



The Legal Aid Society of Hawaii - Making a Difference One Case at a Time

by M. Nalani Fujimori Kaina

- A mother secures custody of her daughter who was sexually abused by her father.

- A disabled woman who inherited her home from her mother succeeds against her brother's attempt to evict her from it.

- A family of four is awarded damages after a landlord illegally deprived them of water for three weeks by shutting off the utilities.

- A wife obtains a divorce from her husband after suffering years of abuse including being punched in the head and pushed into a car to finish the beating.

These are just some of the hundreds of people that the Legal Aid Society of Hawaii ("Legal Aid") assists each day. Legal Aid helps people who have nowhere else to turn and creates the access to justice they deserve.

Founded in 1950, Legal Aid is the oldest and largest non-profit legal services organization in the state. Legal Aid is the only law firm with offices on every island, including Moloka'i and Lanai. Legal Aid's attorneys, paralegals, and support staff provide high quality direct legal services in civil areas, including, but not limited to family, housing, consumer, public benefits, elder law, and child welfare.

In this economic recession, calls for help are growing, and Legal Aid strives

to meet this increase. In the first half of 2009, intake calls increased over 25.6% as compared to the first half of 2008. From June 2008 to July 2009, Legal Aid

have also made generous donations to legal service agencies such as Legal Aid and have made it possible during this recession for services to continue to the

most needy in the community.

Legal Aid's on-going partnership with the bar is critical. The bar is invited to participate with the organization through its Partnership in Pro Bono program, which provides training

and mentorship in full representation cases, or to make a donation to assist its attorneys and paralegals to provide representation and assistance to those in need of accessing justice. Your contributions make a difference in the lives of many.

Legal Aid helps thousands of people annually access justice, but the growing need is still much greater than its reach. Justice is about fairness for all people, and the vision of justice in the community is critical to the foundation of democracy. Access to justice should be no different between the rich and the poor. As lawyers, educated in the foundations of justice and democracy, we must be part of the solution to daily injustices—making a difference one case at a time.

M. Nalani Fujimori Kaina is the Executive Director of Legal Aid Society of Hawaii. She currently sits as a Commissioner on the Access to Justice Commission and is the Chair of the Committee on Maximizing Available Legal Resources.



opened over 9,500 cases. Many of these new cases were directly affected by the recession with calls on foreclosure seeing the largest increase and with family law cases following closely behind. Economic crisis affects the daily life of Legal Aid's clients and their ability to meet basic needs. Legal Aid's services are critical to those in need in helping stabilize a family situation, securing and saving housing for the poor or elderly, preventing consumer fraud, aiding in accessing public assistance when there is no other recourse, helping seniors, and protecting children in crisis.

In 2007, the Access to Justice Hui released a legal needs assessment which found that only 1 in 5 low- and moderate-income people in Hawaii have their legal needs met. The attention drawn to this issue by the Hui resulted in the formation of the Access to Justice Commission. In the last year, many members of the bar have heeded the call of the Commission; committing to meet the fifty hours of pro bono legal services annually under Rule 6.1 of the Hawaii Rules of Professional Conduct. Many



Government Pro Bono Policy

The Access to Justice Commission adopted a Model Pro Bono Policy for Government Attorneys ("Policy") on July 20, 2009. On August 20, 2009, the Hawaii State Bar Association endorsed the Policy. Copies of the Policy have been distributed to eighteen government agencies.

The Access to Justice Pro Bono Committee under Chair Moya Gray prepared the government attorneys pro bono policy. Committee members Shannon Wack and Gilbert Doles spearheaded the drafting of the policy. The committee considered the policies of neighbor island corporation counsels and the opinions that they had received from their respective ethics commissions. The committee also reviewed other jurisdictions' government attorneys pro bono policies, in particular, those from Washington, Minnesota, the United States Department of Justice, and the New York State Bar Association. Upon review of these policies, the committee selected provisions with the greater choices, the better explanations, and what the committee believed were the common sense approaches to government attorneys performing pro bono services in their community. The committee is hopeful that the proposed policy will provide a framework for government attorneys to identify pro bono activities and to perform pro bono services.

MODEL POLICY FOR GOVERNMENT ATTORNEYS PERFORMING PRO BONO WORK

I. The Policy

There is a significant unmet need



Hilo Corporation Counsel Office:

Back row: Justice Acoba: Gerald Takase, Craig Masuda, Molly Lugo, Renee Schoen, Joseph Kamelamela. Seated: Laureen Martin, Julie Mecklenburg, Michael Udovicic, Jill Hasegawa.



Hilo Prosecuting Attorney's Office

Front row - Justice Acoba, Anson Lee, Jason Skier, Thomas Oakes, Shaunda Liu, Jack Matsukawa. Back row - Johann Smith, Darien Nagata, Shannon Kagawa, Kevin Hashizaki, Jill Hasegawa, Carol Kitaoka



The Department of Commerce and Consumer Affairs adopted a memorandum pro bono policy of its own on May 14, 2009.

From left to right are Carolyn Yu, Lawrence Reifurth, and Jo Ann Uchida.

for legal and other community services to those of limited means and disadvantaged persons in Hawaii and the nation. Recognizing the ethical obligation of every attorney to provide legal services to those of limited means and to undertake activities to improve the legal system,¹ the policy on Hawaii's government attorneys seeks to encourage and support their participation in pro bono activities within their communities.²

II. Pro Bono Services

A. Scope of Pro Bono Services.

As used in this policy, "pro bono services" means the following:³

1. Providing legal services without remuneration to:

a. Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

2. Providing additional law-related services through:

a. The delivery of legal services without remuneration to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights, or charitable, religious, civic, community, governmental, and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would

be otherwise inappropriate; or

b. Participation in activities for improving the law, the legal system, or the legal profession.

B. Types of Pro Bono Activities.

Specifically, the following types of pro bono matters and activities may be approved. Attorneys who wish to pursue other activities must obtain prior approval from [their supervisor; the office pro bono coordinator or committee; the division director, etc.] Pro bono matters and activities, which may be approved include, but are not limited to:

1. Participating, coordinating, promoting, and staffing neighborhood legal clinics, and other similar organizations, to make recommendations on services available in the community that may assist the public in resolving their legal dispute;⁴

2. Providing research assistance or expert advice to providers of legal services to the low-income and disadvantaged;

3. Participating on the board of a legal services organization;

4. Providing training or preparing materials for seminars or other educational activities involving issues of importance to low income and/or disadvantaged persons;

5. Participating on bar committees and projects relating to the delivery of legal services and pro bono legal services;

6. Participation in activities for improving the law, the legal system, or the legal profession; and,

7. Contribution of financial support to organizations that provide legal services to persons of limited means, where circumstances make it unduly difficult or



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impossible for the lawyer to provide services, which qualify as pro bono activity, the lawyer may substitute such a financial contribution for direct pro bono legal services.

III. Procedures

A. Approval by Agency. Participation in pro bono activities must be approved in advance by [the attorney's supervisor; the office pro bono coordinator or committee; the division director, etc.]. Prior to approval, [the attorney's supervisor; the pro bono coordinator in consultation with the attorney's supervisor, etc.] shall determine:

1. Whether the request falls within the kinds of pro bono services or activities permitted by this policy;
2. Whether the matter appears likely to interfere with the performance of the attorney's official duties and responsibilities (e.g., the matter or activity appears likely to require protracted absences during office hours; or participation would clearly conflict with the interests of the agency or office); and,
3. A procedure developed to determine closure of the activity performed.

B. Conflicts of interest. Even if direct representation and the formation of an attorney client relationship is not formed, to ensure that statutes are not violated, the government entities adopting this policy should have a system in place for a thorough conflicts check to ensure that pro bono matters do not present a conflict with the attorney's work for the government or the appearance of such a conflict.

C. Use of Agency or Office Resources.

De minimis use of government property and equipment in fulfilling the attor-

neys professional responsibilities should be allowed pursuant to Hawaii Rules of Professional Conduct Rule 6.1 and/or Hawaii County Code of Ethics Article 15 Section 2-83,⁵ and subject to approval of the supervisor.⁶ Limited use of government resources in support of pro bono activities is permitted as long as the use is brief in duration, results in little or no cost to the governmental agency, and is consistent with the above-cited statute and County code.

1. Offices, Equipment, and Supplies. *De minimis* use of resources for pro bono work may include use of the following: telephone use (although personal cellular use is encouraged); use of cost-free internet sites; use of computer for word processing and/or research; printing; copying machines; use of Westlaw or Lexis Nexis subject to approval by the supervisor; common area of office space for meetings; and, other uses approved by the supervisor.

2. Work Schedule. Attorneys may perform pro bono legal services during the work day so long as such work does not interfere with the performance of official duties and is consistent with the Hawaii Ethics law. They may also take advantage of flexible work schedule arrangements, if approved by their supervisor. If a flexible work schedule is not feasible, leave without pay or vacation leave may be approved by the supervisor.

D. Malpractice Insurance. The government offices do not provide professional liability insurance coverage for pro bono legal services. The attorneys providing the pro bono services are encouraged to ensure that the activities they are engaged in either are covered by professional liability insurance (e.g., through Volunteer Legal Services of Hawaii or the organization providing the pro bono service) or is not required.

¹ Hawaii Rules of Professional Conduct, Rule 6.1 states:

A lawyer should aspire to provide at least fifty hours of pro bono services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide at least twenty-five hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
 - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
 - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means. Where, in a given year, the lawyer experiences personal or employment circumstances that make it unduly difficult or impossible to provide services which qualify as pro bono activity, the lawyer may substitute such a financial contribution for direct pro bono legal services.

² "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 Ronald Moon.

³ **The scope of pro bono activities described is intended to accommodate restrictions that may affect the aspirational goals in HRPC Rule 6.1.** Hawaii's legislators enacted a statute precluding the attorney general and deputy attorneys general from engaging in the private practice of law. Haw. Rev. Stat. § 28-10 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.

Similarly, the Hawaii County adopted a code of ethics that precludes the formation of an attorney client relationship by its corporation counsel. Hawaii County Code: Section 2-84 provides as follows:

Conflicts of interests.

(a) No officer or employee shall take any official action directly affecting:

- (1) A business or other undertaking in which that officer or employee has a substantial financial interest;
- (2) A private undertaking in which the officer or employee is engaged as legal counsel, advisor, consultant, or representative, or other agency capacity; . . .

⁴ In the Matter of the Request by Lincoln S. T. Ashida, Corporation Counsel of Hawaii, Informal Advisory Opinion, Petition 2005-03, Board of Ethics dated May 18, 2005.

⁵ Hawaii County Code of Ethics, Article 15, Section 2-83 provides as follows:

Fair treatment.

(a) Officers and employees of the County, while discharging their duties and dealing with the public, shall adhere to the following precepts:

- (1) All public property and equipment are to be treated as a public trust and are not to be used in a proprietary manner or for personal purposes without proper consent.

....

(b) No officer or employee shall use or attempt to use the officer's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

....


- (3) Using County time, equipment or other facilities for private business or campaign purposes.

....

- (5) Using County property or personnel for other than a public activity or purpose.

....

⁶ The Attorney General suggests that such *de minimis* use be subject also to "further guidance from the Ethics Commission." Email from Mary Anne Magnier, deputy attorney general, dated July 15, 2009.




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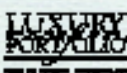


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