



TO: Chair Brian Taniguchi
Vice Chair Clayton Hee
Members of the Committee on Judiciary and Labor

FR: Nanci Kreidman, M.A.
Executive Director

RE: H.B. 3422, H.D.2

Aloha. We submit this testimony in support of H.B. 3422, H.D. 2. 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



HAWAII DISABILITY RIGHTS CENTER

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E-mail: info@hawaiidisabilityrights.org Website: www.hawaiidisabilityrights.org

TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION

To: Senate Committee on Judiciary and labor

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

Re: House Bill 3422, HD2
Relating to Surcharges For Indigent Legal Services

Hearing: March 17, 2008 9:00 AM
Conference Room 016, State Capitol

Members of the Committee on Judiciary and Labor:

Thank you for the opportunity to provide testimony supporting House Bill 3422, HD2, 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 funding 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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March 14, 2008

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

TO: Senate Committee on Judiciary and Labor

HEARING DATE/TIME: Monday, March 17, 2008, 9:00 a.m., Conf. Room 016

MEASURE NUMBER: HB 3422 HD2, RELATING TO SURCHARGE FOR
INDIGENT LEGAL SERVICES

SUBMITTED BY E-MAIL: testimony@capitol.hawaii.gov

The Hawaii Justice Foundation (HJF) requests the Senate Committee on Judiciary and Labor to approve HB 3422 HD2, including provision of \$25 as the surcharge fee on District Court cases and \$50 as the surcharge fee on Circuit and higher Court cases. HJF supports HB 3422 HD2, which amends HRS Section 605-7 to provide additional surcharge fees on various court filings in our Hawaii State Court system under the “Indigent Legal Assistance Fund” (“ILAF”) set forth in HRS Section 605-7.

Some Hawaii attorneys from the Collection Section of the Hawaii State Bar Association and their collection agency clients have objected to any additional surcharges on filing fees. However, the reality is that HB 3422 will not result in people being unable to file cases in our judicial system. The Hawaii State Bar Association Board of Directors on December 20, 2007 endorsed the 10 Steps by 2010 included in the Community Wide Action Plan. Part of Step 2 of those 10 Steps included seeking additional funding for legal services through increasing ILAF surcharge fees. It is quite common that one segment of the Hawaii State Bar Association will favor one viewpoint while other segments have opposing views. It is of course understandable that the collection attorneys are pressing the financial interests of their clients, but it is essential for the Hawaii State Legislature to take the view of what is in the best interests of Hawaii’s people. If the interests of the clients of the collection attorneys are weighed against the needs of those who will be helped by HB 3422, it is clear that the surcharge is an essential part of the collective efforts to provide justice to all.

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. 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.

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.**

Your favorable approval of HB 3422 HD2 is essential, and passage of this bill will be a major step toward efforts to achieve access to justice for all.



Collection Law Section

Chair:
Steven Guttman

Vice Chair:
WilliamJ. Plum

Reply to:

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

March 14, 2008

Senator Brian Tanaguchi, Chair
and Fellow Committee Members
Senate Judiciary Committee
Hawaii State Capital

RE: HB 3422 INCREASING FEES TO FUND INDIGENT LEGAL SERVICES
SENATE JUDICIARY COMMITTEE HEARING 3/17/08 @ 9:00 A.M.

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, as originally proposed, surcharge fees in the District Court would increase by 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 surcharge, as originally proposed, would double 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 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.

March 14, 2008

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Additionally, this surcharge is in essence, a tax on a class of individuals who are trying to get access to the state courts and justice. In other words, a relatively small number of citizens end up paying a large share of the operational budgets for non-profit legal services groups. To compound matters, since most citizens do not know whether they will have to file a lawsuit until the future arrives, they are a class that becomes an easy class to tax. Opposition is less likely to form when citizens who do not yet see any impact to their own wallet. We ask that you resist the temptation to levy these additional fees simply because it is easy, and instead, ask questions about the size of the increase and about the types of specific cases that the legal services groups spend the funds received on.

Lastly, HB 3422 contains no oversight as to how the money will be spent.

Thank you.

Sincerely,



William J. Plum

\hb3422-3.wjp

TESTIMONY IN SUPPORT OF HB 3422, HD 2
RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES

Senate Committee on Judiciary and Labor
March 17, 2008, 9:00 a.m., Room 016

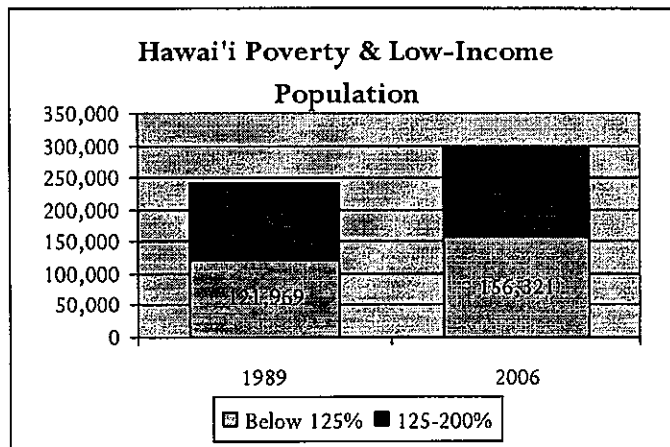
The Legal Aid Society of Hawai'i hereby provides testimony in support of HB 3422, HD 2, Relating to Surcharge for Indigent Legal Services. This bill would increase funding for indigent civil legal services by increasing the surcharge on initial court filing fees in civil actions.

We respectfully request that the filing fee surcharge for Indigent Legal Services be increased from \$25 to \$50 in Circuit Court and on appeal and from \$10 to \$25 in District Court, applicable to all non-governmental cases filed.

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 process 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 (HSBA) (see attached resolution from the HSBA adopting the action plan in its entirety), 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 2, with the filing fee surcharge amounts of \$50 for Circuit Court and on appeal and \$25 for District Court for all non governmental cases filed. 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

**RESOLUTION OF THE BOARD OF DIRECTORS
OF
HAWAII STATE BAR ASSOCIATION**

Re: Adoption of Community Wide Action Plan

Adopted: December 20, 2007

WHEREAS, the Access to Justice Hui carried out a statewide assessment of the civil legal needs of low and moderate-income residents of Hawai'i and on November 7, 2007 released a report entitled Achieving Access to Justice for Hawai'i's People; and

WHEREAS, the Hawaii State Bar Association (HSBA) supported the work of the Access to Justice Hui by providing \$15,000.00 in funding for the assessment and through the active participation on HSBA staff and members of the Delivery of Legal Services Committee as members of the Access to Justice Hui; and

WHEREAS, the Access to Justice Hui found that since 1989 the number of people living below 125% of the federal poverty guideline in Hawai'i has grown 28% to 156,321 and the population living between 125% and 200% of the federal poverty guideline has grown 19% to 143,877; and

WHEREAS, the Access to Justice Hui found that one quarter of Hawai'i's residents live below 200% of the federal poverty guideline; and

WHEREAS, the Access to Justice Hui found that families living at 200% of the federal poverty guideline in Hawai'i are not able to cover their basic living expenses, much less to pay for legal assistance when it is needed; and

WHEREAS, the Access to Justice Hui found that only one in five low and moderate-income Hawai'i residents have their legal needs met; and

WHEREAS, the Access to Justice Hui found that nonprofit legal service providers are able to help only one in three of those who contact them for assistance; and

WHEREAS, the Access to Justice Hui found that in Hawai'i there is one legal service attorney for every 2,291 persons living below 125% of the federal poverty guideline and one legal service attorney for every 4,402 persons living below 200% of the federal poverty guideline as compared to one private attorney for every 361 persons in the general population; and

WHEREAS, the Access to Justice Hui found that 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; and

WHEREAS, the Access to Justice Hui released on November 7, 2007 an action plan to increase equal access to justice in Hawai'i, entitled The Community Wide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai'i By 2010; and

WHEREAS, the Ten Action Steps include creation by the Hawai'i Supreme Court of an Access to Justice Commission to oversee and coordinate statewide efforts to expand access to justice for low-income people, increasing and stabilizing public and private funding for legal service providers, increasing pro bono contributions by attorneys (including by having legal service providers expand programs that encourage pro bono service), increasing the collaboration among legal services providers and the efficient use of their collective resources, developing ways to remove impediments to access to justice and increasing outreach and public awareness;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE HAWAII STATE BAR ASSOCIATION THAT:

1. The Community Wide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai'i By 2010, as released in November 2007 by the Access to Justice Hui (the "Plan"), is hereby adopted and approved in its entirety.

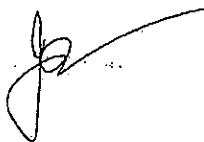
2. The creation of a Hawai'i Access to Justice Commission or similar entity is hereby determined to be essential to improving access to justice in the short and long term, and achievement of this action step shall be supported by the HSBA as a matter of high priority because the prompt formation of a Commission will expedite and increase the likelihood of successful implementation of the other nine action steps of the Plan.

3. Obtaining additional and reliable public and private funding to support the delivery of civil legal services to low-income people in Hawai'i is of fundamental importance and shall also be supported as a matter of high priority of the HSBA, including without limitation supporting the adoption by the Supreme Court of the State of Hawaii of a "comparability" requirement to increase the interest rates paid on IOLTA funds.

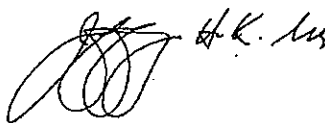
4. The Executive Director, officers and the Delivery of Legal Service to the Public Committee of the HSBA are hereby directed to review the Report and the Plan in detail, identify each respect in which the HSBA might act to contribute to the achievement of the steps set forth in the Plan and then present to the Board of Directors, as promptly as possible, the specific actions proposed that the HSBA undertake, as well as a timetable for such actions, to contribute to the achievement of the action steps called for by the Plan.

5. The Executive Director, the President and other representatives designated by the President or Executive Director of the HSBA are hereby authorized to participate actively in or otherwise support the ongoing work of the Access to Justice Hui and/or the Access to Justice Commission (or similar entity) and to report regularly to the Board on the activities of the Hui and the implementation of the Plan and of the strategic steps taken by the HSBA to support achievement of the action steps called for by the Plan.

ADOPTED BY THE BOARD OF DIRECTIONS OF THE HAWAII STATE BAR ASSOCIATION ON DECEMBER 20, 2007



Jeffrey S. Portnoy
2007 President



Jeffrey H.K. Sia
2008 President

NĀ LOIO

Immigrant Rights and Public Interest Legal Center

TESTIMONY IN SUPPORT OF
HB 3422, HD2
Committee on Judiciary and Labor
Monday, March 17, 2008, Room 016
9:00 A.M.

To: The Honorable Brian T. Taniguchi, Chair
The Honorable Clayton Hee, Vice-Chair
From: Patricia McManaman
Na Loio – Immigrant Rights and Public Interest Legal Center

Na Loio – Immigrant Rights and Public Interest Legal Center is a non-profit legal services organization committed to providing immigration legal services and advocacy in the public interest with a particular emphasis on serving poor and low-income immigrants and their families.

Na Loio unequivocally supports H.B. 3422, HD2 and believes the proposed filing fee increase is one of many steps we need to take as a community to remedy the justice crisis in Hawai'i. Na Loio suggests, however, that the filing fee amount be restored to proposed \$25.00 fee contained in the original bill.

In its 2007 grounding breaking report, *Achieving Access to Justice for Hawai'i's People*, the Access to Justice Hui makes a compelling case statement for enhanced support for legal services for Hawai'i's indigent community. The report notes:

- currently 12 legal service organizations provide services in 15,000 statewide cases per year;
- only 1 out of 5 low and moderate income residents of Hawaii' have their civil legal needs met despite the best efforts of Hawai'i's civil legal service providers; and
- the two top factors affecting the ability to provide additional legal services are the lack of in-house attorneys and funding for operations.

Everyday members of our community seek legal services in compelling cases involving contested child support, landlord tenant lockouts, domestic violence, access to public benefits and health care, guardianship and adoption, and countless other legal matters that impact children, parents, and grandparents. Unmet, these legal needs will often transition into homelessness in the case of lockouts or delinquent child support payments, death or serious bodily harm in the case of domestic violence, or poor health care outcomes in cases involving wrongful denial of state funded health care. H.B. 3422, HD2 is a modest step forward in meeting the statewide community legal needs and in assuring equal access to justice.

testimony

From: George J. Zweibel [george.zweibel@hawaiiantel.net]
Sent: Friday, March 14, 2008 11:40 AM
To: testimony
Subject: Testimony in support of HB 3422, HD2

*
*

LAW OFFICE OF GEORGE J. ZWEIBEL
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(808) 775-1087
*(808) 775-1089 (facsimile)

** Senate Committee on Judiciary and Labor*

*Hearing: Monday, March 17, 2008
**9:00 a.m.*

* IN SUPPORT OF HB 3422, HD2
*

* *
Chair Taniguchi, Vice Chair Hee, and Committee Members:

My name is George Zweibel. I am an attorney in private practice in Honoka'a on the Island of Hawai'i. I am also a member of the Hawai'i Access to Justice Hui. After determining that low-income people in Hawai'i have massive unmet civil legal needs, the Hui formulated a ten-step Community Wide Action Plan for addressing the "justice gap." A very high priority among the recommended actions is increasing overall funding to support the delivery of civil legal services for low-income Hawai'i residents. The specific recommendations include increasing the amounts raised through the court filing fee surcharge for indigent legal services. The Hui found that an increase in the current court filing fee surcharge as well as expansion to cases where it does not currently apply (such as District Court cases not involving summary possession) would generate substantial additional revenue for providing civil legal services for low-income people.

My own practice, which includes extensive pro bono work, and the large number of calls I receive from people who cannot afford to pay for legal help bear out the Hui's findings. Including a \$50 filing fee surcharge for Circuit Court and on appeal and a \$25 filing fee surcharge in all cases in District Court would not significantly increase the cost of litigation (almost all of which is paid to attorneys in any event). On the other hand, when multiplied by the number of cases filed, this modest surcharge would generate substantial additional revenue to support equal access to justice for all people in Hawai'i, regardless of their income.

In conclusion, additional funding from all sources for civil legal services for the poor is urgently needed. Enactment of HB 3422, HD2 - with appropriate filing fee surcharges in District Court, Circuit Court and appeal cases - would represent a major step toward reducing the present funding shortfall.

Thank you for the opportunity to testify on this important issue.

LATE

**LAW OFFICE OF ALLAN Y. OKUBO
P. O. Box 10225
HONOLULU, HAWAII 96816-0225
TELEPHONE: (808) 735-6582**

March 16, 2008

TO: COMMITTEE ON JUDICIARY & LABOR
CHAIRMAN: BRIAN T. TANIGUCHI
VICE CHAIR: CLAYTON HEE

RE: HB 3422 (RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES)

DATE: Monday, March 17, 2008
PLACE: Conference Room 016, State Capitol
TIME: 9:00am

Honorable Committee Members, Chairman Taniguchi and Vice Chairman Hee:

I am an attorney licensed to practice in the State of Hawaii and handle, among other matters, Summary Possession cases.

I oppose the passage of HB 3422 for the following reasons:

1. This is a TAX hidden as a surcharge and is not a benefit for all segments of the population, and is therefore discriminatory.
2. These organizations apply for, and receive, grants from the State of Hawaii, and as such must account for the expenditure of the monies received. However through HB 3422 no such accounting is required and they receive funding for which they need not be accountable for.
3. Legal Aid Society is arbitrary and/or inconsistent in who or how they pick people as client's and as such should make their activities subject to greater scrutiny.

In regard to reason number 3, let me elaborate. I handled a Summary Possession case in 1999 (SHITANISHI vs. ALLEN) which indirectly involved Legal Aid Society. I had gotten a default granted along with a Writ of Possession and Judgment for Possession, at the answer date because the defendant failed to attend. After the Writ of Possession and Judgment for Possession was filed and service of it was with the Sheriff I received a Ex Parte Motion to Stay Execution of Writ of Possession and Judgment for Possession which was filed with the Court.

Because of the Stay of Execution I was unable to serve the Writ and Judgment for Possession. I was further in legal limbo because the Defendant had not also filed a Motion to Set Aside Default Judgment as was stated in the Stay of Execution. Therefore the case could not go forward on my end or by the Court system because the Motion to Set Aside Default Judgment was not filed placing the case back on the calendar for further legal rulings.

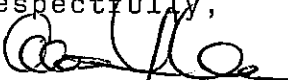
I was forced to file a Motion to Lift the Stay and to essentially put the case back on the calendar for further rulings so that my client could get back possession of his rental and to not incur further losses.

I brought this matter to the attention of the Legal Aid Society because it was their form that the Defendant used to Stay the Execution. I asked them why they didn't have the Defendant file the Motion to Set Aside the Default, and they replied they are not responsible for what the parties do after they give them the form. So in essence they advise them, arm them with forms yet take no responsibility for the actions of those they give their forms to. The forms are not filled in by Legal Aid Society but by the Defendant so they claim no legal duty to assure that the forms and procedures are properly done. So if that is the case, why do they claim they need more money since they don't represent anyone officially.

Because this case took place in 1999 I do not have the documents filed by the Defendant or my Motion to Lift the Stay, but if the Committee requires it I can get a copy from the Court records, but it will take some time. I have however a sample of the Exparte Motion to Stay Execution of Writ of Possession and Judgment for Possession from another case. Please note that the form was created by the Legal Aid Society of Hawaii (as highlighted in pink), and in the body of the document is a statement attesting to filing a Motion to Set Aside Default Judgment (highlighted in yellow). Please also note that the document is filed by the individuals and not by Legal Aid Society. In this case they also did not officially represent the Defendants.

Based on these facts and objections I strongly ask that HB 3422 not pass. If organizations can pick and chose who or how much they will assist someone they claim they are supposed to represent and they are not required to be accountable for the funds they receive, that is a fundamental wrong that should not be allowed.

Respectfully,


ALLAN Y. OKUBO

EX PARTE MOTION TO STAY EXECUTION OF WRIT OF POSSESSION AND JUDGMENT FOR POSSESSION; DECLARATION; ORDER

IN THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
 STATE OF HAWAII

MAR 21 4 01 PM '02

Plaintiff(s) HAWAII CHINESE BUDDHIST SOCIETY, by and through its agent, THE PROPERTY MANAGERS, LTD, a Hawaii Corporation

Reserved for Court Use

DISTRICT COURT OF THE FIRST CIRCUIT

Civil No.

1RC02-1049

Filing Party(ies)/Filing Party(ies)' Attorney (Name, Attorney Number, Address, Telephone and Fascimile Numbers)

ELAINE Y. SILVA
ABIGAIL HILARIO
1616 Nuuanu AVE. APT. K
Honolulu, Hawaii 96817
PH: 371-0719
Defendant Pro Se (No Attorney)

Defendant(s)

ELAINE Y. SILVA
ABIGAIL HILARIO

Date of Default, Judgment or Dismissal entered:

MARCH 14, 2002

EX PARTE MOTION TO STAY EXECUTION OF WRIT OF POSSESSION AND JUDGMENT FOR POSSESSION

This Motion is based upon District Court Rules of Civil Procedure, Rules 7, 55(c) and 60(b), and the declaration attached.

I am the Defendant and Movant in this case. I have attached facts (declaration) as to why this Motion should be granted.

A Judgment for Possession and Writ of Execution for Possession was entered against me on the above date. I have filed a Motion to Set Aside Default Judgment for reasons set forth in the attached declaration. I am requesting a Stay of the Judgment for Possession and Writ of Possession until the Motion to Set Aside Default Judgment is heard by this Court.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAII THAT THE FOLLOWING AND ATTACHED ARE TRUE AND CORRECT.

Date: 03-21-02

Name and Signature of Declarant

Elaine Y. Silva / Abigail Hilario
ELAINE Y. SILVA / ABIGAIL HILARIO

ORDER

The Court having been presented with Defendant(s) Ex Parte Motion to Stay Execution of Writ of Possession and Judgment for Possession, ordered/filed on above date and good cause appearing therein, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff(s) Judgment for Possession and Writ of Possession above-mentioned be stayed until the hearing on Defendant(s) Motion to Set Aside Default Judgment.

Date:

MAR 21 2002

Judge of the above-entitled Court

DAVID W. LO

SEAL

I certify that this is a full, true, and correct copy of the original on file in this office.

W. Asleau

Clerk, District Court of the Above Circuit, State of Hawai'i