



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

LATE

March 27, 2013

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
The Honorable Aaron Ling Johanson, Vice Chair
Honorable Members
House Committee on Finance
Hawaii State Capitol, Room 306
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on S.B. No. 1010, SD 1, HD 1, Relating to Legal Services**

Hearing: Wednesday, March 27, 2013, 4:45 p.m.
State Capitol, Conference Room 308

Written Testimony From: Hawaii State Ethics Commission

Thank you for the opportunity to submit testimony regarding S.B. No. 1010, SD 1, HD 1, Relating to Legal Services. The Hawaii State Ethics Commission ("Commission") supports the general intent of the bill. However, the Commission is concerned that the bill, unintentionally, may be inconsistent with the State Ethics Code, Chapter 84, Hawaii Revised Statutes ("HRS"). The bill, among other things, provides that a deputy attorney general, other than the attorney general's first deputy, may provide pro bono legal services in the "sole discretion" of the attorney general.

Deputy attorneys general are state employees and thus are subject to the State Ethics Code, Chapter 84, Hawaii Revised Statutes ("HRS"). HRS section 84-14(a)(2), pertaining to conflicts of interests, prohibits a state employee from taking official action directly affecting a private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity, regardless of whether the employee is paid for those private services.

For example, if a deputy attorney general is tasked with performing official duties that would directly affect a private undertaking involving his pro bono work, the State Ethics Code prohibits him from working on the matter in his official capacity as a deputy attorney general. To avoid a conflict of interest under the State Ethics Code, he must disqualify himself from working on the matter in his capacity as a deputy attorney general.

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Given the general purpose of the State Ethics Code, i.e., to foster public confidence in state government, the Commission suggests that the attorney general, in his “sole discretion,” should not be allowed to waive a conflict of interest under the State Ethics Code.

To address the concern regarding a possible conflict of interest under the State Ethics Code created by a deputy attorney general’s pro bono activities, the Commission suggests that the bill be amended to expressly limit the types of pro bono legal services to those that do not and cannot reasonably create a conflict of interest under the State Ethics Code.¹ More specifically, the Commission suggests that subsection (a) of the bill be amended to read as follows (added language in bold, italicized, and underscored):

“28-10 Prohibition on private practice of law by the attorney general, first deputy, and other deputies. (a) The attorney general, the attorney general’s first deputy, and other deputies shall devote their entire time and attention to the duties of their respective offices. They shall not engage in the private practice of law~~[, nor]~~ or accept any fees or emoluments other than their official salaries for any legal services[-]; except that, a deputy, other than the attorney general’s first deputy, may provide pro bono legal services in the sole discretion of the attorney general, ***provided that the pro bono activities do not create a conflict of interest under section 84-14.*** In exercising the discretion to allow a deputy to provide pro bono legal services, the attorney general may consider, among other things, whether the pro bono representation might:

- (1) Create the appearance of a conflict of interest within the department of the attorney general;
- (2) Cast the department of the attorney general in a poor light;
- (3) Create undue burdens within the department of the attorney general; or
- (4) Otherwise interfere with or impede with the mission of the department of the attorney general.

Pro bono legal services provided by a deputy shall not be construed to create any client relationship, duty, or legal obligation between the recipient of the pro bono legal services and the department of the attorney

¹ We note that the Senate Committee on Judiciary and Labor had included language to that effect and we are unaware of the reason the House Committee on Judiciary removed that language from this bill.

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general. Pro bono legal services provided by a deputy shall not be construed to disqualify, preclude, prevent, impair, or restrict in any manner, either directly or indirectly, the department of the attorney general from providing legal services or from fulfilling its duties as described in section 26-7, chapter 28, or as otherwise provided or mandated by law or practice.”

The Commission does not suggest that the attorney general will misuse his discretion; however, the Commission believes that this proposed language will serve to prevent any potential issue of a conflict of interest arising under the State Ethics Code.

Thank you for considering the Commission’s testimony.



Hon. Daniel R. Foley
Associate Judge
Intermediate Court of Appeals
Chair

Jill M. Hasegawa
Vice Chair

HAWAII ACCESS TO JUSTICE COMMISSION

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March 26, 2013

To: Representative Sylvia Luke
Chair, House Committee on Finance

Re: House Committee on Finance
Hearing Date: Wednesday, March 27, 2013
Time: 4:45 p.m.

SB 1010, SD1, HD1 - Relating to Legal Services

Dear Chair Luke and Members of the House Committee on Finance:

On behalf of the Hawaii Access to Justice Commission (the "Commission"), I am writing to request your **support** for SB 1010, SD1, HD1 Relating to Legal Services. The Commission, which was created by Rule 21 of the Rules of the Supreme Court of Hawaii on May 1, 2008, was established with the purpose to substantially increase access to justice in civil legal matters for low- and moderate-income residents of Hawaii ("low income Hawaii residents").

The Commission was created in response to the 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People of Hawaii, which found that four out of five low income Hawaii residents do not have their legal needs met and that legal service providers are only able to assist one in three persons who contact them for assistance. The Commission recognizes that in order to increase delivery of legal services to low income Hawaii residents, more involvement by attorneys with pro bono services are needed.

SB 1010, SD1, HD1 would amend HRS §28-10, to allow deputy attorney generals to provide pro bono legal services within the discretion of the attorney general, and would be a much needed boost to the services provided to low and moderate income residences in Hawaii. Currently government attorneys make up approximately twenty percent of Hawaii's active Bar membership, with over 900 attorneys working at the local, state and federal levels of government. If each of these attorneys were permitted to pro bono services, the impact would

be enormous.

I am enclosing for your information a copy of an Access to Justice Commission article entitled Commission Update: Government Pro Bono Policy from the May 2009 Hawaii Bar Journal, discussing the need for government attorneys to do pro bono work, the positive impact that government attorneys providing pro bono services could have, and discussing pro bono activities of other county and federal government attorneys.

The Commission has been hard at work strategizing and implementing various programs to increase attorney involvement with pro bono and to assist the public. One recent successful initiative, which involved a partnership with the Hawaii State Judiciary, the Commission, the Hawaii State Bar Association, and the Legal Aid Society of Hawaii, among others, involved creating Access to Justice “self-help” centers in courthouses across the state, and having volunteer pro bono attorneys on hand to provide basic legal assistance on a variety of matters. Participation in “self-help” clinics or other such programs could greatly benefit if government attorneys were allowed to volunteer. A copy of a recent Hawaii Bar Journal article on these centers is also attached for your reference.

On behalf of the Commission, we urge you to support the passage of SB 1010, SD1, HD1, which could have an enormous benefit for the people of Hawaii. Thank you.

Jill M. Hasegawa, Esq.
Vice-Chair
Access to Justice Commission

Enclosure(s)