



HAWAII STATE BAR ASSOCIATION
Family Law Section

OFFICERS

CHAIR

Thomas D. Farrell
tom@farrell-hawaii.com

VICE-CHAIR/CHAIR-ELECT

Steven L. Hartley
shartley@hmfamilylaw.com

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Jessi L.K. Hall
jhall@coatesandfrey.com

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Lynnae Lai Lan Lee
lle@lla-hawaiilaw.com

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Thomas L. Stirling, Jr.
Paul A. Tomar

Mailing address:

Family Law Section
P. O. Box 3733
Honolulu, HI 96812

Website:

www.hawaiifamilylawsection.org

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

WRITTEN TESTIMONY ONLY

House Committee on Human Services
Conference Room 329, State Capitol

Thursday, February 3, 2011 at 10:30 a.m

**LATE
Testimony**

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 HB 909 for the following reasons:

1. The proposed bill will not simplify and codify existing law as intended by its authors, but will instead lead to a marked increase in litigation. This marked increase in litigation will increase the costs of doing business in divorce cases and serve to further delay and clog the Family Court's already over burdened system.
2. As the Honorable Sabrina S. McKenna, Senior Family Court Judge, stated in her written testimony submitted to the Committee on January 31, 2011, the determination of the "date of the dissolution of the marital partnership" is critical to the division of the marital estate in divorce cases. As such, we believe that allowing five (5) different possible definitions for the "date of the dissolution of the marital partnership" will only serve to increase litigation in divorce cases involving the division of property.
3. The creation of comprehensive dissipation statutory guidelines is not necessary as the Family Court already possesses the necessary authority and power to address the issue of dissipation in divorce cases. Rather than streamlining the process, the proposed codification of dissipation will create more adversarial contests and require even more time and money to hire and manage dueling forensic experts. This will inevitably create more delays in

divorce cases that will require unnecessary diversion of scarce Family Court resources.

4. To the extent that this bill seeks to codify existing case law, it is unnecessary. To the extent that it seeks to legislatively overturn the decisions by the Intermediate Court of Appeals and Supreme Court regarding property division in Hawaii divorce cases, will invite more unpredictability and litigation, not less.

5. The proposed bill shifts the primary responsibility for the development of the law of property division in divorce from the judicial branch to the legislative branch. The legislature is not well equipped for this task and most certainly has more than enough legitimate legislation to address this session.

6. Any attempt at codification of property division law in Hawaii should be the product of careful study, deliberation, and collaboration that includes the divorce bar, the family court, and other legitimate stakeholders.

Thank you for this opportunity to testify.