SB 2712
Senate Judiciary & Labor
Hearing: Thursday, January 31, 9am
Conference Room 016

TO:
Senator Brian Taniguchi, Chair, Senate Judiciary
Senator Clayton Hee, Vice-Chair
Senator Russell Kokubun,
Senator Clarence Nishihara
Senator Mike Gabbard
Senator Sam Slom

## TESTIMONY IN OPPOSITION TO SB2712

My name is Adrienne King. I am speaking on behalf of the of the Family Law Section of the Hawaii State Bar Association (HSBA) of which I am the immediate past Chair and current Legislative Director of the Section. I am also speaking as Chair of the Honolulu Family Court Professionals, a group of 123 signers of a petition in favor of a full-service court in Kapolei and opposed to the relocation of the entire First Circuit Family Court from it present Honolulu location to Kapolei.

The Family Law Section and the Honolulu Family Court Professionals support the deletion by the Senate of

- the additional $9+million requested by the Judiciary for the Kapolei court complex, as set forth in the CIP requests #1
- the $2.6 million lump sum CIP for Judiciary Facilities Statewide, as set forth in #2, and
- the 450,000 for "Facilities Redevelopment Planning, as set forth in #5.

## ALLOCATION PREMATURE

### RESOLUTION DRAFTED &PENDING

A Resolution drafted by Speaker Say, is being edited and will be submitted by Representative from Kapolei, Sharon Har, to the House, along with a concurrent Resolution to the Senate, requests the Judiciary to "conduct a study to identify the funding, personnel, equipment, and supplies needed to create a fourth judicial circuit to be located at the Kapolei judiciary complex to serve the residents of the Waialua, Wahiawa and Ewa districts as identified under Section 4-1, HRS...and to submit a report of its findings to the Legislature no later than twenty days prior to the convening of the Regular Session of 2009."

Representative Har has publicly stated to the Judiciary at their briefing to the House Finance Committee that she wants a "full service" court in Kapolei, not just a "Family Courthouse". Representative Har stated that the type of economic development that is desired in Kapolei will not be encouraged by having only a Family Court in her district. She wants a broad spectrum of professionals, including attorneys who practice in areas other than just family law to establish themselves in Kapolei and that will only be accomplished by the creation of a 4th Circuit. Speaker Say has also endorsed the idea of a 4th Circuit. This is more aa management issue, than a money issue.

The Senate President told the Judiciary that " you have the money, but no plan" two years ago when the legislature allocated funds for the construction of the court complex. As it stands now, there is still no plan, or intent to be accountable to this ELECTED branch of government for the additional funds being requested.

SB 2771 INTRODUCED BY SENATORS ROSALYN BAKER AND SHAN TSUTSUI

WAM Chair and Co-Chair have introduced SB2771 to amend Section 37-66 HRS relating to the responsibilities of the legislature to consider long range plans, including the proposed objectives and policies. [1] It is the stated policy of this Legislature to create a "second city" in Kapolei. Planning and spending should support that policy. It is clear that WAM has serious concerns about never ending requests for more money for CIP projects for which there is NO ACCOUNTABILITY.

Approval of money for the items noted above would, at this time, I respectfully submit, be in contravention of 37-66 HRS which requires the legislature to "Review the implementation of...program accomplishments and execution of legislative policy direction." Any further allocation of money for Kapolei without consideration of the Legislative policy to create a second city is premature.

## JUDICIARY CONTINUES TO IGNORES LAW

HOLD THEM ACCOUNTABLE

Act 110, which allocated $95 million to build a court complex in Kapolei, included the express proviso

> that court space and resources be retained for family court services in the existing Honolulu court location; and provided further that the Judiciary create a public participation process that allows stakeholder group representatives the opportunity to be involved in the planning process for the Kapolei Court Complex, and the Honolulu-based Family Court.

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[1] SECTION 1. The legislature finds that the current procedure of authorizing multi-year, multi-function appropriations for capital improvement projects is inefficient and costly to the taxpayers of the State. In today's economy, the constantly changing nature of construction costs leads to cost estimates and actual expenditure that are often, if not always, very different.

This is particularly true when a capital improvement project appropriation includes planning, design, construction, land acquisition, and equipment. Each of these can be a lengthy process and proposed construction funding that was adequate at the beginning of the planning process is rarely consistent with the needs by the time ground is actually broken.

The purpose of this Act is to ensure more efficient, timely, and accurate capital improvement project appropriations by splitting the appropriation procedures for the different phases of the project.

SECTION 2. Section 37-66, Hawaii Revised Statutes, is amended to read as follows:

"[[]§37-66[]] Responsibilities of the legislature. The legislature shall:

(1) Consider the long-range plans, including the proposed objectives and policies, the six-year state program and financial plan, and the budget and revenue proposals recommended by the governor and any alternatives thereto[.];

(2) Adopt programs and the state budget, and appropriate moneys to implement the programs it deems appropriate[.]; provided that for each capital improvement project the legislature shall appropriate moneys as follows:

(A) An appropriation for plans, design, and land acquisition, as necessary; and

(B) Upon completion of plans, design, and land acquisition, an appropriation for construction and equipment, as necessary;

(3) Adopt such other legislation as necessary to implement state programs[.]; and

(4) Review the implementation of the state budget and program accomplishments and execution of legislative policy direction. Implementation of the state budget and program management, execution, and performance shall be subject to post-audits by the auditor who shall report the auditor's findings and recommendations to the legislature as provided in chapter 23."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008.

This proviso has been repeatedly ignored by the judiciary. They are now requesting more money for more buildings in Kapolei, and to demolish and reconfigure not only the Punchbowl Street courthouse, but also the Alakea St. Courthouse, in which Family Court criminal cases are tried, with *absolutely no involvement of any stakeholder groups in the planning....which is required by law.*

When will the Legislature hold the Judiciary ACCOUNTABLE TO FOLLOWING THE LAW? Any challenge to the Judiciary on this project, an extra-judicial action, is met with imperious protests against infringement on the alleged "independence of the judiciary" as the third branch of the government. I am not aware of any law, constitutional provision or concept of government that says the Judiciary, in its non-judicial actions, is above the law. They are an independent branch only as it applies to their interpretation of the law, not to ignoring the law as it applies to their spending money on CIP projects. Allowing the Judiciary to continue this behavior is setting a very dangerous precedent which will come back to haunt us all if not stopped. They are one branch of government, not a government unto themselves. They don't raise the money they so freely spend.

## THE FAMILY LAW SECTION OF THE HSBA REVOLTED

The Judiciary's above attitude toward the proviso and toward the Family Law Section, after years of promises by the Judiciary to work with the Family Law Section, and after representations were made to the Legislature of such collaboration, led to open and public revolt by the Family Law Section against the Judiciary. *This revolt was no small event, and was not and should not be taken lightly.* On January 17, 2006 the Family Law Section a resolution against the relocation. [2] The Board of Directors unanimously came out in support of the creation of a 4th Circuit on O'ahu, calling it a "quantum leap," a remarkable win-win solution to the Legislature's "second city" plan. The increasing population numbers on O'ahu necessitate *planning now* for the institution of two judicial circuits on this island and such plan supports the Judiciary's own stated policy of ensuring "equal access to justice."

## DENIAL OF EQUAL ACCESS TO JUSTICE

This bears repeating, over and over again: The Judiciary's own survey shows there will be a denial of equal access to justice if they are allowed to move more than a proportional number to the population served of judges to Kapolei, which is what they have told this Legislature and the Family Law Section they intend to do.[3] Equal Access to Justice also means PHYSICAL ACCESS, not just

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[2] The Hawai'i State Bar Association's Family Law Section opposes in the strongest possible terms the relocation of the entire Family Court to Kapolei, because a significant percentage of the families and children who use Family Court will not be able to get to Family Court if Family Court is completely relocated to Kapolei. Instead, in accordance with the mandate of the 2005 Hawai'i State Legislature in Act 110, the Family Law Section agrees that the Family Court should remain "Honolulu-based", and that Family Court services should also be provided in Kapolei. The Section furthermore authorizes and directs its Board of Directors to, in consultation with the Section membership, formulate a specific proposal for the division of Family Court services between Honolulu and Kapolei for presentation to the Hawai'i Judiciary and to the Legislature

[3] The Family Law Section Newsletter of April 1998, which was written by William Darrah, past Section Chair (copy provided on request), summarized the survey taken by the Judiciary of over 2,700 Family Court users. It stated: "a number of things became *plainly apparent* to the survey takers:

1. "A significant number of those who go to Family Court would have a *moderate to very difficult time getting to Kapolei* because of place of residence, work schedules, place of work, school schedules for children, transportation obstacles, etc.
2. "The *poorest patrons of Family Court would likely be hit the hardest.*
3. "A significant number of those people who now come to Family Court would actually refuse to go to Family Court if it was in Kapolei. "Many people, upon learning of the judiciary's plan to move the Family Court to Kapolei, were strongly vocal in their opposition to it, characterizing it as government at its worst.'" [Emphasis added.]

In a September 30, 1998 letter (copy provided upon request) with its enclosed Media Advisory and partial survey results, Mr. Darrah

getting free labor from attorneys and money out of the Legislature for more support staff.

## STATUS QUO IS RECIPE FOR FAILURE

In a Honolulu Advertiser commentary, Senator Jill Tokuda's statements about the real way to solve problems bears repeating. In discussing the failed transition at the State Historic Preservation Division of DLNR, prior to Laura Theilen's appointment, in contrast to the group assembled to oversee the Superferry operations under legislation passed during the last special session, she noted that "assembling a decision-making body that represents only one view is not likely to address the core issues."

> In the latter case, (i.e.the Superferry group) voices of cultural practitioners and environmentalists — those who had been critical of the operations under consideration — were included, reflecting an awareness that all concerns must be heard if a review is to be effective. **Change comes in the wake of the courage to turn away from what you want to hear, and to instead seek what you need to know.**
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> **Coming to grips with dissent is not easy,** but I doubt anyone expects that bringing effective change to SHPD will be simple. **Pushing against the status quo, focusing on what is best rather than what is comfortable calls for real leadership.** We should all hope that the DLNR and its director will demonstrate that leadership, expand the transition team to **include those whose opinions will make a difference to the division's long-term success,** and provide our community with the assurances it deserves that SHPD will operate as intended.

Respectfully submitted,

*Adrienne King*

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stated that "the media should be advised that the Family Law Section would maintain that:

> "(a) Purely from the standpoint of access to justice, the survey results strongly [Mr. Darrah's emphasis in the letter] support the creation of a reasonably-sized secondary full service multi-court facility in Kapolei, with a principle [sic] multi-court facility to remain available to the public in downtown Honolulu.
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> "(b) From an access to justice perspective, the survey results clearly do not [Mr. Darrah's emphasis] support the present State administration's plan to relocate the entire Family Court to Kapolei."

In the April 2001 Family Law Section Newsletter (copy provided upon request), Mr. Darrah summarized as follows:

"The *Hawai'i family law bar has long been opposed to the severance of the First Circuit Court from the existing integrated Circuit, District, and Family Court facilities in downtown Honolulu, and the relocation of the entire Family Court to a site in Kapolei.* We believe that such a severance and relocation of the existing Family Court will create insurmountable transportation problems which will in turn constitute a *major impediment to free access to Family Court, especially among Oahu's lesser affluent families and children.* Instead, we have long favored the creation of a fully integrated satellite court system in Kapolei, with Circuit, District, and Family Court facilities to provide services to that part of Oahu's population who lives and works closer to Kapolei, than to the existing Family Court facilities in downtown Honolulu.