

SB 957

SD 1



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Ways and Means

Senator David Y. Ige, Chair
Senator Michelle Kidani, Vice Chair
Tuesday, March 1, 2011, 9:20 a.m.
State Capitol, Conference Room 211

by
Glennard Fong
Chief Court Administrator, First Circuit

WRITTEN COMMENTS ONLY

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

Purpose: To create a citizen's family law advisory committee to assist the Judiciary and Legislature in continuing to improve the family court.

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



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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.

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



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to divorce and paternity cases, as well as the potential for establishing a family advisory committee or ombudsman as a means for addressing concerns.”

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,



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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.

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.

February 28, 2011

To: Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Committee on Ways and Means

From: Tom Marzec

Subj: Testimony **IN STRONG SUPPORT** of **SB957 SD1** which creates the
Citizen's Family Law Advisory Committee (CFLAC)

Hearing: Tuesday, March 1, 2011; 9:20 a.m.; Room 211, State Capitol

I strongly support SB957 SD1. A method by which the public can participate in Family Court matters and issues is desperately needed. The one group of people almost totally cut out of any meaningful collaboration regarding Family Court are the customers of family court -- mothers and fathers, husbands and wives!! This then negatively affects their children. With the additional issues that civil unions will bring, an open, sunshined process for such citizen participation is even more needed.

In addition, the CFLAC is intended to assist the family courts and to perform functions that otherwise may not be resourced or would require volunteers. The administrative resource issues of being assigned to the Judiciary are far outweighed by the positive effects and the help the advisory committee can provide to the courts.

Continuing Access to Justice work clearly identifies that family court has significant unmet legal needs and barriers to justice. A CFLAC would be a new and appropriate paradigm for Hawaii, which is desperately needed, because doing things the old way and hoping for improvements has not produced results. A State Auditor audit of the family court complaint process¹, in 2002, found that the court does not recognize a need to document complaints; complaints may contain valuable feedback to improve program effectiveness; poor planning impinges on the effectiveness of customer service efforts; and customer service efforts are inadequate at informing the public about court system. Now, in 2011, not enough has been done to proactively address these clear problems.

This CFLAC involves the customers in collaboratively developing solutions to their court problems. As an advisory committee only, the CFLAC has no jurisdiction to change adjudicative decisions.

Other states have similar advisory committees. Oregon created their FLAC in the mid 1990s, after recommendation to do so by a task force charged "to address growing concerns about the divorce process in Oregon, including the volume of family court cases, the combative atmosphere of dissolution proceedings, the misuse of the adversarial process during divorce, and the "lasting, damaging impact on both the parties involved and their children." and with creating "a non-adversarial system for families undergoing divorce that provides the families with an opportunity to access appropriate services for the transition period."

The duties of the Maine FLAC, are more expansive than the modest SB957 CFLAC duties.

Hawaii's Judiciary must be concerned with the level of the publics' faith, trust and confidence in the family courts. The collaboration between the Judiciary and this CFLAC would be a tremendous step forward in addressing family court problems, assisting the family court with resources, filling unmet legal needs, removing barriers to justice and improving associated public faith, trust and confidence in the family courts.

Your consideration of these issues and support of this bill is very much appreciated!

¹ See <http://www.state.hi.us/auditor/Reports/2002/02-23.pdf>

J

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 12:31 PM
To: WAM Testimony
Cc: dr.la@aloha.net
Subject: Testimony for SB957 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB957

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Dr. Laurette Schaller
Organization: Individual
Address:
Phone:
E-mail: dr.la@aloha.net
Submitted on: 2/28/2011

Comments:

I have worked with Senator Chun Oakland on the family court working group, as a representative of the Hawaii Association of Marriage and Family Therapists (HAMFT), for many years now. My private practice work includes Psychological and Court Services.

I strongly support SB957 SD1. An advisory committee such as this would be an asset to the family courts. Representing a broad group of stakeholders, this advisory committee can perform functions, requested by the family court, that the family court would otherwise be unable to staff. In addition, this advisory group allows for a process by which the public's unmet family court legal needs are identified and addressed.

Dr. Laurette DeMandel-Schaller, MFT, Ph.D.
Court Appointed CE, GAL, Senior Mediator former HAMFT Ethics Committee Chairperson

To: Senator David Y. Ige, Chair
Senator Michelle Kidani, Vice Chair
Committee on Ways and Means

From: Chris Lethem

Subj: Testimony IN STRONG SUPPORT of **SB957** which creates the
Citizen's Family Law Advisory Committee (CFLAC)

Hearing: Tuesday, February 28, 2011; 9:20 a.m.; Room 211, State Capitol

I strongly support SB957. A method by which the public can participate in Family Court matters and issues is desperately needed. The one group of people almost totally cut out of any meaningful collaboration regarding Family Court are the customers of family court -- mothers and fathers, husbands and wives!! This then negatively affects their children.

- Expenses associated with the CFLAC would be minimal.
- Submitting vouchers for travel from the Neighbor Island is already being done
- Committee would use of existing facilities.
- Time would be the primary contribution.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 12:10 PM
To: WAM Testimony
Cc: stevekimlaw@gmail.com
Subject: Testimony for SB957 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB957

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Steven Kim
Organization: Individual
Address:
Phone:
E-mail: stevekimlaw@gmail.com
Submitted on: 2/28/2011

Comments:

I am a Honolulu attorney, and have been practicing for approximately 23 years. My practice is virtually all in the family law area. I support this bill because I believe that the Family Court would enjoy greater public confidence as a result of increased transparency and public participation in improvement. At present, there is no known mechanism for evaluation of public comments on Family Court procedures. Creation of a diverse community Advisory Committee would be of great assistance in streamlining and improving Family Court processes that have such a profound impact upon Hawaii's families and children. I apologize that I cannot personally attend the hearing before your committee. Thank you very much for your consideration of this important bill.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 11:48 AM
To: WAM Testimony
Cc: LeslieMason65@yahoo.com
Subject: Testimony for SB957 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB957

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Leslie Mason
Organization: Individual
Address:
Phone:
E-mail: LeslieMason65@yahoo.com
Submitted on: 2/28/2011

Comments:

As a mother who has witnessed the problems with family court custody processes and a Mental Health Professional with a Masters in psychology, I fully support SB957 SD1. There has to be a way to involve the public and the courts in addressing problems of mutual interest. This advisory committee, similar to what other states have, is very necessary.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 11:43 AM
To: WAM Testimony
Cc: mskathrynrose@yahoo.com
Subject: Testimony for SB957 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB957

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Kathy Rose
Organization: Individual
Address:
Phone:
E-mail: mskathrynrose@yahoo.com
Submitted on: 2/28/2011

Comments:

I strongly support open and citizen participation in this advisory-only committee, designed to help and assist family court. The Judiciary must have a way to directly hear public testimony and feedback from citizens so family court can be collaboratively and continuously improved.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 26, 2011 2:43 AM
To: WAM Testimony
Cc: swartzg001@hawaii.rr.com
Subject: Testimony for SB957 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB957

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: gregory swartz
Organization: Individual
Address:
Phone:
E-mail: swartzg001@hawaii.rr.com
Submitted on: 2/26/2011

Comments:
The State has no money. This is a waste of taxpayer funds. STOP ALREADY.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 7:34 AM
To: WAM Testimony
Cc: honolulubruce@aol.com
Subject: Testimony for SB957 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB957

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Bruce Berger
Organization: Individual
Address:
Phone:
E-mail: honolulubruce@aol.com
Submitted on: 2/28/2011

Comments:
Aloha,

Having been a conduit from parents who were involved in the Family Court Process a number of years ago, I can tell you that the overwhelming feedback was that spouses and divorcing parents did not feel part of the process, they felt abused by attorneys, the family court was not fair, objective, were held accountable nor was it transparent. This bill would service to make Family Court more consumer oriented and user friendly. I strongly support this bill.

Bruce Berger

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 4:16 PM
To: WAM Testimony
Cc: gfarstrup@msn.com
Subject: Testimony for SB957 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB957

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Greg Farstrup
Organization: Individual
Address:
Phone:
E-mail: gfarstrup@msn.com
Submitted on: 2/28/2011

Comments: