



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Ways and Means

Representative John M. Mizuno, Chair

Representative Jo Jordan, Vice Chair

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

State Capitol, Conference Room 329

by

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Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 957, S.D.1 , Relating to Family Court.

Purpose: Creates a family law advisory committee.

Judiciary's Position:

The Judiciary respectfully opposes Senate Bill No. 957, S.D.1, which would create a citizen's family law advisory committee within the Judiciary, because the committee's functions and authority would not be appropriate for the judicial branch. The bill mandates that the Chief Justice appoint the 11-15 member-committee to include representation from each judicial circuit, community laypersons, judges, family court administrator, attorneys, family and children service providers, mental health professionals, guardians ad litem, or expert witnesses, state and county agencies including the department of human services, department of health, and department of public safety, and law enforcement agencies. Members serve for terms of 4 years, without compensation, except they may be reimbursed for travel or other expenses. The committee shall meet no less than 9 times every year. The Chief Justice is to submit a report to the Legislature no later than October 15th of each year describing the activities, reports and recommendations of this advisory committee.

This bill is contrary to the doctrine of "separation of powers" which is deeply ingrained in our democracy. The Legislature makes the laws, and the Judiciary interprets, applies, and enforces the laws. Unlike the executive and legislative agency boards covered by HRS Chapter 92, Judiciary boards and committees are generally concerned with administering policies, not creating policies. From time to time, policies involving the core functions of the Judiciary may be the subject of a commission or a task force.



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While the Legislature may create advisory committees to advise the Legislature about possible legislative acts and policies, these kinds of committees cannot serve the same role with the Judiciary. The court's role is to decide individual court matters according to the statutes, constraints of the federal and state Constitutions, established precedents in appellate case law, court rules, and on the basis of evidence and the law. The Family Court applies the Legislature's statutes and constitutional principles on a case-by-case basis and, in doing so, its decisions are subject to review by the Intermediate Court of Appeals and the Supreme Court.

Senate Bill No. 957, S.D.1 empowers the "Committee" to conduct inquiries, studies, evaluations and surveys, review legislation, administrative procedures, and proposals, and evaluate alternatives and make recommendations relating to family law and family court. The Judiciary is concerned that, although these enumerated functions may be well-intentioned, there is a distinct capacity for these committee functions to infringe on the Family Court's constitutionally mandated independence, by inserting extraneous considerations into the adjudicatory process, such as recommending specific dispositions for particular kinds of cases, or prioritizing Judiciary resources for specific types of participants.

The report of the Senate Committee on Judiciary and Labor (Senate Standing Committee Report No. 371) states "significant barriers to justice exist within Hawai'i's Family Court system." This statement is without merit and does a disservice to the hardworking personnel of the Judiciary. We stand by our work as reported to the Legislature. Despite limited resources, budget cuts, loss of staff positions, and furloughs, the judges and staff (and supporting community and agency providers) have performed admirably and with a high level of dedication to the community. The recent economic downturn and the resulting cuts have caused delays in our service. However, there is nothing that is particular to the courts. Every public entity has been so affected.

This bill apparently originates from the Special Committee Report No. 2, January 2, 2008, regarding S.R. No. 10, S.D. 1, at page 5:

"This (Family Court Sunshine and Accountability) Committee examined the issues of confidentiality of records and the provision of equal access to justice in the family courts. Such discussion encompassed the issue of the balance between the need for confidentiality, the security of personal information, and completely sealed records versus the need for access to information, including financial information, with regard to divorce and paternity cases, as well as the potential for establishing a family advisory committee or ombudsman as a means for addressing concerns."



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Regarding the issues of confidentiality and personal information, except on a case-by-case basis, the Judiciary does not govern these matters. It is within the Legislature's province to dictate what public records are protected by confidentiality and what are not. For example, the Legislature has rendered all paternity actions confidential and all divorce actions open (except with regard to child custody issues). The Legislature is free to set up its own "Advisory Committee" to recommend whether any changes should be made to these laws. Subsequently, the Legislature can use the legislative process to change the existing laws.

Regarding the issues of "equal access to justice in the family courts", the Judiciary has steadily addressed this throughout the recent years (despite severely limited resources) and will continue to do so in the coming years (despite severely limited resources).

Our self-help desk is staffed with an amazing crew of hard-working dedicated court staff who are busy helping the public nearly every minute of work day. There is usually a line for this service and people are assisted as staff members finish helping one "customer" and are ready for the next. This help ranges from referrals to basic information to assistance in filling out forms (although the staff members are meticulously careful not to give legal advice or to act as an advocate on behalf of any party).

The family court diligently revises forms so that self-represented litigants can fill them out by themselves. At this time, self-represented litigants can, by themselves, start and finish divorces, paternity actions, orders of protection, adoptions, guardianships of the person, child support actions, and other miscellaneous cases. As noted above, we have dedicated resources to assisting the public in these endeavors.

We have also recognized the pervasiveness of domestic violence in our community by developing and expanding a special unit of officers who assist petitioners in obtaining temporary restraining orders and orders of protection.

We assist the various indigent and pro bono legal service providers with their work. We have given them precious courthouse space, met with them regarding their organizational concerns, attempted to accommodate their needs in order to facilitate their work, and generally done what we are able to in order to be of service to them.

Since the Judiciary does not make policy, we question the perceived need to have the kind of broad community input that the Legislature requires through committees such as is envisioned by this Bill. The actions that we have taken are appropriate to our role and expertise, e.g., revising forms, developing staff units for special tasks, assisting agencies (both public and private) who are the "front line" in delivery of services, and streamlining court procedures and processes as much as we are able to.



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Requiring the Judiciary to form and staff a committee envisioned by this bill is improper and a questionable diversion of valuable resources—resources that can be much better utilized to assist the community in accessing the courts.

Lastly, the Legislature has the most effective means of increasing “access to justice” by appropriating more resources to the existing indigent and “gap group” legal services organizations.

In the most recent edition of The Nonprofit Quarterly (found at: http://www.nonprofitquarterly.org/index.php?option=com_content&view=article&id=9911:tied-to-the-railroad-track-once-again-the-perils-of-legal-aid-funding&catid=153:features&Itemid=336), a feature article reported that:

Numerous studies within individual states and nationally over the last 30 years have demonstrated that over half of the low income people who have a legal problem either do not recognize that it is a legal problem or do not know they can do anything about it. Many of those who do recognize that they have a legal problem do not know that they are eligible or how to get access to civil legal aid. The studies have consistently found that only about 15 percent of the legal needs of low-income people are met even in the best of times.

These numbers reflect where the important work should be focused. As noted above, the Family Court takes seriously the need to produce pro se packets, to simplify procedures, to create forms for use by self-represented parties. Disgruntled litigants can seek policy and law changes through the Legislature and it is the Legislature who can set up its own advisory committee.

Thank you for the opportunity to provide testimony on this matter.