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LAW WEEK

Justice isn't blind to needy

Editor's note: This is another in a series of articles written by members of the state Judiciary in commemoration of Law Week in Hawai'i.

By Reinetta W. Cooper
District Court judge of the Second Judicial Circuit

More than two centuries ago in the Preamble to the Constitution, the founders of our nation listed as a specific function of the new government "to establish justice."

Justice is not simply another governmental entitlement; it is the historic mandate of a free society.

Starting in the late 1800s, lawyers in New York and elsewhere began to form societies to offer free legal assistance to immigrants and other poor people. These attorneys and others believed that people should be secure in the knowledge "that their poverty does not necessarily mean that they will be in a position of inequality before the law." These charitable societies became the first Legal Aid Bureau in 1911.

In the 1920s, the right of the poor to legal representation in civil trials was a particularly novel notion; it was not until 1966 that the U.S. Supreme Court recognized that the right of an indigent defendant in a criminal trial to have the assistance of a lawyer is a fundamental right essential to a fair trial.

In 2000, U.S. Census Bureau data revealed that the nation's overall poverty rate had dropped to its lowest level since 1979; in Hawai'i, however, it is estimated that over 140,000 people are living in poverty. The conclusion is sobering: Very low-income people are more vulnerable today than ever before.

Potential clients are as diverse as the nation's population, encompassing all races, ethnic groups and ages. Many were formerly middle-class wage earners and became poor because of age, unemployment, illness or the breakup of a family.

A private, nonprofit corporation was established by Congress in 1974 to ensure that at least a minimum level of access to justice under the law was available everywhere in the United States. The Legal Services Corp.'s mandate is to provide legal assistance in civil cases to low-income individuals.

In 2000, these offices handled more than a million civil cases. The most common types of cases dealt with family law, housing, employment, government benefits and consumer issues. More than two-thirds of clients were women — most of them mothers.

State governments, nonprofit organizations and individual lawyers and law firms also provide legal assistance to the poor. In Hawai'i, about 76 percent of active lawyers take some pro bono (free) or reduced-fee cases each year.

Legal aid and pro bono services combined fall short of meeting the legal needs of the poor. Estimates are that no more than one out of every five poor people with a legal problem obtains help from these resources.

One option in Hawai'i is the community mediation centers.

Instead of going to court and risking great expense, broken relationships and lost time, disputing parties can try to reach a mutually acceptable agreement with a neutral facilitator. This process gives parties more control over the process and the results.

As a District Court judge on Maui, I assess the individual needs of parties appearing before the court and match them to the wide array

of service providers available throughout the community and the state. In civil small claims and regular lawsuits, I may suggest alternative dispute resolution.

I also have discretion to set aside or waive filing fees and costs for individuals who are seeking protective orders, divorces and other judicial relief but aren't capable of meeting the up-front costs for relief.

Finally, in criminal cases, I am responsible for the appointment of competent counsel for those individuals who face criminal charges, but who cannot be represented by the Public Defender's Office.

My actions as a judge are based on the principle that fees should not restrict access to the courts or pose a barrier to justice. In many ways, meeting the legal needs of the poor is simply one small part of meeting the goals of the justice system envisioned by our nation's founders.
