

**A BRIEF OVERVIEW OF SOME ALTERNATIVE DISPUTE
RESOLUTION INITIATIVES IN THE HAWAII STATE JUDICIARY (April 2010)¹**

I. District Court

A. Rule 12.2, District Court Rules

“The court, in its discretion or upon motion by a party, may order the parties to participate in an alternative dispute resolution process subject to conditions imposed by the court.”

B. Statewide Programs

1. Small claims mediation (generally held at court on the day of trial, provided by community mediation center² volunteers)
2. Residential summary possession cases (generally held at court on the day of trial, provided by community mediation center volunteers)

C. Other Programs

1. TRO Mediation – Cases are referred to the community mediation centers, with some mediation centers providing services at court as well as at the mediation center; 1st Circuit also has a Voluntary Settlement Master Program
2. Misdemeanor Mediation Program – 2nd Circuit, 3rd Circuit, and 5th Circuit (cases are referred to the community mediation centers and mediation is provided at the centers)
3. Pono Kaulike, Restorative Justice Program – 1st Circuit (cases may be referred by the Office of the Prosecutor, Office of the Public Defender, the Victim Witness Kokua Program, District Court, and the private criminal defense counsel bar; cases are handled by trained facilitators under one of three processes: Restorative Conference, Dialogue, or Session)

II. Family Court

A. Rule 53.1, Family Court Rules

“The court, in its discretion or upon motion by a party, may order the parties to participate in an alternative dispute resolution process subject to conditions imposed by the court.”

B. Statewide Programs

1. Education programs for divorcing and separating families, e.g., “Kids First” (contains a component on mediation options) (held at court with presentations by judges, court staff, and psychologists; mediation brochures are available)

¹ The programs and rules apply statewide, unless otherwise noted.

² The Hawaii Judiciary has a purchase of services contract with Mediation Centers of Hawaii, Inc. to provide mediation and related dispute resolution services statewide. Six community mediation centers provide the services, and their contact information is on the last page of this handout.

C. Other Options

1. Oahu Child Welfare Mediation Program (Child protection cases, H.R.S. Chapter 587) – 1st Circuit) (mediation at court)
2. Divorce and paternity mediation (including custody and visitation) – parties are required to go to mediation (they may mediate at the community mediation centers or select a mediator of their choice)
3. Volunteer Settlement Master (VSM) Procedures (divorce cases) -- 1st Circuit (cases are referred to VSMs [volunteer attorneys who are members of the Family Law Section of the HSBA], and they help parties and counsel to try to resolve the case or streamline issues)

III. Circuit Courts

A. Rules

1. Rule 12 (b), Rules of the Circuit Courts

“(6) A statement that each party, or the party's lead counsel, conferred in person with the opposing party, or with lead counsel for each opposing party, in a good faith effort to limit all disputed issues, including outstanding discovery, and considered the feasibility of settlement and alternative dispute resolution options. A face-to-face conference is required under these rules and shall not be satisfied by a telephone conference or written correspondence. The face-to-face conference shall take place in the judicial circuit where the action is pending unless otherwise agreed by counsel and/or the parties; and

(7) A statement identifying any party who objects to alternative dispute resolution and the reasons for objecting. If the parties have agreed to an alternative dispute resolution process, a statement identifying the process.”

2. Rule 12.2, Rules of the Circuit Courts

“The court, in its discretion or upon motion by a party, may order the parties to participate in an alternative dispute resolution process subject to conditions imposed by the court.”

B. Statewide Programs

1. Court Annexed Arbitration Program (non-binding arbitration program for personal injury cases with a probable jury verdict of \$150,000 or less, and a pilot project for contract cases; arbitrators are volunteers)
2. Probate, Trust, and Guardianship of the Property cases (mediators selected by the parties and mediations are held at their offices)

IV. Appellate Courts

- A. Rule 3.1 and Rule 33, Hawaii Rules of Appellate Procedure; Hawaii Appellate Conference Program Rules
- B. Mandatory Program
 - 1. Hawaii Appellate Conference Program (held at court by court volunteers)

V. Hawaii State Judiciary Administration

- A. Center for Alternative Dispute Resolution (established by statute [Chapter 613] in 1989)
 - 1. Four major functions
 - a. Design and implement ADR systems in state and county government, and oversee the Hawaii Appellate Conference Program
 - b. Oversee the Hawaii State Judiciary's contract with the community mediation centers; the mediation centers include:
 - Oahu: The Mediation Center of the Pacific, Inc. (521-6767)
 - Maui: Mediation Services of Maui (244-5744)
 - Molokai: Mediation Center of Molokai (553-3844)
 - Hawaii (Hilo): Kuikahi Mediation Center (935-7844)
 - Hawaii (Waimea): West Hawaii Mediation Center (885-5525)
 - Kauai: Kauai Mediation Program, Kauai Economic Opportunity, Inc. (245-4077)
 - c. Training, research, and education
 - d. Provide mediation and facilitation services for public policy disputes

VI. Rule 2.1, Hawaii Rules of Professional Conduct (Applicable To All Counsel)

“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. In a matter involving or expected to involve litigation, a lawyer should advise a client of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.”