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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION
TO THE HOUSE COMMITTEE ON JUDICIARY
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

FEBRUARY 5, 2015
2:00 PM

TESTIMONY ON H.B. 739, RELATING TO SERVICE BY PUBLICATION.

TO THE HONORABLE KARL RHOADS, CHAIR,
AND TO THE HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

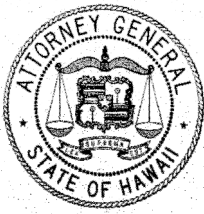
The Department of Commerce and Consumer Affairs, Office of Consumer Protection (“OCP”) has concerns with H.B. 739, Relating to Service by Publication, and offers the following comments for the Committee’s consideration.

H.B. 739 would amend H.R.S. chapter 634 to add a new “Service by publication” section to permit some of the required publications to be via a “state website” (hereinafter “electronic publication”) as an alternative to newspaper publication. H.B. 739 would allow electronic publication in all civil actions.

OCP administers the Mortgage Foreclosure Dispute Resolution Program (“MFDR”) which, in turn, administers the only state website for electronic publications for foreclosure notices of public sale, pursuant to H.R.S. §§ 667-20, 667-27, & 667-96. The

website is specifically designed for foreclosure notices of public sale, only. To require it to accommodate the great number of other types of civil action publications would require an extensive redesign of the system at an uncertain cost. In addition to the concerns noted above, OCP asks whether the provisions regarding electronic publication create due process issues. While cognizant of the heavy burden of the cost of newspaper publication, OCP defers to the Legislature on whether it is appropriate to have service by publication prior to disposition in a medium that is not necessarily available to all persons who have an interest in being served. Such persons may then be unlocatable by reasonable attempts.

OCP appreciates the opportunity to raise these concerns regarding H.B. 739, and urges further consideration and dialogue before expanding the use of electronic publication for service of process.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

H.B. NO. 739, RELATING TO SERVICE BY PUBLICATION

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 5, 2015 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): RUSSELL A. SUZUKI, Attorney General, or
CARON INAGAKI, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides comments on this bill.

This bill amends chapter 634, Hawaii Revised Statutes by adding a new section relating to service by publication.

The proposed amendment in the new section to chapter 634, subsection (c)(2)(C) provides that,

(c) As used in this section, “general circulation” refers to a newspaper that:

...
(2) Is distributed within the circuit in which the action has been filed:

...
(C) To a minimum of three percent of the residents of the circuit, as determined by the last decennial United States census and as verified by an independent audit.

Subparagraph (C) is vague and ambiguous and raises several questions. It is unclear how and to whom this minimum percentage would have to be shown or the process by which it is to be proven. For example, Is the party who seeks to publish required to make a showing prior to publication that the minimum percentage meets the three percent of residents as determined by the last decennial census? In what manner would the showing have to be made? Is the party only required to prove the publication meets the three percent requirement if someone challenges the minimum percentage? What needs to be verified by independent audit? Who retains the auditor? How much would an independent audit cost and would that cost be prohibitive for most

filers? If a newspaper has been verified once as meeting the required three percent, would every new publication of a summons in this same newspaper still need to be verified by an independent audit? Without clarification, it would appear that the requirements of this subsection may be too onerous for the average litigant.

We would recommend that this subsection be amended to simplify the process. For example, a judge could be given the discretion to determine that a newspaper is circulated to a sufficient number of residents to meet the “general circulation” requirement in the circuit in which the action is filed based on information provided by the litigant who seeks to serve a summons by publication.

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Edward Pei	Individual	Support	No

Comments: The Hawaii Bankers Association fully supports the intent of this Bill, which will provide alternatives for the delivery of summons for a civil action. It is a very practical solution, when all other actions have been exhausted.