

ACT 180

S.B. NO. 1073

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 November 2007, the Access to Justice Hui released a report entitled: "Achieving Access to Justice for Hawai'i's People". Part of that report, "The 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People in Hawai'i", noted that 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 to increase the delivery of legal services, more funding is necessary. Additional funds could be generated by increasing the surcharge for indigent legal services, as recommended by another component of the above report, "The Community Wide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai'i by 2010".

The purpose of this Act is to implement the funding recommendation of the Access to Justice Hui by increasing the amount of the surcharges for indigent legal fees.

SECTION 2. Section 607-5.7, Hawaii Revised Statutes, is amended to read as follows:

“§607-5.7 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.] as follows:~~
 - (1) Effective January 1, 2012, \$50; and
 - (2) Effective January 1, 2014, \$65.

(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] at the time of the person's initial filing[-] as follows:

- (1) Effective January 1, 2012, \$25; and
- (2) Effective January 1, 2014, \$35.

(c) 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]~~ at the time of the person's filing[-] as follows:

- (1) Effective January 1, 2012, \$50; and
- (2) Effective January 1, 2014, \$65.

(d) Initial filings for which surcharges in this section 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.

(e) No surcharge in this section 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.

~~[(e)]~~ (f) There is established a special fund to be known as the indigent legal assistance fund. The funds raised under subsections ~~[(a) and (b)]~~ (a), (b), (c), and (d) shall be transmitted to the administrative director of the courts and deposited in the indigent legal assistance fund.

~~[(d)]~~ (g) This fund shall be administered by the administrative director of the courts, or pursuant to contract with the administrative director of the courts. If the fund is administered pursuant to contract with the administrative director of the courts, 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)]~~ (h) 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)]~~ (i) 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];~~ provided that the 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.

(j) The administrative director of the courts, or the contractor administering the fund pursuant to contract with the administrative director of the

courts, shall review, on a biennial basis, the indigent legal assistance fund to determine whether it is meeting the civil legal needs of indigent persons and shall report its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of the legislature in each even-numbered year beginning with the regular session of 2014.

~~[(g)]~~ (k) Funds shall be distributed on a pro rata basis to organizations that meet the criteria in subsection ~~[(f),]~~ (i), 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]~~ that strictly segregate ~~[that]~~ the portion of the organization's expenditures in the prior year ~~[which]~~ that were devoted exclusively to the provision of civil legal services for indigents.

~~[(h)]~~ (l) 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 pro bono, judicial, and administrative advocacy relating 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]~~ 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. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2012.

(Approved July 5, 2011.)