

HB-338-HD-1

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Testimony for JDC on 3/18/2021 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

Stand in Support

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The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature, 2021 Regular Session

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Thursday, March 18, 2021, 9:15 a.m.
VIA VIDEOCONFERENCE
Hawai‘i State Capitol

by
Elizabeth Zack
Supreme Court Staff Attorney

Bill No. and Title: House Bill No. 338, H.D.1, Relating to the Judiciary.

Purpose: Amends Hawai‘i Revised Statutes 601-7 to require an appellate court to conduct a hearing when a conflict of interest pertaining to a judge or justice is alleged by motion of any party to any suit, action, or proceeding of the appellate courts.

Judiciary’s Position:

The Judiciary takes no position on this bill, but offers the following comments and suggestion.

Parties to cases pending before the Intermediate Court of Appeals (ICA) and the Supreme Court can already file motions to disqualify the judges of the ICA or justices of the Supreme Court and have done so in the past. Nothing precludes the litigants from requesting a hearing in these matters. In addition, in matters where the ICA issues a decision on a motion to disqualify, any party can seek further review by the Supreme Court. See *Arquette v State*, 128 Hawai‘i 423, 447 (2012) (In a certiorari proceeding, the Supreme Court reviewed an ICA decision on party’s request to recuse an ICA judge and set forth the standard to review such motions). However, providing for a hearing every time a motion to disqualify is filed may have unintended



consequences or may be impractical. For example, if an inmate files a motion to disqualify an ICA judge or Supreme Court justice and wishes to attend an in-person hearing, the appellate courts are not equipped to provide necessary security at Ali‘iolani Hale. Further, there may be circumstances in which motions to disqualify are based upon reasoning that could be considered frivolous. Under such circumstances, the judges or justices reviewing the motion should have the discretion to determine whether a hearing is warranted.

Finally, research of this issue reveals that several state supreme courts have adopted rules of procedure for consideration of motions to disqualify an appellate judge or justice. At present, there is no provision in the Hawai‘i Rules of Appellate Procedure, which governs appellate practice, that specifically addresses motions to disqualify. Pursuant to Article VI, section 7 of the Hawai‘i Constitution, the Supreme Court has the power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedures, and appeals. To assist with implementing this constitutional authority, the Supreme Court established an Appellate Rules Committee to consider amendments to the appellate rules. The Committee includes representatives from the appellate courts, the private civil and criminal bars, the Honolulu Prosecuting Attorney, the Office of the Public Defender, and the Department of the Attorney General. When recommendations are finalized, the Supreme Court releases the proposed amendments for public comment before acting upon them.

Given the issues raised by this bill and the constitutional authority of the Supreme Court to promulgate rules of court, the Judiciary respectfully asks the legislature to defer this legislation to enable the Appellate Rules Committee to consider amendments to address the issues raised by HB338, H.D.1 and submit its recommendations to the Supreme Court for consideration.

Thank you for the opportunity to testify on this measure.