



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

S.B. 1010, S.D. 1, RELATING TO LEGAL SERVICES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

LATE

DATE: Tuesday, March 12, 2013

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Caron M. Inagaki, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General strongly supports this bill with the inclusion of the requested amendments set forth below.

Access to justice is an important goal of our Judiciary. The Hawaii Rules of Professional Conduct comment that every attorney has the responsibility to provide legal services to those unable to pay. It is only when attorneys contribute their time through pro bono service that the community is assured that all people are indeed afforded access to justice.

Deputy attorneys general currently are not allowed by statute to engage in any type of pro bono services to the community. The reason for the current statute is that deputy attorneys general are required first and foremost to ensure that the legal matters of the State are properly and promptly addressed. The purpose of this bill is to modify the statute to allow deputy attorneys general, in certain circumstances, to be able to provide pro bono services to the community in the Attorney General's discretion.

Any concerns over conflicts of interest or protecting taxpayers from the use of tax moneys in the event of claims of legal malpractice on the part of deputy attorneys general in the provision of pro bono services are fully addressed in this bill.

Rule 6.1 of the Hawaii Rules of Professional Conduct urges all lawyers to aspire to provide at least 50 hours of pro bono services per year. While this bill does not mandate that deputy attorneys general provide pro bono services, it amends the current statute to allow those deputies who wish to do so.

We request that this bill be amended to ensure that the provision of pro bono legal services not be mandated by rule or law and to clarify that deputy attorneys general providing

pro bono legal services shall be deemed volunteers pursuant to chapter 90, Hawaii Revised Statutes (HRS). The purpose of these amendments is twofold. First, it is of foremost importance that there be no appearance of conflict of interest by a deputy attorney general. To avoid actual and apparent conflict, it will be necessary to perform rigorous conflict checks on each potential client. Inasmuch as pro bono services are provided to individuals of limited means, such individuals may already be receiving services from the Department's client agencies. In this situation, the deputy attorney general will not be permitted to provide pro bono legal services. The result is that the ability to meet a required number of service hours will be out of the control of the deputy attorney general.

Second, unlike attorneys in private practice, deputy attorneys general do not have malpractice insurance. Malpractice insurance usually covers both liability and defense. Although the bill currently would limit the liability of a deputy attorney general providing pro bono services in good faith, the limit on liability would not prevent a deputy attorney general from being sued by a client claiming he or she was not acting in good faith, and the deputy would still need to defend against the allegations.

For these reasons, the Department of the Attorney General requests that this bill be amended to provide as follows:

Subsection (a) at page 2, line 20, be amended to provide the following underscored wording as the final sentence of the subsection: "This subsection shall not be construed to require that any deputy attorney general engage in providing mandatory pro bono legal services."

Subsection (b) at pages 2-3 be amended to provide the following underscored wording:

(b) Any deputy attorney general who in good faith provides pro bono legal services pursuant to this section shall not be liable for any civil damages resulting from the deputy's acts or omissions. A deputy attorney general providing pro bono legal services pursuant to this section may be defended by the attorney general in actions or proceedings arising out of the provision of such services when the attorney general has determined that the deputy attorney general has acted in good faith. In no event shall the State be liable for any civil damages that may result from the deputy's provision of pro bono services."

We respectfully request that this bill be passed.