



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

Tuesday, March 2, 2021 at 2:00 p.m.
State Capitol, Conference Room 325
VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

By
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Bill No. and Title: House Bill No. 338, 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



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ICA judge or Supreme Court justice and wishes to attend an in-person 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. 338.