

**Testimony for HB909 on 2/22/2011 2:00:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Tuesday, February 22, 2011 11:12 AM

**To:** JUDtestimony

**Cc:** crslethem@gmail.com

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

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Chris Lethem

Organization: Family Court Interventions Task Force

Address:

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Submitted on: 2/22/2011

Comments:

**LATE TESTIMONY**

#### HB56 –Support

The family courts decision process often is driven by exclusion. Too often grandparents lose access to their grandchildren by proxy. When a parent becomes the non-custodial parent, and for whatever reason cannot exercise their parenting time rights, by extension the grandparents lose access to their grandchildren.

#### HB616- Support

Military personnel or parents forced to relocate due to economic reasons. Too often lose their ability to communicate with their child. This bill provides an opportunity to implement the use of new technology so that children at least have some minimal contact with their non-custodial parent or deployed parent.

#### HB909 –Support

Treating property division during divorce with the same level of care as with partnership or corporation dissolution will help to mitigate the advantage of someone secretly planning a divorce by moving, wasting or indenturing assets as a means to gain an advantage in potential adversarial litigation. Also has a fiduciary they will have a responsibility and be personally held accountable for any wasting of assets. This also should prevent someone from monopolizing assets as a means to prohibit the opposing party from being able to have funds for daily needs or hire legal counsel.

**Testimony for HB909 on 2/22/2011 2:00:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Tuesday, February 22, 2011 9:54 AM

**To:** JUDtestimony

**Cc:** ron@ePleasureHawaii.com

LATE TESTIMONY

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

Conference room: 325  
Testifier position: support  
Testifier will be present: No  
Submitted by: Ron Pollock  
Organization: Individual  
Address:  
Phone:  
E-mail: ron@ePleasureHawaii.com  
Submitted on: 2/22/2011

Comments:

I support this bill with some reservation. I support it because my ex-wife stole and squandered significant marital assets during our unnecessarily prolonged divorce process. She got away with it. This bill may help to prevent that.

I have reservations because the language is too ambiguous and open to interpretation. Especially Lines 7 - 17, which include words such as "contemplated" or "took a substantial step". Cases, under the current system, that may have been settled out of court may have to go to trial under HB909, so that a judge can make a final interpretation of the evidence of contemplation and substantial.

Lastly, I would like to state for the record that what is needed most in the Hawaii Family Court is ACCOUNTABILITY to prevent attorneys and judges from straying from the law and depriving the constitutional rights of the parties involved. I would like to know who is responsible for investigating and prosecuting when laws and rules are violated and when the Office of Disciplinary Council is a party to the public corruption.

Thank you.

- Ron Pollock  
Kaaawa, HI  
808-780-8554

February 22, 2011

To: Rep. Gilbert S.C. Keith-Agaran, Chair  
Rep. Karl Rhoads, Vice Chair  
Committee on Judiciary

## LATE TESTIMONY

From: Tom Marzec

Subj: Testimony in **strong support** of **HB909 HD1** divorce property division & dissipation

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

This bill is necessary to address divorce cases where property is dissipated (concealed or wasted) prior to trial, thereby causing needless additional litigation, unfair advantage and typically inequitable division.

HRS 580-47 provides very little guidance for divorce property division and is inadequate, i.e. "the court may make any further orders as shall appear just and equitable" and:

"the court shall take into consideration: the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case."

Subsequently, the appellate courts have adopted the "marital partnership" model in determining what is just and equitable. Application of this marital partnership model includes the return of capital contributions and the sharing of profit/loss from the partnership. However, too many divorces involve the wasting and concealment of assets and stronger comprehensive statutory guidance is needed to reduce the associated harm to families.

**HB909 HD1** improves, streamlines and incentivizes fair and efficient divorce property division by:

1. adding definitions and codifying existing case law for clarity and consistency, in the creation of comprehensive dissipation statutory guidelines;
2. establishing property valuation as of the date of the divorce complaint filing;
3. requiring each of the parties to provide full financial disclosure at the time of the divorce complaint filing and enjoining the parties from wasting property;
4. defining the winding up period (using existing divorce case law Higashi v. Higashi, 106 Hawai'i 228 (2004) and Chapter 425 Partnership principles) of the marital partnership in order to establish efficiency and predictability, which encourages settlement;
5. applying business partnership model (Chapter 425) principles of duty of loyalty and care during the winding up of the marital partnership, to limit dissipation and fraud;
6. allowing the court to equitably allocate against a party a chargeable reduction against the marital estate, during the winding up period, per Higashi;
7. allowing the court to additionally consider the dissipation, if any, of marital property by either party, and each party's fiduciary duty of loyalty and the duty of care to the winding up of the marital partnership for final property division and award of attorney fees purposes.

These comprehensive reforms need to be defined in statute.

For example, the Hawaii State Bar Association Family Law Section (HSBA FLS) requested a rule allowing for an automatic Initial Pretrial Order when a divorce was filed, to include a "no wasting" order, but this was denied by the Supreme Court. However, Kauai judges routinely issue such an automatic "no wasting" order in their pretrial orders. By comprehensively codifying piecemeal existing case law and principles, this bill significantly improves procedural clarity and assists the courts, practitioners and numerous pro se litigants with family court divorce cases.

Putting parties on notice that they have such duties (disclosure, no wasting, loyalty and care) and requiring consideration of these duties, along with equitable chargeable reductions, is consistent with the partnership model.

Similar to the concept that crimes must be defined in statute (the U.S. Supreme Court decided in *U.S. v. Hudson and Goodwin* (1812) that there can be no common law crimes, but all crimes must be defined by statutes passed by a legislature), conduct required during a divorce "marital partnership" dissolution must be defined in statute. This would serve to dissuade dissipation, rather than encourage it. If parties will argue about conduct during the divorce (which they already can – see *Higashi*), then it is better to set a standard and allow the court to equitably decide the effect of such conduct and the application of clearly defined standards. Not having a standard of conduct with respect to property division is the worst possible condition because litigants will not search out specific case law to understand wasting boundaries and the system too often rewards dissipation by allowing it to happen without consequence.

Much of this new statutory language comes from *Higashi* (the chargeable reduction and date of dissolution language, for example), decided in 2004, but the Judiciary and HSBA FLS claim that this bill will lead to an increase in litigation. However, any change in the amount and manner of litigation would have reached a steady state value long ago. This bill will not result in a marked increase in litigation, is very necessary, and establishes predictability.

The Legislature is fully capable and well-equipped for (1) determining legitimate legislation to hear and (2) amending and improving divorce property division public policy. Requiring the Judiciary to develop the law of property division is limiting, requires a costly and long appeal process, and then may only be able to address narrow issues. Further study is not required because the language in this bill is from case law or existing partnership statutes.

Your consideration of these issues is very appreciated.