



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 758, S.D. 1, RELATING TO SERVICE BY PUBLICATION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, February 19, 2015 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call
Caron Inagaki, Deputy Attorney General at 586-1300

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General provides comments on this bill.

This bill amends chapter 634, Hawaii Revised Statutes, by adding a new section relating to service by publication.

The proposed amendment in the new section to chapter 634, subsection (c)(2)(C) provides that,

(c) As used in this section, “general circulation” refers to a newspaper that:

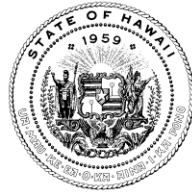
...
(2) Is distributed within the circuit in which the action has been filed:

...
(C) To a minimum of three percent of the residents of the circuit, as determined by the last decennial United States census and as verified by an independent audit.

Subparagraph (C) is vague and ambiguous and raises several questions. It is unclear how and to whom this minimum percentage would have to be shown or the process by which it is to be proven. For example, is the party who seeks to publish required to make a showing prior to publication that the minimum percentage meets the three percent of residents as determined by the last decennial census? In what manner would the showing have to be made? Is the party only required to prove the publication meets the three percent requirement if someone challenges the minimum percentage? What needs to be verified by independent audit? Who retains the auditor? How much would an independent audit cost and would that cost be prohibitive for most

filers? If a newspaper has been verified once as meeting the required three percent, would every new publication of a summons in this same newspaper still need to be verified by an independent audit? Without clarification, it would appear that the requirements of this subsection may be too onerous for the average litigant.

We would recommend that this subsection be amended to simplify the process. For example, a judge could be given the discretion to determine that a newspaper is circulated to a sufficient number of residents to meet the “general circulation” requirement in the circuit in which the action is filed based on information provided by the litigant who seeks to serve a summons by publication.



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

FEBRUARY 19, 2015
9:15 AM

WRITTEN COMMENTS ON S.B. 758, S.D. 1, RELATING TO SERVICE BY
PUBLICATION.

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND TO THE HONORABLE MAILE S.L. SHIMABUKURO, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection (“OCP”) has concerns with S.B. 758, S.D. 1, Relating to Service by Publication, and offers the following comments for the Committee’s consideration.

S.B. 758, S.D. 1 would amend Chapter 634, Hawaii Revised Statutes (“H.R.S.”), to add a new “Service by publication” section to permit some of the required publications to be via a “state website” (hereinafter “electronic publication”) as an alternative to newspaper publication. S.B. 758, S.D. 1 would allow electronic publication in all civil actions.

OCP administers a website for electronic publications of foreclosure notices of public sale, pursuant to H.R.S. §§ 667-20, 667-27, & 667-96. The website is specifically designed for foreclosure notices of public sale only, and is managed through the Mortgage Foreclosure Dispute Resolution Program, established pursuant to H.R.S. §667-73.

If the intent of the bill is to expand the existing program to include notices other than those relating to mortgage foreclosure, the Department notes that it is ill-suited to serve this function, and that the role of providing service of summons by publication as may be ordered by the court should be housed with an entity more directly involved in the judicial process.

Moreover, to require DCCA to accommodate the great number of other types of civil action publications would require a significant expenditure of funds. As a specially funded agency, these expenditures cannot be borne by the Department's existing licensees and registrants or otherwise absorbed in the Department's existing budget.

In addition to the logistical concerns noted above, OCP is uncertain whether service through electronic publication would create unconstitutional due process issues. While cognizant of the heavy burden of the cost of newspaper publication, OCP defers to the Legislature on the appropriateness of service by website publication prior to disposition in a medium that may not be accessible to all persons who have an interest in being served.

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



Collection Law Section

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Yuriko J. Sugimura
Thomas J. Wong

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

February 14, 2015

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

Re: SB 758 Relating to Service by Publication
Hearing: Thursday, Feb. 19, 2015, 9 a.m., Conf. Rm. #016

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

I am Jane Sugimura and I am a Director on the Collection Law Section of the Hawaii Bar Association. Our Section strongly supports passage of this bill and urges that you pass it out of this committee.

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 Commission¹.

Our section believes 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 this bill will accomplish that.

Regarding the only testimony submitted in opposition to this bill by the Honolulu Star-Advertise, we respond as follows: The Star-Advertiser claims that “offering the option to post the summons on a state website and only publishing the summons once in a newspaper, significantly diminishes the ability to reach the largest audience”. . . and arguably reduces notice to defendants that a lawsuit has been filed against them. The newspapers own numbers contradict that position. In January 2015, the newspaper had 1.8 million viewers on 15 million pages of content and **only 596** viewers on 2,106 legal notices.

¹ Cost of publication was a strong factor in the enactment of this provision. The cost of publishing ads in the newspapers most times exceeded \$2,000 and these costs were ultimately charged to the borrow-consumer as part of the lenders’ costs to do a foreclosure. The cost to publish on the state web site currently does not exceed \$300 and we are informed that with increased volume, that cost will decline. Currently the cost to do a publication of summons in a newspaper in connection with a collection action typically exceeds \$2,000 and this cost is passed on to the debtor-consumer as a cost of collection.

Senate Committee on Judiciary & Labor
SB758 Re Publication of Summons
Hearing Date: Thurs., Feb. 19. 2015, 9 a.m.

There is no way to substantiate the Star-Advertiser's position that publishing ads provides "better" notice to defendants than publishing the legal notice on the internet (i.e., on the state website as provided in SB758); however, a number of states have passed laws or are considering laws to require legal notices to be posted on the internet on the grounds that more people will see the notices and that the cost to publish on the internet is lower than publishing in a newspaper. In fact, there is a website dedicated to this issue: <http://legal-notice.org/>.

As a practical matter, it is unlikely that defendants see the publication of summons against them no matter how many times it is published in the newspaper. Internet penetration is growing rapidly while newspaper circulation continues to decline. It is easy to demonstrate that internet penetration far exceeds declining print circulation. It is virtually impossible for any print based newspaper to argue it has more readers than internet users in any given geographic area.

Having the notice on a state website means that it is posted continuously rather than once each week for three or four weeks (i.e., as in a newspaper) and this increases the possibility of notice to a defendant. Also, if the notice were posted on the internet, it is possible to do a search by name(s), which cannot be done if the notice is published in a newspaper. Arguably, the internet posting would provide "better" notice to defendants because they would not have to buy a newspaper subscription to see the notice. They could check the state website 24/7 from their computers, smart phones and other mobile devices.

We believe that SB 758 is a suitable compromise between the newspaper's position and our Section's position since it provides for one newspaper publication along with the internet posting.

For all of these reasons, we respectfully ask that you pass out SB 758.

Thank you for the opportunity to testify.


Jane Sugimura

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.



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

February 19, 2015; 9:15 AM
Hawaii State Capitol, Room 016

RE: SB 758 SD1 – Relating to Service by Publication – IN OPPOSITION

Chair Keith-Agaran, Vice Chair Shimabukuro and members of the committee:

The Honolulu Star-Advertiser opposes SB 758 SD1, which, if enacted, amends the method of service of process for all civil cases when a personal service is unsuccessful.

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).

Offering the option to post the summons on a state website and only publishing the summons once in a newspaper, significantly diminishes the ability to reach the largest audience. A summons on a website will not generate the readership that a printed summons in a daily newspaper will receive. We see this first hand with our own website.

StarAdvertiser.com is one of the most visited websites in the State. Last month (January 2015) we had over 1.8 million unique users view 15 million pages of content on our site. In the same month we had only 596 unique users view 2,106 legal notice pages. All legal notices that run in our paper are automatically posted to our site.

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. The Honolulu Star-Advertiser reaches over 516,000 readers every week.

We urge the Committee to hold this measure. Thank you.

Dennis E. Francis
President & Publisher