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*The Center for Alternative Dispute Resolution Newsletter
State of Hawaii, Judiciary*



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Legislative and Court Updates ***A brief summary for those who missed the forum on August 9th***

Tracey Wiltgen, Executive Director, Mediation Center of the Pacific (Mediation Center), reviewed [Act 48](#) (2011) and [Act 182](#) (2012), which affect the dispute resolution program for non-judicial foreclosures. No parties have participated in this process. The Mediation Center created a judicial foreclosure mediation program available in the 1st, 2nd and 5th Circuits. There have been three requests in the 1st Circuit. Kuikahi Mediation Center (Hilo) and West Hawaii Mediation Center offer judicial foreclosure mediation for the 3rd Circuit's mandatory court program. The Mediation Center works with borrowers and lenders to improve the process of mortgage foreclosure mediation and will offer a training for foreclosure mediators on October 18 and 19, 2012.

Elizabeth Kent discussed [Act 296](#) effective on January 1, 2013. The intent of Act 296 is to shift the focus of the [Medical Claims Conciliation Panel](#) from assessing blame to conciliation and information sharing. The panel will be renamed Medical Inquiry and Conciliation Panel and reduced from three to two members. The written advisory decision will also be eliminated.

[The Uniform Collaborative Law Act](#) was also enacted this session. Collaborative law is a voluntary, contractually based alternative dispute resolution process for parties who want to negotiate solutions rather than litigating. Parties are represented by lawyers during the negotiation process and agree in advance that those lawyers will be disqualified from further representing them if they go to court. Act 207 also lays out features of a collaborative law agreement and creates an evidentiary privilege for the parties.

Judge Gary Chang discussed [Circuit Court Rule 12.2](#), amendments effective July 1, 2012. Amended Rule 12.2 has six sub-parts: (a) authority of the court to order parties to participate in ADR; (b) factors to consider before ordering a case to ADR, including fees and expenses; (c) selection of the neutral; (d) disclosure; (e) physical presence of counsel and parties required; and (f) communication by parties, counsel, the neutral, and the court. Judge Chang discussed his view of "full settlement authority" explaining that parties must be able to respond to the reasonable demands of the other side.

Chuck Hurd provided an update on [Aiona-Agra v. Agra](#), a recent appellate case concerning confidentiality. The parties initiated divorce proceedings, entered mediation, reached an agreement, and later went to trial in family court. In court, the husband moved to enforce the mediated agreement and the wife sought to void it, alleging fraud. Subpoenas were issued to Kuikahi Mediation Center and the mediators, which the judge declined to quash. On appeal, the Intermediate Court of Appeals (ICA) held that the Family Court did not err in refusing to quash the subpoenas. On July 19, 2012, the Hawaii Supreme Court granted cert. in the case and granted the Mediation Center and Mediation Centers of Hawaii, Inc. leave to file amicus briefs regarding Rule 408 (admissibility of evidence) and creation of a mediation privilege. On August 10, 2012, the Supreme Court affirmed the ICA's decision.