



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Human Services

Senator Russell E. Ruderman, Chair

Senator Karl Rhoads, Vice Chair

Monday, February 10, 2020, 2:45 p.m.

State Capitol, Conference Room 016

by

Elizabeth Zack

Supreme Court Staff Attorney

Bill No. and Title: Senate Bill No. 2118, Relating to Discretionary Transfers to the Supreme Court.

Purpose: Allows child custody appeals to be transferred from the Intermediate Court of Appeals to the Supreme Court, except in cases brought under the Child Protective Act.

Judiciary's Position:

The Judiciary supports this bill as written.

The stated mission of the family court is to provide a fair, speedy, economical, and accessible forum for the resolution of matters involving families and children. The proposed legislation does not include appeals from family court cases involving the termination of parental rights, because the supreme court already has an expedited process in place for those cases. With regard to other child custody matters, litigants presently have to wait until the Intermediate Court of Appeals issues a decision and then file an application for certiorari with the supreme court. The Judiciary believes the implementation of Senate Bill No. 2118 will help the Judiciary meet the stated mission of the family court by offering litigants in child custody appeals, other than those involving termination of parental rights, the opportunity to bypass the Intermediate Court of Appeals and expedite the resolution of the appeal by applying for a transfer to the supreme court.

Thank you for allowing the Judiciary submit testimony in support of this bill..

Appellate Section Hawaii State Bar Association

February 7, 2020

**Hearing on S.B. 2118, Relating to Discretionary Transfers to the Supreme Court
Senate Committee on Human Services, February 10, 2020 at 2:45 p.m.**

Dear Chair Ruderman, Vice-Chair Rhoads, and Members of the Committee:

On behalf of our colleagues in the Hawaii State Bar Association's Appellate Section,¹ we write in support of S.B. 2118, Relating to Discretionary Transfers to the Supreme Court. Our section is comprised of appellate practitioners and the functioning of the state appellate courts is of keen interest to us.

This bill would add appeals which involve an issue of child custody to the list of appeals where any of the parties on appeal may seek discretionary transfer from the Intermediate Court of Appeals (ICA) to the Hawai'i Supreme Court. Hawaii Revised Statutes (HRS) § 602-58(b). As defined in the bill, these would not include child custody disputes stemming from HRS chapter 587A, the child protective act. Thus the affected child custody dispute appeals would be those stemming from private divorce proceedings and the like.

Procedurally, transfers from the ICA to the Hawai'i Supreme Court are handled under a well-established process governed by Hawai'i Rules of Appellate Procedure (HRAP) 40.2. This rule sets out the timing for an application to transfer, the contents of that filing, and the time period during which the Hawai'i Supreme Court will resolve such an application.

The HSBA Appellate Section supports this measure because it offers an additional method to resolve child custody disputes in the appellate courts, and does so within the framework of our existing division of state appellate court jurisdiction between the ICA and the Hawai'i Supreme Court. Parties (from any side) would have the option of seeking transfer, which the Hawai'i Supreme Court would have the discretion to grant or deny. If the issues in a particular child custody appeal should be resolved at the Hawai'i Supreme Court in the first instance, a party to an appeal would have the opportunity to explain why this is so for their case in their application to transfer. Because this proposal has the benefit of using an existing system in our rules of appellate procedure, adding these appeals to the grounds on which discretionary transfer may be sought should not add any substantial delays to the appellate process.

We urge the Committee to pass this measure. Thank you.

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

¹ The views and opinions expressed here are those of the HSBA's Appellate Section. The HSBA Board has not reviewed or approved the substance of the testimony submitted.