

JUDtestimony

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To: JUDtestimony
Subject: Testimony to House JUD for HB626 on 2/10/11
Attachments: HB626(JUD).pdf

Attached please find testimony from the Hawaii State Judiciary:

TESTIFIER: Judge Glenn Kim, Chair, Hawaii Supreme Court Standing Committee on the Rules of Evidence
(Written Only)

COMMITTEE: House Committee on Judiciary

HEARING DATE: Thursday, February 10, 2011, 2:00 p.m.

MEASURE NO: HB626, Relating to the Hawaii Uniform Collaborative Law Act

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THE JUDICIARY, STATE OF HAWAII

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

Thursday, February 10, 2011, 2:00 p.m.
State Capitol, Conference Room 325

by
Judge Glenn Kim, Chair
Hawaii Supreme Court Standing Committee on the Rules of Evidence

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 626, Relating to the Hawaii Uniform Collaborative Law Act

Purpose: Enacts Uniform Collaborative Law Act, which authorizes disputants to enter into collaborative law participation agreements signifying interest to resolve the dispute without intervention of a tribunal (court or other third party decision maker). Requires parties to a collaborative law process to disclose information fully, candidly, and informally without formal discovery. Subject to certain exceptions, disqualifies attorneys in the collaborative process (and their law firms) from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

Judiciary's Position:

The Hawaii Supreme Court Standing Committee on the Rules of Evidence (Evidence Committee) respectfully requests that this measure be deferred and referred to it for interim study and a report to the 2012 Legislature.

In order to assist the Legislature in its evaluation of new evidence proposals and to enable the Judiciary to fulfill its constitutional responsibility to assert primacy in matters "relating to process, practice, procedure and appeals," the chief justice created the Evidence Committee in 1993 with a mandate "to study and evaluate proposed evidence law measures referred by the



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Hawaii Legislature, and to consider and propose appropriate amendments to the Hawaii Rules of Evidence.

According to Article VI, section 7 of the Hawaii Constitution, the Hawaii Supreme Court has the “power to promulgate rules...relating to process, practice, procedure and appeals, which shall have the force and effect of law.” This constitutional mandate includes rules of evidence. Beginning with the promulgation of the Hawaii Rules of Evidence in 1980, the Supreme Court has elected to share this power with the Legislature. See Bowman, *The Hawaii Rules of Evidence*, 2 U. Haw. L. Rev. 431 n.3 (1981)(“The cooperative approach was designed in part to avoid a separation of powers struggle between the legislative and judicial branches of government”). Evidence rules are thus on the legislative agenda. But the Evidence Committee has a compelling interest in generating and voicing opinions regarding evidence measures such as that contained in House Bill No. 626.

To assure the Judiciary a fair opportunity to exercise its constitutional function, the Evidence Committee respectfully requests that House Bill No. 626 be deferred and referred to it for interim study and a written report to the very next session of the Legislature, because it is a new measure that has just come to our attention.

Thank you for the opportunity to testify on this measure.