



**Supreme Court** — THE JUDICIARY • STATE OF HAWAII

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**Ronald T.Y. Moon**  
CHIEF JUSTICE

Remarks by the

**HONORABLE RONALD T. Y. MOON**  
*Chief Justice, Hawai'i Supreme Court*

at the

HSBA YOUNG LAWYERS DIVISION LUNCHEON

Friday, October 30, 2009

Noon

YWCA Fuller Hall

DEAN SOIFER, YLD PRESIDENT ELEFANTE, HSBA PRESIDENT CHU, HSBA EXECUTIVE DIRECTOR FLANIGAN, MEMBERS OF THE BAR, LADIES AND GENTLEMEN -- GOOD AFTERNOON:

It's always a pleasure to address the members of the HSBA's Young Lawyers Division, and especially so today inasmuch as this will be my last opportunity to address you as chief justice at your annual YLD meeting since my days -- as they would say in the old West -- are "numbered," -- literally, 306 days left! Although I may have the privilege of addressing you at other events over the rest of my term, I take this opportunity to thank all of the members of the bar for your support, assistance, collaboration, and cooperation extended throughout my tenure as chief justice in contributing to the administration of justice, and I trust that you will continue to assist the Judiciary for many more years to come.

As some of you may know, I was privileged to be the first chief justice to deliver a state of the Judiciary address to a joint session of the legislature in 1997. Up until that time, the chief justice -- by custom and tradition -- addressed the members of the Bar regarding the state of the Judiciary at the HSBA's Annual Bar Convention. When addressing you in 1995, I said: "This past year has been, by far, the most challenging. Because of the Judiciary's commitment to share in the responsibility of dealing with the State's budget deficit and revenue shortfall, some very difficult decisions had to be made." At that time, I had been advised by then-Governor Cayetano of a projected revenue shortfall of at least 414.5 million dollars over the next biennium, who also requested that the Judiciary restrict at least 15% of its general fund appropriations for fiscal year 1996. I explained to you in my address in 1995 that,

[b]ecause the Judiciary's budget is largely comprised of payroll funds, we realized from the outset that significant budget restrictions would involve a reduction in the Judiciary's work force. In the end, 69 occupied positions were eliminated, and 92 vacant positions were frozen, representing a 9% reduction of the Judiciary's actual workforce. The decision to eliminate occupied positions was the most difficult decision that I have had to make since taking office as chief justice.

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That was in 1995. Little did I know that -- before the end of my term -- the state would be facing an even greater deficit of nearly a billion dollars and that we would see such unprecedented budget cuts, furloughs, and judicial salary reductions!

A lay friend of mine recently commented: The current economic situation is so bad, people are saying that the highest paying job in the State is jury duty! And, in fact, he realized just how bad when he saw a man in Costco the other day buying ONE roll of toilet paper!

Indeed, the current economic crisis is not unique to Hawai'i. According to a recent report issued by The Center on Budget and Policy Priorities in March of this year:

at least 47 states faced or are facing shortfalls in their budgets for this and/or next year, and severe fiscal problems are highly likely to continue into the following year as well. Combined budget gaps for the remainder of this fiscal year and state fiscal years 2010 and 2011 are estimated to total more than \$350 billion.

As we all understand, the cruel irony is that, in difficult economic times, the demands on our courts intensify, and, unfortunately, no matter how much we are called upon to sacrifice in terms of court programs, salaries, benefits, and the like, nothing compares to the devastating impact that the current situation has and will continue to have on our citizen's access to justice.

As judiciaries across the country are grappling with ways to address their budget shortfalls, we will begin to hear more about some of the tough decisions that have to be made due to the lack of funds. For example, the Vermont judiciary, beginning in October 2008, closed its courts for one-half day per week, which was to end on June 30, 2009. However, in July 2009, the one-half day per week closings were extended for another year and a 12-day furlough was implemented, meaning one additional day per month of court closures. In New Hampshire, all jury trials -- in both civil and criminal courts -- were halted for one month earlier this year to save juror-expenses.

The National Center for State Courts, which collects and organizes information related to state court budgets, reported a few months ago that several states have delayed filling judicial vacancies. As you may recall, shortly after the end of the last legislative session, Senate President Hanabusa sent a letter to Governor Lingle and myself, as appointing authorities for Hawaii's judges, suggesting that we jointly request the Judicial Selection Commission to consider delaying the submission of nominees for judicial office "as a way to create and realize savings." In response, I advised President Hanabusa and Governor Lingle that I "unequivocally support[ed]" the President's suggestion. Although Governor Lingle did not agree, we in the Judiciary continue to look for ways to address the current budget situation.

When budget shortfalls occur, judiciaries normally endure a heavier impact than other state branches and agencies because, as I mentioned earlier, most court budgets are comprised of personnel expenses. In our case, the Judiciary's entire budget comprises less than 3% of the state's total budget, and our payroll costs comprise 70.7% of our appropriation. During the 2009 legislative session, the Judiciary's budget base was reduced by 7.6%, as opposed to a smaller 6.0% reduction for the executive branch. The reduction to our budget included the elimination of 79 vacant -- but essential -- staff positions, a lump sum

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decrease for other operating expenses, as well as a first-time-ever salary cut for Hawaii's justices and judges -- for a total reduction of 11.5 million dollars.

After waiting ten years (between 1990 and 2000) for an increase in judicial compensation and finally achieving the assurance of incremental raises for a six-year period starting in 2007 based on the recommendation of the Commission on Salaries, it was a devastating and demoralizing blow to our judges to be told that not only would they have to wait for those incremental raises, but that they would also have to give up 5% of their present compensation. According to the schedule of the Commission on Salaries, we were slated to receive a 10% increase on July 1st of this year and another 10% increase on July 1, 2011. For the intervening years of 2010 and 2012, the judges were to receive a 3.5% increase each year. However, in light of Act 85 -- which became effective on June 2, 2009, -- those incremental raises have been delayed and, in addition, effective July 1st of this year, current salaries were reduced by 5% for the next two years. I submit that judges will never be able to catch up to that which was lost in the 1990s.

Given the projections issued by the Council of Revenues even before the start of the 2009 legislative session, the Judiciary -- in 2008 -- imposed restrictions on items such as travel, overtime, and -- as some of you have realized -- the use of per diem judges. We also reduced our expenditures on electricity by nearly 13%. After the legislative session and the imposition of the 7.6% reduction, *i.e.*, the loss of 11.5 million dollars that I referred to earlier, we imposed further significant reductions in such areas as purchase of service or POS contracts, fees for guardians ad litem and court-appointed counsel in family court matters, building repairs and maintenance, and more. For those who may not be familiar with POS contracts, these involve the purchase of services -- such as treatment programs for substance abuse, child sex abuse, and mental health; assessment and treatment of adult sex offenders, anger management and victim impact classes, emergency shelter services, juvenile client and family services, and the list goes on. In terms of dollars, we had to make the hard decisions to cut back over 3 million dollars or 26% of our POS contracts. The impact from the reductions in the availability of these services will likely result in increased domestic violence and other crimes, higher recidivism rates, prison and/or juvenile facility overcrowding, increased risk to children and families, as well as increased concerns regarding public safety. We also scaled back 1.5 million dollars for guardian ad litem and legal counsel services in family court matters.

Although these efforts are a significant step towards addressing the state's urgent budget needs, they are not actions that we can carry forward into the future without serious consequences to our mission and, most importantly, to our citizenry. Additionally, many of the services we provide are required by law or have legally mandated time issues. Thus, although we provide many different kinds of services like the executive branch, we are required to operate in accordance with constitutional and statutory mandates, such as mandatory domestic violence intervention treatment for domestic violence offenders (HRS § 709-906).

I began my remarks today by referring to that time in 1995 when I thought making the decision regarding reductions in our workforce was "the most difficult decision that I have had to make since taking office as chief justice." The many decisions that we have had to make in the past several months, ranging from program budget cuts to implementing a furlough plan pales in comparison. As you know, I announced last week to our employees that the Judiciary would be implementing a two-day-a-month furlough for all HGEA-employees. Over the few days prior to announcing the furlough plan, I received communications from a number of Judiciary employees, explaining their difficult financial situations and asking me to consider other options or a reduced furlough plan. It was heart-wrenching to read some of

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their emails and letters and to learn just how some of our employees will be impacted in light of their specific situation due to the furloughs. Thus, it was painful to have to agree to the Furlough Plan; but, without it, we could be facing future layoffs of Judiciary employees -- a result that, to me, is untenable.

Judges, of course, are not subject to furloughs; thus, they will be required to report to work on furlough days, but will be without staff and other support services. On furlough days, judges will be working in their respective offices preparing for upcoming hearings, motions, trials, etc., catching up on paper work, such as preparing and/or reviewing findings of fact and conclusions of law, and may conduct status, pretrial or other conferences via telephone or video-conferencing. If feasible, judges may also conduct settlement or other conferences at attorneys' offices. Judges may also schedule speaking engagements at schools or with civic organizations as part of their community educational outreach efforts. In short, although the courts will be closed, our judges will still be hard at work.

Beginning November 6, the courts -- statewide -- will be closed two days a month for at least the next 8 months. The furlough schedule up to June 30, 2010 is posted on the Judiciary's website, and I encourage you consult the schedule and calendar those days that the courts will be closed. Also available on the website is the order issued by the supreme court, declaring that for all purposes under the rules of court and any statutes of limitations or repose, each day a court is closed shall be treated as a Saturday or Sunday.

Obviously, the twice-a-month court closure will have a direct impact on court operations and, in turn, on the members of the Bar. We, therefore, ask for your patience, understanding, and cooperation as we all must deal with doing our assigned tasks in less time. I anticipate that trials will take longer and will be set further down the road than anticipated due to the shortened work week caused by furloughs and scheduled holidays. Similarly, you will probably be waiting longer to schedule a hearing or conference. For those who practice in our criminal justice system, you will probably realize the effects of the reduction in POS contracts that I've discussed as your clients may not be able to obtain the kinds of services and treatment programs that had been previously made available due to the severe cuts we have been forced to implement. For those who have served as court-appointed guardians ad litem or legal counsel in family court matters, you may notice a drop in the number of cases being assigned in light of the cut backs in those areas.

Unfortunately, the situation is probably going to get worse before it gets better. The cuts in programs and services that have been made thus far are the result of the budget reductions imposed at the last legislative session. Since then -- as you are well aware from all the news accounts, the projections from the Council of Revenues paints an even darker picture. Thus, we are holding our breath until the end of the next legislative session. We are hoping that the measures that we have taken to date -- including implementation of a furlough plan -- will negate, or, at least, minimize any further reductions to our budget base at the end of the next session.

In that regard, I ask for your assistance in helping us educate your colleagues -- and the public in general -- about the role and responsibilities of the courts. Although such a request may sound strange as "education" may not directly save the courts money, our citizen's knowledge about the role and responsibilities of the courts -- whether they are lawyers or non-lawyers -- has some benefit. Informed attorneys and lay-court-users can assist courts to run more efficiently, resulting in saving time and money.

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Similarly, informed and engaged court users are more likely to support priority budget requests of the Judiciary when legislators are grappling with competing demands. I have spoken many times about the importance of an informed public in the context of enhancing trust and confidence in their judicial system and in our profession, as well as in preserving judicial independence -- but in these clearly unprecedented times, informed court users are critical to understanding the fiscal crisis facing the judiciary and government in general.

Also during this upcoming session, we will be asking the legislature to make permanent the jurisdictional changes brought about in our appellate courts via Acts 145 and 202 in 2006 -- that is, to make our cert-court permanent. I hope you will support our efforts in this regard as we believe the change has yielded positive results, especially in the area of the median age of cases. In fact, the age of cases has decreased in each of the three years that the new system has been in existence from 347 days in June 2006 to 246 days as of June 2009.

Additionally, despite the continuing reductions to our budget base over the past several years, we have made great strides in the technological arena. For example, in November 2007, we successfully implemented an electronic interface with a collection agency partner to refer and collect delinquent traffic fines and fees. As a result, we have electronically collected and deposited to the state's general fund over 4.3 million dollars in delinquent traffic fines and fees. Moreover, on behalf of the Judiciary, I have and will continue to encourage our Congressional delegation to support federal legislation that would allow Hawai'i to intercept federal tax refunds of those who have not paid financial obligations that have been ordered by our courts. We currently have the ability to attach state tax refunds for such purposes and obtaining the same authority at the federal level will create additional revenues for our general fund. I ask that you support our efforts in this regard.

In March of this year, the Judiciary piloted an electronic bench warrant project in the first circuit, which allows the Judiciary to provide law enforcement agencies with updated and secure access to view and print traffic warrants via a web browser. Because these warrants were previously required to be physically retrieved, they took months to be served, largely due to insufficient resources at the sheriff's and police departments. The electronic access has garnered such positive reviews that the Judiciary will be making the system available to police departments statewide.

Of particular interest to members of the Bar are plans to implement electronic filing when the appellate and criminal case types are migrated to the Judiciary Information Management System or JIMS, tentatively scheduled for implementation in June and December 2010, respectively. You will find the system easy to use, especially if you're accustomed to the federal e-filing system. The Judiciary's e-filing system will be a true electronic filing system; not merely the electronic submission of documents -- that is, your documents will be entered on the docket, the case management system will be updated with any required data, and notice will be given to any party or court officer in need of the notice. You will be provided a user name and password, be able to log in from wherever you are, and file your documents -- and attachments -- including documents you want submitted under seal or for *in camera* review. We are currently working on finalizing the many details involved with implementing an e-filing system, including proposed rules that will be put out for public comment in the near future.

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Finally, if you have taken a drive out to Kapolei recently, you will have noticed the nearly completed Kapolei Court Complex and Juvenile Detention Facility, which, is slated for completion and occupancy in the first quarter of 2010 -- less than six months from now! The larger courtrooms and waiting areas will not only enhance family court operations, but provide a safer environment for our judges, as well as family court practitioners and their clients. The benefits of having a brand new detention facility, including its proximity to the courthouse, are obvious. In short, we anticipate that moving our family court operations to Kapolei will improve the quality of services we provide to our many family court users. At the same time, certain operations -- like the entire adult criminal family court calendar will remain in Honolulu. Although many details are being finalized, we anticipate that family court practitioners and the public will have the option of filing documents at either the Honolulu or Kapolei locations and Honolulu-filings will be transported to Kapolei on a daily basis. Video-conferencing between the courthouse in Honolulu and Kapolei will be available, as well as self-help centers to assist *pro se* parties in both locations. Once a majority of the family court operations are moved to Kapolei, other judiciary offices, currently housed in leased-office spaces, will be able to move into Kaahumanu Hale. Thus, even with all of the gloominess surrounding budget cuts, salary reductions, and furloughs, we have much to look forward to with the opening of the new courthouse and detention facility in Kapolei.

Ladies and gentlemen -- As judiciaries across the country grapple with the many and varied issues in these challenging economic times, we, in the Hawai'i state judiciary are committed to taking all necessary and reasonable steps to help in balancing the state budget. We have done so in the past and emerged intact. Consequently, we are confident that, notwithstanding these unprecedented times, we will do so again -- with your help and support. I, therefore, look forward to continuing to work with you to meet those many challenges that are ahead of us. I again ask for your patience and understanding as we deal with court closures, less time, and more work.

Thank you for your attention.