

## **CLE Rule Brings New Focus on Access to Justice**

By Kristen Yamamoto and Lynda Arakawa

The Hawai'i Supreme Court's new Continuing Legal Education rule increases awareness about access to justice issues and encourages more attorneys to perform pro bono services. Generally, RSCH 22<sup>1</sup> aims to increase participation in continuing professional and legal education by establishing Mandatory Continuing Professional Education (MCPE) and Voluntary Continuing Legal Education (VCLE) requirements for all active members of the Hawaii State Bar Association.

Rule 22 of the Rules of the Supreme Court of the State of Hawai'i (RSCH 22) lists access to justice as a topic that will qualify for MCPE credit. RSCH 22 also allows three (3) hours of pro bono service, as defined in Rule 6.1 of the Hawai'i Rules of Professional Conduct, to count for three hours of VCLE credit hours.

Adding access to justice as a MCLE topic is a significant step by the court to enhance the visibility of and to expand attorneys' knowledge of access to justice issues. Hawai'i is one of only a few states that explicitly mentions access to justice courses in its rules or that offers access to justice as a MCPE qualifying course. Currently, only Oregon provides that

a similar access to justice course qualifies for CLE credits as part of its MCLE requirements. Specifically, Oregon requires that every three years, attorneys must take at least three (3) of their forty-five MCLE hours in courses concerning the role of lawyers in regard to issues including access to justice, gender fairness, disability, racial, and ethnic issues.

Additionally, although not expressly referred to in the states' MCLE rules, access to justice is listed within the Professionalism CLE Guidelines for Georgia, New Mexico, and Ohio. In each of those states' guidelines, access to justice is listed as a specific topic that can satisfy the mandatory professionalism CLE requirement of these states.<sup>2</sup>

The inclusion of access to justice as a MCPE is designed to raise attorneys' awareness of the barriers many people in Hawai'i face in gaining access to the courts. The goal is to encourage more attorneys to take leadership roles in expanding access for Hawai'i residents.

Hawai'i is the eighth state to allow continuing legal education credit for pro bono work.<sup>3</sup> Provisions allowing attorneys to obtain CLE credit for pro bono service appear to have substantially increased pro bono representation in civil cases in five of the seven states<sup>4</sup> that have such rules.<sup>5</sup>

Practicing attorneys nationwide strongly favor counting pro bono service toward CLE credit. According to a 2005 American Bar Association survey, when asked what incentives would encourage greater pro bono participation, the response most frequently selected by attorneys was the availability of free training and CLE credit for pro bono services. Because most attorneys lack the time and resources to fulfill both their pro bono and CLE commitments, rules allowing for overlapping credit help attorneys meet both.

Permitting CLE credit for pro bono work is also expected to increase pro bono services in Hawai'i and extend a consistent rate of volunteerism over the long term, helping to meet the ever-growing needs of individuals with limited means. RSCH 22 also recognizes the educational value of pro bono work, inasmuch as attorneys undertaking pro bono work may deal with cases that are not in their normal practice area and expertise.<sup>6</sup> The addition of this provision in RSCH 22 will allow attorneys to meet both the time-consuming demands of the legal profession and the growing need for pro bono representation. The adoption of RSCH 22 will benefit the public, inasmuch as it will likely increase pro bono contributions by attorneys, ultimately expanding access to legal services for low- and moderate-income

Hawai'i residents.

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<sup>1</sup>Rule 22 of the Hawaii Supreme Court Rules provides, in pertinent part, as follows:

(a) Mandatory Continuing Professional Education. Except as otherwise provided herein, every active member of the Bar shall complete at least 3 credit hours per year of approved Mandatory Continuing Professional Education (MCPE). Qualifying professional education topics include the Hawaii Rules of Professional Conduct, legal ethics and related topics, law office management, client trust account administration, bias awareness and prevention, access to justice, case and client management, and malpractice insurance and prevention.

(b) Voluntary Continuing Legal Education. In addition to MCPE, all active members of the Bar are encouraged to complete 9 or more credit hours per year of approved Voluntary Continuing Legal Education (VCLE).

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(e) Courses and Activities. The requirements of this rule may be met, subject to prior approval as set out in sections (f) and (g) of this rule, by:

(1) attending approved courses or activities, including but not limited to, presentations conducted in-house or for Inns of Court, bar sections, professional legal organizations, and the like;

(2) preparing for and teaching approved professional education courses or activities. Two hours of preparation time may be certified or reported for each hour of time spent teaching, i.e. 3 hours may be claimed for teaching a 1 hour course;

(3) studying approved audio, video, or other technology-delivered professional education courses or activities; and

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(4) with regard to the VCLE standard of this rule, up to 3 hours of that standard may be satisfied by providing *pro bono* service, as defined in Rule 6.1 of the Hawai'i Rules of Professional Conduct.

(f) Approved Courses or Activities. Courses and activities sponsored by the Hawai'i State Bar Association (HSBA) or the American Bar Association, and classified by the HSBA as MCPE or VCLE, qualify for credit under this rule.

<sup>2</sup> Other states have previously offered CLE courses, conferences, and programs on the topic of access to justice, but there is no information available as to whether they are offered regularly. States that have access to justice courses include Arkansas, Colorado, New York, Kentucky, Montana, and Texas. States that have offered access to justice conferences and/or programs include Indiana, Montana, Virginia, and Pennsylvania.

<sup>3</sup> The seven other states are Delaware, New York, Tennessee, Washington, and Wyoming. These seven states permit attorneys to earn credit toward MCPE requirements. State rules vary, ranging from one hour of MCLE credit for five or six hours of representation to up to six MCLE credits to be earned annually for two hours of education combined with four hours of *pro bono* service in the same calendar year. However, there are currently no statistics available to evidence an increase in *pro bono* service for any of the seven states that allow CLE credit for *pro bono* service.

<sup>4</sup> The five states are Wyoming, Delaware, New York, Tennessee, and Washington.

<sup>5</sup> JoAnn Vogt, "New Rule Authorizes CLE Credit for Pro Bono Representation," The Colorado Lawyer Vol. 34, No. 2, 25 (Feb. 2005).

<sup>6</sup> See Linda Bellows Olson, "Some Thoughts on CLE Credit for Pro Bono Work," Minnesota Lawyer, July 24, 2006, at 21.

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## **Volunteer Opportunities at the Family Court**

by Lynda Arakawa

With family issues and domestic violence cases creating the greatest needs for legal help,<sup>1</sup> the Access to Justice Commission invited Circuit Court Judge Frances Q.F. Wong to speak about volunteer opportunities in this area at its July meeting. Such opportunities range from volunteer guardians ad litem and settlement masters to volunteer fact finders and pre-trial assistants. "What we find with volunteers is that they are so energized by their work with Family Court," Wong told the Access to Justice Commission. "It's really amazing to me because it's a horrible work environment, both physically . . . (and) just the emotional stuff that just swirls around. But boy, people will just keep volunteering."

Attorneys serve as volunteer guardian ad litem as well as volunteers for Kids First, an education program for families going through divorce. Family law practitioners also volunteer as settlement masters for the divorce division. Others act as fact finders for the court's Special Division, which includes court calendars concerning paternity, adoption, guardianship, and domestic violence matters, Wong said. Fact finders are critical to family district court judges, who do not have law clerks, according to Wong.

For example, the domestic violence calendar is filled with pro se parties and low-income residents in cases without attorneys or home studies, she explained. "Sometimes the best a judge can do is what we can search, which is the rap sheet and all the filings that we have," Wong said. A cadre of volunteer attorneys help to provide judges with a better picture of the case, she said.

She also said volunteers need to be able to refer people to appropriate services and "absolutely" need to know domestic violence. "Domestic violence is in every one of our calendars," she said. "They are everywhere, as is child abuse. . . . We have them everywhere we turn. So the volunteer will inevitably run into that."

The Family Court also has a specialized group of volunteer judicial pre-trial assistants for the child abuse and neglect calendar, including two core volunteers who are lawyers with mental health credentials, Wong said. Many volunteers also need to know child development and mental health issues, she said.

Wong credited firms that allow junior associates to do pro bono work as well as Volunteer Legal Services Hawaii, which conducts training, a critical component in the court's volunteer system.

For more information on volunteer opportunities,  
contact:

- Legal Aid Society of Hawai`i
- Volunteer Legal Services Hawaii
- Domestic Violence Action Center
- Lead Family Court Judges:
  - Domestic Division: Judge Linda Luke
  - Juvenile Division: Judge Bode Uale
  - Special Division: Judge Michael Broderick

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<sup>1</sup> Access to Justice Hui, Achieving Access to Justice For Hawai`i's People,  
November 2007,  
<http://www.hsba.org/resources/1/Documents/Access%20to%20Justice.pdf>.

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Lynda Arakawa is an extern who clerked with Associate Justice Simeon R.  
Acoba, Jr. during the summer of 2009.



## **Critical Legal Services to Those in Need**

by Consortium of Legal Service Providers

Legal service organizations provide critical legal services to low-income and vulnerable people in Hawai'i through direct representation and by facilitating pro bono representation by private and government attorneys. As a critical part of the Access to Justice movement, their work is significant in ensuring that people in need of legal help are able to receive it. Their work touches the lives of many and their staff members choose this calling for a variety of reasons. During this holiday season, we invite you to meet some of the clients that the Domestic Violence Action Center, Hawaii Disability Rights Center, Hawaii Immigrant Justice Center, Legal Aid Society of Hawaii, Native Hawaiian Legal Corporation, and Volunteer Legal Services Hawaii and their outstanding staff who have chosen to practice public interest law have helped.

### Domestic Violence Action Center

Victims of domestic violence have few places to turn to receive the expertise and unduplicated and specialized services offered by agency programs and staff at the Domestic Violence Action Center (“DVAC”).

For one client, DVAC's unique model of an attorney, legal assistance, and Advocate Case Manager, helped her escape years of domestic violence. The client had been subjected to extreme psychological, verbal, and physical abuse by her husband. He once strangled her with a belt and kicked her in the stomach, causing internal bleeding. She was constantly called degrading names, and her life was threatened several times. She would forgive and accept her husband over and over hoping that he would one day change.

Instead, the abuse lasted for seven years and culminated in a brutal act of violence. The client's husband is now in prison serving time for stabbing her nineteen times, narrowly missing her heart. Through the help of a DVAC attorney, she was granted forty years of protection through a Protective Order and her divorce was finalized, with full custody of their children. She and her children are now living in public housing and receive welfare benefits. She finally qualified for Social Security Disability Income (SSDI) after three appeals. The concept of domestic violence is no longer foreign to her, and she is now knowledgeable about various resources in the community. Yet, life can still be a struggle as she continues to experience the adverse emotional and physical effects of the abuse. As with many survivors, she suffers from post traumatic stress disorder (PTSD) and sees a therapist regularly.

DVAC's triad was influential in helping her attain these successes, including addressing her barriers as an immigrant with limited English proficiency. Each triad member is responsible for providing the survivor with his/her own specialized service while acknowledging and incorporating the expertise of the client. The triad team understood her plight and supported her choices that ultimately freed her from the abuse.

All too often, staff is asked, "Why do you do what you do?" Staff may stumble for words or may even take some moment to respond. Some would utter, "It's the right thing to do." Others simply say they "like to help people." Some are child witnesses and survivors of domestic violence; thus, they have a very personal connection to the cause. Many are challenged by the possibility that they can end violence, while others simply feel gratified by successful results. They say the work can be exhausting and depressing, yet, it is very rewarding to make a difference in their lives. Staff are humbled by their experience and are inspired to appreciate the personal blessings they have.

### Hawaii Disability Rights Center

B.T. is a young man with autism who turned twenty in 2008. The State terminated his special education services because its administrative rules limited eligibility to age twenty. The Hawaii Disability Rights Center ("HDRC") challenged the decision in federal court, arguing that Hawaii discriminates against disabled students by ending their education at age twenty, while students without disabilities may continue after that age. In July 2009, United States District Judge David Ezra enjoined the State from ending special education before age twenty-two (the federal age limit) if the student can benefit from further education. The decision gives disabled young people in Hawaii an opportunity to learn vocational skills, life skills, and academics for two more years than was previously allowed. B.T. was represented by John P. Deller and Matthew C. Bassett of the Hawaii Disability Rights Center.

Louis Erteschik has been a staff attorney at HDRC since 2003 and a public interest attorney for 35 years. He explains, "I represent people who are the neediest among us. Most of our clients are impoverished in addition to having a disability. There is no greater reward than the feeling I get every day, knowing that as a result of our efforts, the lives of specific individuals I can point to are demonstrably better because we are here."

### Hawaii Immigrant Justice Center (formerly Na Loio Public Interest Law Center)

Akari was an immigrant and domestic violence victim who was married to a United States citizen. As part of the abuse, her husband refused to petition for her permanent green card. After she left her abusive husband, he stole her identity and spent \$15,000 using her identity, posted a sex advertisement for her on Craigslist, terminated her car insurance, stopped her mail, stalked her,

slashed her tires, reported her to the United States Immigration Service as an “illegal immigrant,” and falsely claimed Akari was abusing him and filed a temporary restraining order action against her. Because Akari felt hopeless, thinking she could not receive justice, she tried to take her own life.

Through the Hawai'i Immigrant Justice Center (“HIJC”), she received culturally and linguistically sensitive services to help with her domestic violence issues, was finally able to prove her husband committed abuse against her, received a safety plan, understood the criminal and family law processes, and obtained the legal right to remain in the United States. Akari described how HIJC helped her when she said,

I was kinda paranoid and maybe that's because I don't have a green card, people don't care about, you know, what's going on. And they more interested in listening to citizens. So getting a green card is like making it all even that I am in the stronger position than I was before. So when I received the approval from the Immigration, I actually dropped on the floor. I couldn't just . . . yes, it was such a beautiful day for me. Finally, everything is over and I can just start a normal life even though I lost everything, all the clothes and belongings.

Paul is a paralegal with the Hawaii Immigrant Justice Center. He helps immigrants and refugees obtain their citizenship, renew their green cards, petition for family reunification, and files applications for abandoned and neglected immigrant children to receive citizenship so they may be more easily adopted and/or receive needed services.

Paul grew up in Vietnam living through a war, and later moving to a refugee camp and transitioned to America where his parents struggled to learn English, and did not understand how things worked. Even junk mail posed a daunting obstacle: they did not know what it was.

Paul later felt compelled to work at a refugee camp in Hong Kong for Vietnamese orphans. Because these children were left to fend for themselves in refugee camps, they were eventually recruited into organized crime. Their bodies covered in scars served as perpetual reminders that they were not accepted by society. Paul observed, “These children suffered so much in their short lives and appeared older than they were. But as I watched these kids play in the ocean, laughing, I saw they were still little children who had a tiny bit of innocence left in them.”

Because of his experiences, Paul feels blessed to live in the United States under the blanket of civil rights and peaceful stability. It is for this reason he has

devoted his life to helping other immigrants and refugees become United States citizens.

### Legal Aid Society of Hawaii

When Mr. N. entered into a rental agreement with his landlord, his agreement indicated that his landlord would pay for the water. Yet, after the first year of the lease, his landlord stopped paying for the water. Not seeing much of a choice, Mr. N. paid the first water bill that came to him. Knowing it wasn't right; Mr. N. told the landlord that they would not pay any future water bills. Soon after, their water was shut off and Mr. N. and his family lived without water for three weeks. When arguing with the landlord that their rent should be offset by what they had paid for the water, the landlord sued to evict them. Through the help of Legal Aid Society of Hawaii ("Legal Aid") attorney Russ Awakuni, the tenants filed a counterclaim based on the illegal shut-off of utilities. The case was eventually settled with the landlord, and Mr. N. received a judgment of \$4,000.

Helping tenants get treated fairly is just part of the variety work that Legal Aid does for those in need. On a regular basis, Legal Aid helps clients in family, consumer, housing, public benefits, and elder law issues.

Legal Aid staff chose careers in public interest law because of their commitment to helping others. Kristina Toshikiyo is just one of those attorneys. Born and raised on Maui and a graduate of William S. Richardson School of Law, Kristina is a staff attorney in the Maui office. Through volunteering for Legal Aid while in law school, Kristina became exposed to the needs of Legal Aid's client community and the difference her work could make. For Kristina, "The number one reason I continue to work at Legal Aid after six years as a staff attorney is personal. I love the people of Maui and have seen so many of my friends, classmates, and neighbors from crisis to resolution because Legal Aid was able to provide legal help. Even my own family benefitted from a Legal Aid attorney during a particularly difficult time. I see the need for our services and feel a responsibility to do what I can to help those who cannot afford an attorney. It is also a big plus that the cases and clients are interesting and challenging so the work is never boring. There is a positive work environment that encourages professional growth and values family and quality of life considerations. Every day I am excited to go to work with colleagues who are smart, passionate, and a lot of fun."

### Native Hawaiian Legal Corporation

James Opiana remembers when his mother was awarded their Hawaiian Homestead lease in Nanakuli. He was ten years old. As young as he was, he recalled the sense of hope and excitement. The family immediately began the hard work of hand-clearing the land, then purchasing a home near the airport and

moving it to their lot. In 1974, Mr. Opiana succeeded to his mother's lease which quickly turned into the "main house" for his growing family.

Though the lot had a history of flooding and drainage problems, it wasn't until early 2006 that Mr. Opiana's family suffered serious damage. After several drenching rainstorms, Mr. Opiana's house collapsed and was completely off its foundations and unlivable. He was forced to leave and began searching for financing to repair or replace his home. At the time, Mr. Opiana had seven children, including two step-children. He was a widow and suffered from health problems due to an accident in 1997 that caused some paralysis.

Because he could no longer live on his property, Mr. Opiana and five of his children moved in with a niece. The other children were split up among other relatives. As time went on, people began to use Mr. Opiana's homestead property as a dumping ground for abandoned cars and other debris.

In June 2008, the Department of Hawaiian Home Lands notified Mr. Opiana that he had violated his lease for: (1) not residing on the property; and (2) failing to maintain his lot. DHHL scheduled a contested case hearing for September 2008 and threatened to revoke his lease if he did not remedy the violations. Mr. Opiana came to the Native Hawaiian Legal Corporation ("NHLC") for assistance.

Through NHLC's assistance, an extension was negotiated with DHHL enforcement officers to allow Mr. Opiana time to obtain financing and begin the construction of a new home. In the ensuing months, Mr. Opiana successfully obtained financing and DHHL approved Mr. Opiana's plan to rebuild his home with the assistance of Habitat for Humanity. Today, Mr. Opiana is getting ready to set the rebar, install the plumbing and electricity, and will be pouring the concrete foundation.

In choosing a career helping kanaka maoli, NHLC attorney Camille Kalama reflects, "It's a rare opportunity to be able to work for an organization committed to the same goals and beliefs for which you have a passion. This is the case for me at the Native Hawaiian Legal Corporation. It is the only law firm specializing in and committed to protecting and preserving the resources, customs, and traditions of kanaka maoli. And, even within this narrow scope, our clients face a broad range of issues in every arena, from individual agency hearings to complex litigation. What makes it most fulfilling are the people we serve and work alongside as they fight to preserve a way of life. I am constantly reminded that the role we play is but a small part of the struggle that our clients and our people face every day and am humbled and honored to do what I can to help."

## Volunteer Legal Services Hawaii

Nonprofit legal service providers in Hawaii deal with a wide range of issues, but one of the greatest areas of unmet need is in the field of family law. Many low-income clients are forced to represent themselves in their contested family law cases, because there are just not enough volunteer attorneys to help everyone who needs representation.

One example of such a client is a woman who first contacted VLSH in June 2008 seeking help to enforce a spousal support order. The woman had been diagnosed with a terminal illness, and she was unable to pay all of her bills. Her ex-husband refused to pay the court-ordered spousal support, and because the woman did not even have enough money to pay for her basic living expenses, she was not able to retain an attorney to help her. Despite the fact that she had already been granted a court order directing that she receive support, even VLSH was not able to assure her that legal assistance could be found. In fact, it was not until more than a year later that a volunteer attorney finally came forward to represent this client to collect the long-overdue spousal support. The client is still suffering from her illness, but she attests that it gives her peace of mind and greatly improves her quality of life to finally have someone looking after her interests.

Beverlyn Simina has been working for VLSH for two years as of December 2009. She initially came to the organization because of her passion for serving the low-income community. Since joining the VLSH staff, Beverlyn has also realized that her position gives her the unique opportunity to serve as an ambassador to a particular segment of the Hawaii population. Beverlyn is Micronesian, and she has experienced firsthand many of the difficulties that can be faced by immigrants to Hawaii. At VLSH, Beverlyn frequently sees people who are experiencing their worst day in a long time, and most of those people are just looking for someone they can talk to about their problems. For clients who cannot easily speak English and who are unfamiliar with the American legal system, it is not uncommon for them to feel as if they have nowhere to turn. Beverlyn, however, is able to communicate directly with many of VLSH's Micronesian clients to help them receive the legal services they need. Beverlyn has come to understand that her position at VLSH not only allows her to work in furtherance of the access to justice movement; it also gives her the opportunity to serve a critical role in Hawaii's Micronesian community.