



**TESTIMONY**

House Committee on Judiciary & Hawaiian Affairs

**Hearing: Tuesday, March 15, 2022 (2:00 p.m.)**

TO: The Honorable Mark M. Nakashima, Chair  
The Honorable Scot Z. Matayoshi, Vice Chair

FROM: Shannon S. Sheldon  
HSBA President

RE: Senate Bill No. 2390, SD2  
Relating to the Judiciary

The hallmark pillar of the American Judicial System is the accurate and expeditious application of statutes, ordinances, administrative rules and regulations, and case precedent, to the issues raised in a dispute brought to the attention of a Court. Equally important, is the provision of a forum that is fair and provides the opportunity for parties to raise their concerns for dispute resolution. Dispute resolution allows parties to move on and plan for the future. This is true for personal disputes as well as commercial disputes and criminal charges. These principles are applicable in all levels of State and Federal Courts. In both judicial systems there are trial levels and appellate levels.

In Hawaii we are fortunate to have two appellate levels—the Intermediate Court of Appeals (ICA) and the Supreme Court. The Hawaii State Bar Association (HSBA) is here today to **SUPPORT** Senate Bill 2390, SD2 which proposes to expand the ICA from 5 judges to 6 judges. This expansion would allow the formation of additional three-judge panels to resolve civil, criminal, and family appeals.

The local legal community is very familiar with the significant caseload of the ICA, which will only increase when the trial courts are fully operational to accommodate the backlog of jury trials and non-jury caused by COVID preventative health and safety Executive and Judicial Orders.

The ICA caseload for the past three years is as follows:

	Pending Cases	New Cases Filed	TOTAL Caseload and Motions	Resolved or Terminated	Pending EOY
FY 2018-2019	923	3013	3936	3039	897
FY 2019-2020	897	2718	3615	2694	921
FY 2020-2021	921	2328	3248	2316	932

Source: Intermediate Court of Appeals

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Cases are disposed of through: Published Opinions, Memorandum Opinions, Summary Disposition Orders, Motions to Dismiss granted, Dismissed by Court Orders, Withdrawn or Discontinued, or other actions.

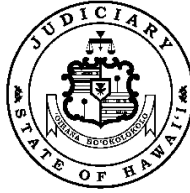
Even during the peak of the COVID lockdowns Executive Orders and Judiciary Orders involving delays of in-person proceedings, the ICA was able to pivot and continue its work.

As Hawaii looks forward to eventually move to an endemic from the pandemic, the ICA can anticipate a significant increase in its caseload as the trial courts dispose of their backlogs of civil, criminal and family cases. The backlog is especially acute in civil cases requesting jury trials or involving out-of-state witnesses or extensive exhibits for evidentiary purposes. Criminal cases with constitutional considerations and certain family cases involving imminent danger receive priority case disposition.

Resolution of civil commercial disputes are important to Hawaii's economic recovery. More important is the resolution of family disputes especially the cases involving the health and safety of our most vulnerable, keiki and kupuna.

The Hawaii State Bar Association requests that the proposed funding in this bill not detract from the Judiciary's priorities noted in its legislative package introduced at the request of the Chief Justice.

Thank you for this opportunity to provide comments in **STRONG SUPPORT** of Senate Bill 2390, SD2.



## *The Judiciary, State of Hawai‘i*

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

#### **House Committee on Judiciary and Hawaiian Affairs**

Representative Mark M. Nakashima, Chair  
Representative Scot Z. Matayoshi, Vice Chair

Tuesday, March 15, 2022, 2:00 p.m.  
Hawai‘i State Capitol  
Conference Room 325 and Videoconference

by  
Chief Judge Lisa M. Ginoza  
Intermediate Court of Appeals

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**Bill No. and Title:** Senate Bill No. 2390, S.D.2, Relating to the Judiciary.

**Purpose:** Increases the number of associate judges on the Intermediate Court of Appeals from five to six. Appropriates funds. (S.D.2)

#### **Judiciary's Position: Strong Support**

This bill would amend Hawai‘i Revised Statutes (HRS) § 602-51 to increase the number of associate judges on the Intermediate Court of Appeals (ICA) from five to six. This would result in a total of seven ICA judges – the chief judge and six associate judges. This bill also appropriates funds for the establishment of one permanent full time ICA judge position, one permanent full time judicial assistant position, two permanent full time law clerk positions, and for equipment, books and furniture for the new judge’s chambers.

The Judiciary supports this bill because an additional ICA associate judge and support staff will allow the court to resolve more appeals in a shorter amount of time and will greatly assist in the effort to address the historical backlog of appeals.

The ICA decides appeals in panels of three judges. The ICA was created in 1979 as a result of the 1978 Constitutional Convention. 1979 Haw. Sess. Laws, Act 111, § 3. The court



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began operations in April 1980, with a chief judge and two associate judges. Since then, HRS § 602-51 has twice been amended to increase the size of the court to its current number of six judges – a chief judge and five associate judges. In 1992, the Legislature created a fourth judge position. 1992 Haw. Sess. Laws, Act 253, § 2. In 2001, two more judge positions were created. 2001 Haw. Sess. Laws, Act 248, § 1. Those two additional judge positions were filled in mid-2004, at which point the court reached its current number of judges (almost eighteen years ago).

Thereafter, effective July 1, 2006, the Legislature restructured Hawai‘i’s appellate court system to increase the ICA’s caseload and responsibilities. Prior to July 1, 2006, all appeals were filed with the Hawai‘i Supreme Court, which then designated a portion of those appeals to the ICA for disposition. Since July 1, 2006, subject to certain exceptions, all appeals are filed with the ICA and the ICA is responsible for resolving each of these appeals (unless a transfer is requested and granted to the Hawai‘i Supreme Court). The ICA’s decisions are then subject to discretionary review by the Hawai‘i Supreme Court.

At the end of fiscal year 2005-2006, just prior to the restructuring of the appellate court system, the number of pending appeals in the ICA was 347 appeals.<sup>1</sup> Due to the change in appellate structure, a large number of appeals were also transferred to the ICA. Then, over the course of the next fifteen years, between FY05-06 and FY20-21, there were 8,121 appeals filed in the ICA (an average of 541 appeals filed each year) and the ICA terminated 7,872 appeals (an average of 524 terminated each year). Although the ICA has resolved a large number of appeals since the appellate restructuring, there has been a net further increase of 249 pending appeals during that fifteen-year period. In total, with all of the above combined, there were 862 pending appeals at the end of fiscal year 2020-2021.

In addition to the increased volume of appeals, restructuring of the appellate system resulted in a greater number of complex appeals being addressed by the ICA because it is now the court of first review in most appeals. However, parties can request that the Hawai‘i Supreme Court transfer certain cases from the ICA to the Hawai‘i Supreme Court, and under Act 48 (2016) certain categories of appeals go directly to the Supreme Court.

Under the restructured appellate system, the ICA is also required to conduct the initial review in each appeal before it to ensure appellate jurisdiction. This can sometimes be a time-consuming and adversarial issue. Additionally, the ICA must resolve between 2,000 to 3,000 procedural and substantive motions each year, which adds to the work load of each ICA judge.

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<sup>1</sup> The testimony submitted to the Senate Judiciary Committee indicated 356 pending appeals at the end of FY05-06, but that number included nine pending motions.



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As an appellate court, the ICA's opinions establish law that is binding upon and provides guidance to trial courts and administrative agencies. Due to the appellate restructuring, the ICA is where most appeals will begin and end. The restructuring resulted in several staff attorneys being relocated from the Hawai'i Supreme Court to the ICA. In past years, the Judiciary's legislative package included a request for another staff attorney position, but that request was not approved. The Judiciary supports this current bill, which would provide even greater resources for the ICA's efforts to address its large and challenging case load. Enhancing the ICA's ability to render well-reasoned decisions more expeditiously provides a great benefit to the public and improves the administration of law in Hawai'i.

The amendments in the S.D.2 version of the bill changed the appropriations to unspecified amounts and changed the effective date, to facilitate further discussion. The Judiciary notes that an appropriation for the additional judge would be needed and that staff to support a new judge would be very important. A new associate judge would have great difficulty carrying out the duties of the position without staff support. Each of the current judges on the ICA has the support of a judicial assistant and two law clerks, who all work together as a team to tackle the many responsibilities in resolving challenging appellate cases. Given the complexity and volume of the work, appropriate staff support is important.

In sum, adding another ICA associate judge, together with the full complement of support staff, would enable the Judiciary to resolve more appeals more expeditiously, including high priority matters such as cases involving termination of parental rights, child custody, criminal cases where the defendant is in custody, and other cases given priority by statute. The Judiciary strongly supports this bill. The Judiciary requests that the amounts in the S.D.1 version of the bill be restored and that the effective date also be restored to July 1, 2022. The Judiciary further requests that this bill not detract from the Judiciary's priorities set out in its legislative package.

Thank you for the opportunity to testify on this measure.

**SB-2390-SD-2**

Submitted on: 3/12/2022 12:31:04 PM

Testimony for JHA on 3/15/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I support SB2390 but find it wanting. I object to the use of defective effective dates and find that they do not serve to encourage future discussion, they are a cop out, and often end in the defeat of a bill during conference committee. The effective date should be changed to effective upon approval.

I do not know what necessitated the introduction of this bill, but it makes sense. There should be an odd number of justices to easily determine a majority. Please move this bill forward.

To the Honorable Representative Mark M. Nakashima, Chair, and Members of the House Committee on Judiciary and Hawaiian Affairs :

Thank you for this opportunity to submit testimony in strong support of SB2390 SD2.

We are retired judges who served on the Hawai`i Intermediate Court of Appeals.

It is important that the people of this State not only have access to the judicial system, but that the resolution of their business before the courts is done in a fair and timely manner. The judges on the ICA do their level best to achieve both of these goals. However, without sufficient personnel, their ability to accomplish this is limited. When Act 202 took effect in January 2006, there were over eight hundred cases pending. One of the reasons for the dramatic change in responsibility for these appeals was the hope that, by tasking the ICA with the initial review of virtually all appeals, a reduction in the so-called backlog in appeals could be achieved. However, no increase in the number of judges on the ICA came with the dramatic increase in caseload.

Over the last sixteen years for which statistics are available, the average number of new cases filed roughly mirrors the average number of resolutions. It is true that in some years new filings increased or decreased and in some years the number of cases terminated also varied. It is true that over the years significant turnover in judges occurred, which on average, reduced the number of judges for six months at a time. It is also true that the number of new filings peaked back in the 2016-17 fiscal year. It should also be noted that a case filed in one fiscal year is not necessarily resolved in that same fiscal year. Nevertheless, the new and concluded case numbers are, on average, virtually identical, and in most years the raw numbers increased or decreased in tandem. Notwithstanding these variables, that the number of terminations roughly equals the number of new cases over these many years speaks to the constancy of the effort and leads to the conclusion that these numbers are not likely to change without some significant kind of intervention. Additional personnel is the most direct method of resolving more cases while keeping the quality of the review consistent.

Based on our experience and the performance of the ICA, we strongly support passage of this measure.

Respectfully submitted,  
Corinne K.A. Watanabe  
Alexa D. M. Fujise

## **Appellate Section Hawaii State Bar Association**

Hearing on S.B. No. 2390 S.D. 2, Relating to the Judiciary  
March 15, 2022 at 2:00 p.m.

House Committee on Judiciary & Hawaiian Affairs  
Honorable Mark M. Nakashima, Chair  
Honorable Scot Z. Matayoshi, Vice Chair

Dear Chair, Vice Chair, and Members of the Committee:

On behalf of our colleagues in the Hawaii State Bar Association's Appellate Section,<sup>1</sup> we write in **strong support** of S.B. 2390 S.D. 2. Members of the section are appellate specialists, and we have a keen interest in the proper functioning of the state appellate courts.

The Intermediate Court of Appeals (ICA) resolves the vast majority of the state court appeals with only a chief judge and 5 associate judges. By the numbers, the ICA does the work of more than six judges. But for years, it has ended the fiscal year with a backlog of more than 700 pending cases. As a result, it often takes three or more years for normal appeals to be decided.

Due to the delays in the ICA, the Legislature has enacted or considered measures that permit certain cases to bypass the ICA with appeals directly to the Hawaii Supreme Court. For example, in 2016, Act 48 allowed specified contested case proceedings to appeal directly to the Hawaii Supreme Court. Bills such as H.B. 339 and S.B. 2343 this session would provide for direct appeals to the supreme court in family court proceedings. These proposals may fix a symptom for some cases, but ultimately will lead to more problems because the Hawaii Supreme Court cannot shoulder a substantially increased caseload. As a result, delays will increase for all cases.

The ICA needs another judge. With an added associate judge, the ICA will be able to reduce its backlog to a manageable size, significantly decreasing the current delays experienced by parties. This proposal will provide stability and help maintain public trust in the Judiciary as an institution that can provide *timely* justice.

Thank you for the opportunity to testify in **strong support** of S.B. 2390 S.D. 2.

Deirdre Marie-Iha, Section Chair

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<sup>1</sup> 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.



March 13, 2022

The Honorable Mark M. Nakashima  
Chair, House Committee on Judiciary and Hawaiian Affairs  
Hawai'i State Capital, Conference Room 325 via Videoconference

Re: SB 2390, SD2 -- RELATING TO THE JUDICIARY

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

I strongly support SB 2390, SD2, which adds an Associate Judge to the Intermediate Court of Appeals (ICA) and provides related funding for the new judge position.

As a former Chief Judge and Associate Judge of the ICA (2004-2018), I can attest to the dedication and hard work of the judges and staff on the court. Despite our best efforts, keeping up with the ICA's heavy caseload has always presented an extremely difficult challenge.

The 2006 restructuring of Hawai'i's appellate system elevated the importance and role of the ICA. Under the restructured system, the ICA became responsible for a markedly increased caseload and for resolving more complex cases. Since 2006, almost all appeals are filed with the ICA, and the ICA is the court that finally resolves the vast majority of appeals.

The new Associate Judge position will provide the ICA with critical resources necessary to address its caseload. It will enable the ICA to resolve more cases at a faster pace, while maintaining the ICA's high standards for rendering well-reasoned and thoughtful decisions. Adding a new Associate Judge to the ICA is an investment in the administration of justice that will greatly benefit our community.

Thank you for the opportunity to present testimony in support of SB 2390, SD2.

Sincerely,



Craig H. Nakamura

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

GLORIA CHANG  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
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**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
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ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS  
ON  
SENATE BILL NO. 2390, S.D. 2

**March 15, 2022**  
**2:00 p.m.**  
**Room 325 and Videoconference**

RELATING TO THE JUDICIARY

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 2390, S.D. 2, increases the number of judges on the intermediate appellate court from five to six associate judges. This bill also makes an unspecified general fund appropriation to the Judiciary in FY 23 for the purposes of establishing permanent full-time equivalent positions and covering incidental costs for: 1) one intermediate appellate court associate judge; 2) one judicial assistant; and 3) two law clerks.

B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and

- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.

**LATE**

**SB-2390-SD-2**

Submitted on: 3/14/2022 4:03:26 PM

Testimony for JHA on 3/15/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Lawrence M. Reifurth	Individual	Support	Written Testimony Only

Comments:

TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS, THE HON. MARK M. NAKASHIMA, CHAIR, AND THE HON. SCOT Z. MATAYOSHI, VICE CHAIR.

As a former associate judge on the Hawaii Intermediate Court of Appeals (ICA), I write in strong support of SB2390 SD2 (and apologizing for my late testimony, as I am currently away from home and out of town).

The bill will allow the ICA to resolve appeals more quickly and to address the current backlog of cases without sacrificing the quality of its decisionmaking. I applaud the vision and understanding demonstrated by the bill's author(s) and supporters. The ICA is a central feature to the appellate process adopted by our state legislature for the provision of case resolution and the determination of justice for users of the system. The number of appeals filed each year with the ICA and the Hawaii Supreme Court, along with the oft-stated appreciation of system users (lawyers and parties alike) for the ICA's devotion to balancing the need for quick resolution of cases with an explanation for its decisions, illustrates the value that would, I submit, be provided by authorizing an additional judge to assist with that caseload.

While appreciating the need to balance competing spending needs, I thank you for considering the value that so many would find in such an expenditure here and encourage you, accordingly, to pass the bill and forward it on to the Finance Committee for its consideration.