



LATE TESTIMONY

## Collection Law Section

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March 11, 2013

Senator Will Espero  
Chair, Senate Public Safety, Intergovernmental and Military Affairs  
Committee  
Hawaii State Capitol  
Honolulu, Hawaii

**RE: HB 951 HD1 - RELATING TO THE SERVICE OF PROCESS  
TESTIMONY IN PARTIAL SUPPORT**

**HEARING 3/12/13 @ 2:45 PM**

Dear Senator Espero and Committee Members:

The Collection Law Section ("CLS") of the Hawaii State Bar Association ("HSBA") submits its testimony in partial support of HB 951 HD1 relating to service of process.<sup>1</sup> HB 951 HD1 in that it provides who can serve, enforce and/or otherwise carry out the following:

Orders to Show Cause  
Writs of Attachment and Execution  
A Garnishee Summons and Order  
Writs of Replevin  
Writs of Possession  
[Collectively sometimes referred to as "Writs"]<sup>2</sup>

Remedial legislation is necessary to restore the elimination by the Department of Pubic Safety ("DPS"), effective July 1, 2012, of the list of authorized private process servers that had been maintained for decades by one part of state government or another, to serve Writs. The elimination of the list was done without advance notice or public input, apparently under the misapprehension that the list was no longer necessary because of Act 142 (from last year's legislative session) and the interplay between Act 142 and the pre-existing Rules 4 of the Hawaii Rules of Civil Procedure, the District Court Rules of Civil Procedure and the Family Court Rules.

<sup>1</sup> These comments represent the views of the Collection Law Section only and do not necessarily reflect the views of the Hawaii State Bar Association as a whole.

<sup>2</sup> Orders for Examination of Judgment Debtor or Orders for Person with Knowledge of the Affairs of the Judgment Debtor (both authorized under Hawaii Revised Statutes ("HRS") §636-4) should also be included.

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DPS's interpretation however, was wrong and caused significant problems and confusion for the courts, members of the bar, parties to lawsuits, prior "listed" process servers, and the general public.

HB 951 HD1 specifically authorizes the DPS to maintain a list of authorized civil process servers who can serve, enforce and/or otherwise carry out Writs and that DPS will be given immunity for the actions of the individuals on that list. The CLS concurs with this concept, but respectfully urges the legislature to mandate, as opposed to giving permission, DPS to create and maintain such a list.

Most importantly however, HB 951 needs to include a provision for the immediate authorization, nunc pro tunc to July 1, 2012, and for the mobilization of a group of individuals by DPS to fill the void DPS created. This must be done to handle literally hundreds of Writs issued statewide each month for which service and enforcement have now become an open question.

The portion of HB951 HD1 covering HRS §604-6.2 does not contain a reference to "independent civil process server". Similarly, "independent civil process server" is also missing in the proposed revisions to HRS 652-2, §634-12 and HRS §654-2. Unless there is a reason for these differences, then the same language should be included in all the sections.

Lastly, the portion of HB951 HD1 covering HRS §634-22 deletes a long standing part of that section that authorizes "a person specifically appointed by the court..." The CLS feels it is not necessary to remove this language, as the language causes no harm. Similarly, it is respectfully suggested that any committee report refrain from stating that HB951 HD1 "removes" powers from the courts, since such comments could lead to a conflict between legislative intent and the court's inherent powers, other sections not addressed in HB951 HD1, and the common law.

The valid service of writs is of crucial importance to our legal system. The passage of HB951 HD21, with the suggested amendments, will restore our broken system.

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Thank you.

Respectfully,

Bill Plum \S\

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

cc: HSBA  
Steven Guttman

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# LATE TESTIMONY

## HB951

Submitted on: 3/11/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bob Dukat	Pyramid Process	Support	No

Comments: Dear Committee Members, I am a part owner of a small process serving company on the Island of Hawaii. I have about 40 years of experience as a private process server. Best estimate is that there are around 100 private process servers in this state of ours. There have been several bills submitted regarding this matter. HB 951 seems to make the most sense. Prior to last year's submission by the Dept. of Public Safety. The single list system kept by that department seemed to work quite well. I know of no unresolved problems with That system. The only recommendation that I may have is to establish a list with numerical registration numbers. Then have an annual small registration and renewal fee for this service. Also, perhaps show some sort of Error and Omission Insurance. The types of process that we are usually serving all all matters, civil. Nothing criminal. We also serve writs of garnishments, other court orders, writs of possession and any other type of civil service of process. Thank you for allowing me to testify. Bob Dukat Pyramid Process Pahoa, HI 808-854-6684 This would eliminate the courts from appointing process servers and their concern over conflict. The Department would not be liable for any actions of private process servers. Private process servers are not law enforcement officer nor do we ever express to anyone that we are. We also do not represent that we are employed by the State or any other governmental agency. We are all independent business people providing a service. In the body of the original bill there are references to a fee structure that was designed for the now extinct Civil Deputy Sheriffs Department of the State. All of these fees on all service of process rules should be either repealed, as that department no longer exists or made to read "as agreed", since this is a contract for service between 2 private parties. This would address the current situation, which is not satisfactory