



LATE TESTIMONY

Collection Law Section

Reply to:

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March 21, 2011

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Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Senate Judiciary Committee
State of Hawaii

TESTIMONY IN SUPPORT OF HB 1138

**RE: HB 1138 / RELATING TO ATTORNEY'S LIENS
HEARING 3/22/11 @ 9:15 PM**

Dear Senator Hee and Committee Members:

The Collection Law Section of the Hawaii State Bar Association supports passage of HB 1138.¹ HB 1138 amends HRS 507-81 to delete the one year deadline for filing the lien with the court or arbitrator and generally improves the section by offering a more consistent use of terms.

For background, HRS 507-81 was enacted in 2004 in response to a taxation issue concerning individuals who had obtained a settlement or judgment, and then found that the Internal Revenue Service ("IRS") was taking the position that certain parts of certain settlements or judgments recovered by those individuals could be taxed without a deduction for the attorney's fees those individuals paid to obtain the settlement or judgment in the first place. Moreover, after taxing those individuals, the IRS again taxed those same attorney's fees on the *attorney's personal income tax return*; thereby amounting to what could effectively be called, double taxation. HRS 507-81 clearly defines the attorney's portion of the recovery as belonging to the attorney and therefore provides assistance to the individual who has obtained a settlement or judgment and does not want to pay taxes on the amount his or her attorney received for their services (please keep in mind, the attorney pays taxes on his or her fees for services rendered no matter if HRS 507-81 exists or not).

¹ The opinions of the Collection Law Section are not necessarily the opinions of the Hawaii State Bar Association proper.

Senator Hee
March 21, 2011
Page 2

HRS 507-81, as currently written, states that the attorney has, at the outside, a one year period after entry of the settlement or judgment, to file the HRS 507-81 notice of lien. If however, the attorney forgets to file a lien with the court or arbitrator, or if the attorney does not know about HRS 507-81, or if an individual needs to hire another attorney to collect on the judgment a few years later, or if the judgment is older than 2003, the lien never is perfected; causing obvious taxation problems for the individual/client. SB 1489 corrects this by eliminating the one year time limit.

Lastly, SB 1489 cleans up HRS 507-81 so that it reads more clearly. HRS 507-81 became a Hawaii statute as a "cut and paste" of an Oregon statute. With all due respect to the Oregon Legislature, legal terms of art in the Oregon law were not used with great consistency. Further, litigation trends are favoring a move towards using arbitration. SB 1489 clarifies and states without any doubt that HRS 507-81 includes settlements and judgments obtained through arbitration.

Thank you.

Respectfully,

/s/ Bill Plum

Bill Plum
Vice Chair

cc: Steve Guttman
Lyn Flanigan

\hb1138

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 21, 2011 10:29 AM
To: JDLEstimony
Cc: valerie.swiderski@gmail.com
Subject: Testimony for HB1138 on 3/22/2011 9:15:00 AM

Testimony for JDL 3/22/2011 9:15:00 AM HB1138

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Valerie Mariano Swiderski
Organization: Individual
Address:
Phone:
E-mail: valerie.swiderski@gmail.com
Submitted on: 3/21/2011

Comments:

Dear Senator Hee and Members of the Committee, I am a freelance court reporter licensed in the states of Hawaii and California and serve on the board of directors for the Hawaii Court Reporters and Captioners Asswociation. I encourage you to vote in favor of HB 1138 giving our hard-working court reporters an avenue for collecting on debts from delinquent attorneys and their law firms. Sincerely, Valerie Mariano Swiderski, RPR. CSR #353, CA CSR #9765



LATE TESTIMONY

HAWAII COURT REPORTERS & CAPTIONERS ASSOCIATION

P.O. Box 4681, Honolulu, Hawai'i 96812

March 21, 2011

Re: HB 1138, Proposed SD1
Date: Tuesday, March 22, 2011
Time: 9:15 a.m.
Place: Conference Room 016, State Capitol

The Hawaii Court Reporters and Captioners Association is requesting legislation regarding payment for court reporting services.

Freelance court reporters record and provide transcripts of depositions, arbitrations, hearings, and sworn statements, etc., and bill for these services both to the noticing attorney and other counsel who order copies.

Reporters and agencies often have difficulties receiving payment for their services. They are told, after being stalled for a long period, that he/she, the attorney, is not responsible for the bill, but that his or her client is responsible even though this was not made know at the outset. This puts the reporters who work independently and agencies who utilize their services in the very difficult position of trying to get paid for their services.

Thirty-four states support this position and have changed their business code, rules or laws to take care of this problem. Our National Court Reporters Association states: "NCRA advocates that attorneys are liable for court reporting fees unless they expressly disclaim liability in advance. This policy conforms to the modified agency rule adopted in the majority of states with respect to court reporter fees that takes into account custom and usage and modern litigation practices in which attorneys, rather than their clients, handle and maintain control over all aspect of litigation, including hiring reporter or other expert services."

The Hawaii Court Reporters & Captioners Association is requesting the adoption of it's proposed addition to Chapter 606 of the Hawaii Revised Statues.

Respectfully submitted, HAWAII COURT REPORTERS & CAPITONERS
ASSOCIATION

Louis A. Carnazzo,
Committee Member

A BILL FOR AN ACT

RELATING TO THE EMPLOYER-UNION HEALTH BENEFITS TRUST FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the counties need
2 representation on the board of trustees of the Hawaii employer-
3 union health benefits trust fund. The counties contribute a
4 substantial amount to the fund, and the health and well-being of
5 their employees and retirees depend on the benefit decisions
6 made by the board of trustees. Despite their lack of
7 representation, as public employers, the counties are affected
8 by board decisions. In a recent case brought by retirees
9 objecting to board of trustees benefit decisions, the counties
10 were joined in the lawsuit even though they did not have any
11 part in making the decisions.

12 The purpose of this Act is to require that one of the five
13 seats on the board allocated to public employers be occupied by
14 a member appointed by the mayors of all four counties and
15 approved by the Hawaii State Association of Counties. That
16 member will provide fiscal expertise and knowledge of county
17 finances and the county workplace. This requirement will enable



1 the effect of proposed benefit changes on the county's workplace
2 and finances to be adequately considered in board decisions.

3 SECTION 2. Section 87A-5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§87A-5 Composition of board. The board of trustees of
6 the employer-union health benefits trust fund shall consist of
7 ten trustees appointed [~~by the governor~~] in accordance with the
8 following procedure:

9 (1) Five trustees [~~7~~] appointed by the governor, one of
10 whom shall represent retirees, to represent employee-
11 beneficiaries and to be selected as follows:

12 (A) Three trustees shall be appointed from a list of
13 two nominees per trustee selected by each of the
14 three exclusive representative organizations that
15 have the largest number of employee-
16 beneficiaries;

17 (B) One trustee shall be appointed from a list of two
18 nominees selected by mutual agreement of the
19 remaining exclusive employee representative
20 organizations; and

21



1 (C) One trustee representing retirees shall be
2 appointed from a list of two nominees selected by
3 mutual agreement of all eligible exclusive
4 representatives; and

5 (2) Five trustees to represent public employers[-], four
6 of whom shall be appointed by the governor, and one of
7 whom shall be appointed by unanimous agreement of the
8 mayors of each of the four counties and approved by
9 the Hawaii State Association of Counties to represent
10 the city and county of Honolulu and the counties of
11 Hawaii, Maui, and Kauai; provided that if the counties
12 do not make an appointment within sixty days, the
13 governor may fill the vacancy.

14 Section 26-34 shall not apply to board member selection and
15 terms. Notwithstanding any other provision of this section, no
16 exclusive representative of a bargaining unit that sponsors or
17 participates in a voluntary employee beneficiary association
18 shall be eligible to select nominees or to be represented by a
19 trustee on the board.

20 As used in this section, the term "exclusive
21 representative" shall have the same meaning as in section 89-2."



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

3 SECTION 4. This Act shall take effect on July 1, 2030.



Report Title:

HSAC Package; Employer-Union Health Benefits Trust Fund;
Counties

Description:

Requires one member of the Employer-Union Health Benefits Trust Fund board of trustees to be appointed by agreement of the mayors of the four counties and approved by the Hawaii State Association of Counties. Authorizes the governor to fill the vacancy should it not be filled within sixty days. Effective July 1, 2030. (HB175 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Pacific Reporting Services Unlimited

**Topa Financial Center
Fort Street Tower
745 Fort Street, Suite 704
Honolulu, Hawaii 96813**



WE SET THE BAR HIGHER

March 22, 2011

In Re: HB 1138, Proposed SD1
Date: Tuesday, March 22, 2011
Time: 9:15 a.m.
Place: Conference Room 016, State Capitol

To Chairman Hee, Vice Chair Shimabukuro, and Committee Members:

My name is Adrienne Ige Kurasaki and I am the owner and operator of Pacific Reporting Services Unlimited, a small court reporting firm. I am in support of HB 1138, which proposes to authorize a lien on an attorney's firm for unpaid certified shorthand reporter services requested by the attorney.

Imagine this: I am requested to act as court reporter in a deposition, arbitration, hearing, statement, etc., and my work product is delivered within 1-14 days to my client and also any party who wishes to have a copy. An invoice is sent shortly thereafter. Court reporters who are independent contractors, who work with our firm, also rely on us for payment. As a firm owner, I advance court reporter commissions and also multiple fees for further processing of a case, i.e., subpoenaed records, process server fees, witness fees, all in the spirit of service.

Oftentimes, payment on that invoice is not made until months later, sometimes even as long as a year. I and my bookkeeper make diligent efforts to collect on the invoices, sending monthly reminders and regularly making personal phone calls, only to be told that their client is responsible for payment and they will forward the invoice; thus, starting the collection process all over again, taking months and months to accomplish anything. Frequently, after months of consistently attempting to collect, I am told the case has settled and it would be impossible to pay our invoices. I have been forced to absorb those costs in such cases.

March 22, 2011

Page 2

As a small business owner, I believe if there is the language to authorize a lien on an attorney's firm for unpaid certified shorthand reporter services, it will be clear whose responsibility it is for payment for services rendered. While it seems obvious whose responsibility it is for payment, somewhere along the line it has gotten blurred. It is important for the sake of our court reporters, and small businesses, to adopt HB 1138.

I thank you very much for allowing me to testify.

Respectfully,



Adrienne Ige Kurasaki

Owner/Operator

Registered Professional Reporter