

EXECUTIVE CHAMBERS

HONOLULU

April 14, 2008

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2391

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2391, entitled "A Bill for an Act Relating to Legal Service."

The reported purpose of this bill is to exempt pro bono legal services that do not create a conflict of interest with the duties of a deputy attorney general, from the prohibition on the private practice of law to which the Attorney General, First Deputy Attorney General, and all deputy attorneys general are subject, under section 28-10, Hawaii Revised Statutes.

I am unwilling to approve this measure. The bill appears to allow individual deputy attorneys general, rather than the Attorney General, to determine when a conflict would preclude a deputy from providing pro bono legal services. This decentralized conflict review process could result in the disqualification of all of the attorneys in the Department of Attorney General from representing the State, or a state official or agency in a particular matter.

It is my understanding that the Rules of Professional Conduct, to which all attorneys are subject, prohibits attorneys from representing a client if the interests of that client are directly adverse to the interests of another client. This rule also requires attorneys to secure knowledgeable and informed

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consent from a client when their responsibilities to a client, a third person, or the interests of the attorney would materially limit the attorney's ability to represent that client. I also understand that because the laws applicable to the Attorney General's practice authorize deputy attorneys general to perform or exercise any and all duties or powers conferred on the Attorney General by law, their duties are interchangeable and each review for conflict would extend to all of the matters that all of the deputy attorneys general are handling or have handled. Thus, all officials and agencies that reasonably could be adversely affected by the deputy's pro bono work would have to be informed about the pro bono matter and its potential to adversely affect the officials' or agencies' interests, and each official or agency would have to waive the conflict before the deputy could perform the pro bono services. Effective review will require time that would otherwise be devoted to protecting the State's legal interests. Ineffective review could place the State at a serious disadvantage.

It is not my intent to bar deputy attorneys general from providing pro bono services or fulfilling the responsibilities all attorneys are urged to fulfill by Rule 6.1, Pro Bono Service, of the Rules of Professional Conduct. Thus, I would support a bill that left it to the Attorney General's discretion to determine if a conflict precluded a deputy attorney general from providing pro bono legal services for a person of limited means, or an organization needing legal services. I cannot support this bill, however, because it interferes with the Attorney General's practice of law for the State, and has the potential for jeopardizing the interests of the State.

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For the foregoing reasons, I am returning House Bill No.
2391 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii