

ACT 305

S.B. NO. 2264

A Bill for an Act Relating to Services for the Indigent.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the civil legal needs of poor persons in Hawaii are not being met due to inadequate funding of organizations that provide these services. It was estimated that, in 1991, less than ten per cent of Hawaii's low-income households with civil legal problems received legal assistance for those problems. Federal funding for indigent legal services was cut by twenty-five per cent in the early 1980s and was not restored thereafter. Although state general funds have been a major support for these programs since the federal cuts were made, this funding has not been sufficient to compensate for the federal cuts, nor has it been sufficient to ensure that organizations without federal funding can provide adequate service to the indigent community. As a result of inadequate funding, organizations providing legal services to indigents have been forced to freeze or cut staff, pay below-market salaries, and forego needed equipment purchases and other capital improvements. These budget restrictions have made it impossible for existing indigent legal services programs to meet the needs of all poor persons in Hawaii.

The legislature further finds that indigent persons should have equal access to justice, and that it is in the public interest to provide adequate funding to ensure this access. Because of their poverty, indigent persons are particularly vulnerable. Without adequate legal representation, indigent persons may lose their homes, jobs, medical coverage, welfare benefits, and social security benefits. Without adequate legal representation, indigent persons may:

- (1) Be forced to remain in abusive marriages;
- (2) Be discriminated against due to race, gender, age, or disability;
- (3) Be victimized by consumer fraud;
- (4) Lose ancestral family lands; or
- (5) Be unable to make adequate plans for their estates or for medical care in their last illnesses.

Without adequate legal representation, indigent persons often have no voice in public policy-making that affects their most vital interests.

The legislature further finds that the persons who pay the filing fee surcharge under this Act will benefit from it because unrepresented indigent litigants create inefficiencies in the judicial system. Most nonattorney litigants do not understand court procedures. As a result, judges and court staff must spend more time educating

these litigants than they must spend with litigants who have counsel. Moreover, although many disputes can be settled without resort to the judicial system, an unrepresented party is less likely to negotiate successfully with an opponent than is a party represented by counsel. The proceeds of this filing fee surcharge will be used to enable indigents to secure attorneys, and these attorneys will help to expedite their clients' cases, thus minimizing a substantial burden on the courts and enabling the courts to hear and decide the claims of nonindigent litigants more efficiently.

The purpose of this Act is to provide an additional source of funding for legal services to indigent persons, through the creation of a new court filing fee surcharge on civil cases.

SECTION 2. Chapter 607, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§607- Surcharge for indigent legal services. (a) In addition to the costs and fees prescribed in section 607-5, any person in a civil action in the circuit court who is required to pay an initial filing fee shall pay an additional surcharge of \$25 at the time of the person's initial filing. Initial filings for which this surcharge shall be assessed include:

- (1) Complaints, petitions, interventions, applications for special proceedings, and answers containing one or more cross-claims or counter-claims; and
- (2) Third party complaints, but shall not include post-judgment civil process.

(b) In addition to the costs and fees prescribed in section 607-4, any person who files an action for summary possession in the district court shall pay an additional surcharge of \$10 at the time of the person's initial filing. Any person in a civil action in the supreme court who is required to pay an initial filing fee also shall pay an additional surcharge of \$25 at the time of the person's filing. No surcharge shall be assessed against:

- (1) Small claims cases;
- (2) Petitions for temporary restraining orders;
- (3) Petitions for protective orders;
- (4) Any party who has received the court's permission to proceed in forma pauperis; or
- (5) Any party proceeding on behalf of the county or State.

Surcharges subject to this section shall be limited to one payment per party.

(c) There is established a special fund to be known as the indigent legal assistance fund. The funds raised under subsections (a) and (b) shall be transmitted to the administrative director of the courts and deposited in the indigent legal assistance fund. All unobligated or unexpended funds as of June 30, 1999, shall revert to the general fund. Upon final disbursement of the remaining balances to the general fund on June 30, 1999, the indigent legal assistance fund shall be terminated.

(d) This fund shall be administered by the office of community services, or pursuant to contract with the office of community services. If the fund is administered pursuant to contract with the office of community services, the contractor shall be a nonprofit organization that has at least one year's experience in administering grants to providers of civil legal services for indigents. The fund administrator shall receive not more than five per cent of the total amount collected under this section each fiscal year as compensation for performing the duties under this section.

(e) The fund administrator shall annually accept applications for grants funded from the indigent legal assistance fund from organizations that provide civil legal assistance to indigent persons. Applications shall be received no later than April 15 for assistance in the following fiscal year. The fund administrator shall

determine the specific information required of the applicant and, at a minimum, shall require applicants to provide information concerning:

- (1) Their governance, staffing, and total annual budget;
- (2) Other funding sources;
- (3) Geographic area of service;
- (4) The number of clients served in the previous fiscal year; and
- (5) The nature and scope of services provided.

(f) To be eligible for assistance from the indigent legal assistance fund, an applicant shall meet all of the following standards at the time of application:

- (1) Be either a nonprofit organization incorporated and operated exclusively in Hawaii and determined by the Internal Revenue Service to be exempt from federal income tax or a program operated exclusively in Hawaii by an accredited nonprofit law school, which organization or program provides as its primary purpose and function civil legal services to indigent persons;
- (2) Have a governing board whose members have no material conflict of interest and serve without compensation;
- (3) Have bylaws or policies that describe the manner in which business is conducted, and policies that relate to nepotism and management of potential conflict of interest situations;
- (4) Have at least one year's experience in providing civil legal services to indigents;
- (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments;
- (6) Agree not to charge client fees for services that are funded in any part by a grant from the indigent legal assistance fund, except that token payments for costs and expenses shall not be considered fees;
- (7) Agree to use any grant received under this section exclusively to provide civil legal services to indigent persons; and
- (8) Have in place sound financial management systems, a client grievance procedure, a method of ensuring the quality of service provided, and a policy that provides that no person may interfere with any attorneys funded in whole or in part by this section in carrying out their professional responsibilities to their clients, as established by the Hawaii rules of professional conduct.

(g) Funds shall be distributed on a pro rata basis to organizations that meet the criteria in subsection (f), based upon the portion of their total budget expended in the prior year for civil legal services to indigent persons as compared to the combined total expended in the prior year for legal services by all qualifying organizations applying for funding. An applicant that provides services other than civil legal services to indigent persons may establish its proportionate entitlement to funds based upon financial statements which strictly segregate that portion of the organization's expenditures in the prior year which were devoted exclusively to the provision of civil legal services for indigents.

(h) As used in this section, unless the context otherwise requires:

"Civil legal services" means direct legal services provided by attorneys or by attorney-supervised staff to clients in civil matters, including judicial and administrative advocacy related to the civil legal problems of indigents.

"Indigent person" means:

- (1) Any individual whose income is not greater than one hundred twenty-five per cent of the official poverty line established by the Secretary of Health and Human Services under the Community Services Block Grant Act, 42 U.S.C. section 9902;

- (2) Any individual who is eligible for free services under the Older Americans Act or Developmentally Disabled Act; or
- (3) Any organization or client group whose purpose is to further the interests of indigent persons and which is at least fifty per cent composed of persons who meet the requirements of paragraph (1) or (2).''

SECTION 3. The commission on access to justice shall review the filing fee surcharge program created by this Act to determine whether it is meeting the civil legal needs of indigent persons and shall present its findings and recommendations to the legislature no later than January 1, 1998.

SECTION 4. The auditor shall conduct a management audit of the Legal Aid Society of Hawaii and shall issue its findings and, based on those findings, shall make a recommendation to the legislature no later than April 30, 1997, as to whether the Legal Aid Society of Hawaii should continue to receive funds from the indigent legal assistance fund.

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 1996, and shall be repealed on June 30, 1999.

(Approved July 3, 1996.)

Note

- 1. Edited pursuant to HRS §23G-16.5.