

Hawaii Access to Justice Commission

2016 Access To Justice Conference

Friday, June 24, 2016

Workshop: “Divorce: Challenges to Access to Justice”

Presenters: Judge R. Mark Browning, Deputy Chief Judge and Senior Family Court Judge; Judge Kevin Souza; Jessi Hall

Prepared by: Mei Nakamoto

The 2016 Workshop focused on the challenges for users of the Family Court who want a divorce or who are the spouses sued in a divorce case. The sheer number of users poses a challenge in itself. On average, over 3,800 new divorce cases are started in the First Circuit (the island O’ahu) each year. The number of children affected by divorce, as indicated by the enrollment of First Circuit Family Court’s Kids First Program, average 34 each week, 52 weeks a year. The adult users’ needs for Family Court assistance range from uncontested “paper only” divorces by agreement, to hearings with witnesses and exhibits (with an average of 34 hearings each week), to full-blown divorce trials that last for days. The three full-time divorce judges in the First Circuit handle about 2000 divorce matters each year. Those matters include requests for relief prior to the divorce (over 1000 each year) and for assistance after a divorce (almost 1500 each year). In order to minimize the delays in appearing before a divorce judge, the First Circuit recently added a *per diem* judge to add two more days of courtroom time for litigants.

The Family Court of the First Circuit, self-described as a court committed to therapeutic and restorative justice within the parameters of the law, has a mission: To provide every family, child and individual under its jurisdiction with equal access to fair, efficient, culturally aware and timely justice. As a result of the high volume of divorce-related services requested of the Family Court, the Workshop identified the following challenges (hereby listed in no particular order) that interfere with the fulfillment of the Court’s mission and pervade all stages of a divorce case: Access logistics (e.g., difficulty finding private transportation and inefficient public transportation routes to and from the Court in Kapolei; lack of computer access to the Judiciary’s website for forms and instructions); staffing (e.g., shortage of staff and judges in light of the

number of consumers); language logistics (e.g., barriers due to spoken and non-spoken language differences, cultural differences, and illiteracy); and knowledge barriers (e.g., misinformed consumers; uneven levels of knowledge due to lack of knowledgeable attorneys for everyone).

For the consumers who are divorced but continue to need judicial assistance, the challenges are exacerbated by the knowledge barriers. The vast majority of post-divorce litigants have no attorneys. Therefore, they struggle with the lack of knowledge about notice to the former spouse and others (such as the Child Support Enforcement Agency), the law and rules of procedure, and alternatives to seeking relief from the Court (e.g., a CSEA administrative proceeding, or mediation).

In response to the challenges, the Family Court has collaborated with community non-profit legal services organizations (e.g., Legal Aid Society of Hawai'i ("LASH"), Volunteer Legal Services of Hawai'i). For example, the Court worked with LASH to create an online program that helps people going through a divorce case with a step-by-step self-help program (see <http://www.lawhelp.org/hi> and attached flyer).

In addition, the Family Court of the First Circuit developed its own programs. In the First Circuit, consumers can seek in-person assistance with divorce papers and divorce case procedure (and other matters, such as adoption and legal guardianship) at the Ho'okele window at the Family Court in Kapolei, as well as the desk at the First Circuit Court building on Punchbowl Street in Honolulu. (See attached flyer.) There, anyone can show up empty-handed or with printed forms downloaded from the Judiciary's website and get instructions about completing the forms and providing the required prior notice by serving the papers on the estranged spouse. In 2015, the Ho'okele program provided 39,321 instances of assistance with just three employees at the Kapolei Family Court.

Twice each month at the Family Court in Kapolei up to 24 consumers can consult with volunteer attorneys from the Hawai'i State Bar Association's Family Law Section. Each appointment is free and can last up to thirty minutes. (See attached Information Sheet.) That program, Kapolei Access To Justice Room ("KAJR"), is one of many Access To Justice Rooms located in courthouses across the State that provide free attorneys for limited consultations about family law, landlord-tenant law, contracts and other issues. All of these programs are open to the public; there is no barrier to entry, such as an income requirement.

In addition, users of KAJR, other Access To Justice Rooms, and the courts in general have access to free interpreters of over 12 languages either by telephone or in person if English is not the consumer's native language. Furthermore, hearing-impaired consumers have access to free sign-language interpreters.

As a result of its mission and the ongoing challenges, the Family Court of the First Circuit, as well as the other Circuits, continue to innovate to address the needs of those who want a divorce or have spouses who want a divorce, regardless of the ability to pay or communicate.