



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 645, RELATING TO SERVICE OF PROCESS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, February 1, 2017 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lynette J. Lau, Administrator, Child Support Enforcement Agency

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to allow for service by publication or by any other manner that is reasonably calculated to give a party notice of a proceeding and an opportunity to be heard when the party cannot be located or personally served in family court proceedings.

The Department of the Attorney General would like to point out that the wording adding a new subsection (c) to section 576E-4, Hawaii Revised Statutes (HRS), on page 5, lines 10 through 21, and on page 6, lines 1 through 10, provides that "the court" may authorize notice of the proceeding by publication or by any other manner that is reasonably calculated to give a party notice. However, chapter 576E, HRS, pertains to the administrative process for child support enforcement and not to proceedings before the Family Court. The Family Court only gets involved when a party appeals a final decision and order issued through the administrative process.

In addition, the proposed wording provides for notice of the proceeding and the time and date of hearing by publication or by any other manner that is reasonably calculated to give the party actual notice of proceedings. Under section 576E-5, HRS, the administrative process requires that the parties be served with a notice of administrative proceedings and notice of financial responsibility that include the following:

- (1) A copy or statement of the order proposed to be entered;
- (2) A statement that the parties are entitled to an administrative hearing before an impartial hearings officer to contest the entry of the order together with an explanation of the procedure for requesting a hearing;
- (3) A statement of rights at the hearing together with an explanation of defenses or objections which may be considered by the hearings officer;
- (4) A statement of the legal authority under which the hearing is to be held;
- (5) A statement that the property of the parties may be seized or that the income of the parties may be withheld for payment of support;
- (6) A statement that information relating to the parties' nonpayment of support may be made available to credit-reporting agencies;
- (7) A statement that child and spousal support shall be payable by an order for immediate income withholding which shall be entered concurrently with the administrative order pursuant to section 576E-16;
- (8) A statement that parties have the right to request judicial review of a final order of a hearings officer pursuant to section 576E-13;
- (9) A statement that an administrative determination of a support obligation creates a judgment by operation of law upon filing of the order at the family court and as such is entitled to full faith and credit in any other state or jurisdiction.

It would not be appropriate to publish the copy or statement of the order proposed to be entered as it includes names and birthdates of the child or children involved in the case and income information of the parties. It would also be cost prohibitive to publish all the information required to be included as part of the notice under the statute. In addition, an administrative hearing is only scheduled after both parties have already been served with the notice of administrative proceedings and a hearing is requested by one or both of the parties. Unless the administrative process for child support enforcement is to be amended as a whole, service of the notice of the proceeding by publication or by any other manner that is reasonably calculated to give the party actual notice of proceedings is not a practice that can appropriately fit into the current administrative process.

The Department of the Attorney General respectfully requests that the provision in section 2 of the bill relating to section 576E-4, HRS, be removed if this bill is passed.



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S. C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

Wednesday, February 1, 2017, 9:00 a.m.

State Capitol, Conference Room 016

By

R. Mark Browning

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 645, Relating to Service of Process.

Purpose: Provides for service by publication or other manner in Family Court proceedings.

Judiciary's Position:

The Judiciary takes no position on this bill. We wish to respectfully suggest that the language regarding electronic service track the language of Act 83 of 2016 (House Bill No. 2281, SD 1) (relating to service by publication in paternity cases). Additionally, because statutorily required confidentiality required by the various statutes, we also respectfully suggest an additional subsection.

First, in the current bill, on pages 4, 6, 8, 9, 10, the court is authorized to permit service:

“Via electronic means, such as electronic mail or posting to a social networking account or online publication website.”



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Allowing electronic notice is not yet an established practice in our State and we respectfully suggest that using consistent language across statutes would promote a more orderly establishment of such a practice. To that end, we wish to point out the language used in Act 83 of 2016 for this Committee's consideration:

“§584-8 Jurisdiction; venue.

(d) (2) When posting to an online publication website is authorized, proof of service shall be satisfied by an affidavit or declaration by the authorized representative for the publication that the notice was given in the manner prescribed by the court.

(d) (3) When service by electronic mail or posting to a social networking account is authorized, proof of service shall be satisfied by an affidavit or declaration by the process server that the notice was given in the manner prescribed by the court.

(d)(4) When service is made by posting to a public bulletin board, proof of service shall be satisfied by an affidavit or declaration by the process server that the notice was given in the manner prescribed by the court.”

Second, we respectfully propose an additional subsection to be inserted at p.4, after line 3; p. 6, after line 8; p.8, after line 8; p.9, after line 15; p.10, after line 9:

(3) Notice under this section shall exclude personal information as defined by court rule.

This proposed language refers to “personal information” as defined in Rule 2.19 of the Hawaii Court Records Rules, as follows:

2.19. Personal information means social security numbers, dates of birth (except for traffic citations), names of minor children, bank or investment account numbers, medical and health records, and social service reports. To the extent a social security or account number is required in an accessible document, the last 4 digits may



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be displayed, provided that no more than half of the social security or account digits are disclosed. To the extent a birthdate is required in an accessible document, the birth year may be displayed. Except as provided in Rule 9.1, to the extent the name of a minor is required in an accessible document, the initials of the minor may be displayed. To the extent a complete social security number, account number, birthdate, or name of a minor child is required for adjudication of a case, the complete number or birthdate shall be submitted in accordance with Rule 9.1 of these rules. (*Amended June 21, 2012, effective September 1, 2012*)

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

**FAMILY LAW SECTION
OF THE
HAWAII STATE BAR ASSOCIATION**

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January 31, 2017

TO: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
Senate Committee on Judiciary and Labor

FROM: LYNNAE LEE, Chair
TOM TANIMOTO, Vice-Chair

HEARING DATE: February 1, 2017 at 9 a.m.

RE: Testimony in Support of SB645 Relating to
Service of Process With Amendments

CHAIR
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Dear Chair Keith-Agaran, Vice Chair Rhoads, and fellow committee members:

We are writing to support SB645 with amendments for application to HRS 584 Uniform Parentage Act. This testimony is written on behalf of the Family Law Section of the Hawaii State Bar Association which is comprised of approximately 140 members statewide all practicing and/or expressing an interest in Family Law.

Having uniform procedures by which to effect service of process in all Family Court proceedings (juvenile, child support, divorce, annulment, separation, UCCJEA), including service by electronic means, is a good idea given the prevalence of electronic and social media communications today. However, it is perhaps in paternity cases that SB645 would be most beneficial since it does not have clear language on service of process [See HRS 584-6(b)]. The litigants in paternity actions tend to be younger, more transient, and very knowledgeable about social media. We believe the lack of reference and application to HRS 584 was an oversight, and hope it can be included in a subsequent draft. A service of process section for HRS 584 could be fashioned similar to HRS 580-3 which applies to annulment, divorce, and separation matters.

For the reasons stated above, the Family Law Section supports SB645 provided it includes application to HRS 584 paternity matters. Thank you for the opportunity to provide testimony on this bill.

Sincerely,



Lynnae Lee, Chair, Family Law Section
Tom Tanimoto, Vice-Chair, Family Law Section

NOTE: The comments and recommendations submitted reflect the position/viewpoint of the Family 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.

TESTIMONY OF THOMAS D. FARRELL
Regarding Senate Bill 645, Relating to Service of Process

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

Wednesday, February 1, 2016 9:00 a.m.
Conference Room 016, State Capitol

Good morning Senator Keith-Agaran and Members of the Committee:

While I am more often here trying to kill off bad ideas, SB 645 is a good idea, and I strongly urge your favorable action.

SB 645 would bring service of process laws for family law matters into the twenty-first century by explicitly authorizing electronic service by any means reasonably calculated to give actual notice to the respondent.

Currently, if you can't find a respondent for personal service, or if the respondent just won't pick up that certified letter waiting at the post office, the only way you can serve is by publication in a newspaper. This is expensive, time-consuming, and the courts are reluctant to approve service by publication because we all know that it is extremely unlikely that the respondent will get actual notice of the proceeding.

I have a case in my office right now that would certainly have benefited from SB645. The wife ran off to the Mainland, and my client wants to divorce her. However, she won't tell us where she is, and won't accept service by mail. Nonetheless, I've been able to email back and forth with her, and she also has a Facebook page. The court has denied my motion for leave to serve by publication, and gave me a laundry list of additional things to do (at great expense to my client) to try to serve her. If SB645 were law, all I would have to do is email the complaint to her.

While the case I am telling you about is not a domestic violence case, there are certainly situations in which respondents in family law matters have good reason to not want their actual whereabouts known to the other party. Nonetheless, they need to have notice of family court proceedings that involve them. SB 645 would provide an option that accommodates those needs.

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