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SCMF-15-0000566

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
HAWAI‘I APPELLATE PRO BONO PILOT PROJECT

ORDER

(By: Recktenwald, C.J.)

The order entered in this matter on August 7, 2015, establishing the Hawai‘i Appellate Pro Bono Pilot Project, requires submission of a report regarding the particulars of the program in its first year. It appears further time is necessary to complete the report called for in the August 7, 2015 order. Therefore,

IT IS HEREBY ORDERED that the deadline for submission of the report is extended to August 8, 2016.

DATED: Honolulu, Hawai‘i, June 9, 2016.

/s/ Mark E. Recktenwald
Chief Justice



August 2015 - June 2016
Hawai'i Appellate *Pro Bono* Pilot Project

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FIRST YEAR REPORT

by

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Partners: The Access to Justice Commission
The Appellate Section, Hawaii State Bar Association
The Hawai'i State Judiciary
Volunteer Legal Services Hawaii (VLSH)

I. OVERVIEW

The Hawai'i Appellate *Pro Bono* Project is the result of the work of the Subcommittee to the Access to Justice Commission's Committee to Increase *Pro Bono* Legal Services, which was Co-Chaired by Michelle Acosta and Rebecca Copeland and included Associate Justice Simeon R. Acoba (Ret.), Chief Judge Craig H. Nakamura of the Hawai'i Intermediate Court of Appeals (the ICA), Brandon Segal, Audrey Stanley, Matthew Chapman, and Joshua Korr. After more than two years planning the Project, the Hawai'i Supreme Court issued an order on August 7, 2015, implementing the Project for a pilot period lasting until July 1, 2017.

The Project matches low-to-moderate-income *pro se* appellate litigants with attorneys willing to provide *pro bono* representation on appeal. The Project has two components. The first component matches attorneys with *pro se* appellate litigants who have filed their notices of appeal and already have cases pending before the ICA. The second component matches volunteer attorneys with *pro se* appellate litigants who have cases pending before the Hawai'i Supreme Court in which the Supreme Court has already made a determination that it will accept the *pro se* litigant's Application for a Writ of Certiorari.

The Program at the ICA currently only covers certain categories of civil cases frequently filed at the ICA with *pro se* appellants or appellees: (1) foreclosures, (2) summary possessions, (3) employment discrimination, (4) workers' compensation, (5) state tax appeals, (6) wrongful terminations, (7) the denial of unemployment benefits, (8) family law cases (specifically divorce, child custody, child support, and paternity cases), and (9) probate. At the conclusion of the Program's pilot period these categories will be reviewed and perhaps expanded.

For cases at the Hawai'i Supreme Court, the Project accepts only civil cases, but those cases are not limited to the categories listed above for ICA appeals.

II. VOLUNTEERS AND RECRUITMENT

Recruitment efforts for the Program were conducted from the outset. A recruitment brochure was created and continues to be distributed by VLSH. VLSH incorporated the Program into its core list of *pro bono* opportunities.

Rebecca Copeland and VLSH made formal presentations regarding the Program to the law firms of Starn O'Toole (on August 21, 2015), Cades Schutte (on September 22, 2015), and Goodsill Anderson Quinn (on December 2, 2015). More informal recruitment was conducted with Alston Hunt Floyd Ing and McCorriston Miller Mukai MacKinnon.

In addition, the Program was promoted at the Hawai'i State Bar Association (in October, 2015), the Hawai'i State Bar Annual Dinner (on August 22, 2015), to the Hawai'i State Bar Foundation (on November 12, 2015), at the Hawai'i State Bar Professionalism Course (on June 4, 2016) and at the Hawai'i Access to Justice Conference (on June 24, 2016).

On January 15, 2016, the HSBA Appellate Section and VLSH sponsored a Continuing Legal Education seminar to brief attorneys on the Program, presented by Rebecca Copeland and ICA Staff Attorney Dan Kunkel. Sixteen attorneys attended. (The flyer for the program is attached.)

Chief Justice Recktenwald promoted the virtues of the Program during public presentations, including the Hawai'i State Supreme Court's swearing-in ceremony of the new Hawai'i State Bar members on November 14, 2015.

The Appellate Section at the Hawai'i State Bar Association (HSBA) now maintains a "listserve" of attorneys who have volunteered to consider providing *pro bono* representation through the Program. It is not necessary for these attorneys to have appellate experience, as one of the Program's objectives is to provide an opportunity for Hawai'i lawyers to obtain such experience. With that in mind, the listserve also includes experienced appellate lawyers willing to mentor attorneys new to appellate practice.

At present, the Program has a pool of 39 attorneys who have committed to receive information and notices about available *pro bono* cases in the appellate courts.

III. PUBLIC AWARENESS AND OUTREACH

Individuals interested in applying for *pro bono* representation of their appeals can now access information regarding the Program by visiting the HSBA website or by contacting the appellate clerks at the ICA and the Hawai'i Supreme Court.

In addition, the application materials for the Program are available at Circuit Courts, Access to Justice Rooms, Self-Help Centers, and by direct inquiry to the HSBA Appellate Section and to VLSH. The application materials were further revised on February 16, 2016 and are attached to this report.

IV. FUNDING

There is no specific funding source to support the Program, which instead relies on in-kind donations of time from Ms. Copeland in coordinating applicants and attorneys, and upon the *pro bono* provision of time and services from the participating attorneys.

VLSH has incorporated the Program into its *Pro Bono* Referral Program to facilitate attorney coordination. At present, one VLSH staff member, Ms. Justine Herrera, provides administrative support to the Program, including working on income-qualification issues for applicants, researching court records, and tracking the cases once they are accepted into the Program. VLSH also extends its Professional Liability Insurance protection to participating volunteer attorneys.

VLSH has, however, received a \$1,500 award from the Hawai'i State Bar Foundation as seed money for the Program's litigation fund, \$500 of which has been awarded thus far, to a Program participant to offset the costs of transcript preparation.

V. OUTCOMES IN THE FIRST YEAR

The Program officially began accepting applications in January, 2016, although one Hawai'i Supreme Court case, Gao v. State, SCWC-14-694, was accepted into the program in September, 2015. In addition to that 2015 case, the Program has received a total of 16 inquiries and 14 completed applications since the initiation of the Program in August, 2015.

Of the 14 completed applications, seven have been accepted and placed with volunteer attorneys for *pro bono* representation. Six of these seven cases remain open.

A further three of the 14 are awaiting placement, while the Program was unable to successfully match the remaining four applicants with attorneys who were willing or able to accept the cases.

Of the 14 applications, eight pertained to foreclosure cases and three to family law disputes. The remaining three involved, separately, employment law, a housing dispute, and the State Employment Retirement System.

Oral argument was held in the Gao v. State case mentioned above, on January 7, 2016. Judgment was entered on June 15, 2016 in Gao's favor, vacating the ICA's May 21, 2015 judgment on appeal and remanding the matter to the Labor and Industrial Relations Appeals Board for further proceedings.