



Hon. Daniel R. Foley
Associate Judge
Intermediate Court of Appeals
Chair

HAWAII ACCESS TO JUSTICE COMMISSION

Commissioners:

Hon. Simeon R. Acoba, Jr. (ret.)
Michelle Acosta
Rep. Della Au Belatti
Hon. Joseph Cardoza
Rona Fukumoto
Victor Geminiani

Moses Haia
Hon. Ronald Ibarra
R. Elton Johnson, III
Jean Johnson
Tracy Jones

M. Nalani Fujimori Kaina
Sen. Gilbert Keith-Agaran
Derek Kobayashi
Mary Anne Magnier
Carol K. Muranaka

Diane T. Ono
Hon. Trudy Senda
Gary M. Slovin
Dean Aviam Soifer
George J. Zweibel

November 30, 2015

The Honorable Ronald D. Kouchi
415 South Beretania Street, Room 409
Honolulu, HI 96813

Re: 2015 Annual Report of the Hawai'i Access to Justice Commission

Dear President Kouchi:

Pursuant to Rule 21(j)(1) of the Rules of the Supreme Court of the State of Hawai'i, enclosed is the 2015 Annual Report of the Hawai'i Access to Justice Commission. The report summarizes the activities of the Commission during the period, January 1, 2015 through December 31, 2015.

Please forward any questions or comments to me by email at daniel.r.foley@courts.haw.gov or by mail addressed to the Intermediate Court of Appeals, 426 S. King Street, Room 201, Honolulu, HI 96813.

Thank you for your attention to this matter and your continued support of access to justice in Hawai'i.

Very truly yours,

Daniel R. Foley
Associate Judge
Intermediate Court of Appeals
Chair, Hawai'i Access to Justice Commission

JUDICIARY COMM. NO. 1



**HAWAI'I
ACCESS TO JUSTICE
COMMISSION**

ANNUAL REPORT FOR 2015

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I. HAWAI'I ACCESS TO JUSTICE COMMISSION

This report highlights the Hawai'i Access to Justice Commission's ("Commission") activities in 2015.

A. Commissioners

The Commission is comprised of twenty-two Commissioners. The various Commissioners are appointed as designated in Rule 21 of the Rules of the Supreme Court of the State of Hawai'i¹ by separate appointing authorities:

- Chief Justice of the Hawai'i Supreme Court
- Hawaii State Bar Association ("HSBA")
- Hawaii Consortium of Legal Service Providers
- Hawaii Justice Foundation ("HJF")
- Williams S. Richardson School of Law
- Hawaii Paralegal Association
- Governor of the State of Hawai'i
- Attorney General of the State of Hawai'i
- State of Hawai'i Senate President
- State of Hawai'i Speaker of the House

The Commissioners who served in 2015 are listed below:

| | Name | Appointed By | Term Ends |
|----|---|------------------------------|-----------|
| 1. | Hon. Daniel R. Foley (CHAIR as of June 30, 2010) | Chief Justice | 12/31/15 |
| 2. | Hon. Simeon R. Acoba, Jr. (ret.) (Former Chair from May 2008 until June 29, 2010) | Chief Justice | 12/31/15 |
| 3. | Hon. Ronald Ibarra | Chief Justice | 12/31/15 |
| 4. | Hon. Joseph E. Cardoza | Chief Justice | 12/31/17 |
| 5. | Hon. Trudy K.T. Senda | Chief Justice | 12/31/15 |
| 6. | Derek R. Kobayashi | Hawaii State Bar Association | 12/31/16 |
| 7. | George J. Zweibel | Hawaii State Bar Association | 12/31/17 |
| 8. | Tracy A. Jones | Hawaii State Bar Association | 12/31/16 |
| 9. | Carol K. Muranaka | Hawaii State Bar Association | 12/31/17 |

¹ Rule 21 of the Hawai'i Supreme Court Rules is attached hereto as Appendix A.



| | | | |
|-----|--|---|----------|
| 10. | Michelle D. Acosta (Volunteer Legal Services of Hawai'i) | Hawai'i Consortium of Legal Services Providers | 12/31/16 |
| 11. | M. Nalani Fujimori Kaina (Legal Aid Society of Hawai'i) | Hawai'i Consortium of Legal Services Providers | 12/31/15 |
| 12. | Moses K.N. Haia, III (Native Hawaiian Legal Corporation) | Hawai'i Consortium of Legal Services Providers | 12/31/16 |
| 13. | M. Victor Geminiani (Hawai'i Appleseed Center for Law and Economic Justice) | Hawai'i Consortium of Legal Services Providers | 12/31/16 |
| 14. | Jean Johnson (Non-attorney public representative) | Hawai'i Consortium of Legal Services Providers in consultation with Chief Justice | 12/31/15 |
| 15. | Rona S.Y. Fukumoto (Non-attorney public representative) | Hawai'i Consortium of Legal Services Providers in consultation with Chief Justice | 12/31/17 |
| 16. | Gary M. Slovin | Hawaii Justice Foundation | 12/31/15 |
| 17. | Dean Aviam Soifer | William S. Richardson School of Law | 12/31/16 |
| 18. | R. Elton Johnson, III | Hawaii Paralegal Association | 12/31/16 |
| 19. | Diane T. Ono ² | Governor | n/a |
| 20. | Mary Anne Magnier | Attorney General | n/a |
| 21. | Hon. Gilbert Keith-Agaran | Senate President | n/a |
| 22. | Hon. Della Au Belatti | House Speaker | n/a |

B. Purpose

Under Rule 21 of the Rules of the Supreme Court of Hawai'i, the purpose of the Commission "shall be to substantially increase access to justice in civil legal matters for low- and moderate-income (together "low-income") residents of Hawai'i." To accomplish such purpose, "the Commission shall, along with such other actions as in its discretion it deems appropriate, endeavor to:

- (1) Provide ongoing leadership and to oversee efforts to expand and improve delivery of high quality civil legal services to low-income people in Hawai'i.
- (2) Develop and implement initiatives designed to expand access to civil justice in Hawai'i.
- (3) Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low-income Hawai'i residents.

² By letter dated August 5, 2015, Governor David Y. Ige appointed Diane T. Ono as his representative, effective immediately.



- (4) Increase and stabilize long-term public and private funding and resources for delivery of civil legal services to low-income Hawai'i residents.
- (5) Maximize the efficient use of available resources by facilitating efforts to improve collaboration and coordination among civil legal services providers.
- (6) Increase pro bono contributions by Hawai'i attorneys through such things as rule changes, recruitment campaigns, increased judicial involvement, and increased recognition for contributors.
- (7) Reduce barriers to the civil justice system by developing resources to overcome language, cultural, and other barriers and by giving input on existing and proposed laws, court rules, regulations, procedures, and policies that may affect meaningful access to justice for low-income Hawai'i residents.
- (8) Encourage lawyers, judges, government officials, and other public and private leaders in Hawai'i to take a leadership role in expanding access to civil justice.
- (9) Educate governmental leaders and the public about the importance of equal access to justice and of the problems low-income people in Hawai'i face in gaining access to the civil justice system through informational briefings, communication campaigns, statewide conferences (including an annual summit to report on and consider the progress of efforts to increase access to justice), testimony at hearings, and other means, and increase awareness of low-income people's legal rights and where they can go when legal assistance is needed.
- (10) Increase effective utilization of paralegals and other non-lawyers in the delivery of civil legal services to low-income Hawai'i residents.
- (11) Increase support for self-represented litigants, such as through self-help centers at the courts.
- (12) Develop initiatives designed to enhance recruitment and retention of attorneys who work for nonprofit civil legal services providers in Hawai'i and to encourage law students to consider, when licensed, the practice of poverty law in Hawai'i.
- (13) Encourage the formation of a broad coalition of groups and individuals to address ways to alleviate poverty in Hawai'i.
- (14) Conduct a statewide assessment of unmet civil legal needs among low-income people in Hawai'i five years after the Commission holds its first meeting to measure the progress being made to increase access to justice.

C. Committees

The Commission created committees and various other ad hoc subcommittees and task force groups to carry out and facilitate its mission. Commissioners serve as chairs for the committees. The role of each committee



is advisory only, and each committee is intended to make such recommendations to the Commission as the committee determines to be appropriate. The committees, their chairs, their members, and the areas of responsibility assigned to them may be changed at any time by the Commission.

Administration Committee

[Associate Justice Simeon R. Acoba, Jr. (ret.) (Chair), David Reber (Vice Chair), Associate Judge Daniel R. Foley, Michelle Acosta, Jill Hasegawa, Derek Kobayashi, Carol K. Muranaka, Tracey Wiltgen]

- Assist the Chair of the Commission in developing an agenda for each Commission meeting and assist in arranging for presenters and written or electronic materials in support of agenda items
- Assist in developing a budget for the Commission, including identifying potential sources of funding, and providing reports on the status of operations relative to budget
- Assist in providing administrative and logistical assistance to the Commission and its committees and task forces
- Coordinate the activities of volunteers in support of the Commission's initiatives

Summary of Actions Taken

The Committee considered and made recommendations to the Commission and other committees regarding the following:

- (1) Approved two applications for service on the Commission's committees and made recommendations to the Commission and other committees.
- (2) Approved Beverlyn Simina, representative from Volunteer Legal Services Hawai'i ("VLSH"), to serve on the Pro Bono Initiatives Task Force since Michelle Acosta, Executive Director of VLSH, was not to attend the meetings.
- (3) Reviewed the status of the pro bono appellate project.
- (4) Prepared a requested two-page description of the Commission's activities for the 2015 National Meeting of State Access to Justice Chairs.
- (5) Approved the appointment of Michelle Acosta, Executive Director of VLSH, on the bar admission pro bono project.
- (6) Referred the issue of adjunct provider representation to the Commission's Right to Counsel Committee.



- (7) Approved the the Commission's Annual Report for 2014; approval of printing certain number of hard copies for the appointing authorities such as the Chief Justice, Governor, and legislators.
- (8) Approved the key questions to be asked of the legal services providers in preparation of the five-year report.
- (9) Reviewed the status of the Working Group to Determine the Funding Administrator for Civil Legal Services formed as a consequence of Senate Resolution No. 6 and House Resolution No. 12. The two separate Resolutions requested the Commission to assemble various state and community entities to determine which agency or organization should administer funding for civil legal services to low- and moderate-income individuals.
- (10) Recommended financial support for the 2015 Pro Bono Celebration on Thursday, October 29, 2015.

In addition, on January 20, 2015, Justice Simeon R. Acoba, Jr. (ret.), Chair of the Committee appeared before the Senate Committee on Judiciary and Labor and the House Committee on Judiciary to provide information about the Commission. In August, 2015, Judge Daniel R. Foley attended the Language Access Conference, which was sponsored by the State of Hawai'i Office of Language Access. The conference attracted 400 attendees at the Japanese Cultural Center.

Annual Report Committee

[Rona S.Y. Fukumoto, Jean Johnson, R. Elton Johnson, III, Carol K. Muranaka]

- Assist in preparing an annual report of the activities of the Commission for filing with the Supreme Court in accordance with Rule 21(j)(1)

Summary of Actions Taken

The Annual Report of the Commission's activities for 2014 was prepared and distributed in March 2015. Hard copies were transmitted to the appointing authorities. The 2014 Annual Report was also posted on the Commission's subpage at the HJF's website.

The Committee commenced collecting information for the Annual Report for 2015.

Committee on Education, Communications and Conference Planning

[Dean Aviam Soifer (Chair), Carol K. Muranaka (Vice Chair), Rep. Della Au Belatti, Sonny Ganaden, Mihoko Ito, Elton Johnson, Robert LeClair, Leila Rothwell Sullivan, Lorenn Walker]



- Assist in organizing an annual conference for the presentation of access to justice issues
- Make recommendations on encouraging lawyers, judges, government officials and other public and private leaders in Hawai'i to take a leadership role in expanding access to justice
- Assist in developing strategies for educating governmental leaders and the public about the importance of equal access to justice and of the problems low- and moderate-income people in Hawai'i face in gaining access to the civil justice system, including through informational briefings, communication campaigns, statewide conferences, testimony at hearings and other means
- Increase awareness of low- and moderate-income people's legal rights and where they can go when legal assistance is needed
- Assist in developing a communications strategy and preparing communications consistent with that strategy
- Encourage judges, lawyers, and legal services providers to prepare a series of articles on access to justice topics for publication in the *Hawaii Bar Journal* and other media

Summary of Actions Taken

The Committee considered and made recommendations to the Commission regarding the following:

- (1) Coordinated the 2015 Access to Justice Conference ("Narrowing the Justice Gap") on Friday, June 19, 2015.³
- (2) Prepared a report to the Commission summarizing the 2015 Access to Justice Conference including expenses, evaluations, and suggestions.
- (3) Prepared an application for approval of six CLE credits for the 2016 Access to Justice Conference.

Committee on Funding of Civil Legal Services

[Gary M. Slovin (Chair), Michelle Acosta, Rebecca Copeland, M. Nalani Fujimori Kaina, Robert LeClair, Dean Aviam Soifer, Kanani M. Tamashiro, Wilfredo Tungol]

- Make recommendations and provide advocacy in support of establishing a permanent "home" for the legislative funding of providers of civil legal

³ Further discussion can be found at "II. 2015 Access to Justice Conference" in this report.



services to low- and moderate-income individuals so that funding for such services may be stable and secure

- Make recommendations and provide advocacy in support of increased legislative funding of civil legal services providers
- Make recommendations and provide advocacy in support of increased funding for civil legal services providers by the federal Legal Services Corporation and other federal and state agencies
- Make recommendations and provide advocacy in support of increased funding of civil legal services through the indigent legal services filing fee surcharge and other measures
- Assist legal services providers in exploring additional public and private funding sources and in developing programs or projects for which funding may be sought
- Make recommendations in collaboration with the Judiciary, the HSBA, law firms, and other employers of lawyers, to encourage attorneys to provide substantial financial support to legal services providers, including additional amounts in years when such attorneys do not meet the aspirational pro bono goals of Rule 6.1 of the Hawaii Rules of Professional Conduct (“HRPC”)

Committee on Increasing Pro Bono Legal Services

[Michelle Acosta (Chair), Tracey Wiltgen (Vice Chair), Sergio Alcubilla, Rebecca Copeland, Ramona Hussey, Linda Ichiyama, Tracy Jones, Gregory Kim, Derek Kobayashi, Audrey Stanley, Catherine Taschner, Jeanilou Torrado, Shannon Wack]

- Study best practices in other jurisdictions for increasing the level of pro bono services by lawyers, paralegals and others who may assist in overcoming barriers to access to justice, including developing effective recruitment campaigns
- Make recommendations concerning ways to develop a culture of commitment to pro bono service among Hawaii’s lawyers
- Maintain a list of legal services providers and others that offer opportunities for pro bono service, describe the nature of those opportunities and explore and assist providers in increasing the opportunities they provide for such service
- Make recommendations concerning ways to make providing pro bono service more attractive to attorneys, such as by assisting in developing resources for the pre-screening of cases, ensuring proper training, providing support and recognizing service
- Make recommendations concerning ways in which the Commission, the Judiciary and the HSBA--acting alone or in partnership with others--can encourage attorneys to provide higher levels of pro bono service
- Make recommendations concerning ways to encourage law firms and others who employ lawyers (including governmental agencies and



corporate law departments) to promote greater pro bono service among their attorneys

- Make recommendations concerning ways to encourage retired lawyers and judges to provide pro bono or staff legal services to low- and moderate-income individuals

Committee on Initiatives to Enhance Civil Justice

[Judge Ronald Ibarra (Chair), Kristin Shigemura (Vice Chair), Sergio Alcubilla, Earl Aquino, Lincoln Ashida, Elizabeth Fujiwara, Carol Kitaoka, Gregory Lui-Kwan, Michelle Moorhead, George Zweibel]

- Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low- and moderate-income Hawai'i residents
- Study best practices in other jurisdictions and develop and recommend new initiatives to expand access to justice in Hawai'i
- Make recommendations and provide advocacy in support of enhancing recruitment and retention of attorneys to work as staff members or to volunteer pro bono for nonprofit civil legal services providers in Hawai'i, which may include:
 - Establishment by the Hawai'i legislature of a student loan repayment assistance program to help full-time, nonprofit civil legal services attorneys pay back their student loans
 - Adoption by the Hawai'i Supreme Court of rules to permit attorneys actively licensed to practice law by the highest court of a state or territory of the United States or the District of Columbia or Puerto Rico and who are working on staff or volunteering pro bono for nonprofit civil legal service providers to practice in that capacity for up to one year without being admitted to practice law in Hawai'i
- Make recommendations concerning ways in which paralegals and other non-lawyers may assist in meeting specified unmet civil legal needs, including whether ethical or procedural rules would need to be changed to accommodate such assistance

Summary of Actions Taken

The Committee considered and made recommendations to the Commission regarding the following:

- (1) Recommended the implementation of pro bono requirements before bar admission (the New York model).
- (2) Recommended joining the ABA initiative for a national interactive pro bono website, where low-income citizens can log onto the internet, then file legal questions, and get answers to their legal questions from pro bono volunteer



lawyers who are licensed in the state in which the client resides or in which the legal matter arises. For the last four years, the Tennessee Alliance for Legal Services and the Tennessee Bar Association operated an interactive pro bono website where volunteer attorneys provide pro bono legal answers to Tennessee low-income families. The ABA national model is based upon this experience.⁴

Law School Liaison Committee

[Moses Haia (Chair), Mary Anne Magnier (Vice Chair), Ashlee Berry, Katie Bennett, Jean Johnson, Linda Kreiger, Calvin Pang, James Pietsch, Dean Aviam Soifer]

Make recommendations concerning ways to:

- Expand efforts to create and develop law student interest in the practice of poverty law by increasing existing clinical programs and instituting new ones to serve the needs of low- and moderate-income populations
- Emphasize, as part of the professional responsibilities curriculum, a lawyer's ethical duty under HRPC Rule 6.1 to perform pro bono legal services and the ways this obligation can be met
- Develop opportunities with legal services providers, and sources of additional funding, to support law students' efforts to meet the 60-hour pro bono graduation requirement in a manner consistent with addressing the needs of low- and moderate-income populations
- Encourage and recognize the involvement of faculty members in efforts to promote equal justice by, for example, testifying in support of access to justice legislation, accepting pro bono cases, serving on boards of organizations that serve the legal needs of low- and moderate-income populations, contributing financially to organizations that serve the legal needs of low- and moderate-income people and filing amicus briefs in proceedings affecting legal services to the underserved
- Develop more public interest summer and academic year clerkships and obtain grants for summer internships and clerkships that serve low- and moderate-income populations

Committee on Overcoming Barriers to Access to Justice

[Jean Johnson (Chair), Jennifer Rose (Vice Chair), Russ Awakuni, Patricia Cookson, Nanci Kreidman, Mary Anne Magnier, Mark K. Murakami, Calvin Pang, Cynthia Tai, Malia Taum-Deenik, Kristina Toshikiyo, Randall M. Wat]

- Make recommendations concerning ways to remove impediments to accessing the justice system due to language, cultural and other

⁴ The memorandum from the ABA Pro Bono Committee regarding the National Interactive Pro Bono Website is attached hereto as Appendix B.



barriers and make recommendations concerning what programs should be initiated to address this barrier, which may include:

- Providing multilingual services, including increasing the number of available staff and pro bono attorneys and court personnel who are bilingual
- Providing forms in multiple languages
- Providing translation services in court, administrative agencies, and with legal service providers
- Partnering with the University of Hawai'i and other schools offering language training to encourage multilingual volunteers to provide outreach and translation services
- Identify other barriers to obtaining legal assistance and make recommendations concerning ways to address them, such as through the provision of ancillary services, e.g., providing for child care during a court hearing or for necessary mental health services
- Seek to reduce barriers by recommending input on existing and proposed laws, court rules, regulations, procedures and policies that may affect meaningful access to justice for low- and moderate-income Hawai'i residents

Summary of Actions Taken

The Committee of Overcoming Barriers to the Access to Justice ("COBAJ") had a busy year with excellent participation from its membership. Four strategic needs were identified to be addressed during the year:

- Gender equity issues in access to justice
- Micronesian access issues/Data needs
- Unmet needs of persons with disabilities
- Further language access training programs

Due to the urgency of the issues and the limited resources of COBAJ to address the needs, the committee decided to concentrate this year on the Micronesian access issues. The primary activity was to conduct a workshop during the June 2015 Access to Justice Conference.

The workshop featured two Micronesian speakers: Ms. Beverlynn Simina and Dr. Sheldon Riklon. Ms. Simina, from Chuuk and a graduate of the University of Hawai'i at Hilo, has worked as the Intake Coordinator at Volunteer Legal Services for six years. She is also a certified Chuukese interpreter. Dr. Riklon, a graduate of the John A. Burns School of Medicine ("JABSOM"), is one of only two Marshallese medical doctors. After working as a physician in the Marshall Islands, he accepted a clinical position at JABSOM and currently chairs the Micronesian Health Committee. Both of these speakers had extensive first-hand knowledge of the issues facing the Micronesian population in Hawai'i.



Fifty-five people preregistered to attend the workshop; actual attendance included more than sixty people. The two presentations lasted about 25 minutes total, leaving ample time for questions and comments from the audience, with responses from the two speakers. Audience participation was lively and filled available time.

Of the 88 evaluation forms submitted following the 2015 Access to Justice Conference, 15 rated this workshop “excellent.” Several helpful comments were included in the responses. These have been shared with COBAJ and with the two speakers.

Extensive needs were identified during the workshop that need further attention from the Access to Justice Commission. These include the following:

- Access to justice is a continuing critical issue and need for Micronesians;
- Overt and implicit bias exists in the community, the press, and the courts;
- Interpreter services are inadequate, are often inappropriate (wrong language or dialect), and fail to take into consideration cultural mores on class and gender differences;
- Written translations are often grossly unintelligible to speakers of the languages;
- No quality control exists for oral interpretations or written translations;
- Becoming a language interpreter is not a sought-for position—to be trained costs money, there are no scholarships, it is not a full-time position, being on-call precludes being able to be otherwise fully employed, the work often requires inconvenient travel, and no benefits are provided;
- More work is needed to educate migrant populations to prepare them for the cultural difference between living in their home islands and living in Hawaii; and,
- The Commission needs to tap the expertise of respected COFA community members who are knowledgeable about their culture and the legal and community expectations in Hawai'i.

The majority of COBAJ members participated in the workshop. The COBAJ meeting on July 17, 2015, discussed the workshop, reviewed the comments from workshop participants and from Conference participants, and produced the following recommendations to the Commission:

- Although much has been done to improve language access in Hawai'i, for many language access remains an unrealized dream. Revitalize the Roundtable to address issues of the inadequate number of interpreters and lack of quality control in oral interpreters and in written translations—consider an article in the Hawaii Bar Journal highlighting the problems.
- Consider establishing staff positions for interpreters within the Courts. *[COBAJ members volunteered to explore this possibility.]*
- As is being done successfully on the neighbor islands, consider scheduling court cases (e.g., Family Court or Juvenile Court) for speakers



of the same language on the same day to facilitate access to highly-qualified interpreters.

- Encourage the updating, wide distribution, and utilization of information to immigrants, such as “Voyaging Together to a New Life.” *[COBAJ members volunteered to contact various agencies to explore the possibility of grants for this purpose.]*
- Explore creating a pilot “Court Navigator” program in Hawai‘i. *[A COBAJ member will explore grant possibility for this program.]*

Addressing the Other Strategic Needs. The gender equity issues will be the focus of the January 2016 meeting of COBAJ. Plans are developing for a collaborative effort with the American Judicature Society Criminal Justice Committee to focus more attention on the language access issues. Attention is also being given to developing a succession plan for continuing COBAJ leadership.

Committee on the Right to Counsel in Certain Civil Proceedings

[Tracy Jones (Chair), Shannon Wack (Vice Chair), Jessica Freedman, Regina Gormley, Brandon Ito, Elton Johnson, Mary Anne Magnier, James Weisman, Cheryl Yamaki]

- The American Bar Association, at its 2006 annual meeting in Hawai‘i, adopted a resolution supporting “legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody, as determined by each jurisdiction.” The Committee should study developments in other jurisdictions with respect to the establishment and implementation of a right to counsel in certain civil proceedings.
- Make recommendations concerning the types of civil matters in which the rights or issues involved are of such fundamental importance that counsel should be provided in Hawai‘i, assess to what extent attorneys are available for such matters and make recommendations on how to assure that counsel is available.

Committee on Self Representation and Unbundling

[Derek Kobayashi (Chair), Sarah Courageous, Damien Elefante, Jerel Fonseca, Victor Geminiani, Tracy Jones, M. Nalani Fujimori Kaina, Victoria Kalman, Jo Kim, Jay Kimura, Justin Kollar, Daniel Pollard, Judge Trudy Senda, Kristina Toshikiyo, Shannon Wack]

Members of this Committee may also serve on a joint committee with the Supreme Court’s Committee on Professionalism. Although the joint committee will need to determine its agenda, this Committee of the Commission may study and make recommendations concerning ways to:



- Create, staff, and fund self-help centers that are connected to every courthouse in Hawai'i in order to provide real-time assistance to low- and moderate-income individuals
- Design programs to make courts more “user-friendly” to low- and moderate-income individuals
- Provide information to self-represented litigants on where they can receive legal assistance
- Reduce barriers encountered by self-represented litigants in the court system, e.g., by using plain English and translations into other languages, and by simplifying procedural rules
- Make changes to court rules and statutes that would streamline and simplify substantive areas of the law, e.g., family, housing and landlord-tenant law
- Make changes to court rules in order to permit limited representation or “unbundled” legal services, and if achieved, make recommendations concerning continuing legal education programs and other ways of promoting unbundling as a way to meet currently unmet legal needs and empowering individuals to represent themselves





II. 2015 ACCESS TO JUSTICE CONFERENCE

There were approximately 260 people in attendance. There were 140 attorneys seeking CLE credits for attendance.⁵

The Commissioners in attendance were: Judge Daniel R. Foley, Chair, Hawai'i Access to Justice Commission; Justice Simeon R. Acoba, Jr. (ret.), Judge Joseph E. Cardoza, Judge Ronald Ibarra, Judge Trudy K.T. Senda, Representative Della Au Belatti, Michelle D. Acosta, Rona S.Y. Fukumoto, Jean Johnson, Derek R. Kobayashi, M. Nalani Fujimori Kaina, Mary Anne Magnier, Carol K. Muranaka, Dean Aviam Soifer, and R. Elton Johnson, III.

There were 38 speakers or panelists. Dean Aviam Soifer and Robert LeClair served as co-emcees for the conference.

In his welcoming remarks, Hawaii Supreme Court Chief Justice Mark E. Recktenwald⁶ stated:

One of the greatest challenges to equal justice today is the lack of effective access to our civil justice system. The reason is simple--people who have low or even moderate incomes cannot afford to hire an attorney to represent them in their civil legal cases. Although there are legal services providers like the Legal Aid Society of Hawai'i who do an amazing job representing indigent clients, they have nowhere near enough resources to meet the need. As a result, every year in Hawai'i, thousands of people must represent themselves in our civil courts, trying to navigate a system that is foreign to the average layperson. Many of them simply give up.

Ensuring that every person's voice is heard when their legal rights are threatened is not a luxury—rather it is at the very *foundation* of the legitimacy of our courts, and therefore, our democracy. We are talking about fundamental human needs--housing, health care, the ability to participate in raising one's child. When these decisions are made without hearing every side of the story, the promise of justice for all rings hollow. . . .

Hawaii's work on access to justice issues is being noticed across the country. Last year, the National Center for Access to Justice completed an independent study of each state justice system across the country. Hawai'i was ranked among the top five for expanding access to justice. We were rated number one for providing services to litigants who represent themselves and tied for first in providing support for people with disabilities. I'm very proud of what this says about the strength of the access to

⁵ This number does not include the panelists who either sought Certificates of Attendance and Teaching (6 credits) or only Certificates of Teaching Credits (3 credits).

⁶ A complete copy of Chief Justice Mark Recktenwald's remarks at the 2015 Access to Justice Conference is attached hereto as Appendix C.



justice movement here in Hawai'i, and I am grateful for all the hard work it represents. . . .

Although increasing access to justice is the right thing to do, it also makes good business sense. Throughout the country, economic value studies have shown that increased provision of legal services to those of low and moderate incomes benefits not only those individuals, but also the economy. Studies are showing that the time and money invested pays off at an exceptional rate: a New York study suggested there was a \$5 return to the economy for every dollar spent on civil legal services.

Why is that return so high? There are a number of reasons. Legal aid makes neighborhoods safer and more stable and desirable. It reduces the number of abused and elderly who require emergency services and subsequent follow-up social services, thereby reducing the costs of those services for taxpayers. It brings federal monies into the state through assisting those in need with disability claims. Legal aid saves jobs by helping families obtain the right services for their children, leading to a more stable workforce. We need to find ways to convey this message and build more partnerships.

Commission Chair Judge Daniel Foley presented his personal story and described his volunteer work as a Peace Corps volunteer in Lesotho in southern Africa in 1969. When the country erupted in a civil war, he was labelled a communist and expelled. He visited Micronesia and stayed for eight years helping with the writing of the constitution and statutes and other governing documents. "Sharing was part of the culture," he said.

When he returned to Hawai'i, Judge Foley joined ACLU as a staff attorney and he remembers that his first big case involved the prison system and its condition. Without that lawsuit, prison conditions would not have improved, he stated. Later in December 1990, several same sex couples wanted to obtain marriage licenses and were refused. "I told the clients not to expect much," said Judge Foley, "because no laws at that time were favorable." Judge Foley was successful in the Baehr case⁷ and so commenced the societal change. He treasures his pro bono work and recommends it strongly.

In his keynote address, "Narrowing the Gap: Access to Justice in Today's Realities" Jonathan D. Asher, Executive Director, Colorado Legal Services,⁸ said:

In Colorado, as here in Hawaii, the Supreme Court and the judiciary have been leaders in improving the justice system for those in need. In Colorado, the Supreme

⁷ Baehr v. Lewin, 74 Haw. 530 (1993)(The state supreme court held it was gender discrimination under Hawaii's equal protection clause to deny same-sex couples marriage licenses).

⁸ A copy of Jonathan Asher's keynote address at the 2015 Access to Justice Conference is attached hereto as Appendix D.



Court has mandated the acceptance by local courts of state approved uniform forms essential to efforts to systematize materials for pro se litigants and the training of pro bono attorneys willing to help those in need. The Colorado Supreme Court has simplified many court proceedings. The Court has adopted rules to facilitate and support discrete task unbundled representation, and when the rules were not widely used, the Court revised them again, easing a lawyer's withdraw after the limited service was provided, making withdrawal automatic, in the hope that more lawyers would start to provide limited scope service. . . .

Let me interject that many of these initiatives were heavily criticized by members of the Bar, as anything new will be. Some believe that judicial leadership on equal justice issues conflicts with judicial neutrality, that judges should sit back and not advance any cause. As Laurence Tribe, the first Senior Counsel for Access to Justice at the U.S. Department of Justice said in 2010 "...there is a basic and often ignored difference between neutrality and judicial inactivity, between judicial objectivity and judicial passivity." He shared that:

Perhaps the greatest image we can conjure of a wise judge is that of Solomon. We all remember his creative, pre-DNA test, solution to the problem of adjudicating the contested issue of maternity between two women making competing parental claims to the same infant. The wise king's proposed solution, which he sprang on the women when he suggested splitting the baby in two while he watched the reactions of both claimants to motherhood, was the very essence of neutrality and objectivity,

but, Tribe said, "it was hardly passive. It was as active as all-get-out. Solomon's wisdom sprang from making justice an active verb."

I encourage all of you, members of the Court, the judiciary, the Bar, the Law School and those of you who simply care about these issues, to be as active as all-get-out.

But I don't think that being active is enough. I encourage you, in your efforts to expand access to justice, to reflect on the difference between access to justice and justice itself. . . .

We should not accept what, I fear, is increasingly two tiers of justice – one for those who can afford counsel and another for those who can't.

I will feel that things are more equal when we tell the CEO of a major corporation that you are pretty bright, you speak English well, so you should go to a website and it will walk you through how to fill out a form and respond to the other party's patent infringement or trademark claim. No. Only those without means are triaged and told that legal information and an interactive website is all that you will get. Some may make the choice that that is all that they need or want – just information.



But while that is fine for those who chose it, we should not accept it for those who have no choice, when we make the choice for them.

Of course, 100% of those in need should get something, but the goal isn't something – the goal is justice – not just access to the courts – opening the door to the courthouse. As Chief Justice Lippman of New York said, there is no point in opening the door if you can't get justice once you are inside – the goal is not increasing judicial efficiency, it is ensuring the right response to someone's legal need, it is the pursuit of justice, not just access.

Technology is a helpful tool, but it is not the end, it is not justice. A computer can, if programmed well and used wisely, help move us in that direction, as it should, but that is all it can do.

We need to test, and then implement, new and broader strategies, beyond just additional resources for legal aid programs – as important as that is – we must help meet the full range of legal needs of low-income people and communities and that those needs, whether within or outside of the court system, should be considered and addressed. . . .

A Greek philosopher, when asked when justice would come to Athens, stated that justice would only come when those who are not injured are as indignant as those who are. I believe that I am in the company of the indignant and that Hawaii will be well served by your thoughtful concern and indignation.

There were two concurrent morning workshops. Chief Justice Recktenwald led the “Engaging the Business Community in Access to Justice” workshop with Robbie Alm, president, Collaborative Leaders Network; Gregory R. Kim, Convergent Law Group LLP; Catherine Ngo, president and chief executive officer, Central Pacific Bank; and Hoyt H. Zia, senior vice president, general counsel and corporate secretary, Hawaiian Airlines, Inc. There were approximately 100 attendees who signed up for this workshop.

A summary of the Business Community workshop follows:

Chief Justice Recktenwald began the panel by explaining that surveys from other parts of the country strongly support the conclusion that business support for access to justice efforts make good business sense, in addition to being the right thing to do. Throughout the country, economic value studies have shown that increased provision of legal services to those of low and moderate incomes benefits not only those individuals, but also the local economy. Studies are showing that the time and money invested pays off at an exceptional rate: a New York study suggested there was a five dollar return to the economy for every dollar spent on civil legal services, and some studies have shown even higher returns.



Legal aid makes neighborhoods safer and more stable and desirable. For example, it reduces the number of abused and elderly who require emergency services and subsequent follow-up social services, thereby reducing the costs of those services for taxpayers. It brings federal monies into the state through assisting those in need with disability claims. And legal aid saves jobs by helping families obtain the right services for their children, leading to a more stable workforce.

The panel focused on the untapped potential for businesses' additional support of the access to justice movement in Hawai'i. At the outset, the panelists noted access to justice movement may have difficulty with messaging and defining "access to justice" for the lay understanding of the business community and community at-large. Suggestions to overcome this difficulty included working with professional marketers or advertising agencies, perhaps some used by the business community, to crystalize a message and convey stories about what is "access to justice," and how it helps the community. Analogies were made to graphic public service announcements, which have an emotional impact on viewers, such as PSAs relating to methamphetamine. News stories, short videos, and commercials were also suggested.

Panelists also explained how one might "pitch" businesses for their support. Panelists emphasized that engaging leaders inside businesses to champion the causes would be helpful if not essential, and that many larger companies receive a large volume of requests from community organizations for support. Panelists explained that access to justice programs or organizations would likely be considered with and compete against other community organizations relating to children, pets, and others. Attorneys--practicing or not--within businesses may be natural candidates to champion pro bono policies or access to justice causes to business leaders because these can assist in explaining what access to justice is, how it helps the community, and how it might uniquely help businesses. Some panelists expressed that regardless of economic benefits to the community, access to justice efforts will likely be considered among other worthy community causes.

Panelists explained that in addition to direct financial support, businesses may help legal services providers by vouching for them in the community; providing support at the Legislature; donating information technology services, hardware, or software; donating in-house marketing services; or donating time of businesses' staff for administrative, clerical, billing, or accounting services (with the caveat of ensuring no conflicts of interest).

Panelists also discussed businesses encouraging law firms to support legal services providers by asking firms directly to increase pro bono services, inquiring as to the types or amount of pro bono work of the firm, or asking the firm to support legal services providers by joining with the business in fundraisers or other support. Panelists cautioned that firms get many requests for support, and, additionally, businesses might not want to limit their options for their own legal work by eliminating potential firms with these inquiries or requests.



Panelists also discussed the apparent paradox of “too many attorneys” and “too few attorneys.” Panelists considered the potential for a “lawyer training corps” similar to medical residencies, and other law firm models that could provide low- cost legal services.

The panel closed with a commitment to continuing the discussion of engaging the business community to improve access to justice in Hawai'i.

Tracey Wiltgen, executive director of The Mediation Center of the Pacific, led the other morning workshop, “What’s Mediation Got to Do with Access to Justice? (includes increasing access to justice with dispute resolution and selecting the right mediation process and mediator). There were approximately 120 attendees who signed up for this workshop.

A summary of the mediation workshop follows:

To lay the foundation for the discussion, the role of Hawaii’s five community mediation centers, jointly referred to as Mediation Centers of Hawaii (“MCH”), was described. It was noted that MCH provides services for a broad variety of areas that involve the low income population including: divorce, unmarried couples with children, landlord/tenant, civil rights, foreclosure, special education, family, elder and more. It was additionally noted that the role of community mediation centers in increasing access to justice is steadily growing as evidenced by the fact that a total of a 3,537 cases were served in fiscal year 2013-2014 and nearly the same amount of case were already served (3,480) in the first three quarters of fiscal year 2014-2015. To serve this large number of cases approximately 274 mediators (both lawyers and non-lawyers) provided services pro bono, or in some instances, low bono.

Following the introduction, the three panel members provided an overview of different mediation and dispute resolution programs that are currently being used in their respective circuits. These programs include:

- An on-site paternity mediation program, a Guardianship Mediation Program, Child Welfare Mediation Program and the Volunteer Settlement Masters Program in the Family Court of the First Circuit.
- A foreclosure mediation program in the Third Circuit.
- A small claims, summary possession and TRO (injunctions against harassment) mediation programs in the District Court of the First Circuit.

In describing these different programs, it was noted that there were key similarities as well as differences that made the respective programs successful. The similarities between the processes were:

- The participants were provided with the opportunity to discuss their issues in an informal setting with the assistance of impartial neutrals.
- No party was required to settle in any of the processes and could return to court.



- Irrespective of whether or not the parties settled, most felt the process was valuable.
- The parties involved in cases that were not resolved through the processed, were generally clearer on what they wanted to achieve when they returned to court.

The differences between the programs included:

- The extent of the Court involvement
 - The foreclosure mediation program requires the participants to appear in court for a status conference; the court determines whether or not a case is appropriate for mediation; the court monitors the progress of the case.
- The participants in the process
 - Foreclosure mediations have multiple participants including the lender representative who may be required to travel from the mainland, the borrower, attorney for the lender and in some instances, attorney for the borrower, whereas Paternity mediations mediated on-site at court generally include two pro se people.
- Where the process is conducted and the length of time before the return court date
 - Foreclosure mediations are conducted at the offices of the community mediation centers and are provided an extensive period of time to exchange documents, meet and negotiate, before returning to court.
 - Small claims and summary possession mediations take place at District Court for approximately 30 minutes. If no agreement is reached, the parties promptly return to the courtroom to have their case decided by a judge.
- The background and training of the neutrals conducting the process
 - All neutrals have effective listening and people skills.
 - The foreclosure mediators come from a broad variety of backgrounds and complete a basic mediation training and specialized training in foreclosure mediation.
 - The on-site Paternity mediators are all experienced mediators with specialized training and most are attorneys with background in family law.

In general, it was emphasized that the challenge for the legal system in providing access to justice for all is that the system strives to provide a single process for all disputes and limited remedies for all problems. Mediation and other dispute resolution processes provide a more flexible approach for addressing the needs of the litigants rather than serving the application and enforcement of the law. The resolution of a mediation is not be limited to the remedies allowed by law. Additionally, mediation does not require the time and location constraints placed on judicial proceedings because of support personnel required such as court clerks, bailiffs, and sheriffs. Mediation is adaptable to taking place online, by video conference, or by phone to accommodate parties in different locations or to preserve the safety and security of the parties.



Questions that were addressed by the panel included:

- Do mediators need to have subject matter expertise to be effective?
 - It was felt that subject matter expertise is needed in certain cases i.e. products liability, medical malpractice etc. But all mediators should have people skills that bring parties together.
 - Mediators should have some background and understanding of the laws governing the areas they mediate in.
- How does Rule 12.2 impact mediation?
 - Circuit Court Rule 12.2 allows the court to refer the parties to mediation.
- When is mediation appropriate or not appropriate?
 - Mediation is appropriate in most cases where violence is not an issue.
- When should mediation be ordered?
 - Because parties do not think about using mediation first, mediation is ordered in most of the court programs. The parties are required to participate, but they are not required to reach an agreement.

A concern was raised about the statutory mandate under 514(b) for owners and condominium association boards to participate in mediation. Owners are required to pay for their own time and attorney, as well as a pro rata share of the cost of the board and the AOA attorney's participation.

There were five concurrent workshops for the first afternoon session:

1. "More Than Just Interpreting Words! (Cultural and Linguistic Barriers for Micronesians to Access Justice)" with Jean Johnson, Dr. Sheldon Riklon, and Beverlyn Simina. There were approximately 55 attendees who signed up for this workshop.
2. "Using Non-Attorneys to Close the Justice Gap" with R. Elton Johnson, III, Robert LeClair, and Nanci Kreidman. There were approximately 54 attendees who signed up for this workshop.
3. "Access to Justice for Individuals with Neurocognitive Disorder (Dementia) and their Caregivers" with Dr. Iqbal Ahmed and Professor James Pietsch. There were approximately 46 attendees who signed up for this workshop.

A summary of this workshop follows:



As our nation's older population continues to grow, so does the importance of having professionals in our society capable of responding to the unique needs of the elderly, including responding to the physical and mental effects of aging on this segment of the population. These professionals should include those who are so-called "dementia-capable" professionals—individuals who are trained to recognize the signs of and address problems caused by Alzheimer's Disease and related disorders or dementias ("ADRD"). By having more dementia-capable professionals, access to justice for those with ADRD may be enhanced.

After an introduction to the subject, the first portion of the panel discussion focused on medical terminology and a description of ADRD. Over the next ten years, the number of individuals who will suffer from ADRD is expected to rise by 40 percent, and the effects of ADRD can often be devastating on individuals, their families and society. Age is the primary factor for developing dementia, and with our aging population growing each year, it is more important than ever for those in the legal profession to become dementia-capable.

The discussion noted that, before an individual reaches the point of having dementia, there may be a period of time in which they may be experiencing moderate or mild cognitive impairment ("MCI"). An individual with MCI may still have or have retained substantial ability to pursue appropriate legal, financial and personal planning for future incapacity. This is an area best suited for a dementia-capable attorney (explained later in presentation) to take advantage of a client's ability to make decisions at the early stages of diminished capacity by having the client portray exact wishes to the lawyer.

The concept of dementia-capable professionals began percolating in the United States in reaction to the alarming prospects of ADRD. The discussion noted that Hawai'i is at the forefront of addressing ADRD-related issues, and the state's community stakeholders have been active from the beginning. Hawai'i has also recognized the need to train legal and other services professionals regarding issues relating to dementia.

This discussion finally provided an overview of the characteristics and challenges of professionals, including attorneys striving to become "dementia-capable."

4. "Delivering Pro Bono Services to Rural Communities (includes providing legal assistance for natural disaster relief)" with Michelle Acosta and Tim Lui-Kwan. There were approximately 23 attendees who signed up for this workshop.

A summary of this workshop follows:

Tim Lui-Kwan and Michelle D. Acosta shared information and experiences on the delivery of pro bono services through the Senior Counsel Division ("SCD") of the HSBA and VLSH. Audience participants Sergio Alcubilla and Valerie Grab shared information on natural disaster relief efforts through a collaboration with



the Legal Aid Society of Hawaii ("LASH"), Hawaii County Bar Association, and the HSBA.

Topics covered:

- a. Identifying rural areas within the State of Hawaii;
- b. Barriers to providing legal services: poverty; geography; isolation; connections to services; limited number of attorneys; and limited services;
- c. The SCD experience on Molokai:

The SCD mobilizes retired attorneys to travel at their own expense to Molokai to provide free legal clinics to rural residents. SCD participants are well experienced attorneys with varying backgrounds and can offer information and advice on an array of legal matters that may not be readily available to Molokai residents. The SCD sponsored clinics are fairly low cost and provide participants an opportunity to gain an understanding of the rural community and fill a need.

- d. The VLSH experience in Ka'u and other rural areas through Pop-Up Legal Clinics:

VLSH coordinated with Ka'u community leaders and social service organizations to host a Neighborhood Legal Clinic for advice and counsel in Ka'u. VLSH shared that the key to a successful delivery of service to rural areas is collaboration with community based organizations and leaders for the purpose of developing services that fit the community's needs and culture.

- e. The Collaborative Experience between LASH, Hawaii County Bar, and HSBA in responding to and preparing for natural disaster relief:

During the 2014 hurricane season, LASH, HSBA and the Hawaii County Bar collaborated to update disaster relief brochures, establish a legal hotline and provide onsite disaster relief clinics on Hawai'i Island. The collaborative effort was successful in mobilizing volunteer attorneys to meet the needs of Hawai'i Island residents affected by severe weather and the lava flow. The 2014 experience has helped further develop brochures and volunteer training for the 2015 hurricane season.

5. "Access to Justice for Juveniles and Foster Children" with Judge R. Mark Browning, Mark Patterson, and Laurie Tochiki. There were approximately 46 attendees who signed up for this workshop.

A summary of this workshop follows:



The Vision Statement for the Hawai'i Family Court states that the Court strives to be a place of healing. This does not mean that it is not a Court in the traditional sense. Rather the aspiration to be a place of healing is consistent with the principles of therapeutic and restorative justice. Further, it acknowledges that in the realm of Juvenile Justice the judges have a responsibility that is different than judges presiding in other courts.

In juvenile criminal cases, Family Court judges have two basic responsibilities. The first is that they must act as the trier of fact. The second responsibility, assuming the minor is adjudicated (found guilty), is the most important of the two and is fundamentally different than adult court. The judge focuses on ways to help the child and to provide the child with services that help the child to become healthy. This is never done at the expense of the safety of the public.

The reality is that approximately 5,000 kids are brought to the Court every year. The majority of these kids have suffered some kind of trauma which can include sexual abuse, physical abuse, neglect, psychological abuse, the loss of a loved one, and so on. The key to understanding and helping these children is that we needed to become more therapeutic and less punitive. For example 10 years ago children were being incarcerated for status offenses and for misdemeanors, not to punish but to supposedly keep the child safe. This was and is unacceptable in light of the fact that research has shown that locking kids up causes more harm than good in a variety of ways.

As such, approximately eight years ago, the Family Court decided to become a leader in Juvenile Justice reform. First, the Court applied and became a Juvenile Detention Alternative Model Court sponsored by the Annie E. Casey Foundation. The Casey Foundation provided the Court with technical assistance, model site visits, mentoring and other assets to begin our reform process. In 2010, the Court issued a memo that we would no longer allow status offenders to be incarcerated. In addition to this step many other measures were taken to reform the system which are too lengthy to detail.

By 2013, the Court began to see the results of our efforts. Secured detention admissions were reduced by 43 percent. The number of youth committed to the Hawaii Youth Correctional Facility was reduced by 68 percent. The data also showed that the reform had been implemented without any detriment to community safety. This fact was demonstrated by a 62 percent decrease in the number of felony petitions filed.

Although these reforms were important, some fundamental Access to Justice issues relative to youth within the Juvenile Court System were being ignored and had been ignored for years. To understand the above statement one must understand that Juvenile Offender Access to Justice issues are not the same as the issues faced by adults.

For juvenile offenders, the fundamental issue is the lack of available and accessible services to assist the Court in its duty to help the youth. This is self-evident when one considers the fact that 80 percent of the youth offenders



are in need of drug treatment and often residential treatment and yet there is really only one residential treatment center for youth in the state. More than 60 percent of the youth suffer from mental health maladies. Despite this fact there is a very limited array of mental health services for our children which leads to children who need more intensive care being sent to the mainland.

To this point, the Juvenile Justice Reform Commission whose members were appointed by the Governor, Chief Justice, President of the State Senate and Speaker of the State House issued a report. In said report, the most important finding by the Commission was that judges and probation officers lacked the necessary services to help children - and that our children were being harmed because state monies were more invested in incarceration facilities than treatment programs.

Contemporaneously with this finding the Pew Foundation was instrumental in assisting the Commission in writing and introducing legislation to address other system issues and to provide monies for the Court to assist youth. In 2014, this legislation was enacted into law as Act 201 and the legislature approved a \$1.26 million appropriation to help our children.

Despite this progress there still exists a great need to reform the delivery of mental health services for our youth. We came a long way but we have so much farther to go. How we treat and care for children defines us as a community and as an individual. We continue to strive to educate people that investing in our kids on the front end of our Juvenile Justice System is fundamentally better for all of us rather than simply resorting to incarcerating them. It is a struggle. But one that is necessary and one that is consistent with our desire to ensure access to justice to our most vulnerable.

For the second part of the afternoon, there were another five concurrent workshops as follows:

6. "Lack of Representation for Non-English Speaking Residents" with Calleen Ching and Gary Singh. There were approximately 41 attendees who signed up for this workshop.
7. "Landlord-Tenant, Homeless, and Other Housing Issues" with Camille K. Kalama, Jenny Lee, Sharla Manley, and Gavin Thornton. There were approximately 67 attendees who signed up for this workshop.
8. "Technology and Access to Justice" with Judge Don Horowitz (ret.), Nalani Fujimori Kaina, and Sherrie Seki. There were approximately 56 attendees who signed up for this workshop.
9. "Incubator Projects and Loan Assistance Programs" with Avi Soifer, Matt Tsujimura, and Keani Rawlins-Fernandez. There were approximately 25 attendees who signed up for this workshop.



10. "Bankruptcy Law and Consumer Debt Issues" with Johnathan Bolton and David Farmer. There were approximately 29 attendees who signed up for this workshop.

This presentation covered the topic areas of consumer debt collection (strategies and defense), the Fair Debt Collection Practices Act, the Hawaii Fair Debt Collection Practices Act, filing small claims, strategies for negotiating with creditors, post-judgment collection strategies (including wage garnishment, writs of attachment, and foreclosures) and the basics of chapter 7, 13, and 11 bankruptcies.

The closing panel focused on "Narrowing the Justice Gap" with Chief Justice Recktenwald, Judge Foley, Jon Asher, and Associate Justice Simeon Acoba (ret.) as moderator, with a discussion on ways that unmet needs can be reached outside of the courtroom door by the Judiciary and by the Commission; not losing sight of achieving justice in efforts to improve access to justice, that is, to the courts; possible priority initiatives for the future.





III. SELF-HELP CENTERS

The self-help centers were started by and continue to be a collaboration of the Hawai'i State Judiciary, the Commission, HSBA (in particular, the HSBA Committee on the Delivery of Legal Services to the Public), Legal Aid Society of Hawai'i, the AmeriCorps program, the county bar associations (East Hawai'i Bar Association, Kauai County Bar Association, Maui County Bar Association, West Hawai'i Bar Association), and the HSBA Family Law Section. There are now self-help centers in each courthouse in each state judicial circuit.

A. Hilo Self-Help Center

The Hilo Self-Help Center is located on the first floor of the Hilo courthouse (Hale Kaulike, 777 Kilauea Avenue, Hilo, Hawaii 96720) and is open twice a week (Tuesday and Friday) from 11:15 a.m. to 12:45 p.m.

The volunteer attorneys provided limited legal information to self-represented litigants on civil matters.

B. Maui Self-Help Center

The Maui Self-Help Center is located on the first floor of Hoapili Hale (2145 Main Street, Wailuku, HI), and is open on Thursdays from 9:00 a.m. to noon. Residents on Molokai, Lanai, and in Hana will also be able to have access to the Center by telephone when the Center is open.

The volunteer attorneys provide limited legal information to self-represented litigants on civil matters. The most common issues for which assistance was sought included: landlord-tenant, family/custody, small claims, and foreclosure cases.

C. Access to Justice Room at the Honolulu District Court

The Access to Justice Room ("AJR") at the Honolulu District Court is located on the third floor of the Honolulu district court building at 1111 Alakea Street. It is staffed by volunteer attorneys on Mondays and Wednesdays, 9:00 a.m. to 1:00 p.m. and an AmeriCorps representative from 8:30 a.m. to 1:30 p.m. The AJR is also open on the first and third Fridays from 9:00 a.m. to 1:00 p.m. The AJR provides short-term legal advice to self-represented litigants on district court civil matters such as landlord-tenant, debt collection, and temporary restraining order and injunction against harassment (involving non-family members or parties who have not been in a dating relationship) issues.



Through an initiative spearheaded by the Access to Justice Commission's Pro Bono Initiatives Task Force, which includes members: Carol K. Muranaka, Co-Chair; Associate Justice Simeon Acoba, (ret.), Co-Chair; Judge Ronald Ibarra, Judge Barbara Richardson, Michelle Acosta, Rex Fujichaku, Jill Hasegawa, Regan Iwao, Kristin Shigemura, and Tracey Wiltgen, various law firms and offices adopted a month of staffing for the AJR in 2015, and individual attorneys and the Hawai'i Filipino Lawyers Association volunteered to cover the months of February and March of 2015.⁹

The AJR was staffed by the following law firms, organizations, and governmental entities in 2015:

| | |
|------------|--|
| January: | Ayabe Chong Nishimoto Sia Nakamura |
| February: | Individual volunteers and the Hawai'i Filipino Lawyers Association |
| March: | Individual volunteers |
| April: | Carlsmith Ball |
| May: | Starn O'Toole Marcus & Fisher / Schlack Ito |
| June | Ashford & Wriston |
| July: | Cades Schutte |
| August: | Goodsill Anderson Quinn & Stifel |
| September: | Alston Hunt Floyd & Ing |
| October: | Office of the Public Defender/ Bronster Fujichaku Robbins |
| November: | Damon Key Leong Kupchak Hastert |
| December: | Yamamoto Caliboso / Marr Jones & Wang |

The Pro Bono Initiatives Task has recruited firms/offices/individual volunteers to staff the AJR for the entire calendar year 2016.

D. Access to Justice Room at the Kapolei Courthouse

The Access to Justice Room ("KAJR") at the Kapolei Courthouse, 4675 Kapolei Parkway, Kapolei, HI 96707 is open on the first and third Thursday of every month from 11:30 a.m. to 1:30 p.m. The KAJR issues are limited to family law issues, including: custody/visitation, child support, divorce and paternity issues, family court temporary restraining orders/protective orders, guardianships, and adoptions.

Appointments are made through the Ho'okele Self Help Desk on the first floor of the Kapolei Courthouse for 30-minute sessions.

⁹ See later discussion in this report of the 2015 Pro Bono Celebration where the individual volunteer attorneys are identified.

**E. Kauai Self-Help Center**

The Kauai Self-Help Center located at Pu'uhonua Kaulike, 3970 Kaana Street, Lihue, HI 96766 is open on Mondays through Thursdays from 9:00 a.m. to noon, staffed by the Legal Aid Society of Hawaii. On Fridays, it is open from 9:00 a.m. until noon, provided there are volunteer attorneys available to staff it.

F. Kona Court Self Help Desk

The Kona Court Self Help Desk is located at the Kona Courthouse, Keakealani Building, 79-1020 Haukapila Street, Kealahou, HI 96750. It is open on Wednesdays from 11:00 a.m. to 1:00 p.m.

The Kona Self Help Desk is staffed by volunteer attorneys from the West Hawaii Bar Association, including solo practitioners, law firm associates, and government attorneys. An AmeriCorps member also assisted with the intake process, prepared the consultation areas for attorneys, supervised the waiting areas, and conducted follow-up with requests from several individuals.





IV. 2015 PRO BONO CELEBRATION

“Without the tremendous work and dedication of the staff, boards, and volunteers of the nonprofit legal services providers, thousands in our community would be denied access to justice.”

-- Hon. Daniel R. Foley, Chair, Hawaii Access to Justice Commission

A. Coordination

Monthly meetings of the Pro Bono Initiative Task Force¹⁰ were held from January 2015 through November 2015. The Task Force members recruited various law firms and offices to staff the Access to Justice Room at the Honolulu District Court for the calendar year 2015. Moreover, the Task Force has organized coverage for the calendar year 2016 by mid-2015.

Upon a request from the Commission, the HSBA and Hawaii State Bar Foundation approved the sum of \$1,500 to support the Pro Bono Celebration. The Commission itself approved up to \$2,000 in additional financial support.

It was decided again that an essay contest be part of the Pro Bono Celebration. The theme for this year's contest was “How to Inspire Fellow Students to Volunteer.” The contest was open to students in grades 10 to 12 and limited to 500 words or less.

As in last year's essay contest, it was decided that one essay from each of the islands of Kauai, Maui (including Lanai and Molokai), and the Big Island and three essays from the island of Oahu would be selected to be recognized at the Pro Bono Celebration event. A \$500 award for each student award recipient was given, and a travel stipend (for airfare and ground transportation) for each of the awardees and one parent or guardian would be provided for students traveling from the neighbor islands.

B. Pro Bono Celebration Program

Prior to the program, photographs with the Hawaii Supreme Court (Chief Justice Mark Recktenwald, Associate Justices Paula Nakayama, Richard

¹⁰ The members of the Pro Bono Initiative Task Force are: Associate Justice Simeon R. Acoba, Jr. (ret.), Co-Chair, Carol K. Muranaka, Co-Chair, Michelle Acosta, Rex Fujichaku, Jill Hasegawa, Judge Ronald Ibarra, Regan Iwao, Judge Barbara Richardson, Kristin Shigemura, and Tracey Wiltgen.



Pollack, Sabrina McKenna, and Michael Wilson), student award recipients, parents, teachers, principal, law firm sponsors, and legislators were arranged.

The Commission's Pro Bono Celebration on Thursday, October 29, 2015 attracted more than 150 attendees. Hawai'i Supreme Court Associate Justice Simeon Acoba (ret.), former Chair of the Commission opened the ceremony by acknowledging that Hawai'i was joining other jurisdictions in a nationwide celebration of pro bono efforts.

Governor David Ige, Chief Justice Mark E. Recktenwald, and HSBA bar president Gregory Markham expressed appreciation to the volunteer attorneys and the high school students for recognizing volunteerism.

The 2015 Pro Bono Honorees

- The Mediation Center of the Pacific ("Mediation Center") recognized Constance Hassell for her dedication since 1989 as a mediator in a broad variety of case types in paternity, divorce, business, workplace, temporary restraining orders, and others. She mediated a total of 138 cases involving 175 mediation sessions, totaling 530 hours. She also regularly assists in The Mediation Center's mediation trainings, mediator mentoring, and apprentice mediator evaluations.
- The Business Law Corps ("BLC") recognized Ryan K. Hew for his contributions to the organization since its inception. He has undertaken pro bono client representation, is a regular participant in BLC's weekly free attorney sessions at the Manoa Innovation Center and the Patsy T. Mink Center for Business and Leadership and has given free seminars for small business owners and entrepreneurs.
- Native Hawaiian Legal Corporation recognized James K. Kawahito for his pro bono work on the *Davis v. Sakai* case, where he served as class counsel in a prisoner rights lawsuit that deals with accommodating Native Hawaiian religion in prison. He was instrumental in obtaining a court order granting class action status to claims made by eight Native Hawaiian prisoners.
- Volunteer Legal Services Hawaii recognized Judge Dyan M. Medeiros for her pro bono work for over 20 years. She was influential in launching the Uncontested Divorce Workshop, which helped many self-represented parties finalize their divorce without the emotional and financial stress often a result of prolonged litigation.



- Domestic Violence Action Center (“DVAC”) recognized Dyan Mitsuyama and Jill Hasegawa. Mitsuyama assists DVAC with its divorce and paternity caseload, which allows the agency to expand its outreach to survivors. She provides representation to indigent survivors as well as guidance to new staff attorneys at the agency. Hasegawa provided staff attorneys with training on divorce and custody matters. She has also been available to assist staff attorneys when they have questions regarding divorce/paternity cases.
- Legal Aid Society of Hawaii recognized the Young Lawyers Division (“YLD”) volunteers who worked on the updates to the *Disaster Relief Assistance Manual*: Marissa Machida, Heather Moore, Seth Corpuz-Lahne, Heather Uekawa, Courtney M. Crawford, Juliette B. McCullough, and Normand R. Lezy. With new legal issues arising, the Manual needed major updates to better train volunteer attorneys.
- Hawaii Appleseed Center for Law and Economic Justice recognized John Rhee who served as lead counsel on two Hawaii Appleseed cases over the past three years. In one case, Rhee helped to obtain \$300,000 in reimbursements for 250 low-income households who were overcharged rent for nearly a decade. In the other case, his work led to over \$4.5 million in repairs and security upgrades at the Mayor Wright public housing project where residents did not have hot water, suffered rat and roach infestations and criminal activity by non-residents.
- American Civil Liberties Union of Hawaii (“ACLU”) recognized Matthew Winter for his extensive pro bono work with the organization. For example, he defended two individuals who were cited by the police for protesting while topless in Waikiki. After having the criminal charges dismissed since there is no law against being topless, he helped to negotiate policy changes for future protests. He worked on a case, lasting nearly two years, involving the First Amendment right to distribute religious leaflets on a public sidewalk.

The Access to Justice Rooms Volunteers

Judge Barbara Richardson, Judge R. Mark Browning, and Representative Karl Rhoads honored the volunteers who staffed the Access to Justice Rooms at the Honolulu District Court and at the Kapolei Family Court.

The attorneys and law firms/offices that volunteered for 2015 are:

January: Ayabe Chong Nishimoto Sia Nakamura

**February and****March:**

Justin Adam Brackett, Patricia L. Cookson, Jessica R. Domingo, Tred R. Eyerly, Elwen A. Freitas, Arlette S. Harada, David J. Hoftiezer, Kurt I. Kagawa, Bernice L.C. Krause, Naomi M. Kusachi, Heather E. Moore, Cheryl A. Nakamura, Terri A. O'Connell, Alana Peacott-Ricardos, Cherrylina C. Piedad, Scott Prange, Radji O. Tolentino, Jefferson S. Willard and the Hawaii Filipino Lawyers Association

April:

Carlsmith Ball

May:

Starn O'Toole Marcus & Fisher / Schlack Ito

June

Ashford & Wriston

July:

Cades Schutte

August:

Goodsill Anderson Quinn & Stifel

September:

Alston Hunt Floyd & Ing

October:

Office of the Public Defender/ Bronster Fujichaku Robbins

November:

Damon Key Leong Kupchak Hastert

December:

Yamamoto Caliboso / Marr Jones & Wang

The attorneys who volunteered at the Kapolei Access to Justice Room and the Motions to Set project in April 2015 were: Kevin S. Adaniya, John C. Bryant, Jr., Richard J. Diehl, Jessi L.K. Hall, Jill M. Hasegawa, Stephen T. Hioki, Mari L. Kishimoto Doi, Erin M.C.L. Kobayashi, Lynnae L.L. Lee, Dyan Mitsuyama, John A. Montalbano, Michelle K. Moorhead, Mei Nakamoto, and Gemma-Rose Poland Soon.

Other attorneys who volunteered at the Kapolei Access to Justice Room were: P. Gregory Frey, Noah Gibson, Seth Harris, John D. Hughes, Ann S. Isobe, Marianita Lopez, Louis J. Markee, Jr., Ellen B. Politano, Evans M. Smith, Dean A. Soma, Tom S. Tanimoto, Jacqueline E. Thurston, Carol A. Tribbey, and Sandra G.Y. Young.

Other lawyers who helped with the Motions to Set project were: Jennifer L. Chan, Thomas E. Crowley, III, William C. Darrah, Thomas D. Farrell, Geoffrey Hamilton, Steven L. Hartley, Desiree L. Hikida, Amanda O. Jenssen, Charles T. Kleintop, Roxanne Kwong, Edward R. Lebb, Timothy Luria, Elsa F.M. McGehee, Naoko C. Miyamoto, Cathy Y. Mizumoto, Courtney N. Naso, Elizabeth Paek-Harris, Anthony A. Perrault, Alethea K. Rebman, Stephanie A. Rezents, Justin L. Sturdivant, Jo-Ann K. Takara, Sheila Vierra, and Craig G.H. Yim.

The Essay Award Recipients

The theme for this year's essay contest, open to high school students in grades 10 through 12, "How to Inspire Fellow Students to Volunteer" attracted



more than 240 essays. Regan Iwao, a member of the Commission's Pro Bono Initiatives Task Force, thanked the preliminary judges: Judge Catherine Remigio, Judge Michael Tanigawa, Judge Hilary Gangnes, Judge Shirley Kawamura, Judge William Domingo, Judge Margaret Masunaga, Judge Dyan Medeiros, Judge Diana Van De Car, Judge Rhonda Loo, Derek Kobayashi, Christine Daleiden, Jessi Hall, Darien Ching Nagata, Carol Kitaoka, David Brittin, Scott Shishido, Lynda Arakawa, Shannon Wack, Reginald Yee, Joanna Sokolow, Jenny Silbiger, Tracy Jones, Roya Dehim.

The final judges were: Chief Justice Recktenwald; Judge Ronald Ibarra, Commissioner; and 2015 HSBA President Gregory Markham.

The sponsors for the \$500 cash awards for each of the students were:

Bank of Hawaii
O'Connor Playdon & Guben
Chang Iwamasa & Chiu
Clay Chapman Iwamura Pulice & Nervell
Pacific Law Group
Sullivan Meheula Lee

The 2015 essay award recipients were: Krizhna Bayudan, Lahainaluna High School, Grade 10; Shaun Gonzalez, Kealakeke High School, Grade 10; Jayson Hawthorne, Kapaa High School, Grade 11; Victoria Huynh, Kalani High School, Grade 12; Joshua Lawrence, Kalaheo High School, Grade 12; and Corina Quach, Kalani High School, Grade 12.

Judge Foley, Chair of the Hawaii Access to Justice Commission, provided closing comments and thanked everyone for the past seven years of working together. Justice Acoba surprised Judge Foley with a plaque of appreciation for being a "super pro bono lawyer" and changing the world with *Baehr v. Lewin*, the case involving the freedom for same-sex couples to marry.





V. OTHER ACTIVITIES

A. Pro Bono Appellate Pilot Project

A subcommittee of the Access to Justice Commission's Committee on Increasing Pro Bono Legal Services continued its work on the Pro Bono Appellate Pilot Project. The Subcommittee's Co-Chairs are Rebecca A. Copeland, of the HSBA Appellate Section, and Michelle Acosta, Executive Director of Volunteer Legal Services of Hawaii ("VLSH"). Other subcommittee members include Hawai'i Supreme Court Associate Justice Simeon Acoba (ret.), Intermediate Court of Appeals Chief Judge Craig Nakamura, Brandon Segal, Audrey Stanley, Matthew P. Chapman, and Joshua Korr.

The subcommittee has been working over the last two years to design the project, which will match eligible pro-se appellate litigants with volunteer appellate attorneys willing to provide pro bono legal services. The project is modeled after similar programs in the United States Court of Appeals for the Ninth Circuit and the Texas Supreme Court, but the subcommittee amended those programs for Hawai'i to ensure that it will serve the needs of the Hawai'i appellate courts and litigants in our community.

On August 7, 2015, the Hawai'i Supreme Court established a Hawai'i Appellate Pro Bono Pilot Project, effective on the filing of its order and expiring on July 1, 2017, unless extended or made permanent by order of the Court.¹¹

B. Educational Loan Repayment Program

The Senate Concurrent Resolution No. 116 (S.C.R. No. 116)¹² requested that the Commission convene a working group to develop an educational loan repayment program for William S. Richardson School of Law ("Law School") graduates to expand opportunities to pursue public interest careers in Hawaii for the benefit of underserved communities.¹³ It was proposed that the working group be composed of members of the Commission, faculty and staff of the Law School, the Student Bar Association of the Law School, the Alumni Association of the Law School, the HSBA, a retired member of the Hawai'i Supreme Court, Hawai'i Consortium of Legal Service Providers, HJF, a member of the House of Representatives, a member of the Senate, and a representative of the Governor's Office.

¹¹ A copy of the Order Establishing a Hawai'i Appellate Pro Bono Pilot Project filed on August 7, 2015 is attached hereto as Appendix E.

¹² A copy of the Senate Concurrent Resolution 116 is attached hereto as Appendix F.

¹³ A copy of the Task Force's report dated January 20, 2015 to the Hawai'i Legislature is attached hereto as Appendix G.



The Commission approved Gary Slovin as chair of this working group and members: Judge Douglas McNish (ret.), Katherine Vessels (law student), Matthew Tsujimura (law student), Nalani Fujimori Kaina (Executive Director, LASH), Keani Rawlins-Fernandez (law student), Representative Isaac Choy, Ronette Kawakami (Associate Dean for Student Services, William S. Richardson School of Law), Senator Gilbert Kahele, Dean Aviam Soifer, William S. Richardson School of Law, Justice Simeon Acoba (ret.), Leighton Hara (HSBA representative), and Tyler Gomes (Public Defender).

The Task Force reached consensus on several factors that would need to be included in a loan repayment assistance program:

- *Endowment:* Annual funding from various sources is the more realistic approach.
- *Income threshold:* The threshold should be set at \$56,000, which is an amount based upon the starting salary for a public school teacher with a Ph.D.
- *State of residence:* The program should be open to any Hawaii-licensed attorney, who meets the other qualifications established for the program and is working in Hawai'i.
- *Loan counseling:* Every person applying for assistance must be or have been in a loan counseling program.
- *Spousal or partner income:* Only the income of the applicant would be considered in reviewing an individual's application for loan assistance under the program.
- *Asset search:* An asset search would not be made.
- *Extent of relief:* Payments would be between \$6,000 and \$10,000 a year, depending upon the size of loan indebtedness and for a period of five years. The maximum amount of assistance would be \$50,000.
- *Administration of the program:* The program would be administered jointly by the Hawaii Justice Foundation ("HJF") and the William S. Richardson School of Law ("Law School").
- *Recertification:* Each grantee's status would be reviewed on an annual basis.
- *Leave of absence:* Leaves of absence will be permitted for specific reasons outlined by HJF and the Law School.
- *Federal programs:* Participation in federal education loan programs should be required for applicants who are eligible.
- *Full-time or part-time:* Assistance should be provided for persons in positions no less than one-half time.
- *Licensees:* An attorney must be licensed to practice in Hawai'i.



The Task Force supported the adoption of legislation that would establish such a program and estimated that the initial cost would be \$600,000.

The Task Force also considered an Incubator program that would assist recent law school graduates to develop group or solo practices aimed at clients of modest means in key legal need areas in Hawai'i.

C. Consortium of Banks and Friends

A call on behalf of the Commission's Pro Bono Initiatives Task Force was made to Central Pacific Bank ("CPB") to assist with volunteers for the Access to Justice Room at the Honolulu District Court, and Catherine Ngo, Chief Executive Officer and President of CPB, General Counsel Glenn Ching, and Christine Daleiden, Senior Legal Counsel, enthusiastically embraced the idea. They recruited their counterparts at the other major banks and organized a training day.

On June 5, 2015, approximately 20 attorneys from five major banks came together for a three-and-one-half-hour training session, which is a prerequisite to volunteer at the Access to Justice Room. Facilitating, organizing, and planning the event required extra hours by CPB's counsel. The consequence was a unique occasion, well-planned and smoothly executed.

General Counsels at Bank of Hawaii (Mark Rossi), First Hawaiian Bank (Carrie Okinaga), American Savings Bank (Michelle Kim Stone), Hawaii National Bank (Daniel Fong), and Finance Factors (Sam Yee) supported their respective banks' attorneys in this training and in volunteering pro bono.

Hawaii Supreme Court Chief Justice Mark E. Recktenwald expressed his appreciation to the group for volunteering. At mid-day, on behalf of the Commission, Tracey Wiltgen, Executive Director, The Mediation Center of the Pacific, thanked the attorneys for their commitment.

General Counsel Ching innovatively sprinkled the duration of the training video with prizes for quick responses to equally quick questions. The attorneys earned 3.5 CLE credits for attendance and will be able to convert one of the credits to an ethics credit after volunteering five hours at the Honolulu Access to Justice Room. The participating attorneys were: Ashlee Berry, Kyle Chang, Jamie Cheng, Calli Chinen, Glenn Ching, Christine Daleiden, Stacey Djou, Jamesner Dumlao, Lianna Figueroa, Daniel Fong, Valerie Ito, Melissa Kolonie, April Lee, Russell Lum, Adrienne Miller, Patricia Moy, Deborah Ng-Furuhashi, Jamie, Sheu, Nichole Shimamoto, Aaron Stewart, and Sam Yee.



The types of legal advice given at the Access to Justice Room are limited to landlord-tenant issues, debt collection problems, and temporary restraining orders related to non-family members. Before the self-represented litigants arrive at the Access to Justice Room, they are screened by the Hookele (aka District Court Civil Service Center) staff.

An additional example of CPB's priority in this area is its development of its own Pro Bono Policy, which can be a template for other financial institutions and organizations. This policy was based upon the model pro bono policies previously adopted by the Commission. The newly developed Policy was shared with the other banks' attorneys prior to the training.

CPB's Pro Bono Policy Statement provides as follows:

All actively licensed attorneys employed at Central Pacific Bank ("Bank") are encouraged to provide free ("pro bono") legal services to charitable, civic, community, governmental, religious, educational, and other organizations, to include organizations that provide or facilitate the provision of legal services to persons of low income or who are otherwise disadvantaged, and to also include organizations involved with improving the judicial system and legal profession.

In addition to enhancing the reputation of our legal profession, pro bono service is personally rewarding, supports our Bank's commitment to our communities

The consortium of banks and friends committed to staffing the Honolulu Access to Justice Room in the month of October 2016.

D. 2015 Equal Justice Conference

Lisa Foster, who is the Director of the Access to Justice Initiative at the U.S. Department of Justice, was the keynote speaker. She described the income equality in the United States and the situation of incarceration because of delinquent fines. She mentioned that the United Nations has included access to justice as a sustainable goal. The connection between poverty and justice is a national issue, she said. She urged that we need to work together although we may be fragmented geographically, by the issues, and by funding (LSC and non-LSC). She believes that we need to assess community strengths and to connect the states' work with the larger national issues. She said that not everyone agrees that data-evidence policy making is the right approach, but she said that data evidence is important. A Roundtable of 17 collaborating



federal agencies was created to help expand access to civil legal aid and criminal indigent defense. The website is: <http://www.justice.gov/atj/legalaid>.

Some of the selected workshops are noted below:

(1) “Gender and Cultural Competency with Legal Technology Considerations and Best Practice” (Camille Holmes, Director, Leadership and Racial Equity, National Legal Aid and Defender Association; Xander Karsten, LawHelp Program Coordinator, Pro Bono Net; Mirenda Meghelli, LawHelp Interactive Program Coordinator, Pro Bono Net; Talley Wells, Director, Disability Integration Project, Atlanta Legal Aid Society, Inc.)

Why do this?

- Create an inclusive platform.
- Capture accurate data.
- Provide for a meaningful representation.

The panel explained that legal technology should be inclusive and inclusion involves authentic and empowered participation and a true sense of belonging.

Cultural humility and competence is a concept that means the ability to maintain an interpersonal stance that is other-oriented. It focuses on self-humility rather than achieving a state of knowledge or awareness. Cultural humility maintains a lifelong commitment for self-evaluation; fixes imbalances; and creates partnerships.

The panel also discussed the why of making a website accessible.

- There are certain federal requirements for inclusion.
- It will expand reach.
- It will promote inclusion.
- It makes for a better website.

They mentioned viewing the Web Content Accessibility Guidelines (“WCAG”) online for recommendations. Their top five tips were: (1) alt image; (2) captioning; (3) color contrast; (4) shifting images; and (5) formatting.

One of the panel members said that there are lessons to be learned from a 1999 Supreme Court decision for people with disabilities (*Olmstead v. L.C.*, 527 U.S. 581 (1999)): (1) plan ahead; educate yourself; budget; include time for corrections; (2) find people to discuss ideas; (3) evaluate and re-evaluate; (4) audit for problems.



To evaluate one's website, you could use: WAVE web accessibility evaluation tool (www.wave.webaim.org).

(2) “Innovating Justice: How Design, Data Science, and Other Disciplines Are Transforming the Legal Services Landscape” (Margaret Hagan, Fellow, Stanford Law’s Center on the Legal Profession; Allegra R. Nethery, Pro Bono & Philanthropy Partner, Seyfarth Shaw LLP; Ken Smith, President, The Resource for Great Programs)

The tools that are not law-related can be used to transform the legal services landscape. Six Sigma is one such idea which came from the manufacturing company to get rid of inefficiency.

The panel mentioned the DMAIC methodology:

- Define
- Measure
- Analyze
- Improve
- Control

Define the system, the voice of the customer and requirements and the project goals specifically. Engage in process mapping and breaking down the procedure/task to the smallest action.

Measure key aspects of the current process and collect relevant data.

Analyze the data to investigate and verify cause-and-effect relationships.

Improve the current process based on the data analysis.

Control the future process so that corrections are made before they result in defects. Implement control systems to continuously monitor the process.

It was noted that this is not a substitute for judgment and that a strong management/leadership is needed to make changes. “Think of continuous evaluation as an engine for innovation,” said Ken Smith. He said that most evaluations come at the end of a project, but evaluations during the project can show what was working and what was not. Monitoring outcomes throughout the project is a powerful idea. One example is CitizenshipWorks, which helped with citizenship applications. Evaluations were done when the project was launched. They gathered information and arranged focus groups. The findings were used to make continuous improvements.

What can design do for legal services? It can solve problems and build relationships.

- Take a beginner’s mindset; challenge yourself and look with fresh eyes; be open-minded and curious.
- Be visual -- map out ideas.



- Build to think.
- Work with interdisciplinary teams, which will have diverse mindsets.
- Embrace constraints (set limits on your time).
- Areas of legal design -- communicate information in a more meaningful way; improve service offerings to clients; develop new ideas into new products and services; build a culture of innovation.

(3) “WriteClearly and ReadClearly: Equal Justice Through Plain Language” (Abhijeet Chavan, Chief Technology Officer, Urban Insight/OpenAdvocate; Anna Hine, Technology Coordinator, Legal Assistance of Western New York; Miranda Meghelli, LawHelp Interactive Program Coordinator, Pro Bono Net)

Plain language -- Why?

- Time savings and efficiency
- Accessibility
- Budgetary considerations

President Obama signed the Plain Writing Act of 2010 on October 13, 2010. The law requires that federal agencies use clear government communication that the public can understand and use.

The panel noted that written protocols are helpful in the following manner:

- It is an efficient way to educate people.
- It helps one to think through details.
- It is essential for decentralized content development.
- It provides continuity when staff leaves.

Some guidelines mentioned:

- Helpful sites: www.transcend.net; www.WriteClearly.net; www.openadvocate.org/writeclearly; www.plainlanguage.gov.
- Cover one idea in one paragraph.
- Headings can convey main ideas.
- When conveying instructions use numerals or bullets.
- Use simple words.
- Use short sentences; short paragraphs.
- Use white space.
- Write in the second person.
- Avoid legal jargon.



(4) “50 Tech Tips” (Liz Keith, Program Director, Pro Bono Net; Glenn Rawdon, Program Counsel for Technology, Legal Services Corp.; Jane Ribadeneyra, Program Analyst for Technology, LSC; Brian Rowe, NTAP Project Coordinator, Northwest Justice Project)

The panel offered the following tips on various websites that would be helpful for various needs:

- Sched.org to manage events
- Turn text and quotes into appealing quotes with Quoxio.com
- Mashable.com - make professional animated videos
- projectNaptha.com - can take text and OCR it
- emailHunter - direct access to web's email addresses
- Project Chrome with Extension Defender
- Fotor.com - create and embellish photos, collages, cover pictures, and cards; download images and print
- Hushed.com is a phone or table app
- Find websites better - ultraDNS
- Google forms
- Calendly for scheduling meetings, set up appointments, interviews, calls
- UberConference.com - free for up to 10 calls; high definition audio
- AnswerDash - add-on to website to answer questions
- Pushbullet - call or text sent to computer “WhatsApp”
- Add-ons from Google - Form notifications - customized email and others
- Format Painter - highlight where correct formatting and click paintbrush and click the incorrect area and the software will fix that area
- Manage Google browsing history and settings - Google.com/history
- ChessLessons - build your brand; logos
- Sndlatr.com - will allow you to send emails later; email reminders; rightinbox.com
- Longform.org - Android app; picks out the best articles and will aggregate the popular pieces; free app
- Download your data from Google - go to Google.com and go to Settings
- PowerPoint and Keynote - hit “B” and will blank out slide
- Cyber Dust - works on Androids and i-Phones; deletes messages
- OMGChrome.com for chromebooks
- Google.play - alarm clock
- www.speedtest.net - ookla speedtest
- bandwidthplace.com - another speed test site
- embed affirmations or “pep talk” in sentences
- patreon - allows artist to interact with patron
- chromebit - chromebook on a stick, 16 GB
- Do.com - gmail; google calendar; dropbox; social media
- Pixabay for high quality images for free



- Spotify - desktop streaming music site
- Massdrop - high end quality acoustic equipment
- hotelwifitest - can learn the speed of wifi for a particular hotel
- canva.com - creates graphic design
- overdrive.com or local library website for e-books or e-magazines
- Fingbo - analyzes your network (free)
- Fast customer app - will call the number for you
- Google maps - current traffic and typical traffic for future travel
- Rent movies via YouTube's movie services
(www.youtube.com/user/moves)
- Fiverr - \$5.00 to build a portfolio
- Microsoft office remote app (free)
- Product Hunt - shows competition of new products
- www.nten.org/research - nonprofit technology network
- iPhone - go to utilities; compass; and the phone becomes a level
- YouTube.com/pair - plays videos on tv
- www.blueavocado.org - nonprofit humor
- NTAPvideos - market news
- Microsoft office lens - can take picture of a chart board and save it as a pdf or Word document

(5) “Roles Beyond Lawyers” (Thomas Clarke, Vice President, Research and Technology, National Center for State Courts; Steve Crossland, Washington sole practitioner; Judge Fern Fisher, New York Deputy Chief Administrative Judge; Paula Littlewood, Executive Director, Washington State Bar Association; Rebecca Sandefur, Professor of Sociology and Law, University of Illinois at Urbana-Champaign)

Judge Fisher explained the Court Navigator Program in New York, which program is modeled after McKenzie Friends. The Navigators assist unrepresented litigants through the courts. One type of Navigator is one who accompanies the litigant in the courtroom, but cannot speak unless is asked a question by the judge to state the facts. There is a DVD that consists of scenarios to instruct the Navigator on what he/she can do. The Navigators cannot interpret for the litigant since there are interpreters for that role.

Judge Fisher prepared the DVD with her staff as actors for the different scenarios. The Navigators are usually college students and not law students because the activity is not considered “legal work.” She has recruited in the city colleges. The Navigators are volunteers who are supervised by her staff.

Judge Fisher said that the use of Navigators can make a difference. For example, the Navigator can lean over to the unrepresented litigant and say, “You forgot to tell the judge about your repairs” - which the litigant might have



disclosed earlier to the Navigator but is too nervous to remember once in the courtroom.

The limited license legal technician program” in Washington was analogized to nurse practitioners. Unlike Navigators, the limited license legal technician (“LLLT”) can offer legal advice. Rules of Professional Conduct were developed for the LLLTs as well as an exam for licensing.

One of the handouts showed the pathway to LLLT admission as follows:

- Step 1: Complete education - Minimum associate level degree; core education: 45 credit hours at ABA-approved program including certain required legal courses; practice area education: family law - 15 credits.
- Step 2: Take and pass examinations: Core Education exam (NFPA Paralegal Core Competency Exam); Professional Responsibility exam - multiple choice exam on general scope and ethics; Practice Area exam, which includes multiple choice, essay, and practice exercise sections
- Step 3: Establish experience - 3,000 hours of substantive law-related experience; approximately 18 months full-time; supervised by a licensed lawyer; within 3 years before or after passing examination; provide declaration(s) of supervising lawyer(s).

The legal technicians can give advice and are required to have malpractice insurance. The discipline for the LLLTs are governed by the same body that handles the attorney discipline in Washington. The LLLTs cannot appear in court and cannot negotiate settlements on behalf of the clients.

In response to the inquiry as to how the LLLT program will address the access to justice problem, LLLTs will charge fees at a lower scale than attorneys and will probably handle moderate income clients.

(6) Courtroom Innovation: How and Why to Get Involved with this Hotspot for Access to Justice System Transformation (Tiela Chalmers, Chief Executive Officer, Alameda County Bar Association; Bonnie Hough, Los Angeles County, California; Stacey Marz, Director, Alaska Court System’s Family Law Self-Help Center)

In Alaska, there is a high rate of self-represented litigants in family court cases. They addressed the following initial questions:

- What does the self-represented litigant need most?
- What does the attorney need?
- What does the judge need?
- What does the mediator need?



The Alaska early resolution program addresses the needs of these people. It was stated that setting the first appearance farther out on the calendar causes more stress so they addressed this by engaging in triage early on. They will calendar hearings on divorce and property settlement cases within two weeks and use video teleconferences for the difficult to reach communities. They encourage a settlement mindset early on.

The Alaska early resolution program partners with legal services providers and with volunteer attorneys. They have processed over 1,000 cases with 100% appearance rate.

Tiela Chalmers explained that their Housing Negotiation Project has two days a week of mandatory settlement conference calendars. They also have a "Day of Court" model, which concentrates the self-represented litigants to a Wednesday calendar in two adjacent court on family court issues.

The Eviction Mediation Project in Oakland provides volunteers trained to serve as mediators. They recruit individuals who have no legal expertise to avoid bias.

Bonnie Hough spoke about the California examples where they have volunteers in the courtroom to assist in preparing orders. Real Justice is a program that has 300 volunteers under the supervision of lawyers.

- She said that she is a believer in meetings -- getting people together to evaluate how to do it better.
- Believer in education for judges - how to talk to people; how to explain in plain language.
- Believer in more Skype appearances and using technology to provide services to low-income persons.
- They put different defenses on different colored cards, e.g. a period of limitations defense will be on a blue card; other defense on a yellow card. The judges would recognize the colored cards and anticipate the nature of the defenses from the self-represented litigant.

E. 2015 National Meeting of State Access to Justice Chairs

The 2015 National Meeting of State Access to Justice Commission Chairs had a different format from years past with three priority issues:

- Communicating the Access to Justice Message
- Serving Self-Represented Litigants
- Funding Access to Justice in Your State



The 2015 Meeting Design Team included:

- Hon. Mark Recktenwald, Chief Justice, Supreme Court of Hawaii
- Hon. Beth Baker, Montana Supreme Court; Liaison, Montana Access to Justice Commission
- Fred Baumann, Lewis Roca Rothgerber LLP; Chair, Colorado Access to Justice Commission
- Douglas Blaze, Dean, College of Law, University of Tennessee Knoxville; Chair, Tennessee Access to Justice Commission
- Hon. Jon Levy, U.S. District Court; past Chair, Maine Justice Action Group
- Hon. Laurie Zelon, California Court of Appeal; founding Chair, California Access to Justice Commission

Opening Plenary Session

Judge Jonathan Lippman, Chief Judge, New York Court of Appeals, gave the keynote address at the National Meeting. He said, "Leadership is needed by the judiciaries, Commissions, and all of you to reduce the justice gap." They decided to engage in economic studies to show that for every dollar spent, there is six dollars saved. "It is an unconventional message," he said.

He said, "Just don't say it is the right thing to do. Get the heads of banks, heads of landlord associations, heads of hospitals, etc. to testify that need to help because it benefits the state." He said that when you have the head of Citibank coming in to talk about civil legal services, people will listen.

He said that each state is different and you need to have a plan - a multi-faceted plan. He said in England, a nonlawyer is trained in a particular niche and that is better than no lawyer. In New York, they have Navigators for housing and consumer credit cases. They went to the state legislature to change the rule about the unauthorized practice of law regarding these Navigators. "Be innovative," he said. He suggested that rules be amended so that it will be easier for judges to deal with unrepresented litigants.

Judge Lippman suggested:

- We need vision
- We need goals
- We need a strategic plan
- We need to be innovative (thinking outside of the box)
- We need to be proactive

Certain selected workshops at the 2015 National Meeting included the following:



(1) “Commission Leadership in Transforming the Courtroom: Engaging the Bench, Bar and Court Administrators in User-Friendly System Innovation (Judge Laurie Zelon, California Court of Appeal; Judge Fern Fisher, New York Court System; Will Hornsby, ABA Committee on the Delivery of Legal Services)

Judge Fisher reviewed the Court Navigators program. (See discussion above.) In her Administrative Order of the Chief Administrative Judge of the Courts, effective February 11, 2014, Judge Fisher clearly defines the duties and limitations of the Court Navigators:

Upon assignment, the Navigator may:

- (1) inform the unrepresented party about, and assist in, the completion of court-designed and court-approved "do-it-yourself" form documents, and the use of Law Help to obtain legal information or to locate an attorney;
- (2) assist the unrepresented party in the gathering and organization of documents relating to the case;
- (3) inform the unrepresented party about, and assist in, the scheduling of court proceedings;
- (4) accompany the unrepresented party to court appearances and, if directed by the court, answer factual questions posed by the court;
- (5) inform the unrepresented party about, and assist in, obtaining available court services (such as interpreter services); and
- (6) provide such other non-legal information and perform such other non-legal services as the court may direct.

The Court Navigators may not:

- (1) provide legal advice, legal counseling, or (unless in a manner approved by the Chief Administrator or her designee) legal information to the unrepresented litigant;
- (2) draft, execute, serve, or file with the court any documents on behalf of the unrepresented litigant (other than the provision of assistance in completing court-approved "do- it-yourself" documents as described above);
- (3) hold themselves out as representing, speaking for, or advocating on behalf of a litigant, or act in any manner as to convey the impression that they are legal practitioners or are associated with a law office;
- (4) address, or conduct negotiations with, opposing counsel, unless at the court's direction;
- (5) address the court on behalf of the unrepresented litigant, unless to provide factual information at the court's direction; or



(6) perform any service that constitutes the practice of law.

Will Hornsby explained that pro bono itself cannot meet the needs and must look at the marketplace. He said the idea about unbundling arose in the 1970s. The ABA did a white paper on this. There are several states that already have unbundling rules. Colorado also has published a report about unbundling prepared by the Modest Means Task Force.

Another movement is the incubator idea. There are 43 around the country and many are sponsored by the law schools. There is no template and no two are alike.

(2) “Using Self-Help Approaches to Overcome Chasm between Communities and the Legal System: Challenges and Specifics” (Richard Zorza, Self-Represented Litigation Network; and others)

In this workshop, the focus was on the incarceration of low-income individuals for uncollected debt (unpaid child support, court fines, etc.) They discussed the practices and sanctions that contribute to the problem such as: charging interest; late fees or collection costs on the court debt; requiring participation in programs that require fees; requirement that the total bail or maximum fine be paid in order to exercise a right to a hearing.

The panelists suggested advocating an end of license suspension as a debt collection tool.

(3) Peer State Breakouts (Group 3B - AK, CT, GU, HI, ME, MD, NH, NM, NV, PR, VI, CT, WY); focus on self-represented litigants; Judge Andrew Mead, Chair, Maine Justice Action Group; Bob LeClair, Hawaii Justice Foundation)

This breakout session focused on the following four broad topics regarding self-represented litigants:

- Challenges or specific questions and topics
- Approaches (solutions)
- Barriers
- Steps (national support?)

Challenges

The unrepresented litigant may confront the following types of challenges within the court system:

- unsophisticated
- language
- lack of understanding of basic court forms



- literacy
- English as a second language
- complicated court forms
- impatient judicial clerks
- reluctant judicial clerks who are limited in their roles of not giving legal advice
- emotional baggage (some may have psychological, social, cognitive issues)
- underlying legal issues may compound the situation
- unrealistic or too high expectations
- overwhelming experience
- burden of the judge to sort out the social, psychological, or legal complications

In Wyoming, a full custody and divorce packet is provided to the unrepresented litigant, but there is no help with the court forms. It was stated that the Wyoming bar was resistant to having a coordinator aid such unrepresented litigants because the bar felt that such an endeavor would take work away from them.

In Hawai'i, it was reported that there are self help centers in each courthouse. The judiciary provides the room, the bar association provides support, and Legal Aid provides the administrative help. Some self help centers only offer legal information and others on Oahu offer legal advice. The Hawai'i Access to Justice Commission's Pro Bono Initiatives Task Force recruits the volunteer firms/offices to staff the centers on Oahu. Additionally, an unrepresented litigant has the ability to go online to generate his/her court documents. (This software can be analogized to TurboTax for law.) The judiciary partnered with the state library system so that library users could use the library computers to prepare their court documents using an A2J software program provided by the Legal Aid Society of Hawai'i.

In Maryland, there are self help centers and online assistance. There is an impressive model for the district courts. JustAdvice at the law school¹⁴

¹⁴ JustAdvice is a project of the University of Maryland Francis King Carey School of Law Clinical Program. The project began operating in June 2009 and was relaunched in April 2010. At its website (www.justadviceclinic.org), it is stated:

Since its creation in 2009, the JustAdvice Clinic has served over 2,600 individuals providing legal advice on a broad range of legal issues including family law, housing, criminal, employment, expungement, insurance, elder law, tax, civil, and social security. The program's goal is to increase access to justice within the Baltimore community by



provides legal advice for a \$10 fee and limited representation. Students perform the intake and there are five volunteer attorneys. In Maryland, there were no objections from the bar with these actions because the perception is that these are cases that the attorneys generally would not want.

In Maine, the librarians came to the courts to raise question on how to help users. The librarians and volunteer lawyers connected to help and developed a program called "Lawyers in Libraries." Their motto is: "Because libraries are at the heart of our communities and justice is at the heart of our democracy." (www.lawyersinlibraries.org) On Law Day 2015, Maine lawyers volunteered to help with legal workshops in the libraries.

In Maine, there is no professional liability insurance provided to the volunteer attorneys so only legal information is given. If legal advice is required, then the litigant is referred to a lawyer referral service.

Barriers

- Language
- Volume of self-represented litigants
- Clerks or judges who do not want to deal with self-represented litigants
- Complexity of the law (Example: In Ohio, a contract to purchase a house may be 18 pages and in Maryland, it is 60 pages.)
- Funding
- Communication to rural districts
- Bar resistance
- Attitudes of the self-represented litigants (For some, they are embarrassed to ask for help; some believe that there is no hope for their situations; for others, there is a lack of trust.)

Steps

- In Hawaii, remote interpretation services are utilized in the courts. (It was mentioned that it is a federal requirement that if an entity is receiving federal funds that language interpretation must be provided.)
- In small states such as Wyoming, there would not be a volume of self-represented litigants since the population of the entire state is approximately 600,000. For others, the likely next step would be to seek more funding.

providing a low cost alternative for individuals in need of legal advice who do not qualify for Legal Aid, but may not have the resources to hire a private attorney.



- There should be training for clerks or judges to reduce the apprehension of dealing with self-represented litigants and to reduce the tension of blame or anxiety. The training should include an explanation of the distinction between legal information and legal advice. In Hawaii, the judges received training on implicit bias to raise awareness of the issue. (For example, Gideon's Promise.org is training that captures that these types of clients are people.)
- There should be a clearinghouse of information from all jurisdictions so that the worthy well-developed programs can be shared.
- There should be a design of a new court system to deal with this issue
- There should be a revamping of the entire divorce laws and other laws to make it user friendly.
- There should be use of technology to help address the needs in the rural districts.
- There should be better broadband in the rural areas so that communication can be facilitated.
- There should be more outside-the-box thinking such as the Navigator program in the New York courts and incubator programs.
- There should be an effort to change attitudes by doing more with self-represented litigants.

Closing Plenary Session

There are four Key Action Steps that were proposed at the 2015 National Meeting of State Access to Justice Chairs:

- (1) Designate a member of your Commission to be the communications person;
- (2) Identify persons in your community who would collectively provide information about the access to justice efforts;
- (3) Develop a simple communications plan;
- (4) Designate a state liaison to Voices for Justice.

It was also recommended that:

- ✓ A liaison be appointed from the respective Commissions to the Self-Represented Litigation Network;
- ✓ A liaison to Meredith McBurney, ABA Resource Center for Access to Justice Initiatives Consultant, for funding.



F. Working Group Re Senate Resolution 6 and House Resolution 12

The Hawai'i Access to Justice Commission ("Commission") received copies of Senate Resolution No. 6¹⁵ and House Resolution No. 12,¹⁶ which requested that the Commission assemble a working group of interested government agencies and community entities to conduct meetings to develop a plan for determining which agency or organization should administer funding for civil legal services.

The Working Group to Determine a Funding Administrator of Civil Legal Services is comprised of the following representatives: (1) President of the Senate: Senator Brickwood Galuteria, member of the Senate Committee on Ways and Means; (2) Speaker of the House: Representative Karl Rhoads, Chair of the House Committee on Judiciary; (3) Judiciary: Sherrie L. Seki, Assistant to the Administrative Director of the Courts; (4) Attorney General: Patricia T. Ohara, Deputy Attorney General; (5) Department of Human Services: R. Malia Taum-Deenik, Project Specialist and Complaint Liaison, Office of the Director; (6) Department of Labor and Industrial Relations, Office of Community Services ("OCS"): Rona M. Suzuki, Executive Director, OCS; (7) Department of Budget and Finance: Neal Miyahira; (8) Department of Accounting and General Services: Robin J. Yahiku, Special Assistant to the Comptroller; (9) Hawaii Justice Foundation: Gary M. Slovin; (10) Legal Aid Society of Hawai'i: Nalani Fujimori Kaina, Executive Director; (11) Volunteer Legal Services Hawai'i: Michelle D. Acosta, Executive Director; (12) Domestic Violence Action Center: Nanci Kreidman, Executive Director; (13) Hawaii Disability Rights Center: Louis Erteschik, Executive Director; (14) Hawaii Appleseed Center for Law and Economic Justice: M. Victor Geminiani and Gavin Thornton, Co-Executive Directors; (15) Hawai'i Access to Justice Commission: Rona S.Y. Fukumoto and Carol K. Muranaka, Commissioners.

Meetings

The Working Group met on Tuesday, August 11; Tuesday, September 15; Tuesday, October 20; Monday, November 9, 2015, and on Tuesday, December 15, 2015.

Discussion

The Working Group discussed the benefits and barriers to assigning the administration of funding for civil legal services to the Judiciary, Department of the Attorney General, Department of Human Services, Department of Labor

¹⁵ A copy of Senate Resolution 6 is attached hereto as Appendix H.

¹⁶ A copy of House Resolution 12 is attached hereto as Appendix I.



and Industrial Relations Office of Community Services, Department of Budget and Finance, Department of Accounting and General Services, and the Hawaii Justice Foundation. The recommendation of the Working Group is that the proper place for the administration of the subject funding is the Judiciary, and the Working Group will prepare a report to the Hawai'i State Legislature in accordance with the two separate Resolutions.





APPENDICES

- Appendix A: Rule 21 of the Rules of the Supreme Court of Hawai'i
- Appendix B: ABA Memorandum re National Interactive Pro Bono Website
- Appendix C: Welcoming Remarks for Hawai'i Access to Justice Conference, June 19, 2015, Chief Justice Mark E. Recktenwald
- Appendix D: "Narrowing the Gap: Access to Justice in Today's Realities," Jonathan D. Asher, Executive Director, Colorado Legal Services (Keynote address at the 2015 Hawai'i Access to Justice Conference)
- Appendix E: Order Establishing a Hawai'i Appellate Pro Bono Pilot Project filed on August 7, 2015 in the Hawai'i Supreme Court
- Appendix F: Senate Concurrent Resolution No. 116 regarding a loan repayment program for graduates of the William S. Richardson School of Law
- Appendix G: SCR 116 Task Force Report dated January 20, 2015
- Appendix H: Senate Resolution 6 (Requesting the Hawaii Access to Justice Commission to Assemble Various State and Community Entities to Determine Which Agency or Organization Should Administer Funding for Civil Legal Services to Low- and Moderate-Income Individuals)
- Appendix I: House Resolution 12 (Requesting the Hawaii Access to Justice Commission to Assemble Various State and Community Entities to Determine Which Agency or Organization Should Administer Funding for Civil Legal Services to Low- and Moderate-Income Individuals)

RULE 21 OF THE RULES OF THE SUPREME COURT OF HAWAII

Rule 21. ACCESS TO JUSTICE COMMISSION.

(a) Creation. There shall be a commission to be known as the Hawai'i Access to Justice Commission (the "Commission").

(b) Purpose. The purpose of the Commission shall be to substantially increase access to justice in civil legal matters for low- and moderate-income (together "low-income") residents of Hawai'i. To accomplish this, the Commission shall, along with such other actions as in its discretion it deems appropriate, endeavor to:

- (1) Provide ongoing leadership and to oversee efforts to expand and improve delivery of high quality civil legal services to low-income people in Hawai'i.
- (2) Develop and implement initiatives designed to expand access to civil justice in Hawai'i.
- (3) Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low-income Hawai'i residents.
- (4) Increase and stabilize long-term public and private funding and resources for delivery of civil legal services to low-income Hawai'i residents.
- (5) Maximize the efficient use of available resources by facilitating efforts to improve collaboration and coordination among civil legal services providers.
- (6) Increase pro bono contributions by Hawai'i attorneys through such things as rule changes, recruitment campaigns, increased judicial involvement, and increased recognition for contributors.
- (7) Reduce barriers to the civil justice system by developing resources to overcome language, cultural, and other barriers and by giving input on existing and proposed laws, court rules, regulations, procedures, and policies that may affect meaningful access to justice for low-income Hawai'i residents.
- (8) Encourage lawyers, judges, government officials, and other public and private leaders in Hawai'i to take a leadership role in expanding access to civil justice.
- (9) Educate governmental leaders and the public about the importance of equal access to justice and of the problems low-income people in Hawai'i face in gaining access to the civil justice system through informational briefings, communication campaigns, statewide conferences (including an annual summit to report on and consider the progress of efforts to increase access to justice), testimony at hearings, and other means, and increase awareness of low-income people's legal rights and where they can go when legal assistance is needed.
- (10) Increase effective utilization of paralegals and other non-lawyers in the delivery of civil legal services to low-income Hawai'i residents.
- (11) Increase support for self-represented litigants, such as through self-help centers at the courts.
- (12) Develop initiatives designed to enhance recruitment and retention of attorneys who work for nonprofit civil legal services providers in Hawai'i and to encourage law students to consider, when licensed, the practice of poverty law in Hawai'i.
- (13) Encourage the formation of a broad coalition of groups and individuals to address ways to alleviate poverty in Hawai'i.

(14) Conduct a statewide assessment of unmet civil legal needs among low-income people in Hawai'i five years after the Commission holds its first meeting to measure the progress being made to increase access to justice.

(c) Membership.

(1) NUMBER OF MEMBERS AND TERMS OF OFFICE. The Commission shall consist of 22 members, with staggered terms. The initial members (other than the chair and the four members appointed under subsection (3)(vii) below) shall draw their terms by lot so that five members shall serve a term ending on December 31 of the year of appointment, six shall serve a term ending on December 31 of the year following the year of appointment, and six shall serve a term ending on December 31 of the second year following the year of appointment. All subsequent appointments of such members (other than appointments to fill vacancies as described in subsection (2)) shall be for terms of three years or until his or her successor is appointed. Such members shall not be appointed to serve more than two successive terms, but an initial term of any member that is less than 30 months shall be disregarded for purposes of this limitation. Governmental representatives appointed under subsection (3)(vii) shall rotate by their terms of office or at the will of the appointing authority. Terms shall run on a calendar year basis, except that a member shall continue to serve until his or her successor is duly appointed.

(2) VACANCIES. A vacancy in the office of a member shall occur upon (i) the written resignation, death or permanent incapacity of such member, (ii) the determination by the applicable appointing authority that there has been a termination of a position held by such member that was the basis of such member's appointment to the Commission and that the appointing authority wishes to replace such member with a new appointee, or (iii) for such other cause as shall be specified in the bylaws, rules or written procedures of the Commission. Upon the occurrence of a vacancy, the appropriate appointing authority shall appoint a successor member to serve the remainder of the term of the vacating member.

(3) APPOINTMENT OF MEMBERS. Members of the Commission shall be appointed as follows:

(i) The Chief Justice of the Supreme Court shall appoint five members to the Commission as follows: (A) the Chief Justice or an Associate Justice of the Supreme Court and (B) four other judges who the Chief Justice shall endeavor to appoint from different judicial circuits and to include at least one circuit court judge, one family court judge, and one district court judge.

(ii) The Hawai'i State Bar Association (the "HSBA") shall appoint four members to the Commission as follows: (A) two representatives of the HSBA, who may be officers, directors or the Executive Director of the HSBA; and (B) two active HSBA members who have demonstrated a commitment to and familiarity with access to justice issues in Hawai'i and who are not currently serving as an HSBA officer or director, one of whom shall be from a law firm of ten or more attorneys. At least one of the attorneys appointed by the HSBA shall be from an Island other than O'ahu.

(iii) The Hawai'i Consortium of Legal Services Providers (the "Consortium") shall appoint six members to the Commission as follows: (A) four representatives of Hawai'i nonprofit civil legal services providers; and (B) in consultation with the Chief Justice of the Supreme Court, two non-attorney public representatives not directly

associated with any such provider who have demonstrated a commitment to and familiarity with access to justice issues in Hawai'i. The initial members of the Consortium shall be the American Civil Liberties Union Hawai'i, Domestic Violence Action Center, Hawai'i Disability Rights Center, Legal Aid Society of Hawai'i, Mediation Center of the Pacific, Na Loio, Native Hawaiian Legal Corporation, University of Hawai'i Elder Law Program of the Richardson School of Law, and Volunteer Legal Services Hawai'i. Other civil legal services providers may be added to, and members may resign or be removed from, the Consortium as determined by the vote of a majority of the then members of the Consortium.

(iv) The Hawai'i Justice Foundation (the "Foundation") shall appoint one member to the Commission, who shall be an officer, director or the Executive Director of the Foundation.

(v) The Dean of the University of Hawai'i William S. Richardson School of Law shall appoint one member to the Commission, who may be the Dean.

(vi) The Hawai'i Paralegal Association shall appoint one member to the Commission, who shall be a paralegal with a demonstrated interest in equal access to justice.

(vii) The Governor of Hawai'i, the Attorney General of Hawai'i, the President of the Hawai'i Senate, and the Speaker of the Hawai'i House of Representatives shall each be entitled to serve on the Commission or to appoint one member, provided that any appointee of the Governor shall be drawn from the Executive branch of government, any appointee of the Attorney General shall be a Deputy Attorney General, any appointee of the President of the Senate shall be a state Senator, and any appointee of the Speaker of the House shall be a state Representative.

(4) COMMUNITY WIDE REPRESENTATION. In making appointments, the appointing authorities shall take into account the effect of their appointments on achieving a Commission composed of members who are residents of different islands in Hawai'i and who reflect the diverse ethnic, economic, urban, and rural communities that exist in the Hawaiian Islands.

(d) Officers. The Chief Justice of the Supreme Court shall designate from among the members of the Commission a chair and a vice chair of the Commission. The chair, who shall be the Chief Justice or the Chief Justice's designee, shall serve an initial term of one year and thereafter shall be designated at such times as the Chief Justice shall determine. The vice chair shall be designated for a term of two years, provided that such term shall expire at any earlier date on which the term of the vice chair as a member of the Commission shall expire or be terminated. The Commission shall select such other officers as it deems necessary and useful. Terms of all officers shall run on a calendar year basis, except that an officer shall continue in office until his or her successor is duly designated or selected. Designations or selections to fill officer-vacancies shall be for the remainder of the term of the vacating officer.

(e) Bylaws, Rules and Procedures. The Commission may adopt bylaws, rules or operational procedures as it deems necessary for and consistent with Sections (c), (d) and (f) through (j) of this rule.

(f) Committees and Task Forces. The Commission may create such committees and task forces, and appoint such committee and task force members, as it deems necessary or desirable to facilitate the work of the Commission. The Commission shall designate a chair of the committee or task force. The Commission may appoint to the committee or task force persons who are not members of the Commission. The role of committees and task forces shall be advisory, and they shall make such recommendations to the Commission as the members of such committees and task forces deem appropriate. Meetings of committees and task forces shall be at the call of the chair or at the call of at least 20% of the members of the committee or task force. A quorum consisting of not less than one-third of the then-appointed and serving members of a committee or task force shall be necessary at a duly called meeting to adopt a recommendation to the Commission.

(g) Meetings, Quorum, and Voting. The Commission shall meet at least quarterly and shall have additional meetings at the call of either the chair or at least seven members upon at least ten days prior notice. A quorum consisting of not less than one-third of the members of the Commission then in office shall be necessary to transact business and make decisions at a meeting of the Commission. On any votes taken at a meeting of the Commission, the chair shall vote only in the event of a tie.

(h) Staff and Funding Support. It is anticipated that staff and funding support for the Commission will be provided by a combination of private and public sources of financial and in-kind support.

(i) Recommendations. Any recommendations by the Commission shall be made in the name of the Commission only, and not in the name of the individual members or the institutions or entities they represent.

(j) Reports and Review.

(1) **ANNUAL REPORTS.** The Commission shall file with the Supreme Court an annual report describing its activities during the prior 12-month period and deliver a copy of the report to the Executive Director of the HSBA.

(2) **THREE-YEAR REVIEW.** Three years after the Commission holds its first meeting, the Supreme Court shall evaluate the progress made by the Commission toward the goal of substantially increasing access to justice in civil legal matters for low-income Hawai'i residents.

(Added April 24, 2008, effective May 1, 2008.)

MEMORANDUM

To: All interested donors, participants, and stake holders

Re: National Interactive Pro Bono Website: "www.ABALEGALANSWERS.ORG"

The purpose of this memorandum is to describe a new initiative to be undertaken by the American Bar Association Pro Bono Committee. The new project is to build and maintain a fifty (50) state interactive pro bono website on which low-income citizens can log onto the internet, then file legal questions and get answers to their legal questions from pro bono volunteer lawyers who are licensed in the state in which the client resides or in which the legal matter arises.

I. History of interactive pro bono websites in the U.S.

We know from recent experience that interactive websites can successfully help thousands of low income citizens. For the last four years, the Tennessee Alliance for Legal Services and Tennessee Bar Association has operated an interactive pro bono website entitled www.ONLINETNJJUSTICE.org. On this website, volunteer lawyers sign up to provide pro bono legal answers to low-income families across Tennessee. The site has helped over 8,000 clients since it was launched in 2011. Since 2011, the states of Alabama, Indiana, Minnesota, South Carolina and West Virginia have launched similar interactive pro bono websites, using the same software. Those sites have operated under the respective names of www.Alabamalegalanswers.org, www.Indianalegalanswers.org, www.MNlegaladvice.org, www.SClawanswers.org and www.WVonlinelegal.org.

II. Site programming

The lead programmer for the national website would be Paul Davis, a programming manager employed by the law firm of Baker, Donelson, Bearman, Caldwell & Berkowitz P.C., who wrote the original software code for www.ONLINETNJJUSTICE.org and assisted each of the other states in launching their sites. The national site would be developed, deployed, and maintained in a hosted environment utilizing virtual technology. This approach would provide flexibility to grow the technology as the popularity of the site grows, and avoid the necessity of any significant capital outlay for servers. This hosted environment would provide 24/7 management of the site infrastructure, enhanced security, and use of the latest technology.

III. Benefits of a national pro bono site

Development of a fifty (50) state model would have several benefits.

1. It would provide this pro bono tool to fifty states with little or no capital outlay for those states.
2. It would provide this pro bono tool to fifty states with little or no necessity for staff to manage the site.
3. It would provide this pro bono resource to states large and small so long as that state has one bar association, access to justice commission, or other pro bono

organization willing to recruit volunteers and promote public awareness of the new resource.

4. It would avoid the necessity of spending significant programing staff time whenever a new state becomes involved.

5. It would collaborate with existing pro bono/legal service provider to increase available resources.

IV. Trends favoring online pro bono

A 2013 study done by the Pugh Research Center indicates that 85% of American adults are internet users and that 70% of American adults have some sort of high-speed internet connection in their home. As of 2013, sixty-four percent of households with incomes between \$20-\$30,000 have internet accessibility and fifty-four percent of households with incomes between \$10-\$20,000 had internet access (as of the 2013 study). The Pugh study showed a dramatic increase in smart phone ownership just in the two year period between May, 2011 and May, 2013, so these numbers probably under-estimate present internet access via smart phone usage as of the spring, 2015.

The trends are clearly in favor of increased internet usage. There is no reason to believe that use of the internet for requesting and receiving legal advice will not continue to grow with every passing year. It is also clear that although limited scope advice, whether provided in a walk-in clinic, a telephone bank, or over the internet, is no substitute for full representation, limited scope advice can provide an invaluable tool to low income residents who cannot possibly afford a lawyer.

V. Estimated cost and funding

It is anticipated that the American Bar Association would provide working space for the site administrator. The most significant cost that we anticipate is a full time, 40/hr a week employee to serve as the site administrator for a fifty (50) state site. If that employee was an employee of the American Bar Association located in Chicago, Illinois, it is anticipated that the approximate cost of salary and benefits would be between \$115,000 and \$140,000 per year. Malpractice insurance for our volunteers may be obtained through the National Legal Aid and Defenders Association for \$5,000 - \$10,000 per year. Thus, the total estimated cost of the site would be approximately \$140,000 per year.

These costs could be funded in numerous ways. We anticipate grant funds would be available from a variety of sources, and that corporations, corporate law departments, and law firms will want to support the site. For example, if we could secure 14 donors at \$10,000.00 per year, the costs would be covered. (We could also decide to ask every state who becomes involved to pay a nominal annual fee of between \$1,000 - \$2,500 per year to go towards the cost of maintaining the site.)

VI. Screening criteria, volunteer attorney licensure, and client satisfaction.

It is anticipated that the site would be available to residents of the United States with income levels less than two times the federal poverty rate. It would be available to eligible

clients with all types of civil legal problems. It is anticipated that after the clients log on, they will answer a series of questions as they do in the six states which have already launched interactive websites. These questions and answers will include income screens and would adduce information regarding the residence of the prospective client. Once the residence of the client is determined, their question would be placed in a queue for that client's state of residence. Then, volunteer lawyers would log on, indicate the state in which they are licensed to practice law, and review and answer questions as they currently do in the six states which now maintain individual state websites. The site will also have built into it a reporting mechanism so that lawyers who are eligible for CLE credit in their state of licensure will be able to get that credit.

The site will have built into it a feed-back loop which will ask clients about the quality of their experience and whether the advice given had a meaningful, positive impact on the resolution of their legal problem. Representative feedback from clients in states with sites include:

- "First off, thank you for your volunteered time in answering questions to help people. You are a blessing from God, and I appreciate you!"
- "Thank you so very much!! I am so grateful for your time and the information. This is truly a good thing you do to help those who cannot afford an attorney."
- "Thank you SO much!! This has been an ongoing problem since 2011." (said in 2014)
- "That's very kind of you. No one else...has offered to help me with this nightmare."

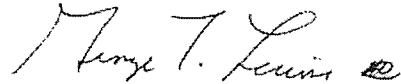
VII. State responsibilities

In each state seeking to provide this pro bono tool for their residents and for their bar, a sponsoring organization would need to take responsibility for recruiting volunteers, working with the site administrator, and promoting awareness of the site with the public, the bar, the judiciary, other legal services providers, social services agencies and related entities. Each state could have one sponsoring organization, or a collaboration of several sponsoring organizations. Large states could have one or more sponsoring organizations in different areas of that state.

VIII. Benefits to lawyer volunteers

The experience in Tennessee and in the other states which have launched interactive websites has been that they provide a significant benefit to lawyers. Government and corporate lawyers, who have difficulty providing pro bono in the public arena, are able to provide pro bono services online. Senior lawyers who no longer have a traditional practice are grateful to have the opportunity to use their considerable experience for the benefit of low-income clients. Lawyers who are disabled or are on family or medical leave or who have taken a break from traditional practice to assume child-rearing responsibilities, are also happy to have the opportunity to continue to use their skills for the benefit of low income clients. Lawyers also like the fact that they can do pro bono any time of the day or night, in any location with internet access. On the internet, lawyers can do pro bono while they sit with their children, or while in a doctor's waiting room, or an airport gate, or while riding in a car, bus or train. The site would also provide opportunities for law student/lawyer collaboration.

The experience in all the states which have launched so far has shown that this online pro bono tool is an important part of the mosaic of pro bono services lawyers can render in carrying out the highest ideals of our profession. Whether you are a potential donor, or potential sponsoring organization, bar leader, member of the judicial branch, access to justice commission member or staff, or play any role whatsoever in helping provide equal access to justice, we eagerly request your support and earnestly seek your comments.

A handwritten signature in cursive script, reading "George T. Lewis", followed by a small circular mark.

George T. "Buck" Lewis
Chair Technology Sub-Committee
ABA Pro Bono Committee

Chief Justice Mark E. Recktenwald
Welcoming Remarks for Access to Justice Conference
William S. Richardson School of Law
June 19, 2015

Good morning and aloha.

I'd like to start by thanking the Access to Justice Commission for sponsoring this seventh annual access to justice conference. I also want to thank Bob LeClair and the Hawai'i Justice Foundation, Dean Avi Soifer and the William S. Richardson School of Law, Greg Markham, Pat Mau-Shimizu and the Hawai'i State Bar Association, and the Cades Foundation for their continued support of the access to justice movement in Hawai'i. I also want to recognize everyone who has worked so hard to plan today's conference, including Carol Muranaka and the Access to Justice Commission's Committee on Education, Communications, and Conference Planning, and all of the distinguished speakers and panel members who will be participating. In particular, I would like to extend a warm aloha to Jonathan Asher, Executive Director of Colorado Legal Services, who will present this year's keynote address. Will you please join me in acknowledging everyone who helped make this conference possible?

The theme of today's conference is "Narrowing the Justice Gap." One of the greatest challenges to equal justice

today is the lack of effective access to our civil justice system. The reason is simple--people who have low or even moderate incomes cannot afford to hire an attorney to represent them in their civil legal cases. Although there are legal services providers like the Legal Aid Society of Hawai'i who do an amazing job representing indigent clients, they have nowhere near enough resources to meet the need. As a result, every year in Hawai'i, thousands of people must represent themselves in our civil courts, trying to navigate a system that is foreign to the average layperson. Many of them simply give up.

Ensuring that every person's voice is heard when their legal rights are threatened is not a luxury--rather it is at the very *foundation* of the legitimacy of our courts, and therefore, our democracy. We are talking about fundamental human needs--housing, health care, the ability to participate in raising one's child. When these decisions are made without hearing every side of the story, the promise of justice for all rings hollow.

The good news is that here in Hawai'i, we decided to focus attention on this crisis in a very systematic way, through the creation of our Access to Justice Commission. Since it was created back in 2008, the Commission has achieved significant results with very limited resources. Those accomplishments range

from successfully advocating at the legislature for increased funding for our legal services providers, to proposing rule amendments and model policies to promote pro bono service, to establishing self-help centers in our courthouses, where volunteer attorneys provide legal information and advice to self-represented parties. We opened the first such center on Kauai in 2011, and now have six centers operating, in every circuit in the state. To date, more than 8,600 people have been assisted, at almost no cost to the public.

All of these accomplishments are a testament to the outstanding leadership of the commission's chair, Judge Daniel Foley, and his predecessor, retired Supreme Court Justice Simeon Acoba. It is also a testament to the commitment and passion of the members of the commission and the many volunteers and other partners who support the Commission's work, including the HSBA, the county bar associations, and the individual attorneys who volunteer their time at the self-help centers and in countless other ways. This web of support and stakeholders has continued to grow and build momentum as more people have come to understand the need, and how they can help meet it.

Hawaii's work on access to justice issues is being noticed across the country. Last year, the National Center for

Access to Justice completed an independent study of each state justice system across the country. Hawai'i was ranked among the top five for expanding access to justice. We were rated number one for providing services to litigants who represent themselves and tied for first in providing support for people with disabilities. I'm very proud of what this says about the strength of the access to justice movement here in Hawai'i, and I am grateful for all the hard work it represents.

But we all know that we have much work to do. We have to find ways to keep this momentum going--to keep our existing volunteers coming back, and new ones coming on board. To do that, we need to develop new partnerships, and innovate to find ways to maximize the impact of our limited resources. One great example is the partnership between the judiciary and the Legal Aid Society to develop interactive software to assist self-represented parties. This software asks the user plain-language questions about their case, and then utilizes the responses to prepare the most commonly-used legal forms. The software is now available at workstations in six courthouses, and on our website.

We are also fostering a partnership with the Hawai'i State Library System, where so many of our citizens go when they need information. We have trained librarians across the state,

and the interactive interviews are now available in 50 libraries statewide, on almost 1,000 computers. We are very excited about this partnership with the libraries, and in just a few months, more than 2,500 people have used the system.

But we need to find new sources of talent and support, including from the business community. I will be moderating a panel today discussing engaging the business community in access to justice efforts, and just two weeks ago, thanks to the leadership of Central Pacific Bank, in-house counsel from nearly every bank in town were trained to volunteer in the self-help centers.

Although increasing access to justice is the right thing to do, it also makes good business sense. Throughout the country, economic value studies have shown that increased provision of legal services to those of low and moderate incomes benefits not only those individuals, but also the economy. Studies are showing that the time and money invested pays off at an exceptional rate: a New York study suggested there was a \$5 return to the economy for every dollar spent on civil legal services.

Why is that return so high? There are a number of reasons. Legal aid makes neighborhoods safer and more stable and desirable. It reduces the number of abused and elderly who require

emergency services and subsequent followup social services, thereby reducing the costs of those services for taxpayers. It brings federal monies into the state through assisting those in need with disability claims. Legal aid saves jobs by helping families obtain the right services for their children, leading to a more stable workforce. We need to find ways to convey this message and build more partnerships.

Another way we can make our justice system more accessible is by making it more transparent, and by focusing resources on areas that affect fundamental human interests. One of those interests, which is explicitly recognized in the Hawai'i constitution, is "the right to a clean and healthful environment." Hawai'i is about to embark on a significant new chapter in the history of our judiciary: on July 1, we will open for business statewide environmental courts. The environmental courts will handle a number of specialized cases ranging from violations of fishing and other natural resources laws to civil litigation involving environmental impact statements and land use. When the legislature provided for establishment of environmental courts in Act 218 last year, it noted that the purpose was "to promote and protect Hawaii's natural environment through consistent and uniform application of environmental laws by establishing

environmental courts."

We are only the second state to have a statewide environmental court, so we are breaking new ground. However, on the international level, we are part of a recent dramatic increase in Environmental Courts and Tribunals around the world, with at least 41 countries having 350 ECTs of some kind. This is consistent with the recognition in international law of importance of access to justice in the environmental context. Indeed, the 1992 Rio Declaration at the Earth Summit concluded that "environmental issues are best handled with participation of all concerned citizens. . . . effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

It will be exciting to see these new environmental courts develop in the months and years ahead. We have been working hard to be ready. We established a working group to help guide the implementation of the courts, under the leadership of my colleague Justice Michael Wilson. I thank Justice Wilson and our many partners in the community, including the William S. Richardson School of Law, for their help in preparing for the implementation of this important new court.

In closing, I return to the theme of this conference,

Narrowing the Justice Gap. Fifty-two years ago today, President Kennedy transmitted a message to Congress asking it to enact what eventually became the Civil Rights Act of 1964. In that message, he asked Congress to be guided by what he termed "the one plain, proud and priceless quality that unites us all as Americans: a sense of justice." I hope that each of you will be guided by that same quality, and inspired by today's conference, to find ways in which you can help meet the very great need for increasing access to justice in our community.

Aloha and mahalo.

Narrowing the Gap:
Access to Justice in Today's Realities

Jonathan D. Asher
Executive Director
Colorado Legal Services

Hawaii Access to Justice Commission
Honolulu, Hawaii
June 19, 2015

I am flattered, honored – but very humbled – by your invitation to be with you today to begin this important annual conclave. Two years ago, you heard from Martha Minow, Dean of the Harvard Law School. Last year, you heard from Jim Sandman, President of the Legal Services Corporation. On my way in this morning, I stopped in the men’s room, where I saw a custodian – a janitor – replacing paper towels. I went up to him and suggested that he start thinking about access to justice because he might well be invited to speak to you next year. In all seriousness, it really is an honor to follow such distinguished and knowledgeable speakers, but I am as surprised as you, that Bob LeClair and the other organizers of this event, asked me to share some thoughts with you this morning, but they did and I am pleased to be with you today.

Mark Twain said that “to do good is noble, to advise others to do good is also noble and far less trouble for yourself.” You need no encouragement from me to do good. You are here because that is a message you already accept and live out in your work, in your dedication to equal justice, and in your efforts to narrow the justice gap.

Your kindness has provided me with an opportunity to reflect on my 40 plus years of effort, trying to provide high-quality representation to the indigent in Colorado. Not long ago, I was on a panel at the University of Denver Graduate School of Social Work with a number of other executive directors of non-profit agencies. We were asked to discuss a variety of difficult issues of leadership and management of non-profit organizations. Late in the session, we were asked to each comment on a single accomplishment of which we were most proud. I was not the first of the several panelists to address the issue, and in those few moments before I spoke, I thought of many things over the years in which I take much pride.

I thought of our efforts with the Chicano community to extend water and sewer lines, which they never had, to a very poor barrio in an unincorporated area, literally on the other side of the tracks, in the small rural town of Eaton in Northeastern Colorado. Indoor plumbing and clean water were worth our time and effort and, ultimately, resulted in our successful efforts with the Farmer Home Administration.

I thought of the many specific cases and litigation in which I was personally involved, beginning with a challenge to the Colorado landlord’s lien statute in the early 70’s which had provided a lien on all possessions of a tenant who was at all delinquent in his or her rent, including a possessory lien on the tenant’s personal papers and even their medications. The statute now is much better – not great, but much better. I thought of my work with Jean Dubofsky, who later became the first woman appointed to the Colorado Supreme Court, and our efforts to ensure compliance by the Weld County General Hospital with its legal

obligation, at that time a yet unenforced and undefined obligation, to provide a reasonable volume of free medical care to those in need which accompanied the hospital's receipt of federal funding.

I thought of our successful challenge to an unconstitutional 35-year residency requirement imposed by the State on the poor and disabled between the ages of 60 and 65 seeking the benefits of the Colorado Old Age Pension. A successful challenge – which has helped many in need of basic assistance.

I thought of one of the first cases brought while I was Director of the Legal Aid Society of Metropolitan Denver in the early 1980's seeking to enforce the obligation of the City of Denver and the State of Colorado to provide adequate mental health services to the homeless mentally ill, a challenge that, unfortunately, one way or another is still ongoing to this day.

I thought of many other cases – from local Municipal and State Courts to the U.S. Supreme Court, and the literally tens of thousands of individuals, maybe even more, who have come through our doors, victims of domestic violence, individuals and families facing eviction or home foreclosure, sometimes through their own fault, frequently not, parents who have lost or have been improperly denied Medicaid with sick or disabled children or spouses in need of essential medical care, of nursing home residents whose income exceeds the Medicaid eligibility level, but whose income is far from adequate to pay the private rate for nursing homes who had nowhere else to go and nowhere to turn, but to us.

I reflected on those cases, but also on the opportunities our offices provided for very able young attorneys, particularly women and minorities, and all of us in legal services, to grow and develop our professional skills to receive terrific supervision, at least some times, and work with models of professionalism, more experienced practitioners and leaders who understood the value of diversity and nurtured our growth and respected our differences, not just our commonalities. Women and minorities who have now served on the highest Court in the State of Colorado, as I said, who have been, and are now, trial court and appellate court judges and members of the Cabinets of Governors and Presidents of the United States, those who became the Mayor of Denver, district attorneys, leaders of the Bar, well-respected members of our community, all of whom stretched their wings and found their initial professional strength early in their careers in legal services offices, and I thought of those many who are yet to follow. I have always thought that an important part of my job – a part of all of our jobs – is as a farmer – planting for the future – never quite sure what will grow, what, if nurtured, will sprout and blossom. Many of our ranks have gone on to great things. I thought of them.

But, though I thought of all of these wonderful experiences, I shared none of them with the students. No, I shared a simple telephone call I received many years ago from a colleague and good friend who was then the Director of the Youngstown, Ohio legal services program. He went on to be the director of the Interest on Lawyer Trust Account program in the State of Ohio. Bob Clyde called me one day and said that he was at home that morning watching the Today Show, or one of the other morning talk shows – I guess he got to the office a little later than I do – but he said that he had been watching TV and had seen our then Governor Dick Lamm on television. It was the time during which our then Governor had raised the issue of the exorbitant and accelerating cost of health care and the extent to which, according to him, we inappropriately used scarce resources for futile heroic, but very expensive measures, to provide medical care in the last days of peoples' lives. He went so far as to suggest that the elderly had a duty to die, so as not to be a financial drain on the rest of the younger public. I was on a panel with Governor Lamm during this period and he described in detail the indefensible costs spent in the last 30 days of life, as I said, on heroic and futile medical care. I told the Governor that I thought he was right, and if he would let us know when his 30 days began to run, we would stop all of his health care. I was never asked to be on a panel with him again.

Well, Bob Clyde told me that he was watching Governor Lamm present his concerns with the costs of health care and his notion that we had to make difficult decisions and prioritize the provision of health care. He said Governor Lamm stated, however, that he knew he had to ration health care in such a way that was fair and consistent with and according to law and regulation, because, otherwise, Denver Legal Aid would sue him. What greater compliment can be paid to a poverty law office than that the Chief Executive Officer of the State knew that there were limits on his authority and that if somebody felt abused or unfairly treated by the system or by the State that he or she might know of Legal Aid, or a friend or neighbor might know, or he or she might have been previously helped by Legal Aid and might even call the office, that somehow he or she could navigate our still barbaric telephone system, that a volunteer or someone on staff would gather the facts of the situation well enough, that somebody might be able to analyze the problem and figure out that there was a legal claim, that we might even have the resources to do something to help that client, and that despite all the difficulties and our lack of resources, that the Governor of the State of Colorado would recognize that, due to our existence, he might be held accountable before the law. What could any lawyer do that would be more important than to defend and assert the legal rights of the poor and most vulnerable among us and help reign in the excesses of government when it violates, rather than protects, the civil rights of its residents. It was terrific. It is that which I shared.

I also remember a statewide training event on welfare issues at which we had asked the Director of the State Department of Human Services to speak. He shared his priorities and plans for the Department and was quite complimentary of our work on behalf of public assistance applicants and recipients – those whose benefits were denied, reduced or terminated. He said he respected our work, even if we were always nipping at his heels. After his presentation, I thanked him for making time for us, and for his compliments and respect for the work of our staff, but I told him I was disappointed that he thought we were nipping at his heels, because we were aiming somewhat higher.

But as Coach John Wooden said “When your past becomes more significant than your future, you’re done.” Well, I’m not quite done this morning.

This conference is sponsored by the Hawaii Access to Justice Commission. I am, and since its inception in the early 2000’s, have been, a member of the Colorado Access to Justice Commission, and I have seen firsthand the incredible progress made in the support of legal services and improvements in the courts and the legal system resulting from the work of Commissions from here in Hawaii, to Washington State, to California, through Texas and all the way to New York and Massachusetts, with now more than 30 other stops along the way. Much of the success of the Commissions is the result of the ownership of the effort by Chief Justices, such as your Chief Justice Recktenwald, now a most well-respected national leader in the Access to Justice community and the significant involvement in the work of the Commissions by the judiciary in each of the states.

In my more than 40 years in legal services, we have moved from a heavily federally influenced system, if not federally dominated system from 1965 until 1980, to a more diversely-funded, heavily state based legal aid system from 1980 until the late 1990’s, in large part due to the funding and influence of IOLTA programs and new and increasing state funding and appropriations, to what is now an increasingly State Supreme Court and judiciary influenced system. This has served to insulate legal aid programs politically and frequently increase their resources, but this influence by the judiciary comes with some risks and concerns. In an article in the Management Information Exchange Journal, a national publication for legal services managers, Jim Bamberger, a former legal services attorney and program director and now the Director of the Washington State Office of Civil Legal Aid, a judicial branch agency, and, I believe, a prominent thinker in the field, stated that his work in the court system enhanced his understanding, I quote,

“...of the many tensions inherent in a branch of government that is focused primarily on maintaining a system for the public adjudication of disputes...rather than on the full spectrum of

justice needs experienced by low income and vulnerable people, especially those that do not present as matters attached to a judicial case....”

He said,

“I am reminded time and again that a judicial branch sponsored or managed legal aid movement is exposed to risk of ‘mission recalibration’ – that is, reorientation of civil legal aid efforts away from a client-centered, justice-oriented focus to one where the relevant outputs and outcomes are grounded in consideration of case processing timelines and court system efficiencies. The former approach drives decisions about case service priorities and resource allocation and when operating at its best, is informed by the full spectrum of client-specific justice outcomes. In contrast, the latter orientation leads to initiatives focused on processing more court cases and achieving efficiency through expanded access, triage and referral systems (e.g., legal aid hotlines), redirection of legal aid staff priorities to cases that present in court (e.g., dedicated family law and landlord tenant attorneys), creation of new types of limited practitioners in areas characterized by high numbers of self-represented litigants (e.g., Washington Limited Licensed Legal Technicians, New York State Courthouse Navigators) and expanded infrastructure focused on the needs of self-represented litigants (e.g, self help centers; simplified and automated court forms).

Housed in courthouses and filtered by the types of cases filed and presented before them, judges and other judicial branch leaders have a much more narrowly focused lens through which they see the access to justice world than do community based legal aid practitioners...”

To paraphrase Jim Baumberger, it is not always obvious that less than 20% of civil legal problems experienced by low-income people are presented before courts and the vast majority of civil legal problems experienced by low-income people are resolved outside of the formal adjudicatory system. The court’s perspective, appropriately, reflects what the judiciary sees each day. Legal aid programs see different things – from the denial of

Medicaid and Medicare, SNAP benefits, still Food Stamps to me, denials of TANF, Childcare Assistance, securing State IDs now required to receive virtually any state benefit, and challenging denials of Unemployment Compensation and the like – these issues almost never reach the court, neither do matters concerning housing conditions, in Colorado at least, and real estate issues, and issues of elder and consumer law, which, if handled well, will never reach the court.

In addition, legal aid programs frequently have the responsibility to challenge as well as support court initiatives, rules and procedures. These challenges can create tensions within the evolving access to justice community.

I do not mean this to be the least bit critical of the judiciary, but I am reminded of the young lawyer who was asked by a judge whether he was showing his contempt for the court. He replied “No, your honor, I am trying very hard to conceal my contempt for the court.” My comments, even to me, sound a touch harsh or even critical. They are not at all intended to be. It is simply to observe the different roles and perspectives. I believe only that the roles of the judiciary and that of good legal aid programs are different, both vitally important, but different.

In Colorado, as here in Hawaii, the Supreme Court and the judiciary have been leaders in improving the justice system for those in need. In Colorado, the Supreme Court has mandated the acceptance by local courts of state approved uniform forms essential to efforts to systematize materials for pro se litigants and the training of pro bono attorneys willing to help those in need. The Colorado Supreme Court has simplified many court proceedings. The Court has adopted rules to facilitate and support discrete task unbundled representation, and when the rules were not widely used, the Court revised them again, easing a lawyer’s withdraw after the limited service was provided, making withdrawal automatic, in the hope that more lawyers would start to provide limited scope service. The court approved revisions to Rule 6.1 specifying and encouraging pro bono representation and adopted a well-received Supreme Court recognition program for lawyers who meet the aspiration set out in the Rule and as a Comment to the Rule, the Court adopted a model law firm pro bono policy. The court adopted Rules to provide continuing legal education credit for attorneys doing or mentoring pro bono work, adopted Rules allowing retired, inactive or single client practitioners to more easily engage in pro bono representation of indigent clients through a formal pro bono program. The Court amended the Rules of Judicial Conduct to more clearly allow judges to encourage and facilitate pro bono representation and to allow judges to assist pro se litigants in navigating the rules of evidence and obtaining a just result and not have to tolerate in silence, the unrepresented litigant’s frustration with legal technicalities. We now have over 50 Self Represented Litigant Coordinators in Colorado and

a SRLC (Sherlocks) and Self Help Center in every State Courthouse. We are working with the Commission and local courts on a required advisement of rights in civil cases, similar to the advisement required in criminal cases. In landlord tenant and consumer cases, defendants would be, at least, shown a video, and advised of their basic rights and responsibilities, their right to file an answer, not just have a court clerk refuse to accept an answer until the defendant has met with the landlord or collection agency's attorney, that is now all too frequently the actual practice. The video would explain what a stipulation is, detail the timelines for the process and the like. Here in Hawaii, Cy Pres Rules were changed to mandate that a portion of remaining unclaimed funds go to access to justice efforts. Without judicial leadership, such efforts would not be possible. All of these are important and appreciated initiatives. Courts should, must, assume a leadership role on Access to Justice issues. The judiciary is absolutely essential to these efforts. It's just that more needs to be done to ensure justice, not just access to justice and efficiencies within the courts.

Let me interject that many of these initiatives were heavily criticized by members of the Bar, as anything new will be. Some believe that judicial leadership on equal justice issues conflicts with judicial neutrality, that judges should sit back and not advance any cause. As Laurence Tribe, the first Senior Counsel for Access to Justice at the US Department of Justice said in 2010 "...there is a basic and often ignored difference between neutrality and judicial inactivity, between judicial objectivity and judicial passivity." He shared that:

"Perhaps the greatest image we can conjure of a wise judge is that of Solomon. We all remember his creative, pre-DNA test, solution to the problem of adjudicating the contested issue of maternity between two women making competing parental claims to the same infant. The wise king's proposed solution, which he sprang on the women when he suggested splitting the baby in two while he watched the reactions of both claimants to motherhood, was the very essence of neutrality and objectivity,"

but, Tribe said,

"...it was hardly passive. It was as active as all-get-out.
Solomon's wisdom sprang from making justice an active verb."

I encourage all of you, members of the Court, the judiciary, the Bar, the Law School and those of you who simply care about these issues, to be as active as all-get-out.

But I don't think that being active is enough. I encourage you, in your efforts to expand access to justice, to reflect on the difference between access to justice and justice itself.

I have been asked by last year's speaker, Jim Sandman, President of the Legal Services Corporation, my program's largest single funding source, isn't something better than nothing? And was emphatically told by him, as were all of you last year, that the perfect should not be the enemy of the good. Certainly, something is almost always better than nothing and we should not wait for the perfect to continue to improve the current state of affairs, but the good should not blind us to what is even better and that, while certainly we should obtain something for everyone, we should not settle for something when the objective is justice for all. I worry that as Gerry Singsen, a longtime legal aid guru, has said, in 50 years we have moved from a War on Poverty to a campaign for less unfairness. It is a campaign worth waging, but falls short in our quest for equal justice.

We should not accept what, I fear, is increasingly two tiers of justice – one for those who can afford counsel and another for those who can't.

I will feel that things are more equal when we tell the CEO of a major corporation that you are pretty bright, you speak English well, so you should go to a website and it will walk you through how to fill out a form and respond to the other party's patent infringement or trademark claim. No. Only those without means are triaged and told that legal information and an interactive website is all that you will get. Some may make the choice that that is all that they need or want – just information. But while that is fine for those who chose it, we should not accept it for those who have no choice, when we make the choice for them.

Of course, 100% of those in need should get something, but the goal isn't something – the goal is justice – not just access to the courts – opening the door to the courthouse. As Chief Justice Lippman of New York said, there is no point in opening the door if you can't get justice once you are inside – the goal is not increasing judicial efficiency, it is ensuring the right response to someone's legal need, it is the pursuit of justice, not just access.

Technology is a helpful tool, but it is not the end, it is not justice. A computer can, if programmed well and used wisely, help move us in that direction, as it should, but that is all it can do.

We need to test, and then implement, new and broader strategies, beyond just additional resources for legal aid programs – as important as that is – we must help meet the full range of legal needs of low-income people and communities and that those needs, whether within or outside of the court system, should be considered and addressed.

But, I do not believe that the prophet Amos, whose words were later captured and used so eloquently by Martin Luther King, Jr., inspired us with the thought that if only we cared enough, if only we worked hard enough, if only we were creative enough, that someday websites and accurate and well-populated forms would flow down like a mighty stream. Our constitution does not begin with a preamble justifying our constitutional construct with in order to establish access to justice. It simply proclaims “to establish justice.” So, too, the Pledge of Allegiance does not end with liberty and access to justice for all, and our Supreme Court is not emblazoned with the words Equal Access to Justice Under Law. No, the guiding principle is not access but, as it always has been, and must continue to be, is justice. That must be our bedrock concern as well.

I do not believe that the governor of Colorado would have acknowledged that he had to act fairly and according to law if he felt those affected by his rationing of health care, would only have access to a self help center providing only legal information, were told to find forms on a State Supreme Court or legal services website, or would be provided with a courthouse kiosk or computer terminal. I believe that his concern was that an energetic, committed and knowledgeable legal aid lawyer might be available to those aggrieved by the policy and would bring legal action ensuring that no one, not even the Chief Executive Officer of the State, is above the law.

A Greek philosopher, when asked when justice would come to Athens, stated that justice would only come when those who are not injured are as indignant as those who are. I believe that I am in the company of the indignant and that Hawaii will be well served by your thoughtful concern and indignation.

J. Paul Getty, a wealthy industrialist and oil baron, when asked his secret of success, stated “Rise early. Work hard. Strike oil.” I certainly struck oil when, in my first year of law school, I met Bob LeClair, and all of you struck oil when he committed his professional life to the State of Hawaii and the underserved here. He has spent his life toiling to increase access to justice by training and expanding the use of paralegals and, more recently, as a most well-respected leader in the national IOLTA community. No one is better, nor could anyone serve you with greater ability, commitment or generosity of spirit than does Bob. So, too, I struck oil when I met Victor Geminiani in the late 1970s, and you struck oil when he came to the Islands from Northern California, and more recently, returned here from

Southern California. No one brings greater energy, passion or vision to his work and to the cause than does Victor. I have learned much from him and respect him immensely. More recently, I struck oil when I met, and have had the opportunity to work with, my friend and colleague, Nelani Fujimori Kaina. While I have not known her as long, I have come to respect her greatly, as well, and I know you struck oil when she decided to commit her professional life to the Legal Aid Society of Hawaii. We have all been fortunate to strike oil in so many ways.

An African proverb frequently used by the staff of the Bill and Melinda Gates Foundation is something like “if you want to go fast, go alone. If you want to go far, go together.” I encourage you who are a large portion of the cadre of those in Hawaii who value justice, to use today to create new ideas and new ways together to help bridge the justice gap.

I have come a long way to be of little help, but, unfortunately, I don’t have easy answers to share. I don’t even have hard ones, but I do know that we can spend the day together working to find them and I look forward to doing that with all of you. An old saying reminds us that the best time to plant a tree is 30 years ago. The second best time is now. The time for all of us is now.

Thank you. Mahalo.

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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the
HAWAI'I APPELLATE PRO BONO PILOT PROJECT

ORDER ESTABLISHING A
HAWAI'I APPELLATE PRO BONO PILOT PROJECT
(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Upon consideration of the Hawai'i Appellate Pro Bono Pilot Project (hereinafter, the pilot project), approved by the Hawai'i Access to Justice Commission and submitted to this court for review, we note with approval the goals of the pilot project; to provide (1) those in our community with limited financial means access to volunteer appellate counsel, (2) volunteer counsel the opportunity to gain valuable appellate experience, and (3) experienced appellate counsel in our legal community the opportunity to mentor the next generation of appellate attorneys. We also note with gratitude the vital role of Volunteer Legal Services of Hawai'i in the practical administration of the pilot project. Therefore,

APPENDIX E

IT IS HEREBY ORDERED the Hawai'i Appellate Pro Bono Pilot Project is approved as a pilot project, effective as of the filing of this order and expiring on July 1, 2017, unless extended or made permanent by order of this court.

IT IS FURTHER ORDERED that the Chief Staff Attorney of this court shall designate a staff attorney to file a report on the performance of the pilot project at least one year after the entry date of this order but no later than July 1, 2016.

IT IS FURTHER ORDERED that the staff attorney so designated shall also work with the Judges and staff of the Intermediate Court of Appeals, the Chief Clerk of the Supreme Court Clerk's Office and her staff, and other individuals associated with the pilot project, in order to ensure its smooth implementation.

IT IS FINALLY ORDERED that the appellate clerks, upon notification by the designated staff attorney that the necessary administrative aspects of the program have been finalized, shall notify pro se litigants, upon the filing of a notice of appeal, of the existence of the pilot project and the relevant materials necessary for participation.

DATED: Honolulu, Hawai'i, August 7, 2015.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

- 2 -



MAR 07 2014

SENATE CONCURRENT RESOLUTION

REQUESTING THE HAWAII ACCESS TO JUSTICE COMMISSION TO CONVENE A
WORKING GROUP TO DEVELOP AN EDUCATIONAL LOAN REPAYMENT
PROGRAM FOR WILLIAM S. RICHARDSON SCHOOL OF LAW GRADUATES
TO EXPAND OPPORTUNITIES TO PURSUE PUBLIC INTEREST CAREERS
IN HAWAII THAT DIRECTLY SERVE UNDERSERVED COMMUNITIES.

1 WHEREAS, the Legislature finds that there is a significant,
2 and income-based disparity in the ability of Hawaii residents to
3 meaningfully achieve justice in both the civil and criminal
4 courts of the State; and
5

6 WHEREAS, the Hawaii Supreme Court's Access to Justice
7 Commission, established in 2008 to increase access to justice in
8 civil legal matters for low- and moderate-income residents,
9 found that one of the reasons for the severe disparity among
10 citizens' abilities to access the judicial system is the
11 insufficient number of attorneys choosing to practice public
12 interest law in Hawaii; and
13

14 WHEREAS, the Legislature finds that there are not enough
15 new lawyers that are able to practice public interest law due to
16 accumulated educational debt incurred, the high cost of living
17 in Hawaii, and the low compensation for public interest work
18 compared to other practice areas; and
19

20 WHEREAS, the legislature further finds that the federal
21 government and 26 other jurisdictions nationwide have loan
22 repayment assistance programs to encourage lawyers to pursue
23 public interest work within their jurisdictions; and
24

25 WHEREAS, there are several available options that could
26 achieve an effective Hawaii-focused loan repayment program, and
27 such a program is necessary to bring similar benefits to the
28 State's underserved communities; and



1 WHEREAS, the William S. Richardson School of Law has served
2 as Hawaii's law school since 1973 and provides an excellent
3 legal education for attorneys pursuing all sectors of law, with
4 an emphasis on public service and public interest law that,
5 compared to law school education elsewhere in the United States,
6 provides a relatively low cost and high value legal education
7 that allows Hawaii residents the opportunity to pursue a
8 rewarding legal career in-State; and
9

10 WHEREAS, many students of the William S. Richardson School
11 of Law express a high level of interest in pursuing public
12 service careers in Hawaii, including in the State's rural
13 communities, and a loan repayment program would be a substantial
14 factor in enabling Richardson graduates to pursue these careers;
15 and
16

17 WHEREAS, many underserved communities in Hawaii would
18 benefit directly from a loan repayment program that supports
19 graduates of the William S. Richardson School of Law pursuing
20 public interest careers; and
21

22 WHEREAS, a successful loan repayment program needs to be
23 crafted carefully to:
24

- 25 (1) Ensure maximum compatibility with the federal
26 repayment program;
27
- 28 (2) Ensure broad support from law students and graduates,
29 the Judiciary, the Hawaii State Bar Association, and
30 the State's public service providers;
31
- 32 (3) Be financially sustainable; and
33
- 34 (4) Include a collection program that provides for
35 appropriate administrative support through the William
36 S. Richardson School of Law, but avoids conflicts of
37 interest with respect to its graduates; now,
38 therefore,
39

40 BE IT RESOLVED by the Senate of the Twenty-seventh
41 Legislature of the State of Hawaii, Regular Session of 2014, the
42 House of Representatives concurring, that the Hawaii Access to
43 Justice Commission is requested to convene a working group to
44 develop an educational loan repayment program for William S.



1 Richardson School of Law graduates to expand opportunities to
2 pursue public interest careers in Hawaii for the benefit of
3 underserved communities; and
4

5 BE IT FURTHER RESOLVED that the working group be composed
6 of members of the Hawaii Access to Justice Commission, faculty
7 and staff of the William S. Richardson School of Law, the
8 Student Bar Association of the William S. Richardson School of
9 Law, the Alumni Association of the William S. Richardson School
10 of Law, the Hawaii State Bar Association, a retired member of
11 the Hawaii Supreme Court, Hawaii Consortium of Legal Service
12 Providers, Hawaii Justice Foundation, a member of the House of
13 Representatives, a member of the Senate, and a representative of
14 the Governor's Office; and
15

16 BE IT FURTHER RESOLVED that the working group is requested
17 to:
18

- 19 (1) Explore alternative methods of encouraging law
20 graduates to pursue public interest careers that
21 provide legal services directly to underserved
22 communities and nonprofit organizations;
23
- 24 (2) Consider the compatibility of the federal law graduate
25 loan repayment programs with a Hawaii program;
26
- 27 (3) Consider the establishment of an incubator program for
28 post-graduate apprenticeship to afford practice-ready
29 training for graduates of the William S. Richardson
30 School of Law and to encourage multidisciplinary
31 training of graduates; and
32
- 33 (4) Draft proposed legislation or alternative measures, if
34 needed, to implement such programs; and
35

36 BE IT FURTHER RESOLVED that the members of the working
37 group should not be considered state employees based solely upon
38 their participation in the working group; and
39

40 BE IT FURTHER RESOLVED that the working group is requested
41 to submit a final report of the working group's findings and
42 recommendations, including any proposed legislation, to the
43 Legislature no later than 20 days prior to the convening of the
44 Regular Session of 2015; and



S.C.R. NO. 116

1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the Governor, the Chief
3 Justice of the Hawaii Supreme Court, members of the Hawaii
4 Access to Justice Commission, the Dean of the William S.
5 Richardson School of Law, the President of the Student Bar
6 Association of the William S. Richardson School of Law, the
7 President of the Alumni Association of the William S. Richardson
8 School of Law, the Executive Director of the Hawaii State Bar
9 Association, members of the Hawaii Consortium of Legal Service
10 Providers, and the Commissioners of the Hawaii Justice
11 Foundation.
12
13
14

OFFERED BY: 



GARY M. SLOVIN
Direct: (808) 539-0834
gslovin@awlaw.com

January 20, 2015

The Honorable Senate President Donna Mercado Kim
Hawaii State Capitol Room 409
415 South Beretania St.
Honolulu, HI 96813

The Honorable Speaker Joseph M. Souki
Hawaii State Capitol Room 431
415 South Beretania St.
Honolulu, HI 96813

**Re: SCR 116 - Requesting The Hawaii Access To Justice Commission To
Convene A Working Group To Develop An Educational Loan Repayment
Program For William S. Richardson School Of Law Graduates To Expand
Opportunities To Pursue Public Interest Careers In Hawaii That Directly
Serve Underserved Communities.**

Dear Senate President Kim and Speaker Souki:

During the course of the 2014 legislative session, the Legislature considered legislation that would create a fund to assist law graduates who work for government, not-for-profits and agencies that serve the indigent with paying off law school loans. The legislation was introduced at the request of a number of students at the Richardson School of Law at the University of Hawaii. Ultimately, the legislation stalled in committee and, instead, a Senate Concurrent Resolution was adopted by the House and Senate. That resolution is SCR116. Among other things, the resolution called for the establishment of a task force consisting of a number of representatives of groups involved in serving indigent persons and persons associated with Richardson as administrators and students, as well as agencies, entities and individuals who have expressed concern and/or have provided legal services to the indigent. Responsibility for the task force was assigned to the Access to Justice Commission (ATJC). The ATJC requested the participation of several individuals who met the criteria established by the Legislature and all graciously agreed.

The resolution called for the task force to study loan repayment assistance programs, commonly known as LRAPs. The resolution also called for the task force to study incubator programs.

The task force members consisted of Retired Judge Doug McNish, Gary Slovin (Chair), Katherine Vessels (Law Student), Matt Tsujimura (Law Student), Nalani Fujimori Kaina

(Executive Director, Legal Aid Society of Hawaii), Keani Rawlins-Fernandez (Law Student), Representative Isaac Choy, Ronette Kawakami (Associate Dean for Student Services at William S. Richardson School of Law), Senator Gilbert Kahele, Aviam Soifer (Dean at William S. Richardson School of Law), Justice Acoba (Retired Justice of Hawaii), Leighton Hara (Hawaii State Bar Association Representative) and Tyler Gomes (Public Defender).

The task force met several times beginning in June 2014 and also consulted with outside persons to gain an understanding of how other jurisdictions have handled this issue. The task force is particularly grateful for the generous assistance provided by Susan Choe of The Ohio Legal Assistance Foundation. That foundation has operated an LRAP successfully for several years. The members of the task force were very impressed by what Ohio has accomplished. While the Ohio situation is quite different from the situation in Hawai'i, certain elements of Ohio's program appealed to most task force members enough for them to believe that Hawaii should replicate them in any program adopted in Hawaii.

At this time, we, the members of the task force, cannot say that we have reached consensus on all points that would need to be included in a loan repayment assistance program. The members, however, do strongly support a modified version of the proposal that was supported by the Richardson students during the 2014 Session. It became clear to the members during the course of our many discussions that the burden of repaying the loans that are needed by most students to complete law school is substantial enough to have a direct impact on the ability of agencies that serve the indigent to recruit capable lawyers at the salaries they pay. The members also learned that law school loans are almost always in addition to significant loan obligations carried over from undergraduate education.

The legal positions in the agencies that serve the poor, directly or indirectly, pay far less, in almost all cases, than private sector jobs and many government legal positions as well. Yet we also learned that a great many Richardson students desire to work in these community-oriented positions. In addition, however, the task force members recognize that the inability of such agencies to pay anything like a competitive salary is a major obstacle to their ability to recruit able lawyers, particularly in rural areas of O'ahu and on the neighbor islands. The agencies that directly serve the indigent, including government entities such as the Public Defender, are in need of greater resources. While an LRAP will assist them, the compensation gap they face, even when compared to many government agencies, is an obstacle to the recruitment and retention of the capable lawyers they need if they are to represent the indigent effectively. An LRAP cannot by itself resolve this issue but the task force members believe that establishing such an LRAP program would be worthwhile and would ameliorate the problem. And we also feel strongly that any such funds granted must not be taken from monies granted to the legal service providers.

The federal government offers loan repayment programs that are very beneficial. The members believe that any applicant for an LRAP should participate in such a federal program if a program is available to her or him.

The members were able to reach consensus on a number of the factors that would need to be included in an LRAP. Included among these factors are the following items:

Endowment: while the legislation considered by the 2014 Legislature would have established an endowment, the task force members felt that the amount of funding needed at current interest rates is too substantial to be realistic. The Ohio Justice Foundation had reached the same conclusion. Therefore, the task force has concluded that annual funding, from various sources, is the more realistic approach.

Income threshold: it was agreed that over a certain job-related annual income level, assistance from an LRAP would not be justified. There was considerable discussion regarding what that threshold should be. The recommendation of the task force is that the threshold should be set at \$56,000. That amount is based on the starting salary for a DOE teacher with a Ph.D.

State of residence: for a number of reasons the task force members believe the program should be open to any attorney licensed in Hawai'i who meets the other qualifications established for the program and is working in Hawai'i.

Loan counseling: every person applying for assistance must be or have been in a loan counseling program. The members learned that many graduates face greater financial burdens than would have been the case if they had been better informed when they took on debt.

Spousal or partner income: one of the key points of our discussions was that the program needs to be simple if it is to be administered efficiently. Ohio reached the same conclusion and found such an initial decision to be a key to the success of its program. Accordingly, the task force concluded that only the income of the applicant would be considered in reviewing an individual's application for loan assistance under the program.

Asset search: pursuant to the foregoing, it was concluded that an asset search would not be made.

Extent of relief: for those who qualify, payments would be between \$6,000 and \$10,000 a year, depending upon the size of loan indebtedness, and for a period of five years. The maximum amount of assistance thus would be \$50,000.

Administration of the program: the program would be administered jointly by the Hawaii Justice Foundation and the Richardson School of Law.

Recertification: each grantee's status would be reviewed for continued qualification on an annual basis.

Leave of absence: the members feel that the program should be flexible. Accordingly, leaves of absence will be permitted for specific reasons to be outlined by the Justice Foundation and the Richardson School of Law as they set up the program

Federal programs: federal education loan programs currently have favorable terms for students doing public interest work and those terms can relieve much of the burden of school loan indebtedness. We believe that participation in these programs should be required for applicants eligible for the federal education loan programs.

Full-time or part-time: recognizing that exigencies will occur in the course of a person's work life, the members support assistance for persons in positions no less than half time, so long as the employer authorizes such limited employment.. The five-year maximum will still apply, however, even if the lawyer worked less than full time.

Licensees: in order to qualify for relief, an attorney must be licensed to practice in Hawai'i.

Qualifying agencies: The task force did not reach consensus on this issue. Some members were of the view that the program's main focus should be on recruiting attorneys for those agencies that directly assist indigent persons with legal issues. Other members felt that, taking into account the income threshold noted above, attorneys serving some government agencies and not-for-profits should be included as well. Still others believe that any attorney working for a nonprofit agency should be eligible, again taking into account the income threshold, though not attorneys working for government. Ultimately, if the legislature sees fit to adopt the program, it will need to make a policy decision in this area. It is probably fair to say, however, that because the legal service providers that assist the indigent directly can often not compete in recruiting against government agencies they would object to extending the program to employees in government agencies, except for those attorneys working in the office of the public defender.

Certainly much of the discussion on this issue related to the fact that many students come from circumstances that make it very difficult for them to attend law school unless they take out sizable loans. Many of the students at Richardson believe that virtually all students must acquire loan indebtedness in order to attend law school and that they should be able to have some kind of debt relief so long as they are not working in the private sector. It is clear from looking at national as well as local sources of information on this matter that loan indebtedness of college students is a significant national issue that has serious consequences in people's lives. Those are not issues that this task force or this program can address directly, yet undoubtedly these factors have affected the thinking of individual task force members about how a repayment assistance program should be structured. A very significant factor in all of our discussions was the extent to which the legislature would be willing to fund a program. There was clear and strong consensus

in favor of a program, and we believe that the overall circumstances described above would provide significant assistance for both students and the agencies they choose to serve with a relatively small investment. Clearly the amount needed to establish an endowment is far too high to be realistic. It is also expected that sources other than government will be sought aggressively to assist in the development of such a program.

Nearly all of the task force members have had some experience regarding the legal needs of indigent persons. The lack of adequate legal resources jeopardizes the wellbeing of many of our residents. The core value of an LRAP is to increase those resources. Therefore, the task force supports the adoption of legislation that would establish such a program. Our estimate is that the cost to fund such a program initially would be \$600,000.

The Task Force also considered an Incubator program, as requested by the resolution. The Task Force supports the establishment of a Hawaii Incubator Program (HIP) to assist recent law school graduates to develop group or solo practices aimed at clients of modest means in key legal need areas in Hawaii. HIP aims to leverage the limited number of public interest jobs in Hawaii and the immense need for legal services to develop a caring and compassionate community of attorneys dedicated to assisting those of limited means with critical legal issues. Such an incubator program would provide assistance with the basics of starting a legal practice, legal education on critical legal needs for those of limited means, and the development of a referral source to help ensure the ultimate success of these community lawyering practices.

Starting a legal practice is a daunting challenge, especially when one is right out of law school. As a collaborative project of the Legal Aid Society of Hawaii, Volunteer Legal Services of Hawaii, the Hawaii State Bar Association, and the William S Richardson School of Law, the first part of HIP will guide participants to create a solo or group practice, including, but not limited to, assistance in creating a business plan, making key business decisions as to the structure of the firm, setting up operations and client trust accounts, and other basics. HIP participants will work with experienced attorneys to ensure their structure is appropriate and meets all professional requirements.

Keeping a new legal practice afloat depends on clients. Part of HIP will be to develop realistic expectations and referral mechanisms for HIP participants, adapting the intake systems of Legal Aid and Volunteer Legal Services. HIP participants will be asked to limit their rates for clients referred to the project. Finally, ongoing support of HIP participants will be supplied to ensure high quality legal services and sustainability of their practices. HIP will also develop a structured format to provide regular support through facilitated monthly meetings and one-on-one mentoring when needed. To meet the challenges of funding such a program, however, required more time than the Task Force had available.

SCR 116 Task Force Report
January 20, 2015
Page 6

The task force members found the tasks set by SCR 116 to be very challenging but also very enlightening and worthwhile. We feel the diversity of the members contributed to open and positive debate.

Very truly yours,

Gary M. Slovin

SENATE RESOLUTION

REQUESTING THE HAWAII ACCESS TO JUSTICE COMMISSION TO ASSEMBLE
VARIOUS STATE AND COMMUNITY ENTITIES TO DETERMINE WHICH
AGENCY OR ORGANIZATION SHOULD ADMINISTER FUNDING FOR CIVIL
LEGAL SERVICES TO LOW- AND MODERATE-INCOME INDIVIDUALS.

1 WHEREAS, civil legal services can improve community well-
2 being as a vital part of our social safety net, which ensures
3 that our keiki, kupuna, family care givers, and all members of a
4 family are healthy and safe; and

5
6 WHEREAS, "The 2007 Assessment of Civil Legal Needs and
7 Barriers of Low- and Moderate-Income People in Hawaii" found
8 that only one in five people has civil legal needs addressed and
9 that only one in three people who contact a civil legal service
10 provider is able to get assistance; and

11
12 WHEREAS, one of the goals set forth in "The Community Wide
13 Action Plan: Ten Action Steps to Increase Access to Justice in
14 Hawaii by 2010" was that an appropriate home for funding civil
15 legal services should be established to ensure stable state
16 funding; and

17
18 WHEREAS, access to civil legal services by the indigent is
19 critical to providing access to justice for those who cannot
20 afford an attorney; and

21
22 WHEREAS, access to civil legal services results in:

- 23
24 (1) Cost savings to the State by way of recovery of
25 federal public benefits, such as Social Security and
26 Veterans Administration benefits;
27
28 (2) Reduction in use of safety net services, such as
29 foster care, by establishing guardianships for family
30 caregivers;
31



1 (3) Reduction of dependency on public assistance by
2 securing child support and alimony;

3
4 (4) Reduction of instances of homelessness through housing
5 representation; and
6

7 (5) Increase in state tax revenues through employment and
8 re-employment related legal assistance; and
9

10 WHEREAS, civil legal services provide better access to the
11 justice system for the indigent, who are immigrants, homeless,
12 at risk of homelessness, families in crisis, consumers who have
13 been taken advantage of, and individuals who speak English as a
14 second language; and
15

16 WHEREAS, civil legal services can support efforts to ensure
17 that government is providing effective services to help those
18 without an attorney navigate the complex legal system; and
19

20 WHEREAS, for thirty years, funding for civil legal services
21 was provided through the Department of Labor and Industrial
22 Relations Office of Community Services; and
23

24 WHEREAS, prior to 2005, general funding for civil legal
25 services was provided by way of a purchase of service contract;
26 and
27

28 WHEREAS, since 2005, general funding for civil legal
29 services has been made by a grant-in-aid; and
30

31 WHEREAS, since 1995, general funding for pro bono legal
32 services has been made by grants-in-aid; and
33

34 WHEREAS, in 2011, the legislature increased court fees to
35 include an amount to be paid into the indigent legal assistance
36 fund pursuant to section 607-5.7, Hawaii Revised Statutes. The
37 legislature did so upon a finding that there was a need to fund
38 legal services for low- and moderate-income individuals who
39 would not otherwise have access to legal services; and
40

41 WHEREAS, despite the increase in court fees to include an
42 amount to be paid into the indigent legal assistance fund, the



1 total amount of funding for general civil legal services
2 decreased from \$2,017,093 in the 2008 fiscal year to \$1,213,135
3 in the 2015 fiscal year; and
4

5 WHEREAS, grant-in-aid funding for civil legal services and
6 pro bono legal services decreased from \$1,832,496 in the 2008
7 fiscal year to \$400,000 in the 2015 fiscal year; and
8

9 WHEREAS, general revenue funding is critical to meet the
10 need for legal services in Hawaii, and the funding of legal
11 services can promote the resolution of critical community
12 issues; and
13

14 WHEREAS, an examination of executive agencies, the
15 Judiciary, and community agencies is necessary to determine
16 which agency or organization is most appropriate and suitable to
17 administer general funding for civil legal services to obtain
18 the best results; and
19

20 WHEREAS, the examination should require:
21

- 22 (1) The identification and assessment of the problems and
23 issues relating to the funding of civil legal
24 services, including the best agency or organization to
25 administer these funds; and
26
27 (2) The involvement of all interested governmental and
28 community stakeholders to ensure that the
29 administration of these funds is workable and
30 acceptable to the interested stakeholders; now,
31 therefore,
32

33 BE IT RESOLVED by the Senate of the Twenty-eighth
34 Legislature of the State of Hawaii, Regular Session of 2015,
35 that the Hawaii Access to Justice Commission is requested to
36 assemble a working group of interested government agencies and
37 community entities to conduct meetings to develop a plan for
38 determining which agency or organization should administer
39 funding for civil legal services; and
40



1 BE IT FURTHER RESOLVED that the following persons or a
2 representative of the following persons, agencies, or
3 organizations be invited to participate in the working group:
4

- 5 (1) The Governor;
- 6
- 7 (2) The President of the Senate;
- 8
- 9 (3) The Speaker of the House of Representatives;
- 10
- 11 (4) The Judiciary;
- 12
- 13 (5) The Attorney General;
- 14
- 15 (6) The Department of Human Services;
- 16
- 17 (7) The Department of Labor and Industrial Relations
18 Office of Community Services;
- 19
- 20 (8) The Department of Budget and Finance;
- 21
- 22 (9) The Department of Accounting and General Services;
- 23
- 24 (10) The Hawaii Justice Foundation;
- 25
- 26 (11) The Hawaii Access to Justice Commission;
- 27
- 28 (12) Legal Aid Society of Hawaii;
- 29
- 30 (13) Volunteer Legal Services Hawaii; and
- 31
- 32 (14) Any other stakeholders that the Hawaii Access to
33 Justice Commission may invite to participate in the
34 working group; and
- 35

36 BE IT FURTHER RESOLVED that the plan include a history of
37 state funding of civil legal services and the issues
38 historically faced by civil legal service providers in providing
39 service to low- and moderate-income individuals; and
40

41 BE IT FURTHER RESOLVED that the plan include an analysis of
42 the benefits and barriers to assigning the administration of



1 funding for civil legal services to the Judiciary, Department of
2 the Attorney General, Department of Human Services, Department
3 of Labor and Industrial Relations Office of Community Services,
4 Department of Budget and Finance, Department of Accounting and
5 General Services, and the Hawaii Justice Foundation; and

6
7 BE IT FURTHER RESOLVED that the plan include
8 recommendations on which agency or organization should
9 administer funding for civil legal services, levels of funding
10 for civil legal services, and if enabling legislation is
11 necessary, a proposal for such enabling legislation; and

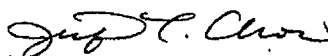
12
13 BE IT FURTHER RESOLVED that the Hawaii Access to Justice
14 Commission is requested to submit the working group's plan to
15 the legislature no later than twenty days prior to the convening
16 of the Regular Session of 2016; and

17
18 BE IT FURTHER RESOLVED that the working group be dissolved
19 on June 30, 2016; and

20
21 BE IT FURTHER RESOLVED that certified copies of this
22 Resolution be transmitted to the Governor, President of the
23 Senate, Speaker of the House of Representatives, Chief Justice
24 of the Hawaii Supreme Court, Attorney General, Director of Human
25 Services, Executive Director of the Department of Labor and
26 Industrial Relations-Office of Community Services, Director of
27 Finance, Comptroller, Executive Director of the Hawaii Justice
28 Foundation, Chair of the Hawaii Access to Justice Commission,
29 Executive Director of the Legal Aid Society of Hawaii, and
30 Executive Director of Volunteer Legal Services of Hawaii.
31

I hereby certify that this is a full, true, and
correct copy of the original filed in this office.

Dated: APR 09 2015


Assistant Clerk of the Senate
State of Hawai'i



1. The first part of the document is a list of the names of the members of the committee.

HOUSE RESOLUTION

REQUESTING THE HAWAII ACCESS TO JUSTICE COMMISSION TO ASSEMBLE
VARIOUS STATE AND COMMUNITY ENTITIES TO DETERMINE WHICH
AGENCY OR ORGANIZATION SHOULD ADMINISTER FUNDING FOR CIVIL
LEGAL SERVICES TO THE LOW- AND MODERATE-INCOME.

1 WHEREAS, civil legal services can improve community well-
2 being as a vital part of our social safety net which ensures
3 that our keiki, kupuna, family care givers, and all members of a
4 family are healthy and safety; and

5
6 WHEREAS, "The 2007 Assessment of Civil Legal Needs and
7 Barriers of Low- and Moderate-Income People in Hawaii" found
8 that only one in five people have their civil legal needs
9 addressed and that only one in three people who contact a civil
10 legal service provider is able to get assistance; and

11
12 WHEREAS, one of the goals set forth in "The Community Wide
13 Action Plan: Ten Action Steps to Increase Access to Justice in
14 Hawaii by 2010" was that an appropriate home for funding civil
15 legal services should be established to ensure stable state
16 funding; and

17
18 WHEREAS, access to civil legal services by the indigent is
19 critical to providing access to justice for those who cannot
20 afford an attorney; and

21
22 WHEREAS, access to civil legal services results in costs
23 savings to the State by way of recovery of federal public
24 benefits (such as SSI and VA benefits), reduction of utilization
25 of safety net services such as foster care by establishing
26 guardianships for family caregivers, reduction of dependency on
27 public assistance by securing child support and alimony, a
28 decrease of instances of homelessness through housing
29 representation, and an increase in state tax revenues
30 through employment and re-employment related legal
31 assistance; and
32

I do hereby certify that the within document
is a full, true and correct copy of the original
on file in this office.

Phin L. T. T. T.
Chief Clerk
House of Representatives
State of Hawaii

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1

1 WHEREAS, civil legal services provides to the indigent
2 who are immigrants, homeless, at risk of homelessness;
3 families in crisis, consumers who have been taken advantage of,
4 and those who speak English as a second language, better access
5 to the justice system; and
6

7 WHEREAS, civil legal services can support efforts to ensure
8 that government is providing effective services by helping those
9 facing the complex legal system without an attorney navigate the
10 system; and
11

12 WHEREAS, for thirty years, the funding for civil legal
13 services was provided through the Department of Labor and
14 Industrial Relations-Office of Community Services; and
15

16 WHEREAS, prior to 2005, general funding for civil legal
17 services was provided by way of a purchase of service contract;
18 since 2005, general funding for civil legal services has been
19 made by a grant-in-aid; and
20

21 WHEREAS, since 1995, general funding for pro bono legal
22 services has been made by grants-in-aid; and
23

24 WHEREAS, in 2011, the legislature increased court fees to
25 include an amount to be paid into the indigent legal assistance
26 fund pursuant to section 607-5.7, Hawaii Revised Statutes. The
27 legislature did so upon a finding that there was a need to fund
28 legal services for low- and moderate-income individuals who
29 would not otherwise have access to legal services; and
30

31 WHEREAS, despite the increase in court fees to include an
32 amount to be paid into the indigent legal assistance fund, the
33 total amount of funding for general civil legal services
34 decreased from \$2,017,093 in the 2008 fiscal year to \$1,213,135
35 in the 2015 fiscal year; and
36

37 WHEREAS, grant-in-aid funding for civil legal services and
38 pro bono legal services decreased from \$1,832,496 in the 2008
39 fiscal year to \$400,000 in the 2015 fiscal year; and
40

41 WHEREAS, general revenue funding is critical to meet the
42 need for legal services in Hawaii, and the funding of legal



1 services can promote the resolution of critical community
2 issues; and

3
4 WHEREAS, there should be an examination of executive
5 agencies, the Judiciary, and community agencies to determine
6 which agency or organization should administer general funding
7 for civil legal services to obtain the best results; and

8
9 WHEREAS, the examination should require:

- 10
11 (1) The identification and assessment of the problems and
12 issues relating to the funding of civil legal
13 services, including the best agency or organization to
14 administer these funds; and
15
16 (2) The involvement of all interested governmental and
17 community stakeholders to ensure that the
18 administration of these funds is workable and
19 acceptable to the interested stakeholders; now,
20 therefore,

21
22 BE IT RESOLVED by the House of Representatives of the
23 Twenty-eighth Legislature of the State of Hawaii, Regular
24 Session of 2015, that the Hawaii Access to Justice Commission is
25 requested to assemble a working group of interested government
26 agencies and community entities to conduct meetings to develop a
27 plan for determining which agency or organization should
28 administer funding for civil legal services; and

29
30 BE IT FURTHER RESOLVED that the following persons or a
31 representative of the following persons, agencies, or
32 organizations be invited to participate in the working group:

- 33
34 (1) The Governor;
35
36 (2) The President of the Senate;
37
38 (3) The Speaker of the House;
39
40 (4) The Judiciary;
41
42 (5) The Attorney General;



- (6) The Department of Human Services;
- (7) The Department of Labor and Industrial Relations-
Office of Community Services;
- (8) The Department of Budget and Finance;
- (9) The Department of Accounting and General Services;
- (10) The Hawaii Justice Foundation;
- (11) The Hawaii Access to Justice Commission;
- (12) Legal Aid Society of Hawaii; and
- (13) Volunteer Legal Services Hawaii; and

BE IT FURTHER RESOLVED, that the Access to Justice Commission may include any other organizations or stakeholders to participate in the working group that it deems necessary; and

BE IT FURTHER RESOLVED that the plan include a history of state funding of civil legal services and the issues historically faced by civil legal service providers in providing service to low- and moderate-income individuals; and

BE IT FURTHER RESOLVED that the plan include an analysis of the benefits and barriers to assigning the administration of funding for civil legal services to the Judiciary, Department of the Attorney General, Department of Human Services, Department of Labor and Industrial Relations-Office of Community Services, Department of Budget and Finance, Department of Accounting and General Services, and the Hawaii Justice Foundation; and

BE IT FURTHER RESOLVED that the plan include recommendations on which agency or organization should administer funding for civil legal services, levels of funding for civil legal services, and if enabling legislation is necessary, a proposal for such enabling legislation; and



1 BE IT FURTHER RESOLVED that the members of the working
2 group should not be considered state employees based solely upon
3 their participation in the working group; and
4

5 BE IT FURTHER RESOLVED that the Hawaii Access to Justice
6 Commission is requested to submit the working group's plan to
7 the legislature no later than twenty days prior to the convening
8 of the Regular Session of 2016; and
9

10 BE IT FURTHER RESOLVED that the working group be dissolved
11 on June 30, 2017; and
12

13 BE IT FURTHER RESOLVED that certified copies of this
14 Resolution be transmitted to the Governor, President of the
15 Senate, Speaker of the House of Representatives, Chief Justice
16 of the Hawaii Supreme Court, Attorney General, Director of Human
17 Services, Executive Director of the Department of Labor and
18 Industrial Relations-Office of Community Services, Director of
19 Finance, Comptroller, Executive Director of the Hawaii Justice
20 Foundation, Chair of the Hawaii Access to Justice Commission,
21 Executive Director of the Legal Aid Society of Hawaii, and
22 Executive Director of Volunteer Legal Services of Hawaii.
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