



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

March 21, 2019, 2:05 p.m.
State Capitol, Conference Room 325

by
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Bill No. and Title: Senate Bill No. 189, S.D. 1, Relating to Designating Substitute Judges on the Intermediate Court of Appeals.

Purpose: Provides statutory authorization for the Chief Justice to designate circuit court judges, retired intermediate appellate judges, or retired supreme court justices to temporarily fill a vacancy on the intermediate court of appeals.

Judiciary's Position: Support.

On February 7, 2019, the House Committee on Judiciary previously held a hearing on the House companion bill—House Bill No. 513—and recommended the measure be passed with a minor revision. Senate Bill No. 189, S.D. 1, includes a technical, nonsubstantive amendment for the purposes of clarity and consistency. The Judiciary requests the Committee pass Senate Bill No. 189, S.D. 1 in its current form.

The bill would amend Section 602-55 of the Hawaii Revised Statutes (HRS) to allow the intermediate court of appeals to have a full complement of six judges to address its heavy case load, even when there is a vacancy on the court.

To put the bill into perspective, the intermediate court of appeals was created in 1979 as a result of the 1978 Constitutional Convention. See 1979 Haw. Sess. Laws, Act 111, § 3. Initially, the intermediate court of appeals consisted of a chief judge and two associate judges. Id. The intermediate court of appeals began operations in April 1980. In the years that followed, the Legislature approved doubling the size of the intermediate court of appeals to six judges. A



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fourth judgeship was approved in 1992 and two more judgeships were approved in 2001. 1992 Haw. Sess. Laws, Act 253, § 2; 2001 Haw. Sess. Laws, Act 248, § 1. The intermediate court of appeals has a significant and complex caseload. With more flexibility and opportunity to address temporary vacancies on the court, while any vacancies are in the process of being filled, the court is better able to effectively and timely decide appeals.

Currently, HRS § 602-55 requires the intermediate court of appeals to decide cases in panels of not less than three judges, and authorizes the Chief Justice to designate circuit court judges, retired intermediate appellate judges, or retired supreme court justices to temporarily fill a need on the intermediate court of appeals when “the number of available intermediate appellate judges is insufficient to make up a panel because of vacancy or disqualification[.]”

The statute, previously codified at HRS § 602-16, originally appeared in the 1979 law that created the intermediate court of appeals. 1979 Haw. Sess. Laws, Act 111 § 3. The statute’s genesis is from a time when the intermediate court of appeals was comprised of only three judges. At that time, if there was a vacancy on the intermediate court of appeals, then the intermediate court of appeals necessarily could not make a three-judge panel and the Chief Justice could temporarily fill the vacancy. But now that the court is comprised of six judges, and the Chief Justice’s authority to designate a substitute judge arises only when the number of “available” intermediate court of appeals judges is insufficient to make up a panel, the threshold is met only when four of the six intermediate court of appeals judges are disqualified, or there is a combination of disqualifications and vacancies that leave fewer than three intermediate court of appeals judges available to comprise a panel.

The proposed amendment would allow the Chief Justice to designate the same category of circuit court judges, retired intermediate appellate judges, or retired supreme court justices to serve temporarily to fill a vacancy on the intermediate court of appeals, thus maintaining its full complement of six judges to address its heavy case load without compromising efficiencies.

Thank you for the opportunity to testify on this measure.

Appellate Section Hawaii State Bar Association

March 19, 2019

Hearing on S.B. 189, S.D. 1, House Judiciary Committee,
March 21, 2019 at 2:05 p.m.

Dear Chair Lee, Vice-Chair San Buenaventura, and Members of the Committee:

On behalf of our colleagues in the Hawaii State Bar Association's Appellate Section, we write in strong support of S.B. 189, S.D. 1, Relating to Designating Substitute Judges on the Intermediate Court of Appeals. Our section is comprised of appellate specialists and the functioning of the state appellate courts is of keen interest to us.

The Intermediate Court of Appeals (ICA) resolves the vast majority of the state court appeals and is comprised of a chief judge and 5 associate judges. When an ICA judge retires from the bench, the lengthy process of choosing her or his successor can take many months and leaves the ICA effectively reduced to 5 judges instead of 6. The most recent changes at the ICA are emblematic of this problem: former Chief Judge Craig Nakamura retired, and then-Associate (now Chief) Judge Lisa Ginoza was nominated to replace him, and then-Circuit Court (now ICA Associate) Judge Keith Hiraoka was nominated to replace her. This left the ICA with two vacancies in succession, both of which took substantial time to fill.

We applaud the thorough process by which appellate judges are chosen, through our Judicial Selection Commission, the Governor, and the Senate. But the pragmatic impact of that lengthy process can and does leave the ICA short-staffed, which ripples through the court's appellate case load and exacerbates the appellate backlog. This bill proposes a straightforward solution: allow the Chief Justice to designate substitute judges when the ICA has a vacancy. This mechanism is already commonly used when any of the Justices of the Hawai'i Supreme Court must recuse themselves. It would be of great assistance to the appellate courts and would take comparatively little effort to implement. We strongly urge the Committee to pass this measure.

Thank you.

Michelle Comeau, Section Chair
Deirdre Marie-Iha, Legislative Liaison