

SB 1532

Measure Title:	RELATING TO LANDLORD-TENANT COURTS.
Report Title:	Landlord and Tenant Courts; Jurisdiction; Appeals
Description:	Establishes the landlord-tenant courts.
Companion:	
Package:	None
Current Referral:	CPH, JDC
Introducer(s):	KIM, Baker, Dela Cruz, English, Fevella, Gabbard, Ihara, Inouye, Kanuha, Keith-Agaran, Moriwaki, Nishihara, Riviere, Ruderman, Shimabukuro



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Commerce, Consumer Protection, and Health

Senator Rosalyn H. Baker, Chair

Senator Stanley Chang, Vice Chair

Monday, February 11, 2019, 9:30 am

State Capitol, Conference Room 229

by

Calvin C. Ching

Deputy Chief Court Administrator, First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1532, Relating to Landlord-Tenant Court

Purpose: Establishes the landlord-tenant courts.

Judiciary's Position:

The Judiciary respectfully opposes this measure.

This bill would have a wide-sweeping impact on the circuit courts - jurisdictionally, administratively, organizationally, and most certainly operationally. In Fiscal Year 2016-17, the 1,600+ summary possession cases represented a substantial proportion of the First Circuit district court civil caseload and if this bill had been in effect, would have brought an over 75% increase to the total First Circuit civil circuit court caseload that year. Under this bill, all of those cases would be the responsibility of the circuit judge designated by the chief justice as "Landlord Tenant Court" judge. The workload would warrant more than one judge to be assigned in the First Circuit. This would prevent these designated judges from sitting in other civil and/or criminal cases. This further increases the remaining judge's caseloads in the civil and criminal divisions and compresses other calendars and jury trials into far fewer court days.

Currently, the landlord-tenant code specifies that the proper venue of a possession case is in the district where the premises is located. Unlike the District Courts which have multiple divisions, the Circuit Court in each county has only one location. In First Circuit all cases would have to be heard at the Circuit Court location in downtown Honolulu. In the Second Circuit, this



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would mean that outer district litigants (Hāna, Lahaina, Lāna‘i, and Moloka‘i) will need to come to Wailuku (Maui) for hearings and trial, often at great time and expense. In the Third Circuit, those in Puna, Ka‘ū, South and North Kohala and Hamākua would be required to utilize court services in either Hilo or Kona. This would negatively impact access to the courts for landlords and tenants.

As housing is a critical issue, landlord-tenant cases warrant special and expedited attention. A specialty landlord-tenant court will provide the advantages of a singular scope and less congested calendar. However, a Circuit Court landlord-tenant court will place a greater financial burden on both the litigants and the court, especially for Second Circuit, which is a three-island circuit.

Landlord-tenant cases and their parties would also lose the benefit of district court's procedural efficiencies - evidenced by district court's cited 169% termination rate in FY 2016-17 - inevitably leading to longer case lifecycles until termination and likely increased costs for litigants.

Finally, planning and implementing the significant workflow shift proposed by this bill would likely require significant administrative and organizational retooling of Judiciary operations, units, and/or positions across each of the four circuits that may not be practicable, particularly by the July 1, 2019, without a commensurate addition of funding and personnel.

Thank you for the opportunity to testify on this measure.



Collection Law Section

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February 10, 2019

Senator Roslyn H. Baker, Chair
and Members of Senate Commerce, Consumer Protection & Health
Committee

Re: SB 1532 Relating to Landlord-Tenant Courts
Hearing: 2/11/19 @ 9:30 a.m.
Testimony in Opposition

Dear Chair Baker:

This testimony is being submitted on behalf of the Collection Law Section of the Hawaii Bar Association ("CLS").¹ The CLS asks that you please defer SB 1532.

This bill may be well intended, but the reason for its introduction is unclear. The District Court currently handles summary possession cases in this state and while no system is perfect, the District Court does a commendable job of giving all parties to a summary possession action the chance for fair participation and the chance to receive due process. Plus, the court does so with reasonable speed. We can see no reason for abandoning a court functions reasonably well, only to transfer the same duties to another court. If either landlords or tenants in this state have specific ideas as to how summary possession matters could be handled to improve the process, the better alternative to creating an entirely new court would be to present those specific ideas to either the legislature for the kind of changes that are appropriate for that body, or present those ideas to the District Court Rules and Forms Committee for changes that are better suited for that body. Keeping in mind that some fixes require the legislature to act and some fixes can be done by the Judiciary via a court rule or the creation or revision of or to a court form.

¹ *The comments and recommendations submitted reflect the position/viewpoint of the Collection Law Section of the Hawaii State Bar Association ("HSBA") only. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors.*

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For those not familiar with the differences between the District Court and the Circuit Court, you should note that the Circuit Court, by *design*, is a more formal environment to proceed under. The rules are generally written to handle more complex to very complex cases and cases that usually have high dollar amounts involved that also include many parties. In comparison, the District Court is designed to be more of a peoples' court. Formalities, while still there, are relaxed a bit so the average person can, and often does represent themselves; and in the area of summary possession cases, the rules are more friendly to cases where the number of parties are usually limited to one landlord and one or two tenants and there is some urgency to getting a resolution. Placing summary possession cases in the Circuit Court, without a substantial restructuring of the way that court operates, will deal a significant blow to any party to represent themselves and therefore to the access to justice for all parties involved.

Thank you.

Respectfully,

/S/ William J. Plum

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

SB-1532

Submitted on: 2/10/2019 9:17:11 AM

Testimony for CPH on 2/11/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

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February 9, 2019

Sen. Roslyn H. Baker, Chair
Sen. Stanley Chang, Vice-Chair
Senate Committee on Commerce, Consumer Protection & Health

Re: Testimony in Opposition to SB 1532 Relating to Landlord-Tenant Courts, Monday, February 11, 2019 at 9:30 Conf. Room #229

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

I have been practicing law in this State since 1978 (i.e., over 40 years) and for a good part of that time, I have represented commercial and residential landlords in every county in this State.

By statute and court rulings, the district courts in Hawaii have exclusive jurisdiction over summary possession (i.e., landlord-tenant cases) and I am not aware that that system is broken or somehow impaired as would warrant passage of this bill.

I have been a member of the District Court Rules & Forms Committee ("DCRFC") for over 25 years and that Committee is still active and continues to address concerns and issues that the courts, lawyers and parties have to deal with in those proceedings. If legislators have concerns regarding how district courts deal with and dispose of landlord-tenant matters, I would be happy to take your concerns to the Committee and report back to you.

This bill should be deferred because the district court system is cheaper and more efficient than circuit court in dealing with Landlord-Tenant cases.

Over 20 years ago, the DCRFC developed court forms that are available online on the judiciary's web-site. The Committee received instructions from the then Chief Justice that the forms and the court process had to be "user-friendly" for pro-se litigants (i.e., parties who appear without attorneys) because in most district court cases, the parties don't have counsel. The summary possession complaint form is a 1 page, 2-sided form with check boxes and blanks to fill in. The court filing fee is currently \$155 and in Honolulu Division, the court return date is 5 business days after service of the complaint. In rural divisions and on Neighbor Islands, the court return date is 2 weeks after service of the complaint. Non-corporate landlords and tenants can appear without counsel

and defendants are not required to file a written answer and can appear pro se at the court return date to admit or deny the allegations in the complaint. In Oahu and Maui, mediation (before trial is set) is mandatory in residential summary possession cases. Trial on the possession issue can be set relative quickly, i.e., within a few weeks, with a trial on damages that will be set on a date after the tenant vacates the premises.

In circuit court, there are no form complaints, which means that pro se landlords may have to hire attorneys to draft their complaints. The filing fee for the complaint is \$330. Defendant tenants will have to engage counsel because they will be required to file a written answer within 20 day after service of the complaint or have default entered against them. Assuming the defendant files a written answer with the Court, the landlord or its attorney can file their motion for possession and get a hearing 4-5 weeks from the date of filing. If the Defendant files an opposition and raises factual issues, a trial will have to be set and in circuit court that usually takes about a year.

To paraphrase a colleague's reaction to this bill:

"If this bill passes it would be a **bonanza for attorneys**. A true gift from our state legislature to lawyers. 5,000 new Circuit Court cases a year. No landlord would be able to be pro-se. Even the simplest eviction for a condo would cost \$7K to \$10k and take months. More difficult cases would run \$10k to \$40k. Trials would be common place and cost a lot more to prepare for and do. Plus, the first year would be utter chaos and would require the hiring of more judges and court clerks, which nobody would figure out until 2020 and would not be in this years budget, so it would take the Leg. another 2 years to fund and confirm the new judges. And because downtown has no extra courtroom space, all the new judges will be located in Kapolei. Adding hours of commute time that landlords will have to pay for."

For all of reasons described in this testimony, please defer action on this bill.



Yuriiko J. Sugimura
OF BENEDET FIDELL SUGIMURA
YJS:ss

SB-1532

Submitted on: 2/7/2019 6:30:42 PM

Testimony for CPH on 2/11/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Randy L Prothero	Individual	Support	No

Comments:

Aloha Senators,

I am support of this bill. I think this a fantastic idea. I have volunteered at the Board of Realtors for several years as a Mediator and Ombudsman and see a large number of Landlord Tenant disputes. These are in most cases minor disputes. Having a court dedicated to them would do two things.

- 1) Free up other courts for more difficult cases.
- 2) Have them handled by someone who specializes in them. This should allow these cases to be resolved more efficiently, reducing court costs and backlog. Also it will give the participants the ability to get their disputes handled in a timely manner.

Thank you,

Randy L. Prothero

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February 8, 2019

Committee on Commerce, Consumer Protection and Health
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Re: SB1532 Relating to Landlord-Tenant Courts

Dear Representatives:

I am an attorney and practice landlord/tenant law. Generally, I represent landlords and file eviction matters for them. I have been doing this for over twenty years. I handle evictions in all of the judicial circuits of Hawaii. My clients collectively manage over 4,000 rental units on Oahu as well as units on Maui, Kauai, and Hawaii Island.

According to statistics from the Hawaii State Judiciary, in the Honolulu District Court approximately 1,700 eviction cases, both commercial and residential, were filed between July 1, 2017 to June 30, 2018 in the fiscal year 2017-2018. The number of summary possession cases filed in the entire state during that period is approximately 2,400. I filed approximately 300 of those.

I am writing **to oppose** SB1532 because there does not appear to be anything to be gained by moving the process from the District Court to a new division of the Circuit Court.

As an initial matter, it may be helpful for the committee to have an overview of the current laws and procedures that govern eviction matters in the State of Hawaii. Evictions in Hawaii will generally fall under one of two categories, summary possession or ejectment.

Summary possession matters involve landlord-tenant relationships that are governed by some type of contract or agreement between the parties. Ejectments are actions in which a party wishes to evict a person or persons that occupy a property without the consent of the owner. An action to evict a squatter, for instance, would be a common ejectment action.

In Hawaii, there are both residential and non-residential landlord-tenant relationships. All of these relationships are governed by HRS §666, which provides Hawaii's summary possession law. In other words, all landlord-tenant evictions occur pursuant to HRS §666, even residential evictions.

HRS §521 provides additional regulations for residential landlord-tenant relationships. However, if there is a breach of the agreement between a landlord and tenant, and an eviction follows, that eviction happens pursuant to HRS §666.

HRS §521 does not apply to commercial landlord-tenant relationship, nor does it apply to the following, which have been specifically exempt from the statute:

(1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, geriatric, educational, religious, or similar services;

(2) Residence in a structure directly controlled and managed by:

(A) The University of Hawaii or any other university or college in the State for housing its own students or faculty or residence in a structure erected on land leased from the university or college by a nonprofit corporation for the exclusive purpose of housing students or faculty of the college or university; or

(B) A private dorm management company that offers a minimum of fifty beds to students of any college, university, or other institution of higher education in the State;

(3) Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser;

(4) Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization;

(5) Transient occupancy on a day-to-day basis in a hotel or motel;

(6) Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon that employment or by a pensioner of the owner or landlord or occupancy for a period of up to four years subsequent thereto, pursuant to a plan for the transfer of the dwelling unit or the property of which it is a part to the occupant;

(7) A lease of improved residential land for a term of fifteen years or more, measured from the date of the commencement of the lease;

(8) Occupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner's rights;

(9) Occupancy by the seller of residential real property after the transfer of the seller's ownership rights;

(10) Occupancy in a homeless facility or any other program for the homeless authorized under part XVII of chapter 346;

(11) Residence or occupancy in a public housing project or complex directly controlled, owned, or managed by the Hawaii public housing authority pursuant to the federal low rent public housing program;

(12) Residence or occupancy in a transitional facility for abused family or household members; or

(13) Residence or occupancy in a structure or on a property directly controlled, owned, or managed by the Hawaii public housing authority.

Presently the District Court has exclusive jurisdiction under HRS §666 to determine issues of possession in residential and non-residential landlord-tenant disputes. It also has exclusive jurisdiction over ejectment actions. It has well-developed procedures for handling all aspects of landlord-tenant disputes, and has Judges who are extremely familiar with the law and well-trained staff to implement the Court's rulings. The District Court has continually worked towards making sure that all that come before it are treated fairly. They do what the law requires and usually do it quickly and efficiently.

Under the proposed legislation, a new Landlord-Tenant Court would be established as a division of the Circuit Court which shall have exclusive jurisdiction over all proceedings, including judicial review of administrative proceedings and proceedings for declaratory judgment arising under chapter 521.

As discussed above, not all evictions and not all landlord-tenant relationship are subject to HRS §521. Commercial landlord-tenant disputes, residential landlord-tenant disputes exempt from HRS §521 and ejectment actions would all still remain under the jurisdiction of the District Court. This legislation would, therefore, break up the handling of evictions and create a separate system based on whether the property is a residence or something else. This will raise jurisdictional issues that do not presently exist. For example, if a farmer rents farmland and also makes his home there, is the lease residential in nature or commercial? Perhaps it is both. Which court has jurisdiction?

Similarly, in an ejectment action, if a Defendant claims there was some type of agreement to allow them to reside at the premises and the matter is landlord-tenant in nature, which court would have jurisdiction?

In addition to raising new questions, it is unclear what problem this legislation is addressing and how it will solve it. If a new Circuit Court division was set up as proposed, it would need to follow the same laws relating to the Residential Landlord-Tenant Code that currently exist. Since the Judiciary developed the rules and procedures for the District Court, and will be required to do so for the Circuit Court, it is reasonable to expect that much of the same procedures will be adopted by the Judiciary for the new Circuit Court division. If the laws remain the same, and the procedures remain the same, it is completely reasonable to expect that the legal results – for residential landlord-tenant matters - will remain the same.

However, if you change courts you will face the practical loss of the District Court's expertise, experience and institutional knowledge in handling residential landlord tenant cases since those tasks will be handed off to new people.

You will also force every residential landlord-tenant case to be heard at the Circuit Court instead of the many District Court divisions, which are located at or near the residence of the tenant. This will likely mean that an eviction taking place for a property on the North Shore of Oahu will be heard in Downtown Honolulu or Kapolei, instead of Wahiawa, or that a tenant on Moloka'i will need to appear in Wailuku. This will make life easier for the landlords' attorneys, but likely no one else.

There may also be some confusion as to which courthouse parties should appear, as some evictions will continue to be heard in the District Courts.

Adopting this legislation will cause great disruption to an existing system that is well-established and which delivers substantial justice to the people of Hawaii. It will create new and interesting legal issues for the Courts to ponder, but will not change any of the substantive law involving landlord-tenant relationships and does not appear to solve any existing problem. The proposed change does not seem to have any advantage over the current system.

Very truly yours,

David W.H. Chee, Esq.