

Hawaii Access to Justice Commission

2016 Access to Justice Conference

Friday, June 24, 2016

Workshop: “Innovations in Expanding Access to Justice”

Presenters: Judge Ronald Ibarra (moderator), J. Randal Valenciano, Kristin Shigemura, and Greg Lui-Kwan

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Judge Ibarra had the panelists discuss certain models and examples as ways in which ATJ can be achieved.

New York Court Navigator Program: Lui-Kwan gave an overview of the New York court navigator model. In the New York model, it was important to reach out to members of the community no matter where they live. Access to justice has to be available to everyone; otherwise the rule of law will deteriorate. We need to have everyone’s voice in the courts. There is a widening gap between the haves and have nots. The rule of law is the cornerstone of our democracy. In 2014, Judge Lippman undertook a pioneering effort in New York.

With regard to demographics in New York, they selected two of the most disenfranchised boroughs in New York, the Bronx and Brooklyn. The Bronx has 28-30% of its population below poverty level and 45% Hispanic and black. In the Bronx, the court navigator program focused on consumer credit cases and in Brooklyn, the focus was on housing cases.

The court navigators are non-lawyers. The program started with 61 volunteers who serviced 1800 individuals who were not represented. The court navigators received training as well as a manual. The navigators met the unrepresented people and walked them through the court process. They helped the litigants fill out the do-it-yourself court forms. They also showed the litigants how they can access information about their case online. On the return date, the navigators accompanied the litigants into the courtroom. The navigators were able to speak in court only if they were asked a question.

After a one-month trial period, a survey was taken of 100 cases. The litigants who were assisted were more relaxed and less anxious. They were better able to relate pertinent facts to the judge than those who were not assisted by a court navigator. Of those who were assisted, 99% had

positive views of their judicial experience. The importance of this is that these people had the perception that they had a chance and had their day in court. It is up to us, the legal profession, to do what we can to promote the rule of law and ATJ as an important cornerstone of democracy.

Ho'okele Court Navigation Project: Shigemura explained the Ho'okele Court Navigation Project was started in 1999 and existed until 2001 at Honolulu District Court and at Family Court. There was a kiosk at the front of the court and a court concierge was there to help look up where the litigants were to go so that they got to the right courtroom on time. These court concierge personnel were paid positions. Additionally there are the self-help centers that still exist in most circuits. Pro se litigants can get help finding the right forms to use so that they can better represent themselves. The self-help centers were funded by the State Justice Institute and through an Americorps grant and were Chief Justice Moon's initiative.

Ho'okele still is in operation in family court where the program has been successful. The court staff say that the program is very helpful and litigants as well find the program helpful.

Recommendations:

- 1) A lot of time and work has to be done upfront to plan and anticipate the issues that will come up.
- 2) A high level champion or sponsor is needed. Chief Justice Moon was the champion of Ho'okele, and in New York, Chief Judge Lippman was the champion. In addition, buy-in from the court staff and others is needed to assist with the implementation. The Judiciary has to be able to lobby for the funds to implement the program.
- 3) The centers should be staffed by full-time professionals who know the courts or there will be a need to have a training program.
- 4) Supervision by a skilled manager is necessary.
- 5) It is important to identify all resources that will be needed for implementation so that the staff has what they need in order to do the job.
- 6) An evaluation component is needed so people who use the program can give feedback.

Kauai Example: Judge Valenciano explained what they are doing on Kauai. He prefaced his remarks with the need for access to justice in order to balance the scale of justice from the start. On Kauai, at the courthouse the calendar is on a computer monitor so people know where they should go. Having heard about the concierge desk on Oahu, Judge Valenciano wanted to do something similar. He said due to lack of funding, they asked court retirees to volunteer their time. This involved

no training. However the downside is that the program relies entirely on volunteers.

Other programs that can be reviewed are in the Washington state family court and in the Massachusetts housing court. The idea is to focus on limited areas and have nonlawyers provide representation with limited authority. An idea would be to utilize the services of retired lawyers in our community in certain limited areas of practice.

It is necessary for defendants to have a better experience in the courtroom in order to balance the scales of justice. Judge Valenciano talked about the need to welcome the unrepresented litigants into our “house.”

Judge Ibarra discussed dealing with the limited financial resources available. He suggested we look at the volunteers coming forward. We need to also look to nonlawyers. On the Big Island, when the judges are sanctioning attorneys, the sanction is often an assignment to work in the self-help centers. Their self-help centers are therefore fully staffed. On Oahu, law firms volunteer for a month at a time. Volunteers can also be found in the colleges as well as in law school.

We need to see access to justice as a process where the pro se litigant is provided with the necessary assistance. The litigant may disagree with the judge’s ruling, but it is important for the litigant to feel that the process is just. In district court, landlord-tenant and debt collection cases are generally a cattle call. The navigator would bring the litigants together before the judge enters the courtroom. This would be supplemental to the bailiff’s responsibilities. As in any program, sustainability of anything started is needed.

It was mentioned that a type of dispute resolution process is needed before cases go straight to the adversarial process. One example is the foreclosure mediation program in the Third Circuit. Once a complaint is filed, a notice for request for mediation is sent. The court schedules the pre-mediation hearing, and this tolls the time to file an answer. There is an attempt to level the playing field between the financial institution and the borrower.

Another policy in the Third Circuit is that limited representation (unbundling) is allowed by special appearance for a particular motion. Also allowed on Kauai are telephone appearances, which are permitted by writing a letter to the judge requesting the phone appearance.

With regard to the court concierges, like at stores, they are often senior citizens. We need to expand our thinking and find nonlawyers who

can provide some of the services. A video should also be created in order to provide instructions to litigants. YouTube could be used to do a whole series about how to go to court and what you need to do before you go to court. The videos would need to be translated into several languages.

A partnership with the Sheriff's office or with the security guard company was suggested so that the guards can act as court concierges as well.

Judge Ibarra invited and encouraged all who are interested to sign up for one of the Commission committees to help on these issues.