



# **Hawai`i Access to Justice Commission**

**Annual Report (2008-2009)**

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## I. INTRODUCTION TO THE COMMISSION

On May 1, 2008, the Hawai`i Supreme Court adopted Rule 21 of the Rules of the Supreme Court of the State of Hawai`i, which provided for the establishment of the Hawai`i Access to Justice Commission (“Commission”).<sup>1</sup> Rule 21 was the culmination of several years of work by the Access to Justice Hui, a collaborative group comprised of various legal services providers and other organizations, including the:

Hawai`i Justice Foundation  
Hawai`i State Bar Association  
Judiciary of the State of Hawai`i  
American Civil Liberties Union of Hawai`i  
Domestic Violence Action Center  
Legal Aid Society of Hawai`i  
Hawai`i Immigrant Justice Center (formerly known as Na Loio  
Immigrant Rights and Public Policy Center)  
Native Hawai`ian Legal Corporation  
University of Hawai`i Elder Law Program  
Volunteer Legal Services of Hawai`i  
William S. Richardson School of Law.

The purpose of the newly created Access to Justice Commission is to substantially increase access to justice in civil legal matters for low- and moderate-income residents of Hawai`i. These needs were explicitly addressed in the *Achieving Access to Justice for Hawaii’s People: The 2007 Assessment of Civil Legal Needs and Barriers to Low- and Moderate-Income People in Hawai`i Report* (“Hui Report”), which was distributed in the fall of 2008. In the Hui Report, certain findings were significant:

- Only one in five low- and moderate- income Hawai`i residents have their civil legal needs met.
- Legal service providers are able to assist only one of three of those who seek help.
- Unmet civil legal needs include housing, family, domestic violence, and consumer issues.

The Access to Justice Commission is tasked with, among other things: providing ongoing leadership to oversee efforts to expand and improve

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<sup>1</sup> Supreme Court Rule 21 enumerates the objectives to be undertaken by the Commission to accomplish the purpose of substantially increasing access to justice for low- and moderate-income Hawai`i residents. See Appendix “A.”



delivery of high quality legal services to low-income people in Hawai'i; developing and implementing initiatives designed to expand access to civil justice in Hawai'i; developing and publishing a strategic, integrated plan for statewide delivery of civil legal services; increasing and stabilizing long-term public and private funding and resources for these services; maximizing the efficient use of available resources by improving collaboration and coordination among civil legal service providers; increasing pro bono contributions by Hawai'i attorneys; reducing barriers to the civil justice system (i.e. language, cultural and other barriers); encouraging people to take a leadership role in expanding access to justice; and educating government leaders and the public on the importance of equal access to justice and the problems faced.<sup>2</sup>

The Commission has had a busy and productive first year. Currently under consideration by the Hawai'i Supreme Court are a mortgage foreclosure mediation program, a model pro bono policy for the judiciary, Judicial Guidelines for Pro Bono Service, and amendments to the Code of Judicial Conduct, all proposed by the Commission. Model pro bono policies for law firms and for government attorneys have been adopted by the Commission and endorsed by the Hawaii State Bar Association ("HSBA") Board of Directors. The Commission obtained access to justice components in the new mandatory continuing legal education rule for the Hawai'i bar.

The Commission passed multiple resolutions<sup>3</sup> and submitted testimony<sup>4</sup> before the Hawai'i State Legislature in support of funding for legal service providers and increasing access to the courts. Through the Commission's energetic efforts to date, sixteen law firms and government offices have committed to meeting the aspirational goal of fifty hours of pro bono legal services, annually. The Commission continues to educate attorneys and the public about the need for legal services for the underserved through meetings with law firms, government agencies, and legal service providers and articles published in the *Hawai'i Bar Journal*, the official magazine of the HSBA and a bar publication, a radio interview with Hawaii Public Radio, and productions on the Olelo TV channel.

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<sup>2</sup> Supreme Court Rule 21 enumerates the objectives to be undertaken by the Commission to accomplish the purpose of substantially increasing access to justice for low- and moderate-income Hawai'i residents. See Appendix "A."

<sup>3</sup> See Appendix N for resolutions passed by the Commission.

<sup>4</sup> See Appendix O to R, inclusive, for the written testimony presented before the 2009 State of Hawai'i legislature. Duplicate copies of Supreme Court Rule 21 and a roster of the Commissioners have been deleted although these documents were presented at the time of the written testimonies.

The Chair of the Commission attended the Access to Justice Symposium at Stanford Law School on March 27, 2009 and the Chair and other members of the Commission attended the ABA-sponsored annual national meeting of State Access to Justice Chairs on May 16, 2009.

On June 24, 2009, the Commission sponsored the first annual Access to Justice Summit Conference at the William S. Richardson School of Law. Over 200 individuals attended this summit, which highlighted the legal issues and challenges facing the indigent community and legal service providers in these difficult economic times. Panelists tackled questions such as: Do desperate times require a re-evaluation of how legal services are provided to low- and moderate- income clients? Should non-traditional approaches to meeting civil legal needs be considered?



## II. THE COMMISSIONERS

The Commission is comprised of twenty-two Commissioners. The various Commissioners are appointed as designated in Rule 21 by separate appointing authorities including the Chief Justice of the Hawai`i Supreme Court, the Hawai`i State Bar Association, the Hawai`i Consortium of Legal Service Providers, the Hawai`i Justice Foundation, the Williams S. Richardson School of Law, the Hawai`i Paralegal Association, the Governor, the Attorney General, the Senate President, and the Speaker of the House. The Commissioners are listed as follows:

	Name	Appointed By	Term Ends
1.	Hon. Simeon R. Acoba, Jr. (CHAIR)	Chief Justice	n/a
2.	Jill M. Hasegawa, Esq. (VICE-CHAIR)	Hawai`i State Bar Association	12/31/11
3.	Hon. Daniel R. Foley	Chief Justice	12/31/09
4.	Hon. Greg K. Nakamura	Chief Justice	12/31/09
5.	Hon. Simone C. Polak	Chief Justice	12/31/11
6.	Hon. Calvin K. Murashige	Chief Justice	12/31/09
7.	Rai Saint Chu, Esq.	Hawai`i State Bar Association	12/31/10
8.	B. Martin Luna, Esq.	Hawai`i State Bar Association	12/31/11
9.	Shannon L. Wack, Esq.	Hawai`i State Bar Association	12/31/10
10.	Moya Gray, Esq. (Volunteer Legal Services of Hawai`i)	Hawai`i Consortium of Legal Services Providers	12/31/11
11.	M. Nalani Fujimori Kaina <sup>5</sup> (Legal Aid Society of Hawai`i)	Hawai`i Consortium of Legal Services Providers	12/31/09
12.	Mahealani Wendt <sup>6</sup> (Native Hawai`ian Legal Corporation)	Hawai`i Consortium of Legal Services Providers	12/31/10
13.	Nanci Kreidman (Domestic Violence Action Center)	Hawai`i Consortium of Legal Services Providers	12/31/10

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<sup>5</sup> Charles Greenfield formerly served as a Commissioner, and M. Nalani Fujimori Kaina was appointed as his replacement by the Hawai`i Consortium of Legal Services Providers.

<sup>6</sup> Mahealani Wendt will be retiring at the end of 2009 as Executive Director of the Native Hawaiian Legal Corporation. Moses Haia was selected to fill her position and was appointed by the Consortium to serve the remainder of Ms. Wendt's term.

14.	Patti Lyons <sup>7</sup>	Hawai'i Consortium of Legal Services Providers	12/31/09
15.	Puanani Burgess <sup>8</sup>	Hawai'i Consortium of Legal Services Providers	12/31/11
16.	Hon. Richard P. Guy (Ret.)	Hawai'i Justice Foundation	12/31/09
17.	Dean Aviam Soifer	William S. Richardson School of Law	12/31/10
18.	R. Elton Johnson, III.	Hawai'i Paralegal Association	12/31/10
19.	Lillian Koller (Department of Human Services)	Governor	n/a
20.	Mary Anne Magnier, Esq.	Attorney General	n/a
21.	Hon. Mike Gabbard	Senate President	n/a
22.	Hon. Blake Oshiro	House Speaker	n/a

See Appendix "B" for complete biographies of the Commissioners. The Commission is also grateful to the following former Commissioners for their service: Charles Greenfield, Patti Lyons, and Puanani Burgess.

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<sup>7</sup> Patti Lyons resigned from the Commission, and Jean Johnson was selected by the Consortium to replace her.

<sup>8</sup> Puanani Burgess resigned from the Commission, and Debbie Shimizu was selected by the Consortium to replace her.

## Commissioners of the Hawai'i Access to Justice Commission



First row: Hawai'i Supreme Court: Justice Simeon Acoba, Jr., Justice Steven Levinson (retired), Chief Justice Ronald Moon, Justice Paula Nakayama, and Justice James Duffy;  
second row: Judge Simone Polak, Puanani Burgess, Moya Gray, Lillian Koller, Mary Anne Magnier, and Jill Hasegawa;  
third row: Judge Calvin Murashige, Shannon Wack, Rai Saint Chu, Judge Greg Nakamura, Judge Daniel Foley, and Mahealani Wendt  
fourth row: Patti Lyons, Elton Johnson, Aviam Soifer, Charles Greenfield, and Chief Justice Richard Guy (retired, Washington Supreme Court)



### **III. COMMISSION MEETINGS**

On June 20, 2008, Chief Justice Ronald Moon and the newly appointed Chair, Justice Simeon Acoba Jr. welcomed the Commissioners at an unofficial introductory meeting of the Commission. Chief Justice Moon made a brief presentation on the Commission. In addition, a presentation on the Hui Report was made by M. Nalani Fujimori Kaina, a Hui member.

Since its establishment, the Commission has held eight official meetings on the following dates:

Wednesday, July 23, 2008 at 10:00 a.m.  
Wednesday, September 3, 2008 at 10:00 am.  
Monday, November 3, 2008 at 10:00 a.m.  
Monday, January 26, 2009 at 10:00 a.m.  
Monday, March 23, 2009 at 10:00 a.m.  
Wednesday, May 6, 2009 at 10:00 a.m.  
Monday, July 20, 2009 at 10:00 a.m.  
Monday, September 21, 2009 at 10:00 a.m.

Copies of the Commission agendas can be found in Appendices F to M, inclusive and respectively.

#### **A Brief Summary of the Meetings**

1. July 23, 2008

At this first meeting of the Commission, it was agreed that decisions would be made by consensus. Certain operational guidelines were discussed and approved.

2. September 3, 2008

The Commission approved the establishment of thirteen committees and a committee protocol. It was emphasized that the role of committees is advisory. Semi-annual reports of the committees would be sent to the Annual Report Committee. The Commission discussed a grant from the Hawaii Justice Foundation to the HSBA to aid the work of the Commission.

3. November 3, 2008

The Hawaii Justice Foundation approved a grant in the amount of \$58,650.00 to the HSBA for Commission expenses. This sum proposed monies for a part-time HSBA staff person to support the Commission and



inter-island travel for the neighbor island Commissioners. Updates of the various committee work were orally provided by the Chairs/Commissioners.

4. January 26, 2009

The Commission decided that the grant from the Hawaii Justice Foundation would need to cover the Commission's work for the future since it is unlikely that the Hawaii Justice Foundation will be able to replicate such funding. The Commission approved guidelines for speakers who may represent the Commission and speakers who would be presenters at the Commission meetings. Updates of committee work were provided, and further discussion was had of pending legislation.

5. March 23, 2009

The Commission discussed the legislative updates. It was reported that the grant-in-aid proposal did not receive much support during legislative meetings because of the state's budgetary problems and that it is anticipated that an estimated \$2,000,000.00 for legal services providers would be cut. Since there will not be any additional funding from the Hawaii Justice Foundation in the foreseeable future, it was agreed that the part-time HSBA position be deferred for the current period. The Commission discussed the proposed foreclosure mediation protocol and other committee work.

6. May 6, 2009

The Commission adopted the proposed Comment 5 to Rule 2.2 of the Hawai'i Revised Judicial Code. The Commission also approved the Foreclosure Mediation Protocol and the notice form that would accompany a complaint and summons requesting mediation. Legislative updates were discussed as well as committee work. It was reported that the small claims bill had died in legislative committee as well as the ILAF (Indigent Legal Assistance Fund) bill. The annual summit conference agenda was approved. It was reported that visits are being made to law firms and government agencies to obtain commitments to meet the goal embodied in Hawai'i Rules of Professional Conduct Rule 6.1 of providing 50 hours of pro bono service annually.

7. July 20, 2009

Family Court Judge Frances Wong made a presentation to the Commission about the status of the family courts and the challenges faced by them. The Commission discussed the annual summit conference on June 24, 2009. It appears that the overflow crowd that attended reacted favorably to the conference. The Commission approved the Judicial Pro

Bono Policy, Law Firm Pro Bono Policy, and Government Pro Bono Policy without objections. Several task forces were appointed: Task Force on Cy Pres (which would be attached to the Committee on Funding); Task Force on Public Meetings; and Task Force on Amending HRCF Rule 6.1.

8. September 21, 2009

The Chair announced that the Foreclosure Mediation Proposal was reviewed by the Supreme Court, and it will be implemented on an experimental basis in the Third Circuit Court only. The Commission discussed the Access to Justice website, which is currently a subpage to the HSBA website and is updated twice a month. It was reported that the Committee on Education, Communications, and Conference Planning (“Committee on Education”) researched the question of an independent website and the attendant costs. The Commission decided that the Committee on Education should further examine the different website proposals and recommend one proposal for the Commission’s consideration.

The Commission accepted the recommendations of the Committee on Education regarding the annual Access to Justice Conference. The Commission approved support for the funding request by the Hawaii Justice Foundation to the Cades Foundation for the future Summit and website expenses. The Commission supported the National Pro Bono Celebration to be held on October 28, 2009 at Tamarind Square. The Commission decided that funding for the legal service providers would be the Commission’s sole legislative priority.



#### IV. COMMITTEES

To carry out and facilitate its mission, the Commission created thirteen committees and various other ad hoc subcommittees and task force groups. The Commission designated Commissioners as the chairs for committees. The role of each committee is advisory only,<sup>9</sup> and each committee is assigned to make recommendations to the Commission as each committee determines to be appropriate.

Of the committees created by the Commission, there are currently three committees with primarily organizational or administrative functions (Administrative, Annual Report, and Staffing Committees) and ten committees that are subject matter committees as follows:

- Committee on Funding of Civil Legal Services
- Committee on Increasing Pro Bono Legal Services
- Committee on the Right to Counsel in Certain Civil Proceedings
- Committee on Self Representation and Unbundling
- Committee on Maximizing Use of Available Resources
- Committee on Overcoming Barriers to Access to Justice
- Committee on Initiatives to Enhance Civil Justice
- Committee on Education, Communications and Conference Planning
- Committee on Alleviating Poverty in Hawai'i
- Law School Liaison Committee

The initial charters for the subject matter committees are drawn largely from two sources—the fourteen purposes of the Commission set forth in Rule 21 and the action steps proposed in the Hui Report. See Appendix “C” for the Memorandum adopted by the Commission establishing the Committee structure. See also Appendix “D” for a list of Committee membership.

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<sup>9</sup> See Appendix E for the Commission’s Committee Protocol Guidelines.



## **V. FUNDING**

To carry out its mission, the Commission has been aided by funds provided by the Hawai'i Justice Foundation to the HSBA. Such funding was intended to cover administrative and operational expenses in 2008. Thanks to the generosity of the Hawai'i Justice Foundation, \$ 58,650.00 was allotted to the HSBA to defray expenses, including travel costs for participation by neighbor island Commissioners at Commission meetings, expenses for the annual Access to Justice Summit conference, travel costs to attend the ABA National Access to Justice Conference, and printing costs of the Annual Report.

It was initially contemplated in the budget that a part-time person assigned to the HSBA would provide administrative help to the Commission. Instead, due to the current economic crisis, the remaining grant funds will be used to support Commission activities in the coming years.



## VI. PURPOSES

Rule 21 of the Rules of the Hawai`i Supreme Court sets forth fourteen purposes to accomplish the goal of substantially increasing access to justice in civil legal matters for low-and moderate-income residents of Hawai`i.

### **Purpose (1)**

**Provide ongoing leadership and oversee efforts to expand and improve delivery of high quality civil legal services to low-income people in Hawai`i.**

The Commission, through the Committee on Education, Communications, and Conference Planning, organized and convened the annual summit conference on Wednesday, June 24, 2009, at the William S. Richardson School of Law, University of Hawai`i from 8:00 a.m. to 3:00 p.m. with the help of volunteers and law school staff.<sup>10</sup> Over 200 people attended the conference.

The five segments of the conference produced stimulating discussion. The unmet needs session commenced with a brief review of the 2007 assessment of civil legal needs by Nalani Fujimori Kaina, Executive Director, Legal Aid Society of Hawai`i.<sup>11</sup> Russ Awakuni, an attorney with Legal Aid Society of Hawai`i and his client presented an example of the human cost of failing to meet basic civil legal services.

The first panel (Ms. Kaina; Moya Gray, Executive Director, Volunteer Legal Services Hawai`i; Robin Kobayashi, Executive Director, Hawai`i Immigrant Justice Center; and Colleen Hanabusa, State Senate President and moderator, Richard Guy, Chief Justice, Washington Supreme Court, retired) faced the complicated question: Do desperate times require re-evaluation of how legal services are provided to low-income clients? The panel members engaged in a lively debate on the hard new reality of funding for legal services and on whether a restructuring of the current programs should be contemplated.

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<sup>10</sup> See Appendix "AA" for the dates that the 2009 Access to Justice Conference will air on Olelo. See Appendix "BB" for Access to Justice Summit Conference Agenda and Biographies of Panelists, Participants, and Moderators.

<sup>11</sup> See Appendix "CC" for Ms. Kaina's handout at the Access to Justice Summit: "Civil Legal Needs and Barriers of Low- and Moderate- Income People in Hawaii.



The second panel (Family Court Judge Michael Broderick and R. Elton Johnson, III, paralegal with moderator, Robert LeClair, Executive Director, Hawai'i Justice Foundation) discussed non-traditional approaches to meeting civil legal needs, including self-representation and extensive use of non-lawyers. The question of civil representation as a right, a civil right to counsel, is a difficult one.

The third group (Tracey Wiltgen, Executive Director, The Mediation Center of the Pacific, Inc.; Nanci Kreidman, Executive Director, Domestic Violence Action Center; Robin Kobayashi, CEO, Haw. Immigrant Justice Center; and James H. Pietsch, Professor, William S. Richardson School of Law) illustrated the predicament for low-income and immigrant clients in locating the proper legal assistance.

Chief Justice John T. Broderick of the New Hampshire Supreme Court, was the featured speaker. Breakout group discussions<sup>12</sup> continued the momentum with concluding remarks of the conference given by Family Court Judge Evelyn Lance (retired).

The first annual summit conference illustrates the momentum of the Commission's industrious efforts to provide the necessary leadership to expand an awareness of the critical access to justice issues. During this past year, the Commission formulated model pro bono policies that government legal agencies and law firms could implement.<sup>13</sup> That leadership will continue so that a significant improvement to the delivery of high quality civil legal services to low-income Hawai'i residents will be realized.

The Commission, through the Committee on Right to Counsel in Civil Proceedings, has studied the civil right to counsel issue by examining the existing right-to-counsel statutes in Hawaii and comparing them with statutes in other jurisdictions. The Commission is considering the feasibility of a proposed model right-to-civil-counsel statute to address certain high priority basic needs such as shelter, sustenance, safety, health, and child custody.

On September 8, 2009, the Chair and Vice Chair of the Commission visited Maui to meet with attorneys with offices on that island, government agencies, and legal service providers to provide information about the Commission and the various actions taken by the Commission in promoting

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<sup>12</sup> See Appendix "DD" for suggestions from the breakout discussions at the Access to Justice Summit for the Commission to consider.

<sup>13</sup> See discussion under Purpose (6).

equal access to justice. On September 15, 2009, the Chair and Vice Chair also conducted a similar visitation on Hawaii.

## **Purpose (2)**

### **Develop and implement initiatives designed to expand access to civil justice in Hawai`i.**

The Commission, through the Committee on Initiatives to Enhance Civil Justice, developed and approved a proposed foreclosure mediation program, which was considered by the Hawaii Supreme Court. The program would allow homeowners facing residential judicial foreclosure proceedings filed in Hawai`i to request mediation with the lender.

Although residential foreclosures are increasing nationwide, Hawai`i is being hit especially hard. A study done by the Pew Charitable Trusts found that 1 in 29 Hawai`i homeowners is expected to face foreclosure by the end of 2010, and that on average a Hawai`i homeowner in foreclosure is expected to lose \$24,768 in property value.<sup>14</sup> Adding to the impact, Hawai`i as a whole will suffer projected losses of \$4.16 billion from combined state and local property tax revenues.<sup>15</sup> Although the majority of residential foreclosures are handled outside of the court system, the number of recent judicial foreclosures is itself distressing. By way of example, in the Third Circuit alone, 375 foreclosure cases were filed from July, 2008, the beginning of the fiscal year, to May, 2009, as compared to 276 cases filed from July 2007 to June 2008.

Committee member and consumer lawyer George Zweibel commented:

In representing people with mortgage problems for many years, I have seen firsthand the alarming increase in Hawaii's foreclosure rate - now considerably above the national average - and the accompanying drop in our property values. This hurts everyone: families who lose their homes, neighbors whose property values are reduced even further, and lenders, whose losses are skyrocketing.

After review by the Hawai`i Supreme Court Committee to Review the Foreclosure Mediation Protocol, the Supreme Court issued an order on September 29, 2009 establishing a Foreclosure Mediation Pilot Project in the

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<sup>14</sup> Pew Charitable Trusts, *Defaulting on the Dream: States Respond to America's Foreclosure Crisis*, Hawaii (December, 2008).

<sup>15</sup> Id.

Third Circuit Court, effective November 1, 2009, to October 31, 2010.<sup>16</sup> In a residential foreclosure action, a Foreclosure Mediation Notice that substantially complies with Attachment A of the September 29, 2009, Order shall be served along with the complaint and summons. The Foreclosure Mediation Notice provides that the party is allowed to participate in mediation under the Foreclosure Mediation Pilot Project if (1) the party is the borrower or co-borrower, and (2) the party occupies the property as his/her primary residence. If a Foreclosure Mediation Request is filed within fifteen days after service of the notice with the complaint and summons, then the deadline to file and serve an answer to the complaint and to seek relief by dispositive motion is suspended until further order of the court.

### **Purpose (3)**

#### **Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low-income Hawai`i residents.**

The Commission discussed whether a strategic plan was necessary at this stage. The Commission is only one year old and has developed a protocol whereby certain objectives are assigned to committees to examine in terms of substantially increasing access to justice. The committees transmit their findings and recommendations to the Commission for action.

It was determined by the Commission that in essence, a plan is already in place. Therefore, the Commission decided to table any action on a formal strategic plan as contemplated under Rule 21 for the present time.

### **Purpose (4)**

#### **Increase and stabilize long-term public and private funding and resources for delivery of civil legal services to low-income Hawai`i residents.**

The Commission prepared resolutions for submission to the state legislature:

- supporting the proposal to raise the jurisdiction of the small claims court, a division of the district court, from \$3,500 to \$7,000. This legislation amending Haw. Rev. Stat. § 633-27 would free judicial time and allow the pro se litigants greater and less expensive access to the legal system.

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<sup>16</sup> See Appendix "S," Order Establishing Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawaii.

- supporting funding for the indigent legal service recipients grants
- supporting an increase of the filing fee in civil cases, which monies are paid into the Indigent Legal Assistance Fund, that, in turn, supports the legal services providers.

### **Purpose (5)**

#### **Maximize the efficient use of available resources by facilitating efforts to improve collaboration and coordination among civil legal services providers.**

The Committee on Maximizing Use of Available Resources recognized that currently there is no comprehensive centralized information on all of the programs provided by the civil legal service providers. The Commission is working to create a database of centralized information from all civil legal services providers and programs concerning the services they each provide. Creation of such a centralized source of information will help the Commission assess the current framework of delivery of such services and assist with facilitating concrete, workable improvements to the framework. In conducting this review, the Commission seeks to ensure that:

- (1) there is an efficient and effective referral system of clients to the “right” program and among programs;
- (2) innovative methods of legal services delivery are explored and used;
- (3) new ways to utilize technology, including a centralized access to justice website, to meet current unmet legal needs are implemented where appropriate;
- (4) mediation and other alternative dispute resolution methods for resolving legal problems are utilized when appropriate; and
- (5) outreach efforts are coordinated among legal service providers as well as with social service providers, agencies and other organizations.

In addition, it may be necessary to explore with existing providers whether there are current gaps in their provision of services and to make recommendations concerning how such services might be expanded. This may include increasing types of legal problems for which assistance is offered; expanding office and clinic locations; extending office hours to include evenings and weekends.

In expanding outreach and publicity regarding the availability of legal services to the public, considerations are: locating outreach sites in areas convenient to potential clients; engaging in partnerships with community groups and agencies; and publicizing services and programs in low and moderate-income communities.

On or about July 9, 2009, and on September 21, 2009, the Committee on Maximizing Use of Available Resources sent surveys to organizations providing legal services regarding their access to justice needs.

Facilitating the collaborative efforts of the legal service providers, the Commission supported the 2009 National Pro Bono Celebration at Tamarind Park in downtown Honolulu on Wednesday, October 28, 2009, 11:00 a.m. to 1:00 p.m. The event was a celebration of and introduction to the Access to Justice legal service providers and pro bono opportunities.

### **Purpose (6)**

**Increase pro bono contributions by Hawai`i attorneys through such things as rule changes, recruitment campaigns, increased judicial involvement, and increased recognition for contributors.**

The Committee on Increasing Pro Bono Legal Services (“Pro Bono Committee”) was established to move forward on this purpose. Through this committee, the Commission has studied the implementation of the following model policies: a judicial pro bono policy, a corporate pro bono policy, a private law firm pro bono policy, and a government attorney pro bono policy.

#### Judicial Pro Bono Policy

In May 2009, the Commission adopted the model Judicial Pro Bono Policy recommended by the Pro Bono Committee, which policy is a compilation in one document of the different provisions in the Hawai`i Revised Code of Judicial Conduct relating to pro bono activities by judges. The policy references the appropriate rule or comment, allowing judges easy accessibility to what is appropriate conduct.<sup>17</sup>

Proposed implementation steps include giving all judges a survey that was modeled after the Montana judicial survey with amendments developed by the Commission; gathering data from all legal service providers regarding pro bono opportunities; preparing a pro bono guide book for the Hawai`i judges; and conducting training related to the guide book.

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<sup>17</sup> See Appendix “T” for a copy of the Hawai`i Judicial Pro Bono Policy.

## Judicial Guidelines for Pro Bono Service

In July 2009, the Judicial Pro Bono Guidelines, setting forth pro bono activities that are allowed to be performed by judges, was recommended by the Committee to Increase Pro Bono Service, and ratified by the Commission without objection.

A proposal to amend Rule 3.7 of the Hawai'i Revised Code of Judicial Conduct, to clarify participation in allowable pro bono activities by judges, was posted for public comment on July 31, 2009, with a deadline of November 3, 2009 to submit comments.<sup>18</sup>

## Corporate Pro Bono Policy

After extensive research, the Pro Bono Committee determined that there is no "model company" that employs a large number of attorneys. Therefore, the Commission is alternatively considering the promotion of an existing model or project for pro bono activity in the corporate sector.

## Lawyers/Law Firm Pro Bono Policy

Policies in various states were reviewed, and it was concluded that the Montana model would serve as an appropriate starting point to incorporate Hawai'i law and practices. The Commission approved a model law firm policy presented by the Pro Bono Committee. On August 20, 2009, the HSBA board of directors endorsed such policy.<sup>19</sup>

## Government Pro Bono Policy

Haw. Rev. Stat. §28-10<sup>20</sup> provides that deputy attorneys general must devote their entire time and attention to the duties of their office and shall

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<sup>18</sup> See Appendix "V" for the proposed amendment to Rule 3.7 of the Hawai'i Revised Code of Judicial Conduct.

<sup>19</sup> See Appendix "W" for a copy of the Model Pro Bono Policy for Hawai'i Law Firms.

<sup>20</sup> 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.

not engage in the private practice of law. 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 2008, House Bill 2391 was introduced, which bill sought 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 Hawai'i legislature, it was vetoed by the Governor, who cited concerns about the process for determination of a conflict of interest. The Commission is considering re-introduction of this bill and will draft testimony, which will (1) specifically address the Governor's conflict of interest concerns and (2) highlight the urgency of the bill's passage due to a growing unmet need for such services.

Despite the current restriction on the type of pro bono activity by deputy attorneys general, the Commission approved a Model Policy for Government Attorneys Performing Pro Bono Work, to provide a framework for pro bono activities.<sup>21</sup> This policy was adopted after review of pro bono policies for government lawyers in various states, federal agencies, the County of Hawai'i, the County of Maui and similar policies in Washington and Minnesota, and policies adopted by the United States Department of Justice and the New York State Bar Association. The selected provisions for inclusion in the Commission's Government Pro Bono Policy best reflect a common sense approach to government attorneys performing pro bono services in their community.

### New CLE Rule

The Commission supported new Supreme Court Rule 22 that requires that each active attorney take three credit hours annually of approved Mandatory Continuing Professional Education (MCPE). Access to justice is

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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 some one of the heads of departments.

<sup>21</sup> See Appendix "X" for the model policy for government attorneys performing pro bono work.

one of the qualifying education topics for MCPE. In addition, all active attorneys are encouraged to complete nine or more credit hours annually of approved Voluntary Continuing Legal Education (VCLE). The Commission's proposal that up to three hours of VCLE may be satisfied by providing pro bono service, as defined in Rule 6.1 of the Hawai'i Rules of Professional Conduct was included in Rule 22.<sup>22</sup>

The Commission will be working with the HSBA on the access to justice aspects of the new Rule 22.

### **Purpose (7)**

**Reduce barriers to the civil justice system by developing resources to overcome language, cultural, and other barriers and by providing input on existing and proposed laws, court rules, regulations, procedures, and policies that may affect meaningful access to justice for low-income Hawai'i residents.**

The Committee on Overcoming Barriers to Access to Justice was established to take action on this purpose. The Committee met with Debi Tulang-De Silva, Project Director for the Office on Equality and Access to the Courts, to discuss the certification process for court interpreters. Based upon data compiled in 2007, the following languages were the highest in demand: Chuukese, Ilokano, Vietnamese, Spanish, Korean, Tongan, Marshallese, Japanese, Samoan, Cantonese, Tagalog, Mandarin, Pompeian, and Laotian. Currently, there are 176 names on the certification registry list.

The committee will meet with a representative of the State of Hawai'i Judiciary's Committee on Equality and Access to the Courts ("CEAC") to determine if the Committee should have a role in the CEAC's project to provide intensive multi-part workshops that will target the leaders of the Southeast Asian communities interested in gaining improved access to the courts. In addition, there will be a review of models utilized by the Domestic Violence Action Center in exploring strategies to educate the legal

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<sup>22</sup> See Appendix "Y" for Supreme Court Rules 17 and 22 regarding mandatory continuing legal education. Furthermore, see Appendix "EE" for an article "CLE Rule Brings New Focus on Access to Justice" by Kristen Yamamoto and Lynda Arakawa, which article will be published in the December 2009 issue of the *Hawaii Bar Journal*. The article explains that "[a]dding 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."



community and the public regarding the issues of interpreters in civil matters.

Other types of barriers that will be investigated include cultural, physical disability, and mental disability barriers.

**Purpose (8)**

**Encourage lawyers, judges, government officials, and other public and private leaders in Hawai'i to take a leadership role in expanding access to civil justice.**

The Commission encouraged participation in Law Week and Law Day. In addition, Nalani Fujimori Kaina of the Legal Aid Society of Hawaii and Jill Hasegawa, Commission Vice Chair, addressed the statewide conference of the Office of the Public Defender, State of Hawai'i.

Rule 6.1 of the Hawai'i Rules of Professional Conduct embodies an aspirational goal that lawyers provide 50 hours of pro bono service annually, which would encompass participation in various pro bono activities as described in the rule. Associate Justice Simeon Acoba, with, at different times, Moya Gray, Jill Hasegawa, Nalani Fujimori Kaina, and Rai St. Chu, visited with the groups to encourage their commitment to meet the goals of Rule 6.1 including the following offices:

Alston Hunt Floyd & Ing

Ashford & Wriston

Ayabe Chong Nishimoto Sia & Nakamura

Cades Schutte

Carlsmith Ball, LLP

Chee & Markham

Damon Key Leong Kupchak Hastert

Goodsill Anderson Quinn & Stifel

Hawaii County Office of the Corporation Counsel

Hawaii County Office of the Prosecuting Attorney

Hawai'i Disability Rights Center  
Henderson Gallagher & Kane  
Intermediate Court of Appeals  
Labor and Industrial Relations Appeals Board  
Maui County Department of the Corporation Counsel  
Office of the Federal Public Defender  
Office of the Public Defender, State of Hawaii  
Schlack Ito Lockwood Piper & Elkind  
Law Office of Eric A. Seitz  
Starn O'Toole Marcus & Fisher

The foregoing named groups have committed to striving to meet the requirements of Rule 6.1. The Commission has recognized these law firms and government offices by acknowledging their commitment in the *Hawai'i Bar Journal* and at the Access to Justice website.<sup>23</sup>

Comment [5] to the Revised Code of Judicial Conduct

In May 2009, the Commission adopted the recommendation by the Initiatives Committee to add a Comment [5] to Rule 2.2 of the Hawai'i Revised Code of Judicial Conduct, which would permit a judge to sanction an attorney by ordering the attorney to perform pro bono legal services or to make a monetary contribution to a non-profit organization providing pro bono legal services. This amendment was posted for public comment on August 11, 2009, with a deadline of November 13, 2009 to submit comments.<sup>24</sup>

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<sup>23</sup> See Appendix "Z" for photographs of the various attorneys in these committed law firms and government agencies and brief statements of their pro bono policies.

<sup>24</sup> See Appendix "U" for the proposed amendment to the Commentary to Rule 2.2 of the Hawai'i Revised Code of Judicial Conduct (Comment 5).

## **Purpose (9)**

**Educate governmental leaders and the public about the importance of equal access to justice and of the problems low-income people in Hawai`i face in gaining access to the civil justice system through informational briefings, communication campaigns, statewide conferences (including an annual summit to report on and consider the progress of efforts to increase access to justice), testimony at hearings, and other means. Increase awareness of low-income people’s legal rights and where they can obtain legal assistance as needed.**

### Communications

The Commission encouraged the publication of articles related to access to justice in the *Hawai`i Bar Journal*, the official magazine of the HSBA. The December 2008 issue of the *Hawai`i Bar Journal* featured a number of articles describing the Commission and the funding outlook for the access to justice. In 2009, there have been monthly articles in the magazine highlighting various legal service providers such as the Domestic Violence Action Center and the Hawai`i Immigrant Justice Center. The Commission also provided periodic updates of the various model pro bono policies adopted.<sup>25</sup>

The Commission published an informative article about the Commission and its actions in the *Pacific Business News* (special supplement for the 2009 HSBA bar convention).<sup>26</sup>

The Commission established an “Access to Justice” subpage at the HSBA website. The “Access to Justice” site provides helpful information about the Commission and current news articles.

### Legislation

Commission members had conferences with various legislators during the 2009 legislative session and met the entire House leadership.

Through the Committee on Funding Civil Legal Services, the Commission supported legislation that would have increased the initial filing

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<sup>25</sup> See Appendix “EE” for various articles on access to justice published in the *Hawaii Bar Journal*.

<sup>26</sup> See Appendix “FF” for various articles on the Commission published in the *Pacific Business News*.

fee for civil actions. Such legislation was not successful during the 2009 session.

Additionally, the Commission supported the proposed legislation raising the jurisdiction of the small claims court, a division of the district court, from \$3,500 to \$7,000. This legislation would have allowed pro se litigants greater and less expensive access to the legal system.

The Commission also adopted a resolution addressed to the state legislature supporting the requests for grants for indigent legal services by the various legal service providers. However, as noted earlier, the legislature did not approve any grants in the last legislative session.

### **Purpose (10)**

#### **Increase effective utilization of paralegals and other non-lawyers in the delivery of civil legal services to low-income Hawai'i residents.**

The Committee on Initiatives to Enhance Civil Justice examined several issues related to the expanded role of paralegals:

- (1) what is the current situation in Hawai'i;
- (2) what is the role of paralegals in other states; and
- (3) whether the expansion of paralegals' roles would be in the context of employment for one of the legal service providers or applied to an individual paralegal.

The Committee is examining projects that would benefit from an expanded role of paralegals, such as assisting in uncontested divorces where the parties are unrepresented by attorneys and guardian ad litem work. The Commission will examine the issue of expanded roles for non-lawyers.

### **Purpose (11)**

#### **Increase support for self-represented litigants, such as through self-help centers at the courts.**

The Commission acknowledges that a past attempt was made to establish a court navigation project. In that project, a self-help center was established at the First Circuit Court. This self-help center provided informational packets of instructions and forms to assist individuals in handling certain of their own legal proceedings and processes (e.g., filing for an uncontested divorce). Although this project was discontinued after the initial grant funds were expended and possible lack of sufficient court staff

and unresolved bureaucratic barriers, other future options include establishing self-help centers organized and staffed by legal services providers (rather than the Judiciary) or providing a part-time service at the courts to assist self-represented parties with filling out court forms and with making return and post-mediation appearances.

In addition to the foregoing, the Commission, through its Committee on Self-Representation and Unbundling, is considering increasing the number of family law and bankruptcy clinics, conducting workshops on electronic resources and court forms, and approaching the Judiciary about securing physical space to provide pro bono services.

### **Purpose (12)**

**Develop initiatives designed to enhance recruitment and retention of attorneys who work for nonprofit civil legal services providers in Hawai`i and to encourage law students to consider, when licensed, the practice of poverty law in Hawai`i.**

Currently, the William S. Richardson School of Law (WSRSL) has demonstrated its commitment to public service law through various programs, including its Clinical Program, externship placements, Advocates for Public Interest Law (APIL) student organization, and Law Student Public Service Program.

The Commission evaluated the current efforts made by WSRSL and identified, through its Law School Liaison Committee, several areas for possible new initiatives or enhancements:

#### **Grants, Loan Reimbursements, and Scholarships**

WSRSL, through APIL, recently awarded two grants to advance the work of WSRSL alumni whose professional endeavors are focused on serving the poor. In an effort to increase the number of grants provided, as well as opportunities for loan reimbursements and scholarships, the Committee is exploring possible legislative funds or support.

#### **Pro bono Program Awareness**

The Committee believes that WSRSL's pro bono program could be greatly strengthened if more practicing attorneys volunteered to accept pro bono cases or mentor students on pro bono cases. In the hopes that more attorneys would volunteer for these activities if they were aware of the availability of law student assistance, the Committee is considering

mechanisms to increase awareness of WSRSL's pro bono program, such as WSRSL's website and a direct link to that website from the HSBA website.

### Special Projects

The Committee determined that pro bono work should extend beyond individual cases, and is exploring ways to encourage law students and attorneys to develop projects that prevent legal problems or provide alternative dispute resolution options, particular for the poor.

### Student Practice Rule

The Committee will examine the possibility of expanding the student practice rule under the Hawai'i Rules of Professional Conduct to allow students to represent consenting clients in court without the presence of a supervising attorney, in order to alleviate time demands on pro bono supervisors and to provide students with more direct access to under-served clients.

### Volunteer Programs

The Committee is recommending that more should be done to encourage professors and students to become actively involved in the volunteer programs run by HSBA that provide legal information to under-served individuals (such as Legal Lines and Table Clinics).

### Pro bono Mandate

WSRSL has a Law Student Public Service Program that mandates at least sixty hours of pro bono work from each student for no additional credits.

## **Purpose (13)**

### **Encourage the formation of a broad coalition of groups and individuals to address ways to alleviate poverty in Hawaii.**

The Commission is in the process of identifying appropriate groups and individuals to participate in a coalition aimed at alleviating poverty in Hawaii by ensuring that every child/person in Hawai'i has adequate food, shelter, healthcare, and education.

As a mechanism for gathering interest and identifying appropriate groups and individuals for the coalition, the Commission's Committee on Alleviating Poverty in Hawaii has considered the possibility of a study of the

legal proceedings dealing with housing issues in Hawaii, particularly landlord-tenant and eviction cases, on the rationale that the loss or lack of adequate shelter is often the precipitating incident that causes a spiral into poverty.

Through this study and other future efforts, it is hoped that the Commission will be able to assemble a coalition that has the proper interests, skills, and resources to generate creative and effective solutions to address poverty issues in Hawai`i.

**Purpose (14)**

**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.**

An initial statewide assessment of unmet civil legal needs among low-income people in Hawaii was completed in November 2007. The Commission held its first meeting on July 23, 2008. Therefore, the next statewide assessment is not scheduled until July 23, 2013.

## VII. ACCESS TO JUSTICE CONFERENCE

Over two hundred people came together for the first annual Hawaii Access to Justice Conference on June 24, 2009, to explore how to more effectively address the unmet civil legal needs of Hawaii's low-and moderate-income people. Associate Justice Simeon R. Acoba, Jr., Chair of the Access to Justice Commission, and moderator for the event, explained that the annual conference was an opportunity to review progress made by the Commission and to consider where future efforts should be directed in order to creatively advance access to justice objectives.



During the day, a significant number of substantive issues related to Hawaii's longstanding access to justice problem were presented and discussed.

Following a review of the nature of the unmet need, and a perspective from a client victim of mortgage fraud, two panel discussions took place, one on the implications of the funding crisis for public interest legal service providers, and another on non-traditional approaches to addressing unmet civil legal needs. A significant midday speech emphasizing the importance of striving to realize the principle of justice for all was followed by audience participation and role playing events designed to give attendees a sense of



some of the linguistic, cultural, and other barriers faced by many of Hawaii's low- and moderate-income people. In four afternoon breakout groups, conference attendees had the opportunity to brainstorm and prioritize recommended goals for the Commission. Further insights on the nature of the access to justice challenges were offered in brief concluding remarks.

While there was considerable anxiety expressed at this first Hawaii Access to Justice Conference regarding the formidable challenges involved in meeting greater needs with fewer resources in difficult economic times, there was also a sense of hope expressed regarding the potential for creative responses to these challenges.



## **CHALLENGES**

### The unmet needs

Both of the statewide Hawaii legal needs assessments undertaken during the past decade and a half have demonstrated that the civil legal needs of most of Hawaii's people of moderate income or below are not met. In his opening remarks, Justice Acoba mentioned the main findings of *The 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People in Hawaii*. These findings were further detailed by Legal Aid Society of Hawaii Executive Director Nalani Fujimori Kaina. Here are some of the key findings:

- Only 1 in 5 low- and moderate-income Hawaii residents have their civil legal needs met
- Legal service providers are able to help only 1 in 3 of those who do contact them for assistance

- Areas of significant unmet civil legal needs include housing, family, domestic violence, and consumer issues
- Significant barriers to obtaining legal assistance, include language and cultural barriers, lack of knowledge of one's legal rights, lack of knowledge of available legal services, and difficulty in accessing legal services programs
- There is one legal service attorney for every 2,291 persons living below 125% of the federal poverty level
- There is one private attorney for every 361 persons in the general population

To illustrate the severity of the need and the critical role of the legal service provider, Russ Awakuni, an attorney with the Legal Aid Society of Hawaii, presented one client who had been victimized by a mortgage rescue scam. Unlike many others less fortunate, this client and her family are still in their home, thanks to the successful defense by Legal Aid of multiple eviction efforts.

In his thoughtful mid-day address, featured speaker Chief Justice John T. Broderick, Jr. of the New Hampshire Supreme Court observed that for the past several decades the state courts have found themselves playing an expanded role in resolving society's problems. He observed that the state courts handle more than 98% of all justice needs--over 47 million cases per year--and noted that one-half or more of the courts' work relates to the family: divorce, domestic violence, guardianship, juvenile delinquency, and so on. He suggested that the growing demands on state court judges and staff are largely the result of stresses on the family, as well as the gradual decline in civic, community, and religious institutions and organizations.

#### The limitations of self-representation

In the judgment of Chief Justice Broderick, the single greatest challenge confronting America's state courts in the first decade of the 21st century is the rising number of self-represented litigants, the vast majority of whom simply cannot afford a lawyer. He asked attendees whether they think it would be appropriate to tell an uninsured individual who came into the emergency room that medical advice cannot be provided about his abdominal pain, "but there are some fabulous illustrated textbooks over there, and the instruments have been recently sterilized. Good luck."

The compelling nature of the need at the court was vividly portrayed by Oahu Family Court Judge Michael Broderick. He explained that most of the parties who appear in court on the Thursday paternity calendar, for example, are poor (earning \$2,500 per month or less--if they have a job at all), uneducated (some have a high school education, and others are

illiterate), often drug- or alcohol-addicted, often exhibiting mental health conditions, and often sharing a house with eight to twelve people, if living in a house at all.

Judge Broderick observed: "There is no way in the world that that person can represent himself. It's impossible. So when I hear people talking about giving them basic information and having them represent themselves, that simply doesn't add up. In my experience the typical family pro se party cannot even write the order that I issue." He added that only a week before the Conference, he'd learned that the court had lost, due to funding cuts, the help of lawyers from the Legal Aid Society of Hawaii, who had been drafting the orders for the parties to the 20 to 25 paternity cases that come before him each Thursday.

### Stresses on the public interest providers

During the worst economic downturn in seventy years, much of the funding for public interest legal service organizations has disappeared, requiring that hard choices be made regarding cuts to staff and programs. This has occurred at the same time that the number of low- and moderate-income people needing civil legal assistance, with not only family and housing but many other personal plight and small business matters, has significantly increased. The current state of crisis from the perspective of these nonprofit legal services organizations was clearly articulated during a panel discussion on the subject of funding moderated by Washington Chief Justice Richard Guy (retired).

Nalani Fujimori Kaina, Executive Director of the Legal Aid Society of Hawaii, noted that the loss of the general legal services funding that had been received for 35 years has changed what Legal Aid has to do and how it delivers services. It has been necessary to shift from a model focused on doing the work that clients need, to a model focused on doing the work that will be funded. Many grants require that hours be billed like any other law firm, and cases may be capped at \$2,500 to \$3,000--not enough time, at \$50 per hour, for many domestic violence, custody, and other cases. She noted that the cuts in services to the self-represented have a serious impact on the work of judges and court staff. Moya Gray, Executive Director of Volunteer Legal Services Hawaii, said that the funding cuts have meant that the mission suffers as the money is chased, in order to continue to have capability to offer services at all.

Robin Kobayashi, Executive Director of the Hawaii Immigrant Justice Center (fka Na Loio), echoed the concerns expressed by other panelists. As of June 30, 2009, she said, a critical legal services program for immigrants will be cut, part of the staff must be let go, and the organization must shift to

sustainable, for-profit projects--that is, they must begin charging for services. She explained that the vast majority of clients who need legal advice before they suffer irreparable harm such as deportation to a life-threatening situation will be excluded under this model. Panelist State Senate President Colleen Hanabusa observed that when times are difficult and resources become limited, nonprofits will be sacrificed before "core services."



### Barriers to public access

Conference attendees were given an opportunity to experience the frustration and personal risk associated with a number of other barriers to public access during audience participation and role-playing presentations by Tracey Wiltgen, Executive Director of The Mediation Center of the Pacific, Robin Kobayashi, Executive Director of the Hawai`i Immigrant Justice Center, Nanci Kreidman, CEO of the Domestic Violence Action Center, and James Pietsch, Professor, William S. Richardson School of Law and Director of the University of Hawai`i Elder Law Program.

First, attendees were asked to answer representative questions within four categories that might be encountered by individuals attempting to navigate the legal system. Then, with further help from Hawai`i Immigrant Justice Center interns Jade Wong and Jennifer Allen and Northeastern law school student Travis Agustin, some of the barriers associated with language, culture, and the interrelations between the various departments and resources within the legal system itself were illustrated within a poignant narrative (based on the ordeal suffered by one of the clients of the

Hawai`i Immigrant Justice Center) about Christina, a Cambodian picture bride, and an abusive spouse capable of manipulating the legal system.

Chief Justice Broderick mentioned another aspect of the crisis affecting the legal system. Noting the outdated tools available in many of the courts in the country, he suggested that failure to keep up technologically not only constitutes a barrier to access but may also lead to a withering of the court system itself. "Could it be that state courts are the only institution that doesn't have to change?" he asked rhetorically. "Can't be." He stressed the need for better and more efficient technology, for more public access centers and self-help centers, and effective websites. Indeed, he suggested, if state courts do not keep pace with and remain relevant to the marketplace of the 21st century, they may be virtually abandoned by the business community and within a decade become primarily a forum for self-represented parties and criminal cases--only to encounter even greater funding challenges due to a constriction of function.

## **TOWARD RESPONSES TO THE CHALLENGES**

Not all aspects of Hawaii's access to justice crisis were articulated in the five and a half hours available at the first Hawai`i Access to Justice Conference, and not all of the problems that were articulated could be effectively engaged at the conference. That is the critical responsibility of the Access to Justice Commission and its committees during the months to come. Some of the promising ideas for helping to address some of the above-mentioned aspects of the crisis were reviewed at the conference, each of which is being explored by the Hawai`i Access to Justice Commission.

### Increasing pro bono

Hawai`i Access to Justice Commission Chair Simeon Acoba has taken a leadership role in a campaign to encourage Hawaii's lawyers to commit to the goal of fifty hours per year of pro bono services set by *Hawai`i Rules of Professional Conduct* Rule 6.1. In his opening remarks, he mentioned that upon administering the oath to new lawyers, Chief Justice Ronald T. Moon emphasized that their professional duties include giving due consideration to the legal needs of those without access to justice. At the conference, Justice Acoba acknowledged a number of professional groups that have already committed to satisfying Rule 6.1.

Family Court Judge Michael Broderick reported that he had recently received calls from two young lawyers interested in helping with the paternity calendar following the loss of the assistance of Legal Aid. He also received a positive response when he contacted three of the largest law firms in Hawai`i to ask whether any associate lawyers could assist in a pro bono

fact-finder capacity for the Family Court. He expressed a belief that there are many lawyers who are interested in helping the court, and he encouraged the development of a creative way to match such volunteers with the needs.



(First row, Nalani Kaina, Moya Gray, Justice Acoba, Tracey Wiltgen; second row, Elton Johnson, Wayne Parsons, Chief Justice Guy, Robert LeClair

### Making rain

During the panel discussion of the funding aspect of the access to justice crisis, Senate President Colleen Hanabusa said that the Commission should not give up asking the Legislature for an increase in the Indigent Legal Assistance Fund (ILAF). However, she stressed the importance of locating other funding sources, given the importance of money for access to justice, and the vulnerability of funding sources that are subject to decision-makers in the legislative or the executive branch.

The Hawai`i Consortium of Legal Service providers, the Hawai`i Justice Foundation, and the Commission will continue to actively seek and develop such funding streams. Robert LeClair noted that last year's establishment of rate comparability for the Interest on Lawyers' Trust Accounts (IOLTA) will pay off once interest rates rise. He noted that interest from real estate transactions is not yet tapped to help address unmet civil legal needs.

Another funding idea mentioned was that of cash in lieu of pro bono services, from those who may not be able to fulfill Rule 6.1. The panelists

each responded favorably to this idea, although it was recognized that the amount of funds thus generated would be relatively small.

Justice Acoba noted that although the Commission is not a lobbying mechanism, it does support legal service providers by passing relevant resolutions and joining providers in visits to legislators. He mentioned that the Commission may need to consider more aggressive efforts, and even the creation of a separate foundation that would be authorized to lobby.

#### Realizing the full evolution of the adjunct provider

During the panel discussion of non-traditional approaches to meeting civil legal needs, paralegal Elton Johnson pointed out that the legal field, like most fields, includes discrete sub-areas that involve relatively routine types of services that would be most efficiently delivered by adjunct providers who specialize in them. Such an adjunct provider, he argued, would complement the primary provider, and enhance pro bono, pro se support, unbundling, and other approaches to addressing the need. He observed that many of the unmet needs fall on the relatively routine end of the spectrum of services.

Mr. Johnson mentioned the documented migration of lawyers from a personal plight sort of practice to a corporate clientele and invited those present to imagine how much less efficient the delivery of healthcare services would be without regulated, trained adjunct providers such as nurses and paramedics. He expressed hope that the Access to Justice Commission will examine the effect of the absence of the fully-evolved adjunct provider in the legal field, and consider acting on the *Community Wide Action Plan* action step 6(a), which encourages the training and regulation of paralegals and other non-lawyers to more effectively help to address certain types of unmet needs.

Robert LeClair added that he knows that expanded utilization of paralegals can work. He explained that between 1978 and 1982, during his tenure with the Legal Aid Society of Hawaii, thirty paralegals were employed under VISTA and other compensation. The number of clients served went from 4,500 to 38,500 per year under this program. He suggested that experiments could be run, as have been done in the medical field, to address some of the unmet need.

In his address, Chief Justice Broderick, too, mentioned the possibility of licensing legal practitioners, under lawyer supervision, capable of handling a narrow band of discrete legal problems at affordable rates.

### Affirming the right to universal civil representation

Also during the discussion of non-traditional approaches, Robert LeClair observed that most people are in favor of access to justice in principle. He pointed out that it is actually relatively inexpensive. He mentioned an American Bar Association study showing that only about \$20 per year, per person, is spent on legal services in the United States, and estimating that what is needed is about \$100 per year. Even if this estimate is low, he said, it is not even close to the approximately \$2,000 to \$4,200 spent on each person per year for Medicare.

Mr. LeClair stated that an affirmation of the right to counsel in civil cases, analogous to the affirmation of the right to counsel in criminal cases that was affirmed in *Gideon v. Wainwright* in 1963, would be the ultimate solution to the access to justice problem, moving the discussion from whether we have enough money in the Legislature to give to the poor or whether the providers have behaved this year, to what is necessary to meet the mandate.

In his midday address, Chief Justice Broderick observed that while every politician has a healthcare plan, none he's met has an access to justice plan. He noted, however, the American Bar Association's unanimous resolution, in 2007, in favor of a universal right to civil representation, or civil *Gideon*.

Chief Justice Broderick also mentioned that in New Hampshire a few years ago, where the Supreme Court appointed a citizen's task force with 104 members, two-thirds of whom were non-lawyers, to review and report on the court system's work, one of the recommendations was that the state should "examine the expansion of legal representation to civil litigants unable to afford counsel, and study implementation of a civil *Gideon* for the poor threatened with loss of shelter, sustenance, safety, health, and the custody of a child." He echoed Robert LeClair's view that a civil *Gideon* may prove to be the only universal solution. He stated that we cannot wait for it to happen, but must soften the beachhead by capturing the attention of citizens and the legislators who represent them, and advocating for access to justice, so that the idea of universal civil representation resonates with them. The emergence of the state access to justice commissions is a great start, he said.

### Other promising recommendations

Each of the above promising initiatives are being explored by the Access to Justice Commission and were among the recommended goals selected by the four breakout groups at the end of the conference. Further



recommended goal priorities identified during the four breakout groups, besides those that were discussed earlier in the conference, included:



#### Pro bono

- Mandatory pro bono
- Limited admission of out-of-state lawyers for pro bono
- Waiver of the pro hac vice fee for pro bono representation
- Amendment of the law student practice rule for pro bono

#### Alternative dispute resolution

- More effective use and public awareness of mediation, arbitration, and other forms of ADR



#### Facilitation/public awareness

- Make the courts more user-friendly (instructional videos and materials, language and cultural accessibility, "customer service representatives")
- More information availability (brochures, advertising on buses)

#### Other goals

- Permit more flexibility for judges to accommodate self-represented parties
- Pilot projects at the law school to better equip graduates for community-oriented practice
- Changing the focus of the Commission from being about lawyers and law firms to being about people and their needs

The Commission committees are also exploring many other initiatives that could not be substantively discussed at this year's conference and were not prioritized in its breakout groups. One major example is the concept of unbundled legal services. This promising approach to improving access to legal services was favorably mentioned by Chief Justice Broderick, but was not further explored during this year's conference.

"There is no status quo any longer," said Chief Justice Broderick. "You're either moving forward or backward in the 21st century."



In her concluding remarks, Family Court Judge Evelyn Lance (retired) observed that pro bono is admirable but can fill only a small part of the need, and money is very important but will always be far from adequate. She said that she feels that the concrete developments of the Hawaii Access to Justice Commission and its first annual conference are evidence that we may be at the beginning of a "paradigm change," noting that not only streamlining but also systemic changes are being contemplated.

Commission Chair Associate Justice Acoba, in his opening remarks at the conference, quoted United States Supreme Court Justice Lewis Powell, Jr.: "Equal justice under law is not just a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. It is fundamental that justice should be the same, in substance and availability, without regard to economic status." The Hawaii Access to Justice Commission will attempt to implement the bold, fundamental changes necessary to fulfill this promise.

