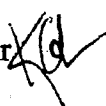


**The Ad Hoc Committee on the One Tier Judiciary  
of The American Judicature Society - Hawaii Chapter**

**Memorandum To:** The Board of Directors of the Hawaii Chapter of the American  
Judicature Society

**From:** The Ad Hoc Committee on the One Tier Judiciary  
Warren Luke, Chair  
Katherine G. Leonard, Esq., Reporter   
The Honorable Paula A. Nakayama  
The Honorable James S. Burns  
The Honorable Daniel R. Foley  
The Honorable Sabrina S. McKenna  
The Honorable Leslie A. Hayashi  
The Honorable Kevin S.C. Chang  
Burnham H. Greeley, Esq.  
David M. Louie, Esq.  
Lynne T.T. Toyofuku, Esq.  
John Y. Yamano, Esq.  
Mr. Peter S. Adler  
Ms. Jean Aoki  
Professor Hazel G. Beh  
Mr. Lionel Y. Tokioka

**Date:** January 23, 2002

**Subject:** The Proposal to Merge the District Courts into the Circuit Courts to  
Form a Single Tier Trial Court System in Hawaii

I. Overview

In March of 2001, the Board created this Committee to review the issue of whether the district courts should be merged into the circuit courts to form a single tier trial court system in Hawaii.

The Committee has made certain observations about the single tier proposal and some of the information that the Committee would find most helpful in the on-going evaluation of whether a merger of Hawaii's trial courts should proceed. However, the Committee's observations are not comprehensive. The Committee finds that further

communication of a detailed one-tier model to judges and staff, and perhaps others, for input and ideas will be critical for the refinement of the model and for the development of support for the proposal. Nevertheless, the Committee hereby presents this report of its observations to the Board for its consideration and further action, as deemed warranted by the Board.

## II. Report

### A. The Goals of the One-Tier Proposal

The primary goal of the proposed single tier trial court structure is to create greater administrative flexibility in the direction and use of judicial resources in Hawaii, principally judges, but also staff, facilities and information management. It is hoped that greater flexibility will promote more efficient service to the public, eliminate redundant or duplicative administrative tasks, create a more versatile judiciary and lead to cost savings.

The Committee finds that these goals are commendable and worthwhile. However, the Committee has struggled in its efforts to determine whether these goals are likely to be achieved through the proposed changes to the judiciary. Based on the information available to the Committee, it appears that there is no excess capacity of judges in either the district courts or the circuit courts. Other methods of improving efficiency have not been implemented or are in the process of being implemented, such as the consolidation of and improved access to computerized court records, consolidation of court administrative functions, one-stop filings at all Hawaii court facilities, reducing delays in criminal trials through more efficient assignments of prosecutors/public defenders, consolidation of the various probation services, more formalized and user friendly self help, especially for district court cases, and eliminating/further reducing the judge's role in traffic matters. The Committee recommends that efforts and resources be concentrated on other methods of improving efficiency while the one-tier model is being more fully developed.

### B. Observations Concerning the One-Tier Proposal

The Committee recognizes that the judiciary has been and continues to be engaged in an information gathering, evaluation and planning process regarding the proposed one-tier court structure. This process was initiated in 1998 with the Plan Review Committee and consultants, surveys to judiciary employees and judges, visits by judges and legislators to one-tier jurisdictions such as Connecticut, and the ongoing work

of the Single Tier Trial Court Committee. A list of the members of the Single Tier Trial Court Committee is attached as Appendix A.

The Single Tier Trial Court Committee is receiving input from judges regarding concerns that they may have regarding the one-tier system and is working on plans, proposals and details regarding the implementation of the one-tier court system. In sum, the judiciary and the Single Tier Committee are in the midst of a dynamic, evaluative process involving the single tier proposal.

In the course of its review, this Committee found that, at this point in time, it is difficult to understand exactly how a single tier system would ultimately be constituted in Hawaii. Major issues appear to be unsettled, such as how judges would be assigned, how and under what circumstances they would be reassigned, how staffing and facilities needs would be addressed, how the criteria and procedures for judicial selection and reappointment would be effected, and a whole host of others. One of the problems involved in the lack of detail about the new system is the apparent sense of uncertainty and the feeling of potential "unfairness" to judges and others in the judiciary who entered the system with certain expectations concerning their positions.

Some of the questions and issues raised by and to members of this Committee are included in Appendix B to this report. We note, however, that the judiciary is aware of and the Single Tier Committee is working on and proceeding to address and answer many of the issues and question raised by the Committee.

### III. Conclusion

The Committee is not able to form an opinion on the ultimate question of whether the district courts and the circuit courts should be merged, principally due to the level of detail available about the proposed one-tier system at the present time. The Committee submits that it would be in the best interests of the Hawaii judiciary, and those it serves, for a more complete model of the single tier proposal to be developed and propounded before the implementation of a one-tier or one-tier-like system is instituted. Greater specificity, including a comprehensive and detailed description of the one-tier model, would lead to better understanding of the proposal and would necessarily address many of the concerns expressed by and to the members of this Committee.

APPENDIX A

Members of the Single Tier Trial Court Committee

Nathan Kim, Facilitator  
Hon. Karen Blondin  
Hon. Jeff Choi  
Hon. Kenneth Enright  
Hon. David Fong  
Hon. Colette Garibaldi  
Hon. Colleen Hirai  
Hon. Ronald Ibarra  
Hon. Douglas Ige  
Hon. George Kimura  
Hon. Victoria Marks  
Hon. George Masuoka  
Hon. Calvin Murashige  
Hon. Greg Nakamura  
Hon. Rhonda Nishimura  
Hon. Richard Perkins  
Hon. Shackley Raffetto  
Hon. Marcia Waldorf  
Hon. Frances Wong  
Larry Coldiron  
Susan Gochros  
William Santos  
Jean Yamane

## APPENDIX B

### Questions and issues raised by and to Committee members:

1. What would be the impact on judicial selection and reappointment?

A strong concern has been expressed regarding an impact on the quality of judges, especially the pool of applicants. The concern is not so much about the competency of current judges, but that recruitment would be affected if applicants might be assigned to positions that are vastly inconsistent with their interests. Some high quality applicants may not be willing to opt for public service if they may be slotted for traffic court or small claims court. Other applicants might shy away from seeking appointment because they do not feel they are yet of the caliber to take on complex litigation or jury trial cases. Would the Judicial Selection Commission be seeking only generalists? Would the governor make all appointments? Many past and sitting judges have gained judicial experience at district court before moving up to circuit court; would the district courts be lost as a training ground for judges or would all new judges be routinely assigned to district court types of cases and move their way up through the system? Would existing district court judges face unduly high hurdles on reappointment? How would the selection and reappointment process work?

2. How would the highly regarded specialized courts be preserved and would there be any systematic method for taking advantage of judges with special expertise? Many of the states referred to as having a single tier system, including California, have two or three classes or categories of judges within the system, not all of whom are interchangeable. Hawaii's existing jurisdictional structure seems to be working well. While it is not necessary to find that something is "broken" in order for improvements to be made, the Committee believes that there should be a strong likelihood of betterment to warrant comprehensive constitutional, statutory and rule-making changes to a time-tested system for the administration of justice. Would there be safeguards in place to prevent a qualified senior judge from being assigned to a rural traffic court or to prevent unfavorable assignments as a form of discipline unrelated to performance? Is there a danger that effective administration of justice would be sacrificed in favor of flexibility and administrative efficiency?

3. Would the transition to a one-tier system have a negative effect on job satisfaction of judges and lead to increased attrition of competent judges? On what basis and how often would judges be reassigned to fill in gaps? Would staff numbers be "equalized" by reducing the number that circuit court judges now have? Would some judges lose their law clerks? Would other judges be asked to take on similar cases without law clerks or with "pooled" law clerks? Who selects pooled law clerks? How

would priorities be established for the use of staff attorneys and/or shared law clerks and other staff? The Committee observes that the decision to proceed with a transition to a single tier system preceded the development and distribution of a detailed and comprehensive model of the system. This has created confusion and concern and does not appear to have inspired the confidence and enthusiasm of those who are being asked to embrace the new system.

4. Would there be a negative impact on district court cases? How would the "people's court" qualities be preserved? The Committee was informed that court rules would be modified and consolidated. There is concern about balancing the user friendly and more streamlined goals of district court rules with the necessarily more complex circuit court rules. Would the other special court rules, such as tax court rules, land court rules, probate court rules, and small claims division rules be retained or consolidated? Concerns have been expressed to the Committee that district court cases might be neglected or given lower priority if assigned to judges with other, more demanding or intellectually interesting, cases. The existing rough models do not clarify whether some judges would be assigned calendars with all district court types of cases and others would be assigned circuit court types of cases or whether all judges within a division would be assigned a mixed calendar.

5. What would be the impact on per diem judges? It appears that the use of per diem judges cannot be eliminated in the foreseeable future. However, per diem judges may not practice before the courts in which they preside over cases. Under existing ethical rules, it appears that per diem judges would be barred from practicing at the trial court level if the district courts and circuit courts were merged.

6. How would facilities be assigned under the proposed restructuring? Currently, the district courts do not have jury boxes, jury rooms or the chambers/offices necessary to accommodate the circuit court type of staffing. Concerns were also raised about security, facilities and procedures for handling of incarcerated persons. The one-tier model needs to include a space and facilities plan, after space and relocation needs are assessed.

7. Have the interests and concerns of the organized bar, other attorneys, court staff, court users and others been adequately addressed? Reassessment of staffing needs may lead to reassignment and/or relocation of staff. This raises union issues, civil service issues and other staffing issues. Would the reassignment of a judge lead to uncertainty for that judge's staff? Judiciary staff need to be well informed about how the changes would affect them and how and when the changes would be implemented.

Ideally the staff should be involved in decisions that affect them. Staff support for a one-tier model would help assure a smooth implementation. Development of a more detailed model would be helpful to the staff in understanding and "buying into" the proposed changes. It has been recognized in the planning process to date that the model for Oahu would not be appropriate for neighbor islands, but it is unclear to the Committee how the single tier system would affect the neighbor island courts. With some exceptions, members of the Hawaii bar seem to have very little information about the planned implementation of the one-tier system and many seem to be simply unaware of it.