



The Judiciary, State of Hawaii

Testimony to the House Committee on Human Services

The Honorable John M. Mizuno, Chair

The Honorable Jo Jordan, Vice Chair

Monday, March 14, 2011, 9:00 a.m.

State Capitol, Conference Room 329

by

Lori M. Okita

Interim Deputy Chief Court Administrator

First Circuit

Bill No. and Title: Senate Bill No. 77, S.D. 1, Relating to the Courts.

Purpose: Permits a court to allow a petition, complaint, motion, or other document to be filed identifying the parties as "jane doe" or "john doe"; permits a court to use a multi-factor balancing test when determining if an anonymous filing is appropriate. Permits a court to allow an alleged victim to be listed as "jane doe" or "john doe" within court filings when petitioning for a temporary restraining order and an injunction from further harassment; provided that the court determines it would be necessary to protect the privacy of the petitioner. Also permits courts to seal court records associated with the "jane doe" or "john doe" filing under certain circumstances.

Judiciary's Position:

Currently, the courts do, from time to time, exercise its equitable powers to protect persons and entities by "sealing" or making confidential selected files and documents that would otherwise be open to the public. This bill appears to protect victims' identities from public disclosure by codifying the ability of a petitioner/plaintiff to request that a party's identity (i.e., party's name), documents or portions of documents that would identify the party or contain sufficient information to identify the party, be "sealed" from public viewing.

The Judiciary takes no position on the policy issue but respectfully seeks confirmation of its understanding that this bill does not intend to limit the court's authority regarding disclosure of the petitioner/plaintiff's identity to defendant(s)/respondent(s) of a "sealed" action or documents for purposes of proper defense/response. Further, confirmation is respectfully sought to confirm that this bill does not intend to limit access to the "sealed" action or documents by law



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enforcement or other authorized authority, in the course of conducting official business, for purposes of effectuating service, enforcement and/or prosecution, unless otherwise authorized by statutory or rule authority, or as ordered by the courts.

Thank you for the opportunity to testify on this matter.



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THE HOUSE OF REPRESENTATIVES THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2011

Committee on Human Services Testimony in Support of S.B. 77, SD1 Relating to The Courts

**Monday, March 14, 2011, 9:00 A.M.
Conference Room 329**

Chair Mizuno 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 codify into statute the ability of the Court in an appropriate situation to allow a complaint, motion or document to be filed identifying a party as "John Doe" or "Jane Doe" in order to protect their right of privacy. We support that and speak to the issue from the perspective of representing litigants in court cases who are individuals with disabilities. These individuals have rights under both federal and State law to have information regarding their disability protected and kept private.

This may be particularly so in the case of individuals who may suffer from a mental illness or substance abuse. They fear repercussions that may occur from having to disclose these conditions in a public record which, as a result of modern technology, is then literally available for "all the world" to see.

While we have had some success in cases convincing the Court to exercise discretion and allow a party to proceed via initials, we believe it is good public policy to codify this provision into the statutes. This would ensure greater uniformity in the protection of

these individuals. It would also eliminate the ability of an attorney on the other side to object to the use of initials or a "doe" filing as a means of coercing the party into a settlement or a withdrawal of the underlying claim . This provision would ensure that the integrity of the judicial process is not compromised in such a fashion.

Thank you for the opportunity to testify in support of this measure.