

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

Workshop Summary<sup>1</sup>

**Domestic Abuse and Protective Orders: Access to Justice for All Parties**

- I. Introduction of Moderator and Panelists
  - Honorable Rebecca A. Copeland (moderator)
  - Honorable Courtney N. Naso
  - Nanci Kriedman (Domestic Violence Action Center)
  - Alen Kaneshiro (attorney, private practice)
  
- II. Discussion: What are we doing right and where do we need to improve our efforts to provide equal and meaningful access to justice for Petitioners and Respondents in cases involving domestic abuse? (Procedural Access – knowing how to file, court/hearing process, after-hearing process)
  - Nanci Kriedman
    - Things going well
      - Improvement in length of time it takes to get a TRO (can be issued the same day as petitioner files)
      - Two locations to file (on O‘ahu) – Circuit Court in Honolulu; Family Court in Kapolei
      - Court staff are open to feedback, have dialogue w/practitioners and community members
      - Expo Program (partnership between Judiciary and Domestic Violence Action Center (DVAC)) to assist petitioners in completing the court form, navigating the court process
      - Keeping petitioner and respondent separated by as much physical distance as possible in court
    - Challenges
      - While temporary restraining orders (TROs) are scheduled within fourteen days as required by statute, there are sometimes challenges if a Respondent is served close to the date of the hearing; for example, panelist experience where the Respondent was not served by the Honolulu Police Department until three days before the order to show cause (OSC) hearing date. This may lead to the Respondent requesting a continuance.

---

<sup>1</sup> The initial draft of this summary was prepared by Scott Shishido and edited and finalized by Judge Rebecca A. Copeland.

- Adult Client Services Branch staff are busy and sometimes do not provide petitioner with all the information needed to draft an effective TRO
  - Ensuring that parties have meaningful access to interpreters
  - Child Protective Service (CPS) is often contacted when TRO involves children
    - CPS report is often not completed by time OSC hearing is held
    - Author of report sometimes is not the person from CPS present in court
- Alen Kaneshiro
  - Access to counsel is a challenge (one party being represented versus pro se party)
    - If both parties are pro se, attorney representation might not be needed
    - If other party is represented, Alen encourages other party to retain an attorney
    - Parties sometimes do not realize that they will likely be limited at the hearing on an order for protection (OFP) to incidents/issues listed in the petition
      - Similar unfamiliarity with rules of evidence, process for preparing/presenting exhibits in court
    - Expo Program is effective
- How to support respondents (question to panel)
  - On Maui (Second Judicial Circuit), there is a Volunteer Court Navigator Program in non-TRO context, and this may be a type of idea to implement for Respondents in TRO cases to have someone to assist or orient them to the process
  - Including an informational sheet with petitions for service on respondent
    - Could help them understand process, what to expect, preparing exhibits/witnesses
- Judge Naso
  - If petition filed in Circuit Court, it will be sent to Family Court for review in Kapolei
    - Accommodations are made for “late filers” who file towards the end of the day; a Family Court judge will stay late to review the TRO so it can be issued (if granted) on the same day
  - Petition needs to be as detailed as possible
    - Litigants would benefit from access to counsel before filing petition
  - Litigants would also benefit from knowing what to bring (exhibits/witnesses) to the first hearing on OFP (i.e., the trial)
  - Often results in court having to issue continuance for parties to compile/present evidence
    - Judge Naso agrees that an informational sheet with the petition would be helpful for parties to know how to present exhibits (number of copies, labelling exhibits)
    - Interpreters must be requested in advance, so if party does not have one on the trial date, court will need to grant continuance

- Judge Naso does not require parties to testify from the witness stand; allows them to testify from table with counsel
- Language access; culturally appropriate services (including LGBTQ)
  - Judiciary provides training to judges on language access and LGBTQ issues
  - Alen Kaneshiro
    - If respondent does not speak/understand English, this creates potential for TRO violation if respondent calls petitioner to ask, “what is this document w/both our names on it?”
    - Difficult to establish what standard to use when assessing language access/culturally sensitive approach
      - Objective v. subjective (reasonable person standard)
    - LGBTQ issues
      - In order to be in Family Court, there must be a familial/intimate partner relationship
      - Petitioner might not want to “out” him/herself because it would entail admitting being gay, lesbian, etc.
        - Can raise a similar issue for respondents who are not open about being LGBTQ
- Judge Naso
  - Intimidation towards other party can be non-verbal
    - Judges need to constantly intervene in some instances
- TROs/OFPs and children (as protected parties; minor intimate partner violence)
  - If children witness abuse, it can adversely affect children’s relationship with the abuser
  - “Junk science around parental alienation” (one parent removing child from home where abuser resides)
    - Sometimes, children do not benefit from having both parents around
  - Misuse of courts and TROs/OFPs
    - This is not the majority of circumstances per Alen, but it does happen
    - This is where parental alienation could be an actual problem

### III. Additional Tips and Pointers

### IV. Audience Questions

- Are petitions filed in JEFs viewed differently from petitions filed in paper?
  - In substance, no
  - Process wise, if they are filed through JEFs, the petitions will not be delivered directly to judge for review?
- Addressing TROs/OFPs where law enforcement officers are involved?
  - DVAC wants to work with the new Honolulu Police Department (HPD) chief to address officer-involved domestic violence
  - Training re domestic violence in HPD is a three-hour course
  - Community groups engaging directly with HPD
- Difficulties with HPD serving/enforcing TROs/OFPs

- Judge Naso suggested calling again, trying to get a different officer, or calling a different location