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**HAWAI'I  
ACCESS TO JUSTICE  
COMMISSION**

**ANNUAL REPORT FOR 2014**





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## I. HAWAI'I ACCESS TO JUSTICE COMMISSION

This report highlights the Hawai'i Access to Justice Commission's ("Commission") activities in 2014.

### A. Commissioners

The Commission comprises twenty-two Commissioners. The various Commissioners are appointed as designated in Rule 21 of the Rules of the Supreme Court of the State of Hawai'i by separate appointing authorities:

- Chief Justice of the Hawai'i Supreme Court
- Hawaii State Bar Association ("HSBA")
- Hawaii Consortium of Legal Service Providers
- Hawaii Justice Foundation ("HJF")
- Williams S. Richardson School of Law
- Hawaii Paralegal Association
- Governor of the State of Hawai'i
- Attorney General of the State of Hawai'i
- State of Hawai'i Senate President
- State of Hawai'i Speaker of the House

The Commissioners who served in 2014 are listed below:

	Name	Appointed By	Term Ends
1.	Hon. Daniel R. Foley (CHAIR as of June 30, 2010)	Chief Justice	12/31/15
2.	Jill M. Hasegawa (VICE-CHAIR)	Hawaii State Bar Association	12/31/14
3.	Hon. Simeon R. Acoba, Jr. (Former Chair from May 2008 until June 29, 2010)	Chief Justice	12/31/15
4.	Hon. Ronald Ibarra	Chief Justice	12/31/15
5.	Hon. Joseph Cardoza	Chief Justice	12/31/14
6.	Hon. Trudy Senda	Chief Justice	12/31/15
7.	Derek Kobayashi	Hawaii State Bar Association	12/31/16
8.	Darien W.L.C. Nagata	Hawaii State Bar Association	12/31/14
9.	Tracy Jones	Hawaii State Bar Association	12/31/16
10.	Michelle Acosta (Volunteer Legal Services of Hawai'i)	Hawai'i Consortium of Legal Services Providers	12/31/14
11.	M. Nalani Fujimori Kaina (Legal Aid Society of Hawai'i)	Hawai'i Consortium of Legal Services Providers	12/31/15



12.	Moses Haia (Native Hawaiian Legal Corporation)	Hawai'i Consortium of Legal Services Providers	12/31/16
13.	Victor Geminiani (Hawai'i Appleseed Center for Law and Economic Justice)	Hawai'i Consortium of Legal Services Providers	12/31/16
14.	Jean Johnson (Non-attorney public representative)	Hawai'i Consortium of Legal Services Providers in consultation with Chief Justice	12/31/15
15.	Scott S. Morishige (Non-attorney public representative)	Hawai'i Consortium of Legal Services Providers in consultation with Chief Justice	12/31/14
16.	Gary M. Slovin	Hawaii Justice Foundation	12/31/15
17.	Dean Aviam Soifer	William S. Richardson School of Law	12/31/16
18.	R. Elton Johnson, III	Hawaii Paralegal Association	12/31/16
19.	Patricia McManaman	Governor	n/a
20.	Mary Anne Magnier	Attorney General	n/a
21.	Hon. Clayton Hee	Senate President	n/a
22.	Hon. Della Au Belatti	House Speaker	n/a

## **B. Purpose**

Under Rule 21 of the Rules of the Supreme Court of Hawai'i, the purpose of the Commission "shall be to substantially increase access to justice in civil legal matters for low- and moderate-income (together "low-income") residents of Hawai'i."<sup>1</sup> To accomplish such purpose, "the Commission shall, along with such other actions as in its discretion it deems appropriate, endeavor to:

- (1) Provide ongoing leadership and to oversee efforts to expand and improve delivery of high quality civil legal services to low-income people in Hawai'i.
- (2) Develop and implement initiatives designed to expand access to civil justice in Hawai'i.
- (3) Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low-income Hawai'i residents.
- (4) Increase and stabilize long-term public and private funding and resources for delivery of civil legal services to low-income Hawai'i residents.

<sup>1</sup> A copy of Rule 21 of the Rules of the Supreme Court of Hawaii is attached as Appendix A.



- (5) Maximize the efficient use of available resources by facilitating efforts to improve collaboration and coordination among civil legal services providers.
- (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.
- (7) Reduce barriers to the civil justice system by developing resources to overcome language, cultural, and other barriers and by giving 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.
- (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.
- (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, and increase awareness of low-income people's legal rights and where they can go when legal assistance is needed.
- (10) Increase effective utilization of paralegals and other non-lawyers in the delivery of civil legal services to low-income Hawai'i residents.
- (11) Increase support for self-represented litigants, such as through self-help centers at the courts.
- (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.
- (13) Encourage the formation of a broad coalition of groups and individuals to address ways to alleviate poverty in Hawai'i.
- (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 to increase access to justice.

### **C. Committees**

The Commission created committees and various other ad hoc subcommittees and task force groups to carry out and facilitate its mission. Commissioners serve as chairs for the committees. The role of each committee is advisory only, and each committee is intended to make such recommendations to the Commission as the committee determines to be appropriate. The committees, their chairs, their members, and the areas of



responsibility assigned to them may be changed at any time by the Commission.

### **Administration Committee**

[Associate Justice Simeon R. Acoba, Jr. (ret.) (Chair), David Reber (Vice Chair), Associate Judge Daniel R. Foley, Michelle Acosta, Jill Hasegawa, Derek Kobayashi, Carol K. Muranaka, Tracey Wiltgen]

- Assist the Chair of the Commission in developing an agenda for each Commission meeting and assist in arranging for presenters and written or electronic materials in support of agenda items
- Assist in developing a budget for the Commission, including identifying potential sources of funding, and providing reports on the status of operations relative to budget
- Assist in providing administrative and logistical assistance to the Commission and its committees and task forces
- Coordinate the activities of volunteers in support of the Commission's initiatives

### Summary of Actions Taken

The Committee considered and made recommendations to the Commission and other committees regarding the following:

- (1) Five applications for service on the Commission's committees and made recommendations to the Commission and other committees.
- (2) The Report to the ABA Resource Center for Access to Justice Initiatives regarding the \$ 20,000 grant received from the ABA to the Commission.
- (3) Financial support from The Cades Foundation for the 2014 Access to Justice Conference.
- (4) Comments and suggestions from the 2014 Access to Justice Conference and allocation to the various Commission committees.
- (5) Financial support for attendance by Chief Justice Mark Recktenwald at the National Meeting of State Access to Justice Chairs.
- (6) Schedule for Commission meetings and the Access to Justice Conference.
- (7) Website design for the Commission.
- (8) Information correcting some of the data gathered for the Justice Index.





- (9) Senate Concurrent Resolution No. 116, loan repayment program for the graduates of the William S. Richardson School of Law.
- (10) Adjunct legal service providers question referred to the Committee on the Right to Counsel in Certain Civil Proceedings.
- (11) Commission's Annual Report for 2013; approval of printing certain number of hard copies for the appointing authorities such as the Chief Justice, Governor, and legislators.
- (12) Financial support for the Pro Bono Celebration on October 23, 2014.
- (13) Tennessee Online Justice software, which provides a platform where volunteer attorneys answers legal questions for free. (There are rules to meet before one can participate.) Referred to the Committee on Initiatives to Enhance Civil Justice.
- (14) Ka`u Legal Clinic where volunteer attorneys provided legal advice to low-income Ka`u residents on such matters as divorce, child custody, child support, paternity, guardianships, adoptions, landlord-tenant, small claims, collections, Chapter 7 bankruptcy, wills and/or trusts, power of attorney, healthcare directives, and Native Hawaiian rights.

#### **Annual Report Committee**

[Jill Hasegawa (Chair), Judge Karen Nakasone (Vice Chair)]

- Assist in preparing an annual report of the activities of the Commission for filing with the Supreme Court in accordance with Rule 21(j)(1)

#### **Summary of Actions Taken**

The Annual Report of the Commission's activities for 2013 was prepared. The annual report was distributed electronically to the HSBA board of directors and others. Hard copies were transmitted to the appointing authorities. The 2013 Annual Report was also posted on the Commission's subpage at the HJF's website.

#### **Committee on Education, Communications and Conference Planning**

[Dean Aviam Soifer (Chair), Carol K. Muranaka (Vice Chair), Rep. Della Au Belatti, Sonny Ganaden, Sen. Clayton Hee, Mihoko Ito, Elton Johnson, Robert LeClair, Leila Rothwell Sullivan, Lorenn Walker]

- Assist in organizing an annual summit for the presentation of access to justice issues
- Make recommendations on encouraging lawyers, judges, government officials and other public and private leaders in Hawai'i to take a leadership role in expanding access to justice



- Assist in developing strategies for educating governmental leaders and the public about the importance of equal access to justice and of the problems low- and moderate-income people in Hawai'i face in gaining access to the civil justice system, including through informational briefings, communication campaigns, statewide conferences, testimony at hearings and other means
- Increase awareness of low- and moderate-income people's legal rights and where they can go when legal assistance is needed
- Assist in developing a communications strategy and preparing communications consistent with that strategy
- Encourage judges, lawyers, and legal services providers to prepare a series of articles on access to justice topics for publication in the *Hawaii Bar Journal* and other media

### Summary of Actions Taken

The Committee considered and made recommendations to the Commission regarding the following:

- (1) Six MCPE credits for the 2015 Access to Justice Conference, which request was subsequently approved by the HSBA.<sup>2</sup> (Five CLE credits and one ethics credit were approved by the HSBA.)
- (2) Coordinated the 2014 Access to Justice Conference ("Meeting the Challenges to Equal Justice for All") on Friday, June 20, 2014.<sup>3</sup>
- (3) Six MCPE credits for the 2014 Access to Justice Conference was requested and subsequently approved by the HSBA.
- (4) Prepared a report to the Commission summarizing the 2014 Access to Justice Conference including expenses, evaluations, and suggestions.

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<sup>2</sup> Effective January 1, 2015, Supreme Court Rule 22 was amended to eliminate the distinction between voluntary continuing legal education ("VCLE") and MCPE (mandatory continuing professional education) credits, so there is a requirement that each active bar member complete at least three continuing legal education ("CLE") each annual reporting period. One hour of approved ethics or professional responsibility credit is required every three years.

<sup>3</sup> Further discussion can be found at "II. 2014 Access to Justice Conference" in this report.



### **Committee on Funding of Civil Legal Services**

[Gary M. Slovin (Chair), Michelle Acosta, Rebecca Copeland, M. Nalani Fujimori Kaina, Robert LeClair, Dean Aviam Soifer, Kanani M. Tamashiro, Wilfredo Tungol]

- Make recommendations and provide advocacy in support of establishing a permanent “home” for the legislative funding of providers of civil legal services to low- and moderate-income individuals so that funding for such services may be stable and secure
- Make recommendations and provide advocacy in support of increased legislative funding of civil legal services providers
- Make recommendations and provide advocacy in support of increased funding for civil legal services providers by the federal Legal Services Corporation and other federal and state agencies
- Make recommendations and provide advocacy in support of increased funding of civil legal services through the indigent legal services filing fee surcharge and other measures
- Assist legal services providers in exploring additional public and private funding sources and in developing programs or projects for which funding may be sought
- Make recommendations in collaboration with the Judiciary, the HSBA, law firms, and other employers of lawyers, to encourage attorneys to provide substantial financial support to legal services providers, including additional amounts in years when such attorneys do not meet the aspirational pro bono goals of Rule 6.1 of the Hawaii Rules of Professional Conduct (“HRPC”)

### **Committee on Increasing Pro Bono Legal Services**

[Michelle Acosta (Chair), Tracey Wiltgen (Vice Chair), Sergio Alcubilla, Rebecca Copeland, Ramona Hussey, Linda Ichiyama, Tracy Jones, Derek Kobayashi, Audrey Stanley, Kanani Michelle Tamashiro, Jan Tamura, Jeanilou Torrado, Shannon Wack]

- Study best practices in other jurisdictions for increasing the level of pro bono services by lawyers, paralegals and others who may assist in overcoming barriers to access to justice, including developing effective recruitment campaigns
- Make recommendations concerning ways to develop a culture of commitment to pro bono service among Hawaii’s lawyers
- Maintain a list of legal services providers and others that offer opportunities for pro bono service, describe the nature of those opportunities and explore and assist providers in increasing the opportunities they provide for such service
- Make recommendations concerning ways to make providing pro bono service more attractive to attorneys, such as by assisting in developing



resources for the pre-screening of cases, ensuring proper training, providing support and recognizing service

- Make recommendations concerning ways in which the Commission, the Judiciary and the HSBA--acting alone or in partnership with others--can encourage attorneys to provide higher levels of pro bono service
- Make recommendations concerning ways to encourage law firms and others who employ lawyers (including governmental agencies and corporate law departments) to promote greater pro bono service among their attorneys
- Make recommendations concerning ways to encourage retired lawyers and judges to provide pro bono or staff legal services to low- and moderate-income individuals

### Summary of Actions Taken

- (1) Supported activities initiated by the Pro Bono Initiatives Task Force.
- (2) Reviewed proposal for the Molokai Legal Clinic and conferred with the Senior Counsel Division of the HSBA. Reported to the Administration Committee that the Senior Counsel Division would be conducting a legal information clinic in Molokai.
- (3) Participated in the working group on the Appellate Pro Bono Pilot Project, headed by Rebecca Copeland, which project included the Supreme Court.
- (4) Designed the Ka`u Legal Clinic from an initiative from the Committee on Initiatives to Enhance Civil Justice as a pilot for delivery of legal services to underserved rural communities in Hawai'i.<sup>4</sup>
- (5) Worked on increasing pro bono participation through pro bono recruitment at the Access to Justice Conference. Made recommendations to the Committee on Education, Communications, and Conference Planning to include a pro bono focused component at the conference by way of a pro bono room or incorporated into applicable workshops.

### **Committee on Initiatives to Enhance Civil Justice**

[Judge Ronald Ibarra (Chair), Kristin Shigemura (Vice Chair), Sergio Alcubilla, Earl Aquino, Lincoln Ashida, Elizabeth Fujiwara, Ryan Hew, Mihoko Ito, Elton Johnson, Laura Ka`akua, Carol Kitaoka, Gregory Lui-Kwan, Michelle Moorhead, George Zweibel]

- Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low- and moderate-income Hawai'i residents

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<sup>4</sup> More information about the Ka`u Legal Clinic is found later in this Report.



- Study best practices in other jurisdictions and develop and recommend new initiatives to expand access to justice in Hawai'i
- Make recommendations and provide advocacy in support of enhancing recruitment and retention of attorneys to work as staff members or to volunteer pro bono for nonprofit civil legal services providers in Hawai'i, which may include:
  - Establishment by the Hawai'i legislature of a student loan repayment assistance program to help full-time, nonprofit civil legal services attorneys pay back their student loans
  - Adoption by the Hawai'i Supreme Court of rules to permit attorneys actively licensed to practice law by the highest court of a state or territory of the United States or the District of Columbia or Puerto Rico and who are working on staff or volunteering pro bono for nonprofit civil legal service providers to practice in that capacity for up to one year without being admitted to practice law in Hawai'i
- Make recommendations concerning ways in which paralegals and other non-lawyers may assist in meeting specified unmet civil legal needs, including whether ethical or procedural rules would need to be changed to accommodate such assistance

#### **Law School Liaison Committee**

[Moses Haia (Chair), Mary Anne Magnier (Vice Chair), Katie Bennett, Jean Johnson, Linda Kreiger, Calvin Pang, James Pietsch, Dean Aviam Soifer]

Make recommendations concerning ways to:

- Expand efforts to create and develop law student interest in the practice of poverty law by increasing existing clinical programs and instituting new ones to serve the needs of low- and moderate-income populations
- Emphasize, as part of the professional responsibilities curriculum, a lawyer's ethical duty under HRPC Rule 6.1 to perform pro bono legal services and the ways this obligation can be met
- Develop opportunities with legal services providers, and sources of additional funding, to support law students' efforts to meet the 60-hour pro bono graduation requirement in a manner consistent with addressing the needs of low- and moderate-income populations
- Encourage and recognize the involvement of faculty members in efforts to promote equal justice by, for example, testifying in support of access to justice legislation, accepting pro bono cases, serving on boards of organizations that serve the legal needs of low- and moderate-income populations, contributing financially to organizations that serve the legal needs of low- and moderate-income people and filing amicus briefs in proceedings affecting legal services to the underserved



- Develop more public interest summer and academic year clerkships and obtain grants for summer internships and clerkships that serve low- and moderate-income populations

### **Committee on Overcoming Barriers to Access to Justice**

[Jean Johnson (Chair), Jennifer Rose (Vice Chair), Russ Awakuni, Patricia Cookson, Nanci Kreidman, Mary Anne Magnier, Mark K. Murakami, Calvin Pang, Cynthia Tai, Malia Taum-Deenik, Kristina Toshikiyo, Randall M. Wat]

- Make recommendations concerning ways to remove impediments to accessing the justice system due to language, cultural and other barriers and make recommendations concerning what programs should be initiated to address this barrier, which may include:
  - Providing multilingual services, including increasing the number of available staff and pro bono attorneys and court personnel who are bilingual
  - Providing forms in multiple languages
  - Providing translation services in court, administrative agencies, and with legal service providers
  - Partnering with the University of Hawai'i and other schools offering language training to encourage multilingual volunteers to provide outreach and translation services
- Identify other barriers to obtaining legal assistance and make recommendations concerning ways to address them, such as through the provision of ancillary services, e.g., providing for child care during a court hearing or for necessary mental health services
- Seek to reduce barriers by recommending input on existing and proposed laws, court rules, regulations, procedures and policies that may affect meaningful access to justice for low- and moderate-income Hawai'i residents

### Summary of Actions Taken

Four quarterly meetings were held that were well attended. Four new members were welcomed to the committee during the year: Mark Murakami, Randall Wat, Patricia Cookson, and Cynthia Tai. They have diverse backgrounds and employment settings bringing new values, ideas, and viewpoints to enrich the Committee.

During the first meeting of the year, strategic objectives for the year were adopted.

- Unmet Needs of Persons with Disabilities
- Micronesian Access Issues/Data Needs
- Need for Zero to Three Court
- Further Language Access Training Programs



Considerable success was achieved on each of the objectives as described in the following paragraphs.

Unmet Needs of Persons with Disabilities. The third meeting of the year was devoted to an educational session on the issues, particularly those surrounding school-aged children. Louis Erteschik, Executive Director of the Hawai'i Disability Rights Center was invited to provide an informational session. The serious barriers facing parents as they represent themselves *pro se* in Individuals with Disabilities Education Act ("IDEA") due process hearings were discussed. Consensus was reached on a number of recommendations from that meeting. One action was to prepare a request for a workshop discussing the issues during the Access to Justice Conference in June 2015.

Micronesia Access Issues/Data Needs. A guest speaker from the Hawai'i Appleseed Center for Law and Economic Justice was invited to participate in the fourth meeting of the year to discuss the pressing legal issues facing the Compact of Free Association ("COFA") emigrants in Hawai'i. The publication, *A Community of Contrasts*, was discussed during an earlier meeting. Three consensus recommendations were developed for presentation to the Commission. A request was made for a workshop during the 2015 Access to Justice Conference to have COFA members share the barriers they are encountering in the State as they seek to meet their basic needs for health, shelter, safety, and educational services.

Need for Zero to Three Court. Discussions were held during the first two meetings of the year to inform members about the work of the Zero to Three Court. The Committee voiced its support to bring the needs to the legal community and judiciary through preparation of an article for the Hawaii Bar Journal. Two members of the committee worked with Judge Christine Kuriyama of the Zero to Three Court to produce, "Access to Justice for Those Without Voice, Words, or Language." This article was published in the December 2014 issue of the Hawaii Bar Journal.<sup>5</sup> The Chief Justice, during a December judicial swearing-in ceremony publicly praised the work of the Court and pledged his support to include funding for its continuation in the next Biennium Judiciary Budget.

Further Language Access Training Programs. The Committee has been collaborating with Judge Katherine Leonard and the American Judicature Society Criminal Justice Committee for further training and a possible forum that will likely occur during 2015.

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<sup>5</sup> A copy of the article, "Access to Justice for Those Without Voice, Words, or Language" in the December 2014 issue of the Hawaii Bar Journal is attached hereto as Appendix B.



### **Committee on the Right to Counsel in Certain Civil Proceedings**

[Tracy Jones (Chair), Shannon Wack (Vice Chair), Jessica Freedman, Regina Gormley, Brandon Ito, Mary Anne Magnier, James Weisman, Cheryl Yamaki]

- The American Bar Association, at its 2006 annual meeting in Hawai'i, adopted a resolution supporting "legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody, as determined by each jurisdiction." The Committee should study developments in other jurisdictions with respect to the establishment and implementation of a right to counsel in certain civil proceedings
- Make recommendations concerning the types of civil matters in which the rights or issues involved are of such fundamental importance that counsel should be provided in Hawai'i, assess to what extent attorneys are available for such matters and make recommendations on how to assure that counsel is available

#### Summary of Actions Taken

- (1) Assigned a new chair of the Committee in August 2014.
- (2) Discussed the case of In re T.M., 131 Haw. 419, 319 P.3d. 338 (2014), about having a procedural checkpoint for Family Court cases or an amendment to the Hawai'i Revised Statutes that directs the Family Court Judge to appoint counsel for indigent parents upon the granting of a petition to DHS for temporary foster custody of their children. Also discussed was a reporting requirement to track the number of cases and the number of appointments.
- (3) Tasked in October 2014, pursuant to Rule 21(b)(5), to explore and develop an adjunct legal service provider referral and methods of partnership to "(5) Maximize the efficient use of available resources by facilitating efforts to improve collaboration and coordination among civil legal services providers," as this is an presently unaddressed mandate of the Commission.

### **Committee on Self Representation and Unbundling**

[Derek Kobayashi (Chair), Sarah Courageous, Damien Elefante, Jerel Fonseca, Victor Geminiani, Tracy Jones, M. Nalani Fujimori Kaina, Victoria Kalman, Jo Kim, Jay Kimura, Justin Kollar, Daniel Pollard, Judge Trudy Senda, Kristina Toshikiyo, Shannon Wack]

Members of this Committee may also serve on a joint committee with the Supreme Court's Committee on Professionalism. Although the joint committee





will need to determine its agenda, this Committee of the Commission may study and make recommendations concerning ways to:

- Create, staff, and fund self-help centers that are connected to every courthouse in Hawai'i in order to provide real-time assistance to low- and moderate-income individuals
- Design programs to make courts more “user-friendly” to low- and moderate-income individuals
- Provide information to self-represented litigants on where they can receive legal assistance
- Reduce barriers encountered by self-represented litigants in the court system, e.g., by using plain English and translations into other languages, and by simplifying procedural rules
- Make changes to court rules and statutes that would streamline and simplify substantive areas of the law, e.g., family, housing and landlord-tenant law
- Make changes to court rules in order to permit limited representation or “unbundled” legal services, and if achieved, make recommendations concerning continuing legal education programs and other ways of promoting unbundling as a way to meet currently unmet legal needs and empowering individuals to represent themselves





## II. 2014 ACCESS TO JUSTICE CONFERENCE

Over 265 people attended the sixth annual Access to Justice Conference held at the William S. Richardson School of Law, University of Hawai'i at Manoa on June 20, 2014. The theme of the 2014 conference was "Meeting the Challenges to Equal Justice for All." Three mandatory continuing professional education ("MCPE") credits were available to Hawai'i-licensed attorneys for attending either three hours in the morning session or three hours in the afternoon session of the conference. For attendance at the all-day conference, six MCPE credits were offered to Hawai'i attorneys.<sup>6</sup>

There were 41 speakers or panelists. Dean Aviam Soifer and Robert LeClair served as co-emcees for the conference as well as moderators for the legislative panel and the closing panel, respectively.

The Cades Foundation was acknowledged for its generosity in providing a grant to assist in defraying the costs of the conference. Gunner Schull, Rhonda Griswold, and Larry Takumi, trustees of The Cades Foundation, were in attendance at the conference.

### A. Morning Session

Commission Chair Judge Daniel R. Foley provided an update on the Commission's activities. Hawaii Supreme Court Chief Justice Mark E. Recktenwald gave an overview of access to justice in the Judiciary. He stated:

Although we have made significant strides in providing increased access to justice here in Hawai'i, we have much work left to do. We need to sustain our achievements, such as the self-help centers, while at the same time looking for innovative ways in which to continue to move forward.

One example of the out-of-the-box thinking that will be required in order to keep us moving forward is the recent report completed by the Judiciary's Strategic Planning Committee on Access to Justice. The purpose of this committee, which is chaired by Justice Acoba, was to set forth a long-range vision for the judiciary's ATJ efforts. The committee's recommendations range from designating an individual or committee to facilitate access to justice programs statewide, to creating an online ask-a-lawyer interface, to producing YouTube videos to inform the public of common legal issues. It also recommended expanding the judiciary's Ho'okele assistance program, under which court staff provide directions and assistance to court users as they enter our courthouses.

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<sup>6</sup> Of the approximately 265 individuals who attended the conference, 154 sought MCPE credits.



It is only through a combination of maintaining and fostering community partnerships, developing innovative means of expanding involvement, and stretching our resources through the use of technology that we will be able to maintain the significant momentum we have achieved during the last six years in making justice more accessible to all of Hawaii's residents. I look forward to hearing your experiences, insights, and ideas on what we can do to make the ideal of justice for all a reality.<sup>7</sup>

The keynote address, "Rethinking Access to Justice" by James J. Sandman, President of Legal Services Corporation, invigorated the audience with concepts on how to redefine access to justice.<sup>8</sup> There are two questions: Is it access? Is it justice? Sandman identified two challenges facing the access to justice movement today:

The first is the invisibility of the issue—the widespread ignorance of the magnitude of the justice gap in the United States. The second is a service-delivery model that leaves too many people with no assistance of any kind.

The invisibility of the issue explains, to a significant extent, the disconnect between our professed national value of "justice for all" and funding for civil legal aid. Ignorance of the crisis in access to justice is prevalent among the public, the legal profession (at least with regard to the magnitude of the problem), private philanthropy, and legislators.

I turn now to the second major challenge facing the access to justice movement: a service-delivery model that leaves 80 percent of the legal needs of low-income Americans unmet and turns away half or more of the people who actively seek legal aid. Accepting that status quo as the inevitable result of inadequate funding is complacency. We have to do better.

President Sandman said that Legal Services Corporation released a report addressing the issue of representation for every client in every case. The report recommended a statewide portal encompassing all legal services providers in the state as a universal point of entry to the legal aid system. "The portal would employ an automated "triage" system to identify the most appropriate and feasible level of assistance for the matter at issue, taking into account such factors as the sophistication of the client, the nature of the matter, what is at stake, whether the other party is represented, and what resources are available."

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<sup>7</sup> The full text of Chief Justice Recktenwald's speech is attached hereto as Appendix C.

<sup>8</sup> The full text of President Sandman's keynote address is attached hereto as Appendix D.



President Sandman observed:

I offer one final thought on rethinking access to justice: We need to rethink the scope of the access-to-justice mission. The mission must encompass simplifying the legal system—a system that was designed largely by lawyers for lawyers and does not work well for those who do not have a lawyer. The system need not be nearly as complicated as it is. We must also expand the role of non-lawyer professionals in the way the medical profession has deployed paraprofessionals to speed and improve patient care. The consequences of being without a lawyer do not have to be as dire as they are today. It may be contrary to the economic self-interest of some lawyers to simplify the system and open it to non-lawyers, but so be it. Access to justice should never be driven by lawyers' self-interest.

President Sandman concluded that legal aid lawyers are heroes. “They are making America’s promise of justice, reflected in the first line of our Constitution and the closing words of the Pledge of Allegiance, real for thousands of people.”

The legislative panel on “Where, Oh, Where Is The Money?” was moderated by Dean Soifer with Senator Clayton Hee and Senator Suzanne Chun Oakland. Senator Chun Oakland provided a handout on information on certain legislative action in the 2014 session.

## **B. Afternoon Workshops**

There were five concurrent workshops for the first afternoon session:

- “Maintaining the Momentum and Maximizing Legal Services for the Underserved” with Michelle Acosta, Volunteer Legal Services Hawaii; Moses Haia, Native Hawaiian Legal Corporation; Jessica Stabile, Mediation Center of the Pacific; Nalani Fujimori Kaina, Legal Aid Society of Hawaii; Gavin Thornton, Hawaii Appleseed Center for Law and Economic Justice; Louis Erteschik, Disability Rights Center; James Pietsch, Elder Law Program; Nanci Kreidman, Domestic Violence Action Center; Daniel Gluck, American Civil Liberties Union. There were 47 attendees who signed up for this workshop.
- “Right to Counsel in Civil Cases--Where Are We? with Associate Justice Simeon R. Acoba, Jr. (ret.), Russ Awakuni, William D. Hoshijo, Mary Anne Magnier, Patricia McManaman, and John Tonaki. There were 33 attendees who signed up for this workshop. An article



describing this workshop was published in the October 2014 issue of the Hawaii Bar Journal.<sup>9</sup>

- “Giving Voice to the Underserved: Lobbying and Political Movements” with Sonny Ganaden, Mihoko Ito, and Gary Slovin. Forty-five attendees signed up for this workshop.
- “Mental Health Issues Concerning Low-Income Individuals” with Associate Justice Michael Wilson and Representative Della Au Belatti. Fifty attendees signed up for this workshop.
- “Strengths/Limitations of Self-Help Centers; Challenges in Working with Unrepresented Litigants” with Judge Ronald Ibarra, Judge Barbara Richardson, and Jessi Hall. There were 41 attendees who signed up for this workshop. The panelists provided a narrative of their workshop as follows:

A summary of the strengths and weakness of the self-help centers (SHCs) and the access to justice rooms (AJRs) in Honolulu and at Kapolei was provided and emphasized that these endeavors result from a partnership between the Judiciary, HSBA, Access to Justice Commission and legal service providers in our communities. Both the SHCs and AJRs are currently providing much needed services to those who would not otherwise be able to afford legal assistance. While services and operations of the SHCs and AJRs should be expanded, the existing SHCs and AJRs are limited by the number of attorneys who can volunteer (especially in the second, third, and fifth circuits) and by the facilities necessary to deliver quality services.

#### Challenges from a Judge’s Point of View

It was pointed out that judges who preside over cases involving SRLs often encounter challenges because, among other things, SRLs have difficulty understanding procedural requirements, do not know what the law requires or prohibits and sometimes base their expectations on what they hear from friends and relatives or what they view on television or in the movies. A judge must remain impartial and therefore cannot in some instances help the SRL move his/her case forward. This can lead to a misunderstanding of the SRL that a judge is biased toward litigants who are represented by an attorney. The SHCs and AJRs do provide SRLs with help they need to navigate our court system and give them some of the tools needed to understand court procedures and the law.

#### Challenges from a Volunteer Attorney’s Point of View

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<sup>9</sup> The article entitled “Right to Counsel Discussed at the Access to Justice Conference” by Mel Masuda is attached hereto as Appendix E.



From the standpoint of attorneys who volunteer at the SHCs and AJRs, there are challenges to meet, and these volunteer attorneys need to prepare themselves, to include the following examples of the challenges:

- SRLs are often those with limited education.
- Be able to explain the legal issues and process in a manner that they will understand.
- SRLs often do not have the resources or ability to perform discovery or prepare for hearings.
- Be creative in suggesting easier and cost effective ways to obtain necessary information.
- Introduce SRLs to alternative resources such as Hawaii Self-Help Interactive Forms.

With a little preparation, the experience of volunteering can be beneficial not only to the SRL, but also for the volunteer attorney.

#### Meeting the Challenges

In meeting the challenges of working with SRLs, the following are some of the suggestions made:

- Enhance the Judiciary's website.
- Initiate online services, such as "Ask a Lawyer" programs.
- Produce YouTube videos.
- Provide online forms.
- Use training videos.
- Partner with mediation centers.
- Partner with the Paralegal community.
- Bring forms and research tools to public libraries (see below).

#### Presentation on Use of Legal Aid's LawHelp Website, Self-Help Workstations and A2J Court Forms

Legal Aid staff shared information about current forms accessible via their LawHelp website and self-help workstations where users can access the forms. They also explained that an SJI grant would allow them to enhance their current programs, including the intent to provide assistance to SRLs at our public libraries.

For the second part of the afternoon, there were five concurrent workshops as follows:

- "Current Topics in Domestic Violence" with Judge R. Mark Browning and Nanci Kreidman. There were 40 attendees who signed up for this workshop.



- “Mediation and Civil Applications of Restorative Justice for the Underserved” with United States District Judge Leslie Kobayashi, James Hoenig, and Diane Petropulos. There were 37 attendees who signed up for this workshop.

Diane Petropulos summarized her presentation as follows:

“The role of community mediation centers in contributing to access to justice is that the underserved are our clients. Our center, Maui Mediation Services, has a policy to provide service regardless of ability to pay. Fortunately, we have also received grant funding to help defray the cost of mediations for low-income disputants.

“Community mediation centers do not just mediate disputes; they educate the community, because of the difference between the evaluative model and the facilitative model of mediation. In facilitative mediation, mandated for community mediation centers by the Hawaii State Judiciary, the parties are the decision-makers, and as they mediate they learn collaborative techniques to resolve problems and it may follow that they become better neighbors, better co-workers and better family members.

“Our mediators must remain neutral by not offering their own solutions and they do not provide legal advice. So what do we do? We empower the disputants.

“We help them turn on a light bulb in their heads—get new perspectives, and move away from previous, unworkable approaches to dispute resolution. This model allows the parties themselves to arrive at their own best solutions.

“By following this model the centers are giving them the confidence to successfully resolve future conflicts on their own. They have the experience of fashioning solutions that they might not have achieved otherwise. They did not have the skills when they walked into the mediation session, but by the end of it, through an inquiry-based learning process, they learn some of those skills. We just gave them a precious gift—how to resolve a dispute without spending the time and money to get others to do it for them. Give a man a fish or teach him to fish.

“In the evaluative model the mediators offer their opinions and guide the parties and their attorneys towards likely solutions. They may review the evidence and give opinions on how it impacts the case. These mediators are often attorneys who can give legal opinions to the parties and can help them negotiate during a mediation session. Note that the parties are not working on coming up with the solutions—it is the mediators who are taking the lead in problem-solving. In this model the parties themselves may not learn new ways to deal with their disputes in the future.”





Jim Hoenig summarized his presentation as follows:

“In 2007, the Access to Justice Hui, a group comprising representatives from several legal organizations, conducted a study that identified the areas having the greatest unmet civil legal needs as: housing (24%), family (23%), domestic violence (8%), and consumer (7%). Mediation has proven to be an excellent process to address all of these issues, with the exception of domestic violence.

“The Community Mediation Centers across the State located on the islands of Oahu, Maui, Kauai, and Hawaii (one located in East Hawaii and one located in West Hawaii) collectively referred to as Mediation Centers of Hawaii, (“MCH”), have a proven track record of assisting individuals in the areas of housing, family, and consumer, through either on-site mediations conducted at court in the various circuits, or in cases referred from the courts to their respective offices. During fiscal year 2012-13, the five centers together provided services for a total of 3,466 cases, of which 3,260 were cases newly opened during the fiscal year, including 2,360 family, consumer and housing cases referred directly from Circuit, District and Family Court. Fifty-one percent of these cases overall, resulted in written agreements.

“The community mediation centers located throughout the State, play a key role in increasing access to justice for Hawaii’s low income and vulnerable populations by providing them with the opportunity to work through their issues quickly in an informal setting, thereby eliminating the need to go to court or engage in a formal legal or administrative process.

“For example, on Oahu, the Mediation Center of the Pacific, (“MCP”) uses approaches that are culturally sensitive to best assist the participants in reaching agreements. The mediation process itself is generally more comfortable for many members of the low income and vulnerable populations because it is informal and gives them the opportunity to be heard.

“While mediators do not provide legal advice, the MCP staff and volunteers ensure that mediation participants are properly prepared to negotiate potential agreements by first directing them to the resources and information they need to make informed decisions. The important relationships MCP has developed with the legal service providers and other organizations, have helped to create a seamless process for the mediation participants to obtain the information they need to most effectively participate in mediation and other dispute resolution processes. Equally important, through these collaborations, pro bono attorneys spend far less time with clients as they are able to resolve their issues quickly through mediation.



“Additionally, MCP works to make its services accessible by: scheduling cases in the evenings and Saturday mornings, as well as during the week days; offering programs on-site at court as well as at the office of MCP; providing services directly at a location in the community if an individual is not physically able to participate at the Mediation Center’s office; allowing parties to participate in a mediation session via Skype or telephone if they are located off-island and are unable to travel to Oahu to attend in person; and making arrangements for language interpreters when necessary to allow a party to participate in their mediation session.

“Approximately 35% of the mediations are conducted at the office of the MCP located at the Children’s Kukui Center on 245 N. Kukui Street. MCP also provides mediation services for summary possession matters, small claims and temporary restraining order requests at the various District Courts located in Honolulu, Ewa, Kaneohe, Wahiawa, and Kapolei. A paternity mediation program involving unmarried couples with children, is conducted at the Family Court in Kapolei to help the couples agree on co-parenting plans and where the children will live. And finally, to ensure that services are accessible when accommodations are needed by a participant, mediations are also conducted at various locations within the communities throughout Oahu including but not limited to nursing homes, community centers, residential homes and more.

“Guided by its mission of providing high quality mediation and dispute resolution services that are accessible and affordable, MCP serves thousands of people annually. In fiscal year 2012-13, the MCP served 4,989 individuals through its mediation programs. Forty-five percent of the individuals involved in mediations were in the gap group population (persons with incomes between 125% and 250% of federal poverty level) and 22% were in the legally poor population (persons at or below 125% of federal poverty level). A total of 1,578 mediation cases were opened, and 1,243 mediations were conducted during the year. Altogether, 48% of the total cases mediated (on-site at court and in-house at the Mediation Center’s office) resulted in written agreements, while 60% of the in-house cases mediated at the Mediation Center resulted in written agreements.

“MCP’s approach and culturally sensitive model of mediation is particularly well suited for people in conflict who have continuing relationships. It is for this reason that MCP has been successful in assisting: unmarried ex-couples to agree on co-parenting plans for their children; siblings to agree on transition and caregiving plans for elderly parents; payment plans between landlords and tenants; and more.

“For example, in 2011, statistics from Family Court in the First Circuit showed that more unmarried couples were going to court regarding custody and time-sharing. In response, MCP created a pilot paternity mediation program that was successful. As a result, the Family Court referrals of these cases has more than tripled. MCP has been able to grow this program from



serving 30 cases in 2011 to 196 cases (158 in-house at the office of MCP and 38 on-site at Family Court in Kapolei) in 2013. Of the 178 cases that were mediated in this area in 2013, 56% reached a written agreement.

“Similar to the Paternity Mediation Program, MCP also provides mediation services for divorcing couples. In 2013, 263 divorce cases were managed, with 58% of the mediated cases reaching final agreements. Three of the divorce cases were mediated with the assistance of the Skype equipment in the virtual mediation room created in the early part of the year.

“Many of Hawaii’s elderly are in the low income population and are vulnerable, particularly if they have Alzheimer’s or other form of dementia. To assist the elderly and their families, MCP created the Kupuna Pono Program, which offers them the opportunity to prevent and resolve their issues through a safe, comfortable process. The processes offered through the Kupuna Pono Program, mediation and family conferencing, provide elders and their families with the opportunity to talk through sensitive issues with the assistance of impartial mediators or facilitators to create their own customized family plans that meet the unique needs of the elder and family members. This reduces stress and strengthens family relationships. Equally important, the processes empowers the elder to have a voice in the decisions that are made for and about them, allowing them to express their desires and participate in family decision-making. Most important, the families do not end up in court.

“A more recent initiative of MCP is implementing an Adopt-A-Court Program to recruit and train managers as mediators for small claims and summary possession cases at District Court. Currently the MCP provides mediators for the six District Courts located throughout Oahu. Last year, 754 cases were mediated at Court. Of the summary possession (eviction) cases that were mediated, 126 were mediated to a successful resolution, allowing the tenants and their families, including 85 children, to remain on the property. This is significant because had the tenants, been evicted, they may not have had any place to go and could have potentially ended up homeless.

“Finally, the feedback provided on the Mediation Center’s quality survey questionnaires completed by the participants upon the conclusion of their mediation session has historically been overwhelmingly complementary. Parties are typically very thankful for the services received and wish that they had known about mediation sooner. During the past fiscal year, 93% of survey respondents agreed that mediation is a useful process. Moreover, the vast majority of participants express their intent to use mediation to resolve disputes in the future. A testament to their belief in the utility of mediation, a full 89% of survey respondents agreed that they would use mediation to resolve future problems.

“Despite their limited resources, the community mediation centers together play a critical role in increasing access to justice. With more support, they could make an even bigger impact.”



- “Capacity Issues for the Elderly: Your Clients, Your Parents” with Dr. John Buzanoski, Dr. Ritabelle Fernandes, and Professor James Pietsch. There were 60 attendees who signed up for this workshop. This panel discussed legal, medical, and psychological issues regarding mental capacity from the perspectives of a lawyer, a geriatrician, and a psychiatrist. They also discussed how doctors and lawyers can more effectively work together to address the growing demographic of aging in Hawaii. A consensus was developed that there are not enough professionals in these fields with expertise in capacity issues (and especially professionals who have trained together) to serve the older population in Hawai'i.
- “Using Technology to Enhance Access to Justice” with Ellen Politano and Emily Su-lan Reber Porter. There were 56 attendees who signed up for this workshop. In their presentation, Ms. Politano and Ms. Porter explored new strategies, technologies, and barriers in the effort to improve access to justice. They summarized their workshop as follows:

“In developing strategies to better achieve our nation’s promise of equal access to justice, we should encompass consideration not only of the legal needs of low-income individuals, *but also* the gap group *and* anyone else for whom services for important needs are currently unavailable or unaffordable. Of course, legal aid service providers and pro bono lawyers must continue to make most of their services available for low-income individuals. But to the extent they develop low-cost legal service delivery systems through the use of technology, these providers may make these services more broadly available. And legal professionals serving individual and family (versus corporate) needs must also find ways to deliver legal services at much lower costs; such services for individual and family needs cannot remain a luxury item.

“Accomplishing equal access to justice in the broader sense referred to above is likely to require fundamental changes to the framework of our legal services marketplace. Other industries have reinvented themselves recently, using advancements in technology. Examples include taxi-type services made available by companies such as Uber, Sidecar and Lyft; travel accommodations offered through AirBnB and VRBO, and even medical services offered online through FirstOpinion and LiveHealth Online. These changes have made the goods and services people that seek more plentiful, accessible, and affordable. The legal services sector needs to embrace similar magnitudes and methods of innovation.

“In the quest to improve access to justice, what types of technologies might be useful? The legal profession could use Apps, Internet websites,



software programs, online chat and video, algorithms, data science and other technologies to increase the supply and lower the cost of legal services. Private companies are already starting to do this in the legal services space: AttorneyFee, Avvo, Elance, JustAnswer, LawGuru, LawDingo, LegalZoom, and RocketLawyer. Pro bono innovators also exist – with online chat through the San Francisco Law Library; online Q&A through the Online Tennessee Justice website, Legal Services of Northern Michigan's Internet Representation Project, Legal Services of Northwest Minnesota's Legal Information Online Network, and JustAnswer's pro bono site Pearl Pro Bono; and information about various areas of law, portals to other legal services providers' websites, and document creation tools on LawHelp.org.

"The barriers to fully embracing the benefits of technology in improving access to justice are found largely in the legal ethics rules and regulations promulgated by the legal profession itself. While originally created to protect the public from unscrupulous attorneys and other persons, many of these rules and regulations now act as barriers to permitting lawyers and others to provide the legal information and legal services necessary to serve the public. They include restrictions and prohibitions against:

- Fee-splitting
- Corporate practice of law
- Lawyer referrals
- Lawyer advertising
- Unauthorized practice of law

"Since legal ethics rules are state-specific, it can be very difficult to take advantage of the economies of scale that could be achieved by a multi-state or even nationwide solution.

"At a minimum, a distinction should be made between the business of law and the practice of law. Lawyers need help in making the business of law more efficient, but fee-splitting and corporate practice of law restrictions make this objective more difficult to achieve. Lawyers need to be more easily reached by individuals and families with legal needs, but lawyer referral and lawyer advertising restrictions make this goal difficult to achieve. More can be done by non-lawyers, especially those already helping in areas where there is a lot of legal need and the non-legal services they provide are intertwined with the legal needs as well, but UPL restrictions again limit the legal services available to those in need.

"Lawyers should not think of embracing technology and loosening legal ethics rules as threatening to their existence or dangerous to the public; rather, these changes should make lawyers' legal services much more efficient and accessible and therefore increase the opportunities for lawyers to deliver more legal services to individuals and families in need, at prices that individuals and families can afford, with more or similar take-home pay for the lawyers.



“To help us envision what might be done to improve access to justice, rather than asking “Can we?” or even “How should we?” we should ask “How might we?” This subtle change in approach helps many entrepreneurs and business people come up with more innovative solutions, in part by suspending judgment, putting less emphasis on current barriers, and looking further out to the ultimate goal to find creative ways to get there, and is the approach that should be taken in tackling access to justice issues.

- “Meeting Challenges to Effective Delivery of Unbundled Legal Services” with Judge Joseph Cardozo, Judge Barbara Richardson, Derek Kobayashi, and Eric Seitz. There were 33 attendees who signed up for this workshop.

The closing panel focused on “Meeting the Challenges to Equal Justice” with Chief Justice Recktenwald, Associate Justice Simeon R. Acoba, Associate Judge Daniel R. Foley, James Sandman, and Robert LeClair as moderator.

The 2014 Access to Justice Conference was another successful conference that raised the awareness of low-income people’s legal rights and the importance of equal access to justice.<sup>10</sup>

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<sup>10</sup> An excellent article written by R. Elton Johnson, III, a member of the Hawai'i Access to Justice Commission, provides his perspectives on the conference: “Reflections on the 2014 Access to Justice Conference” published in the December 2014 issue of the Hawaii Bar Journal. A copy of this article is attached hereto as Appendix F.



### **III. SELF-HELP CENTERS**

The self-help centers were started by and continue to be a collaboration of the Hawaii State Judiciary, the Commission, HSBA (in particular, the HSBA Committee on the Delivery of Legal Services to the Public), Legal Aid Society of Hawai'i, the AmeriCorps program, the county bar associations (East Hawaii Bar Association, Kauai County Bar Association, Maui County Bar Association, West Hawaii Bar Association), and the HSBA Family Law Section. There are now self-help centers in each courthouse in each state judicial circuit.

#### **A. Hilo Self-Help Center**

The Hilo Self-Help Center is located on the first floor of the Hilo courthouse (Hale Kaulike, 777 Kilauea Avenue) and is open twice a week (Tuesday and Friday) from 11:15 a.m. to 12:45 p.m.

In 2014, almost 900 individuals sought and received assistance from attorneys who volunteered with the Hilo Self-Help Center. The volunteer attorneys provided limited legal information to self-represented litigants on civil matters related to district and family courts such as temporary restraining orders and divorce.

Volunteer attorneys for the Hilo Self-Help Center are coordinated by the East Hawaii Bar Association and include solo practitioners, law firm associates, and government attorneys. The Hilo Self-Help Center was also staffed by an AmeriCorp member, who in addition to providing participants with brochures and forms, also monitored the wait list for participants, collected intake information, and aided volunteer attorneys in locating referral information and copying brochures and forms.

#### **B. Maui Self-Help Center**

The Maui Self-Help Center is located on the first floor of Hoapili Hale (2145 Main Street, Wailuku), and is open from 9:00 a.m. to noon on Thursdays. Residents on Molokai, Lanai, and in Hana will also be able to have access to the Center by cell phone.

Throughout 2014, over 630 individuals sought and received assistance from volunteer attorneys through the Maui Self-Help Center. The most common issues for which assistance was sought included: landlord-tenant, family/custody, small claims, and foreclosure cases.



### **C. Access to Justice Room at the Honolulu District Court**

The Access to Justice Room (“AJR”) at the Honolulu District Court is located on the third floor of the Honolulu district court building at 1111 Alakea Street. It is staffed by volunteer attorneys on Mondays and Wednesdays, 9:00 a.m. to 1:00 p.m. and an AmeriCorps representative from 8:30 a.m. to 1:30 p.m. The AJR is also open on the first and third Fridays from 9:00 a.m. to 1:00 p.m. The AJR provides short-term legal advice to self-represented litigants on district court civil matters such as landlord-tenant, debt collection, and temporary restraining order and injunction against harassment (involving non-family members or parties who have not been in a dating relationship) issues.

In 2014, over 950 individuals were referred to the AJR. Through an initiative spearheaded by the Access to Justice Commission’s Pro Bono Initiatives Task Force, which included members: Carol K. Muranaka, Co-Chair; Associate Justice Simeon R. Acoba, Jr., Co-Chair; Judge Ronald Ibarra, Judge Barbara Richardson, Michelle Acosta, Rex Fujichaku, Jill Hasegawa, Regan Iwao, Kristin Shigemura, and Tracey Wiltgen, various law firms and offices adopted a month of staffing for the AJR.

The AJR was staffed by the following law firms, organizations, and governmental entities in 2014: January, Cades Schutte; February, Starn O’Toole Marcus & Fisher; April, Carlsmith Ball; May, Yamamoto Caliboso and Marr Jones & Wang; June, Ashford & Wriston; July, Bronster Hoshibata and Hawaii Filipino Lawyers Association; August, Goodsill Anderson Quinn & Stifel; September, Alston Hung Floyd & Ing; October, Office of the Public Defender; November, Damon Key Leong Kupchak Hastert; December, Schlack Ito and James S. Burns Aloha Chapter, American Inns of Court IV. In the month of March 2014, individual attorneys volunteered to staff the AJR.<sup>11</sup>

### **D. Access to Justice Room at the Kapolei Courthouse**

The Access to Justice Room (“KAJR”) at the Kapolei Courthouse is open on the first and third Thursday of every month from 11:30 a.m. to 1:30 p.m. The KAJR issues are limited to family law issues, including: custody/visitation, child support, divorce and paternity issues, family court temporary restraining orders/protective orders, guardianships, and adoptions.

In 2014, over 350 individuals were referred to the KAJR where attorneys from the HSBA Family Law Section volunteer to assist. Appointments are made

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<sup>11</sup> See later discussion in this report of the 2014 Pro Bono Celebration where the individual volunteer attorneys are identified.





through the Ho`okele Self Help Desk on the first floor of the Kapolei Courthouse for 30-minute sessions.

**E. Kauai Self-Help Center**

The Kauai Self-Help Center located at Pu`uhonua Kaulike, 3970 Kaana Street, Lihue is open on Mondays and Fridays from 9:00 a.m. to noon. It is staffed by volunteer attorneys of the Kauai Bar Association and Legal Aid Society of Hawaii attorneys. On Tuesdays, Wednesdays, and Thursdays, an AmeriCorps member has assisted the self-represented litigants.

In 2014, over 320 individuals were served at the Kauai Self-Help Center. The general types of issues involved landlord tenant issues, consumer collections, and temporary restraining orders involving non-family members.

**F. Kona Court Self Help Desk**

The Kona Court Self Help Desk is located at the Kona Courthouse, Keakealani Building, 79-1020 Haukapila Street, Kealahou. It is open on Wednesdays from 11:00 a.m. to 1:00 p.m.

The Kona Self Help Desk is staffed by volunteer attorneys from the West Hawaii Bar Association, including solo practitioners, law firm associates, and government attorneys. An AmeriCorps member also assisted with the intake process, prepared the consultation areas for attorneys, supervised the waiting areas, and conducted follow-up with requests from several individuals. Almost 500 individuals were assisted at the Kona Self Help Desk in 2014.





#### IV. PRO BONO CELEBRATION

*"The pursuit of equal justice for all is truly a noble endeavor."*

*-- Hawai'i Intermediate Court of Appeals Associate Judge  
Daniel R. Foley, Chair, Hawai'i Access to Commission*

Approximately 150 people attended the 2014 Pro Bono Celebration on Thursday, October 23, 2014 in Ali'iolani Hale (Hawai'i Supreme Court building) sponsored by the Hawai'i Access to Justice Commission ("Commission") and supported by the Hawai'i State Bar Association ("HSBA") and the Hawai'i State Bar Foundation ("HSBF").

##### **A. Coordination**

Monthly meetings of the Pro Bono Initiative Task Force<sup>12</sup> were held from January 2014 through October 2014. The Task Force members recruited various law firms and offices to staff the Access to Justice Room at the Honolulu District Court for the calendar year 2014.

Upon a request from the Commission, the HSBA and HSBF approved the sum of \$1,500 to support the Pro Bono Celebration. The Commission itself approved up to \$2,000 in additional financial support.

It was decided again that an essay contest be part of the Pro Bono Celebration. The theme for this year's contest was "How to Inspire Others to Volunteer" with students answering questions such as: What have you done as a volunteer? Why is it important to volunteer? What are the qualities needed in the role of a volunteer? The contest was open to students in grades 10 to 12 and limited to 500 words or less.

As in last year's essay contest, it was decided that one essay from each of the islands of Kauai, Maui (including Lanai and Molokai), and the Big Island and three essays from the island of Oahu would be selected to be recognized at the Pro Bono Celebration event. A \$500 award for each student award recipient would be given, and a travel stipend (for airfare and rental cars) for each of the awardees and his/her parent or guardian would be provided for students traveling from the neighbor islands.

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<sup>12</sup> The members of the Pro Bono Initiative Task Force are: Associate Justice Simeon R. Acoba, Jr. (ret.), Co-Chair, Carol K. Muranaka, Co-Chair, Michelle Acosta, Rex Fujichaku, Jill Hasegawa, Judge Ronald Ibarra, Regan Iwao, Judge Barbara Richardson, Kristin Shigemura, and Tracey Wiltgen.



Members of the Task Force requested various law firms and legal offices/departments for sponsorships of the \$500 awards to the six students. The six law firms and legal department who generously sponsored the essay recipient awards in 2014 were:<sup>13</sup>

Cronin Fried Sekiya Kekina & Fairbanks  
First Hawaiian Bank  
McCorriston Miller Mukai MacKinnon  
Rush Moore LLP  
Torkildson Katz Moore Hetherington & Harris  
Watanabe Ing LLP

An essay packet was prepared with a cover letter to school principals explaining the Commission's essay contest. These letters were sent prior to the end of the school year in May 2014 with Regan Iwao's help at Goodsill Anderson Quinn & Stifel. Matt Mattice, executive director of the Judiciary History Center, assisted in providing the addresses to all of the schools (public and private). Another letter was sent in August 2014 to teachers and principals to remind them of the essay contest. The Goodsill law firm assisted in the dissemination of these letters.

The HSBA Committee on the Delivery of Legal Services to the Public ("DLSP Committee"), which has a number of overlapping members on the Task Force<sup>14</sup> helped with the preliminary judging of the approximate 280 essays. The final judges were Chief Justice Mark Recktenwald, Jill Hasegawa, Vice Chair of the Commission, and HSBA president Calvin Young.

The preliminary judges were:

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<sup>13</sup> The law firms that sponsored these individual cash awards in 2013 were willing to provide the awards again in 2014.

<sup>14</sup> Members of the DLSP Committee in 2014 were: Regan Iwao (Chair), Justice Simeon Acoba (ret.), Christine Daleiden, Darien Nagata, David Brittin, Derek Kobayashi, James Pietsch, Jennifer Oana, Jo Kim, Judge Barbara Richardson, Gregory Markham, Judge Catherine Remigio, Judge Greg Nakamura, Judge Joel August (ret.), Judge Rhonda Loo, Judge Ronald Ibarra, Nalani Fujimori Kaina, Naomi Kusachi, Rex Fujichaku, Rodney Maile, Russ Awakuni, Sergio Alcubilla, Shannon Wack, Tracey Wiltgen, Victor Geminiani, Carol K. Muranaka, Christopher Pan, Jessi Hall, Scott Shishido, Jennifer Zelko, Tracy Jones, Michelle Acosta, Emiko Meyer, Shauna Cahill, Elton Johnson, Carol Kitaoka, Joanna Sokolow, Jill Hasegawa, Pat Mau-Shimizu, Sonya Toma, Lynda Arakawa, Valerie Grab, Alana Prescott-Richardos, and Calvin Young.



- Oahu 1: Judge James Ashford, Kristin Shigemura,  
Kimberly Asano
- Oahu 2: Judge Melanie Mito May, Derek Kobayashi,  
Christine Daleiden
- Oahu 3: Judge Catherine Remigio, Jessi Hall, Tracey  
Wiltgen
- Oahu 4: Judge Faye Koyanagi, Judge Barbara  
Richardson, Michael Bird, Shannon Wack
- Big Island 1: Judge Michael Tanigawa, Judge Leslie  
Hayashi, Darien Ching Nagata
- Big Island 2: Judge Ronald Ibarra, Carol Kitaoka,  
Joanna Sokolow
- Maui: Judge Rhonda Loo, Roya Dehim, Tracy Jones

Tracey Wiltgen prepared the certificates of recognition from the Commission for the outstanding volunteers. Representative Della Au Belatti prepared the legislative certificates for the volunteers. Kristin Shigemura coordinated the catering of refreshments.

## **B. Pro Bono Celebration Program**

Prior to the program, photographs with the Hawaii Supreme Court (Chief Justice Mark Recktenwald, Associate Justices Paula Nakayama, Richard Pollack, and Michael Wilson), student award recipients, parents, teachers, law firm sponsors, and legislators were arranged.

Justice Acoba welcomed the attendees. Chief Justice Recktenwald and HSBA president Calvin Young provided brief opening remarks. Regan Iwao described the essay contest and acknowledged the preliminary judges who winnowed 280 essays to a "finalist" category so that the final judging could occur.

The essay award recipients were:

- Joseph Kim, 10th grade, Maui High School
- Lisa Ishimoto, 12th grade, Waiakea High School
- Harley Broyles, 12th grade, Waimea High School
- Bayani Gamit, Jr., 11th grade, Leilehua High School
- Ariana Kim, 11th grade, St. Andrews Priory
- Kelsey Uyeda, 12th grade, Leilehua High School



The following attorneys represented their firms in delivering the cash awards to the students at the event:

Bert Sakuda of Cronin Fried Sekiya Kekina & Fairbanks;  
Michael Bird of Watanabe Ing LLP;  
Ron Heller of Torkildson Katz Moore Hetherington & Harris;  
Kimberly Asano of McCorriston Miller Mukai MacKinnon;  
Carrie Okinaga of First Hawaiian Bank; and  
Nathaniel Higa of Rush Moore LLP.

Senator Gilbert Kahele and Representative Clift Tsuji were present to honor Lisa Ishimoto from the Big Island who resides in their legislative district. Representative Marcus Oshiro also attended the Pro Bono Celebration to congratulate Bayani Gamit and Kelsey Uyeda, both from Leilehua High School.

Outstanding volunteers selected by several legal services providers were also recognized at the Pro Bono Celebration. The representatives of the nominating agencies and volunteers were:

- ♦ Alston Hunt Floyd & Ing was honored by the Hawaii Disability Rights Center (“HDRC”) for their invaluable assistance in the past year on two large-scale class actions. In E.R.K. v. Department of Education, the Court ruled that the Department of Education is required to extend special education to children until they reach age 22. The law firm is leading the implementation of this ruling to ensure that approximately 1,500 children will have the opportunity to receive training and services that will help them have more satisfying, productive lives. This effort has been spearheaded by Claire Wong Black, Michelle Comeau, and Chrystn Eads. In J.E. v. McManaman, Alston Hunt represents the HDRC as well as their client in a federal court action to compel the Department of Human Services to provide appropriate treatment under its Medicaid program for children diagnosed with autism spectrum disorder. HDRC was particularly grateful to Kristin Holland and Maile Osika for their efforts.
- ♦ Chris Mashiba, a partner at Cades Schutte, was honored by the Business Law Corps (“BLC”) for his contributions since BLC’s inception in December 2011. Mr. Mashiba had the vision to see the potential of the BLC program and persuaded his firm to become one of BLC’s initial group of participating law firms. Since then, he has generously volunteered his time and talents to represent worthy entrepreneurs in need of assistance to



launch their promising businesses. Recently, Mr. Mashiba traveled to Maui with other BLC participating attorneys to conduct, in collaboration with the Maui Economic Development Board, a seminar and one-on-one meetings with entrepreneurs on Creating Fundable Startups. Mr. Mashiba's contributions facilitated BLC in fulfilling its mission of promoting economic justice and creating sustainable jobs for the community.

- ◆ Bronster Hoshibata was honored by the Hawaii Appleseed Center of Law and Economic Justice. In particular, the firm's attorneys, Margery S. Bronster and Catherine L. Aubuchon, volunteered for the past four years as critical members of the litigation team that actively pursued the rights of immigrants residing in Hawaii under the Compact of Free Association agreements ("COFA") to receive life sustaining health care including dialysis and chemotherapy. Ms. Bronster and Ms. Aubuchon have each spent countless hours, including the pending request for review by the United States Supreme Court, guaranteeing the continuation of health care for COFA migrants. This herculean effort was in response to the State of Hawaii's attempt to significantly reduce services for Micronesians because of funding. The federal district court in Hawaii found the attempt to be in violation of equal protection. The case is currently before the United States Supreme Court. Over 8,000 COFA migrants were affected by the litigation.
- ◆ Jim Bickerton was honored by the Native Hawaiian Legal Corporation. He currently represents a wide range of both plaintiff and defendant clients in commercial and real estate litigation, consumer class actions, professional liability of attorneys, accountants, and real estate brokers, medical malpractice, serious personal injury and wrongful death, and First Amendment and defamation issues. He and founding firm member, William Saunders, Jr. are well-known in the community for their extensive pro bono representation on behalf of many of the significant environmental, free speech, and community causes over the past two decades, including Save Sunset Beach, Save Haleiwa Beach Park, Kaimana Beach Coalition, Save the Star-Bulletin, and Honolulu Weekly.
- ◆ Katherine Bennett, social worker, lawyer, and full-time faculty member at the University of Hawaii at Manoa's Myron B. Thompson School of Social Work, was honored by The Mediation Center of the Pacific. Balancing her time as a mother



of three, family law attorney serving as guardian ad litem for foster care children, and as a faculty lecturer, Ms. Bennett never hesitates to say “yes” to serving as a pro bono mediator whenever her busy schedule allows. She mediates complex family law matters at the office of the Mediation Center as well as mediates paternity cases at the Family Court in Kapolei. She is a generous volunteer who has helped the Mediation Center of the Pacific to further its mission of providing high quality mediation and dispute resolution services that are affordable and accessible.

- ◆ Kevin Kimura was honored by Legal Aid Society of Hawaii for his outstanding work with the Partnership in Pro Bono Project. Since July 2010, he has been working on a divorce case with Legal Aid and persevered to its finality where the client was finally granted a divorce and child support. Because of his diligence, the client is safe from her abusive former husband who will not be able to see or hurt her or their children again.
- ◆ Bradley Tamm was honored by Volunteer Legal Services of Hawaii (“VLSH”). He started volunteering with VLSH in 2009 and his selfless dedication to access to justice has resulted in the delivery of quality pro bono service to countless economically disadvantaged Hawaii residents. Not only has Mr. Tamm volunteered monthly to provide advice and counsel to numerous individuals at VLSH’s bankruptcy clinics, but extended his services to assist in the review of documents and forms, accepted full-representation cases, and provided guidance to the VLSH staff.

In his brief remarks, prior to recognizing the attorneys who volunteered to staff the Kapolei Access to Justice Room in 2014, Judge Browning said:

The Preamble of the Hawaii Rules of Professional Conduct sets the standard of excellence that attorneys aspire to live -  
- each and every day.

Subsection (6) reads in part:

"A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources to ensure equal access to our system of





justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel."

The lawyers, who make up the Family Law Section and consistently volunteer their time and expertise to assist litigants in Family Court, have taken these ideals to heart. From serving as Volunteer Settlement Masters and on important committees to volunteering to be part of our Kapolei Access to Justice Program – these attorneys exemplify the highest ideals of our profession.

The volunteer attorneys who staffed the Kapolei Access to Justice Room in 2014 were: Kevin Adaniya; Richard Diehl; Jessi Hall; Seth Harris; Stephen Hioki; John Hughes; Ann Isobe; Curtis Kam; Mari Kishimoto; Marianita Lopez; Louis Markee; Dyan Mitsuyama; Mei Nakamoto; Elizabeth Paek-Harris; Dean Soma; Tom Tanimoto; Jackie Thurston; Carol Tribbey; and Sandra Young.

Judge Barbara Richardson remarked that when the Access to Justice Room opened in the Honolulu District Court in August, 2012, the invitation to its dedication ceremony stated:

"The Access to Justice Room will offer legal advice through short-term limited legal services to help self-represented litigants better understand the court process and the law which may apply to their case." Today, the Access to Justice Room users are definitely receiving what was promised.

Judge Richardson said the comments by the self-represented litigants show their appreciation for the services they have received. A sample of such comments are:

*"This is such a necessary and wonderful program. It really helped give me peace of mind and confidence in my situation. The volunteers were perfectly suited for my needs and I cannot express my appreciation. The admin staff was also wonderful! Thank you so much!"*

*"This service is wonderful and should be publicized as much as possible. Obtaining an attorney can be an intimidating process and Access to Justice Room alleviates this hurdle and makes the legal process more accessible to everyone."*

*"I think that this service is invaluable and important to all who need*



*legal advice. I am grateful and hope that this service continues to help others like myself and family."*

The following law firms/office and individuals who devoted time at the Honolulu Access to Justice Room during the months of 2014 were:

- January: Cades Schutte (Kristin Shigemura, Stacy Takekawa, Carolyn Volgaridis, Paul Saito, Chris Goodin, Kaliko Fernandes, Keoni Shultz, Andrew Odell, Andrea Ushijima, Elijah Yip, Allison Mizuo Lee, John Duchemin, Rhonda Griswold, Peter Olson, Keith Yamada, Megan Suehiro, Marc Rousseau, Lori Amano)
- February: Starn O'Toole Marcus & Fisher (Judith Ann Pavey, Sharon V. Lovejoy, Christina Ohira, Lindsay Orman, Ivan M. Lui-Kwan, Duane R. Fisher, Norman H.Y. Cheng, Mateo Caballero, Danielle Kiyabu, Stephanie E.W. Thompson, Lisa Anne Evans)
- March: Mateo Caballero; Corlis Chang; Esther Ervin; Tred Eyerly; Steven L. Goto; Arlette Harada; Beverly Hiramatsu; Kurt Kagawa; Bernice Krause; Heather Moore; Mark M. Murakami; Cheryl Nakamura; Radji Tolentino; Shannon Wack; and Jefferson Willard
- April: Carlsmith Ball (Mark Murakami, Alison Kato, Pete Manaut, Lindsay McAneeley, Jake Matson, Tim Lui-Kwan, Duane Miyashiro, Arsima Muller, Onaona Thoene, Rick James, Bob Strand, Erika Lewis, Megan Lim, Melissa Lambert, Jon Yamamura, Harry Oda, Michael Scanlon, Rodd Yano)
- May: Yamamoto Caliboso (Tyler McNish, Terri Motosue, Adrienne Elkind, Carl Caliboso, Jodi Yamamoto)
- Marr Jones & Wang (Lynne Toyofuku, Erin Hisano, Jason Minami, Sarah Wang, Chris Cole, Leighton M. Hara, Eileen Zorc, Christie Trenholme)
- June: Ashford & Wriston (Kevin Herring, Steven Grey, Jill Hasegawa, Lisa Tellio, Michael Gibson, John A. Lockwood, Connie Chow, Rosemary Fazio, Mary Beth Wong, Clara Park)
- July: Bronster Hoshibata (Rex Fujichaku, Sunny Lee, Catherine Aubuchon, John Hoshibata, T.J. Quan, Jae Park, Mia Obciana)
- Hawaii Filipino Lawyers Association (Shyla Fukushima, Rozelle Agag, Alana Peacott-Ricardos, Will Tungol)



- August: Goodsill Anderson Quinn & Stifel (Terri O'Connell, Scott Shishido, Audrey Ng, David Hoftiezer, Johnathan Bolton, Christine Terada, Scott Prange, Claire Goldberg, Lynda Arakawa, James Abraham, Corlis Chang, Carolyn Wong, Regan Iwao)
- September: Alston Hunt Floyd & Ing (Michelle N. Comeau, Christy Gray, Miriah Holden, Sam Sneed, Chrystn Eads, Trisha Gibo, Jessica Y.K. Wong, Louise K.Y. Ing, Richard J. Kowen, Ryan J. Loeffers, Maile Osika, Morgan Early, Kee Campbell, Lucas J. Myers, Blaine Rogers, Kristin L. Holland, Anderson L. Meyer)
- October: Office of the Public Defender (Audrey Stanley, Craig Jerome, Cheryl Chun, Jessica Domingo, Seth Patek, Kai Collins, William Bagasol, Susan Arnett, Reiko Bryant, Bryan Tanaka, Kaupena Soon)
- November: Damon Key Leong Kupchak Hastert (Madeleine M.V. Young, Judith A. Schevtchuk, Bethany C.K. Ace, Christopher Leong, Gregory W. Kugle, Anna H. Oshiro, Tred Eyerly, Caron N. Ikeda, Clare M. Hanusz, Sommerset K.M. Wong, Sara E. Coes, Matthew T. Evans, Douglas C. Smith, Mark M. Murakami, Ikaika B. Rawlins, E. Mumau Pineda-Akiona, Kelly Y. Morikone.
- December: Schlack Ito (Scott Morita, Derek Kobayashi, Natalie Hiu, Mark Ito)
- James S. Burns Aloha Chapter, American Inns of Court IV (Cheryl Y. Arakaki, Annette Andrews, Sergio Rufo)

Judge Daniel R. Foley, Commission Chair, provided the closing remarks for the formal part of the program. The Hawai'i Supreme Court sat for picture taking with the volunteer attorneys who were able to stay after the program concluded.

Refreshments were served and allowed an opportunity for mingling and conversation at the conclusion of the program.





## V. OTHER ACTIVITIES

### **A. Justice Index**

The National Center for Access to Justice (“NCAJ”) created the “Justice Index” in an attempt to measure what is being done nationally to make access to justice a reality for all. The Justice Index reported on four elements of state-based justice systems:

- Attorney access: the number of civil legal aid attorneys serving the poor;
- Self-representation: systems available to assist self-represented litigants;
- Language assistance: systems available to assist people with limited English proficiency; and,
- Disability assistance: systems available to assist people with disabilities.

A comprehensive score is based upon each of these aforementioned categories. Hawai'i scored fourth nationwide.

In a press release issued by the Judiciary, Chief Justice Mark Recktenwald said:

I'm very pleased that Hawaii has been recognized as a leader in providing access to justice. Our hard work is paying off. The Hawaii Access to Justice Commission was formed by the Supreme Court in 2008 with these very objectives in mind. The Justice Index results serve as a testament to how much the Commission, the state judiciary, volunteer attorneys, and our other partners have been able to accomplish with limited resources. The Findings reflect dedication and commitment toward realizing justice for all in Hawaii, and the effectiveness of the partnerships that the Commission has forged.

In a commentary published by the Honolulu Star Advertiser on December 30, 2014, Commission Chair, Judge Daniel Foley said: “the National Center for Access to Justice ranked Hawaii No. 1 for providing support to self-represented litigants. And as this year comes to a close, I cannot help but reflect on how far we have come this past decade to give voice to those who cannot afford an



attorney, and how much help has been provided to those who navigate the judicial system on their own.”<sup>15</sup>

## **B. Strategic Planning Committee on Access to Justice**

The Hawai'i Judiciary 20/20: Our Vision (Final Report of the Judiciary Strategic Planning Committee), December 30, 2012 provided under the topic of “Access to Justice:”

Hawaii's Judiciary shall strive to improve access to justice and shall continue to support, where possible, the mission of the Access to Justice Commission.

### **A. Make justice accessible for all.**

#### **Recommended Actions:**

1. Expand and establish centers where Judiciary forms, information, and assistance navigating through the court process and system are provided to self-represented parties via technology (e.g., public access computers) or by Judiciary personnel.
2. Create additional centers where legal advice is offered by volunteer attorneys, in person, or via technology where limited demand or resources make physical centers less feasible.
3. Ensure that baseline information for each Circuit is posted on the Judiciary's internet site, available via mobile applications and in multiple languages, with sufficient guidance to assist self-represented court customers.
4. Facilitate the use of interpretation services by installing equipment in courtrooms to allow for video-based American Sign Language (ASL) interpretation and language interpretation for individuals with limited English proficiency.

One of the committees established to work toward implementation of the Judiciary's Strategic Plan's recommended actions was the Strategic Planning

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<sup>15</sup> A copy of the article “Hawaii Takes the Lead in Providing Access to Justice for All” by Judge Daniel R. Foley published on December 30, 2014 in the Honolulu Star Advertiser is attached hereto as Appendix G.



Committee on Access to Justice. Chief Justice Recktenwald appointed former Commission Chair, Associate Justice Simeon Acoba (ret.) to chair this committee.

As mentioned in his opening remarks at the 2014 Access to Justice Conference, Chief Justice Recktenwald stated that the committee's recommendations range from designating an individual or committee to facilitate access to justice programs statewide, to creating an online ask-a-lawyer interface, to producing YouTube videos to inform the public of common legal issues. The committee also recommended expanding the Judiciary's Ho'okele assistance program, where Judiciary staff provide assistance to court users as they enter the courthouses.

### **C. SCR 116, Access to Justice Loan Repayment Program**

The Senate Concurrent Resolution No. 116 (S.C.R. No. 116) requested that the Commission convene a working group to develop an educational loan repayment program for William S. Richardson School of Law ("Law School") graduates to expand opportunities to pursue public interest careers in Hawaii for the benefit of underserved communities.<sup>16</sup> It was proposed that the working group be composed of members of the Commission, faculty and staff of the Law School, the Student Bar Association of the Law School, the Alumni Association of the Law School, the HSBA, a retired member of the Hawai'i Supreme Court, Hawai'i Consortium of Legal Service Providers, HJF, a member of the House of Representatives, a member of the Senate, and a representative of the Governor's Office.

The Commission approved Gary Slovin as chair of this working group. He reported that the group met several times in 2014 and would be submitting a status report to the legislature in 2015.

### **D. Website Design**

The Commission determined that its subpage at the Hawaii Justice Foundation ("HJF") website--[www.hawaiijustice.org](http://www.hawaiijustice.org)--should be updated. The Commission also examined whether the Commission should have its own independent website and decided that at the present time the Commission would remain a subpage at the HJF website because of lack of funding and administrative staff.

The website is easy to navigate with two tabs: one for HJF news and the other for the Commission. The subpages of the Commission contain news

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<sup>16</sup> A copy of S.C.R. No. 116 is attached hereto as Appendix H.



about the Access to Justice Conferences, Annual Reports, model pro bono policies, cy pres toolkit, orders adopted by the Hawai'i Supreme Court resulting from recommendations from the Commission, and other information. The "how to help" internal link leads the reader to the various self-help centers (including Access to Justice Rooms) where attorneys may reach a contact person to volunteer.

### **E. Ka`u Project**

The Ka`u Legal Clinic was designed as a pilot for delivery of legal services to underserved rural communities throughout the State of Hawai'i. The District of Ka`u was identified by community stakeholders as an ideal location to test and evaluate rural delivery of legal services using VLSH's Neighborhood Legal Clinic ("NLC") model.

Due to Ka`u's rural nature, legal resources are scarce and transportation issues serve as hurdles to accessing legal services which are presently concentrated in Hilo and Kona. According to the 2010 U.S. Census, Ka`u, Puna, and South Hilo had the highest rate of poverty for Hawaii County. An estimated 45-55% of the population within this district had household incomes falling at or below 200% of the federal poverty level. This translates to a household income of approximately \$55,000 for a family of four.

The NLC model has been used by VLSH for over 30 years to service the low and moderate income community throughout Hawaii through face-to-face and phone consultations. VLSH staff carefully screen applicants for income and legal issue eligibility prior to matching the applicants with experienced attorneys. Staff provide administrative support to both the participant and clinic attorneys before, during, and after each clinic session to ensure a continuum of services at the level needed to assist each participant.

Spearheaded by Lincoln Ashida, VLSH collaborated with O'Ka`u Kakou, the Ka`u Resource and Distance Learning Center in Pahala, the Native Hawaiian Legal Corporation, and the Commission to bring the pilot NLC to Ka`u on November 8, 2014.

A total of seven attorneys were on hand to provide services: four on-site, two on stand-by via phone, and a staff attorney from the Native Hawaiian Legal Corporation. The Clinic took place at the Ka`u Resource and Distance Learning Center in Pahala from 9:00 a.m. to 12:00 noon. Overall, there were 13 participants who received a total of 16 services to include legal advice, document review, and form preparation. Of the 13 participants, 11 are receiving follow-up services through VLSH and the Native Hawaiian Legal





Corporation. A heartfelt mahalo went to the volunteers: Lincoln Ashida, Elizabeth Fujiwara, Matt Jewell, Greg Lui-Kwan, Alana Murakami, Michelle Oishi, and Jennifer Zelko-Schleuter and to the planning group: Lincoln Ashida, Raylene Moses, Jessie Marques, and Heanu Grace.

## **F. Unbundling Project**

The Commission is considering a proposal to allow limited scope representation. Currently, Hawai'i Rules of Professional Conduct, Rule 1.2 provides as follows:

### Rule 1.2. SCOPE OF REPRESENTATION.

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which the objectives are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the objectives of the representation if the client consents after consultation.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

The Commission is considering amendments to Rule 1.2 that would allow the "objectives of the representation" to be limited if the client consents in writing after consultation. In addition, there would be an exception from providing such a consent in writing in the following situations: (1) an initial consultation with any attorney; (2) pro bono services provided through a nonprofit organization, a court-annexed program, a bar association, or an accredited law school; or (3) services provided by a nonprofit organization funded in whole or in part by a federal, state, or county government. Under



consideration is a new Rule 11.1 on the limited appearance and withdrawal of an attorney.

Proposals were discussed in workshops at the 2013 Access to Justice Conference and 2014 Access to Justice Conference, and these discussions are still continuing.

#### **G. Pro Bono Appellate Pilot Project**

A subcommittee of the Access to Justice Commission's Committee on Increasing Pro Bono Legal Services continued its work on the Pro Bono Appellate Pilot Project. The Subcommittee's Co-Chairs are Rebecca A. Copeland, of the HSBA Appellate Section, and Michelle Acosta, Executive Director of Volunteer Legal Services of Hawaii ("VLSH"). Other subcommittee members include former Hawai'i Supreme Court Associate Justice Simeon Acoba, Intermediate Court of Appeals Chief Judge Craig Nakamura, Brandon Segal, Audrey Stanley, Matthew P. Chapman, and Joshua Korr.

The subcommittee has been working over the last two years to design the project, which will match eligible pro-se appellate litigants with volunteer appellate attorneys willing to provide pro bono legal services. The project is modeled after similar programs in the United States Court of Appeals for the Ninth Circuit and the Texas Supreme Court, but the subcommittee amended those programs for Hawai'i to ensure that it will serve the needs of the Hawai'i appellate courts and litigants in our community.

**APPENDICES**

- Appendix A: Rule 21 of the Rules of the Supreme Court of Hawaii
- Appendix B: “Access to Justice for Those Without Voice, Words, or Language” by Jean L. Johnson, Hon. Christine Kuriyama, and Mary Anne Magnier in the December 2014 issue of the Hawaii Bar Journal
- Appendix C: Welcoming Remarks for Hawai'i Access to Justice Conference, June 20, 2014, Chief Justice Mark E. Recktenwald
- Appendix D: “Rethinking Access to Justice” by James J. Sandman, keynote address at the Hawaii Access to Justice Conference, June 20, 2014
- Appendix E: “Right to Counsel Discussed at the Access to Justice Conference” by Mel Masuda published in the October 2014 issue of the Hawaii Bar Journal
- Appendix F: “Reflections on the 2014 Access to Justice Conference” by R. Elton Johnson, III, published in the December 2014 issue of the Hawaii Bar Journal
- Appendix G: “Hawaii Takes the Lead in Providing Access to Justice for All” by Judge Daniel R. Foley published on December 30, 2014 in the Honolulu Star Advertiser
- Appendix H: Senate Concurrent Resolution No. 116 regarding a loan repayment program for graduates of the William S. Richardson School of Law



## RULE 21 OF THE RULES OF THE SUPREME COURT OF HAWAII

### Rule 21. ACCESS TO JUSTICE COMMISSION.

(a) **Creation.** There shall be a commission to be known as the Hawai'i Access to Justice Commission (the "Commission").

(b) **Purpose.** The purpose of the Commission shall be to substantially increase access to justice in civil legal matters for low- and moderate-income (together "low-income") residents of Hawai'i. To accomplish this, the Commission shall, along with such other actions as in its discretion it deems appropriate, endeavor to:

- (1) Provide ongoing leadership and to oversee efforts to expand and improve delivery of high quality civil legal services to low-income people in Hawai'i.
- (2) Develop and implement initiatives designed to expand access to civil justice in Hawai'i.
- (3) Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low-income Hawai'i residents.
- (4) Increase and stabilize long-term public and private funding and resources for delivery of civil legal services to low-income Hawai'i residents.
- (5) Maximize the efficient use of available resources by facilitating efforts to improve collaboration and coordination among civil legal services providers.
- (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.
- (7) Reduce barriers to the civil justice system by developing resources to overcome language, cultural, and other barriers and by giving 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.
- (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.
- (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, and increase awareness of low-income people's legal rights and where they can go when legal assistance is needed.
- (10) Increase effective utilization of paralegals and other non-lawyers in the delivery of civil legal services to low-income Hawai'i residents.
- (11) Increase support for self-represented litigants, such as through self-help centers at the courts.
- (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.
- (13) Encourage the formation of a broad coalition of groups and individuals to address ways to alleviate poverty in Hawai'i.

(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 to increase access to justice.

**(c) Membership.**

(1) **NUMBER OF MEMBERS AND TERMS OF OFFICE.** The Commission shall consist of 22 members, with staggered terms. The initial members (other than the chair and the four members appointed under subsection (3)(vii) below) shall draw their terms by lot so that five members shall serve a term ending on December 31 of the year of appointment, six shall serve a term ending on December 31 of the year following the year of appointment, and six shall serve a term ending on December 31 of the second year following the year of appointment. All subsequent appointments of such members (other than appointments to fill vacancies as described in subsection (2)) shall be for terms of three years or until his or her successor is appointed. Such members shall not be appointed to serve more than two successive terms, but an initial term of any member that is less than 30 months shall be disregarded for purposes of this limitation. Governmental representatives appointed under subsection (3)(vii) shall rotate by their terms of office or at the will of the appointing authority. Terms shall run on a calendar year basis, except that a member shall continue to serve until his or her successor is duly appointed.

(2) **VACANCIES.** A vacancy in the office of a member shall occur upon (i) the written resignation, death or permanent incapacity of such member, (ii) the determination by the applicable appointing authority that there has been a termination of a position held by such member that was the basis of such member's appointment to the Commission and that the appointing authority wishes to replace such member with a new appointee, or (iii) for such other cause as shall be specified in the bylaws, rules or written procedures of the Commission. Upon the occurrence of a vacancy, the appropriate appointing authority shall appoint a successor member to serve the remainder of the term of the vacating member.

(3) **APPOINTMENT OF MEMBERS.** Members of the Commission shall be appointed as follows:

(i) The Chief Justice of the Supreme Court shall appoint five members to the Commission as follows: (A) the Chief Justice or an Associate Justice of the Supreme Court and (B) four other judges who the Chief Justice shall endeavor to appoint from different judicial circuits and to include at least one circuit court judge, one family court judge, and one district court judge.

(ii) The Hawai'i State Bar Association (the "HSBA") shall appoint four members to the Commission as follows: (A) two representatives of the HSBA, who may be officers, directors or the Executive Director of the HSBA; and (B) two active HSBA members who have demonstrated a commitment to and familiarity with access to justice issues in Hawai'i and who are not currently serving as an HSBA officer or director, one of whom shall be from a law firm of ten or more attorneys. At least one of the attorneys appointed by the HSBA shall be from an Island other than O'ahu.

(iii) The Hawai'i Consortium of Legal Services Providers (the "Consortium") shall appoint six members to the Commission as follows: (A) four representatives of Hawai'i nonprofit civil legal services providers; and (B) in consultation with the Chief Justice of the Supreme Court, two non-attorney public representatives not directly

associated with any such provider who have demonstrated a commitment to and familiarity with access to justice issues in Hawai'i. The initial members of the Consortium shall be the American Civil Liberties Union Hawai'i, Domestic Violence Action Center, Hawai'i Disability Rights Center, Legal Aid Society of Hawai'i, Mediation Center of the Pacific, Na Loio, Native Hawaiian Legal Corporation, University of Hawai'i Elder Law Program of the Richardson School of Law, and Volunteer Legal Services Hawai'i. Other civil legal services providers may be added to, and members may resign or be removed from, the Consortium as determined by the vote of a majority of the then members of the Consortium.

(iv) The Hawai'i Justice Foundation (the "Foundation") shall appoint one member to the Commission, who shall be an officer, director or the Executive Director of the Foundation.

(v) The Dean of the University of Hawai'i William S. Richardson School of Law shall appoint one member to the Commission, who may be the Dean.

(vi) The Hawai'i Paralegal Association shall appoint one member to the Commission, who shall be a paralegal with a demonstrated interest in equal access to justice.

(vii) The Governor of Hawai'i, the Attorney General of Hawai'i, the President of the Hawai'i Senate, and the Speaker of the Hawai'i House of Representatives shall each be entitled to serve on the Commission or to appoint one member, provided that any appointee of the Governor shall be drawn from the Executive branch of government, any appointee of the Attorney General shall be a Deputy Attorney General, any appointee of the President of the Senate shall be a state Senator, and any appointee of the Speaker of the House shall be a state Representative.

(4) COMMUNITY WIDE REPRESENTATION. In making appointments, the appointing authorities shall take into account the effect of their appointments on achieving a Commission composed of members who are residents of different islands in Hawai'i and who reflect the diverse ethnic, economic, urban, and rural communities that exist in the Hawaiian Islands.

**(d) Officers.** The Chief Justice of the Supreme Court shall designate from among the members of the Commission a chair and a vice chair of the Commission. The chair, who shall be the Chief Justice or the Chief Justice's designee, shall serve an initial term of one year and thereafter shall be designated at such times as the Chief Justice shall determine. The vice chair shall be designated for a term of two years, provided that such term shall expire at any earlier date on which the term of the vice chair as a member of the Commission shall expire or be terminated. The Commission shall select such other officers as it deems necessary and useful. Terms of all officers shall run on a calendar year basis, except that an officer shall continue in office until his or her successor is duly designated or selected. Designations or selections to fill officer-vacancies shall be for the remainder of the term of the vacating officer.

**(e) Bylaws, Rules and Procedures.** The Commission may adopt bylaws, rules or operational procedures as it deems necessary for and consistent with Sections (c), (d) and (f) through (j) of this rule.

**(f) Committees and Task Forces.** The Commission may create such committees and task forces, and appoint such committee and task force members, as it deems necessary or desirable to facilitate the work of the Commission. The Commission shall designate a chair of the committee or task force. The Commission may appoint to the committee or task force persons who are not members of the Commission. The role of committees and task forces shall be advisory, and they shall make such recommendations to the Commission as the members of such committees and task forces deem appropriate. Meetings of committees and task forces shall be at the call of the chair or at the call of at least 20% of the members of the committee or task force. A quorum consisting of not less than one-third of the then-appointed and serving members of a committee or task force shall be necessary at a duly called meeting to adopt a recommendation to the Commission.

**(g) Meetings, Quorum, and Voting.** The Commission shall meet at least quarterly and shall have additional meetings at the call of either the chair or at least seven members upon at least ten days prior notice. A quorum consisting of not less than one-third of the members of the Commission then in office shall be necessary to transact business and make decisions at a meeting of the Commission. On any votes taken at a meeting of the Commission, the chair shall vote only in the event of a tie.

**(h) Staff and Funding Support.** It is anticipated that staff and funding support for the Commission will be provided by a combination of private and public sources of financial and in-kind support.

**(i) Recommendations.** Any recommendations by the Commission shall be made in the name of the Commission only, and not in the name of the individual members or the institutions or entities they represent.

**(j) Reports and Review.**

(1) **ANNUAL REPORTS.** The Commission shall file with the Supreme Court an annual report describing its activities during the prior 12-month period and deliver a copy of the report to the Executive Director of the HSBA.

(2) **THREE-YEAR REVIEW.** Three years after the Commission holds its first meeting, the Supreme Court shall evaluate the progress made by the Commission toward the goal of substantially increasing access to justice in civil legal matters for low-income Hawai'i residents.

*(Added April 24, 2008, effective May 1, 2008.)*



# ACCESS TO JUSTICE

## Voice, Words, or Language

by Jean L. Johnson,  
Hon. Christine  
Koryama, and  
Mary Anne Magnier

Concerned citizens in Hawai'i have made it a state civic priority to improve access to justice for low-income and moderate-income people.<sup>1</sup> For an especially vulnerable group of Hawai'i's citizens—infants and toddlers under the age of three—access to justice can mean a world of difference for their future. Hawai'i's Zero to Three Court is working to make sure these infants and toddlers—without meaningful voice, words, or language—have access to justice to promote their best possible developmental outcomes.

**The Problem.** Nationally and in Hawai'i, infants under the age of one represent the largest group of children who

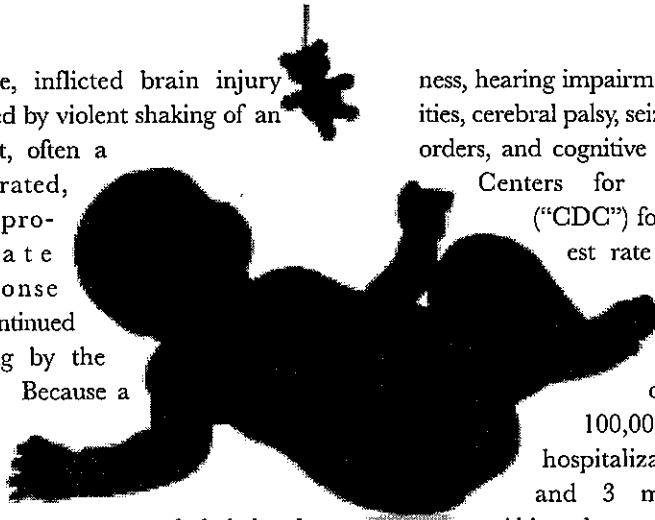
are removed from their parents because of parental abuse or neglect.<sup>2,3</sup> For Hawai'i in 2012 (the most recent data available), 224 (16 percent) of the confirmed cases of child abuse and neglect that year were of infants under the age of one. Children under the age of three represented more than a third (37 percent) of confirmed cases.<sup>4</sup> More alarming is that between 2001 and 2010, 39 children in Hawai'i died as a result of child abuse.<sup>5</sup> The deaths of these children in Hawai'i might have been prevented.

The United States Department

of Health and Human Services documented that the annual number of such deaths has increased over the past decade.<sup>6</sup> Well-documented research concludes the actual number of children who die from abuse and neglect is probably double the official government statistics.<sup>7</sup> In recent years, child-fatality review teams have emerged across the country to address the concerns that systems of child protection, law enforcement, criminal justice, and medicine do not adequately assess the circumstances surrounding child fatalities that result from maltreatment.<sup>8,9</sup>

Equally alarming is that the infants who survive abuse are often left with severe, permanent brain damage. The extreme vulnerability of this age group makes infants under the age of one the largest group sustaining permanent brain injury resulting from "Shaken Baby Syndrome." Shaken Baby Syndrome is a

severe, inflicted brain injury caused by violent shaking of an infant, often a frustrated, inappropriate response to continued crying by the baby. Because a



baby's head is relatively large and heavy (making up 25 percent of body weight), the baby's neck muscles are too weak to support the head. Violent shaking causes blood vessels feeding the brain to tear, causing bleeding around the brain. The blood pools within the skull, sometimes creating more pressure and additional brain damage.<sup>10</sup>

Moreover, damage to the brain that does not result in death has long-term consequences: learning disabilities, physical disabilities, visual disabilities or blind-

ness, hearing impairment, speech disabilities, cerebral palsy, seizures, behavior disorders, and cognitive impairment. The Centers for Disease Control ("CDC") found that the highest rate of Shaken Baby Syndrome is among children under one year of age (32.3 per 100,000) with a peak of hospitalizations between 1 and 3 months of age.<sup>11</sup>

Although no specific data on the incidence of Shaken Baby Syndrome in Hawai'i are available, there are anecdotal data from referrals to the Department of Health's Part C of the *Individuals with Disabilities Education Act* Early Intervention Program. Babies who survive Shaken Baby Syndrome represent those with the most significant, life-long disabilities. Thus, the economic burden to the community of child abuse is substantial.<sup>12,13</sup>

Because abusive head trauma is a significant and tragic cause of morbidity and mortality, with a poor prognosis for

survivors, health care providers and parents are often faced with deciding whether to discontinue life support for a baby with brain damage. This decision is complicated if parents were the perpetrators. Removing life support could result in an escalation of criminal charges from assault to murder. The possibility of murder charges has sometimes resulted in children being kept alive, even when treatment is deemed futile or inhumane. Solutions are being proposed to give greater deference to civil justice for these critically ill children while still preserving parental rights.<sup>14</sup>

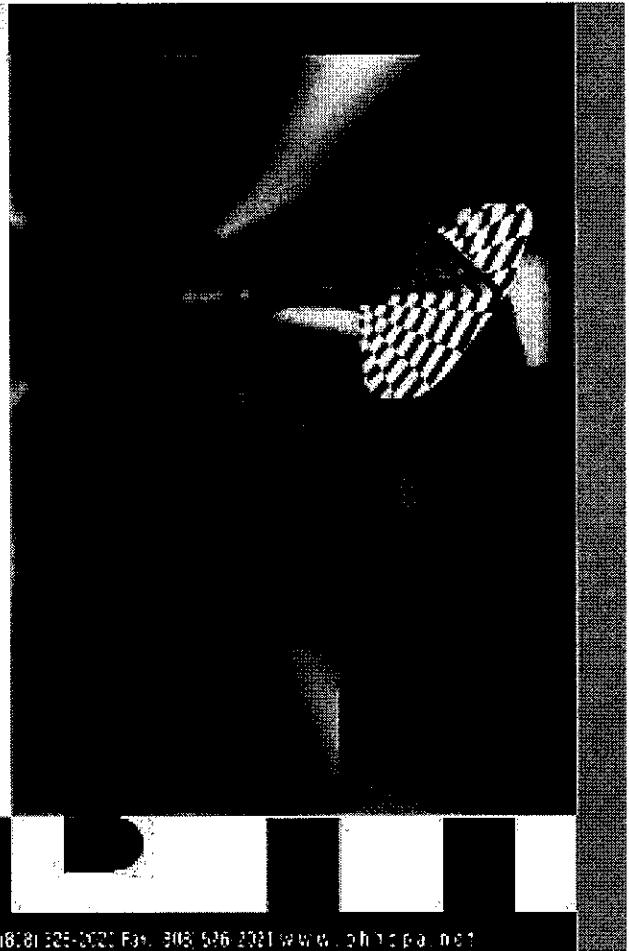
No ethnic or income group is immune to engaging in child abuse and neglect. However, researchers have identified some indicators of parents who are more likely than others to maltreat their children. As early as 1964, researchers identified a cluster of risk factors for parental abuse. The cluster included the following factors: a parent had been abused or neglected as a child; presence of poverty; presence of substance abuse; mental health issues; incarceration of

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parents; parent suspected of having committed prior abuse; marital and financial stressors; social isolation; lack of parental knowledge about child development; parental tendency toward violence; and difficulties in parent-infant bonding.<sup>15</sup>

These risk factors have been used to create a "Family Stress Checklist" for screening purposes.<sup>16</sup> Prevention programs across the country have used that checklist to identify at-risk parents and qualify them for parent-support services such as Hawai'i's Healthy Start Program. These risk factors have been validated in follow-up studies.<sup>17</sup> The CDC also conducted a large study of Adverse Childhood Experiences (ACE Study), which examined the more severe risk factors in the checklist.<sup>18</sup> This study also found a strong relationship between having such adverse experiences in early childhood and developing chronic disease in adulthood.<sup>19</sup>

Poverty, substance abuse, domestic violence, and mental health challenges characterize a large portion of confirmed cases of child abuse and neglect in

Hawai'i.<sup>20</sup> These stressors in a family can result in what is referred to as "intergenerational transmission of trauma and toxic stress."<sup>21</sup> Child abuse and neglect experienced by a child are likely to become part of that child's behavior when the child becomes a parent. Breaking this intergenerational cycle through prevention and early intervention is critical.<sup>22</sup>

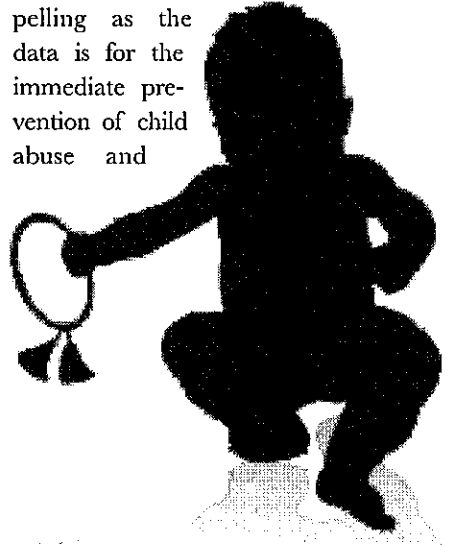
#### Judicial Response to Problem.



In 2004, in an effort to address the civil-justice needs of those children, ZERO TO THREE, a national non-profit infant and toddler advocacy agency, established Safe Babies Court Teams at eight locations around the country. These courts were established in recognition of the critical importance of the first three years in the life of the child. Honolulu's First Circuit Court Team (Hawai'i Zero to Three Court) was added in 2008, with funding continuing through late 2012.

The primary purpose of the Hawai'i Zero to Three Court is to focus attention on the fact that developmental needs of

infants and toddlers are significantly different from the needs of older children in foster care. For example, science on brain development has documented that 70 percent of the structure of the brain is complete by the first birthday. Healthy brain development is dependent on attachment and interaction with the parent or primary caregiver. Early experiences "wire" the brain for life.<sup>23</sup>

Further, as compelling as the data is for the immediate prevention of child abuse and





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neglect, recent science has documented long-term effects of “toxic shock”—an effect that shows up later as chronic illness in adults.<sup>21</sup> Through its partnership with services aimed at promoting positive parent-child attachment and ensuring that children live in a nurturing, secure family placement, the Hawai‘i Zero to Three Court is making significant progress in preventing the cycle of history repeating itself.

Compared with regular dependency court cases, Zero to Three courts invest greater time on each case, with the court team assessing how well the local delivery system is functioning. When gaps are identified, the court team works to develop supportive approaches and community services. Court teams take what has been proven through science and clinical experience to be good for abused and neglected infants and toddlers and translate that knowledge into practices that advance healthy development. A major function of this model is providing physical, developmental, and mental health services to abused infants and toddlers.

Participation is voluntary for parents, requiring a strong commitment by the parents and/or family members. Under the Zero to Three Court, children in foster care and their families have increased parental visitation opportunities, as well as increased relative/kinship placements, both of which increase the likelihood of a child’s reunification with family within 12 months of removal from the home. The court teams thoroughly consider all aspects of a child’s development to ensure the healthiest and most sustainable placements and decisions are made right from the start for each individual child, thereby avoiding corrective changes later.

Two evaluations of the Zero to Three Courts on the mainland have been overwhelmingly positive. (Hawai‘i’s program was not included in the evaluations.) These evaluations include the following key findings: “Control your destiny or somebody else will.”

•99.05 percent of children “Control your destiny or somebody else will.” were protected from further maltreatment while under court supervision, and 97 percent

received needed services;<sup>25</sup> and •Children monitored reached “permanency” 2.67 times faster than the national comparison group.<sup>26</sup>

Five core components guide each court team: 1) local judicial leadership; 2) local community coordinator; 3) local court team; 4) monthly reviews; and, 5) child-focused services and mental health interventions. Increased knowledge and understanding of early childhood development by child welfare workers, judges, and members of the court teams have resulted in children and families receiving appropriate services, including development screening, early intervention, and parenting classes.

The Hawai‘i Zero to Three Court provides “voice, words, and language” for these children to give them the opportunity for access to justice. For them, “justice” is defined as freedom from abuse and neglect by their caregivers. The court strives to provide safe, stable, loving, and nurturing homes for successful growth and development, and to sever the cycle of intergenerational abuse and neglect.

One of the most important of the five core components is monthly judicial reviews. State and federal regulations require court reviews of children in the child welfare system at least every six months. However, for children under the age of three, when physical and mental development is so rapid, a six-month time interval is too long to ensure adequate attention is given to enhancing the child’s brain development and fostering the child’s secure attachment to a parent or significant care giver.

Each Zero to Three case comes to court once a month. Before the scheduled hearings begin, each family’s court team (composed of the Zero to Three Case Manager, the child’s guardian ad litem, parents’ counsel, Deputy Attorney General, and Child Welfare Services social worker) meets with the judge to discuss the child’s and family’s needs and progress in services, the parents’ contact with the child, and any other areas of concern.

Hawai‘i has been extremely fortunate

in its local judicial leadership. Senior Judge R. Mark Browning of the First Circuit Family Court has been extremely supportive of the need for this special court. The court team has been strengthened by continuity in the judicial appointment for the Hawai‘i Zero to Three Court since its beginning in 2008. When funding for Hawai‘i’s program ended in late 2012, the Family Court expressed a commitment to continue the program, using support from the First Circuit Family Drug Court.

In 2013, the Legislature introduced a resolution to provide continued funding for the program. However, another potential federal funding source was identified through the United States Substance Abuse and Mental Health Services Administration. With strong community support, an application was developed and submitted. In late 2013, notification was received of funding of the Zero to Three Court for a three-year period in the amount of \$324,786 for each of the three years. Thus, funding for the Zero to Three Court in the First Circuit is now guaranteed through September 30, 2016.

As of the end of 2013, the Zero to Three Court had accepted 34 cases involving 39 infants and toddlers in addition to seven siblings. Six children were reunited with a parent or parents, and permanency had been achieved through the adoption of 22 children and one legal guardianship. As of January 1, 2014, the court was serving 13 active cases.<sup>27</sup> *This number represented only about three percent of the infants and toddlers under the age of three on O‘ahu who were in foster care as a result of abuse or neglect.*

**The Future.** Now is not too early to begin planning to sustain this critically important community resource for infants and toddlers. Hopefully, funding for the court will eventually become part of the Judiciary Budget. Ideally, the program needs to expand to cover all infants and toddlers on O‘ahu, not just the current three percent.

The Zero to Three Court is now only available in the First Circuit. However, a review of the data suggests the services are greatly needed in the other counties of

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the State. Table 1 shows the 2012 estimated population for each county and the percentage of the state's total child abuse and neglect confirmed reports for that county.

Data is not available on the percentage of the State's population composed of children ages three and under by county. Also not available is data on the number of cases of child abuse and neglect by age by county. However, a comparison of the percentage of population by county and the percentage of confirmed cases of child abuse and neglect by county suggests the problem may be worse in the neighbor islands than in Honolulu County. Honolulu was the only county with a smaller percentage of cases of confirmed abuse and neglect than its percentage of the total State population. Thus, the need for expansion of the Zero to Three Court to other Circuits is crucial.

**Summary.** In the best of all possible worlds, every baby would be welcomed into a family of mature, loving, and nurturing parents. Unfortunately, too many babies are born to parents unprepared to provide the care needed for their child's optimal development. Many of these parents are dealing with their own personal challenges, whether from poverty, addictions, or domestic violence. Too often, the parents themselves were raised in families that did not provide good parenting models or were themselves victims of abuse and neglect as children.

Most people are shocked and sad-

dened whenever the media report details of physical or sexual abuse or descriptions of neglect of a young child by those responsible for the child's care. To work toward the best of all possible worlds, that "village" where young people are taught parenting skills and where there is support for families raising young children while living in stressful situations is needed. The community's safety net of primary prevention of child abuse and neglect has gaping holes that allow too many young children and families to fall into the child welfare system and come under jurisdiction of the courts.

Until that safety net is repaired and the community is more successful with primary prevention, the need for the Zero to Three Court is critical. This court addresses needs of many of the most vulnerable children and families. To expand access to justice for those without meaningful voice, words, or language, the Zero to Three Court in the First Circuit must be continued and eventually expanded to the Second, Third, and Fifth Circuits.

<sup>1</sup> A Report of the Access to Justice Hui (2007). *Achieving Access to Justice for Hawai'i's People*. Report funded by the Hawai'i Justice Foundation and the Hawai'i State Bar Association.

<sup>2</sup> Child Abuse and Neglect Deaths in America. (July 2012). Washington, DC: Every Child Matters Education Fund. Retrieved 4-1-14, [www.everychildmatters.org](http://www.everychildmatters.org).

"Control your destiny or somebody else will."  
 "Control your destiny or somebody else will."

County	State's Projected 2012 Population	Percentage of the State's Total Population	Total Number of 2012 Confirmed Cases of Child Abuse and Neglect <sup>2</sup>	Percentage of State's Total Number of Cases of Child Abuse and Neglect
Hawai'i	188,595	13.50%	301	22%
Honolulu	974,990	70.10%	740	54%
Kaua'i	68,395	4.90%	98	7%
Maui	158,040	11.40%	229	17%
Total	1,390,090	100.00%	1,368	100%

**Table 1. 2012 Project State Population by County and by Percentage of Confirmed Child Abuse and Neglect**

<sup>3</sup> Hawaii State Department of Human Services, A Statistical Report on Child Abuse and Neglect in Hawaii, 2000-2012.

<sup>4</sup> *Id.*

<sup>5</sup> Child Abuse and Neglect Deaths in America, (July 2012). Washington, DC: Every Child Matters Education Fund. Retrieved 4-1-14, [www.everychildmatters.org](http://www.everychildmatters.org).

<sup>6</sup> Department of Health and Human Services, Administration for Children and Families, "Child Maltreatment, 2001-2010."

<sup>7</sup> Herman-Giddens, M.E., Brown, C., Verbiest, S., Carlson, P.J., Hooten, E.G., Howell, E., & Butts, J.D. (1999). Underascertainment of Child Abuse Mortality in the United States. *Journal of the American Medical Association*, 281(5), 463-467.

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<sup>10</sup> <http://www.dontskhake.org/sbs/php/?topNavID=3&subNavID=23>, Retrieved 4-4-14.

<sup>11</sup> Parks, S., Sugarman, D., Xu, L. & Coronado, V. (2012). Characteristics of non-fatal abusive head trauma among children in the USA, 2003-2008: application of the CDC operational case definition in national hospital inpatient data. *Injury Prevention*, 18(6), 392-398.

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<sup>13</sup> Friedman, J., Reed, P., Sharplin, P., & Kelly, P. (2012). Primary prevention of pediatric abusive head trauma: A cost audit and cost-utility analysis. *Child Abuse & Neglect*, 36(11-12), 760-70.

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<sup>15</sup> Kempe, C.H., Silverman, F.N., & Steele, B.F. (1962). The battered child syndrome. *Journal of the American Medical Association*, 181:2, 17-24.

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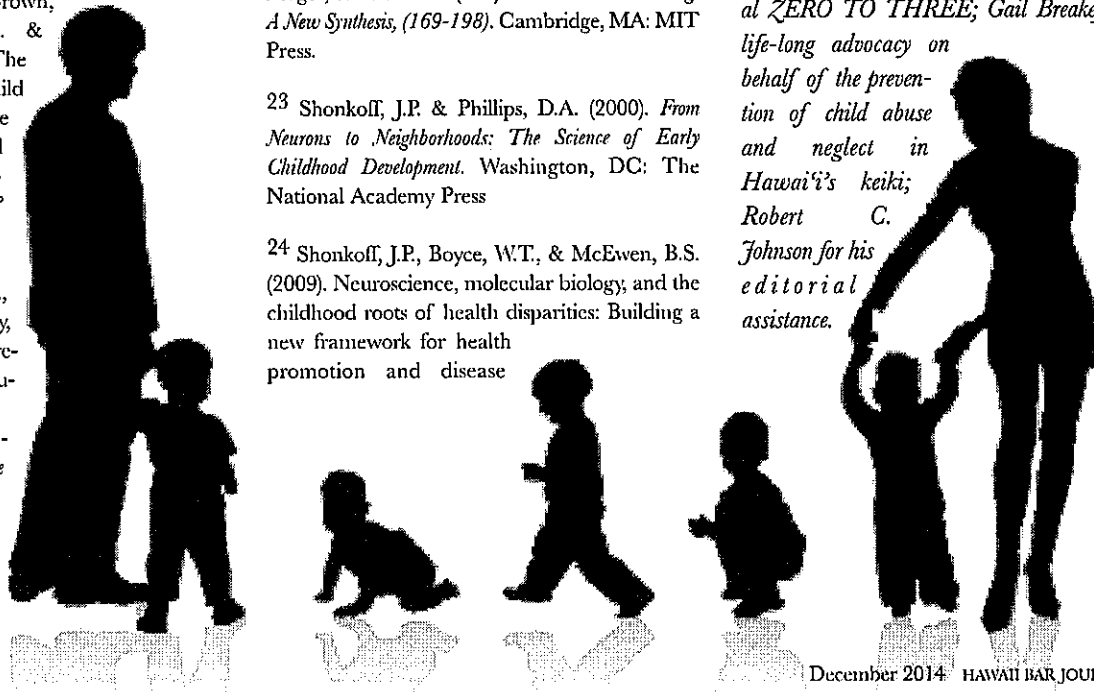
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<sup>28</sup> A Statistical Report on Child Abuse and Neglect in Hawaii, 2012. Retrieved 4-6-14, [www.hawaiidepartmentofhumanservices/management-services-office](http://www.hawaiidepartmentofhumanservices/management-services-office).

Jean L. Johnson, DrPH, is an Associate Professor, Center on Disability Studies, at the University of Hawai'i; Commissioner on the Hawai'i Access to Justice Commission; Chair, Commission's Committee on Overcoming Barriers to the Access to Justice. Judge Christine Kuriyama sits on the O'ahu Family Court in Kapolei. Mary Anne Magnier is a Hawai'i Deputy Attorney General; Commissioner on the Hawai'i Access to Justice Commission; Member, Commission's Committee on Overcoming Barriers to the Access to Justice.

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**Chief Justice Mark E. Recktenwald**  
**Welcoming Remarks for Access to Justice Conference**  
**June 20, 2014**

Good morning and aloha.

I'd like to start by thanking the Access to Justice Commission for sponsoring this sixth annual access to justice conference. I also want to thank Bob LeClair and the Hawai'i Justice Foundation, Dean Avi Soifer and the William S. Richardson School of Law, Calvin Young and the Hawai'i State Bar Association, and the Cades Foundation for their continued support of the access to justice movement here in Hawai'i. I also want to recognize everyone who has worked so hard to plan today's conference, and all of the distinguished speakers and panel members who will be participating. In particular, I would like to extend a warm aloha to Jim Sandman, the president of the Legal Services Corporation, who will present this year's keynote address. And I'd like to extend a personal mahalo to the women at the Women's Community Correctional Center who made these beautiful lei for the speakers today. Will you please join me in acknowledging everyone who helped make this conference possible?

The theme of today's conference is Meeting the Challenges to Equal Justice for All. Indeed, this is a particularly appropriate time to take stock of what we have achieved, as well as the many challenges that remain. This summer marks the 50th anniversary of one of the landmarks in the continuing struggle to achieve equal rights for all Americans:

the passage of the Civil Rights Act of 1964, which prohibited segregation in businesses, banned discriminatory practices in employment, and ended segregation in public places. In calling for the passage of that legislation a year earlier, President Kennedy noted that our nation "was founded on the principle that all men are created equal, and that the rights of every man are diminished when the rights of one man are threatened." President Kennedy went on to observe that "[t]he heart of the question is whether all Americans are to be afforded equal rights and equal opportunities," and "whether we are going to treat our fellow Americans as we want to be treated."

President Kennedy's words--although spoken in the context of condemning racial discrimination--resonate here today as we contemplate the injustice that results when members of our community are denied effective access to the civil legal system because they are unable to afford an attorney to represent them. Every day our courts adjudicate civil cases that affect the most fundamental rights and interests that a person has--whether they will be able to participate in raising their children after a divorce, whether they can remain in their home if they fall behind on their mortgage or rent payments, whether they will have access to essential government services, to name just a few. And every day, people come into our courts who have to represent themselves in these matters because they can't afford legal



counsel, and who are at sea because they don't understand the process and what is expected of them.

Back in 2007, a number of people in Hawai'i came together in an effort called the Access to Justice Hui and asked the same question that President Kennedy asked: is that how we would want to be treated? The answer was a resounding "no". And so, they made the commitment to work together in a systematic and focused way to address that injustice. Just as President Kennedy called for collective action to fight the scourge of racial discrimination and intolerance, so too did our community recognize that sustained collective action--involving partnerships between members of the bar, legal services providers, the judiciary and many others--would be required if we were going to make any headway in meeting the need for civil legal assistance.

In order for that to happen, there had to be a forum for developing and sustaining those partnerships. That forum was the Access to Justice Commission, which was formed by the Supreme Court in 2008. Since the commission was created, it has made significant strides in making the civil legal system in Hawai'i more accessible. Our commission, which is one of 31 such organizations across the country, serves as a model for other states because it has accomplished so much with very limited resources. This is a testament to the leadership of the

commission's chair, Judge Daniel Foley; and his predecessor, retired Supreme Court Justice Simeon Acoba. And, it is also testament to the aloha and commitment of the members of the commission and the many individuals and organizations who have come together and worked so hard to support its efforts.

There is perhaps no better example of the Commission's success in fostering effective partnerships than the creation of self-help centers and access to justice rooms in our courthouses, where self-represented parties can obtain information about court processes from volunteer attorneys and AmeriCorps Advocates, thereby enabling them to navigate the justice system more effectively. The Commission has worked with members of the bar, legal service providers and the judiciary to open self-help centers in every circuit in the state: in Hilo, Wailuku, Lihue, Kona, and here on Oahu at our family court and district court. More than 5,600 people have been helped at these locations since the first center opened in 2011, at almost no cost to the public.

Quite simply, these centers would not be possible without the unified support of the Legal Aid Society of Hawai'i, the HSBA, AmeriCorps, the neighbor island bar associations, and the many attorneys who have generously donated their time volunteering. I deeply appreciate each of their contributions.

The commission has also fostered partnerships with national organizations, like the Legal Services Corporation.

With a grant from the Corporation, the Judiciary worked with the HSBA and the Legal Aid Society of Hawai'i to install access to justice workstations in five courthouses across the state. These computer workstations are equipped with an interactive software program that assists self-represented litigants facing civil legal issues to identify, complete, and print the correct legal forms. Thirteen forms are currently available through the program, and the software is available both at the computer workstations and statewide via the internet.

Going forward, we plan to expand the number of forms that are available, and to develop videos to complement and enhance the use of the program. Also, with a grant from the State Justice Institute, the Judiciary has partnered with the Legal Aid Society of Hawai'i and the Hawai'i State Public Library System to expand access to this software even further by adding the program to computers at 50 public libraries statewide. The grant will also provide for training of librarians, and for presenting community workshops. This expansion into the public libraries will allow us to reach many individuals who might not be able to visit one of our courthouse workstations. Our public libraries provide a unique opportunity for us to reach out into the community, which is why this new partnership is so exciting.

Once again, all of this was started by a modest technology grant from the Legal Services Corporation. That grant

program is a great example of the leadership that the Legal Services Corporation has shown on the national level in advancing the cause of access to justice, and I'd like to thank Jim Sandman for the LSC's willingness to support innovation here in Hawai'i and across the nation.

Notably, through the years the legislature has also provided vital support to access to justice initiatives. For example, the legislature has increased court filing fees that support legal service providers and has provided grants-in-aid as well, and provided hundreds of thousands of dollars in additional funding to support the Judiciary's interpreter program. We deeply appreciate the legislature's continuing commitment to access to justice, and in particular the efforts of Judiciary chairs Clayton Hee and Karl Rhoads, and Finance and Ways and Means chairs Sylvia Luke and David Ige.

Although we have made significant strides in providing increased access to justice here in Hawai'i, we have much work left to do. We need to sustain our achievements, such as the self-help centers, while at the same time looking for innovative ways in which to continue to move forward.

One example of the out-of-the-box thinking that will be required in order to keep us moving forward is the recent report completed by the Judiciary's Strategic Planning Committee on Access to Justice. The purpose of this committee, which is

chaired by Justice Acoba, was to set forth a long-range vision for the judiciary's ATJ efforts. The committee's recommendations range from designating an individual or committee to facilitate access to justice programs statewide, to creating an online ask-a-lawyer interface, to producing YouTube videos to inform the public of common legal issues. It also recommended expanding the judiciary's Ho'okele assistance program, under which court staff provide directions and assistance to court users as they enter our courthouses.

We should also be looking for additional ways to reach out to the community. For example, just last month, a dozen lawyers from the Senior Counsel Division of the HSBA traveled to Molokai to offer an ask-a-lawyer clinic for the island, and another nine attorneys participated by telephone. My colleague, Justice Michael Wilson, traveled to Molokai to support the event, and reports that the response from the community was amazing. More than 70 people came out to seek assistance and information from the attorneys.

And last fall, a number of attorneys and Richardson law school students provided free legal information to veterans at an ask-a-lawyer clinic here on Oahu. That event was made possible because of the efforts of Judge Edward Kubo, Volunteer Legal Services Hawai'i, the Oahu Veterans Center, the Veterans Administration, and the Mediation Center of the Pacific.

We should also explore new ways to involve more people in the access to justice movement. For example, students here at the Richardson School of Law have spearheaded an effort to secure legislation which would provide student loan repayment assistance for attorneys who agree to pursue public service work. Similar programs exist in a number of other jurisdictions across the country. These programs allow new attorneys the opportunity to perform important and rewarding work--such as serving the legal needs of low or moderate income individuals--that might otherwise not be possible because of their student loan debt.

In closing, I return to President Kennedy's question: Are we going to treat our fellow Americans as we want to be treated? Answering that question in the affirmative requires hard work, commitment, and a shared sense of purpose. It is only through a combination of maintaining and fostering community partnerships, developing innovative means of expanding involvement, and stretching our resources through the use of technology that we will be able to maintain the significant momentum we have achieved during the last six years in making justice more accessible to all of Hawaii's residents. I look forward to hearing your experiences, insights, and ideas on what we can do to make the ideal of justice for all a reality. Thank you for your commitment, and your presence here today.

Aloha and mahalo.

## RETHINKING ACCESS TO JUSTICE

James J. Sandman

Hawaii Access to Justice Conference

June 20, 2014

I would like to begin by providing an overview of access to justice in the United States today. I will then describe what I regard as the two greatest challenges facing the access to justice movement and conclude by offering some suggestions for addressing those challenges.

The need for legal services for low-income Americans now stands at an all-time high. Approximately 65 million people – 21 percent of the population – are financially eligible for assistance at legal aid programs funded by the Legal Services Corporation. That is a 30 percent increase over 2007, the last year before the recession began.

But funding for legal aid has remained stagnant in absolute dollars since 2007 and has declined in inflation-adjusted dollars. The best measure of funding over time is inflation-adjusted dollars spent per eligible person, and by that measure, LSC funding is today at an all-time low. State funding varies widely across the country, and many alternative sources of revenue, such as foundation grants, have significant limitations on their use.

As a result of record-high demand for services and low funding, we are not seeing, at least on a national basis, any improvement in access to justice, despite the hard work of Access to Justice Commissions in more than 30 states. Studies consistently show that only 20 percent of the civil legal needs of low-income people are met, and state courts across the country are today overwhelmed with unrepresented litigants.

How can this be? The United States is looked to internationally as a model of the rule of law. The concept of access to justice is deeply embedded in our national values. As Justice Lewis Powell noted, "Equal justice under law is not merely a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. . . . [I]t is fundamental that justice should be the same, in substance and availability, without regard to economic status. "This value is captured in the closing words of the Pledge of Allegiance and in the very first line of the Constitution: "We the people of the United States, in order to form a more perfect union, establish justice . . . ." The framers cited establishing justice as their goal even before they mentioned providing for the common defense or ensuring domestic tranquility. I don't think their ordering was an accident. They recognized that a well-functioning, accessible system of justice is essential to societal stability. It's about the rule of law. You won't long have a nation to defend, or worth defending, without it. This is what the great Judge Learned Hand meant when he said in addressing the Legal Aid Society of New York in 1951, "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."

The disparity between the current state of access to justice in the United States and our national values provides an opportunity for us to step back, take stock, and rethink access to justice. In doing so, we should be mindful of what Esther Lardent, the President of the Pro Bono Institute, recently called “the three enemies of effective movements”: orthodoxy, insularity, and complacency. Orthodoxy, according to Esther, is assuming that there is only one true path or approach to an issue. Insularity is an inward focus and a lack of engagement with those outside the movement. And complacency is the inability or unwillingness to evaluate one’s performance objectively.

With that perspective in mind, I would identify what I think are the two greatest challenges facing the access to justice movement today.

The first is the invisibility of the issue – the widespread ignorance of the magnitude of the justice gap in the United States. The second is a service-delivery model that leaves too many people with no assistance of any kind.

The invisibility of the issue explains, to a significant extent, the disconnect between our professed national value of “justice for all” and funding for civil legal aid. Ignorance of the crisis in access to justice is prevalent among the public, the legal profession (at least with regard to the magnitude of the problem), private philanthropy, and legislators.

Among the public, research has shown a widespread misperception that there is a right to counsel in civil cases. I have my own theory for why this is so. I think most Americans get their understanding of the legal system from television shows. Most television shows about law deal with the criminal justice system. I think many Americans could give you a reasonable approximation of a *Miranda* warning – including the part about having a right to a lawyer and one being appointed to represent you if you cannot afford to pay – with no understanding that *Miranda* rights have no application in a civil case. Most Americans don’t understand the difference between a civil case and a criminal one. Why should they? That’s lawyer stuff.

Within the legal profession, a significant percentage of lawyers are unfamiliar with the size of the justice gap. They do not know the numbers. They do not know that the size of the population eligible for LSC-funded legal aid is at an all-time high or that LSC funding per eligible person is, in inflation-adjusted dollars, at an all-time low. They do not know that last year, 2.3 million people appeared in the state courts of New York without a lawyer, that 98 percent of tenants in eviction cases in New York had no lawyer, that 95 percent of parents in child support cases had no lawyer, and that comparable numbers can be found in courts across the United States.

Private philanthropy, too, is largely unaware of the problem. And to the extent that some foundations are aware of it, they often regard the problem as the unique responsibility of the legal profession, or they regard funding for civil legal aid as being outside the scope of their designated priorities.

Legislators often regard civil legal aid as just another discretionary spending program, a poverty program, that must be reduced because of budget pressures. They do not see the connection between



the values we espouse as a nation and the need for adequately funded civil legal aid. As Justice Jess Dickinson of the Mississippi Supreme Court has said, “We have the moral authority to stop begging and start demanding.”

If we are going to confront and dispel ignorance of the crisis in access to justice, we need to rethink our approach to the issue. We need to ask: To whom do we speak? Who does the talking? And what do we say?

We need to start by speaking to people outside the access-to-justice community. We need to stop talking to ourselves and persuading the already convinced. We need to get before new audiences, particularly of opinion makers and opinion leaders, to present the stark facts and make our case. This is not easy. Because of the invisibility of the issue, it can be difficult to get invitations to speak to the audiences we should most want to reach. But we need to try, and to enlist intermediaries with connections in the effort.

We also need to find people outside the legal aid world to make our case for us. We need new messengers to reach those new audiences. In recent years, judges, and particularly the Chief Justices of a number of state supreme courts, have emerged as very effective advocates for civil legal aid. Your own Chief Justice, Mark Recktenwald, is prominent among them. When judges address the issue, they bring the prestige of their positions, their familiarity with the realities of the justice system today, and their neutrality to the discussion. They present the issue as a nonpartisan one. We need to enlist other, non-traditional advocates for the cause, such as corporate general counsel, chief executive officers, and those foundation leaders who understand the issue and fund legal aid.

And we need to make our case in terms that those outside our world can understand, tailoring the message to the particular audience. We need to start with fundamental American values – particularly the importance of fairness in our justice system, a value that recent research shows resonates deeply with the public. We need to illustrate our case with compelling stories, and to make the business case for legal aid. We need to link legal aid to other client needs so that we are not regarded as foreign. This is the brilliance of medical-legal partnerships, which team doctors and lawyers to provide holistic service to patients whose medical problems can be addressed with legal remedies.

There is good news in the quest to raise the visibility of the need for civil legal aid. Voices for Civil Justice, [voicesforciviljustice.org](http://voicesforciviljustice.org), is a new organization devoted to expanding public awareness of the importance of civil legal aid in helping people protect their livelihoods, their health, and their families. It is funded by the Public Welfare Foundation and the Kresge Foundation, and its mission is to increase media coverage of legal aid. It is headed by Martha Bergmark, a former president of the Legal Services Corporation and the founder of the Mississippi Center for Justice.

I turn now to the second major challenge facing the access to justice movement: a service-delivery model that leaves 80 percent of the legal needs of low-income Americans unmet and turns away half or more of the people who actively seek legal aid. Accepting that status quo as the inevitable result of inadequate funding is complacency. We have to do better.

In light of the realities we face, we need to rethink the goal of the access to justice movement. Is it to provide full representation for every client in every case? That is not realistic, and pursuing that goal at the expense of other alternatives is letting the perfect be the enemy of the good. The fact is that some assistance is better than no assistance.

Late last year, the Legal Services Corporation released a report addressing this issue. <http://lsc.gov/media/in-the-spotlight/report-summit-use-technology-expand-access-justice> The report was the result of a summit that LSC convened “to explore the potential of technology to move the United States toward providing *some form of effective assistance to 100 percent* of persons otherwise unable to afford an attorney for dealing with essential civil legal needs.” Although the report focused on the use of technology, it urged a broad rethinking of the traditional service-delivery model. It recommended the creation of a statewide portal in every state, encompassing all legal services providers in each state, as a universal point of entry to the legal aid system. The portal would employ an automated “triage” system to identify the most appropriate and feasible level of assistance for the matter at issue, taking into account such factors as the sophistication of the client, the nature of the matter, what is at stake, whether the other party is represented, and what resources are available.

The triage assessment will result in full representation for some people and limited representation for others. Some people will be referred to a court-based resource center. Some will be referred to on-line self-help resources, including document-assembly applications. *No one will get nothing*, which is what happens all too often today.

The effectiveness of the triage system in allocating resources will require good historical data. What has been effective in the past? What hasn't? What have past outcomes been with different treatment options? We do not currently have good national or even state-wide data on these questions. The legal aid world can be resistant to data collection and analysis, for understandable reasons: data collection and analysis requires resources and skills that many legal aid programs lack. But I believe the results will justify any needed investment and lead to better management and better client service.

The Legal Aid Society of Cleveland tracks outcomes and uses data to guide resource-allocation decisions. For example, they correlated the results they had achieved in foreclosure cases with the income levels of their clients. They saw that when the client's income was below 75 percent of the federal poverty guideline, they were always unsuccessful in averting foreclosure. That is not surprising, if you think about it; clients at that very low level of income simply did not have enough money to be able to make payments on a restructured mortgage. As a result, the Legal Aid Society of Cleveland decided not to take any more foreclosure cases for people whose incomes were below 75 percent of the poverty guideline. That might strike you as harsh. But I would argue that it was a prudent decision to focus limited resources where they could make a difference.

We need to upgrade the business capacities of legal aid providers. In some places, in-kind pro bono assistance is available from consulting and accounting firms. The Legal Aid Foundation of Metropolitan Chicago, for example, was able to obtain pro bono consulting services to undertake a

thorough analysis of its intake processes, resulting in significant improvements in efficiency. We should try to enlist the assistance of corporate legal departments, which face many issues analogous to those that legal aid offices face, in these efforts.

Rethinking the service delivery model might be viewed as too hard and as a distraction from the core function of client service. But I believe the undertaking is completely consistent with the goal of client service. When we leave 80 percent of the legal needs of low-income people unmet, when we turn away half or more of those who seek out service, we have to do something differently.

I offer one final thought on rethinking access to justice: We need to rethink the scope of the access-to-justice mission. The mission must encompass simplifying the legal system – a system that was designed largely by lawyers for lawyers and does not work well for those who do not have a lawyer. The system need not be nearly as complicated as it is. We must also expand the role of non-lawyer professionals in the way the medical profession has deployed paraprofessionals to speed and improve patient care. The consequences of being without a lawyer do not have to be as dire as they are today. It may be contrary to the economic self-interest of some lawyers to simplify the system and open it to non-lawyers, but so be it. Access to justice should never be driven by lawyers' self-interest.

In confronting the challenges I have outlined, we have one enormous asset – legal aid lawyers. Legal aid lawyers as a group are the lowest paid in the profession. They labor day in and day out with crushing caseloads, with the emotional burden of their clients' circumstances, with the heartbreak of knowing how many people they are unable to help, and with the personal financial insecurity that comes with precarious funding. But they do it with resilience and a professionalism and a passion and a commitment to their clients that is absolutely remarkable. They are making America's promise of justice, reflected in the first line of our Constitution and the closing words of the Pledge of Allegiance, real for thousands of people. I think they are heroes. I thank them for all they do to serve the highest ideals of our profession and of our nation. I commit to them and to you to do everything I can to justify their faith in equal justice.



# RIGHT TO COUNSEL

## Discussed at the Access to Justice Conference

by Mel Masuda

Unlike the right to counsel in criminal cases guaranteed to defendants under the *Gideon v. Wainwright*<sup>1</sup> decision, there is no such equivalent in civil cases, as pointed out by Hawaii Supreme Court Justice Simeon Acoba (ret.) who led a panel discussion at the recent Access to Justice Conference. The topic was “Right to Counsel in Civil Cases—Where Are We?” with the following panelists: State Public Defender John Tonaki; William Hoshijo, Executive Director of the Hawaii Civil Rights Commission; Mary Anne Magnier, supervising deputy attorney general; Russ Awakuni, supervising attorney, Waianae Office of the Legal Aid Society of Hawaii; and Patricia McManaman, Director of the State Department of Human Services. The panelists were selected on the basis of their expertise in the five areas articulated in the “ABA Toolkit for a Right to Counsel in Civil Proceedings (2010)” — shelter, sustenance, safety, health, and child custody.<sup>2</sup> In addition, Justice Acoba asked District Court Judge Michael Tanigawa, who was in the audience, to comment on the representation needs of indigent individuals seeking temporary restraining orders. Justice Acoba circulated to the audience a memorandum prepared by Jessica Freedman and Merissa Velcz, which memorandum provided an overview of the cases decided under the United States (“U.S.”) Constitution and separately under the Hawaii Constitution; expanding the right to counsel under the Hawaii Constitution; and pertinent law review articles.

At the start of the panel discussion, it was noted that the last clause of the Sixth Amendment to the U.S. Constitution, as interpreted by the U.S. Supreme Court, has made the right to counsel mandatory in all criminal cases. There is, however, no such clause in the Constitution that explicitly requires a mandatory right to counsel for indigents in civil cases. The due process clause has been cited by the U.S. Supreme Court as being the source of authority for raising the issue of requiring counsel for indigents in non-criminal cases, as indicated in the discussion below of the U.S. Supreme Court decision in *Lassiter v. Dept. of Social Service of Durham County*.<sup>3</sup>

Justice Acoba pointed out that a required right to counsel for indigents in civil cases is a case-by-case approach by the U.S. Supreme Court in very specific and very much limited areas of the law, namely parental termination hearings in cases of child custody and civil contempt. For example, in the *Lassiter* case involving termination of parental rights, the court set out a three-pronged test to determine whether counsel was required to be appointed to represent an indigent parent. The court started with the premise, borrowed from *Gideon* and progeny and applying it to a civil case situation, that “an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty” under the due process clause of the Fifth Amendment (in federal cases) and of the 14th Amendment (in state cases). *Id.* at 26-27. Next, the court extended the due process concept of “physical liberty” in a criminal case to a civil termination of parental rights

case because “a parent’s desire for and right to the companionship, care, custody, and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection...” *Id.* at 27. However, the court refused to extend a required right to counsel for indigents in all parental termination proceedings. *Id.* at 31. Instead, the court directed the trial courts to evaluate three elements to decide whether counsel is required to be provided for indigents in such hearings—“the private interests at stake, the government’s interest, and the risk that the procedures used will lead to erroneous decisions.” *Id.* at 27.

In dissent, Justice Blackmun asserted that counsel for indigents should be automatically required in parental termination proceedings “where, as here, the threatened loss of liberty is severe and absolute, the State’s role is so clearly adversarial and punitive, and the cost involved is relatively slight...[T]here is no sound basis for refusing to recognize the right to counsel as a requisite of due process in a proceeding initiated by the State to terminate parental rights.” *Id.* at 48.

Justice Acoba noted that, in the recent case of *In re T.M.* (January 6, 2014), the Hawaii Supreme Court, interpreting the State of Hawaii Constitution rather than the U.S. Constitution, held that indigent parents are guaranteed the right to court-appointed counsel in parental rights termination proceedings. 131 Haw. at 421, 319 P.3d at 340. The court “recognize[d] that parents have a substantive liberty interest in the care,

custody, and control of their children that is protected by the due process clause of article I, section 5 of the Hawaii Constitution.” Thus, the court held that, in Hawaii, “parents have a constitutional right to counsel under article I, section 5, in parental termination proceedings and...from and after the filing date of this opinion, courts must appoint counsel for indigent parents once the [Department of Human Services (DHS)] files a petition to assert foster custody over a child.”

The decision of the Hawaii Supreme Court—which goes beyond the U.S. Supreme Court by requiring counsel for an indigent parent in a termination case—is so recent that statistics have just started to be kept for this calendar year at the Department of Human Services.

<sup>1</sup> 372 U.S. 335 (1963).

<sup>2</sup> [www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/civil\\_right\\_to\\_counsel.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/civil_right_to_counsel.html). ABA Model Access Act provides for a civil right to counsel to protect “basic human needs” in five areas: shelter, sustenance, safety, health, and child custody. Shelter means “a person’s or family’s access to or ability to remain in a dwelling, and the habitability of that dwelling.” Sustenance means “a person’s or family’s ability to persevere and maintain assets, income or financial support.” Safety means “a person’s ability to obtain legal remedies affording protection from the threat of serious bodily injury or harm.” Health means “access to health care for treatment of significant health problems.” Child custody means “proceedings in which the parental rights of a party are at risk of being terminated; a parent’s right to residential custody or visitation rights are at risk of being terminated, severely limited, or subject to a supervision requirement; or a party seeks sole legal authority to make major decisions affecting the child.” See further details in the “ABA Toolkit for a Right to Counsel in Civil Proceedings.”

<sup>3</sup> 425 U.S. 18 (1981).

## ODC Ethics Opinions

By Charlene M. Norris

Do you have questions about your duty to a former client or a prospective client? Are you unsure about how to handle a request for a full accounting of your client’s funds? Not certain whether you have a conflict of interest? Not sure how to handle a flat fee retainer? This is the time to call the Office of Disciplinary Counsel (“ODC”) Hotline and request an ethics opinion, and the sooner the better.

One of the primary Disciplinary Board-mandated functions of the ODC is to provide ethical guidance to active members of the bar, including *pro hac vice* counsel, regarding their own prospective conduct. This educational function is both a service to the bar and beneficial to the public in assisting attorneys to avoid ethical problems before they may arise.

### Formal Opinions

Hawai’i bar members are encouraged to visit the Disciplinary Board’s website: [odchawaii.com](http://odchawaii.com), where the full text of all current “Formal Opinions” may be found. As explained on the website, formal written opinions are issued only by the Disciplinary Board and are limited to questions of broad interest and applicability to the bar. The Disciplinary Board does not issue Formal Opinions covering individual scenarios and circumstances. Formal Opinions (“FOs”) are generally suggested by the Hawai’i Supreme Court, the Disciplinary Board, ODC and the bar, on topics ranging from sharing office space (FO 22), to retaining liens (FO 28), email security (FO 40), attorney web sites (FO 41), “of counsel” attorneys (FO 43), handling credit card payments (FO 45), and referral fees (FO 46). Formal Opinions are binding on all bar members and each attorney should be familiar with the text of each FO, as failure to comply with a Formal Opinion may be the basis for a disciplinary proceeding and sanction.

### Informal Opinions

Informal Opinions are generally provided orally by ODC Hotline attorneys to Hawai’i licensed attorneys and address specific factual situations and the

prospective conduct of the individual attorney requesting an opinion. ODC attorneys are assigned to return Hotline calls each week on a rotating basis, and each attorney spends literally hundreds of hours every year in responding to opinion requests from Hawai’i attorneys. ODC does not respond to opinion requests from the public or persons not licensed to practice law in this jurisdiction. ODC does not opine to one attorney on the conduct of other attorneys or provide legal advice. Advice is limited to ethical issues and the application of the Hawai’i Rules of Professional Conduct (“HRPC”).

In limited, complex circumstances, a written opinion request will be entertained and addressed by ODC. Each written opinion is reviewed and approved by a member of the Disciplinary Board’s Opinion Committee.

For the most part, oral opinions are sought by attorneys in time-sensitive situations and the inquiry is relatively simple. Informal Opinions, whether oral or written, are provided with reference to specific HRPC Rules and Comments, and are based solely upon the facts provided by the inquiring attorney. An attorney may be referred to the ABA/BNA Lawyers’ Manual on Professional Conduct (2009), the ABA Annotated Model Rules (7<sup>th</sup> Ed. 2011), and Bar Journal articles or Formal Opinions appearing on the website [odchawaii.com](http://odchawaii.com), as well.

A record of each Informal Opinion is confidentially maintained by the ODC in an attorney database tracking system. If you need an oral Informal Opinion, the ODC and Disciplinary Board suggest that you first check the new Hawai’i Rules of Professional Conduct (effective January 1, 2014), then call the ODC Hotline at 521-4591, choose Option 2 and leave a message with a short description of the facts and your specific question(s). An ODC attorney will try to return your call the same day, but will return the call no later than two business days after the call is received. ODC appreciates the opportunity to serve the bar in this manner.

*Charlene M. Norris is the Acting Chief Disciplinary Counsel.*

by  
R. Elton Johnson, III

For the sixth annual Hawai'i Access to Justice Conference on June 20, 2014, under the title "Meeting the Challenges to Equal Justice for All," nearly 300 people gathered to consider

# REFLECTIONS on the 2014 Conference



pose mentioned in the Preamble to the United States Constitution, and "Liberty and Justice for all" are the closing words of our Pledge of Allegiance.

He quoted Judge Learned Hand regarding the importance of access for our democracy, and noted how critical a func-



the challenges to achieving access to justice for all citizens, in the sense of effective access to their justice system, and to explore how we might better meet those challenges.

### **"Thou shalt not ration justice"**

*"If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."*

— Judge Learned Hand

Hawai'i's Chief Justice, Mark E. Recktenwald reminded those in attendance that when President John F. Kennedy called for the passage of the Civil Rights Act fifty years ago, he cited

our founding principle that all men are created equal, and noted that the rights of every man are diminished when the rights of one man are threatened. "President Kennedy's words," said the Chief Justice, "although spoken in the context of condemning racial discrimination, resonate here today, as we contemplate the injustice that results when members of our community are denied effective access to the civil legal system because they're unable to afford an attorney to represent them."

Guest speaker James J. Sandman, President of the Legal Services Corporation ("LSC"), pointed out that "to establish justice" is the first core pur-

positional, accessible justice system is for social stability: "You won't long have a nation to defend, or worth defending, without it. It's about the rule of law." Given our professed values, President Sandman regards it a great paradox that we have failed to effectively realize access to justice.

### **Access remains elusive**

*"As a result of record-high demand for services and low funding, we are not seeing, at least on a national basis, any improvement in access to justice, despite the hard work of Access to Justice Commissions in more than thirty states."*

— James J. Sandman

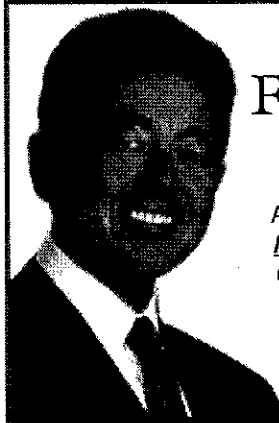


Chief Justice Recktenwald noted that every day, our courts adjudicate civil cases that affect people's most fundamental rights and interests—such as whether they'll be able to participate in raising their children after a divorce, whether they can remain in their home if they fall behind in their mortgage or rent payment, whether they'll have access to essential government services—"and every day people come into our courts who have to represent themselves in these matters because they can't afford legal counsel, and who are at sea because they don't understand the process and what is expected of them."

In his remarks, President Sandman was direct about the current status of access to civil legal assistance by low-income people nationwide. The population financially eligible for LSC-funded programs is now at sixty-five million people, or 21 percent of the U.S. population. This is an all-time high, and represents a 30 percent increase over 2007, the last year before the recession hit.

Meanwhile, funding is at best stagnant over all sources in absolute dollars, but is at an all-time low if adjusted for inflation and by funding per eligible person, due to the huge spike in the number of eligible persons. As a result, over a thousand full-time positions in LSC-funded programs have been lost since 2010, and thirty-three offices have been closed—many of these in rural areas with limited access alternatives.

An increasing number of people are on their own at court when they face life-changing legal issues. President Sandman pointed out that in New York State courts last year, for example, 98 percent of tenants in eviction cases, and 95 percent of parents in child support cases, had no lawyer. Most states do not maintain such statistics, but needs assessments in many



## Divorce Mediation & Family Law Representation

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*Attorney at Law*

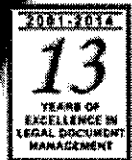
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states—including the latest broad civil legal needs assessment in Hawai‘i, undertaken in 2007 before the recession—have demonstrated that most low- and moderate-income people receive no help with their civil legal needs. In Hawai‘i, a new statewide needs assessment is presumably imminent, as required by Rule 21 of the *Rules of the Supreme Court*.

### Approaches taken

*“It’s our mandate to develop initiatives to increase access to justice by increasing public and private funding for our legal service providers, those who fight on the front lines, to work with the Bar to increase pro bono legal services, to reduce language and cultural barriers to access to justice, to educate government leaders, attorneys, and the public on access to justice.”*

— Associate Judge Daniel R. Foley

Chief Justice Recktenwald, and Associate Judge Daniel R. Foley, Chair of the Hawai‘i Access to Justice Commission, each applauded the partnership enjoyed in Hawai‘i between the Hawai‘i State Judiciary, the funded legal service providers, the Hawai‘i Access to Justice Commission, the Hawai‘i Justice Foundation, the Hawai‘i State Bar Association, the William S. Richardson School of Law, the Cades Foundation, and many others. Hawai‘i’s Access to Justice Commission, they noted, serves as a model nationally, having accomplished so much with so little.

In their respective addresses, Chief Justice Recktenwald and Associate Judge Foley also mentioned many illustrative Hawai‘i efforts to improve access to justice that have been realized in recent years, or are being actively developed. These initiatives are within certain well-established approaches to improving access.

#### *Attorney services approach:*

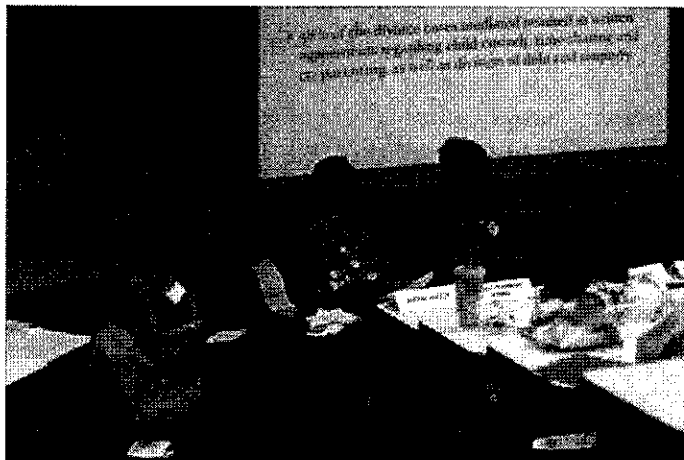
- Amendment of court rules to clarify procedures for limited scope representation or unbundled services

#### *Attorney pro bono services approach:*

- Access To Justice Rooms established since 2011
- Ask-A-Lawyer clinics
- Amendment of *Hawai‘i Revised Code of Judicial Conduct Rule 3.7* in 2010 to encourage pro bono by judges
- Model pro bono policies for law firms and government legal offices
- Training of attorneys for pro bono work

#### *Attorney services via funded legal service provider approach:*

- Increased surcharge on the filing of certain civil case court documents established by Senate Bill 1073 in 2011
- \$500 contribution required for attorneys in lieu of pro bono per *Hawai‘i Rules of Professional Conduct Rule 6.1*
- Amendment of *Hawai‘i Rules of Civil Procedure Rule 23* in 2011 to facilitate distribution of unclaimed class action funds (*cy pres*)



- Grants-in-aid to support providers
- Amendment of court rules to clarify procedures for limited scope representation or unbundled services

#### *Alternative dispute resolution approach:*

- Pilot foreclosure mediation program on the island of Hawai‘i

#### *Self-representation approach:*

- Self-help centers
- Court form and document assembly workstations—and the imminent access to same through public libraries—supported by a Legal Services Corporation technology grant and a State Justice Institute grant

The importance for improving access to justice of technological enhancements generally, and of identifying and addressing language and cultural barriers, was also affirmed by these speakers.

On a legislative panel regarding increasing contributions to funded legal service providers, Senator Clayton Hee, Chair of the Senate Committee on Judiciary and Labor; and Senator Suzanne Chun Oakland, Chair of the Senate Committee on Human Services, both mentioned the Indigent Legal Assistance Fund (“ILAF”), which is based on court filing surcharges. Senator Hee said that since Senate Bill 1073 passed in 2011, ILAF funding has increased from \$330,000 to 1 million in 2014 and is expected to increase to 1.4 million in 2015. He thanked Gary Slovin and Mihoko Ito for their efforts at the Legislature and encouraged those who

seek further funding for legal services to continue to engage with legislators. Senator Chun Oakland observed that good organization and educational efforts by the legal community can be effective, and she particularly stressed the importance of quantifying the unmet need for legal services. This, she said, would also help build alliances with others out-

side the justice system willing to advocate for funding increases.

The work of the Judiciary Strategic Planning Committee for Access to Justice led by Associate Justice (Ret.) and former Chair of the Hawai‘i Access to Justice Commission Simeon R. Acoba, Jr. was also mentioned by Chief Justice Recktenwald. In May 2014, this committee recommended further specific efforts to increase attorney pro bono (through, *e.g.*, improvements associated with the self-help centers, and the establishment of an online Ask-a-Lawyer interface), and further efforts to facilitate self-representation (through, *e.g.*, strengthening the Ho‘okele Program that provides procedural assistance at the courts, improving and

expanding operations of the self-help centers, improving the Judiciary website, producing instructional YouTube videos for the Judiciary YouTube channel, and expanding the implementation of court form and document assembly workstations).

The creative efforts being made in Hawai'i that were mentioned by Judge Foley and Chief Justice Recktenwald in the plenary session of the 2014 conference are within important well-established approaches to effecting greater access to justice, that is, attorney services, attorney pro bono services, attorney services via funded legal service provider, alternative dispute resolution, and self-representation. Though not mentioned by these speakers in the plenary session, the civil right to counsel initiative is another important effort that is also being developed in Hawai'i—if not yet on the Commission itself. Like the unbundling initiative, the civil right to counsel initiative is both an attorney services approach and a funded legal service provider approach to improving access to justice. The unbundling or limited scope representation initiative effectively encourages attorney provision of targeted—and therefore more affordable—assistance rather than strictly full representation, and the right to counsel initiative seeks the provision of counsel at public expense for indigent persons in civil cases when their basic human needs are at risk.

Systemic approaches to improving access to justice through improvement of the delivery model itself are also promising. The alternative dispute resolution (“ADR”) approach helps to improve access through mediation and related services for certain types of disputes; it has ancient roots but has been better recognized as a significant benefit in the public interest within our type of justice system for over thirty years. Judge Foley mentioned the foreclosure mediation pilot program in his conference plenary presentation, and there was a conference workshop this year that explored the implementation of the ADR approach in civil cases. The adjunct provider approach to improving access to justice, whereby an adjunct provider is author-

ized to deliver certain limited civil legal services in identified areas of chronic unmet need, was commended by President Sandman in his conference presentation. With the exception of ADR, no systemic improvement upon the longstanding thin ecology of attorney and funded legal service provider attorney has been developed, with respect to how legal services are delivered to Hawai'i's underserved.

### Re-thinking access


*“When we leave 80 percent of the legal needs of low-income people unmet, when we turn away half or more of those who seek out service, we have to do something differently.”*

—James J. Sandman


As the head of the largest funder of United States civil legal aid programs for low-income people, supporting 134 independent legal aid programs with 799 offices serving every county in the country, President James Sandman has a unique perspective from which to diagnose our access to justice challenges. In his presentation, titled “Re-Thinking Access to Justice,” he identified two major challenges facing the access to justice movement today, namely the invisibility of the issue, and the existing service-delivery model.

With respect to the first major challenge, President Sandman noted that ignorance of the access to justice problem and its magnitude is prevalent among the public, private philanthropy, legislators, and the legal profession. Many people do not understand the difference between criminal and civil law and do not realize that there is no right to counsel in life-changing civil matters in which one may lose one's home, or have one's children taken away, for example. Private philanthropy is largely unaware of the access to justice problem, or regards funding for civil legal aid as outside their priorities, or the responsibility of the legal profession. Legislators often think of civil legal aid as just one more discretionary spending program that must be cut to meet the budg-

*(Continued on page 17)*



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**Quote from Marcelo Nobrega, Esq. on why he does pro bono work:**


*“I always had a heart for justice and providing pro bono services for the Hawaii Immigrant Justice Center at the Legal Aid Society of Hawaii makes my life tremendously happy and fulfilling.”*

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(Continued from page 15)

et, rather than as a foundation of our democratic society. Members of the legal profession often do not appreciate just how severe the unmet need for civil legal services is.

To dispel this sort of ignorance, President Sandman suggests a re-thinking of our approach. Though it is not easy to get invitations, we should try to speak to people outside of the access to justice community, particularly opinion leaders, enlisting connected intermediaries in this effort. We should find people outside the legal aid world to reach new audiences, such as CEOs and foundation leaders who understand the issue. President Sandman noted the recent emergence of Chief Justices, such as Hawai'i's Chief Justice Recktenwald, as effective non-partisan advocates for access to justice.

President Sandman noted that we need to make the economic case for legal aid. He emphasized the need to customize the message for those outside our world, to illustrate with stories, and to emphasize the importance of fairness in our justice system—a focus that is known to resonate with the public. With respect to the phenomenon of the failure to self-identify one's problem as a legal problem, he mentioned an initiative by the Tennessee Access to Justice Commission whereby leaders in faith communities are trained to identify legal problems and advise regarding available resources. He noted the success of medical-legal partnerships in identifying links with other client needs, as when, for example, pervasive mold-related illness is most effectively addressed with legal measures able to eliminate the environmental exposures often at the root of such health issues. He noted the emergence earlier this year of a new initiative funded by the Public Welfare Foundation and the Kresge Foundation called Voices for Civil Justice ([www.voicesforciviljustice.org](http://www.voicesforciviljustice.org)), a communication hub that collects and distributes stories and information from the field, to increase media coverage and expand public awareness of the importance of civil legal aid in protecting people's livelihoods, health, and families.

The second major challenge to the access to justice movement identified by President Sandman is “a service delivery model that leaves 80 percent of the legal needs of low-income Americans unmet and turns away half or more of the people who actively seek legal aid.” He suggested that to accept this status quo as an inevitable consequence of a funding shortfall would constitute complacency.

He argued that the roles of non-lawyer professionals need to be expanded to help achieve more efficient care, as has been done in the medical profession, for example. He observed that the Washington State regulation of non-lawyers to address certain circumscribed unmet civil legal needs, which is just getting started, is “a great move in the right direction.” In Hawai'i, this important systemic approach to improvement in the delivery of legal services to the public through limited civil legal services

and pro bono by regulated adjunct providers remains the uniquely neglected approach among those identified in the 2007 *Community Wide Action Plan* and the 2008 Rule 21 of the *Rules of the Supreme Court of the State of Hawai'i* that initiated our current access to justice movement.

President Sandman argued that while full representation for every client in every case is not realistic, “some assistance is better than no assistance”; he encouraged the use of technology to help provide “some form of effective assistance” to 100 percent of those unable to afford an attorney to deal with essential civil legal needs. He referred to a 2013 Legal Services Corporation summit focused especially on the use of technology to help achieve this goal, which recommended the creation of a statewide legal aid portal and automated triage system in every state (see [\[ort\\\_2013.pdf\]\(#\)\). Based on historical data regarding what has been most effective, some would receive full representation, while others would receive limited representation, or be directed to court-based or online resources. He encouraged simplification of the legal system so that those who do not have a lawyer can better access the information that they need.](http://www.lsc.gov/sites/lsc.gov/files/LSC_Tech%20Summit%20Rep</a></p></div><div data-bbox=)

### An information-rich conference

*“I think prior to 2008, when the Commission was first established, the legal service providers and their allies worked in spheres that seemed separate from the rest of the Bar and the Judiciary. But what was important and significant in estab-*

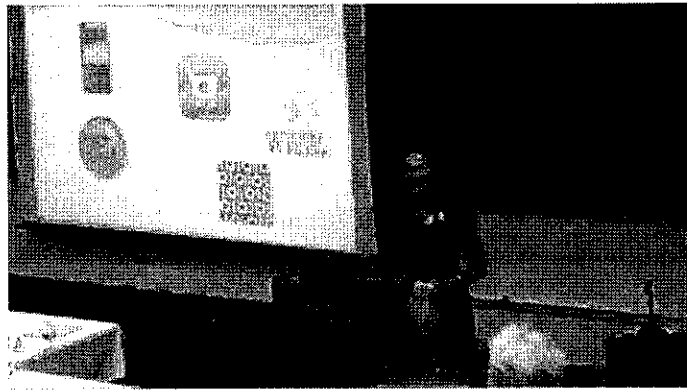


*lishing the Commission was that it gave a place where people could go, established a platform that made the commitment to equal justice available to more people. The establishment of a Commission within the Judiciary thus institutionalized this commitment. And in doing that, it provided the opportunity to sustain the efforts to afford the community access to justice.”*

— Associate Justice Simeon R. Acoba, Jr. (Ret.)

In the afternoon, all attending the 2014 Hawai'i Access to Justice Conference had the opportunity to choose between numerous concurrent workshops covering a rich variety of topics and drawing on the expertise of dozens of providers and others in Hawai'i's legal community with a passion for meeting the challenges of access to justice. The workshop topics covered were maximizing legal services for the underserved, the right to counsel in civil

cases, giving voice to the underserved through lobbying and political movements, mental health issues of the underserved, self-help centers, current topics in domestic violence, mediation and restorative justice, decisional capacity issues for the elderly, enhancing access to justice



with technology, and unbundled legal services. More information about these 2014 conference presentations and discussions is available at <http://www.hawaiijustice.org/hajc/access-to-justice-commission/2014-access-to-justice-conference>.<sup>1</sup>

In one of the workshops, “Meeting Challenges to Effective Delivery of Unbundled Legal Services,” Judge Joseph Cardoza explained that for a self-represented individual, limited scope representation can mean access to relatively affordable legal services for a particularly challenging phase of their case, such as, for example, opposing a motion for summary judgment. He said that—though unbundling is not new (“Unbundling is new only when you compare it to the age of the universe,” he quipped), and has existed in the United States since its founding—more discussion and education is nevertheless needed. Judge Foley, who was in attendance at this workshop, commented that it is the hope of the Commission that explicit clarification of limited scope representation protocols in a rule will help to establish “a uniformity of practice and expectation,” and thereby address attorney reluctance to provide discrete service for fear of being required by the court to see the client’s case through to completion. Panelist Eric Seitz noted that the court typically appreciates the help provided by limited-scope representation counsel. He emphasized the need for all to have a clear understanding, up front, of what the scope of representation is.

With respect to the process of limited scope representation, Judge Cardoza referred to what he calls “the four D’s”: Define the scope of representation, document the scope, disseminate that scope to the court and to opposing parties, and

when finished with one’s work, disengage. Panelist Judge Barbara Richardson explained that a draft of a proposed court rule on limited scope representation, which was distributed to those in attendance, has been revised from mandatory to permissive based on feedback from attorneys familiar with this type of practice. Panelist Derek Kobayashi pointed out that the Access to Justice Room at the Honolulu District Court well illustrates discrete representation; there, the client begins an attorney-client relationship as he or she enters the room, and terminates that relationship upon leaving the room. This is accomplished through intake and exit documentation signed by the client. The sample forms attached to the draft limited-scope representation rule are similar in concept to those forms.

### Are we making progress?

*“My compliments. You have something special here. I don’t know if you know that. But your approach to access to justice issues reflects a level of integration and collaboration that I don’t see elsewhere. The involvement of your Judiciary, at all levels, is really quite remarkable. The number of judges who are here today sends a message to the entire Bar about the preeminence that they regard this issue as having in their priorities. The involvement of your bar association, of your law school, of all of your legal services providers, of your non-profit communities—it just doesn’t happen the same way elsewhere.”*

—James J. Sandman

Before the sixth annual Hawai‘i Access to Justice Conference adjourned under the shared refrain of *Hawai‘i Pono‘i*, the plenary speakers responded to a few questions presented by moderator Robert J. LeClair. Asked whether he thinks we are making progress in the

efforts toward improving access to justice or rather just trying vainly to swim upstream, James Sandman cited three encouraging developments at the national level: The advent of the American Bar Association Resource Center for Access to Justice Initiatives ([http://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/resource\\_center\\_for\\_access\\_to\\_justice.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html)), which serves as a clearinghouse for access to justice commissions and circumvents the need to “re-invent the wheel,” the work of the Access to Justice Initiative of the United States Department of Justice (<http://www.justice.gov/atj/>), which strives to increase funding from non-traditional federal sources (besides the LSC), and the work of the Conference of Chief Justices to bring advocacy by the judiciary to bear for the improvement of access to justice (<http://www.justice.gov/atj/>).

Chief Justice Recktenwald expressed confidence that, though “the need is huge,” we are making progress. He said that the impact of the Hawaii Access to Justice Commission has exceeded all expectations, and he also cited ABA grant project funding of both new commissions and innovations in many states, including Hawai‘i, as a real sign of progress. President Sandman observed that the Hawai‘i community exhibits “a depth of relationships that augurs very well for your success in meeting the challenges of access to justice.”

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<sup>1</sup> An article about the workshop, “Right to Counsel in Civil Cases—Where Are We?” was published in the October 2014 issue of the *Hawaii Bar Journal*.

*Elton Johnson has an abiding interest in the nature of justice, and the importance of public access to the justice system in a democratic society. He has regularly volunteered his time to help further the improvement of public access to legal services.*

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**Hawaii takes the lead in providing access to justice for all**

By Daniel R. Foley

POSTED: 01:30 a.m. HST, Dec 30, 2014

Hawaii is paving the way in providing Access to Justice.

In a recent "access to justice" report, the National Center for Access to Justice ranked Hawaii No. 1 for providing support to self-represented litigants. And as this year comes to a close, I cannot help but reflect on how far we have come this past decade to give a voice to those who cannot afford an attorney, and how much help has been provided to those who navigate the judicial system on their own.

We came from humble beginnings. A small group of people, passionate about making justice accessible for all people from all income levels, came together to form the Access to Justice Hui.

The hui found that only 1 in 5 low- and moderate-income residents had the resources to meet their civil legal needs. This left 4 out of 5 people on their own.

Representatives from the Hawaii Justice Foundation, Hawaii State Bar Association (HSBA), state of Hawaii Judiciary, the William S. Richardson School of Law, nonprofit legal service providers and others worked toward the vision of increasing access to justice for civil legal matters. On May 1, 2008, the Hawaii Access to Justice Commission was established by the state Supreme Court.



*Daniel R. Foley is an associate judge in the Hawaii Intermediate Court of Appeals and chairman of the Access to Justice Commission.*

The number of supporters that are now behind the Access to Justice Commission's mission has grown over the past six years with more lawyers, judges, legislators, nonprofits and community members on board and working together to achieve common goals of increasing access to justice.

Together, we have been able to accomplish much with limited resources and affect change throughout the judicial system.

Each year, the commission hosts an annual Access to Justice Summit. This gathering of attorneys, judges and members of the public serves as a forum to raise awareness, share ideas and foster solutions.

Under the leadership of Chief Justice Mark Recktenwald, the state Judiciary has opened self-help centers in every major courthouse statewide. Since the first opening in 2011, the self-help centers have assisted more than 6,900 people at almost no cost to the public as attorneys from state and local bar associations have stepped forward to provide legal information and advice to the self-represented to make the process more understandable and their self-representation more effective.

One way we have been able to utilize technology to expand services is a partnership between the state Judiciary, the Legal Aid Society of Hawaii and the HSBA to make self-help interactive court forms available online.

In August 2014, the Hawaii State Public Library System joined this partnership by launching its A2J

Interactive Forms Initiative, which has trained our public librarians to assist library patrons to access the interactive forms on its 800 computers and 250 netbooks state-wide. In spring 2015, the partnership will be offering know-your-rights workshops at public libraries across the state, including Molokai and Lanai.

With the Legislature's support, the commission has found ways to fund nonprofit legal service providers. The filing fees for certain civil court documents were increased, and now provide more than \$1.5 million a year for the nonprofits. Court rules have also been amended to provide for the distribution of excess funds from class-action lawsuits to nonprofits.

Along with the state Judiciary, we have made increasing access to justice for all Hawaii residents a top priority.

Thanks to all our partners who have helped us come this far, and let's continue to build on this momentum in the coming year.

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE HAWAII ACCESS TO JUSTICE COMMISSION TO CONVENE A WORKING GROUP TO DEVELOP AN EDUCATIONAL LOAN REPAYMENT PROGRAM FOR WILLIAM S. RICHARDSON SCHOOL OF LAW GRADUATES TO EXPAND OPPORTUNITIES TO PURSUE PUBLIC INTEREST CAREERS IN HAWAII THAT DIRECTLY SERVE UNDERSERVED COMMUNITIES.

1           WHEREAS, the Legislature finds that there is a significant,  
2 and income-based disparity in the ability of Hawaii residents to  
3 meaningfully achieve justice in both the civil and criminal  
4 courts of the State; and

5  
6           WHEREAS, the Hawaii Supreme Court's Access to Justice  
7 Commission, established in 2008 to increase access to justice in  
8 civil legal matters for low- and moderate-income residents,  
9 found that one of the reasons for the severe disparity among  
10 citizens' abilities to access the judicial system is the  
11 insufficient number of attorneys choosing to practice public  
12 interest law in Hawaii; and

13  
14           WHEREAS, the Legislature finds that there are not enough  
15 new lawyers that are able to practice public interest law due to  
16 accumulated educational debt incurred, the high cost of living  
17 in Hawaii, and the low compensation for public interest work  
18 compared to other practice areas; and

19  
20           WHEREAS, the legislature further finds that the federal  
21 government and 26 other jurisdictions nationwide have loan  
22 repayment assistance programs to encourage lawyers to pursue  
23 public interest work within their jurisdictions; and

24  
25           WHEREAS, there are several available options that could  
26 achieve an effective Hawaii-focused loan repayment program, and  
27 such a program is necessary to bring similar benefits to the  
28 State's underserved communities; and



1           WHEREAS, the William S. Richardson School of Law has served  
2 as Hawaii's law school since 1973 and provides an excellent  
3 legal education for attorneys pursuing all sectors of law, with  
4 an emphasis on public service and public interest law that,  
5 compared to law school education elsewhere in the United States,  
6 provides a relatively low cost and high value legal education  
7 that allows Hawaii residents the opportunity to pursue a  
8 rewarding legal career in-State; and  
9

10           WHEREAS, many students of the William S. Richardson School  
11 of Law express a high level of interest in pursuing public  
12 service careers in Hawaii, including in the State's rural  
13 communities, and a loan repayment program would be a substantial  
14 factor in enabling Richardson graduates to pursue these careers;  
15 and  
16

17           WHEREAS, many underserved communities in Hawaii would  
18 benefit directly from a loan repayment program that supports  
19 graduates of the William S. Richardson School of Law pursuing  
20 public interest careers; and  
21

22           WHEREAS, a successful loan repayment program needs to be  
23 crafted carefully to:  
24

- 25           (1) Ensure maximum compatibility with the federal  
26           repayment program;
- 27
- 28           (2) Ensure broad support from law students and graduates,  
29           the Judiciary, the Hawaii State Bar Association, and  
30           the State's public service providers;
- 31
- 32           (3) Be financially sustainable; and  
33
- 34           (4) Include a collection program that provides for  
35           appropriate administrative support through the William  
36           S. Richardson School of Law, but avoids conflicts of  
37           interest with respect to its graduates; now,  
38           therefore,  
39

40           BE IT RESOLVED by the Senate of the Twenty-seventh  
41 Legislature of the State of Hawaii, Regular Session of 2014, the  
42 House of Representatives concurring, that the Hawaii Access to  
43 Justice Commission is requested to convene a working group to  
44 develop an educational loan repayment program for William S.





1 Richardson School of Law graduates to expand opportunities to  
2 pursue public interest careers in Hawaii for the benefit of  
3 underserved communities; and

4  
5 BE IT FURTHER RESOLVED that the working group be composed  
6 of members of the Hawaii Access to Justice Commission, faculty  
7 and staff of the William S. Richardson School of Law, the  
8 Student Bar Association of the William S. Richardson School of  
9 Law, the Alumni Association of the William S. Richardson School  
10 of Law, the Hawaii State Bar Association, a retired member of  
11 the Hawaii Supreme Court, Hawaii Consortium of Legal Service  
12 Providers, Hawaii Justice Foundation, a member of the House of  
13 Representatives, a member of the Senate, and a representative of  
14 the Governor's Office; and

15  
16 BE IT FURTHER RESOLVED that the working group is requested  
17 to:

- 18  
19 (1) Explore alternative methods of encouraging law  
20 graduates to pursue public interest careers that  
21 provide legal services directly to underserved  
22 communities and nonprofit organizations;  
23  
24 (2) Consider the compatibility of the federal law graduate  
25 loan repayment programs with a Hawaii program;  
26  
27 (3) Consider the establishment of an incubator program for  
28 post-graduate apprenticeship to afford practice-ready  
29 training for graduates of the William S. Richardson  
30 School of Law and to encourage multidisciplinary  
31 training of graduates; and  
32  
33 (4) Draft proposed legislation or alternative measures, if  
34 needed, to implement such programs; and  
35

36 BE IT FURTHER RESOLVED that the members of the working  
37 group should not be considered state employees based solely upon  
38 their participation in the working group; and  
39

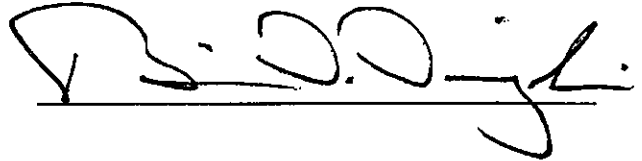
40 BE IT FURTHER RESOLVED that the working group is requested  
41 to submit a final report of the working group's findings and  
42 recommendations, including any proposed legislation, to the  
43 Legislature no later than 20 days prior to the convening of the  
44 Regular Session of 2015; and



# S.C.R. NO. 116

1 BE IT FURTHER RESOLVED that certified copies of this  
2 Concurrent Resolution be transmitted to the Governor, the Chief  
3 Justice of the Hawaii Supreme Court, members of the Hawaii  
4 Access to Justice Commission, the Dean of the William S.  
5 Richardson School of Law, the President of the Student Bar  
6 Association of the William S. Richardson School of Law, the  
7 President of the Alumni Association of the William S. Richardson  
8 School of Law, the Executive Director of the Hawaii State Bar  
9 Association, members of the Hawaii Consortium of Legal Service  
10 Providers, and the Commissioners of the Hawaii Justice  
11 Foundation.  
12  
13  
14

OFFERED BY:



A handwritten signature in black ink, appearing to read "R. D. O. J. L.", is written over a horizontal line. The signature is stylized and cursive.

