

AJS Hawai'i Chapter Special Committee on the Jury

As budget issues predominate our State and our deficit threatens to change "how government does business" in significant ways, each branch of government has been charged to assist with the deficit, and balance fiscal prudence with the needs of the public and the administration of justice. At the Hawaii Judiciary, one possibility for reducing costs is to decrease the number of members on jury panels to six, instead of twelve members in civil trials and in non-serious criminal trials. This could result in significant cost savings. Yet, any such reduction raises issues of constitutionality, of the perceived rights and benefits of a traditional twelve-person jury, and of functional equivalence.

Potential legislation has been drafted by Susan Pang Gochros of the Office of the Administrative Director of the Judiciary and others for AJS's consideration. The legislation proposes to amend Article I, Section 13 of the State Constitution, relating to jury trials in civil cases, and makes conforming amendments to HRS Section 635-26, relating to impaneling a jury. The proposed legislation is based, in part, upon a 1997 Attorney General Opinion that concludes that the use of six-member jury panels in civil cases, where the parties do not stipulate to using a jury panel small than twelve, requires a constitutional amendment.

Two versions of possible legislation may be considered by AJS for reducing the number of jurors in civil trials panels: (1) The first version establishes a requirement in the Constitution for a six-member jury in civil cases; and (2) the second version authorizes the legislature to provide by law for six-member juries in civil cases. The latter option provides for more flexibility than the first should it be determined in the future that twelve-member jury panels are preferable to six-member panels. A change to a larger jury panel would require legislative action, but not a constitutional amendment. Also, the legislature may be more receptive to a measure that reserves for its determination and policymaking the issue of jury size.

If the law is amended to provide for six-member juries in civil cases, Rule 48, of the Hawaii Rules of Civil Procedure would also need to be amended.

Proposed legislation that defines "serious crime" as a felony, for the purpose of determining when a jury in a criminal case shall consist of twelve members; for all other criminal cases in which a right to jury trial attaches, the proposed legislation requires a jury of six.