

**SB2072**

**LATE**



## Collection Law Section

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January 23, 2014

Sen. Clayton Hee, Chair  
Sen. Maile S.L. Shimabukuro, Vice-Chair  
Senate Committee on Judiciary & Labor

**Re: SB 2072 Relating to Service of Process**  
**Hearing: Friday, Jan. 24, 2014, 10 a.m.,**  
**Conf. Rm. #016**

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

This testimony is being submitted on behalf of the Collection Law Section of the Hawaii Bar Association ("CLS").<sup>1</sup> The CLS supports this bill and urges that it be passed out of this Committee.

In an unpublished opinion in Manderville v. Black, CAAP 12-1-653 on November 13, 2013 by the Hawaii Intermediate Court of Appeals, the court found that there was no statutory authority or court rule that allowed for service of a summons and complaint by Certified US Mail on a resident of the State of Hawaii, if that person could not be served after reasonable attempts to serve by personal service. This bill would codify the practice used by attorneys and the courts prior to Manderville to effect service of process on residents of the state when personal service was not successful.

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<sup>1</sup> *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.*

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Without the expressed authority to serve by way of the US Postal Service using Certified, Registered or Express Mail, a number of parties to court actions who need to effect service on other parties will encounter problems. For example, sometimes there are parties who intentionally evade service or are otherwise difficult to locate, who can be served by way of the US Postal Service. Then there are the situations where personal service is difficult or impossible because the party to be served only has a post office box and no postal street address, as is the case in many rural areas of this state. Another example is where a party lives in a gated community or secured condominium or apartment building. The potential parties who come before the court and who need to see service effected include individuals, corporations, and even the State of Hawaii. The types of cases which may need to utilize this type of service include a wide variety of matters brought before the Hawaii Courts.

Lastly, without the expressed authority to serve by way of the US Postal Service, parties who need to affect service but cannot personally serve, are left with the only other option available, publication of the summons in the newspaper. Publication is the method of last resort and is not the preferred method of service, since service by publication adds substantial cost to a case and is a less precise method of service than service by the US Postal Service.

We therefore encourage you to pass the above legislation.

Thank you.

  
William J. Plum  
Vice-Chair

# HAWAII FINANCIAL SERVICES ASSOCIATION

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January 24, 2014

Sen. Clayton Hee, Chair  
Sen. Maile S. L. Shimabukuro, Vice Chair  
and members of the Senate Committee on Judiciary and Labor  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 2072 (Service of Process)**  
**Hearing Date/Time: Friday, January 24, 2014, 10:00 a.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 this Bill with a proposed amendment.**

The purpose of this Bill is to specify the manner of serving a summons within the State for a civil action.

The word “summons” in this Bill and in this testimony refers to 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 reference, a sample of a Circuit Court summons is attached as Exhibit “1”.

If a defendant cannot be served personally with the summons, there are provisions in the Hawaii Revised Statutes (“HRS”) which allow the summons to be served by mail. These include HRS Sec. 633-28 (registered or certified mail), HRS Sec. 634-24 (registered or certified mail), and HRS Sec. 634-36 (certified, registered, or express mail).

However, HRS Sec. 633-28 only involves small claims cases. HRS Sec. 634-24 only applies to cases where the complaint involves property. And, HRS Sec. 634-36 is only triggered for cases (a) under HRS Sec. 634-33 (involving the operation of motor vehicles), (b) under HRS Sec. 634-34 (involving boat operators), or © under 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).

Besides the types of cases covered by HRS Secs. 633-28, 634-24, and 634-36, there are many other types of civil cases where a summons should be allowed to be served by certified, registered, or express mail. These include cases which are filed in the District Court (Regular Claims Division) or the Circuit Court involving recovery of monies based on a contract.

There are situations where the summons for those types of cases can’t be served personally on a defendant who resides in Hawaii. One instance is where the only known address for the

defendant is a post office box address, and not a physical address. Another instance is where the defendant is avoiding service of the summons or is otherwise unavailable to be served personally in Hawaii by a process server. See also the facts in the unpublished Hawaii Intermediate Court of Appeal's Summary Disposition Order in the case of Manderville v. Black filed on November 21, 2013. In Manderville, the Court of Appeals held that the defendant was not properly served with the District Court summons when he received the summons by certified mail in the State of Hawaii. The Court said that service by certified mail in that case "is not permitted under [District Court Rule 4(d)] or any applicable statute." The statute in that case was HRS 634-36.

There isn't a statute to allow for service of a summons by certified, registered, or express mail for those types of cases and situations. A comprehensive and consistent approach is needed to specify the manner by which a summons can be served by mail for civil actions in Hawaii.

This Bill does that.

First, this Bill creates a new section in the Hawaii Revised Statutes which is intended to encompass all situations where a civil summons needs to be served by certified, registered, or express mail.

Consistent with that objective, we recommend an amendment to this Bill. On page 1, line 9, before the words "When service", please add:

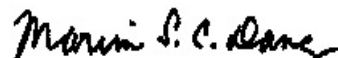
"Notwithstanding any other provision of law to the contrary,".

Second, the proposed manner in this Bill for serving a summons by certified, registered, or express mail is consistent with the procedures in various statutes, including HRS Secs. 633-28, 634-24, and 634-36, all of which are referenced above.

In this regard, this Bill requires that an attempt be first made to serve the summons by personal delivery. If, however, a reasonable attempt at personal delivery is not successful, then the summons can be served by certified, registered, or express mail sent to the addressee only. Importantly, this Bill requires that the service by mail can only be made pursuant to a court order.

For the reasons stated above, we urge your Committee to **pass this Bill with the above amendment.**

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, Hawai'i, \_\_\_\_\_

Clerk of Court

(Seal of the Circuit Court)

(This summons is issued pursuant to Rule 4 of the Hawai'i 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.]

Presentation To  
Senate Committee on Judiciary and Labor  
January 24, 2014 at 10:00am  
State Capitol Conference Room 016

**Testimony in Support of Bill S. B. 2072**

TO: The Honorable Clayton Hee, Chair  
The Honorable Maile S. L. Shimabukuro, 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 eleven FDIC insured depository institutions operating in the State of Hawaii.

The Hawaii Bankers Association supports the intent of SB 2072, specifying the manner in which a summons for a civil action is served in this State. We also support the amendment proposed by the Hawaii Financial Services Association, providing further clarification in this measure. This measure would align the proposed manner for serving a summons for a civil action to be consistent with how summons are currently served 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.

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Testimony to the Senate Committee on Judiciary & Labor  
January 24, 2014

Testimony in support of the intent of SB 2072, Relating to Service of Process

To: The Honorable Clayton Hee, Chair  
The Honorable Maile Shimabukuro, Vice-Chair  
Members of the Committee on Judiciary & Labor

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 SB 2072, which would bring clarity to the law. We are also in support of the Hawaii Financial Services Association's proposed HD1 of this bill.

Thank you for the opportunity to testify.