

GARY M. SLOVIN
Direct: (808) 539-0834
gslovin@awlaw.com

January 20, 2015

The Honorable Senate President Donna Mercado Kim
Hawaii State Capitol Room 409
415 South Beretania St.
Honolulu, HI 96813

The Honorable Speaker Joseph M. Souki
Hawaii State Capitol Room 431
415 South Beretania St.
Honolulu, HI 96813

Re: SCR 116 - Requesting The Hawaii Access To Justice Commission To Convene A Working Group To Develop An Educational Loan Repayment Program For William S. Richardson School Of Law Graduates To Expand Opportunities To Pursue Public Interest Careers In Hawaii That Directly Serve Underserved Communities.

Dear Senate President Kim and Speaker Souki:

During the course of the 2014 legislative session, the Legislature considered legislation that would create a fund to assist law graduates who work for government, not-for-profits and agencies that serve the indigent with paying off law school loans. The legislation was introduced at the request of a number of students at the Richardson School of Law at the University of Hawaii. Ultimately, the legislation stalled in committee and, instead, a Senate Concurrent Resolution was adopted by the House and Senate. That resolution is SCR116. Among other things, the resolution called for the establishment of a task force consisting of a number of representatives of groups involved in serving indigent persons and persons associated with Richardson as administrators and students, as well as agencies, entities and individuals who have expressed concern and/or have provided legal services to the indigent. Responsibility for the task force was assigned to the Access to Justice Commission (ATJC). The ATJC requested the participation of several individuals who met the criteria established by the Legislature and all graciously agreed.

The resolution called for the task force to study loan repayment assistance programs, commonly known as LRAPs. The resolution also called for the task force to study incubator programs.

The task force members consisted of Retired Judge Doug McNish, Gary Slovin (Chair), Katherine Vessels (Law Student), Matt Tsujimura (Law Student), Nalani Fujimori Kaina

APPENDIX G

(Executive Director, Legal Aid Society of Hawaii), Keani Rawlins-Fernandez (Law Student), Representative Isaac Choy, Ronette Kawakami (Associate Dean for Student Services at William S. Richardson School of Law), Senator Gilbert Kahele, Aviam Soifer (Dean at William S. Richardson School of Law), Justice Acoba (Retired Justice of Hawaii), Leighton Hara (Hawaii State Bar Association Representative) and Tyler Gomes (Public Defender).

The task force met several times beginning in June 2014 and also consulted with outside persons to gain an understanding of how other jurisdictions have handled this issue. The task force is particularly grateful for the generous assistance provided by Susan Choe of The Ohio Legal Assistance Foundation. That foundation has operated an LRAP successfully for several years. The members of the task force were very impressed by what Ohio has accomplished. While the Ohio situation is quite different from the situation in Hawai'i, certain elements of Ohio's program appealed to most task force members enough for them to believe that Hawaii should replicate them in any program adopted in Hawaii.

At this time, we, the members of the task force, cannot say that we have reached consensus on all points that would need to be included in a loan repayment assistance program. The members, however, do strongly support a modified version of the proposal that was supported by the Richardson students during the 2014 Session. It became clear to the members during the course of our many discussions that the burden of repaying the loans that are needed by most students to complete law school is substantial enough to have a direct impact on the ability of agencies that serve the indigent to recruit capable lawyers at the salaries they pay. The members also learned that law school loans are almost always in addition to significant loan obligations carried over from undergraduate education.

The legal positions in the agencies that serve the poor, directly or indirectly, pay far less, in almost all cases, than private sector jobs and many government legal positions as well. Yet we also learned that a great many Richardson students desire to work in these community-oriented positions. In addition, however, the task force members recognize that the inability of such agencies to pay anything like a competitive salary is a major obstacle to their ability to recruit able lawyers, particularly in rural areas of O'ahu and on the neighbor islands. The agencies that directly serve the indigent, including government entities such as the Public Defender, are in need of greater resources. While an LRAP will assist them, the compensation gap they face, even when compared to many government agencies, is an obstacle to the recruitment and retention of the capable lawyers they need if they are to represent the indigent effectively. An LRAP cannot by itself resolve this issue but the task force members believe that establishing such an LRAP program would be worthwhile and would ameliorate the problem. And we also feel strongly that any such funds granted must not be taken from monies granted to the legal service providers.

The federal government offers loan repayment programs that are very beneficial. The members believe that any applicant for an LRAP should participate in such a federal program if a program is available to her or him.

The members were able to reach consensus on a number of the factors that would need to be included in an LRAP. Included among these factors are the following items:

Endowment: while the legislation considered by the 2014 Legislature would have established an endowment, the task force members felt that the amount of funding needed at current interest rates is too substantial to be realistic. The Ohio Justice Foundation had reached the same conclusion. Therefore, the task force has concluded that annual funding, from various sources, is the more realistic approach.

Income threshold: it was agreed that over a certain job-related annual income level, assistance from an LRAP would not be justified. There was considerable discussion regarding what that threshold should be. The recommendation of the task force is that the threshold should be set at \$56,000. That amount is based on the starting salary for a DOE teacher with a Ph.D.

State of residence: for a number of reasons the task force members believe the program should be open to any attorney licensed in Hawai'i who meets the other qualifications established for the program and is working in Hawai'i.

Loan counseling: every person applying for assistance must be or have been in a loan counseling program. The members learned that many graduates face greater financial burdens than would have been the case if they had been better informed when they took on debt.

Spousal or partner income: one of the key points of our discussions was that the program needs to be simple if it is to be administered efficiently. Ohio reached the same conclusion and found such an initial decision to be a key to the success of its program. Accordingly, the task force concluded that only the income of the applicant would be considered in reviewing an individual's application for loan assistance under the program.

Asset search: pursuant to the foregoing, it was concluded that an asset search would not be made.

Extent of relief: for those who qualify, payments would be between \$6,000 and \$10,000 a year, depending upon the size of loan indebtedness, and for a period of five years. The maximum amount of assistance thus would be \$50,000.

Administration of the program: the program would be administered jointly by the Hawaii Justice Foundation and the Richardson School of Law.

Recertification: each grantee's status would be reviewed for continued qualification on an annual basis.

Leave of absence: the members feel that the program should be flexible. Accordingly, leaves of absence will be permitted for specific reasons to be outlined by the Justice Foundation and the Richardson School of Law as they set up the program

Federal programs: federal education loan programs currently have favorable terms for students doing public interest work and those terms can relieve much of the burden of school loan indebtedness. We believe that participation in these programs should be required for applicants eligible for the federal education loan programs.

Full-time or part-time: recognizing that exigencies will occur in the course of a person's work life, the members support assistance for persons in positions no less than half time, so long as the employer authorizes such limited employment.. The five-year maximum will still apply, however, even if the lawyer worked less than full time.

Licensees: in order to qualify for relief, an attorney must be licensed to practice in Hawai'i.

Qualifying agencies: The task force did not reach consensus on this issue. Some members were of the view that the program's main focus should be on recruiting attorneys for those agencies that directly assist indigent persons with legal issues. Other members felt that, taking into account the income threshold noted above, attorneys serving some government agencies and not-for-profits should be included as well. Still others believe that any attorney working for a nonprofit agency should be eligible, again taking into account the income threshold, though not attorneys working for government. Ultimately, if the legislature sees fit to adopt the program, it will need to make a policy decision in this area. It is probably fair to say, however, that because the legal service providers that assist the indigent directly can often not compete in recruiting against government agencies they would object to extending the program to employees in government agencies, except for those attorneys working in the office of the public defender.

Certainly much of the discussion on this issue related to the fact that many students come from circumstances that make it very difficult for them to attend law school unless they take out sizable loans. Many of the students at Richardson believe that virtually all students must acquire loan indebtedness in order to attend law school and that they should be able to have some kind of debt relief so long as they are not working in the private sector. It is clear from looking at national as well as local sources of information on this matter that loan indebtedness of college students is a significant national issue that has serious consequences in people's lives. Those are not issues that this task force or this program can address directly, yet undoubtedly these factors have affected the thinking of individual task force members about how a repayment assistance program should be structured. A very significant factor in all of our discussions was the extent to which the legislature would be willing to fund a program. There was clear and strong consensus

in favor of a program, and we believe that the overall circumstances described above would provide significant assistance for both students and the agencies they choose to serve with a relatively small investment. Clearly the amount needed to establish an endowment is far too high to be realistic. It is also expected that sources other than government will be sought aggressively to assist in the development of such a program.

Nearly all of the task force members have had some experience regarding the legal needs of indigent persons. The lack of adequate legal resources jeopardizes the wellbeing of many of our residents. The core value of an LRAP is to increase those resources. Therefore, the task force supports the adoption of legislation that would establish such a program. Our estimate is that the cost to fund such a program initially would be \$600,000.

The Task Force also considered an Incubator program, as requested by the resolution. The Task Force supports the establishment of a Hawaii Incubator Program (HIP) to assist recent law school graduates to develop group or solo practices aimed at clients of modest means in key legal need areas in Hawaii. HIP aims to leverage the limited number of public interest jobs in Hawaii and the immense need for legal services to develop a caring and compassionate community of attorneys dedicated to assisting those of limited means with critical legal issues. Such an incubator program would provide assistance with the basics of starting a legal practice, legal education on critical legal needs for those of limited means, and the development of a referral source to help ensure the ultimate success of these community lawyering practices.

Starting a legal practice is a daunting challenge, especially when one is right out of law school. As a collaborative project of the Legal Aid Society of Hawaii, Volunteer Legal Services of Hawaii, the Hawaii State Bar Association, and the William S Richardson School of Law, the first part of HIP will guide participants to create a solo or group practice, including, but not limited to, assistance in creating a business plan, making key business decisions as to the structure of the firm, setting up operations and client trust accounts, and other basics. HIP participants will work with experienced attorneys to ensure their structure is appropriate and meets all professional requirements.

Keeping a new legal practice afloat depends on clients. Part of HIP will be to develop realistic expectations and referral mechanisms for HIP participants, adapting the intake systems of Legal Aid and Volunteer Legal Services. HIP participants will be asked to limit their rates for clients referred to the project. Finally, ongoing support of HIP participants will be supplied to ensure high quality legal services and sustainability of their practices. HIP will also develop a structured format to provide regular support through facilitated monthly meetings and one-on-one mentoring when needed. To meet the challenges of funding such a program, however, required more time than the Task Force had available.

The task force members found the tasks set by SCR 116 to be very challenging but also very enlightening and worthwhile. We feel the diversity of the members contributed to open and positive debate.

Very truly yours,

Gary M. Slovin