).

Pursuant to Act 148, the 2008 Legislature provided the ICA with the same express powers that other courts and adjudicatory boards and commissions already had. However, Section 4 of Act 148 provided that Act 148 would be repealed on June 30, 2010, the repeal date for the new appellate pass-through system. Section 2 of Act 148 also required the Judiciary to submit a report to the Legislature on the number of times the ICA exercised the subpoena power granted by Act 148.

As noted in the Judiciary's Report to the Twenty-Fifth Legislature, the ICA has not yet used the subpoena power expressly granted by Act 148. It was anticipated, however, that the subpoena power would be infrequently used. Appellate courts typically decide cases based on the evidentiary record that was established in the court or tribunal whose decision is being appealed. The express subpoena power was sought and is important to ensure that the ICA is equipped to fulfill its responsibilities when the need arises.

ICA judges have used the express authority to administer oaths granted by Act 148 on five occasions. These include four occasions in which ICA judges administered the attorney's oath of office to law clerks who earned admission to the bar and one occasion in which an ICA judge administered the oath of office to the incoming board and officers of a community organization.

We respectfully request passage of this bill. Thank you for the opportunity to provide testimony on this measure.