



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Tuesday, February 22, 2011, 2:00 p.m.
State Capitol, Conference Room 325

by
Glennard H.B. Fong
Chief Court Administrator, First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 909, H.D. 1, Relating to Family Court

Purpose: To provide procedures for property division in divorce cases.

Judiciary's Position:

The Judiciary takes no position on this bill, but has the following concerns.

We are concerned that this bill may have an opposite effect from the stated purpose of "simplifying and codifying existing law." There are many crucial phrases in this bill that may cause an increase in litigation and contested hearings.

For example, the determination of the "date of the dissolution of the martial partnership" is critical because it marks the beginning of the "winding up period." Yet, the definition of the "date of the dissolution of the marital partnership," at page 2, Section 2, is described as the earliest of four possible dates, all of which are subjective, all leave much room for litigation. Furthermore, such language does not support the trust that marriages must be built on. A seemingly innocent act or intent during a marriage may later be argued as "a substantial step toward a final separation" or as evidence that a party "contemplated or took a substantial step toward filing of the complaint" or as a "demonstration of an express will to withdraw from the marital partnership."



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If a spouse takes a “substantial step toward a final separation that subsequently occurred,” but the other spouse did not interpret the act as such a “step,” there will be much confusion and litigation. Also, these provisions do not take into account (a) that it is common for couples to wait a very long time from “wanting” a divorce to “filing” for divorce, and (b) couples/spouses change their minds and may change their minds a number of times. Would the very first act that is deemed as a “substantial step” be the dispositive act even though the couple mutually changed their minds before finally proceeding with and completing a divorce?

House Draft 1 sets the valuation of the marital property at the time of the filing of the divorce complaint (p.3, lines 14-15). This provision is much narrower than the authority given by case law, which recognizes that equity may require a different point in time.

This “marital partnership winding up period” does not end until all aspects of a divorce have been completed. This might have the effect of allowing property issues to unduly delay the final disposition of the issues regarding children. In the vast majority of divorces, all aspects are decided at the same time. However, from time to time, usually because of the complexity of the marital estate and sometimes because of terminal illness of one of the spouses, some aspects are decided earlier (such as child-related matters or allowing the dissolution of the marriage) before the property division is decided.

The proposed language in subsection (e) at page 5 (lines 8-18) may also create fiercely contested cases without adding incentives for parties to conclude their divorce cases quickly and simply. The family court already has authority to grant an unequal share of the marital estate if one spouse has been found to waste marital assets. This section will force specific valuations upon the court’s equitable powers. Further, the type of proof required (e.g., detailed bookkeeping) may also add to the litigation expenses of the parties.

The newly created “duty of care” and “duty of loyalty” imposes commercial values upon what is still a personal relationship and commitment. These new duties also cast the language of HRS Section 580-47 in a new light, importing purely commercial considerations to a legal situation that requires much more equitable treatment.

The proposed amendments to add a new subsection (a)(l) to HRS Section 580-10 (Section 3, page 6, lines 4-6) may be helpful. The amendment would allow the family court to more easily issue pre-decree orders to promote full exchange of financial information and to prohibit wasting of assets. However, changing the existing “may” to “shall” will mandate the already existing provisions in this subsection, which are available, under existing law, only upon the filing of an application by the party.

Thank you for the opportunity to provide testimony on this matter



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**TESTIMONY OF THE FAMILY LAW SECTION
HAWAII STATE BAR ASSOCIATION IN OPPOSITION
TO HOUSE BILL NO. 909, RELATING TO FAMILY COURT**

House Committee on Human Services
Conference Room 329, State Capitol

Tuesday, February 22, 2011 at 2:00 p.m.

Good morning, Representative Mizuno and members of the Committee:

My name is Steven L. Hartley and I am the Vice Chair/Chair Elect of the Family Law Section of the Hawaii State Bar Association. I submit this written testimony on behalf of the Family Law Section.

The Family Law Section is comprised of over one hundred attorneys who practice law in the Family Court. The majority of us handle all types of family law matters, including divorce, paternity, domestic violence and guardianship cases. As a Section, our testimony represents the collective views of our members.

In this regard, we strongly oppose the current revised version of HB 909 for the following reasons:

1. The Family Court is currently understaffed and overwhelmed due to the fiscal crisis that we are facing. In the best of times, contested divorce cases can still take years to conclude. As such, we believe that using the date of the filing of the Complaint as the valuation date for marital assets and debts is not prudent.
2. Due to the changes and fluctuations in the financial marketplace, valuing assets and debts as of the filing date of the Complaint will not result in a fair and accurate division of property.
3. The existing case law regarding property division in divorce cases requires the Court to use the Fair Market Values and Net Market Values of assets. Using the date of the filing of the Complaint as the date of valuation will not provide divorcing parties and the Court with accurate Fair Market Values and Net Market Values as required under existing case law.
4. Rather than streamlining the process, the proposed valuation date will produce artificial and arbitrary values of assets and debts and allow divorcing parties to misuse assets following the filing of the Complaint. For instance, if asset values increase during the period from the filing of the Complaint and the date of divorce, parties will be able to "siphon" of the increased values for their own

benefit. If asset values decrease during the period from the filing of the Complaint and the date of divorce, parties will be unfairly penalized for the decreased values and will have to account for the same. This will inevitably create more adversarial contests and require even more time and money to hire and manage dueling forensic experts.

Thank you for allowing us the opportunity to submit our testimony on this extremely important measure.

JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 21, 2011 10:03 PM
To: JUDtestimony
Cc: honolulubruce@aol.com
Subject: Testimony for HB909 on 2/22/2011 2:00:00 PM

Testimony for JUD 2/22/2011 2:00:00 PM HB909

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Bruce Berger
Organization: Individual
Address:
Phone:
E-mail: honolulubruce@aol.com
Submitted on: 2/21/2011

Comments:
I support this bill

JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 22, 2011 2:51 AM
To: JUDtestimony
Cc: dr.la@aloha.net
Subject: Testimony for HB909 on 2/22/2011 2:00:00 PM

Testimony for JUD 2/22/2011 2:00:00 PM HB909

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Laurette DeMandel-Schaller
Organization: Individual
Address:
Phone:
E-mail: dr.la@aloha.net
Submitted on: 2/22/2011

Comments:

I have worked with Senator Chun Oakland on the family court working group, as a representative of the Hawaii Association of Marriage and Family Therapists (HAMFT), for many years now. My work includes private practice in Psychological and Court Services.

I strongly support HB909 HD1 because there is too much fighting over property and money in divorces, which eats up what would otherwise be available for a child's education or upbringing. It is time to establish standards for parties so the typical divorce money games and dirty tactics are not rewarded.

Dr. Laurette DeMandel-Schaller, MFT, Ph.D.
Court Appointed CE, GAL, Senior Mediator former HAMFT Ethics Committee Chairperson

2/21/11

Testimony IN SUPPORT of HB909 with Amendments

Aloha Representatives,

I am in SUPPORT of this measure with Amendments.
Requested Amendments are **Bolded**.

I am a survivor of domestic violence. My divorce, custody and division of marital assets occurred in front of Judge Keith E. Tanaka on Maui.

I initially was awarded a TRO against the DV and terroristic threatening by my ex but Judge Keith Tanaka soon refused to allow myself and my son to return home, made me pay alimony and rent, terminated the TRO leaving us unprotected and gave ALL marital assets to my ex to manage and ultimately keep. In addition I was endured horrific terroristic threatening, break-ins and theft so severe that we were later forced to flee. From 7/31/07 to Nov 2010 my ex managed these assets into the ground devaluing the property and getting family court permission to encumber them further while paying into his retirement accounts and calling it marital debt. Per his own testimony, a large amount of theft occurred where in only the large, expensive and saleable assets took flight. There were reported by my son to be in the home of my ex. This loss of assets was attributed to myself and my elderly mother hauling them off in the afternoon through the heavily wooded gulch through running streams in a wheelbarrow. I was held accountable. Rent income of 10-14K per month plus all kinds of barter was pocketed by my ex while I was held accountable for expenses, maintenance and property condition. NO GET or property tax was paid and property insurance was lapsed. Fleeing was held against me in the custody and property hearings! Moving when the stalking dangerously escalated was held against me. Judge Tanaka ultimately gave this man my son, barred me from all contact with my son, allowed him to relocate out of the State (while my son was in state custody for sexual abuse of a child) and gave him all real property in 2 states and all valuables in the marital estate saying that I was harassing him. My ex neglected the property to the point where he states the marital home is a tear down, infested with vermin and terminates, roof leaks and should be condemned. Maui county is currently looking to inspect that home. Joint home loans on houses in Hawaii and Colorado, given lock stock and barrel to my ex, AFTER I was forced to give equity distributions for them, were left with my name on them. My ex defaulted BOTH loans to the tune of approx \$625K and he is now working with Wells Fargo to modify those loans without my signature or permission further extending my credit against my will. Wells Fargo is working closely with my ex to perpetrate loan fraud and because the family court took everything from me I am helpless to fight them because I can't pay an attorney and the family court has prevented me from filing pro se. Even the family court falsified quit claim conveyance on the Hawaii property and the Colorado property was taken out of my name with NO conveyance. Even with all of this, home renovations in Colorado, flying non-paying renters from CO to HI to work off bad rent checks, no waste was found. There were many more abuses where in I was penalized financially or lost contact with my son for asking for correction as the majority of allegations were unsubstantiated.

My Son, last I spoke with him months ago, was clear that he was being abused and neglected and his SSI money used by my ex to run his stock trading businesses while he neglects, abuses and isolates my son. Forced onto supervised visitation initially there are 5 supervisors that have issued statements and will testify on the neglect and abuse of my son by my ex.

After just awarding my ex both properties, with rental income between 10-14K per month and multiple IRA/401K accounts Judge Tanaka falsified the Child Support Guidelines in favor of my ex, garnished me and stated I was in arrears in excess of 12 weeks all on the day he made the order. Judge Tanaka sat on the board establishing the child support guidelines so he was aware he was falsifying the Guidelines. CSEA in hearing did find that Tanaka falsified income in favor of my ex but they refused to correct the error. This is how compounding occurs when there is no organization that will follow the law instead relying on a bad call and carrying it forward.

The crux here is that Judge Keith Tanaka and his crew of para-professionals do not follow statute and they openly break the law and this is why the SCR91 joint legislative committee has Judge Tanaka under investigation and I have him in appeal. Judge Tanaka intended to teach me a lesson and he did so by taking my child and property and leaving me desperate, alone and unable to financially exist. The state of Hawaii now feeds me and I live with my mother. Without those 2 options I would be hungry and homeless. My ex lives in Denver and Georgetown, has large rental incomes and property holdings, 2 for profit companies, large retirement investments and my Son. My CPA states that this property transfer alone violated approx. 15 IRS codes. Between this and the liens the State has me under to pay HIS income taxes, child support violations, back taxes, garnishments, insurance, judgments and penalties, it is not clear if even a bankruptcy will help me now.

One amendment clearly should be that the property must be divided and valued by a independent licensed and trained professional. Judge Tanaka allowed the GAL to be appointed property manager and she was paid twice for the work, which she did not do.

Another is that all parties in a marriage should be looked at for value improvement and the matters need to be tied up and completed. In my case the marriage was 10 years during which I made mortgage payments, 401K investments, managed the property and tenants and improved and maintained the property. My ex was sick, drug addicted or windsurfing and did no work but he got everything and I got nothing and he didn't even attend the hearing, he defaulted!. Equitable distribution should be just that, equitable.

This act should be effective in contested cases for the past 5 years and special consideration should be given to cases involving DV as often assets and their disposition are not really what they may appear to be n paper..

Thank you for making property distribution for equitable.

Paige Calahan
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JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 22, 2011 8:44 AM
To: JUDtestimony
Cc: gfarstrup@msn.com
Subject: Testimony for HB909 on 2/22/2011 2:00:00 PM

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Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Greg Farstrup
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Comments: