



Collection Law Section

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January 18, 2014

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

Re: HB1415 Relating to Service by Publication
Hearing: Thurs., Jan. 23, 2014, 2 p.m., Conf. Rm. #325

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

I submit this testimony on behalf of the Collection Law Section of the Hawaii Bar Association¹. Our Section supports passage of this bill incorporating the changes reflected in a proposed House Draft 1, which is attached to this testimony.

In 2012, the Legislature enacted revisions to Chapter 667 (i.e., in Act 182 HB1875 HD2 SD2 CD1) that provided for publication of foreclosure notices in (i) a newspaper of general circulation for three consecutive weeks or (ii) on a state website [**see** HRS 667-20]. The state website is in operation and is being administered by the DCCA, Real Estate Commission.

Our members believe that the laws regulating publication of summons in a civil case should be consistent with the provisions in HRS 667-20 and we believe that the language in the attached proposed house draft will accomplish that goal.

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.*

Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice-Chair
HB 1415 Relating to Publication of Summons
January 18, 2014
Page 2

Thank you for the opportunity to testify.

A handwritten signature in cursive script that reads "Yuriko J. Sugimura". The signature is written in black ink and is positioned above the printed name.

Yuriko J. Sugimura
YJS:ss

Attachment (1)

A BILL FOR AN ACT

RELATING TO SERVICE BY PUBLICATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Legislature finds that the manner by which a
2 summons is published within this State for civil actions should
3 be consistent with how notices are published in other provisions
4 of the Hawaii Revised Statutes.

5 The purpose of this Act is to specify the manner by which a
6 summons is published for civil actions within this State.

7 SECTION 2. Chapter 634, Hawaii Revised Statutes, is
8 amended by adding a new section to part III to be appropriately
9 designated and to read as follows:

10 "§634- Service by publication. (a) When service of a
11 summons is required by law, court rule, or court order, but if
12 service of the summons on a defendant by personal delivery or by
13 certified, registered, or express mail is not successful despite
14 a reasonable attempt, and if the facts shall appear by
15 affidavit, declaration, or otherwise to the satisfaction of the

1 court, the court may order that service of the summons be made
2 by publication:

3 (1) In a newspaper published in the State and having a
4 general circulation in the circuit in which the action has been
5 filed. The summons shall be published once each week for
6 three consecutive weeks, constituting three publications. The
7 third publication is to be at least twenty-one days before the
8 return date stated in the summons; or

9 (2) On a state website at the discretion of the agency that
10 maintains the website, in a manner and for such time as the court
11 may order, but at least twenty-one days before the return date
12 stated in the summons; provided that the summons shall also be
13 published at least once in a newspaper described in paragraph
14 (1) at least twenty-one days before the return date.

15 (b) As used in this section, "general circulation" refers
16 to a newspaper that:

17 (1) Contains news of a general nature; and

18 (2) Is distributed within the circuit where the action has
19 been filed:

20 (A) At least weekly;

1 (B) For a minimum of one year unless interrupted by
2 strike, natural disaster, or act of war or
3 terror; and

4 (C) To a minimum of three per cent of the residents
5 of the circuit, as determined by the last
6 decennial United States census and as verified by
7 an independent audit."

8 SECTION 3. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

H.B. NO. 1415

Proposed
H.D. 1

Report Title:

Service by publication

Description:

Specifies the manner of serving a summons by publication within the State for a civil action.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



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Presentation To
House Committee on Judiciary
January 23, 2014 at 2:00pm
State Capitol Conference Room 325

Testimony in Support of Bill H. B. 1415

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 1415, and we also support the House Draft 1 amendment proposed by the Hawaii Financial Services Association. This amendment would align the proposed manner for publishing a summons to be consistent with how notices are currently published under other provisions in 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

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

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January 23, 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 1415 (Service by Publication)**
Hearing Date/Time: Thursday, January 23, 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 the intent of this Bill, and we offer a proposed House Draft 1 amendment.

The original purpose of this Bill was to specify the term “general circulation” as it refers to a newspaper for purposes of service of a summons by publication in a civil action.

A “summons” is 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 information, a sample of a Circuit Court summons is attached as Exhibit “1”.

If a summons cannot be served on a defendant either by personal service or by certified, registered, or express mail, various statutes allow the summons to be served by publishing it in a newspaper of general circulation in the circuit where the complaint was filed. Attached for your reference is a form for a Circuit Court summons that would be published in a newspaper. (See Exhibit “2”.)

This Bill, as introduced, would revise only Hawaii Revised Statutes (“HRS”) Sec. 634-36. That Section allows service of a summons by publication if a defendant can’t be served personally or by certified, registered, or express mail. However, that Section is only triggered for cases under: (a) HRS Sec. 634-33 (involving the operation of motor vehicles), (b) HRS Sec. 634-34 (involving boat operators), and (c) 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).

This Bill, as introduced, doesn’t revise HRS Sec. 634-23. That Section allows service by publication for cases involving property.

However, besides the types of cases covered by HRS Sec. 634-36 and HRS Sec. 634-23, there are many other cases where a summons should be served by publication. These include civil

Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice Chair
and members of the House Committee on Judiciary
House Bill 1415 (Service by Publication)
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cases where the defendant is actually residing in Hawaii, but is unavailable to be served personally or by certified, registered or express mail.

We believe that a more comprehensive approach is needed to specify the manner by which a summons is published for civil actions in Hawaii. For that reason, we ask your Committee to consider amending this Bill with a proposed House Draft 1 which we have attached. The proposed H.D. 1 would create a new section in the Hawaii Revised Statutes that would encompass all situations where a civil summons needs to be published. The proposed manner for publishing a summons would be consistent with how notices are currently published under other provisions in the Hawaii Revised Statutes.

The proposed H.D. 1 requires that a summons be published either (a) once each week for three consecutive weeks in a newspaper of general circulation in the circuit where the complaint is filed, with the last publication being at least 21 days before the return date in the summons, or (b) on a state website at least 21 days before the return date in the summons and once in a newspaper of general circulation in the circuit at least 21 days before the return date.

While there is a requirement in some of the statutes that the summons be published once each week for four consecutive weeks in the newspaper (see, for example, HRS Secs. 634-23(3) and 634-36), the proposed H.D. 1 would instead require the publication to run once each week for three consecutive weeks. This change is consistent with other statutes which require notices to be published only once each week for three consecutive weeks. See, for example, HRS Sec. 667-20 (publication of notice of public sale for judicial foreclosures), HRS Sec. 667-27 (publication of public notice of public sale for power of sale foreclosures by mortgage lenders), HRS Sec. 667-96 (publication of public notice of public sale for power of sale foreclosures by condominium and community associations), and HRS Sec. 560:1-401(a)(3) (publication of notices for hearings on probate petitions).

The wording in the proposed H.D. 1 for the website publication alternative is generally based on the website publication alternative in HRS Sec. 667-20 (publication of notice of public sale for judicial foreclosures), HRS Sec. 667-27 (publication of public notice of public sale for power of sale foreclosures by mortgage lenders), and HRS Sec. 667-96 (publication of public notice of public sale for power of sale foreclosures by condominium and community associations).

The laws governing publication of a summons in a civil case should be consistent. The proposed H.D. 1 will accomplish that goal.

Accordingly, we urge your Committee to pass this Bill as amended by the proposed H.D 1.

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.]

Form 1-A. Publication of Summons

IN THE CIRCUIT COURT OF THE
(_____) CIRCUIT
STATE OF HAWAII

SUMMONS

TO: (defendant's name) _____

YOU ARE HEREBY NOTIFIED THAT (plaintiff's name) _____, plaintiff, has filed a (complaint or petition) _____ in Civil No. (case #) _____, wherein plaintiff prays for (state relief sought) _____ against you in the above-entitled court.

(If applicable, include description of property)

YOU ARE HEREBY SUMMONED to appear in the courtroom of the HONORABLE (name of judge) _____ at (address) _____, (city) _____, Hawaii, on (date) _____, 20XX, at (time) _____ o'clock (A. or P.) _____ M., or to file an answer or other pleading and serve it before said day upon (name of plaintiff's attorney) _____, plaintiff's attorney, whose address is (address, city, and state) _____. If you fail to do so, judgment by default will be taken against you for the relief demanded in the (complaint or petition) _____.

DATED: (city) _____, Hawaii, (date) _____.

(signature of the clerk) _____
Clerk of Court

[Adopted effective January 1, 2012.]

A BILL FOR AN ACT

RELATING TO SERVICE BY PUBLICATION.

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2 summons is published within this State for civil actions should
3 be consistent with how notices are published in other provisions
4 of the Hawaii Revised Statutes.

5 The purpose of this Act is to specify the manner by which a
6 summons is published for civil actions within this State.

7 SECTION 2. Chapter 634, Hawaii Revised Statutes, is
8 amended by adding a new section to part III to be appropriately
9 designated and to read as follows:

10 "~~§634-~~ **Service by publication.** (a) When service of a
11 summons is required by law, court rule, or court order, but if
12 service of the summons on a defendant by personal delivery or by
13 certified, registered, or express mail is not successful despite
14 a reasonable attempt, and if the facts shall appear by
15 affidavit, declaration, or otherwise to the satisfaction of the

1 court, the court may order that service of the summons be made
2 by publication:

3 (1) In a newspaper published in the State and having a
4 general circulation in the circuit in which the action has been
5 filed. The summons shall be published once each week for
6 three consecutive weeks, constituting three publications. The
7 third publication is to be at least twenty-one days before the
8 return date stated in the summons; or

9 (2) On a state website at the discretion of the agency that
10 maintains the website, in a manner and for such time as the court
11 may order, but at least twenty-one days before the return date
12 stated in the summons; provided that the summons shall also be
13 published at least once in a newspaper described in paragraph
14 (1) at least twenty-one days before the return date.

15 (b) As used in this section, "general circulation" refers
16 to a newspaper that:

17 (1) Contains news of a general nature; and

18 (2) Is distributed within the circuit where the action has
19 been filed:

20 (A) At least weekly;

1 (B) For a minimum of one year unless interrupted by
2 strike, natural disaster, or act of war or
3 terror; and

4 (C) To a minimum of three per cent of the residents
5 of the circuit, as determined by the last
6 decennial United States census and as verified by
7 an independent audit."

8 SECTION 3. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

H.B. NO. 1415

Proposed
H.D. 1

Report Title:

Service by publication

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Specifies the manner of serving a summons by publication within the State for a civil action.

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

January 23, 2014; 2:00 PM
Hawaii State Capitol, Room 325

RE: HB 1415 – Relating to Service by Publication – IN OPPOSITION

Chair Rhoads, Vice Chair Har and members of the committee:

The Honolulu Star-Advertiser opposes HB 1415, which, if enacted, creates a definition for the term “general circulation” as it refers to a newspaper for purposes of service by publication in a civil action.

Whenever a lawsuit is filed and one of the defendants cannot be found after sufficient effort is made to locate them, the attorney attempting to serve the defendant can apply to court for an order permitting the attorney to serve the person by publication (filing the summons and a description of the lawsuit in a newspaper of general circulation in the state).

Unlike the recently enacted foreclosure law that allows a newspaper to apply to a court to show that it meets the criteria to be deemed a newspaper of general circulation for purposes of publishing foreclosure ads, HB 1415 does not include such a process. HB 1415 simply sets forth a definition that includes being published weekly and distributed to only 3% of the residents in the Judicial Circuit.

When it comes to service by publication, there should be a strong desire to make sure that the service of a summons by publication is distributed to the largest possible audience. Therefore, we have concerns with page 2, line 20 and page 3, lines 4-7 as it is contrary and restricts the audience. We would like to offer the following amendments for your consideration:

- Replacing line 20 on page 2 with
“(A) Daily, but if a daily publication is not available, then at least weekly;”
- Deleting lines 4 – 7 on page 3

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

Dennis E. Francis
President & Publisher



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Testimony to the House Committee on Judiciary
January 23, 2014 at 2:00 p.m.

Testimony in support of the intent of HB 1415 – Relating to Service by Publication

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 1415, Relating to Service by Publication, which would clarify legal service in a civil action by publication in a newspaper of general circulation. We are in support of the Hawaii Financial Services Association's proposed HD1 of this bill.

Thank you for the opportunity to testify.