



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 2391, H.D. 1, RELATING TO LEGAL SERVICE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, March 12, 2008 **TIME:** 9:00 AM

LOCATION: State Capitol Room 016
Deliver to: Committee Clerk, Room 219, 1 copies

TESTIFIER(S): Mark J. Bennett, Attorney General,
or Deputy Attorney General Charleen M. Aina

Chair Taniguchi and Members of the Committee:

The Attorney General opposes passage of this bill because generally, we do not see a need to change the present system.

This bill amends section 28-10, Hawaii Revised Statutes, to allow all deputy attorneys general, other than the First Deputy Attorney General, to "provide pro bono legal services if the pro bono legal services do not create a conflict of interest with the duties of the deputy's office."

Rule 6.1 of the Rules of Professional Conduct provide in pertinent part that

A lawyer should aspire to provide at least fifty hours of pro bono services per year. In fulfilling this responsibility, the lawyer should:

(a) provide at least twenty-five hours of legal services without fee or expectation of fee to:

- (1) persons of limited means; or
- (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

- (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their

organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

Because under section 28-8(a), Hawaii Revised Statutes, deputy attorneys general may be directed by the Attorney General to "perform or exercise any and all duties or powers by law required of or conferred upon the attorney general," it is important to limit conflicts of interests, as much as possible, to those that arise only out of matters individual deputy attorneys general handled before joining the Department. Providing legal services pro bono does not relieve attorneys of their obligations under the other Rules of Professional Conduct, particularly under Rule 1.6, relating to confidentiality, and Rule 1.7, relating to loyalty and conflicts of interest. Almost any legal service a deputy attorney general provided or delivered to anyone other than a state agency or official could create a conflict of interest with the duties of the deputy's office, irrespective of whether services are provided without charge or for a substantially reduced fee.

However, if the Committee is committed to including an express authorization for attorneys in the Department of the Attorney General to provide pro bono services, then we respectfully suggest that the bill be amended to include a new, separate section in chapter 28, Hawaii Revised Statutes, that expressly authorizes the Attorney General, the First Deputy Attorney General, and all other deputy attorneys general employed in the Department to provide pro bono services only in the form described in Rule 6.1(b)(3) of the Code of Professional Conduct. This should dispel any confusion about the kinds of services and activities attorneys in the

Department may provide or engage in without violating the prohibition against the private practice of law in section 28-10, and obviate any necessity to analyze individual situations for conflicts of interests.

TESTIMONY IN SUPPORT OF
HB2391 HD1 - RELATING TO LEGAL SERVICE

March 12, 2008 at 9:00 a.m.

The Legal Aid Society of Hawaii hereby provides testimony to the Senate Committee on Judiciary and Labor on HB2391 HD1 – Relating to Legal Service, in strong support of the bill.

In November 2007, the Access to Justice Hui released “Achieving Access to Justice for Hawai‘i’s People,” a two-part report that included The Community Wide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai‘i by 2010 and The 2007 Assessment of Civil Legal needs and Barriers of Low- and Moderate-Income People in Hawai‘i.

The Assessment found that one out of every five low- and moderate-income residents in Hawai‘i seeking legal services is unable to receive the assistance that they need and that one in three who seek assistance from legal service providers cannot be helped.

The Community Wide Action Plan was the result of a two day meeting that included stakeholders from throughout the legal community, including the Hawai‘i State Bar Association, the Judiciary, legal service providers, and private bar members. The Plan has since been adopted and endorsed by the Board of Directors of the Hawai‘i State Bar Association, the Young Lawyers Division of the Hawai‘i State Bar Association, Domestic Violence Action Center, Hawai‘i Paralegal Association, Lawyers for Equal Justice, Legal Aid Society of Hawai‘i, Mediation Center of the Pacific, Native Hawaiian Legal Corporation, and Volunteer Legal Services Hawai‘i, and the faculty of the University of Hawai‘i William S. Richardson School of Law. In addition other community partners and organizations are joining daily in adopting this plan.

One of the Ten Action Steps, “Develop a Culture that Values Providing Pro Bono Services,” raised concerns regarding the statutory barrier that is currently faced by state attorney generals in providing pro bono services. This bill will remove this barrier, only prohibiting the first deputy attorney general from providing pro bono services and allowing state attorney generals to provide pro bono services so long as it does not conflict with their work.

Removing this barrier is one of the many things that can make legal assistance more available to members of the community. It also assists attorney generals in fulfilling their Hawai‘i Rules of Professional Conduct aspirational goal of providing fifty hours pro bono service per year. We urge your support of this bill.

Thank you for this opportunity to testify.

Sincerely,

Nalani Fujimori
Deputy Director
527-8014