

2009 HAWAII ACCESS TO JUSTICE CONFERENCE
William S. Richardson School of Law
Wednesday, June 24, 2009

SUGGESTIONS FROM THE BREAKOUT DISCUSSIONS

Group 1. **Pro Bono Legal Services and Civil Right to Counsel**

Participating committees:

- Committee on Increasing Pro Bono Legal Services
- Committee on Right to Counsel in Certain Civil Proceedings
- Law School Liaison Committee

Summary:

From the 26 suggestions noted below, priority items for the group were:

- Although mandatory pro bono has not been passed in this state, the group discussed that this is law in other jurisdictions
- A civil right to counsel could be achieved by constitutional amendment or through judicial interpretation of the state due process clause
- Court appointments by attorneys must be compensated at rates that will make the services economically viable
- Limited admission to the bar for out-of-state lawyers should be created to provide pro bono services
- Pilot projects should be constructed at the law school to make the graduates better equipped to start their own community-oriented law offices

Notes from the breakout discussion:

1. *Form small groups of lawyers to perform specific tasks*
2. *Match need to service (easy) such as match.com?*
3. *Civil Gideon is a way to attack issue*
4. *Allow lawyers to transfer to Hawaii; match x-lawyers to need*
5. *Meaning/contribution*
6. *Limited admission to the bar*

7. *Pro bono connected to national group of expert lawyers*
8. *Sharing the load - unbundled services*
9. *Push lawyers toward bigger concepts*
10. *Access to courts is not the same as access to a lawyer*
11. *Systemic restructuring*
12. *Young lawyers who want to start non-profit (encourage, incubate)*
13. *Part learning/part service*
14. *Court bias*
15. *Mandatory pro bono: Keeping in mind Gideon v. Wainwright*
16. *Middle ground?*
17. *Constitutional amendment*
18. *High need areas -- help instead of easily corrupted constitutional amendment*
19. *Law for minority due process*
20. *Amendment statute*
21. *Review*
22. *Provide fees to court lawyers*
23. *Raise rates for court lawyers*
24. *Rethink package of cases*
25. *Family over criminal court appointment rates*
26. *Support of pilot projects*

Group 2. **Barriers, Self-Representation, and Unbundled Legal Services**

Participating committees:

- Committee on Self-Representation and Unbundling
- Committee on Alleviating Poverty in Hawaii
- Committee on Overcoming Barriers to Access to Justice

Summary: The priority suggestions were:

- The unbundling and the unauthorized practice of law issues:
 - (1) A statute change to allow paralegal representation and to allow out-of-state representation;
 - (2) Change the law students practice;
 - (3) Allow a waiver of the pro hac vice fee for pro bono representation
- Making the courts more user-friendly, with the following ideas:
 - (1) increase the use of instructional videos, e.g., where there is a hearing, the video would explain what would happen
 - (2) instructional materials for people before filing their first pleading that would explain such options such as mediation, etc.;
 - (3) language and cultural access improvements to the courts;
 - (4) revisit a “customer service representative” concept to make it more effective
- Allowing modification of the standard court procedures to accommodate the situation where there is an unrepresented litigant; to examine whether a rule change would allow a judge to “custom fit” the case when there is an unrepresented party.
- Other items not prioritized included:
 - a dispute resolution process such as a CAAP program in Family Court;
 - study other dispute resolution programs around the world;
 - there should be more sunshine in the judiciary where the public should be included in the process if they will be affected.

Notes from the breakout discussion:

Priority 1

- *Unauthorized practice of law and unbundling*

1. Statute change to allow paralegal representation/out of state lawyers
2. Court rule
3. Change law student practice rule
4. Waiver of pro hac vice fee

Priority 2

- Instructional materials; the entire case piece by piece (FAQs and specific forms)
- Publicize options for unrepresented people before filing first paper
- Video (instructional)
 - Making court more user friendly
 - Judge explanation in the beginning
 - Live orientation
- Language
- Revisit customer service representative throughout state

Priority 3

- When party is unrepresented, the court may modify civil procedures

Other suggestions:

- Sunshine Law for Judiciary
- Alternative dispute resolution CAAP for Family Court and other courts
- Study other dispute systems around the world
- Include public in bar and judiciary training

Group 3. **Public Awareness and Resource Issues**

Participating committees:

- Committee on Maximizing Use of Available Resources
- Committee on Funding of Civil Legal Services

Summary: The group's four main ideas were:

- In terms of funding, change the way we look at the pro bono requirement. Specifically, allow payment in lieu of the pro bono service hours requirement (50 pro bono hours) as an alternative for a portion of the hours.
- Work collaboratively with stakeholders (supporters and opponents) to pass the Indigent Legal Assistance Fund legislation; strategize a better way to approach the legislature
- Have the Access to Justice Commission take a larger leadership role at the legislature, rather than having legal service providers go to the legislature to seek funding; the presence of the Access to Justice Commission can convey a more powerful message than the service providers alone.
- In terms of maximizing available resources, the group discussed more effectively using mediation, arbitration, and other forms of dispute resolution. Two comments were raised:
 - (1) Should we consider restructuring the judicial tribunal to streamline procedures and encourage alternative dispute resolution?
 - (2) As public relations issue, how can we make people more aware that mediation arbitration and other forms of dispute resolution are available as a way to avoid the legal process and to resolve their issues?

Notes from the breakout discussion:

Priority 1:

- *Bar members pay \$ x (% for billable hour?) for pro bono funding*
- *Trade off for doing actual pro bono work*
- *Monies allocated to agencies*
- *Supreme Court considering allowing pro bono hours to substitute for CLE credit(s)*
- *Why a buyout may be good alternative: programs not available to handle all of the lawyers who would be required to do pro bono (50 hours x 400*

- lawyers; 1/2 hours (25) can go towards “promoting the legal profession”);
conflicts/restrictions on government lawyers doing pro bono hours
- Bar - ? list of organizations that qualify for (a) pro bono hours (direct) and (b) “promoting legal profession”
 - Increase fee for association

Priority 2

- ILAF bill -- raised filing fees, but did not take monies from general fund
- Opposition from lawyers (Collection Law Section who are currently exempt; bill would have included them; plaintiffs’ attorneys
- Work collaboratively with people opposed to bill
- Involve people who haven’t participated before, but have been able to scuttle efforts

Priority 3

- Better ways to approach the legislature
- Have Commission take a leadership role in approaching the legislature

Priority 4

- Substantive changes to the justice system-- Commission review?
 - Tribunals -- judge as arbitrator/mediator
 - Achieve just results in a simpler/easier way
 - Legal profession has made justice complex
 - Mediation has become more formal and complex over the years
 - Look at different phases to implement a mediation program (i.e., before a lawsuit is even filed)
 - Example: Mass. Housing Ct.

Group 4. **Other Initiatives**

Participating committees:

- Committee on Initiatives to Enhance Civil Justice
- Committee on Education, Communication, and Conference Planning

Summary: The priority suggestions were:

- Greater use of paralegals in the court system (Washington as a model); increased use of paralegals and volunteers at the court house
- Relax procedures when there are pro se litigants; instructional videos; information about dispute resolution
- Increasing outreach by having a clearinghouse of information, information on buses, more brochures
- Changing the focus of the Access to Justice Commission from being about lawyers and law firms, but about people (their needs).

Notes from the breakout discussion:

Priority

- *Use of paralegals*
- *Alternative dispute resolution*
 - *Mediation; restorative justice*
- *Messaging to help people initiate process*
 - *TV, brochure*
 - *Clearinghouse*
- *Change of focus from attorney to people*

Other suggestions

- *Video to be viewed in a room in court*
 - *To explain system/how to prevent going to court*
 - *Done in different languages (such as Micronesian)*
- *Discrete tasks for volunteers*
- *Recognizing changing needs and how to resolve them*

