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Judiciary seems recent target of lawmakers, chief justice says

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Chief Justice Mark E. Recktenwald delivering the State of the Judiciary Address before a joint Senate-House legislative session on Wednesday. Governor David Ige, is at left. Gailynn Williamson, Recktenwald's wife, is at right.

State Supreme Court Chief Justice Mark Recktenwald says lawmakers have advanced some troubling bills in recent years to make dramatic changes in the selection, retention and pensions of state judges but that he doesn't know if the measures were designed to convey some message of disapproval to the state Judiciary.

In an interview with the Star-Advertiser editorial board Thursday, Recktenwald said he cannot discuss specific court cases with lawmakers or anyone else, and he does not know if lawmakers are upset with some decision or another aspect of Judiciary operations.

However, given the series of bills lawmakers proposed and debated last year that were strongly opposed by the Judiciary, "it would seem there is a reaction to something," Recktenwald said. "It appears that something is happening."

Last year, the Senate Judiciary and Labor Committee considered a proposed constitutional amendment to require that candidates seeking to become judges run for election to get the job. That would be a dramatic departure from the current system in which state judges are appointed by the governor or the chief justice.

Lawmakers also considered a proposed constitutional amendment to require that sitting judges win the consent of the Senate to remain on the bench after their initial terms expire, a proposal that was introduced again this year. Currently, the nine-member state Judicial Selection Commission decides whether judges are retained.

The House and Senate also considered measures last year that would have reduced pensions for judges.

None of those measures passed, but lawmakers last year rejected almost all of the supplemental budget requests proposed by the Judiciary for the current budget year.

Taken together, those actions by the Legislature "certainly are grounds for concern for us," Recktenwald said.

"Judicial independence is sort of the foundation of what we do, and our ability to be able to decide cases without outside influence, without pressure and only based on applying the law to the facts is, I think, what makes us worthy of trust and worthy of the public's trust," he said.

The bills that alarmed the Judiciary have fueled speculation at the Capitol that lawmakers were using those measures to express frustration with the courts.

Senate Judiciary and Labor Committee Chairman Gil Keith-Agaran said he has heard that same speculation, but dismissed any suggestion that lawmakers advanced the pension or other bills to convey unhappiness with judges' decisions.

"I think people just love to gossip around here, especially the bar," he said in reference to Hawaii lawyers. "The bar is such a closed group, I think there's too much of this. It's like people who just hang out at the Legislature all the time."

If lawmakers disagree with a court ruling, they should simply change the state law that underpins that ruling, he said.

On the issue of judges' pensions, "we are talking about the most highly paid employees in the state," Keith-Agaran said, noting that judges' salaries approach or exceed \$200,000. Judges can now earn annual pensions of \$60,000 or more after 10 years of service, he said.

"We're just looking at whether or not looking at the retirement system as a whole for all employees, if that's fair or not," Keith-Agaran said. "That's been the discussion."

Regarding the proposal to require Senate consent to retain judges, Keith-Agaran said the process the Judicial Selection Commission uses to decide whether to retain judges is "akin to a star chamber. It's done behind the scenes by nine people; you have no idea what kind of information they received. Basically, it's not done in the open at all."

As for the election proposal, Keith-Agaran noted that most U.S. jurisdictions including California now elect their judges.

"The only message is what we send to all agencies," Keith-Agaran said. "Expect that we're going to take a close look at their budget, we're going to take a close look at their operations."

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