
Sunrise Analysis of Process Servers

A Report to the
Governor
and the
Legislature of
the State of
Hawaii



THE AUDITOR
STATE OF HAWAII

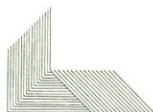
The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* are conducted of professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with a schedule and criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* are conducted on bills which propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Special studies* are conducted when they are requested by both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



THE AUDITOR STATE OF HAWAII

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465 South King Street, Suite 500
Honolulu, Hawaii 96813

Sunrise Analysis of Process Servers

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 91-17
November 1991

OVERVIEW

THE AUDITOR
STATE OF HAWAII

Sunrise Analysis of Process Servers

Summary

We performed a sunrise analysis of whether the State should regulate civil process servers to protect the public. We concluded that the public interest is best served by not regulating them. Usually, sunrise analysis occurs before regulation is enacted, but the 1991 Legislature directed the auditor to perform an after-the-fact sunrise analysis of the regulation of process servers.

“Process” refers to formal documents issued by a court to obtain jurisdiction over someone. “Service of process” is the delivery of these documents to a person in order to give notice that a civil or criminal case has been filed against him or her. In civil cases, the documents served on a defendant are the plaintiff’s complaint and a summons.

Until recently, Section 634-21, Hawaii Revised Statutes limited service of process in civil cases to sheriffs, police officers, court bailiffs, or other persons specially appointed by the court. Deputy sheriffs in the Department of Public Safety serve most civil process. But Act 123 of 1989 (Chapter 634D) added licensed process servers to those already authorized to serve process under Section 634-21, HRS. The Supreme Court is to develop qualifications for this new category of process servers and to license them. Chapter 634D requires a \$25 application fee and a \$5,000 bond. The licensing program has not yet been set up.

We found that a new regulatory program for civil process servers is not warranted. The federal government and most states do not regulate them. True, delays in service of process can harm plaintiffs who seek to obtain a judgment while the defendant still has assets. But the plaintiff’s attorney is responsible for proper service. Delays by the sheriffs in serving process have been alleged. But the remedy for this lies more in market competition than in licensing. Defendants could be harmed if the server falsely claims to have made the delivery, but we found no evidence that this is occurring.

We also found problems in the new licensing law. It requires the Supreme Court to set qualifications for licensed process servers, but no special qualifications or competency are needed to prevent consumer harm. In addition, both the need for a \$5,000 bond and the process for recovering on it are unclear. Further, the law does not define improper service or provide for disciplinary action.

Recommendations and Response

We recommend that Chapter 634D be repealed. The Hawaii Revised Statutes and the pertinent court rules should be amended to follow Rule 4 of the *Federal Rules of Civil Procedure* which allows civil process to be served by any person not a party to the case who is at least 18 years old. Federal officials whom we interviewed reported no difficulties with this procedure. This could bring new process servers into the system and foster healthy competition. At most, process servers could be required to register with the Supreme Court so that a list could be posted for the convenience of consumers.

The Judiciary concurs with our recommendations to repeal Chapter 634D and adopt the federal approach. Concerned with workload demands and possible entanglements with litigation against process servers, however, the Judiciary recommends that any registration be the responsibility of the Department of Commerce and Consumer Affairs. We believe that this proposal has merit.

The Department of Public Safety approves of repealing Chapter 634D but disapproves of adopting the federal approach. It fears that a "laissez faire" strategy could lead to more costly or less effective service of process.

Office of the Auditor State of Hawaii

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Foreword

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, directs the auditor to analyze proposals to begin regulating a profession or vocation.

As requested by Senate Concurrent Resolution No. 42 (1991), this report examines whether process servers should be regulated. It presents our findings as to whether, under the policies in the Sunset Law, there is a reasonable need to regulate process servers to protect the health, safety, and welfare of the public. Because Act 123 of 1989 instituted licensing of process servers, this sunrise analysis is after-the-fact.

We acknowledge the cooperation and assistance of the Judiciary, the Department of Public Safety, officials of the Hawaii State Bar Association and of the U.S. District Court for Hawaii, private attorneys, and others whom we contacted during the course of our analysis. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Newton Sue
Acting Auditor
State of Hawaii

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act (Chapter 26H, Hawaii Revised Statutes), requires that measures proposing to regulate professions or vocations be referred to the auditor for analysis prior to enactment. The auditor is to determine whether regulation is necessary to protect the health, safety, and welfare of consumers.

This report evaluates whether the regulation of process servers complies with policies in the Sunset Law. The 1991 Legislature noted that Chapter 634D, HRS, which requires the licensing of process servers, had inadvertently been enacted without first determining the need for regulation. The Legislature therefore, in Senate Concurrent Resolution No. 42, asked the auditor to perform an after-the-fact sunrise analysis. If licensing was found to be needed, the auditor would determine whether regulatory authority should remain with the Judiciary or be transferred to the Department of Commerce and Consumer Affairs.

Background on Service of Process

The term “process” refers to formal documents issued by a court to exercise jurisdiction over someone. “Service of process” is the delivery of these documents to the person in order to give notice that a civil or criminal case has been filed against him or her. By service of process the court obtains jurisdiction over the defendant, the defendant is given an opportunity to appear and be heard, and the case can proceed. The requirements for service of process in state-court cases are found in the Hawaii Revised Statutes, the Hawaii rules of civil procedure and penal procedure, and the procedural rules of the circuit, district, and family courts.

In civil cases, the subject of this report, the documents served on the defendant are a complaint and a summons. The complaint, normally prepared by the plaintiff’s attorney, summarizes the legal claims against the defendant. For example, a simple complaint might identify a plaintiff and defendant as corporations, charge that the defendant failed to pay the plaintiff amounts owed for merchandise delivered, and demand that the court award the plaintiff the amount owed plus interest, attorney fees, and court costs.

The summons, which is attached to the complaint and signed by the court clerk, is a court document that requires the defendant to serve the plaintiff’s attorney with an answer to the complaint within 20 days or face a default judgment awarding the relief demanded in the complaint.

The answer, prepared by the defendant's attorney, admits or denies each claim made in the complaint and asserts any defenses. For example, an answer to the complaint cited previously might admit that the plaintiff delivered merchandise, deny that any money is owed by the defendant, and argue that the merchandise was defective. Once the answer is served, the litigation moves forward.

There are two ways service of process is carried out—personal service and substituted service. In personal service, copies of the summons and complaint are (1) delivered to the defendant, (2) left at his or her residence with a responsible person, or (3) delivered to an authorized agent. In substituted service, copies are delivered in other ways, such as by mail or through publication in a newspaper. There are statutes and rules to cover special situations, such as serving incompetents, infants, corporations, and others.

Within the 20 days allowed for the answer, the process server must prove to the courts by a “return of service” that the documents were delivered. The process server usually completes and signs a court form showing the time, date, place of service, and person served. Unsuccessful attempts are also documented giving the reasons. When the server is not a sheriff or police officer, there must be a notarized declaration, called an “affidavit of service,” that process was served.

Regulation of Process Servers in Hawaii

Until recently, Section 634-21, HRS, in combination with Rule 4 of the *Hawaii Rules of Civil Procedure*, required that service of process in civil cases be made only by (1) a sheriff or deputy sheriff or some other person specially appointed by the court (they can serve anywhere in the state), or (2) the chief of police or a duly authorized subordinate (they can serve in their county). In addition, Section 606-14 authorized court bailiffs to serve process. Then as now, fees for serving process were set by statute.¹

As a result of our 1989 management and financial audit of the Judiciary, which found problems in the service of civil process by sheriffs,² the Legislature made two major changes in the process serving system. The first change instituted licensing and the second transferred the sheriff's office from the Judiciary to the Department of Public Safety.

New licensing law

Act 123 of 1989 (codified as Chapter 634D and related sections of the Hawaii Revised Statutes) created a new chapter instituting the licensing of civil process servers by the Supreme Court. The Judiciary has not yet set up a licensing program.

The act prohibits service of process by unlicensed persons (except for those previously authorized, such as sheriffs and police). The act also amended Section 634-21 relating to civil actions and proceedings by adding licensed process servers to the categories of persons authorized to serve process.

The law assigns the Supreme Court authority for licensing and for developing qualifications for applicants. Process servers must pay a \$25 application fee, post a \$5,000 surety bond, and have a place of business in which to display their license. Violation of Chapter 634D is a misdemeanor.

In approving the licensing law, the legislative committees cited our 1989 audit. They observed that the police are often not available to serve process in private civil actions, and they concluded that allowing private process servers would promote healthy competition and alleviate the huge manpower demands on the sheriff's office. Competition would lead to more efficient process serving and to lower costs for those seeking access to the legal system.³

Following enactment of the licensing law, the chief justice appointed the Committee on Licensing of Process Servers, comprising six judges, two attorneys, and assisted by judiciary staff. The committee has met three times and is awaiting the results of our analysis.

Transfer of sheriff's office

Act 211 of 1989 established a new Department of Public Safety and transferred to it the employees and functions of the sheriff's office along with several other state law enforcement and security offices. The purposes were to better coordinate public safety functions, to standardize training, and to create a career ladder for public safety employees. In the new department, deputy sheriffs in the civil division of the sheriff's office continue to serve civil process.

Objectives of the Analysis

1. Determine whether there is a reasonable need to regulate process servers to protect the health, safety, and welfare of the public.
2. If regulation is needed, determine the type of regulation, including which agency should have regulatory authority.

Scope and Methodology

We analyzed the service of process in civil cases, focusing on the service of civil complaints and summons. We did not consider who should be

authorized to serve court documents that might require enforcement powers, such as writs of possession under which tenants are evicted, or criminal arrest warrants.

To accomplish our objectives, we reviewed the literature on process servers and their regulation and examined applicable statutes and court rules. We interviewed judges and attorneys, including representatives of the Hawaii State Bar Association, and members of the Judiciary's Committee on Licensing of Process Servers. We examined the work of the committee and also spoke with knowledgeable persons in the sheriff's office, the U.S. District Court for Hawaii, and in other states.

Our work was conducted from March through August of 1991.

Chapter 2

Findings and Recommendations

Summary of Findings

1. The harm posed to consumers by the activities of civil process servers does not warrant creating a new regulatory program.
2. Provisions of the current licensing law are not related to consumer harm posed by civil process servers.
3. Current statutes and rules that control who may serve civil process are too restrictive. Hawaii should consider the federal approach to serving process.

Regulation Is Not Needed to Protect the Public

The activities of process servers can harm the public. Potential harm exists for both plaintiffs and defendants, but the licensing program does not meet criteria in the Sunset Law and would offer little protection against harm. Few states regulate process services, and only one state, Nevada, licenses them. Consumers, we believe in this case, can be protected from harm through means other than regulation.

Potential for harm

The Sunset Law says that regulation shall be imposed to protect consumers who may be at a disadvantage in choosing a provider of the service. The consumer here is not at a disadvantage. The consumer is the plaintiff's attorney who handles the litigation. The attorney arranges for these services (unless the plaintiff sues without an attorney) and is capable of properly instructing the process server.

Plaintiffs can be harmed when service is delayed. A plaintiff suing a financially troubled defendant, for example, will want a judgment before the defendant's assets disappear or are tied up in bankruptcy proceedings—even a short delay can undermine the suit. In Hawaii, plaintiffs and their attorneys have complained about unnecessary delays in having papers served by sheriffs. The Hawaii State Bar Association, in 1989 testimony, attributed the cause to insufficient manpower and the monopoly of the sheriff's office over service of process (the office was then located in the Judiciary).¹ These delays, however, are more likely to be remedied by introducing market competition than by creating a licensing program.

Defendants are affected because through civil process they are informed that they have been sued and can respond accordingly. Defendants can be harmed when a process server fails to deliver the summons and complaint and then files a false return of service, depriving the defendant

of due process. A defendant who is not informed that a suit has been filed will not serve an answer and would lose by default. “Sewer service” of this type used to be common in New York City where in debt collection cases against the poor, certain process servers filed false affidavits with the courts after making little or no effort to serve the defendants. This resulted in many default judgments against the poor. While these judgments could be challenged in court on the grounds that no service of process occurred, impoverished defendants unfamiliar with the legal system faced an uphill battle in doing so.

We found no indications of this practice in Hawaii.

Limited regulation in other states

That licensing is not needed is supported by the absence of regulation in most states. Nevada is the only state that licenses process servers.² It requires two years experience or the equivalent, liability insurance coverage of at least \$200,000, and the passing of an examination. State and county peace officers are exempt from the licensing requirements.

California requires process servers to register with the county clerk but exempts sheriffs, attorneys and their employees, private investigators, and many others. In a procedure similar to registration, Oklahoma authorizes the presiding judges of the judicial administrative districts to issue “licenses” to process servers, whose names are then posted by the district court clerk.

As part of its general business law, New York requires process servers to maintain detailed records of all service made for a period of two years from the date of service. It was thought that recordkeeping requirements would make it easier to verify whether returns of service were honest.

Current Statute Is Unrelated to Preventing Harm

The regulatory program created by Act 123 has little bearing on preventing the potential harm from improper service of process. The law therefore should be repealed.

The law requires the Supreme Court to prescribe qualifications for licensing process servers. This is customary since licensing programs seek to protect consumers by establishing and imposing qualifications to ensure that applicants have a minimum level of knowledge and competency to practice an occupation. Here, however, competency is not an issue because the potential harm to consumers—delays and improper service—is little affected by competency. Sheriffs who currently serve process receive no formal training in serving process.

The law also requires applicants for licensure to have a bond of not less than \$5,000. A person who recovers damages in a proceeding for injuries caused by a service of process made by a licensee may recover damages from the bond. We found no evidence to support the need for a bond in the amount of \$5,000. The law does not make clear how the recovery process will be implemented. The law does not define improper service nor does it contain disciplinary provisions.

Statute and Rules Restrict Competition

Act 123 added licensed process servers to those authorized to serve process. The law previously required that civil process be served by law officers or specially appointed persons. This is the approach of 21 other states.³ Even with the addition of licensed process servers, however, the approach is too restrictive. In practice, deputy sheriffs serve most civil process. Getting the courts to make special appointments requires special circumstances and the filing of a motion by the plaintiff's attorney. The net effect is a monopoly rather than the stimulation of competition.

We recommend instead the approach taken by the federal courts, 24 other states, and the District of Columbia: any adult who is not a party to the lawsuit is authorized to serve civil process.⁴ Rule 4 of the *Federal Rules of Civil Procedure* sets 18 as the minimum age. Federal officials whom we interviewed reported no difficulties with this system in Hawaii. Because there is dissatisfaction among some Hawaii attorneys with the state's traditional approach, repealing Chapter 634D and adopting the federal approach could bring new participants into the market. Several persons have already inquired about getting licensed; presumably they would be equally or more interested if restrictions were loosened further.

Recommendations

1. Chapter 634D should be repealed.
2. The Hawaii Revised Statutes and the pertinent court rules should be amended to follow Rule 4 of the *Federal Rules of Civil Procedure* allowing civil process to be served by any person not a party to the case who is at least 18 years old. At the most, process servers could be required to register with the state supreme court so that a list could be posted for the convenience of consumers.

Notes

Chapter 1

1. Sections 606-14, 607-4, and 607-8, Hawaii Revised Statutes.
2. Hawaii, Legislative Auditor, *Management and Financial Audit of the Judiciary of the State of Hawaii*, Report No. 89-5, Honolulu, Hawaii, January 1989, pp. 115-16, 122.
3. Senate Standing Committee Reports Nos. 964 and 1302 and House Standing Committee Report No. 845 on House Bill No. 536, Regular Session of 1989.

Chapter 2

1. Testimony on House Bill No. 536, House Draft 1 submitted by Larry Gilbert, Chairman, Committee on Legislation and Public Policy, Hawaii State Bar Association, to the Senate Committee on the Judiciary, March 14, 1989.
2. *Occupational and Professional Regulation in the States: A Comprehensive Compilation*, The National Clearinghouse on Licensure, Enforcement and Regulation (CLEAR) and The Council on State Governments, 1990, p. 93.
3. Paul D. Lyman, *1991 National Directory for the Service of Civil Process*, Ft. Worth, Texas, Knowles Law Book Publishing, Inc., 1990, pp. 584-86.
4. Ibid.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted a draft of this Sunrise Analysis to the Judiciary, the Department of Public Safety, and the Department of Commerce and Consumer Affairs on October 24, 1991. A copy of the transmittal letter to the Judiciary is included as Attachment 1 of this Appendix. The Judiciary and the Department of Public Safety submitted written responses which are included as Attachments 2 and 3 respectively. The Department of Commerce and Consumer Affairs did not respond.

The Judiciary concurs with our recommendations that Chapter 634D, Hawaii Revised Statutes should be repealed and that the statutes and court rules should permit service of civil process by any person not a party to the case who is at least 18 years old. But the Judiciary disagrees that any registration of process servers be the responsibility of the state supreme court, pointing to the workload demands already faced by the court and the possibility that the court will become entangled in litigation against process servers. We acknowledge these reservations and note that there is merit to the Judiciary's position that registration is more properly the function of the Department of Commerce and Consumer Affairs.

The Department of Public Safety agrees that Chapter 634D should be repealed. However, the department does not agree that anyone 18 or older who is not a party to the case should be permitted to serve process. It says that this competitive or "laissez faire" approach could lead to higher fees for service of process (if statutory maximum fees are abandoned) or "unscrupulous short-cuts" by private for-profit process servers (if maximum fees are continued).

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813



(808) 548-2450
FAX: (808) 548-2693

September 24, 1991

C O P Y

The Honorable Herman T. F. Lum
Chief Justice
The Judiciary
Ali'iolani Hale
417 South King Street
Honolulu, Hawaii 96813

Dear Chief Justice Lum:

Enclosed are three copies, numbered 6 through 8, of our draft report, *Sunrise Analysis of Process Servers*. We ask that you telephone us by Friday, September 27, 1991, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Thursday, October 24, 1991.

The Directors of the Departments of Commerce and Consumer Affairs and Public Safety, the Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script that reads 'Newton Sue'.

Newton Sue
Acting Auditor

Enclosures



SUPREME COURT OF HAWAII

ALIIOLANI HALE

P. O. BOX 2560

HONOLULU, HAWAII 96804

CHAMBERS OF
HERMAN LUM
CHIEF JUSTICE

October 21, 1991

RECEIVED

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OFC. OF THE AUDITOR
STATE OF HAWAII

Mr. Newton Sue
Acting Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813

Dear Mr. Sue:

Re: Draft report - Sunrise Analysis of Process Servers

The Judiciary concurs with the recommendations contained in your draft report, but we take exception to your recommendation that the process servers be registered with the State Supreme Court.

We believe that registration is properly a function of the Departments of Commerce and Consumer Affairs and Public Safety. Such function can easily be handled by the departments routinely with the many other registration functions they perform. We have a very small staff which, as it is, has a difficult time keeping up with a rising caseload. Any additional workload will severely affect the court's work.

In addition, any registration function assigned to court may conceivably involve the court in lawsuits brought against process servers, which would place the court in a difficult position.

For these and other reasons, I urge that the function of registration of process servers be placed elsewhere.

Sincerely,



HERMAN LUM
Chief Justice



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
677 Ala Moana Boulevard, Suite 1000
Honolulu, Hawaii 96813

GEORGE W. SUMNER
DIRECTOR

DENNIS K. GODA
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DEPUTY DIRECTOR

No. 91-12003

October 31, 1991

Mr. Newton Sue
Acting Auditor
Office of the Auditor
465 South King Street
Honolulu, Hawaii 96813

RECEIVED
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OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Mr. Sue:

I received your letter dated September 24, 1991 and the draft report *Sunrise Analysis of Process Services*. The draft report was reviewed by the Special Services Division staff. We are in concurrence with the auditors recommendation that Chapter 643D, Hawaii Revised Statutes, should be repealed.

However, we are not in agreement that Hawaii Revised Statutes and the pertinent court rules should be amended to follow Rule 4 of the Federal Rules of Civil Procedure, allowing civil process to be served by any person not a party to the case who is at least 18 years old.

The following constitutes Department's perceptions of the advantages to the current process, procedures currently in effect, and the disadvantages of amending current regulations to parallel Rule 4 of the Federal Rules of Civil Procedures.

CURRENT STATUTES IS UNRELATED TO PREVENTING HARM

The report states that "civil deputies do not receive training before they start serving." Every deputy that serves process receives at minimum, 40 hours of training before they go on the road. The training has been enhanced since the beginning of this fiscal year and includes the neighbor islands as well.

Following the 40 hours of classroom instruction, each deputy is assigned to an experienced civil deputy for on-the-job training, until satisfactory performance is attained.

Mr. Newton Sue
October 31, 1991
Page 2

All of the returns that go to court after the process has been served are critiqued by First Deputy Daniel Orso. He is responsible for the service of all civil process servers. The documents are also checked before they are served by either the First Deputy or the experienced Civil Deputy to determine if they are in order.

Hawaii Revised Statute 601-35, states that a bond of \$5,000.00 may be required.

Bond is in fact required by our policy and is renewed annually.

STATUTE AND RULE RESTRICT COMPETITION

Act 123, added the requirement of Licensing of Process Services to those authorized to serve process.

The Civil Branch has no objection to Licensed Process Services, however, feel they should be held to the same minimum requirements and training standards as those currently in effect for the deputies.

POTENTIAL FOR HARM

The law states "**regulation shall be imposed to protect consumers who may be at a disadvantage in choosing a provider of the service.**"

The law, as is now written, is not as restrictive as it appears. Subpoenas may be served by anyone who is not a party to the action. The majority of all civil cases are subpoenas. The civil summons itself may also be served by individuals other than Civil Deputies by filing a motion with the Court to direct the Judge to appoint on a case by case basis.

Mainland documents are being served by private investigators who deal directly with process servers on the mainland.

Plaintiffs and their attorneys have complaints about unnecessary delays in service of service of process by deputies. These delays are not due to manpower shortages but as a result of incorrect information being furnished them by the plaintiffs.

There have also been occasions where plaintiffs have attempted to service process by registered mail and after having failed in these attempts, go to the SSD for service. Meanwhile, precious days have elapsed, and often times SSD is blamed for delay in service.

Mr. Newton Sue
October 31, 1991
Page 3

The auditor's report states, "**The activities of process servers can harm the public.**" Yet, the audit recommends **repealing any regulation to control such activities including regulating controls on who would be licensed to served process.** It further illustrates abuses common in New York City where debt collection cases against the poor result in default judgements against them because of false affidavits of returns by unscrupulous process servers. The audit found no indication of this practice in Hawaii. Such unscrupulous practice is not found in Hawaii because at the present time, process is served by deputies whose are regulated and there is no rampant service by unregulated persons.

If all regulations, including maximum fees, are lifted and laissez faire is allowed, fees for service of process and thus cost of litigation will likely rise to such a degree to make litigation out of reach except for the wealthy.

If maximum fees as currently set by law are maintained, private practitioners, may find themselves in situations where they may have to resort to unscrupulous short-cuts in order to make a profit. Competition in this area will neither lead to efficient process serving nor to lower cost for those seeking access to the legal system.

Thank you for giving the Department an opportunity to comment on the draft report. Should you require further clarification or additional information, please call Deputy Director George Iranon at 587-1255.

Sincerely,



George W. Sumner
Director

c: Honorable John Waihee
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO SERVICE OF PROCESS.

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

1 SECTION 1. Section 634-21, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§634-21 Service of process[,] and orders, by whom. Except
4 as otherwise provided[, service]:

5 (1) Service of [all] process may be made by any person not
6 a party to the case who is at least eighteen years old;
7 and

8 (2) Service of orders shall be made by the sheriff or the
9 sheriff's deputy, the chief of police of the county in
10 which the service is made or the chief's duly
11 authorized subordinate, or some other person specially
12 appointed by the court for the purpose[, or a process
13 server licensed pursuant to chapter 634D]."

14 SECTION 2. Section 634-22, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§634-22 Return. (a) In all cases where any process or
17 order of a court is served by any officer of the court or of the
18 police force or the sheriff or the sheriff's deputies, a record
19 thereof shall be endorsed upon the back of the process,

1 complaint, order, or citation. The record shall state the name
2 of the person served and the time and place of service and shall
3 be signed by the officer making the service. If the officer
4 fails to make service the officer, in like manner, shall endorse
5 the reason for the officer's failure and sign this record.

6 (b) When service is made by a person specially appointed by
7 the court[,] or [a licensed] by a process server[,] other than a
8 person in subsection (a), the person or process server shall make
9 affidavit of that service.

10 The record or the affidavit shall be prima facie evidence of
11 all it contains, and no further proof thereof shall be required
12 unless either party desires to examine the officer or person
13 making service, in which case the officer or person shall be
14 notified to appear for examination."

15 SECTION 3. Section 651-1, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§651-1 General provisions. This part shall apply to
18 circuit and district courts. A judge of any court of record may
19 make any order at chambers which may by [the provisions of] this
20 part be made by the court in term time. When the proceedings are
21 before a district judge, the judge shall be regarded as the clerk
22 of the court for all purposes contemplated [herein.] in this

1 section. The phrase "police officer," as used in this part,
2 means [a licensed process server, or] the director of public
3 safety or the director's duly authorized representative, and any
4 chief of police or subordinate police officer. Nothing in this
5 part shall be construed to permit a district judge to issue a
6 writ of attachment to be served out of the circuit in which the
7 judge's court is situated, or to permit an attachment of real
8 estate, or any interest therein, under a writ issued by a
9 district court judge."

10 SECTION 4. Section 653-6, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§653-6 Garnishee [process.] summons. (a) Any provision
13 to the contrary notwithstanding, no garnishee summons shall be
14 issued before judgment until the creditor upon motion and after
15 hearing has proved to the satisfaction of the court any of the
16 following allegations:

- 17 (1) That the defendant debtor is not a resident of the
18 State and may depart from the State within six months
19 from the date of filing of the action;
- 20 (2) That the defendant debtor has departed from the State;
- 21 (3) That the defendant debtor has left the county of the
22 defendant debtor's residence with intent to avoid

1 service of summons; or

2 (4) That the defendant debtor, although a resident of the
3 State, intends to depart from the State and remain
4 absent therefrom for a period in excess of nine months.

5 If the ruling of the court is in favor of the creditor on any of
6 the allegations above enumerated before judgment or if the
7 creditor has received judgment in the creditor's favor on the
8 creditor's complaint, the creditor may then request the court
9 issuing the garnishee summons to direct the officer serving the
10 same to leave a true copy thereof, which shall be attested by the
11 sheriff, the sheriff's deputy, [a licensed process server] or
12 other serving officer, with the comptroller of the State, or of
13 the political or municipal subdivision of the State, or other
14 officer through whom the salary, stipend, or wages of the debtor
15 is sought to be attached, who shall [herein] be called the
16 garnishee[.] in this section.

17 (b) In any action brought in the district court by a
18 creditor against a debtor, the creditor, ten days after judgment
19 rendered in the creditor's favor, in lieu of requesting the
20 issuance of a garnishee summons, may file a certified copy of the
21 judgment and the creditor's affidavit as to the amount due and
22 unpaid on account of the judgment with the comptroller of the

1 State, or of the political or municipal subdivision of the State
2 or other officers through whom the salary, stipend, or wages of
3 the judgment debtor is paid, and upon that filing the comptroller
4 or other officer shall withhold from the wages of the judgment
5 debtor the amounts provided in section 652-1(a) subject to
6 payment in good faith as provided in section 652-1(f) and pay the
7 same to the judgment creditor."

8 SECTION 5. Section 654-2, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§654-2 Bond. (a) When the plaintiff desires the
11 immediate delivery of the property, the plaintiff shall execute a
12 bond to the defendant in possession of the property, and to all
13 persons having an interest in the property, of such amount and
14 with such sureties as are approved by the court, conditioned that
15 the plaintiff will prosecute the plaintiff's action to judgment
16 without delay, and deliver the property to the defendant in
17 possession or any other person, if such delivery is adjudged, and
18 pay all costs and damages that may be adjudged against the
19 plaintiff. Upon the filing of the verified complaint or
20 affidavit with the bond and a motion for immediate consideration
21 of the matter, the court shall forthwith inquire into the matter,
22 ex parte or otherwise, as in its discretion it determines. If

1 thereupon the court finds that a prima facie claim for relief has
2 been established, it shall issue an order directed to the
3 sheriff, or the sheriff's deputy, or the chief of police, or an
4 authorized police officer of any county, [or a licensed process
5 server,] to take the property therein described and deliver the
6 same to the plaintiff.

7 **(b)** Copies of [the]:

8 **(1)** The verified complaint or affidavit[,]; and[, if]

9 **(2)** If a bond for immediate seizure has been filed, of the
10 bond[,]; and[, if]

11 **(3)** If an order for the taking has been issued on an ex
12 parte hearing, of the order[,];

13 shall forthwith be served upon the defendant in possession and
14 each person having or claiming a possessory interest in the
15 property, in the same manner as is provided for service of
16 summons unless the party to be served has appeared in the action,
17 in which case service may be made in the same manner as is
18 provided for service of papers other than the summons. In a
19 proper case, either before or after issuance of an order for the
20 taking, the required service may be combined with the publication
21 of the summons, in which event the giving of notice of the
22 substance of the proceeding shall be sufficient.

1 Upon the application of any party, the proceeding shall be
2 advanced and assigned for hearing at the earliest possible date."

3 SECTION 6. Chapter 634D, Hawaii Revised Statutes, is
4 repealed.

5 SECTION 7. Statutory material to be repealed is bracketed.
6 New statutory material is underscored.

7 SECTION 8. This Act shall take effect upon its approval.

8

9

INTRODUCED BY: _____

