



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary

Representative Karl Rhoads, Chair

Representative Sharon E. Har, Vice Chair

Thursday, February 14, 2013, 2:00 p.m.

State Capitol, Conference Room 325

WRITTEN TESTIMONY ONLY

by

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Bill No. and Title: House Bill No. 1278, H.D. 1 Relating to Court Fees

Purpose: Increases by an unspecified amount various court service fees of the sheriff, police officers, and serving officers. Effective July 1, 2050 (HB 1278, HD1)

Judiciary's Position:

The Judiciary takes no position as to this bill's objective of increasing court service fees for various persons. We feel compelled, however, to submit testimony in light of inaccurate statements of law made in the Standing Committee Report for this bill (apparently taken from testimony that provided inaccurate information.)

Standing Committee Report No. 225 on HB No. 1278, H.D.1 states:

Your Committee notes that with the change in law last year to permit any person "approved by the court" to serve process, any person over 18 years of age and not a party to the lawsuit may serve process, which may present challenges for those requiring a service of process.



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This incorrect statement appears to have been generated from testimony submitted to the Committee that incorrectly states:

The law as to who could serve process in the State of Hawaii changed last year so that any person “approved by the court” could serve. The problem with that change is that the court never issued any directions or instructions as to who was “approved by the court” so for the lack of any specific instructions, Hawaii law already provided that any person over 18 years of age and who was not a party to the lawsuit could serve civil process.

We submit testimony so that this Committee does not rely upon inaccurate information in reviewing this bill. Act 142, enacted last year did not “permit any person ‘approved by the court’ to serve process.” That language is what is being requested through bills *this* year. (See SB 1182, HB 951). Act 142 allows service of garnishment orders, service and enforcement of writs of execution, attachment, possession and replevin and service and enforcement of orders to show cause under HRS Section 603-29 (collectively referred to as “writs”) to be served by “sheriff, or other person authorized by *the rules of court*.”

The problem with Act 142 is that the rules of court that were relied upon in Act 142 are not in fact applicable. Rules 4 of the Hawaii Rules of Civil Procedure, the District Court Rules of Civil Procedure, and the Family Court Rules of Civil Procedure apply only to the service of “complaint and summons” and do not relate at all to the service of writs.

Because writs are related to post-judgment activity, they are complicated, involved and potentially difficult processes. They involve physically taking possession of one’s personal property, or forcing removal of persons from property and other types of potentially time-consuming, drawn out and adversarial process. The Rules of Court were never intended to permit persons who simply meet the criteria of being over 18 and not a party to the lawsuit to be authorized to serve writs.

Standing Committee Report No. 225 encourages subsequent committees to “also consider the broader issue of who is qualified to serve civil process while contemplating fee increases.” We agree with this suggestion and support bills proposing to establish a working group to review the complicated issues concerning qualifications, training, regulation and certification. (HB 1280, SB 311).

We have concerns, however, that establishing a working group will not resolve the immediate issue at hand and that is the discontinuation by the Department of Public Safety of its long-standing practice of authorizing civil process servers, with the public being left with the mistaken idea from Act 142 that the Rules of Court permit civil process servers to be authorized



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to serve writs when that is simply not (and should not be) the case. That is an issue that needs immediate resolution.

Thank you for the opportunity to provide comments to correct this matter.