

**SB 1073**

February 24, 2011

TO: Senator David Ige, Chair, Ways and Means Committee,  
Senate Members, Ways and Means Committee

FROM: Aviam Soifer, Dean and Professor, William S. Richardson  
School of Law, University of Hawai'i

HEARING DATE/TIME: Friday, February 25, 2011, 9:00 a.m., Conf. Room 215

MEASURE NUMBER: Testimony in Support of SB 1073, SD1, RELATING TO  
SURCHARGE FOR INDIGENT LEGAL SERVICES,  
Amending HRS Section 607-5.7

SUBMITTED BY E-MAIL: WAMTestimony@Capitol.hawaii.gov

I enthusiastically support SB 1073, SD1, which amends HRS Section 607-5.7 to provide amended surcharge fees on various court filings in our Hawai'i State Court system under the "Indigent Legal Assistance Fund" ("ILAF") set forth in HRS Section 607-5.7. I am the Dean and a Professor of Law at the William S. Richardson School of Law, University of Hawai'i; a member of the Hawai'i Access to Justice Commission, and the Chairperson of that Commission's Committee on Education, Communications and Conference Planning, but I am providing testimony only in my personal capacity and not on behalf of any other person or entity.

I have been involved in efforts to increase access to justice for our most vulnerable citizens throughout my professional career, and I have been acutely aware of the severe shortfall in according such access in our state since my sabbatical year here in 1999-2000 and, particularly, since I moved to Hawai'i permanently and began as Dean in the summer of 2003. The survey work and the extensive report done by the Access to Justice Hui in 2007 helped lead to the creation of the Access to Justice Commission in 2008 and underscored the severe gap between needs and services in our state. The underfunding of basic legal services only has become more severe since the substantial economic downturn began in 2008. The work of the Access to Justice Commission underscores the severity of the increasing gap we face in protecting the legal rights and benefits of those among us who are most in need.

Hawai'i can be rightfully proud of the excellent work done by the many remarkably committed and skilled lawyers and their staff members who serve those who most need legal help but who are unable to afford it. I am particularly proud that the students and faculty at our Law School do such a great deal of public interest work themselves through our clinics, our mandatory pro bono program, and in a myriad of other ways. Yet the lack of even minimally adequate funding for basic legal services in our state has exacerbated the problems faced daily by the many who are poor and vulnerable among

us. This ILAF amendment will do a great deal to help protect the people of Hawai'i most in need of legal assistance. I strongly urge its passage.

Please let me know if additional details or different information might be of use to you by contacting me at: 956-6363 or via e-mail at: [soifer@hawaii.edu](mailto:soifer@hawaii.edu).

Thank you.



HAWAII PARALEGAL ASSOCIATION

P. O. Box 674  
Honolulu, Hawaii 96809  
[www.hawaii paralegal.org](http://www.hawaii paralegal.org)

February 24, 2011

Senator David Ige  
Chair, Senate Committee on Ways and Means  
Hawaii State Capitol, Room 215

Re: Comments in support of SB 1073 Relating to Surcharge for Indigent Legal Services (Decision Making: February 25, 2011, 9:00 AM), submitted by email to [WAMTestimony@Capitol.hawaii.gov](mailto:WAMTestimony@Capitol.hawaii.gov)

Dear Chair Ige and Members of the Committee on Ways and Means:

The Hawai'i Paralegal Association ("HPA") is a nonprofit professional association incorporated in 1978 and affiliated with the National Federation of Paralegal Associations since 1988. The HPA is an active participant in the legal community and regularly takes part in educational and *pro bono* activities. The HPA promotes high standards in the paralegal profession, and its members are exhorted by its Code of Ethics and Professional Responsibility to, among other things, serve the public interest by contributing to the delivery of quality legal services and the improvement of the legal system.

**Please approve SB 1073, SD1.** Without assistance with their basic legal needs, many of Hawai'i's people are deprived of shelter, food, medicine, custody of their child, or other indispensables. Studies have shown that it costs the state much less to provide basic civil legal services than it costs us when we fail to do so. The proposed amendment to *Hawaii Revised Statutes* Section 607-5.7 will strengthen the Indigent Legal Assistance Fund ("ILAF") established pursuant to that Section, so that Hawai'i's nonprofit legal service providers can continue to do their critical work on behalf of Hawai'i's most vulnerable. This amendment will help to offset the loss of funding from the Interest on Lawyer Trust Accounts ("IOLTA") and other sources.

We thank you for the opportunity to submit testimony on this critical measure.

Sincerely,

N. Kaliko Siu  
President  
Hawai'i Paralegal Association

**THE MEDIATION CENTER OF THE PACIFIC, INC.**

245 N. Kukui Street, Ste. 206, Honolulu, HI 96817  
Tel: 521-6767 Fax: 538-1454 Email: [mcp@mediatehawaii.org](mailto:mcp@mediatehawaii.org)

February 24, 2011

**TESTIMONY FROM:** Tracey S. Wiltgen, Executive Director, The Mediation Center of the Pacific, Inc.

**TO:** Senator David Ige, Chair, Ways and Means Committee, Senate Members, Ways and Means Committee, Senate

**HEARING DATE/TIME:** Friday, February 25, 2011, 9:00 a.m., Conf. Room 215

**MEASURE NUMBER:** TESTIMONY IN SUPPORT OF SB 1073, SD1, RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES, Amending HRS Section 607-5.7

**SUBMITTED BY E-MAIL:** [WAMTestimony@Capitol.hawaii.gov](mailto:WAMTestimony@Capitol.hawaii.gov)

The Mediation Center of the Pacific (the Mediation Center) requests the Ways and Means Committee to approve SB 1073, SD1, including provision of \$35 as the surcharge fee on District Court cases and \$65 as the surcharge fee on Circuit and higher Court cases. The Mediation Center supports SB 1073, SD1, which amends HRS Section 607-5.7 to provide amended surcharge fees on various court filings in our Hawaii State Court system under the "Indigent Legal Assistance Fund" ("ILAF") set forth in HRS Section 607-5.7.

Your support of SB 1073 is needed because it has a significant impact on access to justice for individuals in the low income and vulnerable populations. In November 2007, The Access to Justice Hui reported that low-income residents have a tremendous unmet need for civil legal services. Since the 2007 Report was published, the number of people living below 200% of the federal poverty guidelines increased slightly and the number of people living below 125% of the federal poverty guidelines increased dramatically. Simultaneously, while the number of individuals in the low income populations increased, funding to support their civil legal needs significantly decreased. SB 1073 provides the opportunity to increase financial support for the legal service providers to address the growing needs of low income residents.

The Mediation Center is a 501(c)(3) not for profit corporation whose mission is to provide high quality mediation and dispute resolution services that are affordable and accessible. The Mediation Center is the only dispute resolution option on Oahu for individuals in the low-income population to assist them in resolving disputes quickly and creatively. Each year, the Mediation Center helps approximately 5,000 individuals to talk, rebuild relationships and resolve conflicts creatively and quickly.

This past year in 2010, the Mediation Center managed 1,609 cases (a 24% increase since 2008) involving divorcing couples, landlords and tenants, families, consumers and merchants and more. Overall, 51% of the cases mediated resulted in written agreements. Due to an approximate 25% reduction in funding over the past two years, the Mediation Center has struggled to meet growing community needs for additional on-site court mediation requests, foreclosure mediation and more.

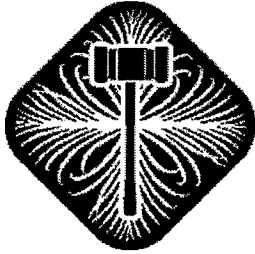
To increase access to justice for Hawaii's people, the Mediation Center works closely with other civil legal service providers and the Access to Justice Commission Committees. Through these partnerships, we strive to assist more people in a variety of critical areas such as landlord/tenant disputes, custody and visitation matters, and family conflicts involving teens or aging parents. Support of SB 1073 will ensure the continued growth and development of the partnerships between the legal service providers to meet the civil legal needs of Hawaii's growing low-income population. Court filing fees, even with the proposed surcharge increase, constitute only a small percentage of the total cost of litigation. The increase does however substantially increase funds for the legal service providers.

Your favorable approval of SB 1073 is essential. Passage of this bill will be a major step toward efforts to achieve access to justice for all.

Sincerely,



Tracey S. Wiltgen  
Executive Director



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what matters.

**To:** Senator David Y. Ige, Chair  
Senate Committee on Ways and Means

**From:** L. Dew Kaneshiro, Interim Executive Director  
Volunteer Legal Services Hawai'i

**Re:** Testimony in Support of S.B. 1073 S.D. 1  
Relating to Surcharge for Indigent Legal Services

**Hearing:** February 25, 2011 at 9:00 a.m., Conference Room 211

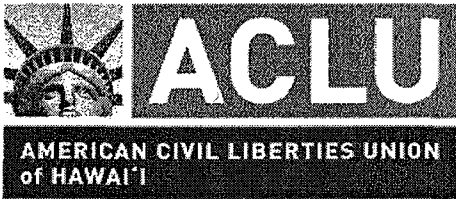
Chair Ige, Vice Chair Kidani, and members of the Committee on Ways and Means,

Volunteer Legal Services Hawai'i submits this testimony in support of S.B. 1073 S.D. 1, Relating to Surcharge for Indigent Legal Services.

S.B. 1073 S.D. 1 raises the court filing fee surcharge and expands the surcharge to all District Court civil cases. Money from the surcharge is deposited into the Indigent Legal Assistance Fund (ILAF), which financially supports organizations that provide legal services to Hawaii's low-income population. Current recipients of ILAF funds are Domestic Violence Action Center, Hawai'i Disability Rights Center, Legal Aid Society of Hawai'i, Mediation Center of the Pacific, Native Hawaiian Legal Corporation, University of Hawai'i Elder Law Program, and Volunteer Legal Services Hawai'i.

Volunteer Legal Services Hawai'i (VLSH) provides free legal assistance to low-income individuals and families through volunteer attorneys. Like other legal service organizations, VLSH has experienced a substantial decrease in funding in recent years. At the time when many Hawai'i residents found themselves newly poor and in need of legal services to deal with changed circumstances, VLSH was forced to reduce its operations and turn away hundreds of individuals and families.

As other funding sources continue to dwindle, ILAF has become increasingly important to legal service providers. The surcharge increases in S.B. 1073 S.D. 1 will help these organizations meet the pressing demand for direct legal services. VLSH therefore respectfully requests your support of S.B. 1073 S.D. 1.



Committee: Committee on Ways and Means  
Hearing Date/Time: Friday, February 25, 2011, 9:00 a.m.  
Place: State Capitol, Conference Room 211  
Re: *Testimony of the ACLU of Hawaii in Support of S.B. 1073, Relating to Surcharge for Indigent Legal Services*

Dear Chair Ige and Members of the Committee on Ways and Means:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of S.B. 1073, which seeks to increase the amount of surcharges for indigent legal fees.

In its 2007 report, the Access to Justice Hui found that **only 1 in 5 low- and moderate-income residents of Hawaii have their serious legal needs met because legal services providers lack adequate funding and attorneys**. S.B. 1073 will increase the ability of legal service organizations to provide essential services to our most vulnerable populations and help to ensure that more people in Hawaii are able to secure access to justice.

The ACLU of Hawaii was one of the organizations represented in the Access to Justice Hui, and is currently serving as part of the Consortium of Hawaii Legal Service Providers. Please note that the ACLU of Hawaii does not accept government funds and therefore is not a direct beneficiary of the surcharge in S.B. 1073.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple  
Staff Attorney  
ACLU of Hawaii

American Civil Liberties Union of Hawaii  
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Honolulu, Hawaii 96801  
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**TO:** Senator David Y. Ige  
Chair, Committee on Ways & Means  
Hawaii State Capitol, Room 215  
*Via Email: [WAMTestimony@Capitol.hawaii.gov](mailto:WAMTestimony@Capitol.hawaii.gov)*

**FROM:** Gary M. Slovin

**DATE:** February 24, 2011

**RE:** **S.B. 1073- Relating to Surcharge for Indigent Legal Services**  
**Hearing: Friday, February 25, 2011 at 9:00 a.m., Room 211**

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Dear Chair Ige and Members of the Committee on Ways & Means:

I am Gary Slovin, submitting comments **in strong support** of S.B. 1073, S.D. 1, which increases the amount of surcharges on filing fees for the indigent legal assistance fund (ILAF).

We are assisting various service organizations with this effort, organizations who are greatly in need of the funds that would be generated by an increase in the surcharge on filing fees. The need for additional funding for legal services is urgent, given the economic climate and the dramatic decrease in funding for legal service providers from other sources, most notably interest generated by IOLTA, an account made up of client trust funds.

We have discussed this measure with the collection bar, and understand that they are opposed to the measure, based upon the fact that collection cases are presently excluded from the surcharge. However, we urge the committee to consider that there are no other states where an ILAF statute exists exempts collection cases. In addition, we are open to further discussions with the group to address their concern that the surcharge apply only once per case.

We ask the Committee to consider that this measure aims to preserve funds to help achieve justice for those who need it most.

I respectfully request your favorable consideration of this measure. Thank you for the opportunity to submit comments.



**COMMENTS IN SUPPORT OF**  
**SB1073 SD1 - RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES**

February 25, 2011 at 9:00 a.m.

The Legal Aid Society of Hawaii hereby provides comments to the Senate Committee on Ways and Means on SB1073 SD1 Relating to Surcharge for Indigent Legal Services, in strong support of the bill.

In November 2007, the Access to Justice Hui released “Achieving Access to Justice for Hawai‘i’s People,” a two-part report that included The Community Wide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai‘i by 2010 and The 2007 Assessment of Civil Legal needs and Barriers of Low- and Moderate-Income People in Hawai‘i. The Assessment found that one out of every five low- and moderate-income residents in Hawai‘i seeking legal services is unable to receive the assistance that they need and that one in three who seek assistance from legal service providers cannot be helped.

Since the 2007 Assessment, the number of people living in poverty has increased and now slightly more than 1 in 10 people in Hawai‘i earn less than \$25,710 for a family of four. The need for legal services has also increased.

The Legal Aid Society of Hawai‘i (“Legal Aid”) is the largest provider of legal services with eleven offices on each of the major islands. We provide legal assistance in family, housing, consumer, public assistance, child welfare, elder law, and as of 2010 in immigration. On an annual basis we close approximately 9,500 cases affecting the lives of almost 20,000 people. However, because of cuts in funding, in 2010, while Legal Aid provided basic advice and assistance to all who meet eligibility criteria, we were only able to provide representation to one in five who contacted us.

This bill is aimed to increase funding for legal services and help more than one in five receive assistance beyond counsel and advice and brief services. Specifically, it would:

- Increase the surcharge from \$25 to \$65 in Circuit Court and Court of Appeal filings and increase it from \$10 to \$35 in District Court filings.
- Expand the surcharge in District Court filings from just summary possession to all cases, including collection cases.
- Continue to exempt: small claims cases, petitions for restraining orders, petitions for temporary restraining orders, cases in which the petitioner is proceeding in forma pauperis and all state and county filings.

**Need for Funding**

This bill could potentially double the funds available for indigent civil legal services by increasing the surcharge on initial court filing fees in civil actions. In this time of economic recession, core services, like those provided by Legal Aid and other legal service providers are fundamental to the safety net. The loss of critical general funding support for general legal services and more proposed losses due to federal cut backs further raise the need for funding for legal services. Our services help those in domestic violence situations, those who needed access to public assistance, those who are subject to predatory lending practices, those who are vulnerable due to disability and those who need representation in this complex legal system. This is a much needed bill to ensure that more low- and moderate-income residents have access to justice.

### **Expansion of Surcharge in District Court**

Since the start of the indigent legal assistance surcharge in 1996, assumpsit cases have been exempt from this surcharge. These cases represent the bulk of civil cases handled in district court and in FY10 there were 20,789 assumpsit cases filed which represented 68.04% of all civil district court cases filed. This represents over 20,000 filings where collection agencies and others are not paying their fair share of the indigent legal assistance fund despite being those whom most often proceed against pro se clients who do not have access to representation.

### **On-Going Exemption from Surcharge**

The current bill would not effect current exemptions for state and county government filings, temporary restraining order, and restraining order initial filings. It would also maintain current exemptions for those proceeding in forma pauperis thereby not increasing the fees for those who can least afford it.

I ask for your support of this bill to bring much needed services to families and individuals who face the loss of a critical basic need, such as housing, family stability and safety, income, and protection from fraud and abuse.

Thank you for this opportunity to provide comments.

Sincerely,

/s/

M. Nalani Fujimori Kaina  
Executive Director  
527-8014

**DELIVERY OF LEGAL SERVICES TO THE PUBLIC COMMITTEE**  
*of the Hawai'i State Bar Association*

February 23, 2011

*Via Email: [WAMTestimony@Capitol.hawaii.gov](mailto:WAMTestimony@Capitol.hawaii.gov)*

Senator David Ige  
Chair, Senate Committee on Ways and Means  
Hawaii State Capitol, Room 215  
415 South Beretania Street  
Honolulu, HI 96813

**Measure: SB 1073 Relating to Surcharge for Indigent Legal Services**  
**Decision Making: February 25, 2011, 9:00 a.m.**

The Honorable Chair Ige and Honorable Committee Members:

We write on behalf of the Delivery of Legal Services to the Public Committee ("DLSP Committee"), a committee of the Hawai'i State Bar Association ("HSBA") to voice strong support for SB 1073 which seeks to increase the amount of surcharges for the Indigent Legal Assistance Fund ("ILAF"). This testimony submitted in support represents the views of the DLSP Committee and does not necessarily reflect the views of the HSBA as a whole.

The purpose of the DLSP Committee is to develop and promote programs designed to make legal services more readily available in the community, work with other organizations to increase services, coordinate participation of the HSBA membership in such programs, and provide a forum for exchange of ideas and information. The DLSP Committee is grouped within the HSBA's written Mission Statement and Goals at Goal Group 5, the essential purpose of which is "To increase the availability of quality legal services to all who need them." As such, the purpose and intent of SB 1073 -- to increase assessments to ILAF and thereby increase funding for legal service providers who provide civil legal services to the low to moderate income residents -- is squarely within the ambit of the DLSP Committee's work.

Since the establishment of ILAF fifteen years ago in 1996, there has been no increase in the ILAF assessments. The DLSP Committee is informed that particularly in these challenging economic times, other funding for legal services providers is greatly reduced and continues to diminish. At the same time, the DLSP Committee is informed that the demand for civil legal services fund by ILAF continues to increase.

The evidence of need is more than anecdotal. In November 2007, the Access to Justice Hu'i concluded an extensive statewide assessment of the civil legal needs of low and moderate-income residents of Hawai'i. The legal need study found, among other needs that:

\* Only 1 in 5 low and moderate-income Hawai'i residents have their legal needs met

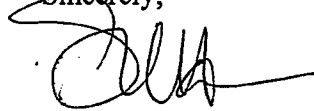
\* Legal service providers are able to help only 1 in 3 of those who contact them for assistance

In servicing such needs, the DLSP Committee notes that ILAF funds are invaluable because these funds are distributed to legal service providers who provide services in myriad legal areas. ILAF recipients include the Domestic Violence Action Center, Hawai'i Disability Rights Center, Legal Aid Society of Hawai'i, The Mediation Center of the Pacific, Native Hawaiian Legal Corporation, the University of Hawai'i – Elder Law Program and Volunteer Legal Services Hawai'i.

Moreover, ILAF monies enable the legal service providers to give advice and counseling to clients, over and above providing direct representation in active litigation, contributing to the efficiency of the judicial system which benefits all users of the Judiciary. Advice given by the legal service providers includes alternative dispute resolution and strategies to achieve settlements, which effectively contributes to alleviating the burgeoning caseload in the courts.

Accordingly, the DLSP Committee respectfully urges the Senate Committee on Ways and Means to support passage of SB 1073.

Sincerely,

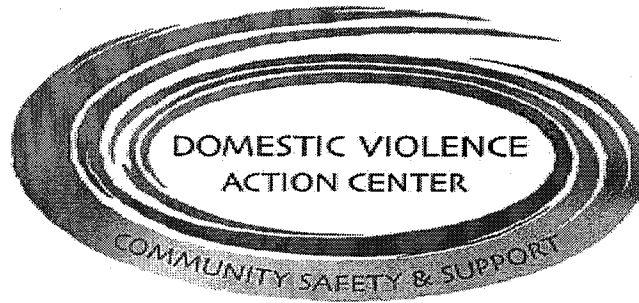


Shannon L. Wack

Jo Kim

Co-Chairs

Delivery of Legal Services to the  
Public Committee



February 24, 2011

FROM: Nanci Kreidman, M.A., Domestic Violence Action Center **(REVISED TESTIMONY\*\* Please negate testimony emailed Feb 23, 2011)**

TO: Senator David Y. Ige, Chair, Senator Michelle Kidani, Vice Chair, Members of the Committee

**RE: SB 1073 SD 1, Support**

Hearing Date: Monday, February 25, 2011, 9am, Conf Rm #211

Aloha. Please accept this testimony in support of S.B. 1073 SD 1. The Indigent Legal Assistance Fund, modeled initially after strategies across the country to support the crucial work of public interest providers of legal services, is key to sustain our community's programs.

The filing fee surcharge which is assessed at the time of court filing, has not increased for over a decade. The cost of delivering services, by each of the small corporations endeavoring to meet community needs, has increased exponentially.

On February 14, 2011 legal service providers had:

824 calls with clients.

181 calls on behalf of a client (i.e. opposing party, investigator, social service, etc.).

109 calls for technical assistance or consultation with other legal issues (i.e. social service provider, newspaper, etc.).

268 in-person contacts with a client.

545 children under age 18 were affected by this work (i.e. for each case children were part of the household).

17 court appearances were made on behalf of clients.

107 helpline/hotline calls were answered.

**(\*\* NOTE REVISED STATS TO INCLUDE AN ADDITIONAL SERVICE PROVIDER'S DATA)**

At the Domestic Violence Action Center demand for services has increased. This, at a time when we have had to impose staff layoffs due to drastic budget cutbacks. Our contract with the Judiciary was amended in 2009 to reduce our agency funding support by \$570,000. Funding support from the City and County of Honolulu was eliminated entirely. Competition for federal and local grants has been fierce. Grants to the Domestic Violence Action Center from the Hawaii Justice Foundation have also shrunk because the interest rates have been low and thus funds collected through IOLTA have decreased.

Although we do not rely exclusively on the funds collected through the ILAF, it is a funding source that is not reliant on general funds or state appropriations. The legal service providers maintain a close working relationship in an effort to examine community needs, best practices, and make a meaningful difference to our low income communities. This is evidenced by our collective participation in the Access to Justice Commission and the Hawaii Consortium of Legal Services Providers.

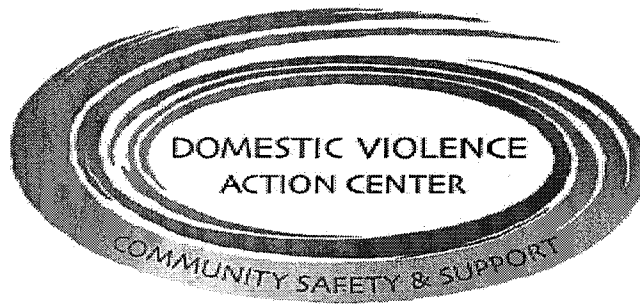
There is no way we can, in actuality, meet the needs of our low income community, but it would be devastating to continue suffering setbacks to the progress we have seen in the creative collaborative work done on their behalf.

P. O. Box 3198 Honolulu, HI 96801-3198

Oahu Helpline: 808 531-3771 Toll-free: 800 690-6200 Administration: 808 534-0040 Fax 808 531-7228

[dvac@stoptheviolence.org](mailto:dvac@stoptheviolence.org) [www.stoptheviolence.org](http://www.stoptheviolence.org)





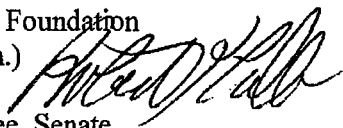
Thank you for inviting community comment on this important measure. We encourage your favorable action on S.B. 1073 SD 1.

P. O. Box 3198 Honolulu, HI 96801-3198  
Oahu Helpline:: 808 531-3771 Toll-free: 800 690-6200 Administration: 808 534-0040 Fax 808 531-7228  
[dvac@stoptheviolence.org](mailto:dvac@stoptheviolence.org) [www.stoptheviolence.org](http://www.stoptheviolence.org)



**HAWAII JUSTICE FOUNDATION**  
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February 23, 2011

TESTIMONY FROM: Robert J. LeClair, Executive Director, Hawaii Justice Foundation  
(Note: Robert LeClair will not be testifying in person.) 

TO: Senator David Ige, Chair, Ways and Means Committee, Senate  
Members, Ways and Means Committee, Senate

HEARING DATE/TIME: Friday, February 25, 2011, 9:00 a.m., Conf. Room 215

MEASURE NUMBER: TESTIMONY IN SUPPORT OF  
SB 1073, SD1, RELATING TO SURCHARGE FOR  
INDIGENT LEGAL SERVICES, Amending HRS Section 607-5.7

SUBMITTED BY E-MAIL: [WAMTestimony@Capitol.hawaii.gov](mailto:WAMTestimony@Capitol.hawaii.gov)

**The Hawaii Justice Foundation (HJF) requests the Ways and Means Committee to approve SB 1073, SD1,, including provision of \$35 as the surcharge fee on District Court cases and \$65 as the surcharge fee on Circuit and higher Court cases. HJF supports SB 1073, SD1, which amends HRS Section 607-5.7 to provide amended surcharge fees on various court filings in our Hawaii State Court system under the "Indigent Legal Assistance Fund" ("ILAF") set forth in HRS Section 607-5.7.**

HJF distributes funds from a variety of sources to help increase access to justice for Hawaii's people. HJF does not provide direct client services, but HJF's funding activities provide HJF with a perspective on the seriousness of the unmet civil legal needs in the Islands. For several years, HJF has worked in cooperation with the Hawaii State Judiciary to manage the ILAF Program. ILAF has been operating smoothly, with excellent cooperation from the low-income legal service providers, the Hawaii State Judiciary, and the Hawaii Justice Foundation. **The Hawaii Justice Foundation is confident that the proposed amendments to the ILAF statute can be integrated without any difficulty into the ongoing successful ILAF Program.**

**HJF's income from the IOLTA funds has plummeted with the decrease in interest rates, and the proposed ILAF amendment is needed to offset some of this decrease.** HJF receives funds from the Interest on Attorney Trust Accounts (IOLTA) Program under Rule 11 of the Rules of the Hawaii Supreme Court. Recent economic events have resulted in a serious decline of interest rates, and HJF's interest under the IOLTA program is 1/8<sup>th</sup> of what it was as recently as September, 2008. This means that HJF's ability to fund legal service providers under the IOLTA Program is virtually non-existent under current interest rates. It is essential that the proposed ILAF amendment be approved to fill this serious revenue decline. Even with the requested ILAF proposed amendment amounts, the additional funds will not be sufficient to



replace IOLTA income under more “typical” federal funds target rates of 2.5% and higher. **The current recipients of funds under HRS Section 607-5.7 unanimously support the provisions of SB 1073, SD1.** All of the current ILAF recipients face serious economic challenges to their continued ability to meet legal needs of our low-income population. We are all painfully aware of the current national and local economic conditions. Legal needs of people are higher than ever, due to these economic conditions. Low-income legal service providers face potential cuts in governmental funding sources and reduced contributions from private donations. This makes it critical that SB 1073, SD1 be approved to provide additional funding from surcharges on various court filings.

**The ILAF Program has procedural safeguards to ensure accuracy and accountability.** All organizations receiving funds under ILAF are strictly monitored by the Hawaii Justice Foundation. Quarterly reports and a yearly summary report are required of each organization, and these are reviewed by the Hawaii Justice Foundation. The application process is quite extensive, with thorough documentation. The application includes an attestation clause, where the Executive Director of each organization attests to the truthfulness of the application. State Unemployment reporting forms are used for verification of employees, and individual signed statements are received from each person providing legal services that attest to the veracity of the percentage of time that the person spends in providing qualified direct legal services. The Hawaii Justice Foundation works with the Hawaii State Judiciary to determine the allocation formulas, and the potential grantees have an opportunity to contest any determinations made under the ILAF program. For many years, the program has operated smoothly and without complaints regarding accuracy or accountability from the Judiciary, the Hawaii Justice Foundation, or the grantees. The ILAF Program is an example of how mutual cooperation and competency can produce an effective process that works for the betterment of Hawaii's people.

Court filing fees, even with the proposed surcharge increase, constitute only a small percentage of the total cost of litigation. Existing exemptions for small claims cases, TROs, protective orders, *in forma pauperis* cases, and County and State governmental filings will remain in effect under SB 1073, SD1. All court litigation is already heavily “government subsidized,” since filing fees do not begin to cover the costs of the State of Hawaii personnel involved in our Courts. SB 1073, SD1 will substantially increase funds available through ILAF for distribution to qualifying low-income legal service providers. The net effect to Hawaii's people from SB 1073, SD1 will be extremely beneficial.

**Some Hawaii attorneys from the Collection Section of the Hawaii State Bar Association and their debt collection clients have raised objections to any surcharges on filing fees for their collection cases. It should be noted that this is not an “official” position of the Hawaii State Bar Association and represents the personal and financial views of the collection attorneys. However, the reality is that SB 1073, SD1 will not result in people being unable to file cases in our judicial system. The Hawaii State Bar Association Board of Directors on December 20, 2007 endorsed the 10 Steps by 2010 included in the Community Wide Action Plan. Part of Step 2 of those 10 Steps included seeking additional funding for the ILAF program. It is quite common that one segment of the Hawaii State Bar Association will favor one viewpoint while other segments have opposing views. It is of course understandable that the**

collection attorneys are pressing for the financial interests of their clients, but it is essential for the Hawaii State Legislature to take the view of what is in the best interests of Hawaii's people. If the interests of the clients of the collection attorneys are weighed against the needs of those who will be helped by SB 1073, SD1, it is clear that the surcharge is an essential part of the collective efforts to provide justice to all. For more than a decade, other groups using the court system have paid a surcharge on court filing fees to help meet civil legal service needs. The debt collection agencies are heavy users of court resources, and it is fair that the ILAF program be expanded to require that these debt collection agencies participate in contributing to ILAF.

SB 1073, SD1 provides a significant boost to the funds available for meeting civil legal services needs. The Community Wide Action Plan, with its 10 Steps by 2010, studied the unmet civil legal needs in the Islands. Step 2 of the 10 Steps by 2010 requests increased funding for low-income legal service providers, and SB 1073, SD1 will provide needed additional funds.

**An additional benefit from increasing funding to the low-income legal service providers relates to increased efficiency in the courts by helping with providing legal advice and other needed services to the numerous *pro se* ("by self") litigants in Hawaii's various courts.** District Courts and Family Courts have seen a virtual explosion of cases where people are unrepresented by counsel. The Hawaii State Judiciary has made valiant efforts to assist these litigants through information kiosks and other programs. However, people representing themselves face two fundamental difficulties. First, they are unfamiliar with court procedures and forms. Second, litigants of any economic level are emotionally involved in their case, and this makes it very difficult to resolve the case without outside assistance. SB 1073, SD1 will provide additional funds to our legal service providers, who in turn will be able to give greater information, advice, and sometimes direct representation to litigants. **This will assist our Courts in processing cases in a more efficient and effective manner.**

Your favorable approval of SB 1073, SD1 is essential. Passage of this bill will be a major step toward efforts to achieve access to justice for all.

## **HAWAII DISABILITY RIGHTS CENTER**

**900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813**

*Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928*

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### **THE SENATE THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2011**

#### **Committee on Ways and Means Testimony in Support of S.B. 1073, SD1 Relating to Surcharge For Indigent Legal Services**

**Friday, February 25, 2011, 9:00 A.M.  
Conference Room 211**

Chair Ige and Members of the Committee:

I am Louis Erteschik, Staff Attorney at the Hawaii Disability Rights Center, and am testifying in support of this bill.

The purpose of the bill is to increase the filing fee in certain court cases so that more funds will be deposited into the indigent legal assistance fund to support various legal services programs.

We support this bill because it will provide increased funds to organizations that serve a vital interest in our state. We are a member of the Access to Justice Hui and are well aware of the civil legal needs and barriers to indigent people in Hawaii, including those with developmental disabilities. As a member, we are supportive of the recommendations that came from a report prepared to increase access to justice in Hawaii. An increase in the surcharge on filing fees is a reasonable means to provide critical funding to already under funded legal services programs. For those reasons we support this bill.

Thank you for the opportunity to provide testimony in support of this bill.

COMMITTEE ON WAYS AND MEANS  
Senator David Ige  
State Capitol  
Honolulu, Hawaii

RE: SB 1073/Indigent Legal Surcharge

OPPOSITION TO BILL

SENATE WAYS AND MEANS COMMITTEE

HEARING: February 25, 2011 @ 9:00am

Dear Senator Ige and Ways and Means Committee Members:

Please note my objection against this bill, SB 1073, for these reasons:

Plaintiffs, as much as people want to vilify them, are an important entity in the economy of this State. While they are viewed as that “villain” taking the little guy to Court or to the cleaners unjustly, they are also: a Mom & Pop grocery store in Kalihi; a small business owner selling shave ice in Moiliili; a Chinatown restaurant; a Waianae drive-inn; a Waipahu bike shop; a Kakaako mechanic; and many others trying to make an honest living. They are the life blood of this island, yet they are cast as the “enemy” because they want to be paid for the goods or services they provided someone who failed to be honorable and pay for what they received. Are we to wait until they become “debtors” before we embrace them for the goods or services they used to provide.

In the last 10-15 years I have not seen any indigent legal service providers assisting people in civil assumpsit cases (money matters) in District Court. Legal Aid Society tried to establish an illegal presence in the courts by setting up shop in the courtroom to assist eviction matters but were finally removed. Even when they intervened in an eviction matter they would not enter an official appearance as counsel of record for the debtor and merely acted as an unrecorded adviser. They would not handle the case if it went to trial and therefore were more of a hinderance rather than help to the court system.

Now the major question to be asked is, if LAS, who would be the major recipient of the surcharge, does not do any significant work in the court system other than in the field of Family Court/Domestic Abuse, why are the people utilizing the civil court system for monetary issues (assumpsit cases) being forced to support Family Court/Domestic Abuse cases? Why isn't the surcharge being paid by the group involved with the aligned services (Family Court/Domestic Abuse)? Why are they going after the business population in the assumpsit cases who have nothing to do with Family Court/Domestic Abuse?

The cases filed in the District Court civil section in 2010 exceeded 20,000. These cases are not in the field of Family Court/Domestic Abuse, yet funding is being sought from

them. They are the cash cow indigent service providers seek to milk. If you look at the chart/graph provided by the legal services providers in 2007, over fifty per cent (50%+) of their monetary distribution goes towards Family/Domestic Violence matters, and only six per cent (6%) goes for Financial/Consumer protection matters. Yet they see to get funding from a segment of the population that they rarely provide services for. This is stealing from those who work hard to provide goods or services to the people of Hawaii. This is wrong.

While we in the legal community understand that there is a need to help those less fortunate this is not the way to good about it. The argument by Legal Aid Society that everyone should pay their fair share in the indigent legal surcharge fund doesn't have merit as the bill only targets a specific segment of the population....those that attempt to recover money for the goods or services they have not been paid for. These people have suffered lose of income and now must fund indigent legal service providers also!

In Hawaii and nationally only about 10-15% of cases filed for monetary issues are recovered in whole or in part, so that means that between 85-90% of all cases are just pieces of paper. As of September 30, 2010 (a nine month period) 88 credit unions statewide charged-off \$31,520,942.00, and only recovered \$5,003,098.00, which is 15%. That means they failed to recover \$26,517,844.00. Do you want them to suffer more loss by subjecting them to a surchrge to rightfully collect money owed to them?

As Legislators you have the responsibility to look after ALL people of this State and not just a small group such as those seeking the windfall to be generated by this Bill. Hawaii is struggling economically and business' are struggling as well, so to single them out to bear the burden of the beneficiaries of this Bill is unjust. These agencies receive funding from the State and while it may not be what they want they shouldn't get more than their fair share by circumventing the system via this Bill, which in essence is a "TAX" on only a specific segment of the population. This is DISCRIMINATION at it's worst. The life blood of this State's economy is through the sweat and efforts of the very people or business' this Bill is targeting.....THE SMALL BUSINESS-PEOPLE. Why punish them for keeping the State's economy going?

I respectfully ask that this Bill (SB 1073) not be passed and that the economic impact the small business-people in this State have on our economy be recognized and that they be praised, and not razed.

ALLAN Y. OKUBO, ESQ.  
P.O. BOX 10225  
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**HAWAII ACCESS TO JUSTICE COMMISSION**

Daniel R. Foley  
Judge, Intermediate Court of Appeals  
Chair

Jill M. Hasegawa, Esq.  
Vice Chair

February 24, 2011

Senator David Ige  
Chair, Senate Committee on Ways and Means  
Hawaii State Capitol, Room 215

RE: Measure: SB 1073 Relating to Surcharge for Indigent Legal Services  
Decision Making: February 25, 2011, 9:00 am

Dear Chair Ige and Members of the Committee on Ways and Means:

On behalf of the Access to Justice Commission (the "Commission"), I am writing to request your support for SB 1073 Relating to a Surcharge for Indigent Legal Services. The Commission, which was created by Rule 21 of the Rules of the Supreme Court of Hawaii on May 1, 2008, was established with the purpose to substantially increase access to justice in civil legal matters for low- and moderate-income residents of Hawaii ("low income Hawaii residents"), including increasing and stabilizing long-term public and private funding and resources for delivery of civil legal services to low-income Hawaii residents.

The Commission was created in response to the 2007 Assessment of Civil Legal needs and Barriers of Low- and Moderate-Income People of Hawaii, which found that four out of five low income Hawaii residents do not have their legal needs met and that legal service providers are only able to assist one in three persons who contact them for assistance. The Commission recognizes that in order to increase delivery of legal services to low income Hawaii residents, more funding is essential to assist the legal service providers. One such potential source of increased funding has been identified as the Indigent Legal Assistance Fee.


In the current economic climate, it is imperative, now more than ever, that we maintain funding for our legal service providers. The proposed additional surcharge fees on various court filings in our Hawaii State Court system under the "Indigent Legal Assistance Fund" ("ILAF") set forth in HRS Section 607-5 would provide sorely needed funds for meeting civil legal services needs, especially during a time when the legal need and number of low income Hawaii residents are increasing.

Since 2007, legal service providers have consistently seen between a 20-50% increase in the number of requests for assistance over and above the 2007 figures. This at a time when the legal service providers experienced cuts in legislative funding and reductions in traditional funding sources. In addition, many legal service providers who rely on IOLTA (Interest on Lawyer Trust Account) revenue, which is disbursed by the Hawaii Justice Foundation, have been hit by the sharp decline in interest rates, with HJF receiving only one-eighth the amount of interest received prior to December 15, 2008. This drop in revenue makes the ILAF program even more vital to the continued operations of low-income legal service providers.

During 2009, access to justice in Hawaii suffered another significant blow, with the closing of a long-time legal service provider, the Hawaii Immigrant Justice Center (formerly known as Na Loio) due to funding cuts. It also saw several organizations cut essential programs that service low income individuals, in order to balance budget cuts. As it currently stands, several organizations that rely on federal funding through the Office on Violence Against Women Legal Assistance for Victims, including the Domestic Violence Action Center, are only receiving approximately 20% of their previous funding levels, and this amount is expected to continue to decrease. Those legal services providers who receive federal funding have already been told to anticipate significant cuts in funding, potentially in excess of 25%.

Given the increasing number of indigent persons in Hawaii and their mounting legal needs, it is imperative that funding be maintained for legal service organizations. The increase in ILAF filing fees is essential to providing legal service providers with additional funding to make up for funding shortfalls elsewhere and to meet the ever increasing need for legal services.

On behalf of the Commission, support of the passage of HB 1073, which embodies the Commission's intent is urged to assure that the legal needs of our communities' indigent will be addressed. Thank you.

  
Jill M. Hasegawa, Esq.  
Vice-Chair  
Access to Justice Commission

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**Senate Committee on Ways and Means**  
**Hearing: Friday, February 25, 2011**  
**9:00 a.m.**

**IN SUPPORT OF SB 1073 SD1**

**Chair Ige, Vice Chair Kidani, and Committee Members:**

My name is George Zweibel. I am honored to provide testimony in strong support of SB 1063 SD 1. I am an attorney in private practice on Hawai'i Island and strongly believe that an increase in the surcharge for indigent legal services would greatly increase the ability of Legal Aid to provide needed services to low-income Hawai'i residents.

In November 2007, the Access to Justice Hui released its report entitled Achieving Access to Justice for Hawai'i's People, which includes The Community Wide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai'i by 2010 and The 2007 Assessment of Civil Legal needs and Barriers of Low- and Moderate-Income People in Hawai'i. The Access to Justice Hui found that only one in five low and moderate-income Hawai'i residents have their civil legal needs met, and that legal service providers are able to help only one in three of those who seek their assistance. Since then, the situation has gotten even worse, with a large increase in the number of people in Hawai'i living below 125% of the federal poverty guidelines. This is compounded by the foreclosure crisis and widespread unemployment.

A top priority among the actions recommended by the Hui was increasing overall funding to support the delivery of civil legal services for low-income Hawai'i residents. The specific recommendations include increasing the amounts raised through the court filing fee surcharge for indigent legal services. The Hui found that an increase in the current filing fee surcharge as well as expansion to cases where it does not currently apply (such as District Court cases not involving summary possession) would generate substantial additional revenue for providing civil legal services for low-income people.

SB 1073 SD 1 would increase funding for indigent civil legal services by increasing the surcharge on initial court filing fees in civil actions. Specifically, it would:

- Increase the surcharge from \$25 to \$65 in Circuit Court and Court of Appeal filings and increase it from \$10 to \$35 in District Court filings.



- Expand the surcharge in District Court filings from just summary possession to all cases, including collection cases.
- Continue to exempt small claims cases, petitions for restraining orders, petitions for temporary restraining orders, cases in which the petitioner is proceeding in forma pauperis and all state and county filings.

Thus, SB 1073 SD 1 would raise much needed funds to provide legal assistance to families and individuals who face the loss of a critical basic need, such as housing, family stability and safety, income, and protection from fraud and abuse.

In conclusion, additional funding from all sources for civil legal services for the poor is urgently needed. Enactment of SB 1073 SD 1 – with appropriate filing fee surcharges in District Court, Circuit Court and appeal cases – would represent a major step toward reducing the present funding shortfall.

Thank you for considering my comments on this critical issue.

**James H. Pietsch**  
956-6785  
E-Mail: [james.pietsch@gmail.com](mailto:james.pietsch@gmail.com)

February 23, 2011

TESTIMONY FROM: James H. Pietsch, Director, University of Hawaii Elder Law Program

TO: Senator David Ige, Chair, Ways and Means Committee, Senate,  
Members, Ways and Means Committee, Senate

HEARING DATE/TIME: Friday, February 25, 2011, 9:00 a.m., Conf. Room 215

MEASURE NUMBER: **TESTIMONY IN SUPPORT OF SB 1073, SD1, RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES, Amending HRS Section 607-5.7**

SUBMITTED BY E-MAIL: [WAMTestimony@Capitol.hawaii.gov](mailto:WAMTestimony@Capitol.hawaii.gov)

Dear Chair Ige and Members of the Committee on Ways and Means:

**I strongly support SB 1073, SD1**, which amends HRS Section 607-5.7 to provide amended surcharge fees on various court filings in our Hawaii State Court system under the “Indigent Legal Assistance Fund” (“ILAF”) set forth in HRS Section 607-5.7. I am providing testimony in my personal capacity and not on behalf of the University of Hawaii or the William S. Richardson School of Law.

The University of Hawaii Elder Law Program (UHELP) has been an integral unit of the William S. Richardson School of Law at the University of Hawaii at Manoa for nearly 20 years and plays a vital role in the community by providing free legal services to Oahu’s socially and economically needy, frail and vulnerable elderly population. We are committed to helping our clients’ access to justice by providing direct legal services, consultation, referrals and educating and empowering them to advocate for themselves.

We have been providing legal services at the law school with the support of the Indigent Legal Assistance Fund and from the Elderly Affairs Division of the City and County of Honolulu under Title III, the Older Americans Act. We could not operate without external grants. Unfortunately the external grants do not cover the current costs of running the program and the other legal services providers are facing similar difficulties.

I respectfully urge your favorable approval of SB 1073, SD1 to help continue UHELP’s mission, which is to provide legal services to socially and economically needy elders and to educate law students in this rapidly expanding area of need.

Having limited legal access or none at all particularly affects those who are frail, elderly, and vulnerable with language and mobility barriers, disabilities, mental and physical incapacities. If there is limited or no access to justice, legal problems escalate, basic needs, such as having adequate food, shelter and healthcare are not met and possible abuse and neglect of elders on O‘ahu are tolerated, hidden and go unchallenged. UHELP has the expertise to help solve the problem of access to justices and legal services. It can help educate, advocate for and counsel elders about entitlements to food, shelter, income, medical care, and end-of-life information, how to keep safe and protected and other matters related to the well being of elders.

To carry out its mission, UHELP functions in several important capacities: as a legal service provider that provides 1500 units of legal services. Direct legal services are provided to 350 qualified elders each fiscal year and 40 informational outreach sessions is given to reach a total of 1450 elders each fiscal year. UHELP also functions as a law school program that educates students in elder law and as a clinical program that gives hands-on legal experience to students to benefit socially and economically needy elders. The inter-relationship of these functions is symbiotic and increases our presence in the community and the impact of grant monies. The Indigent Legal Assistance Fund is a key source of our support.

Once again, I respectfully urge your favorable approval of SB 1073, SD1.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 24, 2011 12:59 PM  
**To:** WAM Testimony  
**Cc:** tracey@mediatehawaii.org  
**Subject:** Testimony for SB1073 on 2/25/2011 9:00:00 AM

Testimony for WAM 2/25/2011 9:00:00 AM SB1073

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Tracey S. Wiltgen  
Organization:  
Address:  
Phone:  
E-mail: [tracey@mediatehawaii.org](mailto:tracey@mediatehawaii.org)  
Submitted on: 2/24/2011

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
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**Cc:** hctfgac@hotmail.com  
**Subject:** Testimony for SB1073 on 2/25/2011 9:00:00 AM

Testimony for WAM 2/25/2011 9:00:00 AM SB1073

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Naomi C. Fujimoto  
Organization: Individual  
Address:  
Phone:  
E-mail: [hctfgac@hotmail.com](mailto:hctfgac@hotmail.com)  
Submitted on: 2/24/2011

Comments: