

Testimony on behalf of the
Office of the Public Defender, State of Hawai`i
to the House Committee on Judiciary

March 3, 2009

RE: H.B. No. 1229: Relating to Notice

Chair Karamatsu and Members of the Committee:

H.B. No. 1229 seeks to allow for service of district court temporary restraining orders (“TRO”) by publication when the petitioner is unable to ascertain the address of the subject of the order or when the subject has “evaded” the service of the order. We oppose this measure because it substantially waters down the requirement of service of a restraining order by either personal or certified mail service. A TRO can be obtained with an ex parte application by the petitioner. In other words the subject of the order is not given an opportunity to respond to the allegations in the application. Therefore, it is not unlikely that the petitioner would not know the current address of the subject of the order. This mere fact would allow the court to publish the subject’s name in a publication exposing the subject to public ridicule, employment consequences, and other negative results. We would remind the committee that this is not analogous to the sex offender registry – sex offenders are convicted felons, persons subject to publication here are merely accused of malfeasance with no opportunity to respond.

Moreover, notice by publication does not assure that the subject has actual notice of the TRO. A violation of the order under this section is a misdemeanor and could mean a mandatory prison sentence, therefore, actual knowledge of the order and its contents is essential to placing the order in effect.

Thank you for the opportunity to comment on this bill.