



## *The Judiciary, State of Hawai'i*

**Testimony to the Thirty-First Legislature, 2022 Regular Session**

**Senate Committee on Human Services**  
Senator Joy A. San Buenaventura, Chair  
Senator Les Ihara, Jr., Vice Chair

Thursday, January 27, 2022, 3:10 PM  
State Capitol, Conference Room 225  
VIA VIDEOCONFERENCE

by:

Rodney A. Maile  
Administrative Director of the Courts

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**Bill No. and Title:** Senate Bill No. 2343, Relating to the Family Court.

**Purpose:** Makes decisions of the family court appealable to the supreme court instead of the intermediate court of appeals.

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

The Judiciary respectfully opposes this bill, but offers suggestions to address the concerns raised about the length of time experienced by parents and children awaiting disposition of appeals from family court decisions.

The Judiciary recognizes that appeals involving the custody of children must be decided in a timely fashion. To this end, the Supreme Court has adopted an expedited process for handling family court termination of parental rights cases, which allows for accelerated appeal deadlines and advancement of the appeals for disposition. See Rules Expediting Child Protective Appeals. In addition, both the Supreme Court and the Intermediate Court of Appeals (ICA) give priority to termination of parental rights cases, and family court matters involving the custody of children.

For fiscal year 2020-2021, there were 52 Family Court appeals terminated by the ICA. Of the 52 final dispositions in the ICA, only nine litigants filed an application for writ of certiorari in the Supreme Court (and only three of those concerned the custody of a child). Thus, the majority of Family Court appeals are resolved by the ICA and do not come before the Supreme Court. As proposed under this bill, all 52 of those matters would have come to the Supreme Court in the first instance – a significant expansion of the Court’s caseload, which would detract from its ability to timely resolve other pressing matters, including its own direct appeals.<sup>1</sup>

SB2343 cites three cases as examples of delays in child custody matters. Two of those appeals did not involve the custody of children. Cox v. Cox, 138 Hawai‘i 476, 382 P.3d 288 (2016), involved the award of appellate attorney fees arising out of a divorce action. Brutsch v. Brutsch, 139 Hawai‘i 373, 390 P.3d. 1260 (2017), involved division of the husband’s inheritance in a divorce action, and the opinion was clear that the issue of child custody was resolved and was not the subject of the application for writ of certiorari before the Supreme Court.

Tumaneng v. Tumaneng 138 Hawai‘i 468, 382 P.3d 280 (2016), did involve the custody of a child in a divorce action. Review of the record shows, however, that a portion of the time the case was pending in the appellate courts was the result of requests for extensions in the briefing schedule filed by both parties to the appeal. Once briefing was complete, the ICA issued its decision quickly. Within seven months of accepting the application for writ of certiorari, the Supreme Court issued its published opinion.

The Judiciary firmly supports the Family Court’s mission “to provide a fair, speedy, economical, and accessible forum for the resolution of matters involving families and children.” Importantly, there are already procedures in place to ensure Family Court appeals involving the custody of children are timely and expeditiously resolved and, thus, the Judiciary believes that the appellate forum change proposed by SB2343 is not necessary. The Judiciary is open, however, to considering changes that may further expedite appeals from final decisions entered in Family Court matters. In the spirit of the proposed legislation, one change that would have a direct impact and further advance the goal envisioned by SB2343, is an amendment to HRS section 602-58(b)<sup>2</sup> to permit the supreme court to grant an application for transfer of any appeal in the ICA involving the custody of children. Such an amendment would address the concerns raised in SB2343 while ensuring the Supreme Court will still have the ability to timely resolve

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<sup>1</sup> Contested case hearings before the commissions on Water Resource Management (HRS ch. 174C), Land Use (HRS ch. 205), Public Utilities (HRS ch. 269), the Hawai‘i Community Development Authority (HRS ch. 206E), and cases involving conservation districts (HRS ch. 183C), are appealed directly to the Supreme Court.

<sup>2</sup> HRS section 602-58 sets forth the statutory grounds pursuant to which the Supreme Court may grant an application for transfer, which effectively transfers an appeal from the ICA to the Supreme Court for direct appellate review.

other types of cases, apart from child custody cases, that are also given priority status by statute.<sup>3</sup> The Judiciary is available to work with the Committee to address this issue.

Thank you for the opportunity to submit testimony on this measure.

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<sup>3</sup> At present, there are over twenty types of appeals that are given priority by statute or case law. Some of those appeals include: HRS section 641-13(7) (appeals by the state in criminal cases involving pretrial orders granting motions to suppress evidence, to suppress confessions, or for return of property); HRS section 11-52 (appeals from election registration decisions made by the board of registration); HRS section 232-19 (appeals from the Tax Appeal Court); HRS section 92F-15(f) (appeals from actions to compel disclosure of government records under the Uniform Information Practices Act); HRS section 101-34 (interlocutory appeals from eminent domain decisions involving the issue of public use or superior use of the property to be condemned); HRS section 37D-10 (appeals from a first circuit decision on the validity of a financing agreement); HRS section 201B-15(e) (appeals from circuit court decisions on the validity of HRS ch. 201B or actions of the Hawai'i Tourism Authority), and all contested case hearing direct appeals to this court.

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Tuesday, January 25, 2022

RE: SB 2343 RELATING TO THE FAMILY

THE SENATE  
THE THIRTY-FIRST LEGISLATURE REGULAR SESSION OF 2022  
COMMITTEE ON HUMAN SERVICES

Senator Joy A. San Buenaventura, Chair  
Senator Les Ihara, Jr., Vice Chair

NOTICE OF HEARING  
Thursday, January 27, 2022  
3:10PM

Dear Chair Buenaventura and members of the Committee on Human Services,

Please let this communication serve as my personal support in favor of passing SB 2343 relating to the Family court in order to make decisions of the family court appealable to the supreme court instead of the intermediate court of appeals. I am a divorced male, single parent and father of three children. As the primary caregiver/homemaker for my children the majority of their lives, I have found great inequities in the application of constitutional law where the Family Court of the First Circuit, State of Hawaii is yet evolving in the fair application of rights afforded to fathers as it is to mothers therefore where the Hawaii Supreme Court is founded upon the highest expression of constitutional and statutory law, I support the ability for a litigant suffering an appeal pursuant to litigation pertaining to the family or 'ohana to be provided a fair, speedy, economical, and accessible forum for the resolution of matters to be addressed thru the Supreme Court in order to avoid wrongful deprivation and/or to avoid any delays experienced by parents and children while awaiting the disposition

of an appeal from family court decisions where lack of timely access to procedural and/or substantive rights could arguably violate the due process clauses of both the state and federal constitutions. I remain firmly steadfast in the knowledge that a healthy family unit is the single most important factor affecting the ascension of humanity and ask for your support in providing the mechanism to assist in protecting the heart of our society, of our nation and of the world. I support SB 2343 and recommend the committee on Human Services take immediate action in favor of passing this bill. Thank you for allowing me the opportunity to testify.

Sincerely,

Robert Quartero

**SB-2343**

Submitted on: 1/25/2022 3:50:12 PM

Testimony for HMS on 1/27/2022 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Dara Carlin, M.A.	Individual	Support	No

Comments:

Stand in support.