

Hawai'i Access to Justice Conference  
“Continuing to Meet Challenges to Access to Justice”  
Friday, June 17, 2022

Workshop Summary<sup>1</sup>

**“Thinking Forward for Access to Justice”**

Friday, June 17, 2022: 2:15 - 3:30 p.m.

Speakers:

The Honorable Joseph Cardoza (ret.), Chair of the Hawai'i Access to Justice Commission  
Heather Lusk, Executive Director of Hawai'i Health and Harm Reduction Center (“HHHRC”)  
Nalani Fujimori Kaina, Executive Director of the Legal Aid Society of Hawai'i (“LASH”)  
Tracey Wiltgen, Executive Director of the Mediation Center of the Pacific (“MCP”)  
State Senator Karl Rhoads (District 13)

The esteemed panel began with a discussion on lessons learned during the pandemic about access to justice. The panel agreed that innovations in technology allowed for access to the courts and mediation to increase during the pandemic. This resulted in more people participating in their court proceedings and more people coming to resolutions without court intervention. Individuals who may not have participated in the court process before now faced reduced barriers as a result of technology making it easier for them to participate in their proceedings and/or mediation. Access to remote testimony in the legislature also increased as a result of the pandemic.

Act 57 was discussed as a successful example of how the combination of technology and alternative dispute resolution increased access to justice in our communities. The legislature worked with community stakeholders to craft the law. At the time of its enactment, UHERO estimated that 10,000 tenants were behind in their rent. Act 57 was necessary in part to respond to the anticipated flood of evictions that would occur at the end of the federal moratorium on evictions.

Remote access to court proceedings via Zoom increased the parties' participation in the process. Prior to the pandemic, only about 50% of tenants appeared at eviction hearings. During the pandemic with Zoom online hearings, 64% of tenants made appearances.

Act 57 also required mediation as part of the eviction process. Mediation provided opportunities for landlords to negotiate a payment plan with the tenant. Mediators were able to work with landlords and tenants to help them agree on applying for rental assistance together and/or avoid eviction. Between August 7, 2021 and April 30, 2022, approximately 2,400 landlords and tenants agreed upon payment plans.

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<sup>1</sup> This workshop summary was prepared by Michelle Moorhead, a member of the Commission's Committee on Education, Communications, and Conference Planning, and reviewed and revised by the speakers for this workshop.

In looking back at what succeeded during the pandemic, the panel emphasized the importance of partnering with community stakeholders and having navigators available within all facets of the community. If an individual is working with a community partner or navigator, that increases that individual's participation in their court proceedings, including mediation. Community partners, if aware of a party's court-required obligations, can work with the party on an individual basis to help ensure access to justice. Medical-legal partnerships, such as the one that now exists between LASH and HHHRC, also work well to increase access to justice.

The panel then discussed how the increase in use of technology also created some barriers to access to justice. Innovations in technology highlighted the need for "tech equity." There should be no assumptions by the government or service providers that individuals can easily access or even understand how to use technology.

During the pandemic, legal service providers continually provided support and made that support more readily available to the public. LASH launched an online intake system that increased referrals from community organizations and increased applications from those in need of an interpreter. Both LASH and HHHRC continued its outreach in the community despite the pandemic. HHHRC worked with a private funder in order to purchase and distribute 500 cell phones to the houseless community. MCP opened up its employees' offices to allow parties access to online mediation and access to mediation for district court and domestic cases also increased. As demand for mediation increased, private mediators stepped up to the plate to help their community mediation centers.

Moreover, lack of broadband access and/or good connectivity during a court proceeding can highlight the "tech divide" in our courtrooms. An example was given regarding a case early in the pandemic where a party had connection issues and could not participate. The hearing proceeded despite the party's counsel's objections. The case was appealed and was eventually settled. There were also concerns about how bias and/or credibility determinations could be impacted if an individual is not physically present before the Court and/or wearing a mask during his/her testimony. Moreover, providing free smart phones may not be a permanent solution to access to justice because phones may be lost, damaged, or confiscated.

Legal service providers expressed their appreciation for state and federal funds that contribute to their operating costs and acknowledged the legislature's commitment to ensuring that access to justice is achieved. Private donations and funding also play a role in the continued success of legal service providers.

Some concerns were shared about how the use of technology may increase financial costs for legal service providers whom already have limited budgets. There was also brief discussion about how limited budgets affect the competitiveness and hiring ability of legal service providers in today's job market.

In wrapping up its discussion on barriers to access to justice, the panel discussed how "justice delayed is justice denied" and how arbitration and mediation are helping to reduce court delays. If court dates are scheduled far out in advance, alternative dispute resolution offers individuals opportunities to resolve their problems on their own schedule. Moreover, due to the

highly emotional nature of family court cases, the Court may not be to blame for the backlog in cases because parties may not be emotionally ready to move forward with their divorce or custody matters. Mediation conducted prior to filing a legal action can also help to reduce court backlogs. Act 57 is a strong example of the effectiveness of pre-filing mediation where 87% of the landlord-tenant disputes that proceeded to pre-filing mediation were successfully resolved through mediated agreements.

The panel ended with a report on initiatives that may help to increase access to justice in Hawai'i. The first is a part of a national conversation on the concept of a "Regulatory Sandbox." An example of this is "The Sandbox" which is overseen by the Office of Legal Services Innovation in Utah. The Sandbox allows entities to use new business structures and service models to provide legal services in Utah after going through a review and approval process. The Utah Supreme Court recently extended the term of The Sandbox from two years to seven years. Entities that have been approved so far in the first two years of the program include services for family law, end of life planning, and small business needs. Nonlawyer human or software providers are being used to provide legal advice and assistance.

Likewise, on a national level, the ABA is supporting researchers across the country whose goal is to transform access to the legal system. There are not enough lawyers to serve low-income individuals who cannot afford lawyers. There are also areas of law where representation is virtually non-existent because lawyers are not able to help individuals if their business model does not allow them to assist. In the state of Arizona, the Arizona Supreme Court eliminated its ethics rule barring nonlawyers from having an economic interest in a law firm or participating in fee sharing. The Court also approved a new category of nonlawyer licensee called Legal Paraprofessionals. Corporations have begun working and training social workers in order to assist parties in specific legal situations.

On a local level, Forensic Peer Specialists ("FPRs") are another innovation that are helping to increase access to justice. FPRs work with those involved in the criminal justice system by sharing their own history of criminal justice involvement and mental health recovery. The state legislature recently appropriated \$800,000.00 for additional funding for this program.

Members of the panel agreed that, to increase access to justice in Hawai'i, community stakeholders will need to continue to work together like they did during the pandemic. The community must also not be afraid to think of unconventional answers to longstanding problems.