

EDWARD R. BENDET
YURIKO J. SUGIMURA
KEITH S. AGENA
LORI LEI Y. HIJII

OF COUNSEL
GREGORY A. FERREN

BENDET FIDELL

ATTORNEYS AT LAW
A LAW CORPORATION
BISHOP SQUARE
1001 BISHOP STREET, STE 710
HONOLULU, HAWAII 96813

AREA CODE 808

TELEPHONE 524-0544
TELEFAX 521-7739

LAWYERS@BENDETFIDELL.COM
WWW.BENDETFIDELL.COM

February 6, 2013

Rep. Henry J.C. Aquino, Chair
Rep. Kaniela Ing., Vice-Chair
House Committee on Public Safety

Re: HB1278 Re Court Fees
Hearing: Thurs. Feb. 7, 2013, 9 a.m. in Conf. Room 309

Chair Aquino, Vice-Chair Ing and Members of this Committee:

I have been practicing civil litigation for over 30 years. In 1992 I was appointed by a former Chief Justice to serve on the District Court Rules and Forms Committee and I served on that Committee for over 15 years and I am currently a Board member for the Collection Law Section of the Hawaii Bar Association.

I have concerns about this bill due to a change in the law that happened last year. Prior to the change, there were process servers who were on an approved list maintained by the Department of Public Safety. The law as to who could serve process in the State of Hawaii changed last year so that any person "approved by the court" could serve. The problem with that change is that the "court" never issued any directions or instructions as to who was "approved by the court" so for the lack of any specific instructions, Hawaii law already provided that any person over 18 years of age and who was not a party to the lawsuit could serve civil process. Because of the change, as of July 1, 2012, the process servers who were on the Department of Public Safety's "approved" list were "delisted" and they were uncertain whether or not they were still authorized to serve special Writs, such as Writs of Possession, Writ of Execution, Orders to Show Cause, etc. since there was nothing in writing from the Court that they would be authorized to served such Writs.

This uncertainty led to a situation where attorneys could not get a process server to serve a Writ of Possession or a Writ of Execution. I have never known a police officer or a deputy sheriff who would agree to serve a Writ. We attorneys always used people who were on the Department of Public Safety's list and now those people will not serve Writs because they have not been "approved" by the "court". I understand that the neither the Department of

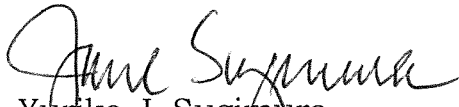
Public Safety nor the Judiciary want to be in a position to approve certain people to serve process because of the liability.

Our Bar section asked Senator Will Espero, who chairs the Senate Committee on Public Safety, to establish a working group to look into this problem. Attached to this testimony is a copy of SB311, which will be tasked to define the responsibilities of a process server, ensure that they have adequate training so that they do not expose their contractors to liability and that some state agency will have oversight over them. We've spoken to Chief Justice Recktenwald about this problem and he's agreed that the judiciary¹ should get involved because this issue is beginning to take up additional court time to deal with the motions requesting appointments of receivers.

I am concerned that a fee increase for anyone who says they are a process server will just encourage the wrong kinds of people to suddenly want to be process servers. Any bad acts by those people will reflect negatively on all process servers, including the ones who were civil deputies and who have been serving Writs for years and doing a fine job until they were "delisted" last year with no prior notice.

Before dealing with a fee increase for serving process, I urge this committee to consider the broader issues of who is qualified to serve civil process and who will have oversight over that group. Therefore, I suggest that the language in SB311 be added to this bill so that issues of who can serve process, and what can they serve will be in the same bill that deals with increasing the fees paid for their service.

Thank you for allowing me to testify on this bill.


Yuriko J. Sugimura
Of BENDET FIDELL

YJS:ss

¹ We are aware that district court judges have expressed concern that landlords' attorneys are filing motions for appointment of a receivers so that they can get their Writ of Possession served in an eviction.

S.B. NO. 311

Report Title:

Sheriff; Process Servers; Working Group

Description:

Requires the department of public safety to form a working group to define and delineate the duties and responsibilities of process servers under its jurisdiction, create a process to obtain certification for the sheriff division from the Commission on Accreditation for Law Enforcement Agencies, Inc., to ensure that proper law enforcement policies and procedures are enacted and followed, create a process of registration for process servicers in the state, and address other issues deemed relevant by the working group or by the department of public safety. Requires a report to the legislature.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



JAN 18 2013

A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that process servers play
2 an important role in facilitating a timely judicial process and
3 protecting public safety. The legislature attempted to regulate
4 process servers in the early 1990s. Auditor's Report No. 91-17,
5 an after-the-fact sunrise analysis on the state regulation of
6 process servers, alluded to concerns such as alleged delays by
7 the sheriffs in serving process. However, the Auditor
8 recommended in that report that the State not regulate process
9 servers at the time. Nearly two decades later, Auditor's Report
10 No. 10-06, *Audit of the Department of Public Safety, Sheriff*
11 *Division* (June 2010), stated, "Inefficiencies in the warrant
12 process point to larger problems in the Sheriff Division." The
13 Auditor recommended, among other things, "that the department
14 pursue accreditation for the Sheriff Division from the
15 Commission on Accreditation for Law Enforcement Agencies, Inc.
16 (CALEA), to ensure that proper law enforcement policies and
17 procedures are enacted and followed."



1 A survey conducted by the Feerick Center for Social Justice
2 at Fordham Law School, entitled *State-by-State Survey of Process*
3 *Server Provisions*, was conducted in 2009. The purpose of the
4 project was to explore the potential of process server education
5 and training as one method to improve industry practice. The
6 survey demonstrates that regulation of process servers varies
7 greatly throughout the country. In some states, only law
8 enforcement personnel may serve legal process whereas in other
9 states, process can be served by any adult who is not a party to
10 the action. Some states require licensure, registration, or
11 appointment while others do not. Additional provisions mandate
12 education, such as training or testing, bond or insurance
13 requirements, and fee guidelines. Finally, some state
14 requirements are statutory and regulatory whereas others are
15 imposed by court rule. Based on the survey, twenty-four states
16 require some type of license, registration, or appointment.

17 Civil process servers in Hawaii are not required to obtain
18 a license. Section 634-21, Hawaii Revised Statutes, identifies
19 who may perform service of process:

20 **"§634-21 Service of process, by whom.** Except as
21 otherwise provided, service of all process and orders shall
22 be made by the sheriff or the sheriff's deputy, the chief



1 of police of the county in which the service is made or the
2 chief's duly authorized subordinate, some other person
3 specially appointed by the court for the purpose, any
4 investigator appointed and commissioned by the director of
5 commerce and consumer affairs pursuant to section 26-9(j),
6 or a person authorized by the rules of court."

7 For persons authorized to serve process by the rules of court,
8 Rule 4(c), Hawaii Rules of Civil Procedure, requires the
9 following:

10 "Service of all process shall be made: (1) anywhere
11 in the State by the sheriff or the sheriff's deputy, by
12 some other person specially appointed by the court for that
13 purpose, or by any person who is not a party and is not
14 less than 18 years of age; or (2) in any county by the
15 chief of police or the chief's duly authorized subordinate.

16 A subpoena, however, may be served as provided in Rule 45."
17 For the service of subpoenas, Rule 45(c), Hawaii Rules of Civil
18 Procedure, in part, requires the following:

19 "A subpoena may be served: (1) anywhere in the State
20 by the sheriff or deputy sheriff or by any other person who
21 is not a party and is not less than 18 years of age; or (2)



1 in any county by the chief of police or a duly authorized
2 subordinate."

3 Thus, in addition to law enforcement officers and individuals
4 specially appointed by the court, any individual may perform
5 service of process so long as that individual is not a party to
6 the matter and has reached the age of majority.

7 In light of ongoing concerns regarding service of process,
8 the legislature finds that the department of public safety
9 should more clearly define and delineate the duties and
10 responsibilities of process servers under its jurisdiction and
11 examine ways of certifying and registering its process servers.

12 The purpose of this Act is to require the department of
13 public safety to convene a working group to clarify the duties
14 and responsibilities of process servers under the department's
15 jurisdiction, create a process of registration and certification
16 of process servers, and address other relevant issues.

17 SECTION 2. The department of public safety shall convene a
18 working group with the following objectives:

- 19 (1) Defining and delineating the duties and
20 responsibilities of process servers under its
21 jurisdiction;



- 1 (2) Creating a process to obtain certification for the
2 sheriff division from the Commission on Accreditation
3 for Law Enforcement Agencies, Inc., to ensure that
4 proper law enforcement policies and procedures are
5 enacted and followed;
- 6 (3) Creating a process of registration for process servers
7 in the State; and
- 8 (4) Addressing other issues deemed relevant by the working
9 group or by the department of public safety.

10 SECTION 3. The working group established under section 2
11 shall be composed of ten members as follows:

- 12 (1) Three current process servers to be appointed by the
13 governor;
- 14 (2) Two current employees of the sheriff division to be
15 appointed by the director of public safety;
- 16 (3) Two employees of the judiciary to be appointed by the
17 chief justice;
- 18 (4) Two members of the Hawaii state bar association to be
19 appointed by the president of the Hawaii state bar
20 association; and
- 21 (5) The director of public safety, as an ex officio
22 member, to serve as chair.



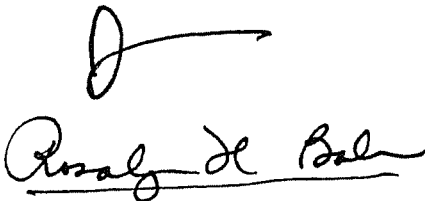
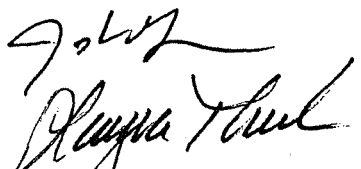
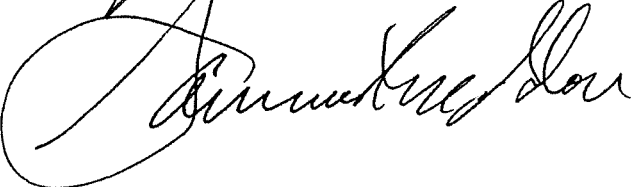
S.B. NO. 311

1 SECTION 4. Members of the working group shall serve
2 without compensation for their service on the working group.

3 SECTION 5. The working group established by this Act shall
4 report its findings and recommendations to the legislature no
5 later than twenty days prior to the convening of the regular
6 session of 2014. The working group shall meet at least four
7 times.

8 SECTION 6. This Act shall take effect upon its approval.
9

INTRODUCED BY: Will Eyo


Rosalyn De Bevoise

Guyana Thiel

Annunzio Sora