

TO: Senator Brian Taniguchi, Chair, and Members
Senate Committee on Judiciary and Labor

FROM: Colin Goo, Member, on behalf of the Standing Committee on the
Uniform Probate Code and Probate Court Practices

DATE: March 24, 2008

RE: HB 2699, H.D. 1 Relating to the Uniform Probate Code

TO BE HEARD: March 25, 2008

This written testimony is submitted on behalf of the Standing Committee on the Uniform Probate Code and Probate Court Practices of the Judiciary of the State of Hawaii (the "Probate Committee"). The Probate Committee was organized pursuant to Resolution No. 91-25, adopted by the sixth annual Hawaii State Judicial Conference. The Probate Committee is comprised of four circuit court judges, each representing a Circuit Court of the Judiciary of the State of Hawaii, and nine attorneys that practice estate planning and probate law, all of whom have been appointed by the Chief Justice of the Supreme Court of the State of Hawaii. These comments represent the views of the members of the Probate Committee.

The Probate Committee supports the enactment of HB 2699, to be effective upon its approval, or in the alternative, with an effective date of January 1, 2009.

The proposed legislation is intended to do the following.

1. Eliminate an inconsistency between HRS §§ 560:6-110 and 2-706 regarding the payment of payable-on-death (POD) accounts.

Currently, under HRS §560:2-706, the funds remaining in the POD account may be distributed to the POD account beneficiary's descendants and under HRS §560:6-110, a bank must distribute the funds to the Personal Representative or heirs of the original account owner.

This legislation intends to eliminate POD accounts from being payable under the Hawaii anti-lapse statute (HRS §560:2-706) to allow banks to distribute the funds remaining in a POD account to the Personal Representative or heirs of the original account owner.

This proposed amendment is the most practical for the management and distribution of a decedent's remaining funds by banks and other financial institutions.

2. Limit the parties in a probate proceeding who must be served copies of revised inventories of probate assets.

Currently, under HRS §560:3-708, every party that had an interest or requested notice in a probate proceeding must be served with copies of any revised inventory in a probate proceeding at anytime during the probate proceeding.

This legislation intends to limit the parties to whom a revised inventory must be served to the parties who actually have an interest in the probate proceeding at the time the revised inventory is filed or to parties who have an interest in the proceeding and request the newly discovered and filed inventory information.

3. Allow the court, in guardianship and conservatorship proceedings, to waive a requirement that the kokua kanawai interview the respondent in a guardianship or conservatorship proceeding.

Currently, HRS § 560:5-305(c) and 5-406(c) require the kokua kanawai to interview the respondent in person.

This legislation intends to allow the court to waive the interview requirement in situations in which the respondent cannot be interviewed in person and the court finds that there is adequate basis for waiving the personal interview.

4. Add nominated guardians, nominated conservators, and their lawyers to the list of parties to whom certain sensitive information may be made available.

Currently, under HRS § 560:5-307 and 5-407, a kokua kanawai's report and court ordered professional evaluations are sealed upon filing and are not available to nominated guardians, nominated conservators, and their lawyers.

This legislation intends to add nominated guardians, nominated conservators, and their lawyers to the list of parties to whom the kokua kanawai's report and evaluations may be made available. Access to the kokua kanawai's reports and professional evaluations is necessary to enable nominated guardians, nominated conservators, and their lawyers to make decisions in the guardianship and conservatorship proceedings that are in the best interest of respondents.

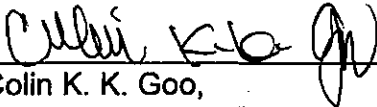
5. Allow the court, in guardianship and conservatorship proceedings, to extend the time for service or waive a requirement that the appointed guardian or conservator serve the ward or protected person a copy of the order granting the petition requesting the guardianship or conservatorship.

Currently, HRS § 560:5-311 and 5-409 require the appointed guardian or conservator to serve copies of the order appointing the guardian or conservator on the ward or protected person within fourteen (14) days of the appointment.

This legislation intends to allow the court to waive or modify the service requirement in situations in which the respondent cannot be located in time to complete serving the ward or protected person within the fourteen (14) day period.

The Probate Committee supports the enactment of H.B. 2699, to be effective upon its approval, or in the alternative, with an effective date of January 1, 2009.

Respectfully submitted this 24th day of March, 2008.

By 

Colin K. K. Goo,
Member, Probate Committee