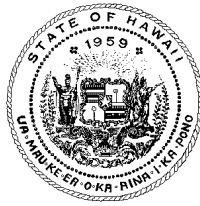


DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Shelley Nobriga
Deputy Director
Corrections

Shawn H. Tsuha
Deputy Director
Law Enforcement

TESTIMONY ON SENATE BILL 107
RELATING TO COURT FEES

by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Friday, January 30, 2015; 8:30 AM
State Capitol, Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

Department of Public Safety (PSD) **supports the intent** of this bill, which seeks to set an equitable fee structure for the service of process in Hawaii. It has been over ten years since the fee structure has been examined, and since that time, the cost of doing business in Hawaii has increased. Debate on this measure will ensure the due process rights of the respondents and the interests of the plaintiffs are satisfied, and that the costs incurred by the service are recovered by the process server.

Thank you for the opportunity to present this testimony.



Collection Law Section

Chair:
Steven Guttman

Vice Chair:
William J. Plum

Secretary:
Thomas J. Wong

Treasurer:
Arlette S. Harada

Directors:
Lynn Araki-Regan
Marvin S.C. Dang
David C. Farmer
Christopher Shea Goodwin
Steven Guttman
Arlette S. Harada
James Hochberg
Elizabeth A. Kane
William J. Plum
David B. Rosen
Andrew Salenger
Mark T. Shklov
Yuriko J. Sugimura
Thomas J. Wong
Reginald K.T. Yee

Reply to: **STEVEN GUTTMAN, CHAIR**
220 SOUTH KING STREET SUITE 1900
HONOLULU, HAWAII 96813
TELEPHONE: (808) 536-1900
FAX: (808) 529-7177
E-MAIL: sguttman@kdubm.com

March 17, 2014

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice-Chair
Senate Judiciary Committee

Re: SB 107 Relating to Court Fees
Hearing: January 30, 2015, 8:30 a.m.,

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

This testimony is being submitted on behalf of the Collection Law Section of the Hawaii Bar Association (“CLS”).¹ The CLS takes *no position* on the majority of the bill. However, the CLS opposes: (1) *increasing* the “minimum” fee for hourly work by a process server from \$50 per hour to \$75 per hour; and (2) *increasing* the commission or *percentage* of the sale allowed, for serving an “execution or other process for the collection of money,” for the following reasons.

1. Hourly fees. The applicable subsections involve an hourly fee arrangement that is typically used when a person is evading service of a court document or when some other circumstances dictate the use of special effort or a higher level of skill on the part of the process server. For example, a process server may have to stakeout a house or building for hours on end in order to have a chance at finding and serving an individual. Regardless of the situation, the current *minimum* of \$50 per hour is just that, a minimum, and is a sufficient amount for the majority of the cases where the special need arises. Moreover, the current statute does not cap, in any way, the party needing the service and the process server providing the service, from agreeing to a higher fee.

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.*

January 28, 2015

Page 2

2. Execution Commission. The applicable subsections involve the percentage of a sale the process server gets for selling an asset to satisfy a judgment. These sales typically involve real property and normally occur on the court house steps in the form of an auction. The proposed increases for District and Circuit Court sales are not simply increases for inflation, but real increases in the commission allowed. For example, a real estate broker typically gets a commission for selling property. The real estate industry does not however, ask for increases to that amount every few years, just because of inflation. Why? Given enough years, every real estate broker would eventually be entitled to a commission equal the entire value of the asset they were selling. In other words, a 100% commission. In the current situation, the percentages provided for in the statutes are sufficient for the amount of work involved in selling an asset. If the percentage is not sufficient, the process server can always refuse the job unless he or she is paid by the hour.

Thank you.

Respectfully,

/S/ William J. Plum

William J. Plum
Vice-Chair
Collection Law Section of the HSBA

cc: Steven Guttman
Patricia A. Mau-Shimizu

\\sb107-1.cls

From: [Chris Curley](#)
To: [JDLTestimony](#)
Subject: SB107
Date: Thursday, January 29, 2015 11:28:06 AM

Aloha Hawaii State Senators,

My name is Christopher Curley. For the last 7.5 years I have operated a small process serving business on Maui called Aqua Legal, LLC.

More than a decade ago, former Hawaii Governor Ben Cayetano eliminated the Civil Deputies from the Department of Public Safety to save the State money. As far as I know, the only purpose of the Civil Deputies Division was the service of process. Since then, all civil process service in Hawaii is handled by independent private process servers. If you go to the Police or Sheriff's Department and ask them to help serve a summons and complaint or any other civil process they will refer you to seek out a private process server.

In the last decade there has been an explosion in the number of private process servers in Hawaii. Therefore, like any private marketplace there are lots of options for the consumer (plaintiffs or defendants) to shop for a process server. I am not sure why the State of Hawaii wants to regulate the fees of private process servers. I have not heard of there being a big problem with attorneys and Pro Se parties getting overcharged for service of process. If someone is overcharging for process services the market will eventually push them to margins. Does the State regulate what the attorneys charge their clients?

This bill seems to be addressing how much money the Judiciary will allow for the reimbursement of private process server fees awarded to a winning Plaintiff. The current Statute addressing these recoverable process server fees is thirteen years old and the fees are so very outdated. I appreciate the intent of SB107, getting process server fees raised. However, I would vote that the State not be involved in governing how much private process servers charge. There really is no need for this oversight because of course if a judge thought that a particular process server fee was outlandish they always have the discretion to adjust that judgment.

Mahalo - Chris

Chris Curley
Aqua Legal, LLC
55 Naniluna Place
Wailuku, HI 96793

www.aqualegal.com

Serving ALL the Hawaiian Islands with Aloha

From: [Pyramid Process](#)
To: [JDL Testimony](#)
Subject: Fwd: SB 107
Date: Thursday, January 29, 2015 11:30:10 AM

Aloha:

I am a partner with Pyramid Process, a private process business located on the Big Island of Hawaii and submit my testimony in objection to SB 107.

Private process servers in the State of Hawaii are private businesses providing a service to other private businesses, ie. attorneys, State and County agencies, collection agencies, banks, credit unions, private individuals etc. All of these private businesses do not have their fees regulated by State law, therefore, why should private process servers have their fees regulated by law? When the fee structure was established many years ago the service of process was completed by Civil Deputies in their capacity as a Civil Deputy and not an individual/private party/private business. In those days no one other than a Civil Deputy could serve process. Today, Rule 4(c) of the Hawaii Rules of Civil Procedure allows for a person not a party to action and over the age of 18 years old be allowed to serve process in the State of Hawaii. Times have changed and now private process service has evolved to what it is today. The fee structure should be "as agreed upon between the parties" and that agreed upon fee shall be recoverable costs on all final judgments/orders for all legal matters.

--

Thank you~

Kelly Tmakiung
PYRAMID PROCESS
RR3, Box 1229
Pahoa, Hawaii 96778
[REDACTED]

Website: pyramidprocess.com

--

Thank you~

Kelly Tmakiung
PYRAMID PROCESS
RR3, Box 1229
Pahoa, Hawaii 96778
[REDACTED]

Website: pyramidprocess.com

From: [R.F. Dukat](#)
To: [JDLTestimony](#)
Cc: [Kelly Tmakiung](#); [Chris Curley](#); [Jeannie Jorg](#); [N. Yoro & Assoc](#); [AAA Legal Process](#)
Subject: SB 107
Date: Wednesday, January 28, 2015 4:34:14 PM

The hearing on this bill is on 1/30/2015

My name is Robert Dukat and I am a private process server on the Big Island. I am submitting a statement of opposition to this bill.

The primary reason is that it sets the fees for governmental agencies, sheriff and other law enforcement agencies as well as private process Servers.

Private process servers are not government employees or law enforcement, or court employees. Private Process servers are small business people doing business with other small businesses, attorneys, banks, collection agencies etc..


The fee structure for Private Process servers should be "as agreed upon" as it is with all the other businesses in this State.

Currently the Judiciary does not allow recoverable fees beyond this schedule. The fee allowance to the prevailing parties should be what the actual fee charged is.

Thank you for allowing me to testify

Robert Dukat

Pahoa, HI

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: 
Subject: Submitted testimony for SB107 on Jan 30, 2015 08:30AM
Date: Thursday, January 29, 2015 8:49:25 AM

SB107

Submitted on: 1/29/2015

Testimony for JDL on Jan 30, 2015 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
MELISSA TOYOOKA	Individual	Comments Only	No

Comments: As private process servers, we should not be run by the state. We are small business owners and should be able to charge our clients a price which is agreed upon between both parties. Our businesses are registered under the DCCA just as other businesses are. We are the only industry which has our prices run by the state, as in this bill. When serving for the state and other clients who follow this bill, it makes it nearly impossible to make any money. Our clients will not be able to collect anything over what is set out in this bill. We do understand that it is important to get these services completed for our clients, but we also do not want to work for free. For example, we may have a service out in Waianae. If we go there and find out the Defendant does not live there, then we can only charge for that one attempt. In the bill where it says "For returning as unserved after due and diligent search any process when it has been found that the person to be served has left the State," the fee is \$5. The wording says "found the person... has left the state" should not be included. A majority of the time, we have no idea if the person left the state, so that fee is uncollectable. Also, the gas prices are always fluctuating and really do end up spending more money on gas than the service is even worth. Since we are small business owners and not part of the state, it is not fair that our fees are run by the state. Although I am happy that this matter is finally being brought to the legislature's attention, I feel we should be able to charge a price as agreed upon between both parties and they should do away with this bill. Thank you for your time and consideration.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov