



The Judiciary, State of Hawai'i

Testimony to the Thirty-First Legislature, 2021 Regular Session

House Committee on Judiciary and Hawaiian Affairs

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

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VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

by:

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Bill No. and Title: House Bill No. 339, H.D. 1, 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.

The reason stated for this bill is the length of time families, including children, must wait for decisions related to children and families. The Judiciary recognizes that appeals involving the custody of children must be decided in a timely fashion. To that end, the Supreme Court has adopted an expedited process for handling family court termination of parental rights cases. 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 2019-2020, there were fifty family court appeals terminated by the ICA. Of the fifty final dispositions in the ICA, only fourteen litigants filed an application for certiorari in the Supreme Court. Thus, the majority of family court appeals are resolved by the ICA and do not move to the Supreme Court. However, under this bill, all fifty 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.¹

Of the three cases cited in HB339 as evidence of the delay in child custody matters, two appeals did not involve the custody of children. Cox v. Cox, 138 Hawai‘i 476, 382 P.3d 288 (2016), involved the award of attorneys’ fees. Brutsch v. Brutsch, 139 Hawai‘i 373, 390 P.3d. 1260 (2017), involved the division of the husband’s inheritance. The opinion in Brutsch v. Brutsch, stated specifically that the issue of child custody was resolved and was not the subject of the appeal.

Tumaneng v. Tumaneng 138 Hawai‘i 468, 382 P.3d 280 (2016) did involve the custody of a child. 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 filed by both parties to the appeal. Once briefing was complete, the ICA issued its decision quickly. The Supreme Court issued its published opinion within seven months after the application for a writ of certiorari was accepted. Further, either party could have filed an application for transfer to the Supreme Court pursuant to HRS section 602-58 and Rule 40.2 of the Hawai‘i Rules of Appellate Procedure.

Inasmuch as there are already procedures in place to ensure family court appeals involving the custody of children are resolved in a timely fashion, the change proposed by HB339 is unnecessary. The Judiciary is open, however, to considering changes that may further expedite appeals from final decisions entered in family court matters. One change that would have a direct impact is an amendment to HRS section 602-58(b) to permit the supreme court to grant an application for transfer from the ICA of any appeal involving the custody of children. Such an amendment would address the concerns raised in HB339 while ensuring the supreme court will still have the ability to timely resolve other types of cases, apart from child custody cases, that are given priority status by statute.

Thank you for the opportunity to testify on this measure.

¹ At present, there are twenty-one types of appeals that are given priority by statute or case law.