

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

To: House Committee on Judiciary

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

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

Hearing: February 5, 2008 2:00 PM
Conference Room 325 , State Capitol

Members of the Committee on Judiciary:

Thank you for the opportunity to provide testimony supporting House Bill 3422, 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.

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HAWAII JUSTICE FOUNDATION

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February 4, 2008

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

TO: Committee on Judiciary, House of Representatives

HEARING DATE/TIME: Tuesday, February 5, 2008, 2:00 p.m.

MEASURE NUMBER: HB 3422, 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 into the ongoing successful ILAF Program without any difficulty.

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.

Court filing fees, even with the proposed surcharge increase, constitute only a small percentage of the total cost of litigation. HB 3422 should not result in people being unable to file cases in our judicial system, and HB 3422 will substantially increase funds available through ILAF for distribution to qualifying low-income legal service providers.

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

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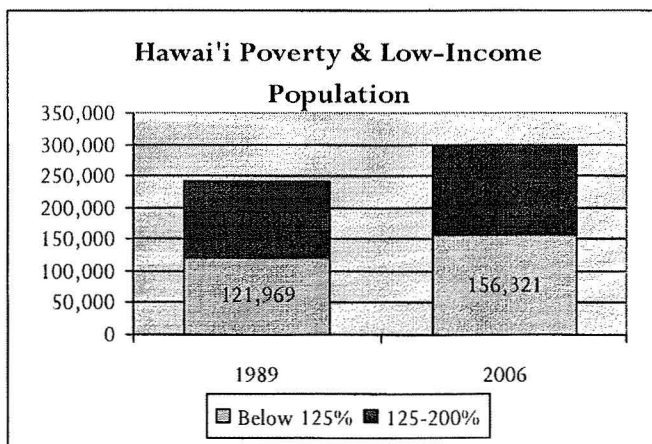
TESTIMONY IN SUPPORT OF HB 3422
RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES

The Legal Aid Society of Hawai'i hereby provides testimony in full support of HB 3422 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.

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. 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

NĀ LOIO

Immigrant Rights and Public Interest Legal Center

TESTIMONY IN SUPPORT OF

HB 3422

Committee on Judiciary

Tuesday, February 5, 2008

2:00 p.m.

To: The Honorable Tommy Waters, Chair
The Honorable Blake Oshiro, 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 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. In its 2007 groundbreaking 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 is a modest step forward in meeting the statewide community legal needs and in assuring equal access to justice.