



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Tuesday, February 15, 9:30 a.m.

State Capitol, Conference Room 016

By

Janice Yamada

Deputy Chief Court Administrator

Client Services Section

First Circuit Court

Bill No. and Title: Senate Bill No. 957, Relating to Family Court.

Purpose: Creates a citizen's family law advisory committee within the Judiciary.

Judiciary's Position:

The Judiciary respectfully opposes Senate Bill No. 957, which would create a citizen's family law advisory committee within the Judiciary, because the committee's functions and authority would not be appropriate for the judicial branch.

The doctrine of "separation of powers" is deeply ingrained in our democracy. The Legislature makes the laws, and the Judiciary interprets, applies, and enforces the laws. Unlike the executive and legislative agency boards covered by HRS Chapter 92, Judiciary boards and committees are generally concerned with administering policies, not creating policies. From time to time, policies involving the core functions of the judiciary may be the subject of a commission or a task force.

The Judiciary applies laws passed by the Legislature according to the constraints of the federal and state Constitutions, established case law, and court rules. These laws are applied according to the facts of each case.



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While the Legislature may create advisory committees to advise the Legislature about possible legislative acts and policies, these kinds of committees cannot serve the same role with the Judiciary, which decides individual court matters on the basis of evidence and law. The Family Court applies the Legislature's statutes and constitutional principles on a case-by-case basis and, in doing so, its decisions may be subject to review by the Intermediate Court of Appeals and the Supreme Court.

Among the authority granted to the proposed committee by Senate Bill No. 957, the committee would be empowered to conduct inquiries and studies, review legislation, administrative procedures, and proposal, and evaluate alternatives and make recommendations.

The Judiciary is concerned that although these enumerated functions may be well-intentioned, there is a distinct capacity for these committee functions to infringe on the Family Court's constitutionally mandated independence, by inserting extraneous considerations into the adjudicatory process, such as recommending specific dispositions for particular kinds of cases, or prioritizing Judiciary resources for specific types of participants.

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



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**TESTIMONY OF THE FAMILY LAW SECTION, HAWAII STATE
BAR ASSOCIATION, AGAINST SENATE BILL NO. 957,
RELATING TO FAMILY COURT**

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Conference Room 016, State Capitol
February 15, 2011, 9:30 a.m.

Good morning Senators:

My name is Steven L. Hartley and I am the Vice Chair/Chair Elect of the Family Law Section of the Hawaii State Bar Association. I submit this written testimony on behalf of the Family Law Section.

The Family Law Section is comprised of over one hundred attorneys who practice law in the Family Court. The majority of us handle all types of family law matters, including divorce, paternity, domestic violence and guardianship cases. As a Section, our testimony represents the views of our members.

In this regard, we oppose SB 957 as currently drafted for the following reasons:

1. Section 571(d)(2) provides for the inclusion of a representative on the Citizen's Family Law Advisory Committee from persons who are or were parties in a family court action, including self-represented individuals. We oppose this provision because Section 571(d)(1) already provides for the inclusion of a representative who is a community lawyer making Section 571(d)(2) unnecessary and cumulative.
2. In addition, including persons who are or were parties in a family court action on the committee will allow disgruntled court users to use the system for their own personal ends as opposed to serving the general public.
3. Moreover, including persons who are or were parties in a family court action on the committee will likely undermine the legislative intent of the Bill and create conflict for the Board by providing disgruntled family court participants with a back door forum to seek redress and reconsideration of issues that is not otherwise allowed under the existing rules.

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4. Finally, we are concerned with where the funding for the Committee will come from. The creation of this committee will most certainly cost the Family Court time and money that it simply doesn't have now, especially with the current furloughs in place.

Thank you for allowing us to present our testimony.

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Monday, February 14, 2011 10:50 AM
To: JDLEstimony
Subject: SB957 to be heard Tuesday, 02/15/11, at 9:30am in Room 016

LATE TESTIMONY

TO: Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair
Members of the Judiciary & Labor Committee

FROM: Dara Carlin, M.A.
Domestic Violence Survivor Advocate
881 Akiu Place
Kailua, HI 96734

DATE: February 15, 2011

RE: SUPPORT WITH SUGGESTION for SB957

Good Morning Senators and thank you for this opportunity to provide testimony on this measure.

The issue of sunshine in the Judiciary has been a recurrent theme year after year that everyone generally supports but nothing ever gets put into action. Considering the volume of complaints and reports that come before the legislature each year about issues and concerns in family court, a professional-citizen advisory/review board sounds like a win-win situation. In reading through this proposal, I would only have one suggestion:

It says that the Chief Justice will appoint all members, including those from the public sector; I think the Chief Justice's selection would be a great thing BUT a nomination or application process should be put into place for candidates prior to his appointment process otherwise I cannot see how he'll choose those professionals and citizens who'll be the absolute best for this committee. Just a suggestion...

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate

February 14, 2011

To: Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor

LATE TESTIMONY

From: Chris Lethem

Subject: Testimony **IN STRONG SUPPORT** of **SB957** which creates the
Citizen's Family Law Advisory Committee (CFLAC)

Hearing: February 15, 2011; 9:30 a.m.; Room 016, State Capitol

I must support SB957. The adversarial system for handling child custody matters is bad idea in the long history of bad ideas. Beyond that there is no mechanism for citizens to address the methodologies implemented by the family court system. A method by which the public can participate in Family Court matters and issues is desperately needed. The one group of people from any meaningful input regarding Family Court is the customers. The negative and destructive impact of the family court process can last years, and even generations. The impact is on the husbands and wives and always the children. This impact is emotional and financial. With the additional issues that civil unions will bring, an open transparent process for the citizens of Hawaii to participate in, is even more needed.

Hawaii's Judiciary must be concerned with the level of the publics' faith, trust and confidence in the family courts. The collaboration between the Judiciary and this CFLAC would be a tremendous step forward in addressing family court problems, filling unmet legal needs, removing barriers to justice and improving associated public faith, trust and confidence in the family courts.

Your consideration of these issues and support of this bill is very much appreciated!

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 14, 2011 1:01 PM
To: JDLTestimony
Cc: crslethem@gmail.com
Subject: Testimony for SB957 on 2/14/2011 9:15:00 AM

LATE TESTIMONY

Testimony for JDL 2/14/2011 9:15:00 AM SB957

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Chris Lethem
Organization: Individual
Address:
Phone:
E-mail: crslethem@gmail.com
Submitted on: 2/14/2011

Comments: