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August 3, 2010

MEMORANDUM

TO: Honorable Les Ihara
Senator, 9th District

FROM: Kammy Chan 
Research Attorney

SUBJECT: Statutory Functions and Duties of the Chief Justice that are Different from Any Other Justice or Judge

You requested information on the statutory functions and duties of the chief justice of the Hawaii supreme court that are different from any other justice or judge. We reviewed the Hawaii Revised Statutes and have summarized the chief justice's unique statutory functions and duties by subject area. Due to the time constraints, we caution that the summary may not include an exhaustive list of all of the chief justice's responsibilities.

Judiciary Selection Commission

- The chief justice appoints one member to the judicial selection commission. (Haw. Const., art. VI, §4.)

Supreme Court; Intermediate Appellate Court; Circuit Court

- The chief justice may:
 - Assign a judge or judges of the intermediate appellate court or a circuit court to serve temporarily on the supreme court;
 - A judge of the circuit court to serve temporarily on the intermediate appellate court; and
 - A judge of the district court to serve temporarily on the circuit court. (Haw. Const., art. VI, §2.)

- As provided by law and at the request of the chief justice, retired justices of the supreme court also may serve temporarily on the supreme court, and retired judges of the intermediate appellate court, the circuit courts, the district courts and the district family courts may serve temporarily on the intermediate appellate court, on any district court, on any district court and on any district family court, respectively. (Haw. Const., art. VI, §2.)

Judiciary History Center

- Chief justice appoints members of the board of the judiciary history center (§6F-3¹)
- Chief justice approves contracts entered into by the friends of the judiciary history center (§6F-7)

Elections

- When elections commission member vacancies are not filled within the times specified in section 11-7, HRS, the vacancies shall be filled promptly by the chief justice. (§11-7)

Salaries of Certain State Officers

- The chief justice appoints one member to the commission on salaries. (§26-56)

Employment of Attorneys

- The chief justice or the chief justice's designee may request that the attorney general provide representation to a court or judicial office. (§28-8.3)

Budget; Proposed Appropriations for the Judiciary (see also entries related to section 601-2 under Administration of Courts)

- Chief justice is responsible for submitting a plan of proposed appropriations of the judicial branch to the legislature, which shall accompany the judiciary biennial and supplemental budgets. According to statute, the plan of proposed appropriations shall include the judiciary budget, proposed grants to private entities, and any specific appropriation measures to be proposed by the judicial branch. (§37-92)
- Chief justice is one of the persons designated to be informed by the director of finance about the preliminary estimate and the final estimate of the state growth and expenditure ceiling. (§37-94)
- Council on revenues is required to report the estimate of the total state personal income for the calendar year in progress and the next succeeding calendar year, and any revisions, to several persons including the chief justice each August 5 and November 5. (§37-113.1)

¹ All references are to sections of the Hawaii Revised Statutes.

Civil Service

- For purposes of the civil service laws, the term "chief executive" includes the chief justice. Chief justice is the "chief executive" for purposes of overseeing civil service law as applied to judicial branch. (§76-11)

Public Service

- For the purposes of chapter 78 (public service), the term "chief executive" has the same meaning as section 76-11, HRS (meaning that the term "chief executive" includes the chief justice). The powers of the chief justice include the following:
 - Determining the judiciary's hours of operation. (§78-1.6)
 - Establishing a leave sharing program to allow employees to donate accumulated vacation leave credits to another employee in the judiciary who has a serious personal illness or injury or who has a family member who has a serious personal illness or injury. (§78-26)
 - Establishing incentive and awards programs to recognize employees. (§78-29)
 - Establishing a wage and salary reduction benefit program which qualifies as a cafeteria plan within the meaning of section 125 of the Internal Revenue Code. (§78-30)

Standards of Conduct; Code of Ethics

- With regard to employees of the judicial branch, the powers and duties that are assigned to the governor with respect to the executive branch in part IV of Chapter 84 (regarding the administration and enforcement of the code of ethics of elected officers and public employees of the state) are assigned to the chief justice. (§84-38)

Collective Bargaining

- For purposes of negotiating a collective bargaining agreement for bargaining units (1), (2), (3), (4), (9), (10), and (13), the chief justice has one vote if the judiciary has employees in the particular bargaining unit. (§89-6)

Civil Defense and Emergency Act

- When an application for a preliminary or interlocutory injunction or temporary restraining order is presented to a circuit judge, the judge is required to immediately notify the chief justice. The chief justice assigns two other circuit judges to sit with the circuit judge in hearing and determining the application. (§128-29)

State Highway Safety Council

- The chief justice or designee is a member of the state highway safety council. (§286-5)
- Grants authorization to the director of transportation regarding the records of the violations bureaus of the district courts and of the circuit courts, so that the information may be furnished in response to specific circumstances set forth in statute. (§286-172)

Substance Abuse Program

- Chief justice is one of the persons who approves the ex-offender who is selected to serve on the coordinating body, which oversees the development and implementation of offender substance abuse treatment programs. (§321-193.5)

Hawaii Paroling Authority

- Chief justice is a member of the panel that nominates members of the Hawaii paroling authority. (§353-61)

Interstate Compact for the Supervision of Adult Offenders

- With regard to the State's membership in the interstate compact for the supervision of adult offenders, if the State's membership is suspended or terminated, the chief justice is among the people notified of the suspension. (§353B-1)
- Chief justice appoints one member of the judiciary to be a member of the state council for interstate adult offender supervision. In addition, the compact administrator, who is appointed by the governor, is appointed with the advice and consent of the senate and the chief justice. (§353B-3)

Corrections Population Management Commission

- Chief justice appoints one judge and one adult probation administrator to serve as members of the corrections population management commission. (§353F-4)

Office of the Public Guardian

- Chief justice appoints the public guardian. (§551A-1)

Family Courts

- Chief justice is authorized to temporarily assign a family court judge to preside in another circuit when the urgency of one or more cases requires the chief justice to do so. (Haw. Const., art. VI, §2; §571-3)
- Chief justice designates judges of the first circuit to be judges of the family court of the first circuit. In any circuit in which more than one judge is authorized to exercise jurisdiction as judge of the family court, the chief justice designates one of the judges as senior judge. (§571-4)

- All actions by the board of family court judges are subject to the regulatory supervision of the chief justice. (§571-5)
- Chief justice may:
 - Exercise discretion when the urgency or volume of cases requires the appointment of one or more district family judges for each judicial circuit;
 - Within any circuit, designate any district judge of the district court to act as a district family judge within that circuit;
 - Within any circuit, designate a district family judge appointed pursuant to this section to act as a district judge; and
 - Assign any district judge or district family judge of any circuit to serve temporarily in either the district court or the district family court of any other circuit. (§571-8)
- When there is a vacancy in the office of district family judge of any circuit due to disqualification, absence, or other reason, the chief justice may designate the district family judge of any other circuit or any district judge appointed pursuant to chapter 604. (§571-8.3)

Interstate Compact for Juveniles

- Chief justice appoints one member of the judiciary to the Hawaii state council for interstate juvenile supervision. In addition, the compact administrator, who is appointed by the governor, is appointed with the advice and consent of the senate and the chief justice. (§582D-1)
- With regard to the State's membership in the interstate compact for juveniles, if the State's membership is suspended or terminated, the chief justice is among the people notified of the suspension. (§582D-1)

Courts; Civil Defense Emergency

- During a period of civil defense emergency proclaimed by the governor under section 128-7, the chief justice is authorized to order the suspension, tolling, or granting of relief from deadlines, time schedules, or filing requirements imposed by otherwise applicable statutes, rules, or court orders, in civil or criminal cases or administrative matters, in any judicial circuit affected by the governor's proclamation. (§601-1.5)

Administration of Courts

- Chief justice is the administrative head of the judiciary.
 - Chief justice is required to:
 - Report to the legislature at each regular session on the business of the judiciary and the administration of justice throughout the State;

- Present to the legislature a unified budget, six-year program and financial plan, and variance report for all the programs of the judiciary; and
 - Direct the administration of the judiciary, with responsibility for the efficient operation of all of the courts and for the expeditious dispatch of all judicial business.
- Chief justice shall possess the following powers, subject to such rules as may be adopted by the supreme court:
 - To assign circuit judges from one circuit to another;
 - In a circuit court with more than one judge, (A) to make assignments of calendars among the circuit judges for such period as the chief justice may determine and, as deemed advisable from time to time, to change assignments of calendars or portions thereof (but not individual cases) from one judge to another, and (B) to appoint one of the judges, for such period as the chief justice may determine, as the administrative judge to manage the business of the court, subject to the rules of the supreme court and the direction of the chief justice;
 - To prescribe for all of the courts a uniform system of keeping and periodically reporting statistics of their business;
 - To procure from all of the courts estimates for their appropriations; with the cooperation of the representatives of the court concerned to review and revise them as the chief justice deems necessary for equitable provisions for the various courts according to their needs and to present the estimates, as reviewed and revised by the chief justice, to the legislature as collectively constituting a unified budget for all of the courts;
 - To exercise exclusive authority over the preparation, explanation, and administration of the judiciary budget, programs, plans, and expenditures, including without limitation policies and practices of financial administration and the establishment of guidelines as to permissible expenditures, provided that all expenditures of the judiciary shall be in conformance with program appropriations and provisions of the legislature, and all powers of administration over judiciary personnel that are specified in Title 7 (public officers and employees); and
 - To do all other acts which may be necessary or appropriate for the administration of the judiciary.

(§601-2)

- The chief justice, with approval of the supreme court, appoints an administrative director of the courts to assist the chief justice in directing the administration of the judiciary. The administrative director performs its functions subject to the direction of the chief justice. (§601-3)

- The chief justice is a member and chairperson of the judicial council. (§601-4)
- Chief justice is authorized to hire on a contractual basis an arbitration administrator. (§601-20)

Courts of Appeal

- By statute, the supreme court sits in Honolulu, provided that the chief justice may appoint a different place for the sitting of the court, pro tempore. (§602-9)
- When there is a vacancy in the supreme court, or if a justice of the supreme court is disqualified from sitting in any case pending before the supreme court, is unable to attend, is absent, is recused, or has been excused, the vacancy or place of such justice may be temporarily filled by a circuit judge designated by the chief justice or the appointment of a justice who has retired from the supreme court. (§602-10)

Intermediate Appellate Court

- When the number of available intermediate appellate judges is insufficient to make up a panel because of vacancy or disqualification, the chief justice may designate circuit judges or retired intermediate appellate judges or retired supreme court justices to temporarily fill such need. (§602-55)

Circuit Courts

- A chief justice may designate a place, other than the circuit in which the case is pending, where a jury trial shall be conducted. (§603-14)
- The chief justice may assign and require the judge of any other circuit, or any retired circuit judge, from any circuit, to hear and determine any or all matters then or thereafter pending in the circuit to which the judge is assigned for such purpose, and to perform any other duties pertaining to the office of the circuit judge of the circuit to which the judge is so assigned, and while so engaged the judge shall have and exercise all the powers vested in a judge of that circuit. (Haw. Const., art. VI, §2; §603-41)

District Courts

- The chief justice may authorize the district judge that hears landlord-tenant and small claims matters to substitute for or act in addition to or otherwise in place of any other district judge of the district court of the first circuit. In addition, the chief justice may designate a judge in each circuit as the administrative judge for the circuit. (§604-1)
- The chief justice, with the consent of the senate, appoints district judges. The chief justice also appoints district judges to serve on a per diem basis. (Haw. Const., art. VI, §3; §604-2)

- When it is advisable by reason of a vacancy, disqualification, absence, or other reason, the chief justice may designate the district judge of any other circuit, or any district family judge of any circuit, to hear and determine any and all matters pending in the district court to which the district judge or district family judge is called for such purpose. (§604-3)

Grand Jury Counsel and Proceedings

- Chief justice appoints and removes one or more grand jury counsel for the four judicial circuits of the State. (§612-51)
- The term of a grand jury counsel may be extended when the matters for which the counsel was called to service cannot be completed before the end of the counsel's term, and the chief justice must authorize the extension where completion of such matters would be substantially extended or hindered by the assignment of another counsel. (§612-53)

Center for Alternative Dispute Resolution

- The chief justice or the chief justice's designee organizes, guides, and administratively maintains the center for alternative dispute resolution. Additionally, the chief justice appoints the director of the center. (§613-2)
- The chief justice appoints the members of the board of advisors of the center for alternative dispute resolution. (§613-3)

Small Claims Division of the District Court

- The chief justice, as administrative head of the judiciary, shall cause to be published a booklet or pamphlet describing the procedures of the small claims division of the district court, remedies available upon judgment of the small claims division, and such other information as will facilitate the utilization of the small claims procedure and shall also cause to be made and printed such standardized forms as may be utilized throughout the small claims procedure prior to, upon and after judgment. (§633-36)

Medical Claim Conciliation Panel

- The chairperson of a medical claim conciliation panel is appointed by the director of commerce and consumer affairs from a list of eligible persons approved by the chief justice. (§671-11)

Design Claim Conciliation Panel

- The chairperson of a design claim conciliation panel is appointed by the director of commerce and consumer affairs from a list of eligible persons approved by the chief justice. (§672B-3)

Electronic Eavesdropping

- Chief justice designates a circuit court judge to issue orders under the state's electronic eavesdropping law. (§803-46)

Criminal Procedure

- The chief justice may by order authorize district court judges to make probable cause determinations, set bail, and direct the issuance of arrest warrants, as provided by section 806-85. (§806-85)

If you have any questions, please contact me by phone at 587-0666 or by email at k.chan@capitol.hawaii.gov.

APPROVED:



Ken H. Takayama
Director

ADDENDUM (provided by Sen. Les Ihara, Jr.)
Source: Judiciary Deputy Director Walter Ozawa

In addition to the responsibilities outlined in the LRB memo above, the Chief Justice also has the following duties and responsibilities relative to the Associate Justices on the Supreme Court:

1. is the "administrative head" of the Judiciary - Haw. Const. Art. 6, section 6; HRS 601-2
2. presides over the state senate if the governor, lieutenant governor, or appointed officer are impeached - Haw. Const. Art. 3, section 19
3. adjusts salaries and benefits of employees excluded from collective bargaining - HRS 89C-15
4. receives reports of volunteer utilization - HRS 90-5
5. may "direct" the administrative judge of the first circuit with regard to the assignment of land court matters to judges - HRS 501-2

Relative to the Judiciary Budget, the Chief Justice:

1. is authorized, whenever the need arises, to transfer sufficient funds and positions between programs for operating purposes.
2. shall have the power, if he/she secures federal funds or other property under any act of Congress or any funds from private organizations or individuals which are to be expended in connection with any programs or works authorized by the budget act, to enter into the undertaking with the federal government, private organization, or individual.
3. shall determine when and in what manner authorized capital improvement projects shall be initiated, and shall notify the governor periodically of specific amounts required for the projects.
4. may make supplemental allotments from the Judiciary project adjustment fund if the amount allocated from the general obligation bond fund for a capital improvement project in the budget act is insufficient.
5. can authorize a reduction in the scope of a capital improvement project if it has been determined that changed conditions permit the reduction of the scope of an authorized project.
6. may supplement funds for any cost element for an authorized capital improvement project by transferring needed sums from funds appropriated for other cost elements of the same project
7. is authorized to correct any clerical, typographical, or mechanical error on the budget act.