

## **The Hawai`i Renaissance in Access to Justice<sup>1</sup>**

by Hon. Simeon R. Acoba, Jr. (ret.)

The recent decade marked a renaissance in access to justice efforts. The movement was spurred by a 2007 report by the Access to Justice hui, a group comprised of representatives from the judiciary, the bar, the William S. Richardson School of Law, and spearheaded by legal service organizations. The report found that only one in five low- and moderate-income residents had his or her legal needs met and that legal service providers could assist only one in three persons who contacted them.<sup>2</sup> The report recommended ten action steps, the first of which was the establishment of an Access to Justice Commission (“Commission”).<sup>3</sup> In response, the Hawai`i Supreme Court adopted rules of the Supreme Court of Hawai`i Rule 21, establishing the Commission on April 24, 2008. The rule became effective on May 1, 2008, the 50th anniversary of Law Day, and the Commission held its first meeting on July 23, 2008.

The purpose of the Commission is to “substantially increase access to justice in civil legal matters for low- and moderate-income “persons. RSCH Rule 21(b) (2008). Each of the three branches of government, the Hawai`i State Bar Association (“HSBA”), the Consortium of Legal Service Providers, the William S. Richardson law school, the Hawai`i Justice Foundation (a private fund-granting nonprofit corporation), the Hawai`i attorney general, the Hawai`i Paralegal Association, and the community at large were accorded representatives on the 22-member Commission. See RSCH rule 21(3), (4) (2008).

What is unique about the Commission from other prior attempts in Hawai`i to advance civil legal assistance to those who are underserved is that it formally institutionalized an ideal—that justice must be extended to everyone notwithstanding economic, social, cultural, language, and other barriers to equal access to the civil law system. At its inception, the role of the Commission could not be predicted, but since its establishment many accomplishments<sup>4</sup> have marked its existence.<sup>5</sup>

The Judiciary, under the leadership of Chief Justice Recktenwald, has taken a prominent national leadership role in promoting equal justice. In 2014, the Hawai`i judicial system was ranked fourth in a “Justice index”<sup>6</sup> based on a nationwide survey by the national center for Access to Justice. The report of the National Center for State Courts based the ranking on four categories: attorney access for low-income litigants; support of self-represented litigants; support for litigants with limited language proficiency; and support for people with disabilities.<sup>7</sup> In a press release dated November 13, 2014, Chief

Justice Recktenwald noted that “[t]he 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.” In 2016, the Justice Index findings by the National Center ranked Hawai`i, “[a]mong the top three states in the country for progress toward making access to justice a reality for all people.”<sup>8</sup>

In 2015, the National Conference of Chief Justices adopted Resolution 5, which committed the states to extending civil access to justice to 100% of those in need of services.<sup>9</sup> In 2016 and in 2018, Hawai`i was one of the states chosen by the National Center for State Courts to receive “Justice for All” (“JFA”) grants for creating and implementing a model plan to achieve the goal of Resolution 5. The Hawaii Justice Foundation, working in collaboration with the Judiciary and the Commission, was awarded the grants, which in total exceeded \$200,000. The implementation grant funded (i) a community navigator project using community leaders and other trusted persons to reach discrete communities that face access barriers because of ethnicity, culture, language, income, age, or geography; and (ii) a health and social services coordinator/roundtable project that seeks to align and to assist the coordination of public and private agency services through a roundtable structure.

The HSBA furnishes much of the volunteer assistance by lawyers that supports legal services for those in need. Under the aspirational tenets of the Hawai`i Rules of Professional Conduct (“HRPC”) Rule 6.1, at least 25 hours of legal services without fee or expectation of a fee is recommended on behalf of “(1) persons of limited means; or (2) [needy] charitable, religious, civic, community, governmental and educational organizations.” While mandatory pro bono service is not required, RSCH rule 17(d)(1)(b) mandates each attorney to annually report his or her “hours of pro bono service and amount of related financial contributions.” It does not appear that pro bono records were kept prior to the mandated reporting, but following adoption of the rule, data posted on the HSBA website during April or May of each licensing year indicate that total pro bono hours contributed by the bar have ranged from 105,000 hours in 2003 to 200,000 in 2017, with an annual average contribution of over 173,000 hours over the 15-year period.

As noted in Hawai`i’s December 2017 JFA grant application, there are ten primary legal service providers and five mediation centers that work across the state to provide civil legal services and mediation services.<sup>10</sup> These entities have made significant strides in expanding assistance to those who are in need.<sup>11</sup> To note two examples, Volunteer Legal Services Hawaii has implemented broader services to reach low-income groups and those who face geographic barriers through the use of technology in the “Hawai`i Online Pro bono – ABA (American Bar Association) Free Legal Answers” project.

In another groundbreaking example, Hawai`i was one of two states recently selected by the Legal Services Corporation and Microsoft Corporation to develop, through the Legal Aid Society of Hawai`i and the Judiciary,<sup>12</sup> a next-generation internet portal that will use inclusive design principles to help people understand and to resolve their civil legal problems. The project is intended to lay the foundation for portals in other states across the country. The impact of the Commission has been to heighten and to broaden awareness of the need for civil legal assistance for those underserved and to bring access to justice issues to the forefront. Under the Judiciary's leadership and in collaboration with the Commission, legal service providers, and the bar, access to justice considerations have become an integral part of practically every endeavor involving the law in Hawai`i and have had and continue to have a national impact.

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<sup>2</sup> See "FAQs about the Commission" at Hawai`i Access to Justice commission ("Commission") pages on the Hawai`i Justice foundation ("HJF") website at <http://www.Hawaiijustice.org/Hawai`i-access-to-justice-commission/faqs-about-the-commission> (visited on September 25, 2018).

<sup>3</sup> *See id.*

<sup>4</sup> Commission highlights over the last decade are listed in Appendix 2 of the December 2017 "Justice for All" ("JFA") report at "news and reports" on the Judiciary website at [http://www.courts.state.hi.us/news\\_and\\_reports/news\\_and\\_reports](http://www.courts.state.hi.us/news_and_reports/news_and_reports) (visited September 27, 2018). These highlights are also part of this posting.

<sup>5</sup> On July 21, 2011, pursuant to the three-year review required by RSCH Rule 21(j)(2), the Hawai`i Supreme Court filed its evaluation stating that the

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commission had made “concrete strides in a very difficult fiscal environment” resulting in “impressive and real progress in providing practical solutions to the ongoing challenge of improving access to the civil justice system.” Appendix B, 2011 annual report of the commission, pp. 17-18, Commission pages, HJF website <http://25shu2g61cw30sjn46t4k87by.wpengine.netdna-cdn.com/wp-content/uploads/2011/05/Appendix-B-to-annual-report-for-2011.pdf> (visited September 25, 2018).

<sup>6</sup> Justice Index at <https://justiceindex.org/> (visited on September 28, 2018).

<sup>7</sup> See “Justice for All Strategic Plan,” Commission pages at HJF <http://www.Hawaiijustice.org/hajc/justice-strategic-plan> (visited on September 28, 2018).

<sup>8</sup> Hawai`i State Judiciary Annual Report 2017, p.6 available at [http://www.courts.state.hi.us/wp-content/uploads/2016/03/2017\\_Judiciary\\_Annual\\_Report.pdf](http://www.courts.state.hi.us/wp-content/uploads/2016/03/2017_Judiciary_Annual_Report.pdf) (visited on September 28, 2018).

<sup>9</sup> See “Justice for All Strategic Plan,” at the Commission pages, HJF website <http://www.Hawaiijustice.org/hajc/justice-strategic-plan> (visited on September 28, 2018).

<sup>10</sup> The legal service providers include the American Civil Liberties Union of Hawai`i, Business Law Corps, Domestic Violence Action Center, Hawai`i Appleseed Center for Law and Economic Justice, Hawai`i Disability Rights Center, Legal Aid Society of Hawai`i, Native Hawaiian Legal Corporation, the University of Hawai`i Elder Law Project and Medical Legal Partnership for Children, and Volunteer Legal Services Hawai`i. The mediation centers include the Kauai Economic Opportunity Mediation Program, Ku`ikahi Mediation Center, Maui Mediation Services, Mediation Center of the Pacific, and West Hawai`i Mediation center.

<sup>11</sup> See Appendix 3 in December 2017 JFA report at “news and reports” at the Judiciary website at <http://www.courts.state.hi.us/newsandreports/> (visited on September 28, 2018).

<sup>12</sup> See Hawai`i State Judiciary Annual Report 2017, p.9 available at [http://www.courts.state.hi.us/wp-content/uploads/2016/03/2017\\_Judiciary\\_Annual\\_Report.pdf](http://www.courts.state.hi.us/wp-content/uploads/2016/03/2017_Judiciary_Annual_Report.pdf) (visited on October 29, 2018).