



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 21, 2008 **TIME:** 2:45 PM

LOCATION: State Capitol, Room
Deliver to: State Capitol, Room 302, 5 Copies

TESTIFIER(S): WRITTEN TESTIMONY ONLY.
(For more information, contact Charleen Aina, Deputy Attorney General, at 586-1286.)

Chair Waters and Members of the Committee:

The Attorney General provides the following comments regarding this bill.

This bill amends section 28-10, Hawaii Revised Statutes, to provide that deputy attorneys general, except the first deputy, may provide pro bono legal services if the services do not conflict with the duties of the deputies' offices.

In general, we oppose this bill because we do not see a need to change the present system.

However, if the Committee chooses to adopt this provision, it should be established in a new, separate section. The provision should not be included in section 28-10 because pro bono legal service is not the same as private practice of law.

If this provision is established in a new, separate section, the decision as to whether a deputy may provide pro bono legal service should be at the discretion of the Attorney General.

TESTIMONY IN SUPPORT OF
HB2391 - RELATING TO LEGAL SERVICE

February 21, 2008 at 2:45 p.m.

The Legal Aid Society of Hawaii hereby provides testimony to the House Committee on Judiciary on HB2391 – 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.

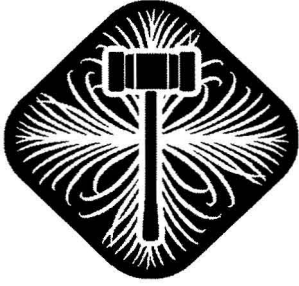
Thank you for this opportunity to testify.

Sincerely,

Nalani Fujimori
Deputy Director



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Testimony In Support of H.B. 2391

House Committee on Judiciary
2:45 P.M., February 21, 2008

Chair Waters, Vice Chair Oshiro and Members of the House Committee on Judiciary, thank you for this opportunity to testify.

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My name is Moya Gray and I am the Executive Director of Volunteer Legal Services Hawaii. I am testifying in support of HB 2391. HB 2391 makes it possible for government attorneys working at the State Attorney General's office to provide pro bono services as do their brethren in private practice or those in government practice at the County level and at the Federal level.

Rule 6.1 of the Supreme Court sets an aspirational goal of 50 hours of pro bono services; this rule applies equally to all registered lawyers, including deputy attorneys general. However, H.R.S. §28-10 is interpreted to prohibit deputy attorneys general from providing these services to the community.

Perhaps this conservative interpretation is intended to avoid conflicts of interests by government attorneys. But a government lawyer does not face a conflict of interest simply by providing pro bono services. Nor is it a violation of the State's ethical rules to provide pro bono services as the lawyer does not receive a fee or other benefit for this service.

Government attorneys in the State of Hawaii have already resolved these issues and are providing pro bono services today through Volunteer Legal Services Hawaii. For example, the attorneys of the Corporation Counsel in the Counties of Hawaii and Maui, each with the clearance of the boards of ethics within their respective counties, already provide pro bono services to the residents of those counties through our Neighborhood Legal Clinics. In each case, we check to ensure that there is no conflict of interest between the client and the advising attorney, and because these attorneys meet with clients during the evening at Volunteer Legal Services Hawaii's facilities, these attorneys are not using government time, space nor other materials.

The proposed amendment would make it very clear that pro bono service may be provided by government attorneys. We would go one step further and ask this committee to consider applying this amendment to both the Attorney General himself as well as the first deputy.

THE NEED FOR PRO BONO LAWYERS CANNOT BE OVERSTATED: The Access to Justice Hui, composed of representatives of the Judiciary, the Hawaii State Bar Association, legal services providers, the Hawaii Justice Foundation and the William S. Richardson School of Law,

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conducted a statewide legal needs assessment of low and moderate-income people. The Hui issued its report in 2007 entitled *Achieving Access to Justice for Hawaii's People: The 2007 Assessment of Civil Legal Needs and Barriers of Low and Moderate-Income People in Hawai'i* (hereinafter "The Hui's Report"). A full copy of the report is available at the Hawaii State Bar Association's website:

<http://www.hsba.org/resources/1/Documents/Access%20to%20Justice.pdf>

The need for lawyers to provide access to justice is growing. In its report at *page i* The Hui found that people in Hawaii have experienced increased poverty as well as a high cost of living; that one quarter of Hawai'i's residents live below 200% of the federal poverty guideline and that the serious legal needs of only 1 in 5 low to moderate income people were being met. More significantly, the report found that of this group of people 2 out of every 3 people could not be served by the legal service provider because the legal service provider lacked capacity. And this is true for Volunteer Legal Services Hawaii. In 2007 Volunteer Legal Services Hawaii experienced a 30% increase in the demand for our services, outstripping our current ability to meet the need.

TAKING 10 ACTION STEPS BY 2010: Based on its legal needs assessment, the Access to Justice Hui recommended that the community take 10 action steps to increase access to justice, including "Develop[ing] a Culture that Values Providing Pro Bono Services" (See *The Hui's Report*).

As part of this plan to develop a culture that values pro bono services, the Hui stated that

Attorneys who voluntarily provide free legal assistance to low and moderate-income residents play a key role in helping to address the unmet need for legal services. Measures should be taken that elevate pro bono to a value revered throughout Hawai'i's legal community

(See *The Hui's Report* at *ii.*) The Hui specifically recommended that

[n]ew ways to increase pro bono involvement by government (county, state, and federal) lawyers, including eliminating any legal or internal policy barriers to such involvement, should be explored and pursued.

(*Id* at I-5, emphasis added).

H.B. 2391 takes up this action step and eliminates "any legal or internal policy barriers to such involvement." We thoroughly commend Chair Waters for hearing this bill and strongly urge its passage.

Thank you.

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