



The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth Legislature

Senate Committee on Judiciary and Labor

The Honorable Brian T. Taniguchi, Chair

The Honorable Clayton Hee, Vice Chair

Tuesday, February 12, 2008, 9:00 a.m.

State Capitol, Conference Room 016

by

Thomas R. Keller

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2819, Making an Appropriation for Civil Legal Services.

Purpose: Provide funding to private organizations who offer civil legal services to indigent and low-income populations.

Judiciary's Position:

The Judiciary supports the intent of this measure, but is concerned about the legality of appropriating public funds to private organizations in the manner set forth in the bill. Article VII, section 4 of the Hawai'i State Constitution states:

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose. No grant shall be made in violation of Section 4 of Article I of this constitution. No grant of public money or property shall be made except pursuant to standards provided by law.

The standards for using public funds to support private organizations are incorporated in Hawai'i Revised Statutes (HRS) chapters 42F and 103F. HRS chapter 42F provides the means for organizations to receive grants and subsidies from the



Senate Bill No. 2819, Making an Appropriation for Civil Legal Services.
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legislature. Organizations must meet the standards set forth in HRS section 42F-103 to be eligible for grants or subsidies.

HRS chapter 103F establishes procedures for the purchase of health or human services from private organizations. State agencies are required to follow the methods specified in HRS chapter 103F, part IV, to purchase health or human services.

Under Senate Bill No. 2819, public funds would be appropriated directly to the Legal Aid Society of Hawaii (LASH), Volunteer Legal Services Hawaii (VLSH), Na Loio Immigrant Rights and Public Interest Legal Center (Na Loio) and three other private organizations. Because the appropriation does not comport with HRS chapters 42F and 103F, it may be subject to legal challenge. The Judiciary has consulted with the Department of the Attorney General on this bill. The Department of the Attorney General concurs with our concerns regarding the legality of making appropriations to LASH and the other private organizations identified in the bill.

Additionally, the Judiciary wishes to point out that the funding of legal representation through the judicial branch presents the potential for a conflict of interest or the appearance of bias. A lawyer has an ethical obligation to avoid representation that involves a conflict of interest. The potential for such conflict may increase, however, when a lawyer provides representation in the courts pursuant to a contract administered by the Judiciary. The client's interest in zealous representation may conflict with the courts' interest in the prompt and efficient administration of justice and the conservation of judicial resources; therefore, the attorney may be subjected to competing loyalties. Further, the courts may be viewed as less than impartial if the Judiciary funds legal advocacy on behalf of certain litigant groups. Such funding may be construed as establishing a bias within the courts in favor of these litigants and their claims.

Thank you for the opportunity to testify on Senate Bill No. 2819.



SB 2819, MAKING AN APPROPRIATION FOR CIVIL LEGAL SERVICES

Senate Committee on Judiciary and Labor

February 12, 2008

9:00 a.m.

Room: 016

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

The OHA **SUPPORTS** SB 2819, which would make an appropriation supporting organizations that provide free or low-cost civil legal services for low-income and indigent residents.

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 SB 2819 to help meet the legal needs of Native Hawaiians. Thank you for the opportunity to testify.

Domestic Violence Action Center

P.O. Box 3198 • Honolulu • Hawaii • 96801-3198

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

FR: Nanci Kreidman, M.A.
Executive Director

RE: S.B. 2819

Aloha. This Bill's intention to make certain that civil legal services are available in our community because of the importance of access to justice is sound and worth striving for.

The Domestic Violence Action Center, formerly The Domestic Violence Clearinghouse and Legal Hotline, currently has a POS contract with the Judiciary to provide the essential services we provide. We will not be seeking additional program monies, although increased funding is always our objective-since the demand far exceeds our capacity to meet it.

It is not entirely clear from this Bill what is intended, except that monies for the named agencies would be appropriated to the Judiciary. If this is the sole purpose, it would be acceptable to remove our agency from the list of programs.

Thank you for inviting comment today.

LATE

TESTIMONY IN SUPPORT OF SB 2819
MAKING AN APPROPRIATION FOR LEGAL SERVICES

The Legal Aid Society of Hawai'i hereby provides testimony in support of SB 2819, Making an Appropriation for Legal Services. This bill appropriates funds to certain legal services providers to help them continue to offer a wide range of essential legal services on civil matters to low-income residents.

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.

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. Legal Aid provides legal assistance, community education and outreach services to families and individuals who have critical need to:

- **Maintain or secure affordable housing**
- **Eliminate the barriers to being homeless**
- **Secure appropriate placement and services for abused and neglected children (we are guardian ad litem for the children)**
- **Obtain public benefits such as disability benefits from the Social Security Administration or Medicaid**
- **Help their family become safe and stable with family law services, including protection from domestic violence, child custody and support**
- **Be protected from a consumer problem such as mortgage "rescue" scams or illegal debt collection practices**

Being able to receive assistance for one's legal problems is critical in order for productivity to improve and self-sufficiency to be achieved. For those who are most vulnerable in our society, legal advocacy from a trusted community resource can mean the difference between receiving food and shelter, being able to visit and ensure the safety of their children and be protected from fraud and predatory consumer practices. Legal services ensure that the safety net created by the government and the community is available for those most disenfranchised.

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 only one out of five low and moderate income residents of Hawai'i have their legal needs met. Further, only one out of every three persons contacting an existing legal services provider can obtain the legal help they need. The full 200 page Hui report is available at <http://www.legalaidhawaii.org/images/uploads/justice.pdf>.

One of the key recommendations of the Access to Justice Hui was that the State Legislature should increase funding for civil legal services. See Community Wide Action Plan: Ten Steps in Increase Access to Justice in Hawai'i by 2010, issued by the Hui on November 7, 2007.

Legal Aid is requesting \$1,200,000 from the legislature for FY 2008-09 to continue to provide civil legal services statewide, to open a new office in Wahiawa (two attorneys and two paralegals), to hire two additional attorneys (Hilo and Waianae offices) and two paralegals (Maui and Kona offices).¹ Legal services will be provided statewide through Legal Aid's nine offices and satellite sites. With this support, Legal Aid will be able to continue its mission and provide critically-needed legal services to 10,000 families and individuals and positively affect the lives of over 20,000 people.

The requested funding increase will allow Legal Aid to help more families and individuals maintain or secure affordable housing, secure appropriate placement and services for abused and neglected children (we are guardian ad litem for the children), obtain public benefits such as disability benefits from the Social Security Administration or Medicaid, help families become safe and stable with family law services, including protection from domestic violence, child custody and support, and protect them from a consumer problem such as mortgage "rescue" scams or illegal debt collection practices.

The funding increase will also allow us to recruit and retain our staff by paying living wages. Our attorney salaries are well below those paid to public attorneys and some other non-profit organizations. As a result we have had difficulty retaining and recruiting staff, particularly local attorneys. We are committed to improving the retention and enhancing the recruitment of staff. We have recently created a "Legal Aid Fellowship" program with the William S. Richardson

¹ In FY 1992, funding for this grant to the Legal Aid Society of Hawai'i was at \$1.47 million. Between FY 1993 – FY 1997 the grant slowly decreased to \$1 million. In FY 2000 the award leveled off at \$810,000 for four years, and in FY 2004 dropped to \$647,000. In both FY 2006 and 2007, funding was \$649,000. Funding increased to \$810,000 in FY 2008. Overall, funding has decreased by 45% since 1992.

School of Law to hire one Richardson graduate per year who is interested in practicing public interest law. The fellowships are for two years.

Without this grant, Legal Aid may be forced to significantly reduce its services in rural areas that traditionally do not have specific funding sources available to provide civil legal services. Furthermore, loss of these funds may affect Legal Aid's ability to leverage federal funds into the state that has allowed the organization to expand its capacity to provide services specifically in the areas of housing discrimination, supportive legal services to the homeless, housing counseling, and tax disputes with the IRS.

The Access to Justice Hui further recommended that

an appropriate home for funding for civil legal services should be established to ensure stable state funding.

(See Community Wide Action Plan)

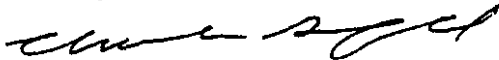
We note that the current language of SB 2819 provides for funding for specific non profit organizations, which appears to be a Grant in Aid. Remaining in the category of Grant in Aid, where Legal Aid current is located, presents a very difficult situation with funding uncertainty year to year and decisions not made until the end of each session. It is clear, however, that we need a home somewhere in state government. We need the stability that a home would provide.

The Judiciary has indicated that they do not desire to fund the Legal Aid Society as a purchase of service contract, thus we need to find a home elsewhere in the state government.

We respectfully request your support for SB 2819, as modified to provide an appropriate state governmental home for the Legal Aid Society. The stability and funding are both 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

S.B. 2819

Committee on Judiciary and Labor

Tuesday, February 12, 2008

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

Founded in 1983, Na Loio provides statewide free legal services, case management, community education, and advocacy in the public interest for vulnerable Hawai'i residents including low income immigrants, refugees, and other persons seeking justice. Significantly, almost 50% of Na Loio's clients are victims of domestic violence, human trafficking, sexual assault and other serious crimes, or abused and abandoned immigrant children. This past calendar year, for example, Na Loio provided free full legal representation for 148 vulnerable immigrants, of which 52 were victims of domestic violence or sexual assault, 5 were human trafficking victims, and an additional 5 were immigrant children who had been neglected, abused or abandoned.

Services for clients are provided through three main program initiatives. The Immigrant Domestic Abuse Project (IDAP) focuses exclusively on immigrant victims of domestic violence, sexual assault or stalking. Since the project's inception in 2000, IDAP has provided full legal representation for over 150 immigrant victims and assisted over 400 others with advice and counsel. IDAP's highly interactive and collaborative format is a model for the delivery of cost efficient statewide services. Under IDAP, Na Loio provides direct legal representation for immigrant victims helping them to secure legal status, citizenship, and access to public benefits. To provide immigrant victims with comprehensive services, Na Loio partners with domestic violence shelters and attorneys across the state. At shelters, for example, designated Immigrant Advocates identify immigrant victims in need of Na Loio's legal services. Once identified, Na Loio's attorneys and the Immigrant Advocates collaborate to secure documentation and evidence needed to support a victim's petition for legal status, naturalization, or public benefits. Na Loio's attorney partners include the Legal Aid Society of Hawai'i and the Domestic Violence Action Center, as well as private attorneys. Under IDAP, Na Loio partners with and pays a modest stipend to these legal service providers to provide needed family law legal services including: restraining orders, paternity, divorce, and contested child custody legal assistance.

The Immigration Law Project (ILP) is Na Loio's second core statewide legal services program. Under ILP, Na Loio reaches out to and provides services for immigrant victims of human trafficking, immigrant victims of serious crime, abused and neglected immigrant children, disabled naturalization applicants, asylum seekers, and other vulnerable members of

our statewide community. Most of Na Loio's clients are eligible for legal remedies yet cannot prevail without legal representation, and many have strong roots in the community. In addition to full legal representation cases, Na Loio regularly provides over-the-telephone consultation and advice to individuals, state and federal agencies, and other non-profit or community organizations. A toll free number is maintained for Neighbor Island residents. Last year alone, Na Loio responded to over 900 telephone requests for simple advice, counsel, or referral.

Since its inception twenty-four years ago, Na Loio has actively engaged in community education projects reaching thousands of immigrants and citizens alike. Topics are timely and diverse and have included presentations on civil rights, public benefits, voting and voting rights, legalization, language access, remedies for immigrant victims of crime and sexual assault as well as abused immigrant children. Na Loio's education forums and training workshops are developed and presented to a wide range of the community including: church groups, state agencies, community organizations, and the community at large. Last year for example, Na Loio provided 30 plus community presentations reaching over 1,000 persons statewide.

Na Loio is also frequently asked to participate on boards and commission to formulate policy recommendations to benefit the community. For example, Na Loio actively participated on the Hawai'i Statewide Strategic Plan for Victim Services sponsored by the Department of the Attorney General and also sits on the Violence Against Women State Planning Commission. Na Loio is presently active and participates in the Hawai'i Anti Trafficking Task Force I (to establish a protocol for case referral and management between law enforcement and service providers in cases involving human trafficking victims) and the Hawai'i Anti Trafficking Task Force II (established by the 2006 Legislature to submit a report on human trafficking in Hawai'i and to make legislative recommendations.)

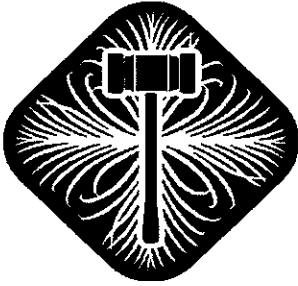
Over the past 10 years Na Loio and its staff have received numerous state and national awards attesting to its services and programs including: YWCA Luncheon Leaders Award, Foundation for Improvement of Justice Award (Atlanta, Georgia), Organization of Chinese Americans, Ho'okele Leadership Award (Hawaii Community Foundation), President's Award (Hawai'i Women Lawyers), and the Rhoda Lewis Award for Public Service.

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 that only 1 out of 5 low and moderate income residents of Hawai'i have their civil legal needs met, and that the lack of in-house attorneys and adequate funding for operations are significant barriers to obtaining justice in Hawai'i. To continue the provision of services for its clients, Na Loio respectfully requests funding in the amount of **\$478,000.00**. This request reflects a modest \$55,000.00 increase over last year's funding appropriation. The proposed increase will help Na Loio to offset increased rental costs associated with its move to the Kukui Children's Foundation Building in the summer of 2008 and will also support funding for case management services by a licensed social worker.

As Na Loio begins to take on more and more work with vulnerable victims of human trafficking, domestic violence, and sexual assault, the need to provide culturally and linguistically appropriate case management services has never been so acute. Inevitably, as immigrants transition to America they confront gaps between their old society and American society. At these critical junctures, immigrants are particularly vulnerable. Unsure they can access the police or courts, for example, many immigrants remain in abusive relationships because their batterer has told them they will be deported if they report the abuse, or that the courts will not award an immigrant parent custody of a minor child. Many United States citizen abusers also refuse to complete and file immigration forms to legalize the status of their immigrant spouse, or restrict their immigrant spouse from access to ESL courses or other activities outside the home. Isolated and alone, these immigrant victims live a horrifying life in constant fear of abuse and deportation.

At Na Loio, we have helped immigrant victims who have been chained like animals and locked in their homes, set on fire by their abusive spouse, denied food and other basic necessities, burned with cigarettes, thrown out of moving cars, attacked with knives, and threatened with other unimaginable harms. More than one immigrant victim has confided that without our services they would be dead. At Na Loio not only do our victim clients receive needed legal help as a necessary component of holistic services, they also receive social services. Over the past year, for example, Na Loio helped immigrant victims to: acquire safe housing, secure food and clothing; obtain needed medical services; and enroll in college. We also provided financial counseling and budgeting services as well as basic instruction on accessing public transportation and bus routes. Existing funding for Na Loio's part-time case manager, social worker may not be renewed after December 2008. Accordingly, in order to continue to provide necessary, unduplicated services for our clients, we are requesting funding for salary in the amount of \$25,000.00 plus payroll taxes and benefits.

Thank you for the opportunity to testify on this measure.



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Testimony In Support of S.B. 2819

Senate Committee on Judiciary and Labor

9:00 A.M.

February 12, 2008

Chair Taniguchi, Vice Chair Hee and Members of the Senate Committee on Judiciary and labor, thank you for this opportunity to testify. My name is Moya Gray and I am the Executive Director of Volunteer Legal Services Hawaii. I am testifying in support of SB 2819. SB 2819 appropriates funds to, among others, Volunteer Legal Services Hawaii for civil legal services. This bill would appear to be a grant as opposed to an appropriation for civil pro bono legal services, which I would also support.

Volunteer Legal Services Hawaii'i, one of the country's first pro bono legal organizations, has been working with the indigent community since 1981. **In 2007 Volunteer Legal Services Hawaii experienced a 30% increase in demand for our services.**

Our voice has been heard in the courtroom and before legislative bodies and we have devoted much of our resources to promoting and protecting the rights of children, victims of domestic violence, the homeless and a broad spectrum of people with few financial resources. Our service delivery through volunteers supported by staff is what sets us apart and enables us to serve so many with so little. We currently provide legal services statewide in Hilo, Kailua-Kona, Wailuku, Lihue, downtown Honolulu, Waimanalo and in Waipahu.

Volunteer Legal Services Hawaii provides legal assistance, services, education and outreach services through volunteer and staff lawyers to individuals, families, children, the homeless, the elderly and the sick through our Pro Bono Referral Program, Neighborhood Legal Clinic Program, Uncontested Divorce Clinic Program, Housing Support Legal Program, Community Tax Assistance Program, Capacity Building & Legal Support Program for Non-Profits, Na Keiki Law Center Legal Services, Young Families in Need Program, Parenting Plan Mediation Pilot Program, and Youth Outreach Program.

Without the assistance of lawyers our clients would have no way to protect their basic human rights such as housing, or to sustain themselves with employment, or to keep their families whole. The children that we see would have no voice in the legal system and for many their lives would be lived either in quiet desperation or in active and dangerous rebellion.

The Access to Justice Hui: In 2007 the Access to Justice Hui, composed of representatives of the Judiciary, the Hawaii State Bar Association, legal services providers, the Hawaii Justice Foundation and the William S. Richardson School of Law, conducted a statewide legal needs assessment of low and moderate-income people. The Hui issued its report entitled *Achieving Access to Justice for Hawaii's People: The 2007 Assessment of Civil Legal Needs and Barriers of Low and Moderate-Income People in Hawai'i.* A full copy of the report is available at the Hawaii State Bar Association's website:
<http://www.hsba.org/resources/1/Documents/Access%20to%20Justice.pdf>

In its report (*page i*), The Hui found that people in Hawaii have experienced increased poverty as well as a high cost of living.

One 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. In 2005, a family of four living at 125% of the federal poverty guideline earned \$2,319 per month, while such a family living at 200% of poverty earned \$3,710 per month. A study by the Center on the Family at the University of Hawai'i found that in 2005 it took \$4,824 per month to cover the basic living expenses for a family of four living in Honolulu.² Families unable to afford even basic expenses certainly are in no position to pay for legal assistance when it is needed.

(Emphasis added). The Hui found that the serious legal needs of only 1 in 5 low to moderate income people were being met. More significantly, the report found that of this group of people 2 out of every 3 people could not be served by the legal service provider because the legal service provider lacked capacity. And this is true for Volunteer Legal Services Hawaii. Based on its legal needs assessment, the Access to Justice Hui recommended that the community take 10 action steps to increase access to justice, including "increasing the funding to support the delivery of legal services to ensure access to justice" (See *The Community Wide Action Plan: 10 Action Steps To Increase Access To Justice In Hawai'i By 2010*).

In 2007 Volunteer Legal Services Hawaii experienced a 30% increase in the demand for our services, outstripping our current ability to meet the need. For these reasons additional funding for legal services is needed. Volunteer Legal Services Hawaii is requesting \$890,000 from the legislature for FY 2008-09 to continue providing civil legal services statewide and to open three new offices staffed by three part-time employees in Waianae, Hilo and in Wailuku. With this funding, Volunteer Legal Services Hawaii will be able to meet the 30% increase in demand for our services, providing access to justice to the thousands of people statewide. More people will be able to protect their children, their

homes, their jobs and begin new lives. More people who are at risk of homeless, or who are homeless, will be able to protect their families from vagaries of life lived in a car, in a shelter, in a park or on the beach.

Increased funding will also help Volunteer Legal Services Hawaii pay living wages to our own employees. In 2007 we, as with many businesses in Hawaii, were unable to keep up with rising wages, and lost many employees to other businesses. Those dedicated employees who have remained with Volunteer Legal Services Hawaii barely make a living wage. Additional funding would allow us to recruit and retain staff with a living wage.

Without additional funding, Volunteer Legal Services Hawaii will not be able to meet the rising demand for our services in the non-urban areas of our state. If families cannot protect their children, if more people lose their jobs and homes, or are enticed to borrow more money at high interest rates, the cost to the State to address these problem will only increase – whether that cost is in increased crime, increased teenaged pregnancies, increased domestic violence, increased child abuse, or increased homelessness.

Expending Agency: We note that the bill as drafted provides that “[t]he sum appropriated shall be expended by the judiciary for the purposes of this Act.” When one thinks of which branch of government is most closely aligned with the mission of providing legal services to the poor, one automatically thinks of the Judiciary. While the Judiciary is an independent arbiter of disputes, it has, as a core mission, to keep its courthouse doors open and accessible to those who have no money to hire lawyers. No other branch of government understands this better than the judicial branch of government. In fact, the Judiciary already pays “court-appointed” lawyers for the services these lawyers provide. I favor the judicial branch of government for one simple reason. Access to justice is the mission of pro bono legal services and we do so mostly through attorneys who generously volunteer their expertise, their time and their offices. However, it is the Judiciary’s preference not to have this appropriation within its budget. While attempts at compromise have been discussed with the Judiciary for the last 3 years, no agreement has been reached.

It is clear however, that those people who live in poverty without access to lawyers and to the courts need to have funding for civil legal services placed in an agency that understands and supports their needs. Agencies who serve the people who live in poverty, such as Volunteer Legal Services Hawaii, need the stability that would come from an appropriate funding ‘home.’

Thank you.