
A BILL FOR AN ACT

RELATING TO COURTS OF APPEAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. A basic philosophy and practice in civil and
2 criminal law is that parties should not be the victim of unfair
3 surprise. Relevant evidence and legal theories must be
4 disclosed throughout the course of litigation. Attorneys are
5 subject to penalties when they thwart proper disclosure.
6 Appellate courts are not above the law. When an appellate
7 court affirms, modifies, reverses, or vacates a judgment or
8 order on factual or legal grounds that have not been litigated
9 by the parties, the appellate court violates due process.
10 Appellate courts should, at a minimum, afford the parties an
11 opportunity to address new factual or legal contentions that the
12 appellate court wishes to unilaterally insert into the
13 proceeding.
14 The United States Supreme Court has held that sua sponte
15 decisions reached without full briefing or argument have less
16 precedential value and should be given less deference. For
17 example, the Court has recognized that it has been "less



1 constrained to follow precedent where, as here, the opinion was
2 rendered without full briefing and argument." *Hohn v. United*
3 *States*, 524 U.S. 236, 251 (1998).

4 The Court has also stated that "somewhat less deference [is
5 owed] to a decision that was rendered without benefit of a full
6 airing of all the relevant considerations. That is the premise
7 of the canon of interpretation that language in a decision not
8 necessary to the holding may be accorded less weight in
9 subsequent cases." *Monell v. Dep't of Social Servs.*, 436 U.S.
10 658, 709 n. 6 (1978) (Powell, J concurring).

11 Furthermore, "[s]ound judicial decisionmaking requires both
12 a vigorous prosecution and a vigorous defense of the issues in
13 dispute, and a constitutional rule announced sua sponte is
14 entitled to less deference than one addressed on full briefing
15 and argument." *Church of the Lukumi Babalu Aye, Inc. v. City of*
16 *Hialeah*, 508 U.S. 520, 572 (1993) (Souter, J concurring)
17 (internal citations and quotations omitted). Additionally, the
18 Court has stated that "a rule of law unnecessary to the outcome
19 of the case, especially one not put into play by the parties,
20 approaches without more the sort of dicta ... which may be



1 followed if sufficiently persuasive but are not controlling."

2 *Id.* at 572-573 (internal citations and quotations omitted).

3 By making sua sponte decisions, an appellate court in
4 effect substitutes itself as a party to the proceeding by
5 raising new factual or legal theories. It does not allow the
6 parties to litigate their own cases. Due process is especially
7 violated when an appellate court makes a sua sponte decision
8 that alters the remedy sought by the parties.

9 For example, in *Cox v. Cox*, 138 Hawai'i 476 (2016), a
10 majority of the Hawai'i supreme court sua sponte invalidated a
11 family court rule to deny the prevailing party an award of
12 attorneys' fees and costs. No one in the litigation requested
13 that the rule be invalidated. Nor did the supreme court provide
14 the parties with an opportunity to address the issue.

15 Again, in *State v. Chang*, SCWC-17-0000674,
16 2019 WL 2715512 (Haw. June 28, 2019) a majority of the Hawai'i
17 supreme court vacated a conviction when the court unilaterally
18 held that a motion to suppress may not be consolidated with a
19 trial even when the parties consent to such an action. In
20 making its decision, the majority overruled forty year old



1 precedent. At no time did the majority afford the parties an
2 opportunity to address the issue.

3 There are potential remedies that may prevent rash
4 decisions. A party may be permitted to appeal the sua sponte
5 decision to another court or an aggrieved party may be permitted
6 to seek a recovery for any damages it may have incurred as a
7 result of the decision.

8 The legislature finds that the better course of action is
9 to simply prohibit an appellate court from rendering sua sponte
10 decisions unless the parties have been heard. An appellate
11 court must require supplemental briefing and hold oral argument.
12 This alternative will ensure due process and permit the parties,
13 rather than the appellate court, to litigate their own case.

14 The purpose of this Act is to prohibit the courts of appeal
15 from affirming, modifying, reversing, or vacating a matter on
16 grounds other than those raised by the parties to the
17 proceeding, unless the parties are provided the opportunity to
18 brief the court and present oral argument on the issue.

19 SECTION 2. Chapter 602, Hawaii Revised Statutes, is
20 amended by:



1 1. Adding a new section to part I to be appropriately
2 designated and to read as follows:

3 "§602- Supreme court; sua sponte decisions. The supreme
4 court, when acting on a matter on appeal, shall not affirm,
5 modify, reverse, or vacate a matter on grounds other than those
6 raised by the parties to the proceeding, unless the parties are
7 provided the opportunity to brief the court and present oral
8 argument on the matter."

9 2. Adding a new section to part II to be appropriately
10 designated and to read as follows:

11 "§602- Intermediate appellate court; sua sponte
12 decisions. The intermediate appellate court shall not affirm,
13 modify, reverse, or vacate a matter on grounds other than those
14 raised by the parties to the proceeding, unless the parties are
15 provided the opportunity to brief the court and present oral
16 argument on the matter."

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

19

INTRODUCED BY:

RCR - Am
H. Kaslun
on *Bill A. Bellini*
[Signature]



H.B. NO. 2548

Report Title:

Courts of Appeal; Sua Sponte Decisions

Description:

Prohibits courts of appeal from affirming, modifying, reversing, or vacating a matter on grounds other than those raised by the parties to the proceeding, unless the parties are provided the opportunity to brief the court and present oral argument on the matter.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

