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February 22, 2014

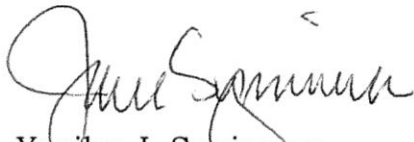
Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice-Chair
House Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: HB1656 Relating to Service of Process
Hearing Date: Tues., Feb. 25, 2014 at 2 p.m. in Conf. Rm. #325

I have been a collection lawyer for over 30 years in this state and I support the intent and purpose of this bill. As a result of the unpublished ICA opinion in Manderville v. Black, CAAP 12-1-653, plaintiffs will not be able to use certified mail as a means to effect service of process in civil cases. This means that if we cannot effect service on defendants in a civil case by way of personal service, we will be forced to use the more expensive method of publication of summons, which requires publication of the notice three (3) times in a newspaper of general circulation that a lawsuit has been filed. This is not a preferred method of service because service by publication adds substantial cost to a case and is a less precise method of service than service by the US Postal Service.

For these reasons, I ask that you pass this bill out of your committee. Thank you for allowing me to testify on this matter.

Very truly yours,



Yuriko J. Sugimura
Of BENDET FIDELL SUGIMURA
YJS:ss



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Testimony to the House Committee on Judiciary
February 25, 2014

Testimony in support of the intent of HB 1676, Relating to Service of Process

To: The Honorable Karl Rhoads, Chair
The Honorable Sharon Har, Vice-Chair
Members of the Committee on Judiciary

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 75 Hawaii credit unions, representing approximately 804,000 credit union members across the state.

We are in support of the intent of HB 1676, which would bring clarity to the law. We are also in support of the Hawaii Financial Services Association's proposed HD1 of this bill.

Thank you for the opportunity to testify.

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

February 25, 2014

Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice Chair
and members of the House Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 1656 (Service of Process)**
Hearing Date/Time: February 25, 2014, 2:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA **supports this Bill with a proposed amendment.**

The purpose of this Bill is to specify the manner of serving a summons within the State for a civil action.

The word “summons” in this Bill and in this testimony refers to a notice which is attached to a civil complaint filed by a plaintiff against a defendant. Depending on which court issues the summons, the summons will either require the defendant to: (a) file a written answer to the complaint within 20 days after service of the summons, or (b) appear in court on a date and time specified to answer the complaint. For your reference, a sample of a Circuit Court summons is attached as Exhibit “1”.

If a defendant cannot be served personally with the summons, there are provisions in the Hawaii Revised Statutes (“HRS”) which allow the summons to be served by mail. These include HRS Sec. 633-28 (registered or certified mail), HRS Sec. 634-24 (registered or certified mail), and HRS Sec. 634-36 (certified, registered, or express mail).

However, HRS Sec. 633-28 only involves small claims cases. HRS Sec. 634-24 only applies to cases where the complaint involves property. And, HRS Sec. 634-36 is only triggered for cases (a) under HRS Sec. 634-33 (involving the operation of motor vehicles), (b) under HRS Sec. 634-34 (involving boat operators), or (c) under the “long arm statute”, i.e. HRS Sec. 634-35 (when the defendant who had transacted business or committed torts in Hawaii cannot be found in Hawaii).

Besides the types of cases covered by HRS Secs. 633-28, 634-24, and 634-36, there are many other types of civil cases where a summons should be allowed to be served by certified, registered, or express mail. These include cases which are filed in the District Court (Regular Claims Division) or the Circuit Court involving recovery of monies based on a contract.

There are situations where the summons for those types of cases can’t be served personally on a defendant who resides in Hawaii. One instance is where the only known address for the

defendant is a post office box address, and not a physical address. Another instance is where the defendant is avoiding service of the summons or is otherwise unavailable to be served personally in Hawaii by a process server. See also the facts in the unpublished Hawaii Intermediate Court of Appeal's Summary Disposition Order in the case of Manderville v. Black filed on November 21, 2013. In Manderville, the Court of Appeals held that the defendant was not properly served with the District Court summons when he received the summons by certified mail in the State of Hawaii. The Court said that service by certified mail in that case "is not permitted under [District Court Rule 4(d)] or any applicable statute." The statute in that case was HRS 634-36.

There isn't a statute to allow for service of a summons by certified, registered, or express mail for those types of cases and situations. A comprehensive and consistent approach is needed to specify the manner by which a summons can be served by mail for civil actions in Hawaii.

This Bill does that.

First, this Bill creates a new section in the Hawaii Revised Statutes which is intended to encompass all situations where a civil summons needs to be served by certified, registered, or express mail.

Consistent with that objective, we recommend an amendment to this Bill. On page 1, line 9, before the words "When service", please add:

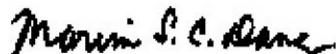
"Notwithstanding any other provision of law to the contrary,".

Second, the proposed manner in this Bill for serving a summons by certified, registered, or express mail is consistent with the procedures in various statutes, including HRS Secs. 633-28, 634-24, and 634-36, all of which are referenced above.

In this regard, this Bill requires that an attempt be first made to serve the summons by personal delivery. If, however, a reasonable attempt at personal delivery is not successful, then the summons can be served by certified, registered, or express mail sent to the addressee only. Importantly, this Bill requires that the service by mail can only be made pursuant to a court order.

For the reasons stated above, we urge your Committee to **pass this Bill with the above amendment.**

Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

APPENDIX OF FORMS
(See Rule 84)

Introductory Statement

1. The following forms are sufficient under these rules. They are limited in number. No attempt is made to furnish a manual of forms. Each form assumes the action to be brought in the First Circuit. The caption should state the circuit in which the action is brought.

2. Except where otherwise indicated each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "Summons." In the caption of the summons and in the caption of the complaint all parties must be named but in other pleadings and papers, it is sufficient to state

the name of the first party on either side, with an appropriate indication of other parties. See Rules 4(b), 7(b)(2), and 10(a).

3. Each pleading, motion, and other paper is to be signed in the individual name of at least one attorney of record (Rule 11). The attorney's name is to be followed by the attorney's address.

4. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney.

5. Rule 3 of the Rules of the Circuit Courts prescribes additional requirements.

[Amended effective July 1, 2011.]

Form 1. Summons

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

A.B., Plaintiff,)	Civil No. ____
)	
v.)	
)	SUMMONS
C.D., Defendant.)	
_____)	

SUMMONS

STATE OF HAWAII

To the above-named Defendant:

You are hereby summoned and required to file with the court and serve upon _____, plaintiff's attorney, whose address is _____, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated: Honolulu, Hawaii, _____

Clerk of Court

(Seal of the Circuit Court)

(This summons is issued pursuant to Rule 4 of the Hawaii Rules of Civil Procedure).

Note

For provisional and final remedies, including attachment, garnishment, etc., see Chapter VIII of these rules.

[Amended effective July 1, 2011.]

Presentation To
House Committee on Judiciary
February 25, 2014 at 2:00pm
State Capitol Conference Room 325

Testimony in Support of House Bill 1656

TO: The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice Chair
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing all FDIC insured depository institutions operating in the State of Hawaii.

The Hawaii Bankers Association supports the intent of HB 1656 to specify the manner by which summons are served for civil actions within the State. This bill will render the processes consistent with other provisions of the Hawaii Revised Statutes.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.



Edward Y. W. Pei
(808) 524-5161

NEIL ABERCROMBIE
GOVERNOR

LATE



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

TED SAKAI
DIRECTOR

Martha Torney
Deputy Director
Administration

Max Otani
Deputy Director
Corrections

Shawn Tsuha
Deputy Director
Law Enforcement

TESTIMONY ON HOUSE BILL (HB) 1656
RELATING TO
SERVICE OF PROCESS
by
Ted Sakai, Director
Department of Public Safety

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Tuesday, February 25, 2014; 2:00 p.m.
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair Har, and Members of the Committee:

The Department of Public Safety (PSD) **supports** HB1656, which will make the service of summons within the State for civil actions, consistent with the Hawaii Revised Statutes (HRS). Section 634-24, HRS, already allows for service outside of the State of Hawaii by registered or certified mail, with a request for a return receipt for service. This measure will ensure the due process rights of the respondents and the interests of the plaintiffs are satisfied in a timely, and legally accountable manner.

Thank you for the opportunity to present this testimony.



Araki-Regan & Associates, LLC

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Ph: (808) 244-6042 Fax: (808) 249-2872

Lynn A.S. Araki-Regan
Stephen E. Pike
Attorneys

Christopher R. Dang
Garrick L.H. Goo
Of Counsel

FEBRUARY 24, 2014

Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice-Chair
House Judiciary Committee

Re: **HB 1656 Relating to Service of Process**
Hearing: Feb. 25, 2014 @ 2:00 p.m.

Dear Chair, Vice-Chair, and Members of the Committee:

I am writing to humbly ask for your support for the above-referenced bill and urge that it be passed out of this Committee.

It is of great surprise to me that there is presently no statutory authority or court rule that allows for service of a summons and complaint by Certified US Mail on a resident of the State of Hawaii, if that person cannot be served after reasonable attempts to serve by personal service. This bill would codify the practice used by attorneys and the courts to effect service of process on residents of the state when personal service was not successful.

Without the expressed authority to serve by way of the US Postal Service using Certified, Registered or Express Mail, a number of parties to court actions who need to effect service on other parties will encounter problems. Oftentimes, there are parties who intentionally evade service or are otherwise difficult to locate, but who can be served by way of the US Postal Service. Then there are the situations where personal service is difficult or impossible because the party to be served only has a post office box and no postal street address, as is the case in many rural areas of this state. Another example is where a party lives in a gated community or secured condominium or apartment building. The potential parties who come before the court and who need to see service effected include individuals, corporations, and even the State of Hawaii. The types of cases which may need to utilize this type of service include a wide variety of matters brought before the Hawaii Courts.

Lastly, without the expressed authority to serve by way of the US Postal Service, parties who need to affect service but cannot personally serve, are left with the only other option available, publication of the summons in the newspaper. Publication is oftentimes cost-prohibitive so it is not the preferred method of service.

I encourage you to pass the above legislation.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Lynn A.S. Araki-Regan'.

Lynn A.S. Araki-Regan



Collection Law Section

Chair:
Steven Guttman

Vice Chair:
William J. Plum

Secretary:
Thomas J. Wong

Treasurer:
Arlette S. Harada

Directors:
Lynn Araki-Regan
Marvin S.C. Dang
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Steven Guttman
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James Hochberg
Elizabeth A. Kane
William J. Plum
David B. Rosen
Andrew Salenger
Mark T. Shklov
Yuriko J. Sugimura
Thomas J. Wong
Reginald K.T. Yee

Reply to: **STEVEN GUTTMAN, CHAIR**
220 SOUTH KING STREET SUITE 1900
HONOLULU, HAWAII 96813
TELEPHONE: (808) 536-1900
FAX: (808) 529-7177
E-MAIL: sguttman@kdubm.com

February 24, 2014

Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice-Chair
House Judiciary Committee

Re: HB 1656 Relating to Service of Process
Hearing: Feb. 25, 2014 @ 2:00 p.m.

Dear Chair, Vice-Chair, and Members of the Committee:

This testimony is being submitted on behalf of the Collection Law Section of the Hawaii Bar Association (“CLS”).¹ The CLS supports this bill and urges that it be passed out of this Committee.

In an unpublished opinion in Manderville v. Black, CAAP 12-1-653 on November 13, 2013 by the Hawaii Intermediate Court of Appeals, the court found that there was no statutory authority or court rule that allowed for service of a summons and complaint by Certified US Mail on a resident of the State of Hawaii, if that person could not be served after reasonable attempts to serve by personal service. This bill would codify the practice used by attorneys and the courts prior to Manderville to effect service of process on residents of the state when personal service was not successful.

Without the expressed authority to serve by way of the US Postal Service using Certified, Registered or Express Mail, a number of parties to court actions who need to effect service on other parties will encounter problems. For example, sometimes there are parties who intentionally evade service or are otherwise difficult to locate, who can be served by way of the US Postal Service. Then there are the situations where personal service is difficult or impossible because the party to be served only has a post office box and no postal street address, as is the case in many rural areas of this state. Another example is where a party lives in a gated community or secured

¹ *The comments and recommendations submitted reflect the position/viewpoint of the Collection Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.*

February 24, 2014
Page 2

condominium or apartment building. The potential parties who come before the court and who need to see service effected include individuals, corporations, and even the State of Hawaii. The types of cases which may need to utilize this type of service include a wide variety of matters brought before the Hawaii Courts.

Lastly, without the expressed authority to serve by way of the US Postal Service, parties who need to affect service but cannot personally serve, are left with the only other option available, publication of the summons in the newspaper. Publication is the method of last resort and is not the preferred method of service, since service by publication adds substantial cost to a case and is a less precise method of service than service by the US Postal Service.

We therefore encourage you to pass the above legislation.

Thank you.

/S/ William J. Plum

William J. Plum
Vice-Chair

cc: Steven Guttman
Patricia A. Mau-Shimizu



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

LATE

February 24, 2014

The Honorable Karl Rhoads, Chair,
The Honorable Sharon E. Har, Vice Chair, and
Members of the House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

Re: HB 1656 Relating to Service of Process

Chair Rhoads, Vice Chair Har, and Members of the House Committee on Judiciary:

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate or support the origination of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The MBAH supports the intent of House Bill 1656 which will bring consistency in the manner of serving a summons in the State of Hawaii for a civil action.

Thank you for the opportunity to present this testimony.

LINDA NAKAMURA
Mortgage Bankers Association of Hawaii