2017 Access To Justice Conference
"Fulfilling The Promise Of Equal Justice"
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CHALLENGING ISSUES FOR THE LOW INCOME CLIENT IN FAMILY COURT

Presenters: The Honorable R. Mark Browning, Chief Judge and Administrative Judge of the First Circuit (facilitator); Mei Nakamoto, Esq.; James K. Hoenig, J.D., Ph.D.

The 2017 workshop focused on the challenges in the Family Court for low-income users of the Court's services. Chief Judge and Administrative Judge of the Circuit Court (First Circuit) R. Mark Browning, who was the Deputy Administrative and Senior Family Court Judge of the Family Court (First Circuit) until his April 2017 appointment to his current position, familiarized the audience with the organization of the Family Court (First Circuit) and its mission, vision, and values statements. The salient feature is the Court's objective of being a place of healing for the approximately 50,000 people who pass through that court house annually. Undeniably, there are challenges to meeting that objective.

Many of the challenges facing the low-income families of that population remain the same as those identified in the 2016 workshop: Access logistics (e.g., difficulty finding private transportation and inefficient public transportation routes to and from the Family Court in Kapolei; staffing (e.g., shortage of judges and staff, including courtroom staff and Judiciary employees who provide free technical service through the "Ho'okele" program at the Kapolei courthouse); and knowledge barriers (e.g., misinformed consumers; uneven levels of knowledge due to lack of knowledgeable attorneys for everyone). An additional challenge is the vast number of military families who use the Family Court. According to an informal survey of cases, it was estimated that about 40% of the uncontested and contested divorce cases in the First Circuit involve a party who is a military service member. (The implied challenge is that their impact on the Judiciary is exacerbated by the lack of tax support, since many of those service members pay income taxes to states other than Hawai'i.)

Noteworthy was Judge Browning's observation that much of the dissatisfaction with the lack of meaningful access to judicial services focuses on divorce cases and child custody disputes between non-married parents. Yet, those disputes comprise about 20% of the Family Court's "business." The disproportionate focus on just 20% of the Court's operations illustrates the enormity of the impact those types of disputes have on our community. For that reason, solutions are critically important.

Meeting the challenges has taken many forms. There has been close collaboration between the Court and the Family Law Section of the HSBA ("FLS"). That collaboration has resulted in the Kapolei Access To Justice Room (KAJR) and the Volunteer Settlement Master ("VSM") Program. KAJR provides free legal advice provided by members of the FLS in 30-minute client-attorney meetings. The VSM Program involves experienced divorce and child custody FLS members providing free assessments for three (and in most cases more than three) hours to *pro se* and represented parties. The objective of the Program is to give the parties and their

attorneys (if any) an objective perspective and "reality check" of the viability of respective positions, which could lead to compromise and settlement of disputes. Mei Nakamoto, who participates in KAJR and the VSM Program, invited attorney members of the audience to volunteer. She explained the time-commitment is minimal and the benefits from helping people in need without the responsibilities of case management were very attractive features.

Other successful collaborations have been with non-governmental organizations dedicated to providing various law-related services, such as Volunteer Legal Services of Hawai'i (legal clinics, online legal assistance, attorney identification for pro bono representation), Legal Aid Society of Hawai'i (order-drafting for cases with all *pro se* parties, online judicial form completion), Domestic Violence Action Center (low-cost or free attorney representation and/or case management for victims of domestic abuse, outreach and education for victims seeking restraining orders), and Mediation Center of the Pacific (mediation in paternity cases, administration of the VSM Program).

These efforts have existed for many years. Despite the recent change of leadership at the Family Court (First Circuit) and evolving leadership in the other Circuits as judges retire, there is a continuing commitment to maintain, improve and innovate. This year, the Workshop addressed the challenges for low-income clients by featuring the benefits of avoiding the Family Court.

Dr. James Hoenig challenged the audience to consider whether there is meaningful justice in a system that presumes parents and spouses will be adversarial and submits them to months or years of litigation and the high emotional and financial costs which accompany that path. He also made a fascinating proposition: Resolution through private mediation and arbitration benefit low-income parties because the private procedures divert high-income and high-asset parties (who often use a disproportionate amount of judicial time) away from the Family Court, thereby liberating judicial resources for low-income parties.

Dr. Hoenig also mentioned an often-overlooked benefit of alternative dispute resolution: There are myriad benefits from mediation and arbitration in addition to resolution of a dispute, while the law restricts options and, thereby, provides little besides the often-temporary end of a fight. Since mediation and arbitration are private processes, the parties are able to express desires and frustrations that a judge could not consider. That procedural flexibility can motivate a party to compromise and reach an agreement. For example, a party in a divorce mediation can explain frustration about a spouse's conduct, whereas that information would be irrelevant in this no-fault

jurisdiction and, consequently, be excluded by a judge. Having experienced the catharsis of "unloading" to the mediator, a party is often more willing to compromise. On the other hand, a litigant forced to swallow a decree imposed by a judge after being limited by the evidence rules has less motivation to avoid conflict later. With a lifetime of parenting ahead of them, litigating parents who undergo that process face a bleak co-parenting future, and the Family Court will likely see them again.

Dr. Hoenig closed with a call to action: Change the concept of justice in the Family Court by diverting parties to the option of alternative dispute resolution. Encourage them to collaborate as people with shared interests rather than litigate as adversaries.