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HAWAII**

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To: House Committee on Finance
From: Moya Gray, Executive Director
RE: Testimony In Support of H.B. 625 Relating To Surcharges For
Indigent Legal Services

Hearing: February 27, 2008, 4:00 PM

Chair Oshiro, Vice Chair Lee and members of the Committee, thank you for this opportunity to testify in support of H.B. 625, relating to surcharges for indigent legal services.

I am Moya Gray, Executive Director of Volunteer Legal Services Hawaii. Through the generosity of our volunteer lawyers, we provide legal services to clients throughout the State of Hawaii. I also serve as a Commissioner on The Access to Justice Commission and as a member of the Consortium of Hawaii Legal Service Providers, many of whom have submitted testimony.

The Commission's predecessor, the Access to Justice Hui, found in its groundbreaking 2007 report, that **only 1 in 5 low and moderate income residents of Hawaii have their serious legal needs met because the legal services providers lack adequate funding and attorneys.**

This bill proposes that the surcharge be increased to help sustain the work of Hawaii's legal service providers and that the distribution formula be changed to be more equitable. The current surcharges have not been changed in over 13 years.

Should this proposal become law the increased surcharges will only offset the **very significant losses of income from the Interest on Lawyers Trust Accounts (IOLTA) which is administered through the Judiciary.** This loss of income is tied directly to the very low federal interest rate. The drop in the federal interest rate, while intended to help credit flow again, has only aggravated a very difficult situation for poor folks.

Increased charges will be paid for by the court users, initially by plaintiffs and in those cases in which plaintiffs win the plaintiff will likely pass the charges on to the defendant. However, the bill retains very significant exemptions from the surcharge for those individuals who file small claims cases, for temporary restraining orders, for protective orders, for indigent clients who have received permission to proceed in forma pauperis and the government.

As you know these funds are collected by the Judiciary and administered under contract with the Hawaii Justice Foundation. The Hawaii Justice Foundation distributes these funds based upon the statutory formula. The current distribution formula provides more funds to the largest of the all the service providers, in fact 50% currently goes to the largest service provider whereas less than 4% goes to the smallest agency. This bill proposes to change the distribution formula so that 30% of the entire fund will be split evenly among **qualified** legal service providers and that the remaining 70% will be distributed pro rata based upon actual expenditures.

In order to qualify for such revenues each applicant to the fund must meet statutory requirements which the Hawaii Justice Foundation ensures and accounting for such revenues is provided through this process. The ILAF Program has procedural safeguards to ensure accuracy and accountability. All successful applicants are strictly monitored by the Hawaii Justice Foundation. Quarterly reports and a yearly summary report are required of each organization, and these are reviewed by the Hawaii Justice Foundation.

Finally, we would support an amendment to the bill to set off the distribution under the proposed formula to July 2010, thereby maintaining the current one year lag in the distribution of the increased surcharge.

This bill will improve the ability of the large, medium and small legal services providers to provide much needed legal services to the poor, the disabled, the homeless, the abused and the most vulnerable of all of us. For that reason, Volunteer Legal Services Hawaii supports this bill and we respectfully ask that you pass this bill.

Thank you.



HAWAII DISABILITY RIGHTS CENTER

900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: info@hawaiiidisabilityrights.org Website: www.hawaiiidisabilityrights.org

TESTIMONY TO THE TWENTY-FIFTH STATE LEGISLATURE, 2009 SESSION

To: House Committee on Finance

From: Hawaii Disability Rights Center

Re: House Bill 625
Relating to Surcharges For Indigent Legal Services

Hearing: February 27 2009 4:00 PM
Conference Room 308 , State Capitol

Members of the Committee on Finance:

Thank you for the opportunity to provide testimony supporting House Bill 625, Relating to Surcharges For Indigent Legal Services.

We are the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We support this bill because it will provide increased funds to organizations that serve a vital interest in our state. We are a member of the Access to Justice Hui and are well aware of the civil legal needs and barriers to low and moderate income people in Hawaii. As a member, we are supportive of the recommendations which came from a report which was done to increase access to justice in Hawaii. An increase in the surcharge on filing fees is a reasonable means to provide critical funding to already under funded legal services programs. For those reasons we support this bill.

Thank you for the opportunity to provide testimony in support of this bill.

**TESTIMONY IN SUPPORT, REQUESTING AMENDMENTS OF
HB625 - RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES**

February 27, 2009 at 4:00 p.m.

The Legal Aid Society of Hawaii hereby provides testimony to the House Committee on Finance on HB625 – Relating to Legal Service, in strong support of the bill, but requesting amendments.

In November 2007, the Access to Justice Hui released “Achieving Access to Justice for Hawai'i's People,” a two-part report that included The Community Wide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai'i by 2010 and The 2007 Assessment of Civil Legal needs and Barriers of Low- and Moderate-Income People in Hawai'i. The Assessment found that one out of every five low- and moderate-income residents in Hawai'i seeking legal services is unable to receive the assistance that they need and that one in three who seek assistance from legal service providers cannot be helped.

This bill is aimed to increase funding for legal services. Specifically, it would:

- Increase the surcharge from \$25 to \$65 in Circuit Court and Court of Appeal filings and increase it from \$10 to \$35 in District Court filings.
- Expand the surcharge in District Court filings from just summary possession to all cases, including collection cases.
- Continue to exempt: small claims cases, petitions for restraining orders, petitions for temporary restraining orders, cases in which the petitioner is proceeding in forma pauperis and all state and county filings.
- Adjust the distribution formula by providing an equal share of 30% of the collection to each legal services entity eligible to receiving funding. The remaining 70% would continue to be distributed pro rata based on the portion of their budget spent on direct legal services to indigent clients.

Amendment to Delay Effective Date of Distribution Formula

We are requesting an amendment to delay the effective date for the new distribution formula in order to ensure that the new distribution only becomes effective upon the realization of an increased indigent legal assistance fund. The current language of the bill would make the distribution formula effective immediately adversely affecting larger providers like Legal Aid. It is our belief that the new distribution formula should take effect only upon an overall increase in the indigent legal assistance fund. Proposed language is included with our testimony and is highlighted.

Increase the Surcharge

This bill could potentially triple the funds available for indigent civil legal services by increasing the surcharge on initial court filing fees in civil actions. Currently, approximately \$320,000 in generated funds is shared by seven legal service agencies.

This increase is especially needed in light of recent interest rate cuts. Funding provided through the Interest on Lawyer Trust Accounts is expected to be 1/8 of the amount currently distributed. Any increase in the surcharge will help off-set this decrease.

In this time of economic recession, core services, like those provided by Legal Aid are fundamental to the safety net. Our services help those in domestic violence situations, those who needed access to public assistance, those who are subject to predatory lending practices, those who are vulnerable due to disability and those who need representation in this complex legal system.

Expansion of Surcharge in District Court

Since the start of the indigent legal assistance surcharge, assumpsit cases have been exempt from this surcharge. These cases represent the bulk of civil cases handled in district court and in FY07-08, of the 22,405 civil actions filed in district court, 13,267 or (55.69%) were assumpsit cases. This represents over 13,000 filings where collection agencies and others are not paying their fair share to the indigent legal assistance fund.

Members of the collection bar have argued that it is unfair that their cases are being subject to this surcharge as they donate funds to legal service agencies and do pro bono work. However, isn't it just as unfair that for over thirteen years, they have not paid the surcharge?

On-Going Exemption from Surcharge

The current bill would not effect current exemptions for state and county government filings, temporary restraining order, and restraining order initial filings. It would also maintain current exemptions for those proceeding in forma pauperis thereby not increasing the fees for those who can least afford it.

Distribution Formula

Under this bill the distribution formula would change to provide an equal base of funding for all legal service providers. This base would be 30% of all funds from the fund while the remaining 70% would be reflective of the actual services provided by the particular legal service provider. This formula along with an increase in funding and the inclusion of District Court assumpsit and tort cases, is the best solution to ensure that current providers do not suffer decreases and that increases to the fund are equally distributed to the providers.

I ask for your support of this bill to bring much needed services to families and individuals who face the loss of a critical basic need, such as housing, family stability and safety, income, and protection from fraud and abuse.

Thank you for this opportunity to testify.

Sincerely,

Nalani Fujimori
Interim Executive Director

Report Title:

Surcharge for Indigent Legal Services

Description:

Increases the initial filing fee for civil actions.

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009

H.B. NO. 625
Proposed
HD1

STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that in the 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People of Hawai'i, four out of five low- and moderate-income residents did not have their legal needs met and that legal service providers are only able to assist one in three who contact them for assistance.

The legislature also finds that in order to increase the delivery of legal service, more funding is necessary and can be generated by increasing the surcharge for indigent legal services, as recommended by the Access to Justice Hui, in its Community Wide Action Plan: Ten Steps to Increase Access to Justice in Hawai'i by 2010.

The legislature further finds that the Hawaii Consortium of Legal Services Providers has been working diligently together to strengthen and increase outreach and services to low-income residents, and that each unique legal service provider requires a certain minimum amount of funding to meet basic expenses necessary to operate the respective non-profit organization or program. Therefore, the purpose of this Act is to change the allocation formula so that thirty per cent of all funds distributed shall be provided equally to all organizations or programs that meet the qualifications for receipt of the funds, in addition to a seventy per cent distribution of all funds pro rata under the current formula.

SECTION 2. Section 607-5.7(a) and (b), Hawaii Revised Statutes, is amended as follows:

~~[1. By amending subsections (a) and (b) to read:]~~

"(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~~] \$65 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~~] in a civil action in the district court who is required to pay an initial filing fee shall pay an additional surcharge of [~~\$10~~] \$35 at the time of the person's initial filing. Any person in a civil action in the [~~supreme court~~] courts of appeal who is required to pay an initial filing fee also shall pay an additional surcharge of [~~\$25~~] \$65 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."

SECTION 3. Section 607-5.7(g), Hawaii Revised

Statutes, is amended as follows:

[2. By amending subsection (g) to read:]

"(g) Funds shall be distributed as follows:

(1) General distribution. Seventy per cent of all 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.

(2) Supplemental distribution. For organizations that apply for and receive funding under subsection (f), above, whose total budget expended in the prior year for civil legal

services to indigent persons exceeds \$100,000,
thirty per cent of all funds shall be distributed
equally to all such organizations."

SECTION [~~3~~]4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION [~~4~~]5. This Act shall take effect on July 1, 2009, except for Section 3 which shall take effect on July 1, 2010.

INTRODUCED BY: _____

HAWAII JUSTICE FOUNDATION

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E-Mail: [hjff@hawaii.rr.com](mailto:hjf@hawaii.rr.com)

February 26, 2009

TESTIMONY FROM: Robert J. LeClair, Executive Director, Hawaii Justice Foundation

TO: Committee on Finance, House of Representatives

HEARING DATE/TIME: Friday, February 27, 2009, 4:00 p.m. Conf. Room 308

MEASURE NUMBER: TESTIMONY IN SUPPORT OF
HB 625, HD1, RELATING TO SURCHARGE FOR
INDIGENT LEGAL SERVICES, Amending HRS Section 607-5.7

SUBMITTED BY WEB: <http://www.capitol.hawaii.gov/emailtestimony/>

The Hawaii Justice Foundation (HJF) requests the Committee on Finance to approve HB 625, HD1, including provision of \$35 as the surcharge fee on District Court cases and \$65 as the surcharge fee on Circuit and higher Court cases. HJF supports HB 625 HD1, which amends HRS Section 607-5.7 to provide: 1) a minor change in the allocation formula under the statute; and 2) additional surcharge fees on various court filings in our Hawaii State Court system under the “Indigent Legal Assistance Fund” (“ILAF”) set forth in HRS Section 607-5.7.

HJF distributes funds from a variety of sources to help increase access to justice for Hawaii’s people. HJF does not provide direct client services, but HJF’s funding activities provide HJF with a perspective on the seriousness of the unmet civil legal needs in the Islands. For several years, HJF has worked in cooperation with the Hawaii State Judiciary to manage the ILAF Program. ILAF has been operating smoothly, with excellent cooperation from the low-income legal service providers, the Hawaii State Judiciary, and the Hawaii Justice Foundation. **The Hawaii Justice Foundation is confident that the proposed amendments to the ILAF statute can be integrated without any difficulty into the ongoing successful ILAF Program.**

HJF’s income from the IOLTA funds has plummeted with the decrease in interest rates, and the proposed ILAF amendment is needed to offset some of this decrease. HJF receives funds from the Interest on Attorney Trust Accounts (IOLTA) Program under Rule 11 of the Rules of the Hawaii Supreme Court. Recent economic events have resulted in a serious decline of interest rates, and HJF’s interest under the IOLTA program is 1/8th of what it was as recently as September, 2008. This means that HJF’s ability to fund legal service providers under the IOLTA Program is virtually non-existent under current interest rates. It is essential that the proposed ILAF amendment be approved to fill this serious revenue decline. Even with the requested ILAF proposed amendment amounts, the additional funds will not be sufficient to replace IOLTA income under more “typical” federal funds target rates of 2.5% and higher.

The current recipients of funds under HRS Section 607-5.7 unanimously support the provisions of HB 625. These recipients have met with HJF to rework the current ILAF allocation formula to provide the changes as expressed in HB 625. All of these recipients face serious economic challenges to their continued ability to meet legal needs of our low-income population. We are all painfully aware of the current national and local economic conditions. Legal needs of people are higher than ever, due to these economic conditions. Low-income legal service providers face potential cuts in governmental funding sources and reduced contributions from private donations. This makes it critical that HB 625 be approved to provide additional funding from surcharges on various court filings.

Court filing fees, even with the proposed surcharge increase, constitute only a small percentage of the total cost of litigation. Existing exemptions for small claims cases, TROs, protective orders, *in forma pauperis* cases, and County and State governmental filings will remain in effect under HB 625. All court litigation is already heavily "government subsidized," since filing fees do not begin to cover the costs of the State of Hawaii personnel involved in our Courts. HB 625 will substantially increase funds available through ILAF for distribution to qualifying low-income legal service providers. The net effect to Hawaii's people from HB 625 will be extremely beneficial.

Some Hawaii attorneys from the Collection Section of the Hawaii State Bar Association and their debt collection clients have raised objections to any additional surcharges on filing fees. However, the reality is that HB 625 will not result in people being unable to file cases in our judicial system. The Hawaii State Bar Association Board of Directors on December 20, 2007 endorsed the 10 Steps by 2010 included in the Community Wide Action Plan. Part of Step 2 of those 10 Steps included seeking additional funding for the ILAF program. It is quite common that one segment of the Hawaii State Bar Association will favor one viewpoint while other segments have opposing views. It is of course understandable that the collection attorneys are pressing for the financial interests of their clients, but it is essential for the Hawaii State Legislature to take the view of what is in the best interests of Hawaii's people. If the interests of the clients of the collection attorneys are weighed against the needs of those who will be helped by HB 625, it is clear that the surcharge is an essential part of the collective efforts to provide justice to all. For more than a decade, other groups using the court system have paid a surcharge on court filing fees to help meet civil legal service needs. The debt collection agencies are heavy users of court resources, and it is fair that the ILAF program be expanded to require that these debt collection agencies participate in contributing to ILAF.

HB 625 provides a significant boost to the funds available for meeting civil legal services needs. The Community Wide Action Plan, with its 10 Steps by 2010, studied the unmet civil legal needs in the Islands. Step 2 of the 10 Steps by 2010 requests increased funding for low-income legal service providers, and HB 625 will provide needed additional funds.

An additional benefit from increasing funding to the low-income legal service providers relates to increased efficiency in the courts by helping with providing legal advice and other needed services to the numerous *pro se* ("by self") litigants in Hawaii's various courts. District Courts and Family Courts have seen a virtual explosion of cases where people are unrepresented by counsel. The Hawaii State Judiciary has made valiant efforts to assist these litigants through information kiosks and other programs. However, people representing

themselves face two fundamental difficulties. First, they are unfamiliar with court procedures and forms. Second, litigants of any economic level are emotionally involved in their case, and this makes it very difficult to resolve the case without outside assistance. HB 625 will provide additional funds to our legal service providers, who in turn will be able to give greater information, advice, and sometimes direct representation to litigants. **This will assist our Courts in processing cases in a more efficient and effective manner.**

Your favorable approval of HB 625 HD1 is essential. Passage of this bill will be a major step toward efforts to achieve access to justice for all.

Hawaii Immigrant Justice Center

(Formerly known as Na Loio)

Serving Hawaii's Immigrant Families and Children

February 26, 2009

TO : Committee on Finance, House of Representatives

TESTIMONY FROM: Robin H. Kobayashi, Executive Director
Hawaii Immigrant Justice Center f/k/a Na Loio

MEASURE NUMBER: TESTIMONY IN SUPOPT OF HB 625, HD 1, RELATING
TO SURCHARGE FOR INDIGENT LEGAL SERVICES,
Amending HRS Section 607-5.7

The Hawai'i Immigrant Justice Center ("the Justice Center") f/k/a Na Loio asks the Committee on Finance to **approve HB 625, HD 1**, including the provision to increase District Court surcharge fees to \$35 and Circuit courts and appellate courts surcharge fees to \$65.

I. HB 325, HD 1 Will Expand the Surcharge To More Cases But Will Not Tax the Needy.

HB 625, HD 1 proposes to expand a filing fee surcharge from summary possession cases in District Court, which is the current arrangement, to all cases. However, certain exceptions will be made for those who are poor or need restraining orders. For instance, individuals who proceed *in forma pauperis*, thereby cannot afford to pay filing fees, will not be required to meet the surcharge attached to filing fees. Similarly, individuals who proceed in small claims court, file for restraining orders, or file for temporary restraining orders are exempted from paying the surcharge. Even those who must pay the filing fee do so only once in any case.

II. HB 625, HD 1 Will Not Increase Funding For Legal Service Providers, But Only Maintain the Status Quo, Even Though Demand For Services Is Rising.

Only 1 in every 5 impoverished or moderate-income individuals had their civil needs met. Legal service providers are so overwhelmed by lack of resources that they are able to help only 1 in every 3 individuals according to the Access to Justice Hui Statewide Assessment in November 2007.

HB 325, HD1 is especially crucial at this time to continue funding for legal service providers. Most legal service providers receive funding through the surcharge proposed in HB 625, HD1 through the Indigent Legal Assistance Fund ("ILAF"), but also through the Hawai'i Justice Foundation under the Interest on Lawyer Trust Accounts ("IOLTA")

Program. The IOLTA Program builds interest on unearned fees held in trust accounts for attorneys on behalf of their clients. The income generated from interest accrued has fallen dramatically with the drop in interest rates. In fact, the IOLTA Program receives only 1/8 the amount of funds it received prior to December 15, 2008.

This means that even if HB 325, HD 1 is enacted, which will raise funds available through ILAF, legal service providers will see an almost proportional **drop in funds** from the IOLTA Program. The result of which will be that funding for legal service providers remains, at best, status quo. Because legal service providers are also seeing a drop in funding from other sources, HB 325, HD 1 is especially crucial for the survival of our legal service providers.

III. Collection Attorneys And Agencies Should Not Be Exempted.

Currently, collection attorneys and agencies are exempted from paying the filing fee surcharge in District Court. However, they are the heaviest users of District Court. In fiscal year 2008, 55.69% or 12,477 of all cases filed in District Court were assumpsit cases. These assumpsit cases do not benefit the victimized or needy; rather, the current system of exempting collection attorneys and agencies rob funds badly needed to help the greater good. There should be no special exemption for those collecting on a debt.

Please approve HB 625, HD1. Doing so is crucial to maintaining legal services for all clients of legal service providers, including the impoverished, disabled, abused, victimized immigrants, Native Hawaiians, and indigent elderly.



Domestic Violence Action Center

Formerly the *Domestic Violence Clearinghouse and Legal Hotline*

PO Box 3198 • Honolulu, Hawaii 96801 • Ph:808/534-0040 • Fax:808/531-7228

TO: Chair Marcus Oshiro
Vice Chair Marilyn B. Lee
Members of the Committee

FR: Nanci Kreidman, M.A.
Chief Executive Officer

RE: H.B. 625

Aloha. Please accept this testimony in support of H.B. 625. The Indigent Legal Assistance Fund, modeled initially after strategies across the country to support the crucial work of public interest providers of legal services, is key to sustain our community's programs.

The filing fee surcharge which is assessed at the time of court filing has not increased for ten years. The cost of delivering services, by each of the small corporations endeavoring to meet community needs, has increased exponentially. It is our expectation that demand will increase.

Although we do not rely exclusively on the funds collected through the ILAF, it is a funding source that is not reliant on general funds or state appropriations. The legal service providers maintain a close working relationship in an effort to examine community needs, best practices, and make a meaningful difference to our low income communities. This is evidenced by our collective participation in the Access to Justice Commission and the Hawaii Consortium of Legal Services Providers.

There is no way we can, in actuality, meet the needs of our low income community, but it would be devastating to suffer any setbacks to the progress we have seen in the creative collaborative work done on their behalf.

Thank you for inviting community comment on this important measure. We encourage your favorable action on H.B. 625.

Access to Justice Commission
c/o Hawaii State Bar Association
1132 Bishop Street, Suite 906
Honolulu, Hawaii 96813

February 26, 2009

Attn: House Committee on Finance
Hearing Date: Friday, February 27, 2009
Time: 4:00 p.m.

HB 625 - Relating to Surcharge for Indigent Legal Services

Dear Chair Oshiro, Vice-Chair Lee, and Members of the House Committee on Finance:

I am writing on behalf of the Access to Justice Commission (the "Commission"), which was created by Rule 21 of the Rules of the Supreme Court of Hawaii on May 1, 2008. The Commission was established with the purpose to substantially increase access to justice in civil legal matters for low- and moderate-income residents of Hawaii ("low income Hawaii residents"), including increasing and stabilizing long-term public and private funding and resources for delivery of civil legal services to low-income Hawaii residents.

The Commission was created in response to the 2007 Assessment of Civil Legal needs and Barriers of Low- and Moderate-Income People of Hawaii, which found that four out of five low income Hawaii residents do not have their legal needs met and that legal service providers are only able to assist one in three persons who contact them for assistance. The Commission recognizes that in order to increase delivery of legal services to low income Hawaii residents, more funding is essential to assist the legal service providers. One such potential source of increased funding has been identified as the Indigent Legal Assistance Fee.

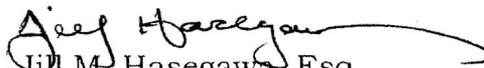
The Commission supports additional surcharge fees on various court filings in our Hawaii State Court system under the "Indigent Legal Assistance Fund" ("ILAF") set forth in HRS Section 607-5. In its present form, HB 625 would provide sorely needed funds for meeting civil legal services needs, especially during a time when the legal need and number of low income Hawaii residents are increasing. In addition, many legal service providers rely on IOLTA (Interest on Lawyer Trust Account) revenue, which is disbursed by the Hawaii Justice Foundation, to meet operating expenses. The IOLTA funds are derived from the interest on unearned fees in trust accounts held by attorneys on behalf of clients. However, with the sharp decline in interest rates, the IOLTA program apparently will receive only one-eighth the amount of interest received prior to December 15, 2008. This drop in revenue makes the ILAF

program even more vital to the continued operations of low-income legal service providers.

HB 625 would also amend the allocation formula for the distribution of funds to provide that in addition to the current 70% pro rata distribution of funds under the formula, the remaining 30% of funds would be distributed equally to all organizations or programs meeting the qualifications for receipt of funds. The amendment would assure that each unique legal service provider would have the necessary resources to meet its basic operational expenses.

Attached is a copy of "Resolution of Support by the Hawaii Access to Justice Commission for the Proposed Amendment of the Indigent Legal Assistance Fund (ILAF), H.R.S. Section(s) 607-5 and 607-5.7", which was adopted by the Commission at its meeting on January 26, 2009. I am also attaching a copy of Rule 21 of the Rules of the Supreme Court of Hawaii, which established the Commission and sets forth the Commission's mission and composition, and a copy of the Commission's membership.

On behalf of the Commission, support of the passage of HB 625, which embodies the Commission's intent is urged to assure that the legal needs of our communities' indigent will be addressed. Thank you.


Jill M. Hasegawa, Esq.
Vice-Chair
Access to Justice Commission

Enclosure(s)

RESOLUTION OF SUPPORT BY THE HAWAI'I ACCESS TO JUSTICE
COMMISSION FOR THE PROPOSED AMENDMENT OF THE INDIGENT
LEGAL ASSISTANCE FUND (ILAF), H.R.S. SECTION(S) 607-5 and 607-5.7

WHEREAS, the Hawai'i Access to Justice Commission (the Commission) was created by Rule 21 of the Rules of the Supreme Court of Hawai'i to assist with making the delivery of civil legal services more available, widespread, and affordable for all of Hawaii's people,

WHEREAS, the 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People of Hawai'i found that four out of five low- and moderate-income residents do not have their legal needs met and that legal service providers are only able to assist one in three who contact them for assistance,

WHEREAS, the Commission finds that in order to increase the delivery of legal services, more funding is necessary and can be generated by increasing the surcharge for indigent legal services, as recommended by the Access to Justice Hui, in its Community Wide Action Plan: Ten Steps to Increase Access to Justice in Hawai'i by 2010,

WHEREAS, the Hawai'i Consortium of Legal Services Providers has been working diligently together to strengthen and increase outreach and services to low income residents.

WHEREAS, each unique legal service provider requires a certain minimum amount of funding to meet basic expenses necessary to operate the respective non-profit organization or program,

NOW, THEREFORE, the Commission fully supports the proposed amendment increasing the filing fees surcharges under the Indigent Legal Assistance Fund (ILAF) program created under H.R.S. Sections 607-5 and 607-5.7. The Commission further finds it appropriate to change the allocation formula so that 30% of all funds distributed shall be provided equally to all organizations or programs that meet the qualifications for receipt of the funds in addition to a 70% distribution of all funds pro rata under the current formula.

The Commission urges the Hawai'i State Legislature and the Governor of Hawai'i to approve the proposed amendment of the ILAF statute, to help meet the civil legal needs of the people of Hawai'i.

DATED: Honolulu, Hawai'i, January 27, 2009

Jill Hasegawa
JILL HASEGAWA Vice-Chair

Rules of the Supreme Court of the State of Hawaii

Rule 21. ACCESS TO JUSTICE COMMISSION.

(a) **Creation.** There shall be a commission to be known as the Hawai'i Access to Justice Commission (the "Commission").

(b) **Purpose.** The purpose of the Commission shall be to substantially increase access to justice in civil legal matters for low- and moderate-income (together "low-income") residents of Hawai'i. To accomplish this, the Commission shall, along with such other actions as in its discretion it deems appropriate, endeavor to:

(1) Provide ongoing leadership and to oversee efforts to expand and improve delivery of high quality civil legal services to low-income people in Hawai'i.

(2) Develop and implement initiatives designed to expand access to civil justice in Hawai'i.

(3) Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low-income Hawai'i residents.

(4) Increase and stabilize long-term public and private funding and resources for delivery of civil legal services to low-income Hawai'i residents.

(5) Maximize the efficient use of available resources by facilitating efforts to improve collaboration and coordination among civil legal services providers.

(6) Increase pro bono contributions by Hawai'i attorneys through such things as rule changes, recruitment campaigns, increased judicial involvement, and increased recognition for contributors.

(7) Reduce barriers to the civil justice system by developing resources to overcome language, cultural, and other barriers and by giving input on existing and proposed laws, court rules, regulations, procedures, and policies that may affect meaningful access to justice for low-income Hawai'i residents.

(8) Encourage lawyers, judges, government officials, and other public and private leaders in Hawai'i to take a leadership role in expanding access to civil justice.

(9) Educate governmental leaders and the public about the importance of equal access to justice and of the problems low-income people in Hawai'i face in gaining access to the civil justice system through informational briefings, communication campaigns, statewide conferences (including an annual summit to report on and consider the progress of efforts to increase access to justice), testimony at hearings, and other means, and increase awareness of low-income people's legal rights and where they can go when legal assistance is needed.

(10) Increase effective utilization of paralegals and other non-lawyers in the delivery of civil legal services to low-income Hawai'i residents.

(11) Increase support for self-represented litigants, such as through self-help centers at the courts.

(12) Develop initiatives designed to enhance recruitment and retention of attorneys who work for nonprofit civil legal services providers in Hawai'i and to encourage law students to consider, when licensed, the practice of poverty law in Hawai'i.

(13) Encourage the formation of a broad coalition of groups and individuals to address ways to alleviate poverty in Hawai'i.

(14) Conduct a statewide assessment of unmet civil legal needs among low-income people in Hawai'i five years after the Commission holds its first meeting to measure the progress being made to increase access to justice.

(c) **Membership.**

(1) **NUMBER OF MEMBERS AND TERMS OF OFFICE.** The Commission shall consist of 22 members, with staggered terms. The initial members (other than the chair and the four members appointed under subsection (3)(vii) below) shall draw their terms by lot so that five members shall serve a term ending on December 31 of the year of appointment, six shall serve a term ending on December 31 of the year following the year of appointment, and six shall serve a term ending on December 31 of the second year following the year of appointment. All subsequent appointments of such members (other than appointments to fill vacancies as described in subsection (2)) shall be for terms of three years or until his or her successor is appointed. Such members shall not be appointed to serve more than two successive terms, but an initial term of any member that is less than 30 months shall be disregarded for purposes of this limitation. Governmental representatives appointed under subsection (3)(vii) shall rotate by their terms of office or at the will of the appointing authority. Terms shall run on a calendar year basis, except that a member shall continue to serve until his or her successor is duly appointed.

(2) **VACANCIES.** A vacancy in the office of a member shall occur upon (i) the written resignation, death or permanent incapacity of such member, (ii) the determination by the applicable appointing authority that there has been a termination of a position held by such member that was the basis of such member's appointment to the Commission and that the appointing authority wishes to replace such member with a new appointee, or (iii) for such other cause as shall be specified in the bylaws, rules or written procedures of the Commission. Upon the occurrence of a vacancy, the appropriate appointing authority shall appoint a successor member to serve the remainder of the term of the vacating member.

(3) **APPOINTMENT OF MEMBERS.** Members of the Commission shall be appointed as follows:

(i) The Chief Justice of the Supreme Court shall appoint five members to the Commission as follows: (A) the Chief Justice or an Associate Justice of the Supreme Court and (B) four other judges who the Chief Justice shall endeavor to appoint from different judicial circuits and to include at least one circuit court judge, one family court judge, and one district court judge.

(ii) The Hawai'i State Bar Association (the "HSBA") shall appoint four members to the Commission as follows: (A) two representatives of the HSBA, who may be officers, directors or the Executive Director of the HSBA; and (B) two active HSBA

members who have demonstrated a commitment to and familiarity with access to justice issues in Hawai'i and who are not currently serving as an HSBA officer or director, one of whom shall be from a law firm of ten or more attorneys. At least one of the attorneys appointed by the HSBA shall be from an Island other than O'ahu.

(iii) The Hawai'i Consortium of Legal Services Providers (the "Consortium") shall appoint six members to the Commission as follows: (A) four representatives of Hawai'i nonprofit civil legal services providers; and (B) in consultation with the Chief Justice of the Supreme Court, two non-attorney public representatives not directly associated with any such provider who have demonstrated a commitment to and familiarity with access to justice issues in Hawai'i. The initial members of the Consortium shall be the American Civil Liberties Union Hawai'i, Domestic Violence Action Center, Hawai'i Disability Rights Center, Legal Aid Society of Hawai'i, Mediation Center of the Pacific, Na Loio, Native Hawaiian Legal Corporation, University of Hawai'i Elder Law Program of the Richardson School of Law, and Volunteer Legal Services Hawai'i. Other civil legal services providers may be added to, and members may resign or be removed from, the Consortium as determined by the vote of a majority of the then members of the Consortium.

(iv) The Hawai'i Justice Foundation (the "Foundation") shall appoint one member to the Commission, who shall be an officer, director or the Executive Director of the Foundation.

(v) The Dean of the University of Hawai'i William S. Richardson School of Law shall appoint one member to the Commission, who may be the Dean.

(vi) The Hawai'i Paralegal Association shall appoint one member to the Commission, who shall be a paralegal with a demonstrated interest in equal access to justice.

(vii) The Governor of Hawai'i, the Attorney General of Hawai'i, the President of the Hawai'i Senate, and the Speaker of the Hawai'i House of Representatives shall each be entitled to serve on the Commission or to appoint one member, provided that any appointee of the Governor shall be drawn from the Executive branch of government, any appointee of the Attorney General shall be a Deputy Attorney General, any appointee of the President of the Senate shall be a state Senator, and any appointee of the Speaker of the House shall be a state Representative.

(4) **COMMUNITY WIDE REPRESENTATION.** In making appointments, the appointing authorities shall take into account the effect of their appointments on achieving a Commission composed of members who are residents of different islands in Hawai'i and who reflect the diverse ethnic, economic, urban, and rural communities that exist in the Hawaiian Islands.

(d) Officers. The Chief Justice of the Supreme Court shall designate from among the members of the Commission a chair and a vice chair of the Commission. The chair, who shall be the Chief Justice or the Chief Justice's designee, shall serve an initial term of one year and thereafter shall be designated at such times as the Chief Justice shall determine. The vice chair shall be designated for a term of two years, provided that such term shall expire at any earlier date on which the term of the vice chair as a member of the Commission shall expire or be terminated. The Commission shall select such other officers as it deems necessary and useful. Terms of all officers shall run on a calendar year basis, except that an officer shall continue in office until his or her successor is duly designated or selected. Designations or selections to fill officer-vacancies shall be for the remainder of the term of the vacating officer.

(e) Bylaws, Rules and Procedures. The Commission may adopt bylaws, rules or operational procedures as it deems necessary for and consistent with Sections (c), (d) and (f) through (j) of this rule.

(f) Committees and Task Forces. The Commission may create such committees and task forces, and appoint such committee and task force members, as it deems necessary or desirable to facilitate the work of the Commission. The Commission shall designate a chair of the committee or task force. The Commission may appoint to the committee or task force persons who are not members of the Commission. The role of committees and task forces shall be advisory, and they shall make such recommendations to the Commission as the members of such committees and task forces deem appropriate. Meetings of committees and task forces shall be at the call of the chair or at the call of at least 20% of the members of the committee or task force. A quorum consisting of not less than one-third of the then-appointed and serving members of a committee or task force shall be necessary at a duly called meeting to adopt a recommendation to the Commission.

(g) Meetings, Quorum, and Voting. The Commission shall meet at least quarterly and shall have additional meetings at the call of either the chair or at least seven members upon at least ten days prior notice. A quorum consisting of not less than one-third of the members of the Commission then in office shall be necessary to transact business and make decisions at a meeting of the Commission. On any votes taken at a meeting of the Commission, the chair shall vote only in the event of a tie.

(h) Staff and Funding Support. It is anticipated that staff and funding support for the Commission will be provided by a combination of private and public sources of financial and in-kind support.

(i) Recommendations. Any recommendations by the Commission shall be made in the name of the Commission only, and not in the name of the individual members or the institutions or entities they represent.

(j) Reports and Review.

(1) **ANNUAL REPORTS.** The Commission shall file with the Supreme Court an annual report describing its activities during the prior 12-month period and deliver a copy of the report to the Executive Director of the HSBA.

(2) **THREE-YEAR REVIEW.** Three years after the Commission holds its first meeting, the Supreme Court shall evaluate the progress made by the Commission toward the goal of substantially increasing access to justice in civil legal matters for low-income Hawai'i residents.

(Added April 24, 2008, effective May 1, 2008.)

ACCESS TO JUSTICE COMMISSION

(as of February 1, 2009)

	Name	Appointed By	Term Ends
1.	Hon. Simeon R. Acoba, Jr. (CHAIR)	Chief Justice	
2.	Jill M. Hasegawa, Esq. (VICE-CHAIR)	Hawaii State Bar Association	12/31/11
3.	Hon. Daniel R. Foley	Chief Justice	12/31/09
4.	Hon. Greg K. Nakamura	Chief Justice	12/31/09
5.	Hon. Simone C. Polak	Chief Justice	12/31/11
6.	Hon. Calvin K. Murashige	Chief Justice	12/31/09
7.	Rai Saint Chu, Esq.	Hawaii State Bar Association	12/31/10
8.	B. Martin Luna, Esq.	Hawaii State Bar Association	12/31/11
9.	Shannon L. Wack, Esq.	Hawaii State Bar Association	12/31/10
10.	Moya Gray, Esq. (Volunteer Legal Services of Hawaii)	Hawaii Consortium of Legal Services Providers	12/31/11
11.	Nalani Fujimori (Legal Aid Society of Hawaii)	Hawaii Consortium of Legal Services Providers	12/31/09
12.	Mahealani Wendt (Native Hawaiian Legal Corporation)	Hawaii Consortium of Legal Services Providers	12/31/10
13.	Nanci Kreidman (Domestic Violence Action Center)	Hawaii Consortium of Legal Services Providers	12/31/10
14.	Patti J. Lyons	Hawaii Consortium of Legal Services Providers	12/31/09
15.	Puanani Burgess	Hawaii Consortium of Legal Services Providers	12/31/11
16.	Hon. Richard P. Guy (Ret.)	Hawaii Justice Foundation	12/31/09
17.	Dean Aviam Soifer	William S. Richardson School of Law	12/31/10
18.	R. Elton Johnson, III.	Hawaii Paralegal Association	12/31/10
19.	Lillian Koller (Department of Human Services)	Governor	n/a
20.	MaryAnne Magnier, Esq.	Governor	n/a
21.	Hon. Mike Gabbard	Senate President	n/a
22.	Hon. Blake Oshiro	House Speaker	n/a



COLLECTION AGENCY OF HAWAII, INC.
HAWAII'S FULLY COMPUTERIZED COLLECTION SERVICE



118 Kukuau Street Hilo, Hawaii 96720 Phone (808) 935-7442 Fax (808) 961-6732

February 26, 2009

RE: HB 625, RELATING TO SURCHARGE FOR INDIGENT LEGAL SVCS
HEARING: FRIDAY, 2/27/09
4:00 PM, ROOM 308 – HOUSE CONFERENCE ROOM

POSITION: DO NOT SUPPORT

While the intention of this bill is noble, to help indigent citizens pay for legal services that they are unable to otherwise afford, increasing the filing fees for both District and Circuit Courts is not the right and fair way to go about achieving that goal.

Increasing the filing fees, clearly targets selected small businesses and industries. This is in effect a tax on small business.

As a collection agency, our services are sought by many businesses from all sectors of Hawaii's economy. Our ability to provide recoveries has a direct and positive impact on the cash flow for these Hawaii businesses. Increasing District and Circuit Court filing fees will have a direct and negative impact on the cash flow for these small Hawaii businesses.

During these difficult times for small businesses throughout the State of Hawaii, it is important to keep operating costs down while business owners seek to increase efficiencies.

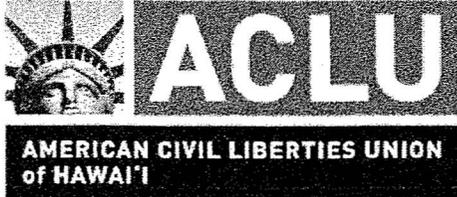
I respectfully and strongly urge you to not approve HB 625.

Please feel free to contact me should you have any questions or concerns at (808) 532-8388.

Respectfully submitted,

COLLECTION AGENCY OF HAWAII, INC.

Jane Pang, Vice President



VIA WEB

Committee: Committee on Finance
Hearing Date/Time: Friday, February 27, 2009, 4:00 p.m.
Place: State Capitol, Conference Room 308
Re: *Testimony of the ACLU of Hawaii in Support of H.B. 625, Relating to Surcharge for Indigent Legal Services*

Dear Chair Oshiro and Members of the Committee on Finance:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of H.B.625, which seeks to increase the initial filing fee for civil actions.

In its 2007 report, the Access to Justice Hui found that **only 1 in 5 low- and moderate-income residents of Hawaii have their serious legal needs met because legal services providers lack adequate funding and attorneys**. H.B. 625 will increase the ability of legal service organizations to provide essential services to our most vulnerable populations and help to ensure that more people in Hawaii are able to secure access to justice.

The ACLU of Hawaii was one of the organizations represented in the Access to Justice Hui, and is currently serving as part of the Consortium of Hawaii Legal Service Providers. Please note that the ACLU of Hawaii does not accept government funds and therefore is not a direct beneficiary of the surcharge in H.B. 625.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

PACIFIC COLLECTIONS

(COLLECTION AGENCY)

a division of DOCTORS BUSINESS BUREAU OF HAWAII

1616 Liliha Street, 3rd Floor / Honolulu, Hawaii 96817 / Phone (808) 532-8388



AMERICAN COLLECTORS

2210-10107 member

February 26, 2009

RE: HB 625, RELATING TO SURCHARGE FOR INDIGENT LEGAL SVCS
HEARING: FRIDAY, 2/27/09
4:00 PM, ROOM 308 – HOUSE CONFERENCE ROOM

POSITION: DO NOT SUPPORT

While the intention of this bill is noble, to help indigent citizens pay for legal services that they are unable to otherwise afford, increasing the filing fees for both District and Circuit Courts is not the right and fair way to go about achieving that goal.

Increasing the filing fees, clearly targets selected small businesses and industries. This is in effect a tax on small business.

As a collection agency, our services are sought by many businesses from all sectors of Hawaii's economy. Our ability to provide recoveries has a direct and positive impact on the cash flow for these Hawaii businesses. Increasing District and Circuit Court filing fees will have a direct and negative impact on the cash flow for these small Hawaii businesses.

During these difficult times for small businesses throughout the State of Hawaii, it is important to keep operating costs down while business owners seek to increase efficiencies.

I respectfully and strongly urge you to not approve HB 625.

Please feel free to contact me should you have any questions or concerns at (808) 532-8388.

Respectfully submitted,

PACIFIC COLLECTIONS

A handwritten signature in cursive script, appearing to read "Franklin".

Franklin President

BENDET, FIDELL, SAKAI & LEE

EDWARD R. BENDET
JAY M. FIDELL
WESLEY H. SAKAI, JR.
DENIS LEE
YURIKO J. SUGIMURA
KYLE T. SAKUMOTO
THOMAS R. SYLVESTER*
LORI L. Y. HIJII

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yjs@bfsi.com

OF COUNSEL
KEITH S. AGENGA

*Also licensed in California

February 25, 2009

Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice-Chair
House Finance Committee

Re: Testimony in Opposition to HB625
Relating to Surcharge for Indigent Legal Services
Hearing: February 27, 2009, Agenda #7 @ 4 p.m., Conf. Rm. 308

Dear Chair Oshiro, Vice-Chair Lee and Members of the Committee

My name is Jane Sugimura and I am a partner in this firm and my practice includes civil litigation, including landlord-tenant matters and collections. Over the many years that I have been licensed to practice law, I have volunteered for Legal Aid projects, pro bono projects for the Hawaii State Bar Association and make annual donations to both the Legal Aid Society and to the ACLU Foundation.

I oppose this bill because it taxes access to the civil courts of our State. It unfairly targets my business clients who are already burdened with costs to litigate their claims. In these dire economic times, my clients are faced with tenants who do not pay their rent and customers who do not pay their bills for goods and services. By litigating their claims, they are not guaranteed recovery of the amounts that are owed to them.

The surcharge for a district court action would increase more than 300% because the current surcharge is \$10 and the proposed surcharge would be \$35. Many of my landlord clients file suit just to get their property back (for non-payment of rent) and because the tenants either "run away", file for bankruptcy or are judgment-proof, we never proceed to get a judgment because it would take more legal fees to do that and the client makes a business decision not to pursue collection. Its already burdensome for my clients to file

HB625 Re Surcharge for Indigent Legal Services
House Finance Committee, Agenda #7, 2/27/09
February 25, 2009
Page 2

lawsuits and now if this bill passes, they will have to pay these additional surcharges as well.

This bill does not provide any reasonable guidelines for recipients of funds collected by the courts. Distribution is based on the budget of the respective indigent service provider and there is no accountability or oversight requirement for the use of these funds. While providing legal services to the indigent is an important social need, this bill is not the proper vehicle to achieve that goal.

Thank you for allowing me to testify on this bill

Very truly yours,

Jane Sugimura
Of BENDET, FIDELL, SAKAI & LEE

YJS:ss

COLIN K. KURATA
Counselor at Law
American Savings Bank Tower
1001 Bishop Street, Suite 2850
Honolulu, Hawaii 96813
Phone: (808) 524-2900
Fax: (808) 524-2922
Email: colin@kurata-law.com
February 26, 2009

To: Chairman Marcus Oshiro and Members of the House Finance Committee
From: Colin K. Kurata, Counselor at Law, Member of Collections and Business
Law Section of HSBA
Re: HB 625 Relating to Surcharge for Indigent Legal Services
Hearing: 4 p.m., February 27, 2009

Esteemed Members of the House Finance Committee:

While I applaud the intent of HB 625 to find a viable vehicle to fund indigent legal services, I oppose the surcharge for the following reasons:

1. The target group for surcharge is too small. To promote access to the courts in a society, should it be the primary burden of those who do or must resort to the courts for their redress? It seems logical that users should pay for the public service being used. This rationale applies to parks and recreation facilities, and highways and airports as examples. But how many citizens actually used the courts? Certainly a very small sector is being targeted to fund access for all.
2. The surcharge adversely affects many unintended users. The committee should also consider who would be surcharged. What percentage sought money judgment, but recovered nothing. What percentage simply seek to retain custody of a minor child against an aggressive spouse. So, not only is a special sector targeted, but all users are subject to this tax. A company may be able to write this off, but not individuals who are the primary users.
3. In short, I would want to know who would be paying and how much would be paid. If the burden is upon too few, then it is an unfair tax. If it is the equivalent of a tax, then allow a write-off or call it a tax. And if it is a tax, then it is so selective as to raise equal protection questions.

Should you wish to discuss this matter with either myself or other members of the referenced HSBA Sections, please call the undersigned.

Respectfully submitted,

COLIN K. KURATA

**LAW OFFICE OF ALLAN Y. OKUBO
P. O. Box 10225
HONOLULU, HAWAII 96816-0225
TELEPHONE: (808) 735-6582**

February 24, 2009

HONORABLE MEMBERS OF THE HOUSE OF REPRESENTATIVES,
COMMITTEE CHAIR MARCUS R. OSHIRO, AND VICE CHAIR MARILYN B. LEE

WRITTEN TESTIMONY FROM: ALLAN Y. OKUBO, ESQ.

DATE OF HEARING: FEBRUARY 27, 2009

TIME: 4:00pm

AGENDA NO.: AGENDA NO. 7

RE: HB 625 (HSCR80)

TO: COMMITTEE ON FINANCE

NUMBER OF COPIES REQUESTED: Two (2) copies to Room 306
in the State Capitol

I am an attorney licensed to practice in the State of Hawaii and practice mainly in the District Courts of this State, and handle mostly debt collection matters for various companies and collection agencies.

I strongly oppose HB 625 as it is not right to benefit one group by penalizing another group. As an attorney representing mainly people or companies who are owed money by debtors the gross misperception of the general public is that by getting a Judgment in Court will automatically get you your money and all of your expenses repaid immediately. This is far from reality. The majority of the cases are not collectible for various reasons such as the inability to serve the debtor the Complaint, the inability of the debtor to pay, or the refusal of the debtor to pay. Approximately only 10-15 cases out of every 100 are fully collected, thus most filing parties have what is referred to as a "PAPER JUDGMENT".

Presently the filing fee in District Court is \$120.00 which is a substantial amount considering the fact that it once was only \$25.00. As the fees were increased for computer updating and other court maintenance issues the amount of filings declined greatly. As the public grew to accept the \$120.00 filing fee gradually the filings has increased to over 11,000 filings in 2008. To subject the Plaintiff to a surcharge of (\$35.00) in addition to the \$120.00 filing fee is tantamount to forcing them to not seek legal relief again because of the expense involved, and the likelihood of not being able to recover the monies from the debtor. In this tough economic time this may force some companies to close as they do not have the funds to file against those owing them money.

As Legislators you have the responsibility to look after ALL people of this State and not just a small group such as those seeking the windfall to be generated by this Bill. Hawaii is struggling economically and business' are struggling as well, so to single them out to bear the burden of the beneficiaries of this Bill is unjust. These agencies receive funding from the State and while it may not be enough for them they shouldn't get more than their share by circumventing the system via this Bill, which in essence is a "TAX" on only a specific segment of the population. This is DISCRIMINATION at it's worst. The life blood of this State's economy is through the sweat and efforts of the very people or business' this Bill is targeting.....THE SMALL BUSINESS-PEOPLE. Why punish them for keeping the State's economy going?

I respectfully ask that this Bill (HB 625) not be passed and that the economic impact the small business-people in this State have on our economy be recognized and that they be praised, not razed.

Sincerely,



ALLAN Y. OKUBO

Araki-Regan & Associates, LLC

1823 Wells Street, Suite 2A
Wailuku, HI 96793
(808) 244-6042
Fax: (808) 249-2872

Lynn A.S. Araki-Regan
Stephen E. Pike

Christopher R. Dong
Gerrick L.H. Goo
Of Counsel

February 25, 2009

COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

DATE: Friday, February 27, 2009
TIME: 4:00 p.m.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

Re: **HB 625, RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES.**

POSITION: NOT IN SUPPORT

Dear Finance Committee Chair, Vice Chair & Members:

The current filing fees in District and Circuit Courts are \$120.00 and \$275.00 respectively. To increase the indigent fee from \$10.00 to \$35.00 in District Court and from \$25.00 to \$65.00 in Circuit Court will place undue burden on those utilizing the court system to resolve legal disputes.

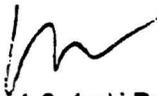
As an attorney who represents her clients in many debt collection and landlord-tenant related cases, I know full well that such fees will be passed onto the Defendant who can least afford to pay such additional costs. Given the current state of our economy, now is surely not the time to increase these fees and burden the already struggling defendant/ debtor/tenant.

I humbly urge you to not support this legislation at this time.

Please feel free to contact me should you have any questions or concerns at (808) 244-6042 or via my email at lynn@araki-regan.com.

Thank you in advance for your consideration on this very important issue.

Sincerely yours,



Lynn A.S. Araki-Regan
Attorney at Law

MARK T. SHKLOV
Attorney at Law
A Limited Liability Law Company

American Savings Bank Tower
1001 Bishop Street, Suite 988
Honolulu, Hawaii 96813

Telephone: (808) 585-8858
Fax: (808) 599-4198
E-mail: mark@shklovlaw.com

TESTIMONY OF MARK T. SHKLOV

BEFORE THE COMMITTEE ON FINANCE
February 27, 2009 AT 4:00 P.M.

HOUSE BILL 625
SURCHARGE FOR INDIGENT LEGAL SERVICES

Chairperson Oshiro and Members of the Committee:

My name is Mark T. Shklov and I oppose House Bill 625 (Surcharge of Indigent Legal Services).

I am an attorney and I have been licensed to practice law in the State of Hawaii since 1976. I worked for Legal Aid as a volunteer law student while in law school. I have supported the ACLU in time and money. I have contributed money to Volunteer Legal Services Hawaii through the Hawaii State Bar Association. I have represented indigent persons and I have provided legal services through Volunteer Legal Services Hawaii ("VLSH"). I have provided many hours of pro bono professional legal services.

Organizations such as Legal Aid, the ACLU, and VLSH deserve support but this Bill is not the proper vehicle because it places added burdens on business and ordinary citizens and because it taxes access to the Courts and because it is vague and ambiguous in its application and consequences. There is no rational or reasonable relationship between the class of persons who are taxed by this Bill and the provision of indigent legal services. There is no reasonable justification for this increased additional and expanded surcharge.

I represent many individuals and small businesses in Hawaii who file lawsuits. It is unfair and unreasonable to burden these persons and businesses, who support the economy and employ citizens of our State, with another tax and penalty on what should be their right of access to the Courts of the State of Hawaii.

This Bill, which sets an increased additional and expanded surcharge of \$35.00 at District Court and an increased additional surcharge of \$65.00 at Circuit Court for civil case filings and \$65.00 for filing appeals, was obviously drafted to benefit certain indigent service providers who have the largest budgets and spend the most money. This is not the best way to allocate scarce financial resources.

The Bill does not indicate how much money will be generated by this surcharge or the demographics of those who will be required to pay it. Nor does the Bill adequately describe who will receive the funds, how the funds will be used or why. Nor is there any justification for rewarding, as this Bill does, those indigent service providers with the largest budgets. The Bill does not provide for any accountability by those who receive the funds or for how it is used. The Bill rewards spending, not results.

Legal services for the poor are needed. Indigent legal services should be supported. However, an increased additional and expanded surcharge on the right to Court access is not the way to do it. This Bill assures that the wealthiest will preserve their rights and hurts the middle class. This Bill does not guarantee proper legal services for the indigent. It proposes a tax on certain citizens for the support of certain private companies. This issue should be resolved through participation of Hawaii lawyers, the Hawaii State Bar Association and the Hawaii Supreme Court. The Legislature and the indigent legal service providers should work with the Supreme Court and the Bar to find a fair and just solution.

Thank you for this opportunity to express my view.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Mark T. Shklov', written in dark ink.

Mark T. Shklov

TO: The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair and
The Honorable members of the House Committee on Finance

FROM: Naomi C. Fujimoto

DATE: Friday, February 27, 2009, 4:00 p.m. in State Capitol Conference Room 308

RE: H.B. 625 Relating to Surcharge for Indigent Legal Services

Thank you for this opportunity to testify in strong support of H.B. 625. My name is Naomi C. Fujimoto and I am a member of the Board of Directors of the Legal Aid Society of Hawaii.

We are all aware that current tough economic times have resulted in an increase in our poverty stricken population. Unfortunately, this has also resulted in a greater portion of our population who are unable to obtain needed legal assistance. The 2007 Access to Justice Hui statewide assessment of civil legal needs of low and moderate income residents of Hawaii found that only 1 in 5 low and moderate income residents of Hawaii have their legal needs met and legal service providers are able to assist only 1 in 3 people seeking assistance. The cost of this high level of unmet civil legal needs is reflected not just in a dollar amount to specific individuals but also in increased adverse effects to and instability in our families and communities.

During these very difficult times, we need to rely even more on public-private partnerships to address the fundamental needs of our community. The bill provides for a modest increase in the existing surcharge for funding indigent legal services and an expansion of the surcharge to apply to all district court cases while continuing to exempt small claims cases, petitions for restraining orders, petition for temporary restraining orders, cases in which the petitioner is proceeding in forma pauperis and all state and county filings. The surcharge would fund a number of different providers of civil legal services to low income residents. Current recipients of the funds are the Domestic Violence Action Center, Hawaii Disability Rights Center, Legal Aid Society of Hawaii, Hawaii Immigrant Justice Center (formerly known as Na Loio Immigrant Rights and Public Interest Legal Center, Native Hawaiian Legal Corporation, University of Hawaii Elder Law Program and Volunteer Legal Services Hawaii.

I believe that the measures provided in this bill will significantly increase the ability of civil legal service providers such as the Legal Aid Society of Hawaii to provide much needed assistance to our clients. Therefore, I respectfully urge you to support and pass H.B. 625. Thank you.

**THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009**

**COMMITTEE ON FINANCE
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair**

Hearing Date: Friday, February 27, 2009
Time: 4:00 p.m.
Place: Conference Room 308
State Capitol

By: Tracey Wiltgen, Executive Director
The Mediation Center of the Pacific, Inc.

Bill No. and Title: HB625, Relating to Increasing the Court Filing Fee
Surcharge for Indigent Legal Service Providers

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR AND THE HONORABLE
MARILYN B. LEE, VICE CHAIR AND MEMBERS OF THE COMMITTEE

My name is Tracey Wiltgen, Executive Director of The Mediation Center of the Pacific (the Mediation Center). I am writing on behalf of the Mediation Center to respectfully request the Committee on Finance to **approve HB 625, to increase the surcharge fee to \$35 on District Court cases and \$65 on Circuit and higher Court cases.** The Mediation Center supports HB 625 which amends HRS Section 605-7 to provide: 1) a minor change in the allocation formula under the statute; and 2) additional surcharge fees on various court filings in our Hawaii State Court system under the "Indigent Legal Assistance Fund" ("ILAF") set forth in HRS Section 605-7.

The Mediation Center is a 501(c)(3) not for profit corporation whose mission is to provide high quality mediation and dispute resolution services that are affordable and accessible. The Mediation Center is the only dispute resolution option for individuals in the low-income population on Oahu to assist them in resolving disputes quickly and creatively.

To increase access to justice for Hawaii's people, the Mediation Center works closely with other low-income legal service providers including Domestic Violence Action Center, Hawai'i Disability Rights Center, Legal Aid Society of Hawai'i, Hawai'i Immigrant Justice Center (fka Na Loio Immigrant Rights and Public Interest Legal Center), Native Hawaiian Legal Corporation, University of Hawai'i Elder Law Program, and Volunteer Legal Services Hawai'i. Through these partnerships, more people are assisted in a variety of critical areas such as landlord/tenant disputes, custody and visitation matters, and family conflicts involving teens or aging parents.

Successfully mediated agreements can mean the difference between being homeless and working out a payment plan to save a family home; losing precious time with one's children or developing a co-parenting plan with an ex-spouse; severing family ties or building relationships to support troubled teens or aging parents. These critical outcomes are the result of partnerships developed between the low-income legal service providers. **Support of the proposed amendments to the ILAF statute will reinforce the partnerships between the providers. More importantly, the amendments will ensure that the civil legal needs of Hawaii's growing low-income population are addressed.**

A primary example of the commitment of the legal service providers to work closely together to better serve Hawaii's needy in these difficult economic times is the language in the bill itself to amend the allocations formula. Together, the current recipients of funds under HRS Section 605-7 and other providers such as the Mediation Center brainstormed and unanimously agreed on the provisions of HB 625. To reach consensus, the providers discussed community needs, working relationships and the needs of the respective organizations to effectively provide services to the community. Through those discussions, everyone agreed on the proposed changes to the ILAF allocation formula. The positive working relationship and ability of the providers to agree on a potentially sensitive issue of funding is significant in light of the current financial crisis. Rather than compete for limited funds, all providers recognized the importance of working closely together to share resources and strengths to meet the growing need for services. **Approval of HB 625 will provide additional funding for the legal service providers and support the positive working relationship that is needed to increase access to Justice in Hawai'i.**

Court filing fees, even with the proposed surcharge increase, constitute only a small percentage of the total cost of litigation. The increase does however substantially increase funds for qualifying low-income service providers. Existing exemptions for small claims cases, TROs, protective orders, *in forma pauperis* cases, and County and State governmental filings will remain in effect under HB 625. Thus, **approval of HB625 will have a negligible impact on court users while providing a significant benefit to individuals in the low-income population through increased access to justice.**

Your favorable approval of HB 625 is essential to enable legal services providers to meet the civil legal needs of the growing low income population in Hawai'i. The bill will raise additional funds to provide legal assistance to families and individuals who face the loss of a critical basic need, such as housing, family stability and safety, income, and protection from fraud and abuse. Passage of this bill will be a major step toward efforts to achieve access to justice for all.

Sincerely,

Tracey S. Wiltgen

Tracey S. Wiltgen
Executive Director

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 26, 2009 1:14 PM
To: FINTestimony
Cc: skaye@runbox.com
Subject: Testimony for HB625 on 2/27/2009 4:00:00 PM

Testimony for FIN 2/27/2009 4:00:00 PM HB625

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: sally kaye
Organization: Individual
Address: 511 Ilima Lana`i City, HI
Phone: 808/565-6276
E-mail: skaye@runbox.com
Submitted on: 2/26/2009

Comments:

TESTIMONY IN SUPPORT OF
HB625 - RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES

February 27, 2009 at 4:00 p.m., Room 308

Aloha from Lana`i, Members of the Finance Committee:

I am writing today to express my support for HB 625. The additional funding that would result from passage of this bill (by increasing the surcharge on initial court filing fees in civil actions) is urgently needed to help support civil legal services for those least able to afford legal assistance.

Achieving Access to Justice for Hawai`i's People: The 2007 Assessment of Civil Legal Needs and Barriers of Low and Moderate-Income People in Hawai`i, found that Hawai`i's lower-income population continues to increase relative to the full population and that an unacceptable level of unmet civil legal needs persists. For example, only one in five low and moderate-income Hawai`i residents has his or her legal needs met, and those providing legal services are able to help only one in three of those who contact them for assistance. This is unacceptable, and will likely persist or worsen if current funding levels remain static.

One of the recommendations issued by the Access to Justice Hui's report to address this dire situation was for the Legislature to increase funding for civil legal services by increasing the filing fee surcharge.

I began my legal career as a part time paralegal for the Legal Aid Society of Hawai`i here on Lana`i in the mid 1970's. Our island is still being served through the efforts of a single, part-time paralegal. This situation leads to many unmet civil legal needs and will not likely change without additional funding.

Thank you for this opportunity to testify.

Sally Kaye
Lana`i City, Hawai`i

LASH Board Member
808/565-6276

Dear Committee on Finance,

HB 625, RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES.

Date: Friday, February 27, 2009

Time: 4:00 p.m.

POSITION: NOT IN SUPPORT

There is no doubt that additional funding is needed for indigent legal services; however, we urge you to consider amending the proposed legislation currently under consideration.

In its current proposed form, HB 625 removes the portion of HRS 607-5.7 that limits the additional fees to summary possessions in district court. By allowing this change, all district court filings will be subject to the indigent fee that will go from \$0 for non-summary possession filings to an additional \$35.00 on top of the \$120.00 currently being paid. This will increase the total cost to file an action in district court to \$155.00

I urge you to consider returning the summary possession language to the proposed bill so as to limit these fees to **summary possession** filings in district court.

I humbly urge you to either amend this proposed legislation or not support it at this time.

Please feel free to contact me should you have any questions or concerns at (808) 244-2485 or via my email at keith.regan@creditassoc.com.

Best regards,


Keith A. Regan
President