



The Judiciary, State of Hawaii

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

Wednesday, March 21, 2012, 2:15 p.m.
State Capitol, Conference Room 325

by
R. Mark Browning
Deputy Chief Judge / Senior Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 3008, H.D. 1, Relating to Family Court.

Purpose: Allows impoverished family court plaintiffs and petitioners to serve notice by posting pleadings at the courthouse in lieu of notice by publication, subject to order of the court, demonstration of a diligent search, and mailing of the pleading to the defendant's or respondent's closest known relative.

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 3008, H.D. 1. However, we respectfully request that should the Legislature pass this legislation, the effective date of the bill be changed to September 1, 2012, to give the Hawaii Supreme Court time to determine whether new court rules are needed to implement this legislation.

Thank you for the opportunity to present testimony on this measure.



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TESTIMONY IN SUPPORT OF
SB3008 HD1 - RELATING TO FAMILY COURT

Committee on Judiciary
Representative Gilbert Keith-Agaran, Chair
Representative Karl Rhoads, Vice-Chair

March 21, 2012 at 2:15 p.m.

The Legal Aid Society of Hawaii submits testimony in support of SB3008 HD1 – Relating to Family Court. This bill would allow posting as an alternative to serving notice by publication for impoverished litigants in all family court matters after a due and diligent search for the defendant.

This bill would extend current provisions which allow impoverished litigants in divorce actions to serve by posting in lieu of publication to all family court matters. The court would determine based on affidavits submitted by the plaintiff or petitioner whether a due and diligent search was made prior to allowing posting in lieu of publication. The Judiciary has taken no position on this bill except to ask for additional time for implementation to September 1, 2012 which we agree is appropriate.

Posting in lieu of publication for impoverished litigants is not new in Hawai'i. Current statutes allow for posting in lieu of publication in divorce actions and prior to the passage of the statute in 2000, Family Court rules allowed for posting in lieu of publication.

For an impoverished litigant, finding the funds to pay for publication should not be a barrier to access to justice. Recent increases to publication rates have now made it almost impossible to publish notice especially on Oahu. For example, last June, publication for an adoption case was \$580.10. However, in January 2012, the cost increased to \$1,523.56 (approximately half of the monthly income for a family of five who live under 125% of the federal poverty guideline). For a guardianship, notice currently costs \$1,020.95.

This legislation would help alleviate this burden of publication and make it more accessible for:

- grandparents who are caring for their mo'opuna and need guardianship to get the child onto their health insurance, but cannot find the mother;
- a mother who needs to register her child in school, but does not have legal custody and does not know where the father of the child is;
- an aunt and uncle who want to adopt their niece who has lived with them since birth and wants to be part of their family, but they have no idea who the niece's father is or where he can be found

These are families who are trying their best to care for children and should be barred from doing so because they cannot afford the cost to publish notice. We encourage you to pass this legislation to help these families and children.

Thank you for this opportunity to provide testimony. I apologize I am not able to appear in person as I am currently traveling on the mainland.

Sincerely,

M. Nalani Fujimori Kaina
Executive Director

The Legal Aid Society of Hawaii (Legal Aid) is the only legal service provider with offices on every island in the state, and in 2011 provided legal assistance to over 10,000 Hawai'i residents in the areas of consumer fraud, public assistance, family law, the prevention of homelessness, employment, protection from domestic violence, and immigration. Our mission is to achieve fairness and justice through legal advocacy, outreach and education for those in need.



To: Chair Keith-Agaran
Vice Chair Rhoads
Members of the Committee on Judiciary

Fr: Nanci Kreidman, M.A.

RE: SB 3008 HD 1

Good afternoon. The Domestic Violence Action Center is in support of SB 3008 HD 1. This bill would allow posting as an alternative to serving notice by publication for impoverished litigants in all family court matters after a due and diligent search for the defendant. This bill would extend current provisions which allow impoverished litigants in divorce actions to serve by posting in lieu of publication to all family court matters.

Domestic Violence Action Center has a robust caseload comprised of survivors of domestic violence in desperate need of divorce representation. In the first six months of FY 2012, the agency has already received 301 requests for legal representation. For some of these victims, finding the defendant in the case can be difficult. It can be a father who is only intermittently in the child's life, a mother who is in hiding, or a father who is not the abuser and long gone from the partnership and their whereabouts are just unknown. Under current statutes, if you are unable to locate any of these defendants in actions other than divorce, you must pay to publish notice in a newspaper which circulates in the county of the impending action.

For an impoverished survivor, finding the funds to pay for publication is already difficult. However, recent increases to publication rates have now made it almost impossible. Costs for noticing cases is exorbitant.

This legislation would help alleviate this burden of publication and make it more accessible for our client constituency.

Thank you for your consideration.