

LEGAL AID SOCIETY OF HAWAII

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George J. Zweibel, Esq.
President, Board of Directors

Charles K. Greenfield, Esq.
Executive Director

TESTIMONY IN SUPPORT OF HB 3422, HD1 RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES

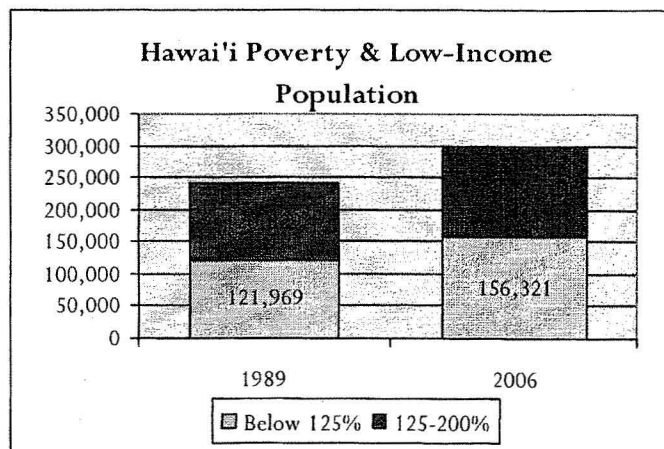
House Committee on Finance
February 21, 2008, 4:00 p.m.

The Legal Aid Society of Hawai'i hereby provides testimony in full support of HB 3422, HD 1 Relating to Surcharge for Indigent Legal Services. This bill would increase funding for indigent civil legal services by increasing the surcharge on initial court filing fees in civil actions.

Additional funding for civil legal services is urgently needed. The Access to Justice Hui, comprised of representatives of the Judiciary, the Hawai'i State Bar Association, legal service providers, the Hawai'i Justice Foundation and the William S. Richardson School of Law, as well as bar leaders and other interested parties, recently concluded an extensive statewide assessment of the civil legal needs of low and moderate-income residents of Hawai'i. The resulting report, Achieving Access to Justice for Hawai'i's People: The 2007 Assessment of Civil Legal Needs and Barriers of Low and Moderate-Income People in Hawai'i, finds that Hawai'i's low-income population continued to increase relative to the population and that a disturbing level of unmet civil legal needs persists. The full 200 page Hui report is available at <http://www.legalaidhawaii.org/images/uploads/justice.pdf>.

Increased Poverty and High Cost of Living

The Access to Justice Hui's report found that a quarter of Hawai'i's residents live below 200% of the federal poverty guideline. Since 1989, the number of people living below 125% of the federal poverty guideline in Hawai'i has grown 28% to 156,321. During the same period, the population living between 125% and 200% of the federal poverty guideline has grown 19% to 143,877.



Key Findings of the Needs Assessment

- Only 1 in 5 low and moderate-income Hawai'i residents have their legal needs met.
- Legal service providers are able to help only 1 in 3 of those who contact them for assistance.

- The areas with the greatest unmet civil legal needs are housing (24%), family (23%), domestic violence (8%), and consumer (7%).
- Significant barriers to obtaining legal assistance in addition to inability to afford an attorney include language and cultural barriers, lack of knowledge of one's legal rights, lack of knowledge of available legal services, and difficulty in accessing legal services programs.
- There is one legal service attorney for every 2,291 persons living below 125% of the federal poverty guideline.
- There is one legal service attorney for every 4,402 persons living below 200% of the federal poverty guideline.
- There is one private attorney for every 361 persons in the general population.

It is unacceptable that only one out of five low and moderate income residents is able to obtain a lawyer when there is a serious legal need. It is likewise unacceptable that only one out of three residents seeking assistance from current legal services providers can be assisted. Current funding for civil legal services in Hawaii is plainly inadequate. One of the key recommendations of the Access to Justice Hui is that the Legislature should increase funding for civil legal services, including urging the following:

The Hawai'i Legislature should increase the amounts raised through the court filing fee surcharge for the Judiciary's Indigent Legal Assistance Fund.

See Community Wide Action Plan: Ten Steps in Increase Access to Justice in Hawai'i by 2010, issued by the Access to Justice Hui on November 7, 2007.

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 in the process of adopting this plan.

In comments to the recommendation that the court filing fee surcharge should be increase, the Access to Justice Hui states:

H.R.S. Section 607-5.7 provides for a \$25 surcharge in civil cases in circuit court when there is an initial filing, such as a complaint or petition, a \$10 surcharge when filing a summary possession charge in district court, and a \$25 surcharge when filing a civil action in the Supreme Court. The funds generated are placed in the Indigent Legal Assistance Fund for distribution to organizations that provide civil legal assistance to indigent persons. The Administrative

Director of the Courts administers the funds in cooperation with the Hawai'i Justice Foundation. In FY 2007-8, the amount to be distributed to eight legal services providers is \$305,000.

According to a recent compilation by the ABA Resources Center for Access to Justice Initiatives, 32 states fund legal services for the poor from court fees and fines. Annual revenue generated ranges from a low of \$73,000 per year in Rhode Island to a high of \$7,299,000 in Michigan.

The total annual funding for indigent legal services nationally from court fees and fines is currently about \$89,243,000 per year. In comparison, the total annual funding for legal services for the poor from state appropriations, separate from court fees and fines, is approximately \$108,509,000. Thus, 45% of state generated funding for legal services for the poor throughout the U.S. is from court filing fees and fines. (ABA Resource Center of Access to Justice Initiatives, McBurney, August 2, 2007). In Hawai'i, only 14% of total annual funding from appropriations is from filing fees and fines. (\$305,000 of \$2,137,496). An increase in the court filing fee surcharge for the Indigent Legal Assistance Fund, as well an expansion to cases where it does not currently apply (for example, other District Court cases not involving summary possession), would generate substantial additional revenue for legal services for low-income residents of Hawai'i.

The Legal Aid Society of Hawaii provides civil legal assistance to low-income residents statewide through nine offices located in Lihue, Waianae, Honolulu, Kahaluu, Kaunakakai, Lanai City, Wailuku, Kona and Hilo. In FY 2007, Legal Aid handled over 8,400 cases, serving over 15,000 children, adults and seniors.

We respectfully request your support for HB 3422, HD 1. The additional funding is urgently needed to help support civil legal services for those unable to afford legal assistance.

Thank you for this opportunity to testify.

Sincerely,



Chuck Greenfield
Executive Director



TO: Chair Marcus Oshiro
Vice Chair Marilyn Lee
Members of the Committee on Finance

FR: Nanci Kreidman, M.A.
Executive Director

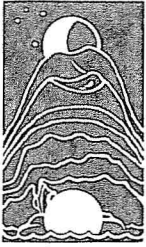
RE: H.B. 3422, H.D.1

Aloha. We submit this testimony in support of H.B. 3422, H.D. 1. The monies collected from surcharges on filing fees for the support of civil legal services and distributed from the Indigent Legal Services Fund are critical to programs in the community.

These filing fees have been at the rate they currently are since the inception of this Fund. It is crucial to adjust the fees, if we are to meet the purpose originally established. Fees must be raised to meet rising costs. Our costs of doing business continue to escalate, along with the demands for services.

We ask for your concurrence in recognizing our community responsibility to increase accessibility to legal services. This will only happen by diversifying and enhancing funding streams that support the civil legal service agencies.

Thank you



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TESTIMONY OF MAHEALANI WENDT, EXECUTIVE DIRECTOR IN SUPPORT OF HOUSE BILL 3422, HD 1 (HSCR 389-08)

February 21, 2008

Aloha Chairperson Oshiro, Vice-Chair Lee, and members of the House Committee on Finance. I am Mahealani Wendt, Executive Director of the Native Hawaiian Legal Corporation. Thank you for the opportunity to testify in support of House Bill 3422, House Draft 1, which increases indigent legal services funding by increasing the surcharge on initial filing fees for civil actions.

The bill references "The 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People of Hawai'i, a study that concluded four out of five low- and moderate-income residents donot have their legal services needs met and that legal services providers are only able to assist one in three who contact them for assistance.

It also references the Access to Justice Hui, a group consisting of concerned representatives of the community, legal services providers, members of the Hawai'i State Bar Association and many others. Following on the heels of the 2007 Assessment, the Access to Justice Hui formulated recommendations in its report entitled "The Community Wide Action Plan: Ten Steps to Increase Access to Justice in Hawai'i", which recommends an increase to the filing fee surcharge. As you know, the surcharge is used to fund direct legal services to Hawai'i's indigent.

The increase reflected in this bill would provide critical support to legal services programs that are severely underfunded. We believe it is reasonable and compares favorably with similar programs in other state jurisdictions.

We also support changing the definition of "indigent person" so that eligibility for services is increased from 125% to 250% of the official poverty line established by the U.S. Secretary of Health & Human Services. It has been our experience that because of the high cost of living in Hawai'i, many individuals must work multiple jobs in order to make ends meet, which boosts household income and render many ineligible for indigent legal services.

NHLC is in strong support of House Bill 3422, House Draft 1 and urges its passage. Thank you for this opportunity to testify.

Services made possible with major funding from the Office of Hawaiian Affairs.



**TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008
SESSION**

To: House Committee on Finance

From: Gary L. Smith, President
Hawaii Disability Rights Center

Re: House Bill 3422, HD1
Relating to Surcharges For Indigent Legal Services

Hearing: February 21, 2008 4:00 PM
Conference Room 308 , State Capitol

Members of the Committee on Finance:

Thank you for the opportunity to provide testimony supporting House Bill 3422,HD1 Relating to Surcharges For Indigent Legal Services.

I am Gary L. Smith, President of the Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A). As you may know, we are the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We support this bill because it will provide increased funds to organizations that serve a vital interest in our state. We are a member of the Access to Justice Hui and are well aware of the civil legal needs and barriers to low and moderate income people in Hawaii. As a member, we are supportive of the recommendations which came from a report which was done to increase access to justice in Hawaii. An increase in the surcharge on filing fees is a reasonable means to provide critical finding to already under funded legal services programs. For those reasons we support this bill.

Thank you for the opportunity to provide testimony in support of this bill.

HAWAII JUSTICE FOUNDATION

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E-Mail: [hjff@hawaii.rr.com](mailto:hjf@hawaii.rr.com)

February 20, 2008

TESTIMONY FROM: Robert J. LeClair, Executive Director, Hawaii Justice Foundation

TO: Committee on Finance, House of Representatives

HEARING DATE/TIME: Thursday, February 21, 2008, 4:00 p.m., Room 308

MEASURE NUMBER: HB 3422 HD1, RELATING TO SURCHARGE FOR
INDIGENT LEGAL SERVICES

SUBMITTED BY E-MAIL: JUDtestimony@Capitol.hawaii.gov

The Hawaii Justice Foundation (HJF) supports HB 3422, which amends HRS Section 605-7 to provide additional surcharge fees on various court filings in our Hawaii State Court system. The bill also amends eligibility qualifications under the "Indigent Legal Assistance Fund" ("ILAF") set forth in HRS Section 605-7.

HJF distributes funds from a variety of sources to help increase access to justice for Hawaii's people. HJF does not provide direct client services, but HJF's funding activities provide HJF with a perspective on the seriousness of the unmet civil legal needs in the Islands. For several years, HJF has worked in cooperation with the Hawaii State Judiciary to manage the ILAF Program. ILAF has been operating smoothly, with excellent cooperation from the low-income legal service providers, the Hawaii State Judiciary, and the Hawaii Justice Foundation. **The Hawaii Justice Foundation is confident that the proposed amendments to the ILAF statute can be integrated without any difficulty into the ongoing successful ILAF Program.**

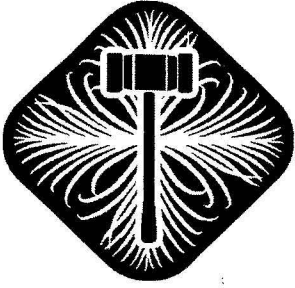
HB 3422 provides a significant boost to the funds available for meeting civil legal services needs. The Community Wide Action Plan, with its 10 Steps by 2010, studied the unmet civil legal needs in the Islands. Step 2 of the 10 Steps by 2010 requests increased funding for low-income legal service providers, and HB 3422 will provide needed additional funds.

An additional benefit from increasing funding to the low-income legal service providers relates to the increasing numbers of *pro se* ("by self") litigants in Hawaii's various courts. District Courts and Family Courts have seen a virtual explosion of cases where people are unrepresented by counsel. The Hawaii State Judiciary has made valiant efforts to assist these litigants through information kiosks and other programs. However, people representing themselves face two fundamental difficulties. First, they are unfamiliar with court procedures and forms. Second, litigants of any economic level are emotionally involved in their case, and

this makes it very difficult to resolve the case without outside assistance. HB 3422 will provide additional funds to our legal service providers, who in turn will be able to give greater information, advice, and sometimes direct representation to litigants. **This will assist our Courts in processing cases in a more efficient and effective manner.**

Court filing fees, even with the proposed surcharge increase, constitute only a small percentage of the total cost of litigation. All court litigation is already heavily “government subsidized,” since filing fees do not begin to cover the costs of the State of Hawaii personnel involved in our Courts. **Some Hawaii attorneys and special interest groups will object to any additional surcharges on filing fees, but the reality is that HB 3422 will not result in people being unable to file cases in our judicial system.** HB 3422 will substantially increase funds available through ILAF for distribution to qualifying low-income legal service providers. The net effect to Hawaii’s people from HB 3422 will be extremely beneficial.

Your favorable approval of HB 3422 will be a major step toward efforts to achieve access to justice for all.



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Judge Sabrina McKenna

Arthur Park, Esq.

Dean Aviam Soifer, Esq.

Wayne Tanna, Esq.

To: House Committee on Finance

From: Moya Gray, Executive Director

RE: Testimony on H.B. 3422, H.D. 1, Relating To
Surcharges For Indigent Legal Services

Hearing: February 21, 2008, 4:00 PM

Chair Oshiro, Vice Chair Lee and members of the Committee, thank you for this opportunity to testify in support of H.B. 3422, relating to surcharges for indigent legal services.

I am Moya Gray, Executive Director of Volunteer Legal Services Hawaii. Through the generosity of our volunteer lawyers, we provide legal services to clients throughout the State of Hawaii.

The Access to Justice Hui has recognized that there is an inability to meet the legal needs of those in our community. The Hui found that only 1 in 5 low and moderate income residents of Hawaii have their serious legal needs met because the legal services providers lack adequate funding and attorneys.

Volunteer Legal Services Hawaii knows that the demand for legal services is growing daily – in 2007 alone we experienced a 30% increase in requests for legal assistance. We strongly support this bill because it will provide increased funds to Hawaii's legal services providers that serve the poor, the disabled, the homeless, the abused and the most vulnerable of all of us and we respectfully ask that you pass this bill.

Thank you.



Collection Law Section

Chair:
Steven Guttman

Vice Chair:
William J. Plum

Reply to:

STEVEN GUTTMAN, CHAIR
220 SOUTH KING STREET, 19TH FLOOR
HONOLULU, HAWAII 96813
TELEPHONE: (808) 536-1900
FAX: (808) 529-7177 E-MAIL: sguttman@kdubm.com

February 20, 2008

Representative Marcus R. Oshiro, Chair
and Fellow Finance Committee Members
House Finance Committee
Hawaii State Capital

RE: HB 3422 INCREASING FEES TO FUND INDIGENT LEGAL SERVICES
HOUSE FINANCE COMMITTEE HEARING 2/21/08

Dear Chair and Committee Members:

The Collection Law Section of the Hawaii State Bar Association¹ urges you to oppose the increases in the filing fees/surcharges proposed under HB 3422 and carefully consider the impact and nature of this proposal. Under HB 3422, filing fees in the District Court would go up more than 150% and the surcharge would be extended to a new class of lawsuit comprising annually of approximately 8,500 cases (based on last FY reported by the Judiciary). Currently, in the District Court, only summary possession cases pay the fee (approximately 2,400 annually based on last FY reported by the Judiciary). In the Circuit Court, the fee would be doubling on the approximately 3,500 cases filed annually (based on last FY reported by the Judiciary). All told, these are big increases both in dollar terms and in the number of cases the fee is going to be levied upon.

Furthermore, if a person looks closely, the surcharge is not a one time fee, but a fee that can be charged multiple times in the same case. This is because the surcharge applies to any filing of a cross-claim, counter-claim and third party complaint. Should any of those events occur in a case, and they often do, the surcharge is again collected. In Circuit Court, it is common for the case to contain multiple parties and multiple claims of this nature. For example, if only the complaint and four other claims are filed, the total of "surcharge fees" will equal the entire filing fee of \$250 collected by the Judiciary for accepting the case.

¹ The opinions of the Collection Law Section are not necessarily those of the Hawaii State Bar Association proper.



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(A COLLECTION AGENCY)

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LIHUE, KAUAI, HAWAII 96766
PHONE: (808) 245-4094 FAX: (808) 246-1576

MEMBER:
HAWAIIAN COLLECTORS ASSN
AMERICAN COLLECTORS ASSN

February 20, 2008

Dear Committee on Finance,

**IIB 3422, HD1 RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES
(IISCR389-08)**

Date: Thursday, February 21, 2008
Agenda Number: 4

POSITION: NOT IN SUPPORT

The increase in filing fees for both District and Circuit Court along with amending the indigent eligibility from 125% to 250% of the official poverty line will have negative ramifications that will affect all direct and indirect users of our court system. We do not dispute the importance of providing resources to those individuals most in need. We do object to providing access to those people who may well afford to pay for legal services on their own.

Increasing the indigent eligibility by such drastic percentages may in fact have a negative impact on the available resources for the truly indigent populace. On the surface this increase may give the appearance of being positive but beware of the slippery slope that may be created. What will happen when the legal service providers tasked with serving the indigent require more funds because of an increase in users? Will another increase in surcharges be required in order to meet the need for more resources?

Who ultimately will be paying for these increased surcharges? As with most fees, these will be passed on to the consumer in one form or another. Directly or indirectly, we will all end up paying for these increases. I humbly urge you to not approve IIB 3422, HD1.

Please feel free to contact me should you have any questions or concerns at (808) 245-4094 or via my email at mhk@kauaicreditadj.com

Regards,

Mike Kobayashi
President

February 20, 2008

Dear Committee on Finance,

HB 3422, HD1 RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES (HSCR389-08)

Hearing date: Thursday, February 21, 2008

Agenda Number: 4

POSITION: DO NOT IN SUPPORT

While the intention of this bill is noble: to help indigent citizens pay for legal services that they are unable to otherwise afford, increasing the filing fees for both District and Circuit Court is not the right and fair way to go about achieving that goal. **Increasing the filing fees, AGAIN, clearly targets selected small businesses and industries. This is, in effect, a tax on small business.**

In addition, amending the indigent eligibility from 125% to 250% of the official poverty line will no doubt have negative ramifications. I do not dispute the importance of providing resources to those individuals most in need however, I do object to providing access to those people who may well afford to pay for legal services.

It is important to consider the **unintended results** of increasing the indigent eligibility by such drastic percentages as it may in fact have a **negative impact on the available resources for the truly indigent populace**. On the surface this increase may give the appearance of being positive but **beware of the slippery slope** that may be created. What will happen when the legal service providers tasked with serving the indigent require more funds because of an increase in users? Will another increase in surcharges be required in order to meet the need for more resources?

I respectfully and strongly urge you to not approve HB 3422, HD1.

Please feel free to contact me should you have any questions or concerns at (808) 266-2020 or via my email at gfreeman@medcah.com.

Respectfully submitted,

Genevieve Freeman
President
MEDCAH, Inc.

Dear Committee on Finance,

**HB 3422, HD1 RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES
(HSCR389-08)**

Date: Thursday, February 21, 2008

Agenda Number: 4

POSITION: NOT IN SUPPORT

The increase in filing fees for both District and Circuit Court along with amending the indigent eligibility from 125% to 250% of the official poverty line will have negative ramifications that will affect all direct and indirect users of our court system. We do not dispute the importance of providing resources to those individuals most in need. We do object to providing access to those people who may well afford to pay for legal services on their own.

Increasing the indigent eligibility by such drastic percentages may in fact have a negative impact on the available resources for the truly indigent populace. On the surface this increase may give the appearance of being positive but **beware of the slippery slope** that may be created. What will happen when the legal service providers tasked with serving the indigent require more funds because of an increase in users? Will another increase in surcharges be required in order to meet the need for more resources?

Who ultimately will be paying for these increased surcharges? As with most fees, these will be passed on to the consumer in one form or another. Directly or indirectly, we will all end up paying for these increases. I humbly urge you to not approve HB 3422, HD1.

Please feel free to contact me should you have any questions or concerns at (808) 242-9771 or via my email at ptomita.mcs@hawaiiantel.net.

Thank you for your time and consideration of my testimony.

Regards,

Patricia R. Tomita
Maui Collection Service, Inc.

FINtestimony

From: Accutrack [accutrack@hawaii.rr.com]
Sent: Wednesday, February 20, 2008 12:49 PM
To: FINtestimony
Subject: Testimony

Dear Committee on Finance,

HB 3422, HD1 RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES (HSCR389-08)

Date: Thursday, February 21, 2008
Agenda Number: 4

POSITION: NOT IN SUPPORT

The increase in filing fees for both District and Circuit Court along with amending the indigent eligibility from 125% to 250% of the official poverty line will have negative ramifications that will affect all direct and indirect users of our court system. We do not dispute the importance of providing resources to those individuals most in need. We do object to providing access to those people who may well afford to pay for legal services on their own.

Increasing the indigent eligibility by such drastic percentages may in fact have a negative impact on the available resources for the truly indigent populace. On the surface this increase may give the appearance of being positive but **beware of the slippery slope** that may be created. What will happen when the legal service providers tasked with serving the indigent require more funds because of an increase in users? Will another increase in surcharges be required in order to meet the need for more resources?

Who ultimately will be paying for these increased surcharges? As with most fees, these will be passed on to the consumer in one form or another. Directly or indirectly, we will all end up paying for these increases. I humbly urge you to not approve HB 3422, HD1.

Please feel free to contact me should you have any questions or concerns at (808) 945-7053 or via my email at accutrack@hawaii.rr.com

Regards,

Naomi Luke Tadani

FINtestimony

From: Allan Okubo [ayokubo@hotmail.com]
Sent: Wednesday, February 20, 2008 6:28 AM
To: FINtestimony
Subject: HB 3422, HD1; February 21, 2008; Agenda #7; (HSCR387-08)

Honorable Members of the House of Representatives, Committee Chair Marcus R. Oshiro and Vice Chair Marilyn B. Lee,

Written Testimony From: Allan Y. Okubo, Esq.
Date of Hearing: February 21, 2008
Agenda No.: Agenda No. 7
RE: HB 3422, HD1 (HSCR387-08)
TO: Committee of Finance
NUMBER OF COPIES REQUESTED: Two (2) copies to Room
306 in the State Capitol

I am an attorney licensed to practice law in the State of Hawaii and handle primarily District Court cases, and strongly oppose the passage of this bill.

While there might be a need for assistance for the indigent legal or otherwise, this is not the way to go about it. This is tantamount to a tax on a specific segment of the population. This circumvents the State funding procedure for special needs groups who request funding for their programs; i.e. the numerous charities and non-profits groups. What prevents some other groups from requesting the same provisions as this bill to fund their programs after they get rejected from the normal funding procedures? This would allow every group to seek out funding to support their causes and programs. And unlike State funding of programs, there is no mention of accountability or reporting as to where or how these funds are being used. Normally if programs are State funded the organizations need to account for the money and there are guidelines as to what or how the funds are to be used for. There is none here.

The court system shouldn't be a cash cow for needs other than the courts. Filing fees have gone up from \$25.00, to \$75.00, to \$100.00, then to the present sum of \$125.00. Later the surcharge of \$10.00 was tacked on to Summary Possession cases. The initial increases was to update the computer system, but it must have been evident that because so many cases are being filed each year the court system can be a cash cow, so the fees were increased within a two or three year period to the the present sum of \$125.00. This is a lot of money for filing fees which the Plaintiff needs to dish out to seek restitution for their losses, with no guarantee of recovery. To make them also fund the debtors legal defense by this surcharge is unacceptable. While there are some who are rightfully in need of legal services there are also a vast many who just use the system to avoid their responsibilities. If we only bail them out time and time again, what does that teach them and the future generations to follow as to being responsible?

Please consider this testimony and I respectfully request that this bill not pass.

Sincerely,
ALLAN Y. OKUBO

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