



The Judiciary, State of Hawai'i

Testimony to the House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. Buenaventura, Vice Chair

Thursday, February 13, 2020 at 2:05 p.m.
State Capitol, Conference Room 325

By

Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: House Bill No. 2675, 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 concerns.

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 the hearing, the appellate courts are not equipped to provide necessary security at Ali'iolani Hale.

Finally, the Judiciary is unaware of any problems or concerns that have been raised with regard to the present procedure for handling appellate disqualification motions.

Thank you for providing the opportunity to comment on House Bill No. 2675.

Statement Before The
HOUSE COMMITTEE ON JUDICIARY
Thursday, February 13, 2020
2:05 PM
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in consideration of
HB 2675
RELATING TO THE JUDICIARY.

Chair LEE, Vice Chair SAN BUENAVENTURA, and Members of the House Judiciary Committee

Common Cause Hawaii provides comments on HB 2675. HB 2675 would require an appellate court to conduct a hearing when a conflict of interest pertaining to a judge or justice is alleged by motion of a party to any suit, action, or proceeding of the appellate court.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to strengthening our democracy. A strong democracy requires protecting everyone's constitutional rights and ensuring our courts are fair and impartial. Fair and impartial courts are one of the foundations of democracy.

HB 2675 would permit any party to "file a motion for a hearing on possible conflict of interest when the party believes that any judge or justice before whom the pending suit or action is to be tried or heard may have a disqualifying conflict of interest resulting in a personal bias or prejudice either against the party or in favor of any opposite party to the suit." Page 4, lines 7-12. It can be envisioned that a litigant may have lost a pretrial motion (or motions) and then files a motion alleging "possible conflict of interest" against the presiding judge prior to hearing of the action, which will have to be heard, delaying the case and driving up costs for all involved. This will not serve any party or the court, especially our courts, which are backlogged as is. There is already a Commission on Judicial Conduct established by the Supreme Court of Hawaii to investigate allegations of judicial misconduct and disability under Hawaii Revised Code of Judicial Conduct and has jurisdiction over all justices and judges of the State of Hawaii.

Thank you for the opportunity to comment on HB 2675. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

HB-2675

Submitted on: 2/11/2020 2:22:00 PM

Testimony for JUD on 2/13/2020 2:05:00 PM

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

Comments: