

**PROGRESS TOWARD INCREASING  
ACCESS TO JUSTICE  
and  
SUMMARY OF UNMET CIVIL LEGAL NEEDS  
PURSUANT TO HAWAI‘I SUPREME COURT RULE 21(b)(14)**

**ACCESS TO JUSTICE COMMISSION**

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## INTRODUCTION

Rule 21(b)(14) provides that the Commission shall “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.” Rule 21(j) also provides that annual reports shall be filed with the Supreme Court and that the Supreme Court shall provide a three-year review of the progress made by the Commission in “substantially increasing access to justice in civil legal matters for low-income Hawai‘i residents.” While annual reports and the three-year review have been filed, the five-year review called for in Rule 21(b)(4) was not filed in 2013, five years after the first meeting of the Commission on May 1, 2008.

Nevertheless, as briefly outlined in the following report, substantial progress was made during the period from May 1, 2008, to the present. This report provides a summary assessment for the period, May 1, 2008, through the end of 2015.<sup>1</sup>

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<sup>1</sup> This report was prepared by Jean Johnson with editorial suggestions by Carol Muranaka and Simeon Acoba. Tracey Wiltgen obtained the reports from the legal service providers. The separate statements of unmet needs were written and provided by the respective legal services providers.

**PROGRESS TOWARD INCREASING ACCESS TO JUSTICE**  
**by the**  
**ACCESS TO JUSTICE COMMISSION**

In 2008, the Supreme Court of the State of Hawai‘i through Supreme Court Rule 21 established the Hawai‘i Access to Justice Commission. This action was in response to the report titled, Achieving Access to Justice for Hawaii’s People: The 2007 Assessment of Civil Legal Needs and Barriers to Low- and Moderate-Income People in Hawaii.

Supreme Court Rule 21 requires the Commission to issue annual reports on its activities and periodic reviews of its progress toward the goal of substantially increasing access to justice in civil legal matters for low- and moderate-income Hawai‘i residents.

This report briefly highlights accomplishments of the Commission inclusive of the Three-Year Evaluation filed with the Supreme Court of the State of Hawai‘i on July 21, 2011. The first part of this report covers the period from May 1, 2008, through the end of calendar year 2015, describing accomplishments achieved to date. More detailed information is available in each of the annual reports by the Commission, available at <http://www.hawaiijusticeorg/hawaii-access-to-justice-commission>.

The second portion of this report covers the activities of providers of civil legal services to low- and moderate-income residents of Hawai‘i over that period of time as well as the continuing unmet needs identified by those organizations.

Efforts to increase access to justice by the Commission are the responsibility of 22 commissioners, working through committees and task forces. Supreme Court Rule 21(f). The role of committees and task forces are advisory, and they make such recommendations to the Commission as the members of such committees and task forces deem appropriate.

## **Progress toward Achieving Greater Access to Justice**

The early efforts of the Commission have resulted in a substantial increase in resources to provide legal services to low- and moderate-income residents of Hawai‘i. The following paragraphs highlight those accomplishments.

***Annual Access to Justice Conferences.*** The Commission has sponsored seven annual all-day Access to Justice Conferences. A nationally-recognized leader in access to justice issues makes a keynote presentation to each conference. These annual conferences provide a unique opportunity to bring access to justice issues to the larger community. Strong participation and support by Hawai‘i Supreme Court Chief Justice Mark Recktenwald validates the value of these conferences. The most recent Access to Justice Conference covered by this report was held in June 2015 with 260 attendees and 150 attorneys obtaining continuing legal education credits for participation. The conference hosted 38 speakers or panelists in various sessions, including 12 workshops.

***Establishment of Self-Help Centers in All Circuits.*** Probably the most significant increase in resources over the past four years for the many residents of Hawai‘i who are unable to afford legal services has been establishment of Self-Help Centers in each courthouse in each of the State’s judicial circuits. These centers are the result of a collaborative effort involving the Commission, the Hawai‘i State Judiciary, the Hawaii State Bar Association (“HSBA”) through its Committee on the Delivery of Legal Services to the Public, the Legal Aid Society of Hawai‘i, Americorps, the county bar associations, and the HSBA Family Law Section.

These Self-Help Centers are open for specific hours during specific days of the week. On the neighbor islands, volunteer attorneys provide limited legal information to self-represented litigants on civil matters. On Oahu, the volunteer attorneys provide limited legal advice to self-represented litigants in three areas: landlord-tenant issues, temporary restraining orders involving

non-family members, and debt collection issues. The attorneys offering their volunteer time at the Kapolei Family Court assist in such matters as child support, child visitation, other divorce issues, paternity, and other issues.

***Increase in Pro Bono Activities by Members of the Bar.*** A major focus of the Commission has been to encourage participation of private and government attorneys in providing one-to-one legal assistance to clients who are unable to afford legal services. This effort has been successful as a result of a number of initiatives. Initially, model pro bono policies were developed for private firms, government lawyers, and judges. As a result, private firms and some government lawyers increased pro bono activities. The Self-Help Centers have been one venue for use of their services.

In another effort, the Commission initiated rule changes to promote pro bono activities, access to the legal system, and legal services by exempting lawyers from conflict of interest rules in pro bono activities. Another change allows a \$500 contribution to non-profit entities in lieu of 50 hours of pro bono activities. Military attorneys have been allowed limited admission to practice law and character reports have been waived for them. Additionally, attorneys employed by non-profit entities are now granted limited admission to practice for two years.

To further support and encourage pro bono activities, the Commission sponsors a Pro Bono Celebration each fall through its Pro Bono Initiatives Task Force. With support from the Hawaii State Bar Foundation, this Pro Bono Celebration honors individuals and organizations for outstanding pro bono activities. Additionally, to inspire the next generation to appreciate the value of volunteerism, for the past three years, a statewide essay contest was held among high school students in grades 10 through 12. In 2015, more than 240 essays were received and reviewed by volunteer preliminary judges comprised of attorneys and sitting judges. The final

essay judges were Chief Justice Recktenwald, a Commissioner, and the HSBA bar president. Six students, one from Kauai, Big Island, and Maui, and three from Oahu, were selected as essay award recipients. Each honored student received a \$500 cash award in addition to transportation to attend the ceremony in Honolulu. Funds for the student awards were donated from private law firms and financial institutions.

A subcommittee of the Commission's Committee on Increasing Pro Bono Legal Services, along with Volunteer Legal Services Hawai'i, and the Appellate Law Section of the HSBA, has been successful in creating a Pro Bono Appellate Pilot Project. This project was established by the Hawai'i Supreme Court in July 2015, with two years to demonstrate its effectiveness in matching eligible pro-se appellate litigants with volunteer appellate attorneys willing to provide pro bono legal services.

In 2015, local banks were encouraged to promote pro bono services by their staff attorneys. Central Pacific Bank organized an event to show the training video for attorneys to volunteer at the Access to Justice Room (self-help center) at the Honolulu District Court. The general counsels at Bank of Hawaii, First Hawaiian Bank, American Savings Bank, Hawaii National Bank, and Finance Factors encouraged their respective employee-attorneys to attend the training and to provide pro bono legal services at the Honolulu District Court Access to Justice Room.

***Amendment to Indigent Legal Assistance Fund ("ILAF") Statute.*** In collaboration with the Hawaii Justice Foundation ("HJF"), the Commission worked to increase the surcharges collected on certain filing fees for state court cases. These funds are retained by the Judiciary for distribution to qualified service providers. The HJF acts as administrator for those funds. The

ILAF funds are distributed, in cooperation with the Hawai'i State Judiciary, to extend legal services for low-income Hawai'i residents.

The amounts available in ILAF funds vary each year, depending upon the number of eligible cases filed and the rate of the surcharge. The ILAF program has seen tremendous growth due to the increase in the surcharge rate. The final step increase took effect January 1, 2014. In FY 2012-2013, the amount distributed to eight grantees was \$472,039; for FY 2013-2014, \$1,400,000; and for FY 2014-2015, \$1,425,000.

Although these funds do not replace the decreases in funding that has resulted from sequestration and reductions in federal and state support for service providers, the funds do represent a substantial increase in resources for the service providers to provide legal assistance to the low-income population.

***Improved Access to Language Services.*** As part of its commitment to ensuring language access to speakers of other languages, in 2013, the Commission obtained a grant of \$20,000 from the American Bar Association to improve language access of limited-English-proficient clients. The project was successful in developing a procedure for requesting an interpreter for court proceedings, producing a program to educate attorneys on language access and the use of interpreters to work effectively with limited-English-proficient clients and to provide implicit bias training for judges. In terms of language access, the project identified the challenges of the cost of translation of informational materials, the high cost of travel for professional training, and the continuing challenges in availability of qualified interpreters.

A successful one-day conference on implicit bias for judges was held with panelists from the faculty of the Richardson School of Law and state judges. Numerous materials were produced and transmitted to the ABA for use by other states.



The Commission's Committee on Overcoming Barriers to Access Justice ("COBAJ") initiated a series of Roundtable Meetings on Linguistic and Cultural Access to Justice. These Roundtable meetings brought together five participants: the Hawai'i Supreme Court Committee on Access to the Courts; the Hawai'i Supreme Court Committee on Court Interpreters and Language Access; the Judiciary's Office on Equality and Access to the Courts; HSBA's Committee on Diversity, Equality, and the Law; and COBAJ. The intent of the Roundtable was to provide a venue for collaboration to dismantle the language and cultural barriers that block many from obtaining justice through the use of Hawai'i's legal system. The meetings provided an opportunity to avoid duplication and to share resources to meet common goals.

***Access Needs of Special Populations.*** The Commission has addressed special access needs of minority populations or vulnerable groups. Special attention has been given to the needs of migrant populations from the Freely Associated States of the Pacific. The needs of this population constitute a significant block of unmet needs in the community. The Commission has sponsored several workshops during the annual conferences to address these needs. In 2012, an article was published in the Hawaii Bar Journal to document the historical issues and current challenges facing this growing population of state residents.

Another vulnerable population whose needs have been addressed are the infants and toddlers who are removed from their homes for abuse or neglect. Hawai'i's Zero-to-Three Court, under the leadership of Family Court Judge Mark Browning and former Zero-to-Three Court Judge Christine Kuriyama made significant strides in improving access for these members of the population who have neither voice, words, nor language. The Commission was successful in bringing the needs of this population to the attention of the Judiciary, resulting in a permanent

source of funding for the Zero to Three Court. These needs were also documented in an article in the Hawaii Bar Journal.

***Other Initiatives Contributing to Improving Access.*** A number of other initiatives have made a significant impact on improving access to justice. These include the following Commission activities:

- Initiated a successful foreclosure mediation program in the Third Circuit in response to the legal crisis created for many Hawai‘i residents as a result of the collapse of the housing market in 2008. That collapse resulted in escalating foreclosures and bankruptcies. This need continues—in foreclosure cases, the percentage of pro se defendants increased from 79.5% in FY 2006 to more than 86% in FY 2014.
- Recommended amending *Hawai‘i Rules of Civil Procedure*, Rule 23 to improve distribution of class action funds that are not claimed and created a cy pres kit that instructs lawyers on the distribution of unclaimed class action proceeds to non-profit organizations.
- Encouraged the Ka‘u Project designed as a pilot for delivery of legal services to underserved rural communities in the State.
- Supported a study on the feasibility of providing subsidies for law students who choose public interest work.
- Recommended adoption of an unbundling protocol for court proceedings in which an attorney could perform services for only a portion of the case. Those recommendations are currently before the Hawai‘i Supreme Court for consideration.

- Supported installation of court form and document assembly workstations at courthouses.
- Supported a partnership with the Judiciary, Legal Aid Society of Hawai‘i, and the Hawai‘i State Library System, training librarians with interactive interviews in 50 libraries across the state, accessible on nearly 1,000 computers.
- Used legal and public media to highlight access-to-justice issues through articles in the Hawaii Bar Journal aimed at the legal profession. Numerous articles in local newspapers targeted the general population.
- Held four community briefings to inform local communities about the Commission’s efforts and available resources, at schools, churches, and other venues.

### **Challenges Commission Needs to Address to Increase Access to Justice**

As the Commission moves beyond the enthusiasm surrounding its creation and the initial successes it has achieved, it embraces the goal described by Jonathan Asher in his keynote during the June 2015 Access to Justice Conference: *“the goal is justice-not just access to the Courts.”* As he further elaborated, while technology is a helpful tool, it is not the end; it is not justice.”

***More Effective Roles for Paralegals.*** Supreme Court Rule 21(b)(10) mandates that the Commission “shall...increase effective utilization of paralegals and other non-lawyers in the delivery of civil legal services to low-income Hawai‘i residents.” In 2011, the Three-Year Evaluation stated that, in 2009, the Commission made preliminary efforts to assess whether

access to civil legal services might improve if paralegals were allowed a greater role in matters like uncontested divorces and guardian ad litem work. Although efforts were made to assess the role of paralegals, the issue has largely remained dormant. Action is needed to thoroughly examine and make recommendations regarding all issues related to the role of paralegals and other non-lawyers in expanding access to justice for low- and moderate-income residents.

As stated by James Sandman, President of the Legal Services Corporation in his keynote address during the 2014 Access to Justice Conference, “We must expand the role of non-lawyer professionals in the way the medical profession has deployed paraprofessionals to speed and improve patient care....Access to justice should never be driven by lawyers’ self-interest.” Or as discussed in the 2014 afternoon workshop by Politano and Reber Porter, “...many of these rules and regulations now act as barriers to permitting lawyers and others to provide the legal information and legal services necessary to serve the public.”

***Responding to Recommendations Resulting from Access to Justice Conferences.*** The value of the Access to Justice Conferences is the opportunity to bring together the community that cares about access-to-justice issues to bring to the attention of the Commission issues that need to be addressed. A number of salient recommendations have arisen from the conferences that deserve the attention of Commissioners. Among those recommendations are the following:

- Strong recommendations have arisen in the workshops at the Access to Justice Conferences for the Commission to find ways to address the relationship between poverty and reduced access to justice. Supreme Court Rule 21(b)(13) provides that the Commission “encourage the formation of a broad coalition of groups and individuals to address ways to alleviate poverty in Hawai‘i.” As reported in the July 2011 Three-Year Evaluation, as an initial step in 2009, the Commission began considering a study of legal

proceedings governing housing issues in Hawai‘i. That study has not yet materialized. Further, the Chief Justice in his October 2015 remarks at the HJF Annual Meeting, recognized the role that the Commission should play in addressing social challenges such as income inequality.

- Create access to pro bono representation of low- and moderate-income individuals in agency administrative hearings and appeals.
- Although access to proceedings in a person’s first language has improved in recent years, workshop participants have documented inadequacies that continue. Too often interpretation does not consider cultural factors. Written translations are often grossly unintelligible to speakers of the languages because no quality control exists for oral or written interpretations. Much needs to be done to improve the attractiveness of positions for court interpreters. Community support is needed to prepare migrants for what to expect when they move from an area such as Micronesia to Hawai‘i. The Commission was asked to explore the possibility of a pilot court navigator program.

***Strategic Plan.*** Supreme Court Rule 21 (b)(3) encouraged the Commission to develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low-income residents of Hawai‘i. Perhaps the time has come to build upon the achievements of the past years to develop a plan that can propel the Commission over the next years to focus not only on access, but work to “assure” that justice is accessible for all.

Moreover, the Conference of State Chief Justices adopted Resolution 5 encouraging each state to develop a strategic plan with realistic and measurable outcomes and set an ambitious overall goal of 100 percent access to the justice system through a continuum of meaningful and appropriate services.

## **Summary**

Since the first meeting of the Commission in July 2008, low- and moderate-income Hawai‘i residents have gained expanded resources to navigate the judicial system, more attorneys are providing pro bono services, nonprofit legal services providers have increased fiscal resources, the Judiciary, Legislative, and Executive branches of government have demonstrated commitment to ensuring access to justice, and greater public awareness of these issues exists. The Commission has succeeded in responding to at least ten of the endeavors recommended in Rule 21.

The Commission can find satisfaction in its rating by the National Center for Access to Justice (“NCAJ”). NCAJ created the Justice Index that rates each state on four elements of the state-based justice system: (1) the number of civil legal aid attorneys serving the poor; (2) systems available to assist the self-represented litigants; (3) systems available to assist those with limited English proficiency; and (4) systems available to assist those with disabilities. Overall, NCAJ acknowledged Hawai‘i as a national leader, ranking it number four in providing access to the civil and criminal courts for the most vulnerable populations. Hawai‘i was ranked number one across the nation in its support for self-represented litigants. Hawai‘i tied for first in providing support for people with disabilities.

The Commission is committed to ensuring that there is equal justice for all. As Justice Simeon Acoba said, “Equal access to justice should not be a mere illusion. We should be energized to meet the challenge of such equality.”

**UPDATED SUMMARY ASSESSMENT OF UNMET CIVIL LEGAL NEEDS**  
**PURSUANT TO HAWAI'I SUPREME COURT RULE 21(b)(14)**

## **DOMESTIC VIOLENCE ACTION CENTER**

The legal needs of survivors of domestic violence do not vary greatly. It is essential that effective, accessible, affordable advice, brief services, and full representation be available to victims suffering the harm of abuse – whether it be physical, coercive control, or exploitation of any kind. The Domestic Violence Action Center (DVAC) meets this mandate. But, far too few are served. Representation by adequately trained attorneys is especially important in Family Court. Issues of ambivalence and vulnerability are enormous and poorly understood. Facing an abuser in any proceeding is terrifying. Victims need attorneys who understand the risks, the full meaning of abuse, and how the system can covertly and subtly be used as a weapon by the abuser against the victim.

The challenging work, coupled with the vicarious trauma and the insufficient salary, make recruiting and retaining attorneys difficult. The historical experience of the DVAC has been that we attract young, inexperienced attorneys, train and supervise them carefully – until they become ready or desirable for the private market. Then they depart.

The uncertainty and unpredictability of budget revenues continues to be a destabilizing fact in delivering legal services. Real lives are on the line. Attorneys must be adequately trained to serve clients to minimize client risks to life, property, and mental health. One-year grants challenge this commitment. The constant search for multiple grants to maintain staffing challenges stability because staff have no assurance that their positions will continue to be funded.

These conditions contribute to an ongoing need for a firm foundation to meet the unending civil legal needs of victims of domestic violence. Published research suggests that legal services are the most important thing a survivor needs. Judges say that legal services are crucial for their court management, and there is a steady demand for help. The DVAC maintains



a waitlist, provides brief services, full representation, and experiments with the idea of “clinics.” But these are not really suited for survivors, since the legal system is used to re-victimize them. The need remains great; there is no substitute. A totally unmet need is criminal defense for victims erroneously arrested.

During the period 1/5/16 – 1/15/16, 55 survivors were served in TRO Court program, 40 requests for legal help were received, and 54 callers to Legal Helpline needed legal information. According to Judge Katherine Tennyson, “It would be helpful to all of us on the bench if there was an effective way to make sure everyone had a lawyer. It’s the most lacking asset. It’s critical to get off to a very clear start. Once one mistake is made, everything kind of compounds on that. At the very beginning of the case, if a judge finds that something did not occur, then it’s very hard to undo.”

Her advice to survivors, whether they’re looking to extend an order of protection, secure custody, or something else related to domestic violence is, “Don’t go it alone. Just make sure it’s representation from someone knowledgeable,” she warns. “Having bad help is almost as bad as having no help. Having help at the beginning is critical. The biggest mistake people make is trying to do this themselves.”

## **HAWAI‘I APPLESEED CENTER FOR LAW AND ECONOMIC JUSTICE**

The Hawai‘i Appleseed Center for Law and Economic Justice (Hawai‘i Appleseed) is a nonprofit, 501(c)(3) law firm created to advocate on behalf of low-income individuals and families in Hawai‘i on civil legal issues of statewide importance and to complement the assistance provided by existing legal services providers in the State.

Hawai‘i Appleseed conducts important research on housing, health, education, child nutrition, immigrants and disability rights issues, to identify underlying problems in the community. Once problems are identified, Hawai‘i Appleseed may engage in legislative and administrative advocacy to ensure that the policies, laws, and practices intended to address the problems of those living in poverty are well designed and are implemented legally, fairly, and effectively.

Hawai‘i Appleseed may also conduct seminars, prepare publications, and engage in legal education to disseminate its findings and inform low-income individuals and community groups of their rights and the options available to exercise those rights. Hawai‘i Appleseed also reaches out to other like-minded community groups through building grassroots coalitions and supporting the work of other public-interest advocates in Hawai‘i. These collaborative partnerships facilitate the sharing of technical skills and substantive knowledge and the coordinated use of resources. Finally, Hawai‘i Appleseed, when necessary, conducts large scale, complex litigation to protect the rights of the low-income community.

Our current top priorities include the following:

- Advocating for tax policy changes to correct the inequities of our current state taxing system, which has been determined by the Institute for Tax and Economic Policy (ITEP)

to be the second worst system in the nation for taxing our low- and moderate-income residents.

- Recommending and supporting creation of affordable housing models, including Accessory Dwelling Units and Micro Units that will produce more affordable housing alternatives. The program has also concentrated on ensuring that tenants in public housing have critical repairs made to their apartments as well as receiving refunds for overpayments and inhabitable conditions in their housing.
- Ensuring access to critical health services for low-income immigrants by ensuring that COFA residents receive sufficient coverage.
- Advocating for improved systems to feed our children through development of more efficient school breakfast delivery as well as ensuring that timely provision of food stamps is provided to eligible individuals and families.

Since 2010, Hawaii Appleseed has provided the following services (number of residents served is approximate):

- 110,000 low-income residents gain more income through the expansion of current refundable tax credits.
- 15,000 low-income tenants receive services to ensure habitable conditions and receive refunds of rent overcharges.
- 8000 low income immigrants have had health care coverage preserved.
- 45,000 low income individuals receive timely food stamps when in need.

Numerous unmet needs in our community continue, including these;

- Providing legal representation of tenants who face eviction.

- Ensuring that opportunities for the creation of truly affordable housing are maximized as decisions are made on the use of available land included in Transit Oriented Development.
- Improving language access for immigrants.
- Advocacy for disabled individuals who are eligible for Social Security Disability and Supplemental Security Income programs.

## **HAWAII DISABILITY RIGHTS CENTER**

The Hawaii Disability Rights Center is the state designated protection and advocacy system. We have been designated by the Governor of Hawai'i in Executive Orders No. 77-3, 82-4, 89-2 and 94-06 to provide advocacy services to individuals with disabilities, in accordance with various federal laws (see 42 U.S.C. § 15001, 42 U.S.C. § 10801, and 29 U.S.C. § 732). Hawaii law, at Section 333F -8.5 of the Hawaii Revised Statutes, expressly recognizes the obligation of the State to provide advocacy services to individuals with developmental disabilities and mental illness in order to receive federal funds. The federal statutes require, as a condition of funding services provided by a number of state agencies, that a protection and advocacy agency be established by the State.

Our Annual Report serves as a baseline indicator of our overall funding and activities. We have a reasonable budget based upon the aggregate of our federal grants. Of course, the funds received from the Indigent Legal Assistance Fund (ILAF) grant were very helpful to supplement our work. The Hawaii Disability Rights Center is a small, efficient agency that serves thousands of individuals each year with legal issues surrounding their various disabilities. We effectively utilize our resources and keep our administrative costs to a minimum.

However, federal funding has plateaued over the past several years, and been reduced in recent years as a result of sequestration, while expenses have continued to increase. Each federal grant is specific and restricted to serving only those individuals who meet the requirements of the literal definition of that disability. If all funds from that particular grant are expended, then we are less able to serve individuals within that population. The ILAF grant was very useful in filling potential gaps that exist within the limits of each federal grant.

The Annual Report also provides a breakdown of the number of individuals served as well as the types of cases. We work in the Special Education area to make sure that the DOE provides the Free and Appropriate Education (FAPE) to its students as required by federal law. We assist individuals in obtaining services and benefits to which they may be entitled but to which they have been denied. This would include services provided by the Department of Health Developmental Disabilities Division or its Adult Mental Health Division. We also represent individuals at hearings before an Administrative Law Judge to obtain Social Security Disability Benefits, or to obtain services from the State Department of Vocational Rehabilitation.

We have engaged in advocacy and representation of individuals with mental health issues within our prison system. Currently, prisons now house a very large number of such individuals. We have made it a priority to ensure that adequate mental health services are provided to inmates. We have also made it a priority to represent what we refer to as “underserved” populations. We have one advocate who spends most of his time conducting outreach and advocacy within the community of individuals who arrived here from the Compact of Free Association (COFA) nations. A large number of these people are from Micronesia and include the Chuukese and the Marshallese.

We have also represented individuals who have desired to receive residential or rehabilitative type services in community settings. The Olmstead Decision from the U.S. Supreme Court guarantees individuals with disabilities the right to reside in integrated settings in the community. We have had clients who were living in facilities (hospitals or nursing homes), and we undertook either advocacy or administrative or judicial action on their behalf to secure their placement in community settings with appropriate services.

We have also undertaken larger scale systems advocacy. We are involved in two class-action lawsuits that we believe will benefit an entire generation of children in Hawai'i. One lawsuit resulted in a 9th Circuit decision that overturned the DOE practice of requiring special education students to leave the school upon reaching the age of 20. In the wake of this lawsuit, students will be entitled to receive these services until the age of 22.

The other lawsuit was filed against the Department of Human Services for not providing proper coverage to children with autism as required by federal law. We are in settlement negotiations with them, and they have indicated that their policy has been changed to provide the services that are necessary.

While additional funding is always welcome, gauging the degree of unmet needs is difficult. For the most part, the Hawaii Disability Rights Center does not turn away people if they meet the priorities that the federal government sets out for us each year. The monies we receive from our federal funding and ILAF have been reasonably sufficient to allow us to perform our mandated functions.

The federal government specifically enumerates the types of cases we are expected to accept. For that reason, most cases that we reject are either ones that we think have little merit (which we would not take even if we had more staff) or do not fit the federal criteria that requires the legal issue presented be based upon the individual's disability. There are misconceptions that some have that we are an "all purpose" law firm for people with disabilities. But the federal requirements are much narrower. For that reason, we would not take cases outside of the federal guidelines even if we had more funding. Some cases are "borderline" cases where we feel the person can engage in self advocacy and perhaps we might take a few more cases if we had more

funding. However, given that the federal government also requires the development of self-advocacy, it is not clear that we would undertake a significant number of additional cases.

We have found that federal reporting requirements have become more onerous and extensive in recent years. For that reason, we are forced to spend additional hours complying with the myriad of forms presented and information required by the federal government. In that regard, additional funding might enable us to undertake some additional number of cases that would fall within the federal priorities.



## **LEGAL AID SOCIETY OF HAWAI'I**

In 2015, the Legal Aid Society of Hawai'i (Legal Aid) opened approximately 9,800 cases in a variety of civil legal needs; 9,495 of these were for those under 250% of the federal poverty guidelines; 8,480 were for those under 125% of the federal poverty guidelines. The highest requests (32.38%) for assistance came in the area of family law, followed by public assistance (26.06%), and housing (14.35%). These statistics are similar for those under 250% and 125% of the federal poverty guidelines.

Of the approximately 9,400 cases closed in 2015, 90% of clients received some level of service, ranging from counsel and advice to full representation. Of the cases closed by Legal Aid in 2015, only 13.25% (about 1,250 cases) could be assigned to an attorney or paralegal for representation in a court or administrative hearing or in negotiations against an opposing party with or without the possibility of litigation due to limited resources.

The demand for legal assistance in the state of Hawai'i remains high. In October 2015, Legal Aid conducted 141 stakeholder interviews as part of its Priority Setting process and lay some ground work for its strategic planning process. These stakeholders ranged from clients to social service providers to judges to community leaders. Stakeholders identified family, housing, and public benefits as the priority legal areas that Legal Aid should focus on.

Growing legal needs identified by stakeholders included homelessness, lack of affordable housing, the increase of low-income individuals and the decrease of funding for legal service providers, lack of education, need for more resources for Limited English Proficient, and Social Security Disability assistance.

Lack of funding to provide an adequate level of services to those in need of assistance continues to be the number one issue facing legal service programs. In FY08, Legal Aid had 33

attorneys and 4 AmeriCorps attorneys providing direct legal services to clients. With funding cuts and increased costs, those numbers have dropped to 25.3 attorneys reducing the number of clients we are able to represent. While we can be creative and work to increase the amount of resources and information available to those who have the capacity to represent themselves, a segment of the population remains that needs more than just a pamphlet or a brief training.

Ultimately, it will take a combined effort of all providers to work toward 100% access to legal assistance for critical legal needs: leveraging different types of services from mediation to legal advice to assistance completing forms to representation, utilization of technology for screening and dissemination of information, and coordination amongst partners in the community can help to make a difference.

## **THE MEDIATION CENTER OF THE PACIFIC, INC.**

Guided by its mission of providing high quality mediation and dispute resolution services that are affordable and accessible, the Mediation Center of the Pacific, Inc. (Mediation Center) serves over 7,000 people annually. Over the past five years, the number of cases managed has grown by approximately 10% annually. In calendar year 2015, the Mediation Center managed a total of 1,808 mediations and facilitations. Of the 1,747 new cases opened, 1,231 were scheduled for mediation or facilitation processes; 51% of those cases resulted in written agreements.

The many opportunities provided by the Mediation Center to prevent and resolve disputes quickly and affordably through culturally sensitive processes are a vital resource for low income and vulnerable populations in Hawai'i. The services can mean the difference between: adult siblings creating a mutually agreeable plan to support an elderly parent compared with battling it out in an adult guardianship proceeding and permanently damaging their relationship; or a couple finalizing a divorce amicably compared with the escalation of emotions and potential violence.

Despite the continued growth in services, far more clients could be served if the Mediation Center had more financial and human resources. For example, the Family Court at the First Circuit would like to have more on-site mediators to assist with custody mediations. Additionally, despite providing direct services for 223 custody cases involving unmarried couples and 341 mediations for divorcing couples in the last calendar year, hundreds more couples would benefit from participating in the process. The Civil Rights Commission has also expressed an interest in having the Mediation Center provide mediation for housing discrimination cases.

Moreover, the number of eviction cases has steadily grown over the past few years. The tenants involved in these cases would benefit from participating in mediation. For example, at the beginning of fiscal year 2014, 5,182 summary possession (eviction) cases were pending in the District Court of the First Circuit. During the year, 1,786 new cases were filed, for a total of 6,968 cases. At the end of the fiscal year, 5,976 were pending summary possession cases.

While many of the landlords and tenants in residential eviction cases have the opportunity to participate in an abbreviated mediation process at District Court, the parties have only approximately 30 minutes to mediate. With the limited amount of time, only 50% are able to reach an agreement. Additionally, because the tenants have already breached their leases by not paying rent, the landlords have the right to evict them. Therefore, most of the agreements focus on providing a longer move-out date for the tenants to enable them to find a new home for their family, rather than working out payment plans to stay in the home.

While this is a positive outcome, with more time and information, and less emotional pressure, ideally more landlords and tenants could reach agreements that would allow the tenants to remain in their homes. If landlords and tenants accessed mediation first at the Mediation Center, as soon as an issue arises, then more agreements would be reached allowing the tenant to remain on the property. More specifically, the focus of the mediation would be to develop a plan for repayment of back rent and payment of current rent that is feasible in light of the tenant's income.

In summary, over the past five years the Mediation Center has served more people than before. However, due to the economic recession during this five-year period, and the high cost of living in the islands, the need for more services continues to be high. In particular, more mediation and dispute resolution services are needed to help unmarried couples working through

custody issues, divorcing couples with children, tenants struggling to remain on their property and the elderly who face multiple challenges as they age.

## **NATIVE HAWAIIAN LEGAL CORPORATION**

The Native Hawaiian Legal Corporation (NHLC) sees legal representation in family court as an unmet legal need that is having a significant adverse impact on the lives and wellbeing of Native Hawaiians and Native Hawaiian children. A 2007 assessment of the justice gap in Hawai'i concluded that legal representation in family court is one of two of the greatest unmet legal needs in Hawai'i. Additionally, nearly half of the children in the foster care system of Hawaii are Native Hawaiian. But for a current lack of funding and resources, the NHLC would be addressing these unmet needs

## **VOLUNTEER LEGAL SERVICES HAWAI'I**

Volunteer Legal Services Hawai'i (Volunteer Legal) is in its 35th year of providing civil legal services to the low- and moderate-income households in the State of Hawai'i. The primary function of Volunteer Legal is to engage the private bar in Hawai'i and facilitate meaningful ways to meet the civil legal needs of the low- and moderate-income community through pro bono service.

Like many other service providers in Hawai'i, Volunteer Legal experienced drastic funding reduction throughout the past seven years, which consequently forced the scaling down of services. During Fiscal Year 2009-2010, Volunteer Legal assisted 2,365 Indigent Legal Assistance Fund (ILAF) qualified individuals (those whose incomes are at 125% of the Federal Poverty Guidelines for Hawai'i). In FY 2014-2015, Volunteer Legal assisted 1,610 ILAF qualified individuals, a drop of 32% from FY 2009-2010.

During this same time period, Volunteer Legal reduced services to the neighboring counties of Hawai'i, Maui, and Kaua'i, and the eventual closure of bi-monthly and monthly legal clinics in the Windward and Leeward districts on O'ahu, and all neighbor island clinics in 2013.

In addition, the following are areas of service available five years ago and no longer available now: employment law matters (to include workers comp; unlawful termination); real estate litigation (to include foreclosures and complex probate matters); contracts; and immigration (with the exception of Deferred Action of Childhood Arrivals).

In the last three years, Volunteer Legal has focused its efforts on restoring services and ensuring that pro bono work remains an operative tool in achieving access to justice for Hawai'i residents. Currently, Volunteer Legal provides services in the following practice areas: family law (divorce; child custody, support and visitation; guardianship; domestic restraining orders);

guardianship and conservatorship; estate planning; Chapter 7 Bankruptcy; collections; Veterans benefits; and driver's license reinstatement (bench warrant removal).

Despite funding shortages, Volunteer Legal has maintained services to neighbor island residents through use of basic technology (phone and email), and small scale projects targeted at specific groups and legal issue areas.

Based on the number of Intakes conducted throughout the past five years, the greatest demand remains in the family law areas: divorce, paternity, child custody, support, and visitation. This is followed by debt relief (collections and bankruptcy), evictions defense, and elder care (guardianship/conservatorship, and basic estate planning: health and financial powers of attorney). Volunteer Legal has also experienced spikes in specific areas of law throughout the last 7 years. For example, demand for assistance in bankruptcy and foreclosure.

Volunteer Legal continues to receive a high volume of inquiries and applications each month. Applicants who call usually receive a call back within 24 to 48 hours. Outside of general and basic legal information provided during Intake, the current wait time for service is three weeks on average. Volunteer Legal has been in the process of reducing the wait time for service by expanding immediate services through use of online technology like the A2J Interactive Forms, and limited scope services provided by trained staff.



**CONFERENCE OF CHIEF JUSTICES  
CONFERENCE OF STATE COURT ADMINISTRATORS  
RESOLUTION 5**

**Reaffirming the Commitment to Meaningful Access to Justice for All**

WHEREAS, the Conference of Chief Justices acknowledged in 2001 in Resolution 23 that the promise of equal justice is not realized for individuals and families who have no meaningful access to the justice system and that the Judicial Branch has the primary leadership responsibility to ensure access for those who face impediments they cannot surmount on their own; and

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators passed Resolution 2 in 2008 recognizing that ensuring access to justice in adversarial proceedings involving basic human needs, such as shelter, sustenance, safety, health, and child custody is one of the Conferences' highest priorities and encouraged their members to take steps to ensure that no citizen is denied access to the justice system due to the lack of resources, or any other such barrier; and

WHEREAS, significant advances in creating a continuum of meaningful and appropriate services to secure effective assistance for essential civil legal needs have been made by state courts, national organizations, state Access to Justice Commissions and other similar bodies, and state bar associations during the last decade; and

WHEREAS, these advances include, but are not limited to, expanded self-help services to litigants, new or modified court rules and processes that facilitate access, discrete task representation by counsel, increased pro bono assistance, effective use of technology, increased availability of legal aid services, enhanced language access services, and triage models to match specific needs to the appropriate level of services;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs and urge their members to provide leadership in achieving that goal and to work with their Access to Justice Commission or other such entities to develop a strategic plan with realistic and measurable outcomes; and

BE IT FURTHER RESOLVED that the Conferences urge the National Center for State Courts and other national organizations to develop tools and provide assistance to states in achieving the goal of 100 percent access through a continuum of meaningful and appropriate services.

Adopted as proposed by the CCJ/COSCA Access, Fairness and Public Trust Committee at the 2015 Annual Meeting.