



## COMMISSION UPDATE: *Government Pro Bono Policy*

by Jill M.  
Hasegawa

Government attorneys make up twenty percent of Hawaii's active Bar membership, a significant part of our legal community. A model pro bono policy could help to establish guidelines for government employers and attorneys and encourage government attorneys to engage in pro bono activities. The Big Island example led by Corporation Counsel Lincoln Ashida and Prosecutor Jay Kimura, and the Maui initiative by Corporation Counsel Brian Moto provide leadership in this area. The Hawaii Access to Justice Commission is actively working through its pro bono committee to develop and propose a model pro bono policy for government attorneys in Hawai'i.

—Justice Simeon R. Acoba, Jr.

There are over 900 government

attorneys in Hawaii working at the local, state and federal levels of government. These attorneys comprise approximately 20% of the Hawaii State Bar Association's active attorneys. If each of these attorneys contributed a minimum 50 hours of pro bono service each year, the public would benefit from 45,000 hours of much needed service.

In a keynote address on June 19, 2008 to the HBSA Government Lawyers Division, Chief Justice Ronald Moon said:

ALL government attorneys should do pro bono work because...lawyers must "do good" for the poor and disadvantaged to change the public's perception of our profession.

Chief Justice Moon further opined that "the image of lawyers has been and continues to be at a low ebb based on the

results of numerous surveys reported over the past several decades." Citing the ABA's 1998 *Deskbook for Government & Public Sector Lawyers*, in answer to the question "why should government and public sector attorneys have pro bono projects?," Chief Justice Moon stated: "even though government lawyers are already involved in public service broadly, they still have a specific pro bono responsibility to provide legal services to the poor, as do all other lawyers."

Moya Gray, Executive Director of Volunteer Legal Services Hawaii ("VLSH") and Chair of the Access to Justice Commission's Committee on Increasing Pro Bono Legal Services<sup>1</sup> agrees: "Justice cannot wait for someone else to do the work. We need all the leaders within our legal community — government and otherwise — to encourage lawyers to participate in providing pro

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bono services to the people of Hawaii.”

As County of Hawaii Prosecutor Jay Kimura commented:

Being an attorney is a privilege extended to only a few. Government attorneys represent a potential boost to the number of attorneys who could participate in providing pro bono legal services, and I support and encourage all government attorneys to do as much as they can for pro bono, including providing direct legal services through clinics such as VLSH, participating in educational programs, and volunteering their time with non-profit organizations.

The Access to Justice Commission is currently researching and drafting a government lawyers’ pro bono policy, which the Commission hopes will be adopted by the various levels of government in Hawaii. Two shining examples of such pro bono initiatives involve the government lawyers working for the County of Hawaii and the County of Maui.

In 2005, County of Hawaii

Corporation Counsel Lincoln Ashida made an inquiry with the Hawaii County Board of Ethics concerning the use of time and resources in the fulfillment of pro bono requirements for deputy corporation counsels pursuant to Rule 6.1 of the Hawaii Rules of Professional Conduct (“HRPC”). Corporation Counsel Ashida proposed to have the Department of Corporation Counsel partner with VLSH to coordinate, promote, and staff neighborhood legal clinics in the County of Hawaii. Partnering with the VLSH clinics would allow members of the public in need of legal services the opportunity to meet with an attorney in order to discuss their legal dilemmas. These meetings would be “one-time consultations” with the attorneys making recommendations on other available services with VLSH as well as in the community that may assist the public in resolving their legal disputes. For those cases that the volunteer attorneys would determine need additional legal services, the attorneys would make direct referrals or recommendations to VLSH to obtain

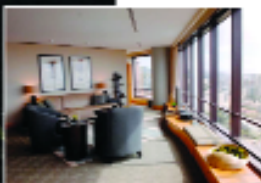
attorneys for those particular individuals. In addition, volunteer attorneys would be covered under VLSH’s liability insurance for the consultations. The clinics would regularly take place outside of the normal work hours and would be done on a volunteer basis by county attorneys.

Corporation Counsel Ashida acknowledged that there was a possibility of incidental and *de minimis* use of county time and resources, which included the possibility of using Corporation Counsel offices for the legal clinics after normal work hours. Recognizing the importance of assisting the community as well as the attorneys’ obligations under HRPC 6.1, the County of Hawaii Board of Ethics found that the Office of the Corporation Counsel of the County of Hawaii’s *de minimis* use of county property and equipment in fulfilling their professional responsibilities and of performing pro bono services did not violate the County of Hawaii Code of Ethics.

In a similar opinion obtained by Maui County Corporation Counsel Brian Moto in 2005, the Maui County



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Board of Ethics found that participation by Maui County Deputy Corporation Counsels in the Court Annexed Arbitration Program ("CAAP") and pro bono legal services through VLSH clinics in fulfilling their professional responsibilities outlined in Rule 6.1 of the HRPC did not violate the Maui County Code of Ethics, provided that the work was done outside of working hours and involved only *de minimis* use of county equipment and property.

In light of the opinions obtained by Corporation Counsels Ashida and Moto, both department heads have encouraged their deputies to volunteer and provide pro bono legal services through VLSH. Ashida said: "We encourage the attorneys in our office to do their part in performing and promoting pro bono. It strengthens the legal profession and strengthens our community."

Both counties have been successful in obtaining the support and participation of their attorneys with VLSH. Many of these government attorneys have been recognized with Certificates of Merit presented by the Hawaii County Council and by Mayor Tavares.

In contrast, Haw. Rev. Stat. §28-10 provides that deputy attorneys general must devote their entire time and attention to the duties of their office and shall not engage in the private practice of law.<sup>2</sup> This statute, which was enacted in 1953, has been interpreted by some as imposing a limitation on deputy attorneys general in rendering pro bono legal services. In fact, Gray noted that because of this statute VLSH lost the services of a long-time committed volunteer when her office was moved from a county department to a department within the State Attorney General's office.

In 2008, House Bill 2391 was introduced to amend Haw. Rev. Stat. §28-10 to allow a deputy attorney general to provide pro bono legal services if the services did not create a conflict of interest with the duties of the deputy's office. Although House Bill 2391 was passed by the Hawaii legislature, it was vetoed by Governor Linda Lingle, who cited concerns about the process for determination of a conflict of interest.

At the federal government level, in

February 1996, then President Clinton issued an executive order, which among other things, provided that "all Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer services by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule or guideline." Following the executive order, the U.S. Department of Justice adopted an expansive written pro bono policy, which allowed attorneys with the Department of Justice to participate in pro bono legal services. Since then several other federal agencies have adopted similar policies to allow their employees to participate in providing pro bono legal services.

Across the country, federal, state, and county agencies have developed pro bono policies for their government attorneys because of the importance of the need for representation of the indigent. To date, at least 11 states have adopted pro bono policies for their government attorneys. Issues such as conflicts of

interest and use of resources may be perceived barriers, but there are opportunities that do not involve client representation. Government lawyers in Hawaii who already hold high ideals of professionalism should be allowed and encouraged to participate in pro bono projects. The Access to Justice Commission recognizes that government lawyers are committed to public service and stands ready to engage in continual development and design of pro bono policies for government lawyers.

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<sup>1</sup> Other members of the Committee on Increasing Pro Bono Legal Services are: Judge Simone Polak, Shannon Wack, Derek Kobayashi, Tracey Wiltgen, Gilbert Doles, Clara Javier, Mihoko Ito, Colbert Matsumoto, Robin Kobayashi, and Wayne Tanna.

<sup>2</sup> Haw. Rev. Stat. §28-10 (1993) provides as follows:

**Prohibition on private practice of law by the attorney general, first deputy, and other deputies.** The attorney general, the attorney general's

first deputy, and other deputies shall devote their entire time and attention to the duties of their respective offices. They shall not engage in the private practice of law, nor accept any fees or emoluments other than their official salaries for any legal services. This section shall not apply to any special deputy employed on a part-time basis for a limited period.

Interestingly, section 28-5 provides that there should be assistance by the attorney general to the poor. That section provides as follows:

**Aids poor.** The attorney general shall give counsel and aid to poor and oppressed citizens of the State and assist them in obtaining their just rights without charge; provided that the attorney general shall not be obliged to render such aid, counsel, and assistance, unless requested so to do by the governor, or by someone of the heads of departments

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