



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

Friday, March 22, 2013, 10:30 a.m.
State Capitol, Conference Room 016

by

Susan Pang Gochros
Chief Staff Attorney and Department Head
Intergovernmental and Community Relations Department

Bill No. and Title: House Bill No. 951, HD 1, SD 1, Relating to the Service of Process

Purpose: Specifies the persons authorized to serve legal process. Requires the Director of Public Safety to maintain a list of independent process servers. Shields the State and the Department of Public Safety from liability arising from the acts of independent process servers. (HB951 HD1, SD1.)

Judiciary's Position:

The Judiciary supports House Bill 951, HD1, SD1, as it appears to address all concerns raised by the stakeholders involved in this matter. It confers the needed authority and immunity that will enable the Department of Public Safety (PSD) to continue the practice – discontinued last year – of providing a list of independent process servers. The list was discontinued based on concerns related to PSD's legal authority to provide the list; and the implicit approval it appeared to give the independent process servers whose names appeared on the list.

As amended, this bill requires PSD to maintain a list of independent civil process servers to process writs. It also provides criteria for disallowing names on the list and immunity from liability for PSD, the state and individual employees.



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Given a mandate by law to provide the list, concerns about whether “de-listing” may occur in the future will be obviated; and the immunity provision will be re-enforced by declaring the list a legal requirement.

We support this bill as amended, but note that it includes what appears to be an inadvertent deletion taken from the original statute requiring an affidavit as proof of service. This clause has been long-standing in the statute and court rules, the latter allowing proof of service by declaration without a notarized signature. Thus, we respectfully suggest that Section 10 of the bill (page 17, lines 10-14) reinstate language previously in the statute and current court rules, and incorporating the present changes, so that HRS Section 634-22 would read as follows:

When service is made by a person specially appointed by the court, or an independent civil process server, that person shall make declaration or affidavit of that service.

Historical Context: Act 142, SLH 2012

Legislation enacted last year allowed persons “authorized by rules of court” to serve and enforce writs. At that time, the Department of Public Safety (PSD) held a list of authorized civil process servers for five types of service: orders to show cause, writs of attachment and execution; garnishment documents; writs of replevin; and writs of possession. The authorization process required application to the Department. (Notes from Public Safety Department Director, page 6, State Survey of Process Server Requirements by Feerick Center for Social Justice at Fordham Law School, 2009).

At the time Act 142 was passed, PSD authorized individuals on a PSD-generated list to serve certain types of civil process. PSD provided the list with a letter explaining that PSD has “authorized the individuals on the attached list . . . [but] that PSD is not responsible for the conduct of the authorized process servers and . . . [a]n authorized process server is NOT a law enforcement officer, civil deputy sheriff, or an employee of the State of Hawaii.” (Letter from Deputy Director for Law Enforcement, September 1, 2011) Shortly after Act 142 was enacted, the PSD Sheriff’s Division stopped using their lists of process servers. There was an apparent assumption that the court rules would take over where the list ended. The only applicable court rules, however, are Rules 4 of the Hawaii District Court Rules of Civil Procedure, the Hawaii Rules of Civil Procedure and the Family Court Rules. Those rules apply only to service of a complaint and summons and do not apply to persons who would serve and enforce writs. Therefore, the statute required amendment.

The amendments provided in this bill as introduced presented myriad problems, all of which have been addressed and cured through the present bill as amended in HD1 and SD1, which the Judiciary supports.

Thank you for the opportunity to provide comments on this measure.



Collection Law Section

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March 20, 2013

Senator Clayton Hee
Chair, Senate Judiciary Committee
Hawaii State Capitol
Honolulu, Hawaii

**RE: HB 951 SD1 - RELATING TO THE SERVICE OF PROCESS
TESTIMONY IN SUPPORT**

HEARING 3/22/13 @ 10:30 AM

Dear Senator Hee and Committee Members:

The Collection Law Section ("CLS") of the Hawaii State Bar Association ("HSBA") submits its testimony in partial support of HB 951 SD1 relating to service of process.¹ HB 951 SD1 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"]²

Remedial legislation is necessary to restore the elimination by the Department of Public 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.

¹ 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.

² 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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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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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 SD1 specifically mandates 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 provision and would also recommend two additional items. First, that DPS be given not more than 30 days after the bill becomes law to have the list in place and functioning, and second, that the individuals who were on the old list be relisted, with their relisting date effective, nunc pro tunc, to July 1, 2012. Creating a deadline for the DPS to act is needed to make sure someone is available to handle literally hundreds of Writs issued statewide each month for which service and enforcement have now become an open question. Furthermore, providing that the relisting be nunc pro tunc to July 1, 2012, will assist in undoing some of the damage that was done by the DPS to those in the public who continued, unknowingly, to use individuals on the former DPS list or had a Writ that was in the process of being enforced on one or more dates both sides of July 1, 2012.

Additionally, the portion of HB951 SD1, dealing with HRS §604-6.2 (**Section 4**), does not contain a reference to "independent civil process server". Similarly, the words "independent civil process server" are also missing in the proposed revisions to HRS §634-12 (**Section 9**), §652-2 (**Section 14**), and §654-2 (**Section 18**). **This language needs to be included in all of these sections.**

Lastly, the portion of HB951 SD1 covering HRS §634-22 (**Section 10**) deletes language that authorizes "a person specifically appointed by the court..." It is not necessary to remove this language. This language was present long before Act 142 was passed and is not inconsistent with the rest of HB951 SD1. Similarly, it is respectfully suggested that any committee report refrain from stating that HB951 SD1 "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 SD1, and the common law.

The valid service of writs is of crucial importance to our legal system. The passage of HB951 SD21, with the suggested amendments, will restore our broken system.

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 21, 2013 7:14 AM
To: JDLTestimony
Cc: geezweduke@gmail.com
Subject: Submitted testimony for HB951 on Mar 22, 2013 10:30AM

HB951

Submitted on: 3/21/2013

Testimony for JDL on Mar 22, 2013 10:30AM in Conference Room 16

Submitted By	Organization	Testifier Position	Present at Hearing
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 over 40 years of experience as a private process server. The best estimate that I can give, is that there are about 100 private process servers in this State of ours. Prior to last year's submission and passage of a bill by the Department of Public Safety, the single list system seemed to work quite well. I saw no unusual problems. That system should be reinstated with the addition of a numbered list for each process server or Process Serving Company. There could be a small fee and annual renewal fee for this service. May I also suggest that there be proof of some sort of insurance, such as E & O E for this industry. The matter of fees should also be addressed as the fee schedule was set up over 10 years ago to apply to a governmental agency known as "Civil Deputy Sheriff's Dept.", which is now defunct. The fee schedules for all service of civil process should be "as agreed" as this is a contract between 2 private parties. Civil process servers serve only civil documents, as we do not handle criminal paperwork. We do not represent ourselves as being law enforcement or a part of any governmental agency. There are other issues that should be addressed at a later date. Thank you for allowing me to testify. Aloha, Bob Dukat Pyramid Process Pahoehoe, HI 808-854-6684

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Testimony for Public Hearing on House Bill 951, HD1, SD1 to the
COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Friday, March 22, 2013, 10:30 a.m.
State Capitol, Conference Room 016

WRITTEN TESTIMONY ONLY

By
Jeannie C. Jorg Domingo
77-6425 Kuakini Highway, C2-1
Kailua-Kona, HI 96740

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

My name is Jeannie C. Jorg Domingo. I am writing today to comment on House Bill 951. While I mostly support this bill, I strongly believe it must be amended in regards to process server fees.

I have been a self-employed process server in Hawaii County since 1996. When I first started, I was commissioned by the Public Safety Department and my title was Civil Deputy Sheriff. I received a training in the proper methods of process serving and managing evictions. I was never paid a salary by the State of Hawaii. I have always been responsible for all the expenses associated with running a small business in Hawaii. Just a few examples are: advertising, office supplies, purchase & maintenance of vehicles, insurances, GET taxes, income taxes and bonds.

As process servers, we provide an important civil function, which is to notify a party that a legal action is being taken against them. The act of serving process and managing evictions can be challenging. There are many considerations to take into account and each job I receive has the potential for safety risk. On the Big Island, we are also dealing with service destinations that are further spread

apart then on other islands. I believe that the fee structure charged should be agreed upon between the server and his/her client. What I charge to clients is the fair market value for the job performed. I do not believe that the fees I charge to my clients should be mandated by the HRS. We are private business people performing work for private individuals and businesses. The fee structure that is currently in effect is outdated. That structure was created when the Public Safety Department enlisted Police Officers and Sheriffs to serve civil documents. There used to be a support staff and use of vehicles that were paid for by the State of Hawaii. The stated fees are not realistic to cover the expenses of private business owners, which we process servers are.

HB 951 seeks to add us private business owners to the HRS under the term "independent civil process servers". While I agree we should be included, I strongly disagree that we should then be mandated to charge our clients fees so low that we would be put out of business. It must be stated in the HRS that the fees charged by independent civil process servers are "as agreed" between the server and his/her client.

In conclusion, I believe that bill HB 951 should be passed, with amendments to allow "as agreed " fees between process servers and their clients.

Thank you for the opportunity to testify on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeannie C. Jorg Domingo', written in a cursive style.

Jeannie C. Jorg Domingo