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## NEWS RELEASE

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### NEW COURT SURCHARGE ON SELECTED CIVIL CASES TO BENEFIT INDIGENT

On July 3, 1996, a new law will take effect which requires that the courts of the Hawai'i State Judiciary collect a surcharge, in addition to an initial filing fee, in certain civil cases. As stated in Senate Bill 2264 (see attached), relating to services for the indigent, "The purpose of the Act is to provide an additional source of funding for legal services to indigent persons, through the creation of a new court filing fee surcharge on civil cases." All funds collected will be deposited into an Indigent Legal Assistance Fund which will be administered by the Office of Community Services, Department of Labor and Industrial Relations.

Listed below are examples of those civil filings which will be subject to the additional surcharge:

#### Supreme Court - \$25.00 Surcharge

Filing of a Notice of Appeal (or Cross Appeal)  
 Original Proceedings (i.e. Writ of Mandamus, etc.)

#### Circuit Court - \$25.00 Surcharge

Civil Complaints  
 Applications for Special Proceedings  
 Petition for Probates

#### Family Court - \$25.00 Surcharge

(Note: Family Courts are Divisions of the Circuit Courts. Filing fees are collected by the Circuit Court Clerks.)

Complaints for Divorce, Separation or Annulment  
 Petitions for Adoption  
 Petitions for Guardianship of the Person  
 Other Miscellaneous Civil Proceedings

((more))

**District Court - \$10.00 Surcharge**

(Note: This is the only district court action subject to a surcharge.)  
Complaints for Summary Possession

Certain civil actions are specifically excluded from the surcharge, including petitions for temporary restraining orders, petitions for protective orders, and small claims cases.

For more information concerning Senate Bill 2264, 1996, and the filing of a civil case in either the Supreme Court, Circuit, Family or District Courts, please contact the Chief Court Administrator of the Court.

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# A BILL FOR AN ACT

RELATING TO SERVICES FOR THE INDIGENT.

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

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

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

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

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

19 The legislature further finds that the persons who pay the  
20 filing fee surcharge under this Act will benefit from it because  
21 unrepresented indigent litigants create inefficiencies in the  
22 judicial system. Most nonattorney litigants do not understand

1 court procedures. As a result, judges and court staff must spend  
2 more time educating these litigants than they must spend with  
3 litigants who have counsel. Moreover, although many disputes can  
4 be settled without resort to the judicial system, an  
5 unrepresented party is less likely to negotiate successfully with  
6 an opponent than is a party represented by counsel. The proceeds  
7 of this filing fee surcharge will be used to enable indigents to  
8 secure attorneys, and these attorneys will help to expedite their  
9 clients' cases, thus minimizing a substantial burden on the  
10 courts and enabling the courts to hear and decide the claims of  
11 nonindigent litigants more efficiently.

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

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

18 "§607- Surcharge for indigent legal services. (a) In  
19 addition to the costs and fees prescribed in section 607-5, any  
20 person in a civil action in the circuit court who is required to  
21 pay an initial filing fee shall pay an additional surcharge of  
22 \$25 at the time of the person's initial filing. Initial filings

1 for which this surcharge shall be assessed include:

2     (1) Complaints, petitions, interventions, applications for  
3             special proceedings, and answers containing one or more  
4             cross-claims or counter-claims; and

5     (2) Third party complaints, but shall not include post-  
6             judgment civil process.

7     (b) In addition to the costs and fees prescribed in section  
8 607-4, any person who files an action for summary possession in  
9 the district court shall pay an additional surcharge of \$10 at  
10 the time of the person's initial filing. Any person in a civil  
11 action in the supreme court who is required to pay an initial  
12 filing fee also shall pay an additional surcharge of \$25 at the  
13 time of the person's filing. No surcharge shall be assessed  
14 against:

15     (1) Small claims cases;

16     (2) Petitions for temporary restraining orders;

17     (3) Petitions for protective orders;

18     (4) Any party who has received the court's permission to  
19             proceed in forma pauperis; or

20     (5) Any party proceeding on behalf of the county or State.

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

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

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

20 (e) The fund administrator shall annually accept  
21 applications for grants funded from the indigent legal assistance  
22 fund from organizations that provide civil legal assistance to



1 indigent persons. Applications shall be received no later than  
2 April 15 for assistance in the following fiscal year. The fund  
3 administrator shall determine the specific information required  
4 of the applicant and, at a minimum, shall require applicants to  
5 provide information concerning:

6     (1) Their governance, staffing, and total annual budget;

7     (2) Other funding sources;

8     (3) Geographic area of service;

9     (4) The number of clients served in the previous fiscal  
10     year; and

11     (5) The nature and scope of services provided.

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

15     (1) Be either a nonprofit organization incorporated and  
16     operated exclusively in Hawaii and determined by the  
17     Internal Revenue Service to be exempt from federal  
18     income tax or a program operated exclusively in Hawaii  
19     by an accredited nonprofit law school, which  
20     organization or program provides as its primary purpose  
21     and function civil legal services to indigent persons;

22     (2) Have a governing board whose members have no material

- 1 conflict of interest and serve without compensation;
- 2 (3) Have bylaws or policies that describe the manner in  
3 which business is conducted, and policies that relate  
4 to nepotism and management of potential conflict of  
5 interest situations;
- 6 (4) Have at least one year's experience in providing civil  
7 legal services to indigents;
- 8 (5) Be licensed and accredited, as applicable, in  
9 accordance with the requirements of federal, state, and  
10 county governments;
- 11 (6) Agree not to charge client fees for services that are  
12 funded in any part by a grant from the indigent legal  
13 assistance fund, except that token payments for costs  
14 and expenses shall not be considered fees;
- 15 (7) Agree to use any grant received under this section  
16 exclusively to provide civil legal services to indigent  
17 persons; and
- 18 (8) Have in place sound financial management systems, a  
19 client grievance procedure, a method of ensuring the  
20 quality of service provided, and a policy that provides  
21 that no person may interfere with any attorneys funded  
22 in whole or in part by this section in carrying out

1           their professional responsibilities to their clients,  
2           as established by the Hawaii rules of professional  
3           conduct.

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

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

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

22           "Indigent person" means:

1     (1) Any individual whose income is not greater than one  
2     hundred twenty-five per cent of the official poverty  
3     line established by the Secretary of Health and Human  
4     Services under the Community Services Block Grant Act,  
5     42 U.S.C. section 9902;

6     (2) Any individual who is eligible for free services under  
7     the Older Americans Act or Developmentally Disabled  
8     Act; or

9     (3) Any organization or client group whose purpose is to  
10    further the interests of indigent persons and which is  
11    at least fifty per cent composed of persons who meet  
12    the requirements of paragraph (1) or (2)."

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

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

1 indigent legal assistance fund.

2 SECTION 5. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 1996, and

4 shall be repealed on June 30, 1999.