

Honolulu, Hawaii

April 7, 2011

RE: S.B. No. 946
S.D. 1
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 946, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE JUDICIARY,"

begs leave to report as follows:

The purpose of this bill, as received by your Committee, is to establish the Access to Justice Trust Fund to be administered by a nonprofit entity to provide legal services for the poor, indigent, and other vulnerable populations.

For purposes of the public hearing, your Committee circulated a proposed draft prior to the hearing that deleted the contents of this bill as received by your Committee. The proposed draft:

- (1) Permits courts to allow parties to proceed as "Jane Doe" or "John Doe" where several factors are met, including the reasonableness of the petitioner's fears, risk of prejudice to the other party, and the impact on the public interest; and
- (2) Permits courts to seal records identifying the parties or containing sufficient information from which the parties' identities could be discerned if:
 - (A) Compelling reasons exist that outweigh the public's interest in disclosure; and



- (B) The court believes that the files may be a vehicle for improper use if not made anonymous.

Your Committee received testimony on the proposed draft. The Hawaii Disability Rights Center, Hawaii State Coalition Against Domestic Violence, and two concerned citizens testified in support of the proposed draft. The Domestic Violence Action Center supported the intent of the draft. The Office of the Public Defender and American Civil Liberties Union of Hawaii opposed the draft. The Judiciary and two concerned individuals commented on the draft.

Your Committee finds that while the Judiciary has at times exercised its discretion to allow parties to proceed anonymously and to seal court records, this practice needs to be clarified. The proposed draft provides factors for the court to consider and a clear standard to be met prior to permitting parties to be identified as "Jane Doe" or "John Doe" or to sealing records that are presumptively open to the public. These provisions will allow for greater uniformity of these practices among the courts, and provide privacy protections to a party when necessary, as well as safeguards against unreasonable prejudice to the other party and injury to the public interest in disclosure.

Your Committee has amended the bill as received by your Committee with the provisions of the proposed draft that was circulated, as discussed above, and has made the following additional amendments:

- (1) Changing the effective date to January 1, 2012; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 946, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 946, S.D. 1, H.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary,


GILBERT KEITH-AGARAN, Chair



