



The Judiciary, State of Hawai‘i

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

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

Tuesday, February 1, 2022, 9:30 a.m.
Hawai‘i State Capitol, Via Videoconference

by
Chief Judge Lisa M. Ginoza
Intermediate Court of Appeals

Bill No. and Title: Senate Bill No. 2390, Relating to the Judiciary.

Purpose: Increases the number of associate judges on the Intermediate Court of Appeals from five to six.

Judiciary's Position: Support with proposed amendment

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 bill also appropriates funds necessary for the establishment of one permanent full time ICA judge position. The result of this bill would be a total of seven ICA judges – the chief judge and six associate judges.

The Judiciary supports this bill because an additional ICA associate judge 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 Judiciary requests, however, that the bill be amended to add necessary support staff positions for a new judge, funding for those positions, and funding for related expenses. Specifically, in addition to the new associate judge position and the appropriation for that position currently in the bill, the Judiciary recommends: creating one full-time judicial assistant position with related appropriation of \$86,688 for salary; creating two full-time law clerk positions with related appropriation of \$67,200 for each law clerk



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position (total of \$134,400 for law clerk salaries); and an appropriation of \$42,450 for equipment, books, and furniture for the new judge's chambers.

The ICA decides appeals in panels of three judges. At its beginning in 1980, the ICA had three judges – 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 as of 2004. The ICA was created in 1979 as a result of the 1978 Constitutional Convention, with three judges. 1979 Haw. Sess. Laws, Act 111, § 3. The ICA began operations in April 1980. In 1992, the Legislature created a fourth associate judge position. 1992 Haw. Sess. Laws, Act 253, § 2. In 2001, two more associate judge positions were created. 2001 Haw. Sess. Laws, Act 248, § 1. Those two additional associate judge positions were filled in mid-2004, at which point the court reached its current number of judges (almost eighteen years ago).

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 356 appeals. Over the course of the next fifteen years, the number of pending appeals has grown, with 862 pending appeals at the end of fiscal year 2020-2021. On average, during that fifteen year period between fiscal year 2005-2006 and fiscal year 2020-2021, there were 541 appeals filed each year in the ICA.

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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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.

As noted, however, this bill does not currently provide for staff to support a new associate judge position. 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 compliment 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 supports this bill, with the suggested amendments noted above. 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.



TESTIMONY
 Senate Committee on Judiciary
Hearing: Tuesday, February 1, 2022 (9:30 a.m.)

TO: The Honorable Karl Rhoads, Chair
 The Honorable Jarrett Keohokalole, Vice Chair

FROM: Shannon S. Sheldon
 HSBA President

RE: Senate Bill No. 2390
 Relating to the Judiciary

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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 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	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	982

Source: Intermediate Court of Appeals

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 HSBA applauds the Chair for his foresight in proposing the addition of 1 additional judge to the ICA. It is respectfully requested that the staff necessary to support the additional judge be funded as well.

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

Appellate Section Hawaii State Bar Association

Hearing on S.B. No. 2390, Relating to the Judiciary
February 1, 2022 at 9:30 a.m.

Senate Committee on Judiciary
Honorable Karl Rhoads, Chair
Honorable Jarrett Keohokalole, 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,¹ we write in **strong support** of S.B. 2390. Members of the section are appellate practitioners, 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.

Deirdre Marie-Iha, Section Chair

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.

SB-2390

Submitted on: 1/29/2022 10:26:20 AM

Testimony for JDC on 2/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
lynne matusow	Individual	Support	No

Comments:

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.