

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

Charles K. Greenfield, Esq.  
Executive Director

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

Senate Committee on Ways and Means

April 1, 2008, 10:15 a.m., Room 311

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.

Your support is requested for this bill for the following reasons:

- 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. See, 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. The legal needs assessment included surveys to over 200 social service providers and organizations, judges, adjudicative bodies and legal service providers across the State to gather their thoughts and understanding of the legal needs of the low- and moderate-income population. In addition, 50 key stakeholder interviews were conducted and 21 client focus groups on every island we held around the State to gather information from potential clients and the community on their legal needs.
- The legal need study found that low-income residents have a tremendous unmet need for civil legal services.
  - 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
  - There is one legal service attorney for every 2,291 persons living below 125% of the federal poverty guideline
  - There is one private attorney for every 361 persons in the general population.
- One of the key recommendations of the Access to Justice Hui is that "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.

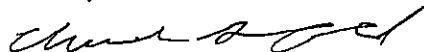
- This bill is strongly supported by the Access to Justice Hui. The Community Wide Action Plan, including an increase in the court filing fee surcharge, has been adopted and endorsed by the following Hui members: The Board of Directors of the Hawai'i State Bar Association (HSBA) (see attached resolution 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.
- The court filing fee surcharge funds a number of different non profit organizations that provide civil legal services to low income residents. Current recipients are Domestic Violence Action Center, Hawai'i Disability Rights Center, Kokua Legal Services, Legal Aid Society of Hawai'i, Na Loio Immigrant Rights and Public Interest Legal Center, Native Hawaiian Legal Corporation, University of Hawai'i Elder Law Program, and Volunteer Legal Services Hawai'i.
- There are stringent reporting and monitoring requirements for the use of court filing fee surcharge funds. The money is first deposited in the Indigent Legal Assistance Fund with the Judiciary. Judiciary contracts with the Hawai'i Justice Foundation to administer the funds. The Hawai'i Justice Foundation has a yearly application process and requires all successful applicants to submit quarterly financial and programmatic reports on the expenditure of the funds, a yearly report, and the organization's audit to them for review.
- While a few collection attorneys and collection agencies have opposed the bill, it is unfair for collection cases to be excluded from the court filing fee surcharge. Under current law, those filing collection cases are exempt from paying the filing fee surcharge in District Court. Yet, they are some of the heaviest users of the District Court. As users of the court system, they should pay like everyone else. There should be no special exemption for those collecting on a debt.
- This bill has received strong support from the House Judiciary and Finance Committees and the Senate Judiciary and Labor Committee. We urge the Senate Ways and Means Committee to also support this bill.

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. 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.

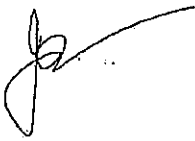
2. The creation of a Hawai'i Access to Justice Commission or similar entity is hereby determined to be essential to improving access to justice in the short and long term, and achievement of this action step shall be supported by the HSBA as a matter of high priority because the prompt formation of a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

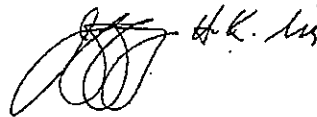
4. The Executive Director, officers and the Delivery of Legal Service to the Public Committee of the HSBA are hereby directed to review the Report and the Plan in detail, identify each respect in which the HSBA might act to contribute to the achievement of the steps set forth in the Plan and then present 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

**LAW OFFICE OF GEORGE J. ZWEIBEL**  
**45-3590A Mamane Street**  
**Honoka'a, Hawaii 96727**  
**(808) 775-1087**  
**(808) 775-1089 (facsimile)**

**Senate Committee on Ways and Means**

**Hearing: Tuesday, April 1, 2008**  
**10:15 a.m.**

**IN SUPPORT OF HB 3422, HD2**

**Chair Baker, Vice Chair Tsutsui, 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. Increasing the filing fee surcharge from \$25 to \$50 in Circuit Court and on appeal and from \$10 to \$25 in all cases in District Court would not significantly increase the cost of litigation, nor would it alter the existing exemptions (small claims, TROs, etc.). 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.

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.



# NATIVE HAWAIIAN LEGAL CORPORATION

*Serving Hawai'i since 1974*

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813 • Phone (808) 521-2302 • Fax (808) 537-4268

## TESTIMONY OF MAHEALANI WENDT, EXECUTIVE DIRECTOR IN SUPPORT OF HOUSE BILL 3422, HD 2 (HSCR 389-08)

April 1, 2008

Aloha Chairperson Baker, Vice-Chair Tsutsui, and members of the Senate Committee on Ways & Means. 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 2, 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 do not 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 2 and urges its passage. Thank you for this opportunity to testify.

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





**HAWAII JUSTICE FOUNDATION**

P. O. Box 1230  
Honolulu, Hawaii 96807-1230

---

(tel) 808•537-3886 (fax) 808•528-1974

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

March 26, 2008

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

TO: Senate Committee on Ways and Means

HEARING DATE/TIME: Tuesday, April 1, 2008, 10:15 a.m., Conf. Room 211

MEASURE NUMBER: HB 3422 HD2, RELATING TO SURCHARGE FOR  
INDIGENT LEGAL SERVICES, Amending HRS Section 605-7

SUBMITTED BY E-MAIL: [testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov)

**The Hawaii Justice Foundation (HJF) requests the Senate Committee on Ways and Means 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 debt collection 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 the ILAF program. 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. For more than a decade, other groups using the court system have paid a surcharge on court filing fees to help meet civil legal service needs. The debt collection agencies are heavy users of court resources, and it is fair that the ILAF program be expanded to require that these debt collection agencies participate in contributing to ILAF.**

Court filing fees, even with the proposed surcharge increase, constitute only a small percentage of the total cost of litigation. Existing exemptions for small claims cases, TROs, protective

orders, in forma pauperis, and County and State governmental filings will remain in effect under HB 3422. 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. Passage of this bill will be a major step toward efforts to achieve access to justice for all.



## HAWAII DISABILITY RIGHTS CENTER

900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813  
 Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928  
 E-mail: [info@hawaiidisabilityrights.org](mailto:info@hawaiidisabilityrights.org) Website: [www.hawaiidisabilityrights.org](http://www.hawaiidisabilityrights.org)

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

**To:** Senate Committee on Ways and Means

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

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

**Hearing:** April 1, 2008 10:15 A.M.  
Conference Room 211, State Capitol

Members of the Committee on Ways and Means:

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.



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

Senate Committee on Ways and Means  
April 1, 2008, 10:15 a.m., Room 211

My name is David L. Fairbanks, and I am an attorney in private practice in Honolulu and a partner with the firm of Cronin, Fried, Sekiya, Kekina & Fairbanks. Thank you for permitting me to submit written testimony concerning this bill.

I support HB 3422, HD2, urge restoration of the increased surcharge for certain filing fees (\$50 for filing in and appeals from Circuit Court for civil cases; \$25 for civil cases (non-governmental) filed in the District Courts) and urge its passage.

In my forty (40) years of practicing law in Hawaii, I have been aware of the need for those less fortunate in our community to have access to basic civil legal services. That need has been increasing and has reached critical proportions. While the Legal Aid Society of Hawaii does an outstanding job in providing legal services in this regard, its resources are very limited. As you are aware, the recent Access to Justice Hui's report found that Hawaii's low-income population continues to increase and that only one in five of the low-to-moderate income residents in Hawaii are able to have their basic legal needs met

(their needs are primarily in the areas of: housing; family law; domestic violence; and consumer issues). This means that 80% of our most-needy residents do not have basic legal assistance. There is only one legal service attorney for every 2,291 people in the state who are below 125% of the federal poverty guidelines and one legal service attorney for every 4,402 people in the state who are below 200% of the federal poverty guideline. However, there is one private attorney for every 361 people in the general population in our community.

This is disturbing and intolerable. Funding for civil legal services in our community is woefully inadequate and must be increased. It is everyone's responsibility to improve this serious problem: the Bar, interested organizations, and the Legislature. Currently, the members of the Bar are engaged in a fund-raising campaign (over a three-year period) to enable the Legal Aid Society to increase its capacity and ability to assist more of our indigent citizens. While the results of the campaign have been promising, it cannot by itself redress the problem of 80% of our resident citizens not being able to receive basic legal services. HB 3422, HD 2, goes a long way to providing permanent support to attack the problem. The additional monies that would be dedicated to legal services to the indigent from the increase in the surcharge are critical and

absolutely necessary if we, as a community, are going to do anything meaningful to address this growing problem.

The concept of funding legal services for the poor through court filing fees is not new or radical. Some 32 states already utilize this method. Nationally, about 45% of all state funding for legal services to indigents comes from filing fees and fines. However, in Hawaii, only 14% of the total annual funding comes from filing fees and fines (approximately \$305,000). This amount needs to be substantially increased.

Consequently, I urge that the increase in fees be restored to the bill and I urge passage of the bill.

Respectfully submitted,

  
David L. Fairbanks

DEREK R. KOBAYASHI

TOPA FINANCIAL CENTER  
745 FORT STREET · SUITE 1500  
HONOLULU, HAWAII 96813

TELEPHONE (808) 523-6060 · FAX (808) 523-6030

March 31, 2008

Senator Rosalyn H. Baker and Committee Members  
Senate Ways and Means Committee  
Hawaii State Capitol, Room 210  
415 South Beretania Street  
Honolulu, HI 96813

Re: HB 3422, HD2

The Honorable Chair Baker and Honorable Committee Members:

I appreciate the opportunity to submit testimony in support of HB 3422 and the intent of the measure to increase funding to provide access to civil legal services for indigent persons in our Hawai'i.

I am a current board member and a past President of Volunteer Legal Services Hawai'i and a member of the Access to Justice Hui (the "Hui"). I have attended and presented at the annual ABA/NLADA Equal Justice Conference, and I am pleased to be attending this year's conference in May 2008, with other members of the Hui to share with thousands of others in the pro bono community from across the country, the vast strides made in identifying the legal needs of our indigent community and establishing goals to meet those needs. The needs and goals are identified in the Hui's report, "Achieving Access To Justice For Hawaii's People."

HB 3422 is an integral component in breaking down barriers to justice for those who cannot afford access the civil legal system. The measure is a reasonable means to continue to raise and direct additional Indigent Legal Assistance Funds ("ILAF") towards servicing those individuals without access in order that they receive direct legal representation to meet their needs.

As a civil litigation attorney in private practice, I am proud and privileged to have represented and continue to represent such clients on a pro bono basis. The needs are real. There are families facing threat of eviction and homelessness. Also, persons in need of assistance pursuing government benefits to which they are entitled.

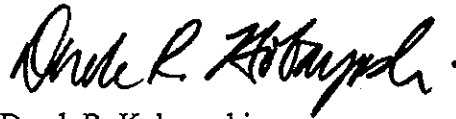
Over the years, ILAF monies have enabled legal service providers to intake, service and direct such persons to private attorneys to undertake pro bono representations. The loss of ILAF monies, and the absence of the relatively modest

Senator Rosalyn H. Baker and Committee Members  
Senate Ways and Means Committee  
Page 2

increases proposed will certainly result in a decline in the ability of legal service providers to facilitate such provide pro bono representations.

Accordingly, it is respectfully submitted that HB 3422 be passed with the modest increase in surcharges sought, in order to continue to provide vital ILAF monies to legal service providers.

Very truly yours,

A handwritten signature in black ink, appearing to read "Derek R. Kobayashi". The signature is written in a cursive, flowing style.

Derek R. Kobayashi

DRK:bjm



TO: Senator Rosalyn H. Baker, Chair  
Senator Shaun S. Tsutsui, Vice Chair  
Members of the Senate Committee on Ways and Means

FROM: Naomi C. Fujimoto

RE: HB 3422, HD2 Relating to Surcharge for Indigent Legal Services

HEARING: Tuesday, April 1, 2008, 10:15 a.m. in Conference Room 211

---

Dear Senator Baker, Senator Tsutsui, and members of the Ways and Means Committee:

I am an attorney in private practice on Oahu, a member of the Board of Directors of the Legal Aid Society of Hawaii, and a member of the Board of Directors of Lawyers for Equal Justice. I strongly support HB 3422, HD2, and respectfully request your assistance in enacting it.

A significant portion of our community struggles to make ends meet for basic things like food, shelter and medical care and has nothing to spare to address pressing legal issues and needs. Hawaii provides a safety net for indigent citizens facing criminal proceedings through the Office of the Public Defender because we recognize the importance of protecting people's liberty interests. However, as noted in the Hawaii Access to Justice Hui's Community Wide Action Plan, access to justice in a civil law context is also extremely important and we have a dire need to increase support for the provision of civil legal services to poverty stricken Hawaii residents.

The proposed bill would increase the filing fee by \$25 per case in Circuit Court and on appeal and increase the filing fee by \$15 per case in District Court and would expand the cases to which the fee applies in District Court to all non-exempt cases. These are small filing fee increases on a per case basis; however, when multiplied by all the cases to which the fee would be applied, this would generate a good stream of revenue to assist those most in need. I believe that these modest surcharges and the accompanying increase in access to justice for indigent residents would result in an effective reduction in the social and economic costs that is paid by all Hawaii residents when we are not able to address the legal needs of some of the most vulnerable members of our community.

Thank you for your consideration.

# SUSAN M. ICHINOSE

*Attorney at Law*

March 31, 2008

The Hon. Rosalyn H. Baker, Chair  
The Hon. Shan S. Tsutsui, Vice Chair  
Senate Committee on Ways and Means  
State Capitol  
Honolulu, HI 96813

Re: HB 3422, HD 2 (SSCR 3091)

Dear Chair Baker, Vice Chair Tsutsui, and Members of the Committee:

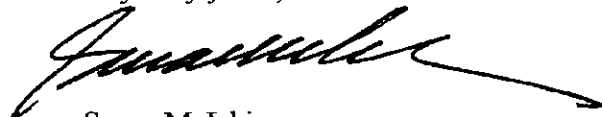
Thank you for hearing this bill, which seeks to increase a nominal surcharge on filing fees for certain types of court complaints in order to assist legal services for the indigent.

As a member of the Bar who litigates in State Courts, and as a contributor to public service agencies who dispense legal services to the poor, I would like to add my voice to those in support of the bill. I was present last year when the Access to Justice Hui made a public presentation of its report on "Achieving Access to Justice for Hawaii's People" at a downtown assemblage of leading public servants and private citizens. Although I was well aware that the gap between our community's social services needs and our resources continues to grow each year, I was surprised to learn from the report that fully 80% of all low and moderate-income residents can not afford to have their legal needs met.

As an attorney who represents litigants in State Courts, I have considered the filing surcharges that my clients and I pay to be nominal in nature; and yet those nominal fees have immense financial consequences in helping to bridge the needs gap for our financially disadvantaged residents. The increase in the surcharges will not be an undue burden on the litigants who are able to afford court services, but will result in an exponential benefit to those who have difficulty in getting their legal needs met.

Thank you for your time and consideration. Mahalo, me ke Aloha pumehana.

Very truly yours,



Susan M. Ichinose

**testimony**

---

**From:** Reber, David J. [dreber@goodsill.com]  
**Sent:** Saturday, March 29, 2008 10:44 AM  
**To:** testimony  
**Subject:** HB 3422 HD 2

This email is intended for submission to the Senate Committee on Ways and Means for its hearing on HB 3422, HD2 (relating to the surcharge for indigent legal services) to be held on April 1, 2008 at 10:15 a.m. in Conference Room 211 at the State Capitol.

Dear Chair Baker, Vice Chair Tsutsui and Senators Chun Oakland, English, Fukunaga, Hooser, Inouye, Menor, Mercado Kim, Tokuda, Hemmings and Whalen:

This email is written to request, respectfully, that the Senate Ways and Means Committee act favorably on HB 3422, HD2 at its hearing of that bill on April 1, 2008. The bill is proposed in order to increase funding for the provision of civil legal services to Hawaii's growing poverty community by increasing, and expanding the applicability of, the surcharge on court filing fees in civil actions. This is a particularly appropriate source for increased funding for civil legal services to the poor and will help insure that needy members of our low income community have meaningful access to our justice system.

I urge approval of the bill in a final form that will provide that the filing fee surcharge for indigent legal services be increased from \$25 to \$50 in Circuit Court and on appeals and from \$10 to \$25 in District Court, and that the fee be made applicable to all non-governmental cases, but preserving the existing exemptions from the surcharge for small claims cases, TROs, protective orders and *in forma pauperis* filings. These surcharges have not been increased since the legislation providing for the surcharges was adopted over 10 years ago and the proposed levels are reasonable, particularly in view of Hawaii's increased poverty population and the effects of inflation.

As a member of the Board of Directors of the Legal Aid Society of Hawai'i for 10 years and its volunteer President for six years, and as an active participant in the Access to Justice Hu ' i (which is a group 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), I am acutely aware of the critical need for additional funding for civil legal services for the poor. My firm and I financially support Legal Aid Society of Hawai'i and Voluntary Legal Services of Hawai'i, and have devoted a substantial amount of time and effort in serving these organizations and in providing pro bono legal assistance to their low income clients. Clearly these organizations, and the others who receive support from the filing fee surcharge, require substantially greater financial resources to meet the unmet needs of our poverty community. If our economy turns for the worse, this need will be further compounded, and increasing the amount and scope of the filing fee surcharge is a fair and equitable step to take in order to address the problem. Achieving this step is a key component of the Community-Wide Action Plan that the Access to Justice Hu ' i has advanced to improve access to justice and the difficult circumstances of our growing poverty community.

Thank you for your consideration.

3/29/2008

**David J. Reber**

1099 Alakea Street, Suite 1800

Honolulu, HI 96813

Direct line: (808) 547-5611

Fax: (808) 547-5880

email: [dreber@goodsill.com](mailto:dreber@goodsill.com)

## testimony

---

**From:** Galen Nakamura [galen.nakamura@hawaiiintel.net]  
**Sent:** Monday, March 31, 2008 12:50 PM  
**To:** testimony  
**Subject:** HB 3422, HD 2, Court Filing Fee Bill Scheduled with Senate Ways and Means Committee, April 1, 10:15 a.m.

Please submit this testimony to the Senate Ways and Means Committee for a hearing on HB 3422, HD2 (Court Filing Fee Bill) scheduled for April 1, 2008 at 10:15 a.m.

To: Hon. Rosalyn H. Baker, Chair  
and Committee Members  
Senate Ways and Means Committee  
2008 Legislature, State of Hawaii

I am an attorney in private practice on Kauai and a member of the Board of the Legal Aid Society of Hawaii.

I am writing to express strong support of HB 3422, HD 2 ("Relating to Surcharge for Indigent Legal Services"). The revenue raised from this important bill will supplement critically needed civil legal services by Hawaii's poor. The surcharge increase is modest, but would generate substantial additional revenue to support equal access to justice for Hawaii's indigent population.

Thank you for the opportunity to testify on this important issue

*Galen T. Nakamura*

Shiramizu Loo & Nakamura, LLLP  
Attorneys at Law  
4357 Rice Street, Suite 201  
Lihue, Hawaii 96766  
Phone: 808 632-2267

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED COMMUNICATION AND/OR ATTORNEY WORK PRODUCT: This message (and any attachments) is intended only for the use of the designated recipient named above. This message is or may be an attorney-client communication and does or may contain attorney work product, and either does or may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone and delete this message and any attachments. Thank you.

No virus found in this outgoing message.

Checked by AVG.

Version: 7.5.519 / Virus Database: 269.22.1/1352 - Release Date: 3/31/2008 10:13 AM



**HB 3422 HD 2, RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES**

Senate Committee on Ways and Means

April 1, 2008  
Room: 211

10:15 a.m.

---

Aloha Chair Baker, Vice Chair Tsutsui, and members of the Committee. I am Clyde Namu`o, Administrator of the Office of Hawaiian Affairs (OHA).

The OHA **SUPPORTS** HB 3422, HD2, which would increase funding for indigent legal services by increasing the surcharge on certain court filing fees.

*Achieving Access to Justice for Hawai'i's People*, a November 2007 report of the Access to Justice Hui, cited data indicating that 38,005 Native Hawaiians live below 100 percent of the federal poverty guidelines. The report also mentioned that various legal service providers indicated that nearly 27 percent of their clients were Native Hawaiians. Furthermore, the report indicated that the greatest legal needs of the poor are with family issues, housing, consumer problems, and domestic violence. Native Hawaiian rights was another area in which potential clients lacked legal assistance.

OHA urges the Committee to PASS HB 3422, HD2 to help meet the legal needs of Native Hawaiians. Thank you for the opportunity to testify.

**LAW OFFICE OF HOWARD K. K. LUKE**

ATTORNEYS AT LAW  
DAVIES PACIFIC CENTER  
SUITE 2022  
841 BISHOP STREET  
HONOLULU, HAWAII 96813

HOWARD K. K. LUKE  
DAVID M. HAYAKAWA

TEL: (808) 545-5000  
FAX: (808) 523-9137

**Senate Committee on Ways and Means**

**Hearing: Tuesday, April 1, 2008  
10:15 a.m.**

**IN SUPPORT OF HB 3422, HD2**

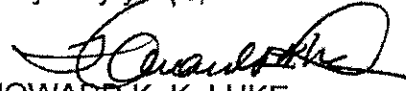
Chair Baker, Vice Chair Tsutsui, and Committee Members:

I am writing in strong support of House Bill 3422, HD 2. Passage of this bill will increase desperately needed funding for those members of our community who qualify for indigent legal services representation.

As a member of the Board of Directors of the Legal Aid Society of Hawaii, I firmly believe that passage of HB 3422, HD2 will serve the interests of not only those who are unable to afford legal services, but also the members of the Hawaii State Bar as a whole. We are called upon as attorneys to be active in ensuring that justice is available not only to our clients who can afford our professional services, but also to those who have legitimate legal claims but are unable to bear the often prohibitive expense of seeing these claims through the legal system. The proposed bill will not change the status of those who are in positions of exemption from the proposed amendments, including persons who qualify for in forma pauperis filings, petitioners for protective and temporary restraining orders, and small claims litigants. It will, however, through the increase of the filing fee surcharge to \$25 in the district court and \$50 in the circuit court, enhance the ultimate goal of providing universal access to justice for all citizens of the State of Hawaii.

Thank you for your consideration of my statement of support. If you or members of your staff have any questions or comments, please feel free to contact me at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "Howard K. K. Luke", written in a cursive style.

HOWARD K. K. LUKE  
Attorney at Law



**testimony**

---

**From:** Sally Kaye [skaye@runbox.com]

**Sent:** Monday, March 31, 2008 1:39 PM

**To:** testimony

**Subject:** RE: HB 3422, HD 2 - Committee on Ways and Means, hearing on 4/1/08 at 10:15 a.m.

**COMMITTEE ON WAYS AND MEANS**

Senator Rosalyn H. Baker, Chair

Senator Shan S. Tsutsui, Vice Chair

---

I am writing today to ask that the Senate Ways and Means Committee **SUPPORT HB 3422, HD 2**. The additional funding that would result from passage of this bill (by increasing the surcharge on initial court filing fees in civil actions) is urgently needed to help support civil legal services for those least able to afford legal assistance.

I would also ask 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 in all non-governmental cases filed.

As the bill's language acknowledges, the recently released 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, found that Hawai'i's lower-income population continues to increase relative to the total population and that an unacceptable level of unmet civil legal needs persists. This is unacceptable, and will likely persist or worsen if current funding levels remain static.

One of the recommendations issued by the Access to Justice Hui's report to address this dire situation was for the Legislature to increase funding for civil legal services by increasing the filing fee surcharge.

I began my legal career as a part time paralegal for the Legal Aid Society of Hawaii (LASH) here on Lana'i in the late 70's. Our island is still being primarily served through the efforts of a single, part-time paralegal. This situation leads to many unmet civil legal needs and will not likely change without additional funding.

Thank you for this opportunity to testify before your Committee on this important measure.

Sally Kaye  
P.O. Box 631313  
Lanai City, HI 96763  
LASH Board Member

**testimony**

---

**From:** Allan Okubo [ayokubo@hotmail.com]  
**Sent:** Monday, March 31, 2008 10:26 AM  
**To:** testimony  
**Subject:** HB 3422, HD2

TO: COMMITTEE ON WAYS AND MEANS  
 Senator Rosalyn H. Baker, Chair  
 Senator Shan S. Tsutsui, Vice Chair  
 DATE: Tuesday, April 1, 2008  
 TIME: 10:15a.m.  
 PLACE: Conference Room 211

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

Honorable Committee, Madam Chair and Mister Vice Chair:

I am an attorney who practices in the District Court of the First Circuit primarily in the field of collection law.

I object the HB 3422, HD2 because it is discriminatory to the people who are trying to get repaid from the parties who have not fulfilled their financial obligations. To make the Plaintiffs pay an additional \$25.00 to file their claims would be a financial hardship and burden as statistically nationwide the rate of actually collecting the indebtedness is less than 20% and probably getting worse.

The organizations seeking funding are making the claim that the Plaintiffs are all deep pocket organizations and can afford the money, but that is not true. Even collection agencies only collect at the rate stated above, so to force them to pay \$25.00 additional, above the \$120.00 filing fee will put some of them out of business, because more than 80% of the cases will not be collectible, so they suffer the loss of the filing fee, service fees and the SURCHARGE FEE. It is not true, as portrayed by the organizations, that they will get back their money. Also, there are thousands of individuals who file in the court systems who will be forced to pay the surcharge, and the cost might be prohibitive, and therefore have them decide not to pursue their legal remedy through the courts. And like the statistics, only 20% of the cases will be collectible. The system has changed and has become more cumbersome in the forms and procedures used, and for the layman it is even more confusing. To additionally have each pay \$25.00 more to file will make them reconsider and for some, not file.

The organizations claim they need the funding to help the indigent get legal services. But as far as I have heard none have stressed that they will be trying to re-educate the people to make better financial choices and have programs to do so. Therein lies the Catch 22. If they run such programs and it is effective, then the people will not get themselves in financial problems thus having less lawsuits. If that happens that means the organizations receive less money from the surcharge fees. Thus it is in their best interest to not educate the people so that more cases can be filed, and they receive more funding.

Also the organizations all receive grants and funding from the State through the grants and aids process, and this is double dipping into the system to get more. But their claim is that it is not funding from the State and therefore shouldn't be a problem

because it will be from people using the court system. The court system IS part of the State of Hawaii, and to use the system again, through a backdoor method is unethical. That will open the door for other organizations to seek to get additional funding by tagging onto some other fee program such as the DCCA filing fees, or licensing or permit fees, etc. The general public is not an open check book for organizations and if they can't fund their programs they need to evaluate how they run themselves and seek funding from the private sector, not the individual who has already suffered a loss by not being paid rent, and must now fund an organization who will potentially be contesting his claim for rent. To have the Plaintiffs pay for programs that do nothing but seek to find an easy way out for their clients to beat the system is unfair, and I humbly ask that this committee not pass this bill

ALLAN Y. OKUBO, ESQ.  
 P.O. Box 10225  
 Honolulu, HI 96816  
 Ph. 735-6582  
 email: [ayokubo@hotmail.com](mailto:ayokubo@hotmail.com)

---

Test your Star IQ [Play now!](#)

March 31, 2008

**Committee on Ways and Means**

**Hearing date: Tuesday, April 1, 2008**

**TIME: 10:15 a.m. (or immediately following completion of the 10:00 a.m. agenda)**

**PLACE: Conference Room 211  
State Capitol  
415 South Beretania Street**

**HB 3422, HD2 RELATED TO SURCHARGE FOR INDIGENT LEGAL SERVICES**

**POSITION: DO NOT 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.**

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, HD2.**

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](mailto:gfreeman@medcah.com).

Respectfully submitted,

Genevieve Freeman  
President  
MEDCAH, Inc.

**testimony**

---

**From:** Pat Tomita [ptomita.mcs@hawaiiantel.net]  
**Sent:** Monday, March 31, 2008 3:00 PM  
**To:** testimony  
**Subject:** HB 3422 HD2 - TESTIMONY 3-31-2008

Please submit testimony to Committee on Ways and Means

---

March 31, 2008

**Committee on Ways and Means**

**Hearing date:** Tuesday, April 1, 2008

**TIME:** 10:15 a.m. (or immediately following completion of the 10:00 a.m. agenda)

**PLACE:** Conference Room 211  
State Capitol  
415 South Beretania Street

**HB 3422, HD2 RELATED TO SURCHARGE FOR INDIGENT LEGAL SERVICES**

**POSITION: DO NOT 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.**

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, HD2.**

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.

Respectfully submitted,

Patricia R. Tomita  
President  
Maui Collection Service, Inc.