



Collection Law Section

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February 10, 2013

Representative Angus L.K. McKelvey
Chair, House Consumer Protection & Commerce Committee
Hawaii State Capitol
Honolulu, Hawaii

**RE: HB 1150 - RELATING TO ATTORNEY'S FEES TO ASSIST IN
THE RECOVERY OF UNCLAIMED PROPERTY UNDER HRS
CHAPTER 532-A**

Dear Representative McKelvey and Committee Members:

The Collection Law Section ("CLS") of the Hawaii State Bar Association ("HSBA") requests that you consider introduction of a bill relating to the attorney's fees allowed in the assistance of the recovery of unclaimed property under Hawaii Revised Statutes (HRS) Chapter 523A.¹ A copy of the proposed language is attached. Chapter 523A deals with property that has escheated to the State Department of Finance (the Dept.). Typically, this includes such property as bank accounts, insurance proceeds, proceeds from a decedent's estate, and the like. The reason for the proposed change is to deal with a limitation enacted last year under Act 229 capping fees for *anyone* assisting another in recovering unclaimed funds to 10% of the amount recovered.

While there may be reasons for applying a 10% cap to non-attorneys who work in the field, applying a 10% cap on attorney's fees severely limits the public's ability to engage an attorney to assist them in the recovery of property they believe is theirs. For example, the vast majority of the accounts held by the Dept. are below \$5,000, with most of the accounts being significantly smaller. Even the most simple involvement of an attorney is quickly going to go above the 10% limit in all but the very largest of cases. In the end, retaining an attorney by the hour or on a contingency basis (if the client does not have the funds to pay up front or does not want to take on the risk involved if no recovery is obtained) is not going to be possible for the majority of the public.

¹ The opinions of the Collection Law Section are not necessarily the opinions of the Hawaii State Bar Association proper.

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Furthermore, there is evidence indicating that setting a 10% cap in Act 229 on *anyone* who is involved in the assisting others to obtain a recovery may have been an oversight. For instance, HRS §523A-25(a) restricts any such services within the first 24 months after the Dept. receives an account, yet HRS §523A-25(a) also provides an *exemption* that allows individuals to retain *attorneys* during this same period.

Enacting the proposed legislation would allow members of the public more options and a greater ability to recover funds than is possible with the current restrictions. If the idea of the Unclaimed Property Program is to get the funds or other property to the person entitled to receive those funds or property, then introduction and enactment of this proposed legislation will move the law one step closer to achieving that goal.

Thank you.

Respectfully,



Bill Plum
Vice Chair
The Collection Law Section
of the Hawaii State Bar
Association

cc: HSBA
Steven Guttman

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