

SB758

Measure Title: RELATING TO SERVICE BY PUBLICATION.

Report Title: Civil Actions; Service of Process; Service by Publication; Newspaper; Website

Description: Specifies that the method of service of process for all civil cases under chapter 634, Hawaii Revised Statutes, when personal service is unsuccessful, shall include publication in a newspaper of general circulation three times or publication on a state website together with publication in a newspaper of general circulation once.

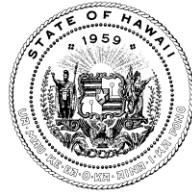
Companion:

Package: None

Current Referral: CPN, JDL

Introducer(s): BAKER, KEITH-AGARAN, KIDANI, Chun Oakland, Espero, Ihara, Nishihara, Ruderman, L. Thielen, Wakai

<u>Sort by Date</u>		Status Text
1/23/2015	S	Introduced.
1/26/2015	S	Passed First Reading.
1/28/2015	S	Referred to JDL.
1/29/2015	S	Re-Referred to CPN, JDL.
1/30/2015	S	The committee(s) on CPN has scheduled a public hearing on 02-04-15 9:00AM in conference room 229.



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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

FEBRUARY 4, 2015
9:00 AM

TESTIMONY ON S.B. 758, RELATING TO SERVICE BY PUBLICATION.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE BRIAN T. TANIGUCHI, 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, Relating to Service by Publication, and offers the following comments for the Committee’s consideration.

S.B. 758 would amend H.R.S. chapter 634 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 would allow electronic publication in all civil actions.

OCP administers the Mortgage Foreclosure Dispute Resolution Program (“MFDR”) which, in turn, administers the only state website for electronic publications for 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. To require it to accommodate the great number of other types of civil action publications would require an extensive redesign of the system at an uncertain cost.

In addition to the concerns noted above, OCP asks whether the provisions regarding electronic publication create due process issues. While cognizant of the heavy burden of the cost of newspaper publication, OCP defers to the Legislature on whether it is appropriate to have service by publication prior to disposition in a medium that is not necessarily available to all persons who have an interest in being served. Such persons may then be unlocatable by reasonable attempts.

OCP S.B. 758, and urges further consideration and dialogue before expanding the use of electronic publication for service of process.



Collection Law Section

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Sen. Rosalyn H. Baker, Chair
Sen. Brian Taniguchi, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: SB 758 Relating to Service by Publication
Hearing: Wednesday, February 4, 2015, 9 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Taniguchi 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 Commission.

The members in our section 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 this bill will accomplish that.

Thank you for the opportunity to testify.

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.

Jane Sugimura

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 does not exceed \$300. Currently the cost to do a publication of summons in a newspaper in connection with collection action typically exceeds \$2,000 and this cost is passed on to the debtor-consumer as a cost of collection.

SB758

Submitted on: 2/3/2015

Testimony for CPN on Feb 4, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Edward Pei	Hawaii Bankers Association	Support	Yes

Comments: Hawaii Bankers Association supports the intent of SB758, specifying the manner in which a summons for a civil action is served in this State..