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HAWAI'I ACCESS TO JUSTICE COMMISSION

ANNUAL REPORT FOR 2023

**TABLE OF CONTENTS**

	<u>Page</u>
I. HAWAI'I ACCESS TO JUSTICE COMMISSION	1
A. Commissioners	1
B. Committees	3
1. Committee on Education, Communications and Conference Planning	4
2. Committee on Increasing Pro Bono Legal Services	5
3. Committee on Initiatives to Enhance Civil Justice	7
4. Committee on Overcoming Barriers to Access to Justice	8
5. Committee on Paralegals and Other Nonlawyers	10
6. Committee on Maximizing the Use of Available Resources for Separating and Divorcing Families in Hawai'i	12
II. 2023 HAWAI'I ACCESS TO JUSTICE CONFERENCE	13
Keynote Address	15
Morning Plenary	17
Workshop Summaries	19
III. 2023 PRO BONO CELEBRATION	41
APPENDIX	53



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I. HAWAI'I ACCESS TO JUSTICE COMMISSION

This report highlights the Hawai'i Access to Justice Commission's ("Commission") activities in 2023.

A. Commissioners

The Commission is comprised of twenty-two Commissioners. The various Commissioners are appointed as designated in Rule 21 of the Rules of the Supreme Court of the State of Hawai'i by separate appointing authorities:

- Chief Justice of the Hawai'i Supreme Court
- Hawai'i State Bar Association ("HSBA")
- Hawai'i Consortium of Legal Service Providers
- Hawaii Justice Foundation ("HJF")
- Williams S. Richardson School of Law
- Hawai'i Paralegal Association
- Governor of the State of Hawai'i
- Attorney General of the State of Hawai'i
- State of Hawai'i Senate President
- State of Hawai'i Speaker of the House

The Commissioners who served in 2023 are listed on the next page.



	Name	Appointed By	Term Ends
1.	Hon. Joseph E. Cardoza (Ret.) (Chair)	Chief Justice	12/31/23
2.	Hon. Todd W. Eddins	Chief Justice	12/31/24
3.	Hon. Brian A. Costa	Chief Justice	12/31/24
4.	Hon. Joanna E. Sokolow	Chief Justice	12/31/25
5.	Hon. Michael K. Soong	Chief Justice	12/31/24
6.	Derek R. Kobayashi (Vice Chair)	Hawai'i State Bar Association	12/31/25
7.	Christine Daleiden	Hawai'i State Bar Association	12/31/23
8.	Jacky Mena	Hawai'i State Bar Association	12/31/25
9.	Carol K. Muranaka	Hawai'i State Bar Association	12/31/23
10.	Rachel Figueroa (Volunteer Legal Services of Hawai'i)	Hawai'i Consortium of Legal Services Providers	12/31/25
11.	David Kopper (Legal Aid Society of Hawai'i)	Hawai'i Consortium of Legal Services Providers	12/31/24
12.	Erin Sugita (Domestic Action Violence Center)	Hawai'i Consortium of Legal Services Providers	12/31/25
13.	Makalika Naholowa'a (Native Hawaiian Legal Corporation)	Hawai'i Consortium of Legal Services Providers	12/31/25
14.	Heather Lusk (Non-attorney public representative)	Hawai'i Consortium of Legal Services Providers in consultation with the Chief Justice	12/31/24
15.	Rona Fukumoto (Non-attorney public representative)	Hawai'i Consortium of Legal Services Providers in consultation with the Chief Justice	12/31/23
16.	Mihoko Ito	Hawaii Justice Foundation	12/31/25
17.	Dean Aviam Soifer (Ret.)	William S. Richardson School of Law	12/31/25
18.	Kalen Sato	Hawai'i Paralegal Association	12/31/25
19.	(to be appointed)	Governor	n/a
20.	Matthew Dvonch	Attorney General	n/a
21.	Hon. Gilbert Keith-Agaran	Senate President	n/a
22.	Hon. Della Au Belatti	House Speaker	n/a



B. Committees

Rule 21(f) of the Rules of the Hawai'i Supreme Court provides that the Commission may create such committees as it deems necessary or desirable to facilitate the work of the Commission.

The Commission created committees and various other ad hoc subcommittees and task force groups to carry out and facilitate its mission. Commissioners serve as chairs for the committees. The role of each committee is advisory only, and each committee is intended to make such recommendations to the Commission as the committee determines to be appropriate. The committees, their chairs, their members, and the areas of responsibility assigned to them may be changed at any time by the Commission.

The initial charters for the subject matter committees are drawn largely from two sources—the fourteen purposes of the Commission set forth in Supreme Court Rule 21 and the action steps proposed by the Hawai'i Access to Justice Hui in its “Community Wide Action Plan To Increase Access to Justice in Hawai'i by 2010” (the “Community Wide Action Plan”). The Community Wide Action Plan grew out of “The 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People in Hawai'i,” and both the Assessment and the Action Plan are included in the Report provided to each Commissioner entitled “Achieving Access to Justice for Hawai'i's People” (the “Report”).

The Commission began the process of reviewing its committee structure in October 2022. It was decided that the Administration Committee would review the matter and make recommendations to the Commission. On March 20, 2023, the Commission approved the restructuring of certain committees and task forces of the Commission.

The Administration Committee provides the following functions:

- Assist in providing reports on the status of operations.
- Assist in providing administrative and logistical assistance to the Commission and its committees and task forces.
- Assist in developing policies and initiatives that further the mission of the Commission.
- Coordinate the activities of volunteers in support of the Commission's initiatives.

During 2023, the members of this committee were Judge Joseph E. Cardoza (Ret.)(Chair), Judge Brian Costa, Christine Daleiden, Judge Jill Hasegawa, Derek Kobayashi, Carol K. Muranaka, Judge Joanna Sokolow, Judge Michael Soong, and Tracey Wiltgen.



The subject matter committees are listed below:

1. Committee on Education, Communications and Conference Planning

The Committee on Education, Communications, and Conference Planning facilitates the work of the Commission by the following functions:

- a. Assist in organizing an annual conference for presentation of issues related to access to justice.
- b. Make recommendations on encouraging lawyers, judges, government officials, and other public and private leaders in Hawai'i to take a leadership role in expanding access to justice.
- c. Assist in developing strategies for educating governmental leaders and the public about the importance of equal access to justice and of the problems that low-income persons in Hawai'i face in gaining access to the civil justice system. Strategies include informational briefings, communication campaigns, statewide conferences, testimony at hearings, and other means.
- d. Increase awareness of legal rights of low-income persons and where they can go when legal assistance is needed.
- e. Assist in developing a communications strategy and preparing communications consistent with that strategy.
- f. Encourage judges, lawyers, and legal services providers to prepare a series of articles on access to justice topics for publication in the *Hawaii Bar Journal* and other media.

The members of this committee in 2023 were former Dean Aviam Soifer (Chair), Sergio Alcubilla, State of Hawai'i Representative Della Au Belatti, Rona Fukumoto, State of Hawai'i Representative Sonny Ganaden, Cora Hume, Mihoko Ito, Robert J. LeClair, Judge Clarissa Malinao, Simeona Mariano, Michelle Moorhead, Carol K. Muranaka (Vice Chair), Teri-Ann Nagata, Leila Rothwell Sullivan, and Lorenn Walker.

Summary of Activities

- (1) Planned, recommended, and coordinated the 2023 Access to Justice Conference (Theme: "Building Trust and Understanding About Civil Access to Justice") held on Friday, June 16, 2023 at the William S. Richardson School of Law, University of Hawai'i.
- (2) Prepared a report to the Commission summarizing the 2023 Hawai'i Access to Justice Conference, including expenses, evaluations, and summaries of various conference workshops.
- (3) Prepared an application for approval of six continuing legal education



credits for Hawai'i-licensed attorneys attending the 2023 Hawai'i Access to Justice Conference. Approval for the six credits was ultimately received from the HSBA.

- (4) Worked on possible workshop topics for the 2024 Hawai'i Access to Justice Conference.
- (5) Worked on developing a seminar to recruit attorneys to assist on special education cases for those in need.

2. Committee on Increasing Pro Bono Legal Services

The Committee on Increasing Pro Bono Legal Services aids in the work of the Commission by the following functions:

- a. Study best practices in other jurisdictions for increasing the level of pro bono services by lawyers, paralegals, and others who may assist in overcoming barriers to access to justice. Methods include developing effective recruitment campaigns.
- b. Make recommendations concerning ways to develop a culture of commitment to pro bono service among Hawai'i's lawyers.
- c. Maintain a list of providers of legal services and others who offer opportunities for pro bono service (including adjustments due to COVID-19), describe the nature of those opportunities, and explore and assist providers in increasing the opportunities they provide for such service.
- d. Make recommendations concerning ways in which to make providing pro bono service more attractive to attorneys. Methods include assisting in developing resources for the pre-screening of cases, ensuring proper training, providing support, and recognizing service.
- e. Make recommendations concerning ways to encourage law firms and others who employ lawyers (including governmental agencies and corporate law departments) to promote increased pro bono service among their attorneys.
- f. Make recommendations concerning ways to encourage retired lawyers and judges to provide pro bono or staff legal services to low- income persons.
- g. Assist in recruiting and staffing pro bono attorneys for the Access to Justice Room at the Honolulu District Court.



- h. Coordinating the annual Pro Bono Celebration.
- i. Make recommendations and provide advocacy in support of enhancing recruitment and retention of attorneys to work as staff members or to volunteer pro bono for non-profit providers of civil legal services in Hawai'i.

In 2023, as part of the committee restructuring, members of the Pro Bono Initiative Task Force were approved as members of this committee. The members of this committee in 2023 were Christine Daleiden (Chair), Angela Kuo Min, Jennifer Chin, Derek Kobayashi, Judge Rebecca A. Copeland, Representative Linda Ichiyama, Rachel Figueroa, Judge Brian A. Costa, Tracey Wiltgen, Associate Justice Simeon R. Acoba (Ret.), Shawn L.M. Benton, Judge Rebecca Copeland, Judge Jill Hasegawa, Regan Iwao, Judge Melanie May, Judge Trish K. Morikawa, and Trisha Y. Nakamura.

Summary of Activities

The Committee set two goals in 2023 to increase pro bono participation by attorneys in the community: (1) reach out to law firms in Hawai'i to increase attorney pro bono participation and (2) reach out to the University of Hawaii's Richardson School of Law to ensure that future lawyers know of the availability of pro bono opportunities. The Committee accomplished these goals in the following ways:

- In June 2023, the Committee partnered with the Hawaii State Judiciary to host a meet and greet at the Supreme Court to encourage lawyers to commit to pro bono service. Representatives from law firms, legal service providers, and public entity attorneys participated. The meet and greet was successful in signing up attorneys to volunteer at the Access to Justice Self-help centers.
- The Committee reached out to local legal service providers that enlist pro bono law student volunteers to update information regarding opportunities to volunteer. This database was provided to participants at the annual Hawaii Access to Justice Conference.

On October 26, 2023, the 2023 Pro Bono Celebration occurred at the Hawai'i Supreme Court Courtroom. The following students were honored for their essays on "A Day in My Life As A Volunteer, a Lifetime of Lessons Learned": Maiyah Panis-Vuong, Waiakea High School; Arianna Rector, Haleaka Waldorf School; Rafael Firme, Campbell High School; Satomi Lakin, Iolani High School; and Esther Lim, Leilehua High School.



The various legal services providers, Hawaii State Bar Association, and the Hawaii Justice Foundation acknowledged their respective outstanding volunteers: Jim Davy by American Civil Liberties Union; Sean Hartlieb by Legal Aid Society of Hawai'i; Maile Osika, Madisson Heinze, Kristin Holland, and Paul Aston by the Hawaii Disability Rights Center; Zachary McNish by the Native Hawaiian Legal Corporation; Bruce McEwan by the Mediation Center of the Pacific; Lily Ling, Marie Laderta, and Daniel Kawamoto by Volunteer Legal Services Hawai'i; Gary Slovin by Hawaii Justice Foundation; and Jacky Mena by the Hawaii State Bar Association. Individual and law office volunteers who staffed the Honolulu and Kapolei Access to Justice Rooms were recognized. Acknowledgments also were given to the Volunteer Settlement Masters in Family Court, the pro bono appellate attorneys and mediators, and the Volunteer Court Navigators on Maui.

3. Committee on Initiatives to Enhance Civil Justice

The Committee on Initiatives to Enhance Civil Justice and Right to Counsel in Certain Civil Proceedings assists the Commission by the following functions:

- a. Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low-income residents of Hawai'i.
- b. Study best practices in other jurisdictions and develop and recommend new initiatives to expand access to justice in Hawai'i.

Summary of Activities

In 2023, the Committee on Initiatives to Enhance Civil Justice has returned to an initiative discussed pre-COVID 19 pandemic, to alleviate problems with transportation to court and to continue developing proposed instructional materials for distribution to the public. The committee has also begun studying ways in which it can garner specific input from self-represented litigants on their court experiences and how the Judiciary (and individual judges) facilitated their access to justice. It is hoped that this information could provide constructive feedback that could be used to specifically improve self-represented litigants' access by educating judges and leading to the implementation of new initiatives to address concerns, barriers, or gaps.

Members of the Committee in 2023 were Judge Joanna E. Sokolow (Chair), Edward Aquino, Lincoln Ashida, Katie Bennett, Charles Crumpton, Elizabeth Fujiwara, Craig Jerome, Patricia Kickland, Gregory Lui-Kwan, Emily Marr, Hon. John A. Montalbano, Deja Marie Ostrowski, Kristin Shigemura (Vice Chair), and Reginald Yee.



4. Committee on Overcoming Barriers to Access to Justice

The Committee on Overcoming Barriers to Access to Justice facilitates the work of the Commission by the following functions:

- a. Make recommendations concerning ways to remove impediments to accessing the justice system due to language, cultural, and other barriers and make recommendations concerning what programs should be initiated to address this barrier, which may include the following:
 - Providing multilingual services, including increasing the number of available staff, pro bono attorneys and court personnel who are bilingual.
 - Providing forms in multiple languages.
 - Providing translation services in court, administrative agencies, and with legal service providers.
 - Partnering with the University of Hawai'i and other schools offering language training to encourage multilingual volunteers to provide outreach and translation services.
 - Identify state entities working on these issues to increase collaboration and share resources.
 - Examine factors around barriers to interpreter certification and make recommendations to ensure quality and availability.
- b. Identify other barriers to obtaining legal assistance and make recommendations concerning ways to address them, such as through the provision of ancillary services--e.g., providing for child care during a court hearing or for necessary mental health services.
- c. Seek to reduce barriers by recommending input on existing and proposed laws, court rules, regulations, procedures and policies that may affect meaningful access to justice for low- and moderate income Hawai'i residents.
- d. Reduce barriers encountered by self-represented litigants in the court system. Examples include using plain English, translations into other languages, and by simplifying procedural rules.



Summary of Activities

In 2023, the Committee initiated an inter-agency roundtable to meet at least twice a year to identify current needs, resources, and gaps to provide more multilingual services, provide forms in multiple languages, and offer training and translation services to courts, administrative agencies and legal service providers. In 2023, the Roundtable on Increasing Access to Cultural and Linguistic Resources met in the spring and fall and included participation from the University of Hawai'i, State Department of Health, State Department of Human Resources, the Judiciary, and other key stakeholders. Key priorities discussed included progress in linguistic access with the Victims of Crime Act requiring language plans, collaboration between Office of Language Access and the Executive Branch and efforts to address interpreter shortages (especially in Chuukese and Ilocano) as well as developing a centralized language hub. Interpreter fees continue to be a barrier to recruiting and retaining interpreters, and the Roundtable is working on a formal recommendation to address this issue, as well as community outreach interpreters and support for a pathway to language studies, especially University of Hawai'i, Hilo's program and other efforts to increase the workforce of qualified culturally appropriate linguistic support.

In April 2023, Committee Chair Heather Lusk, Governor's Office of Wellness and Resilience Director Tia Hartsock and Judge William Domingo conducted a workshop on Trauma Informed Judicial Practices and Judicial Wellness at the Hawaii State Judicial Conference. The workshop, based on the Substance Abuse and Mental Health Services Administration, was conducted twice for full-time and per diem judges and according to evaluations, was well-received and highlighted the need for ongoing trainings for the rest of Judiciary and justice systems. The Committee recommends continued collaboration with the Office of Wellness and Resilience to support wellness efforts and decrease vicarious trauma for lawyers, judges, clerks, staffers and law enforcement involved in the justice system.

In 2023 the Committee continued to interface with the Department of Health, Office of Wellness and Resilience, the Department of Human Services and community-based agencies such as the Pu'a Foundation on the development and implementation of forensic peer programs across the islands. Research shows that those with lived experience of the justice system can be very effective in providing support, navigation and access to resources. The Committee recommends continuing to support this effort so that training, certification and reimbursement can be standardized to increase utilization of competent peer specialists.

Members of the Committee in 2023 were Heather Lusk (Chair), Judge William M. Domingo (Vice Chair), Patricia Cookson, Simeona Mariano, Derek



Kobayashi, Page Ogata, Jennifer Rose, Brandon Segal, Cynthia Tai, Malia Taum-Deenik, Kristina Toshikiyo, Representative Della Au Belatti, Rona Fukumoto, Russ Awakuni, and Aphirak Bamrungruan.

Members of the Roundtable on Cultural and Linguistic Access included members of the Committee and Sue Zeng, Christine Daleiden, Judge Rebecca Copeland, Debi Tulang-Desliva, Frances Lum, and William Bagasol.

5. Committee on Paralegals and Other Nonlawyers

On January 11, 2016, the Hawai'i Access to Justice Commission ("Commission") approved the creation of a Task Force on Paralegals and Other Nonlawyers ("Task Force") to examine the role of paralegals and other non-lawyers in expanding access to justice in Hawai'i. During 2022 and 2023, the Commission reviewed the Commission committee structure. On March 20, 2023, the Commission approved a committee restructuring plan that converted the Task Force into a permanent committee of the Commission. The committee is now called the Committee on Paralegals and Other Nonlawyers ("Committee").¹

During 2023, the Committee met at least once each month to work on Committee membership and proposals and projects designed to enhance access to justice through the use of paralegals and nonlawyers.

During 2021, the Hawai'i Supreme Court requested that the Hawai'i Access to Justice Commission review Rule 7 of the Rules of the Supreme Court of the State of Hawai'i to determine whether the reach of the law student license program should be expanded. The Commission then assigned this request to the Committee. In response, the Committee formed a subcommittee to review and report on Supreme Court Rule 7. The subcommittee members included John Barkai, Angela Lovitt, Calvin Pang, all instructors at the University of

¹ The 2023 members of the Task Force on Paralegals and Other Nonlawyers, now the Committee on Paralegals and Other Nonlawyers, were: Judge Joseph E. Cardoza, Second Circuit Chief Judge (Ret.) (Chair, Access to Justice Commissioner); Gilbert Doles (Attorney); Marielle Florendo (Volunteer Legal Services Hawai'i); Susan Jaworowski (Professor and Paralegal Program Coordinator, Kapiolani Community College); Kimberly Koide (Professor and new Paralegal Program Coordinator, Kapiolani Community College), Raymond Kong (Legal Director, Lawyers for Equal Justice), Chelsey Konno (Maui High School Student); Angela Lovitt (Legal Aid Society of Hawai'i Staff Attorney), Carol K. Muranaka (Attorney and Commissioner); Calvin Pang (William S. Richardson School of Law Professor); Kalen Sato (Hawai'i Paralegal Association and Commissioner); and Grant Teichman (Volunteer Legal Services Hawai'i).



Hawai'i William S. Richardson School of Law ("Law School"), and former Law School Dean Aviam Soifer.

Rule 7 was originally promulgated in the 1970s when the Law School was first established. In the 1970s, clinical legal education was still in its infancy. Now there have been over forty years of experience with Rule 7. Based on this experience, the subcommittee and Committee proposed changes to Rule 7 designed to provide greater access to justice for those of low- and moderate-income. The proposed changes were intended to more effectively meet the needs of the Law School and Bar, while maintaining the key concepts of training and supervision for law student interns. The proposed amendments to the Rule included a provision to allow eligible law students from other accredited law schools to access Rule 7 authorization, and a provision to streamline the qualification procedures.

During 2022, the proposed amendments to Rule 7 were presented to the Commission for review. The Commission subsequently approved forwarding the proposed Rule 7 amendments to the Hawai'i Supreme Court for review. The Hawai'i Supreme Court invited public comment on the proposed amendments to Rule 7. After careful consideration, the Hawai'i Supreme Court approved a new Rule 7 that addressed, among other things, the concerns expressed by the Committee. A copy of new Rule 7 is attached to this report in the Appendix.

During its existence, the Task Force benefited from the expertise and dedication of several persons who served as members of the Task Force. After becoming a permanent committee, the Committee focused its efforts on membership to ensure that the work on utilizing paralegals and other nonlawyers to enhance access to justice continues for the long-term. The Committee actively recruited persons interested in Committee membership. As a result of these efforts, three new members have joined the Committee, including our first high school Committee member. The Committee encourages anyone interested in Committee membership to apply. The Committee also expresses its deepest appreciation to all of those who tirelessly served on the Task Force to expand access to justice in Hawai'i.

During 2023, the Task Force also continued its work on certain projects including the further development of an Online Volunteer Court Navigator, and a Second Circuit Volunteer Attorney and Volunteer Assistant Pilot Project.

Tragically, during 2023, devastating wildfires struck the island of Maui causing the loss of many lives and widespread destruction of homes, schools, businesses, and infrastructure. The Hawai'i State Bar Association, Maui County Bar Association, pro bono lawyers, paralegals and other nonlawyers, volunteers, agencies, and businesses sprung into action to assist those impacted by the



wildfires. In response, the Committee embarked upon a project designed to provide long-term assistance to victims of the wildfires. The project will involve the use of paralegals and other nonlawyers to learn of the needs of impacted communities as the needs evolve over the years. The project will also attempt to link persons in need with existing services and provide information on needed services where gaps exist. This will be a long-term project that is anticipated to last approximately a decade or more with a recognition that needs will evolve over the years and available services may decrease in number over time.

The Committee will continue to work on other projects and will examine other areas of concern in 2024.

The members of the Committee express their sincere gratitude to the Judiciary for its leadership and assistance during 2023 and the dedication of the many volunteers and agencies who have made the Committee's projects a reality.

6. Committee on Maximizing the Use of Available Resources for Separating and Divorcing Families in Hawai'i

This committee was formed on September 18, 2023. Its purpose is to evaluate the nature and status of pending cases involving separating and divorcing families in Hawai'i; evaluate the available resources for separating and divorcing families in Hawai'i; increase awareness of the available resources to separating and divorcing families in Hawai'i; and make recommendations for possible enactment of statutes, Family Court Rules, and/or Family Court policy and procedure directives designed to maximize the use of available resources for separating and divorcing families in Hawai'i.

The Committee's first meeting was held on November 14, 2023. The Committee discussed (1) ways of evaluating the nature and status of pending cases involving separating and divorcing families in Hawai'i and (2) adding mental health resources for suicide prevention in litigants. The Committee drafted letters to all Senior Family Court judges in an effort to establish a meaningful and effective working relationship with all Family Courts, to obtain information necessary to evaluate subject cases, and to facilitate and implement this Committee's purpose in a manner that is meaningful and effective for each of the Family Courts.

The members of this committee in 2023 were A. Jaqueline "Jacky" Mena (Chair), Judge Joanna E. Sokolow, Judge R. Mark Browning, William C. Darrah, Tracey R. Wiltgen, Sara Jo Buehler, Erin Lea Lowenthal, Makia Minerbi, Michelle K. Moorhead, and Tiare Nakata.



II. 2023 HAWAI'I ACCESS TO JUSTICE CONFERENCE

The fourteenth annual Hawai'i Access to Justice Conference sponsored by the Hawai'i Access to the Justice Commission brought together more than 220 interested individuals on a sunny Friday, June 16, 2023 at the William S. Richardson School of Law, University of Hawai'i. The theme of the conference, "Building Trust and Understanding About Civil Access to Justice" generated exciting discussions on diverse topics.

The Cades Foundation was acknowledged for its financial support in assisting with the conference expenses. It has generously supported the conferences for a number of years.

Hawai'i Supreme Court Chief Justice Mark Recktenwald opened the conference by recognizing two leaders in the Access to Justice Community: Nanci Kreidman, co-founder and outgoing CEO of the Domestic Violence Action Center (DVAC); and M. Nalani Fujimori Kaina, outgoing Executive Director of the Legal Aid Society of Hawai'i (LASH). Chief Justice Recktenwald remarked that it was impossible to think of DVAC without thinking of Ms. Kreidman, and it was impossible to think of LASH without thinking of Ms. Fujimori Kaina.

Retired Second Circuit Chief Judge Joseph Cardoza, who is Chair of the Hawai'i Access to Justice Commission ("Commission") welcomed the attendees with his remarks:

Nationally, Hawai'i continues to rank among the highest in the nation when it comes to access to justice. This would not have been possible were it not for the outstanding leadership, support and enthusiasm of Chief Justice Mark Recktenwald, the entire Judiciary, the support of the Legislative and Executive branches of government, and all of you. If you have not had the chance to join the team, please do so. Participating in these efforts makes a real difference to the people of Hawai'i. I urge you to go to the legal services providers' tables outside and sign up as a volunteer.

. . . .

In recent years, I have been going to court as a volunteer and speaking to those who are unrepresented in civil proceedings. The courthouse experiences of the unrepresented are vastly different from those who are represented. Although this seems obvious, many of us may not fully appreciate these differences unless you actually go to court, sit in the hallway, and observe those who are unrepresented. Fortunately, I have also seen that a little bit of help can go a long way in assisting those who must navigate our system of civil justice on their own. Please remember that it does not take a great deal of effort to make a big difference.



Is there really a need for your assistance you might ask. In September 2021, James Sandman, former president of the United States Legal Services Corporation reported that, *“Every licensed attorney in the United States would have to provide 180 hours of pro bono services every year in order to provide 1 hour of service to every household with an unmet civil legal need.”* Yes, there is a need and the need is great.

Today, I see before me a gathering of people who represent hope. Hope is one of the most important human emotions we can experience. With hope, we believe that we can improve the lives of those who feel that there is no hope. Hope empowers us to envision a better future and to take the steps necessary to make it happen. When I look at all of you, I see hope. It would be nice to take a photograph of all of you and caption the photo “hope.” This would serve as a reminder that your presence today represents hope for others.

Chief Justice Recktenwald began his remarks by thanking everyone who made the conference possible.² Access to justice relies on great partnerships, including the partnerships among the Access to Justice Commission, legal services organizations, volunteer attorneys, and the legislature, which last year appropriated \$1.2 million in new funding for civil legal services and additional funding for mediation services. Chief Justice Recktenwald thanked the Mediation Center of the Pacific and the legislature for their commitment to access to justice.

Chief Justice Recktenwald spoke about the COVID-19 pandemic as the transformative event of the last three years. During the pandemic, the Judiciary dramatically increased the use of remote proceedings. The Judiciary has been considering how remote proceedings benefit and, in some ways, hinder access to justice. Remote proceedings are not right for every type of case, but they can be beneficial in cases involving, for example, small claims, landlord-tenant, or debt collection issues, or for parties who reside in outlying areas or require child care. If a party’s choice is between attending remotely and not attending at all, it is better for the party to attend remotely.

The Judiciary has presided over 600,000 remote hearings. It has increased use of its online dispute resolution program, which allows parties to populate forms, engage in mediation, and pay filing fees remotely. So far, more than 1,600 cases have made use of the program, and the Judiciary is considering ways to enhance it.

² Teri-Ann Nagata, a member of the Commission’s Committee on Education, Communications, and Conference Planning, prepared a summary of the entire morning session. This summary can be found at the pages of the Commission at www.hawaiijustice.org.

Keynote Address

Judge Nancy Gertner divided her keynote address, “Incomplete Sentences: Judging Poverty,” into two parts: reviewing and updating the information that she had presented virtually at a prior Access to Justice Conference, and presenting new material.

Part One. In the first part of her address, Judge Gertner revisited the use of digital procedures as a radical approach to increasing access to justice. The use of technology in court proceedings increased dramatically during the pandemic. In *Online Courts and the Future of Justice*, Richard Susskind argued that online courts were critical to addressing issues such as limited access to justice, the substantial cost of litigation, and untenable backlogs. For example, immigration courts formerly operated much like nineteenth century courts, with physical files, in-person hearings, and paper filings. By January 2023, the immigration courts had an extraordinary backlog of two million cases. Then the immigration courts rolled out specially equipped laptops to allow for online hearings with digital audio recordings. This allowed extraordinary access to the courts.



There are potential concerns, however. In online hearings, the only human in the courtroom was the judge. This may raise questions about gravitas, civility, and more summary decision making. Judge Gertner discussed the example of *United States v. Nippon Paper Industries Co., Ltd.*, an antitrust case that she decided as a district court judge. That case involved an alleged conspiracy to set prices for

thermal fax paper. One of the critical issues in the case was the translation and interpretation of a word in a memorandum. Judge Gertner received testimony remotely, from a witness testifying in Japanese. She described how difficult it was to assess the testimony when it was presented by a face on a screen testifying in a different language. The context was missing because of the nature of the proceeding.

Judge Gertner asked whether empathy may be erased or sharply curtailed in online proceedings because, when a person is not present, neither the individual nor his or her emotions can be fully appreciated. In this context, will trauma be devalued? Immigration judges are told to consider factors such as



consistency of testimony. The implication is that honest memory is like a videotape, free of inconsistencies. Research by the Massachusetts General Hospital Center for Law, Brain and Behavior, however, has found that trauma affects recall and creates inconsistency in memory. Autobiographical memory is especially vulnerable to interference in the encoding, storage, and retrieval stages. How sensitive will judges be to this if parties appear as faces on screen? This may be a training issue for judges.

Judge Gertner asked how digital procedures can change substance, and how we can work to ensure that these changes are for the better. One continuing issue is presented or exacerbated by caseload pressures. Judge Gertner related that, if judges avoid making or writing decisions in an effort to dispose of cases quickly, poorer litigants may bear the burden. In an article in *The Yale Law Journal* titled *Losers' Rules*, Judge Gertner discussed how avoiding written decisions in close cases can skew precedent. She explained that close cases proceed to trial, generally without a written decision, while losing cases often are disposed of with a written summary judgment opinion. As a result, most opinions are written in cases that seem trivial. When courts of appeals review these decisions, they begin to view most cases as trivial because they do not review opinions in the stronger cases that proceeded to trial or settled, for example.

Part Two. In part two of her keynote address, Judge Gertner addressed the challenge of incomplete or unjust criminal sentences, explaining that a lack of access to civil services can push individuals toward the criminal justice system.

She cited several examples of criminal defendants she had sentenced. These defendants had access to legal services and transportation services to and from court. In some ways they were given increased access to the criminal justice system because their access to everything else had been deficient. For example, Shaheer Bashid appeared before Judge Gertner when he was 59 years old. He had a history of paranoid schizophrenia, bipolar disorder, drug abuse since the age of eight, and family abuse. His record showed a ten-year hiatus in criminal activity while he was taking medication. When he stopped taking his medication, however, police officers found a bullet in Mr. Bashid's duffle bag, resulting in a federal charge of felon in possession of a firearm or ammunition. Because of his record, he was facing a 15-year mandatory minimum sentence. When the government was asked why Mr. Bashid should be sentenced to prison rather than receive mental health treatment, the apparent answer was that sentencing him to prison was easier than getting him care. Judge Gertner sentenced Mr. Bashid to six years in prison, and the government appealed.



Judge Gertner also discussed the case of Calvin Parker, who had suffered a leg injury at birth. He had been eligible for Social Security disability benefits, but he did not receive those benefits until after he was in prison because he had started dealing crack cocaine to survive.

In light of cases like these, there are holistic initiatives that seek to address unjust criminal sentences. The Bronx Defenders, for example, provide holistic criminal defense services, including providing social worker and educational services to persons who have been criminally charged. Yale Law School has a medical-legal partnerships program, in which Yale law students collaborate with medical providers. Yale Professor Emily Yang studies formerly incarcerated individuals and the effects of incarceration on the body. She co-founded the Transitions Clinic Network, which recognizes that formerly incarcerated individuals require access to services because the criminal justice system exacerbates problems.

In summary, Judge Gertner noted her concern that, in criminal cases, defendants have access to courts, counsel, and housing, but they may not have access to justice.

Morning Plenary

The morning plenary workshop entitled “Perspectives of Access to Justice in the Current Climate” moderated by former Dean Aviam Soifer discussed the approaches of the state’s executive, judicial, and legislative branches of government in meeting the access to justice concerns with Chief Justice Recktenwald, State Representative Della Au Belatti, State Senator Joy A. San Buenaventura, and James Walther.³

Senator San Buenaventura thanked Chief Justice Recktenwald for talking about collaboration. She was proud to be part of the panel as one of the few practicing attorneys in the legislature, and as a solo practitioner in Hilo with a clientele of mostly low- to moderate-income individuals. She noted that low- to moderate-income individuals come to courts primarily for traffic and family law issues. For these issues, self-help court forms are helpful. One of the first issues Senator San Buenaventura sought to address after her election was the fact that Hawai'i was one of the few states without domestic relations orders for state employees. Divorced individuals were required to return to court each month after their former spouse's retirement to request their share of the retirement benefits. Individuals who did not wish to return to court, such as domestic violence victims, sometimes ended up forgoing their shares. Another issue was the lack of automatic restraining orders in divorce cases. Spouses with more

³ James Walther, Supervising Deputy Attorney General, Human Services Division, participated on behalf of Attorney General Anne Lopez.

assets sometimes started dissipating assets after filing. With her fellow legislators, Senator San Buenaventura worked to pass legislation making automatic restraining orders mandatory in divorce cases.

Representative Au Belatti participated in the panel virtually and noted that on the day before the conference, Governor Josh Green signed several domestic violence bills into law. Representative Au Belatti focused the remainder of her opening remarks on mental health initiatives. In 2020, the legislature passed Act 26, which was aimed at diverting non-violent misdemeanants from the criminal justice system to mental health treatment centers. Since then, there has been a collaborative effort among the Department of

Health and Human Services, the Judiciary, prosecutors, public defenders, and agencies such as the Office on Homelessness and Housing Solutions to identify and provide resources for these non-violent defendants. Representative Au Belatti described Act 26 as an opportunity to take up the challenge offered by Judge Gertner.



Aviam Soifer, James Walther, Chief Justice Mark Recktenwald, Representative Della Au Belatti, Senator Joy San Buenaventura

Deputy Attorney General Walther discussed efforts by his clients, the Department of Human Services (DHS) and the Department of Health, to provide services to low- to moderate-income individuals. Legal services to these individuals may be limited, but they can have a huge impact on an individual who receives assistance obtaining a restraining order, for example. Deputy Attorney General Walther noted that each of the DHS benefits programs has rules allowing individuals to challenge benefits decisions. A challenge first results in an informal review. Individuals then may request an appeal. Appeals of benefits decisions are intended to be informal and simple. Hearings in administrative appeals are offered via telephone, Zoom, and Microsoft Teams. These virtual appeals hearings increase access for individuals who have limited mobility or who live in rural areas. After an administrative appeal, individuals may appeal to the circuit court. LASH often will provide representation for individuals at this stage. DHS, the Attorney General's Office, LASH, and the Judiciary have been participating in a roundtable to increase access to these types of legal services.



Chief Justice Recktenwald commented that the idea for the roundtable was borrowed from the federal government. Different federal agencies that came into contact with low- to moderate-income individuals met to discuss overlapping interests such as access to services and access to the courts.

Chief Justice Recktenwald began his remarks by echoing Judge Gertner's observations regarding the overlap between the criminal justice system and access to civil services. He described a formerly common scenario of an individual on the street with obvious mental illness. If the individual became disruptive and was arrested, and if the public defender did not believe the individual could meaningfully engage with the public defender, the individual likely remained in jail for a period before being transferred to a mental hospital and then released with no follow-up services.

Chief Justice Recktenwald observed that some courts have started treating these individuals differently. In Miami-Dade County, courts are diverting mentally ill individuals from the criminal justice system whenever possible.

In Hawai'i, Act 26 was a modest first step. Petty, non-violent misdemeanants are evaluated quickly. If they are determined to be competent, they remain in the criminal justice system. If they are determined to be incompetent, they are released, but with a warm hand-off to available services. More recently, a team from Hawai'i, with representatives from the Judiciary, prosecutor's office, and public defender's office, traveled to Miami, Florida, to learn more about what Miami courts are doing to divert a broader category of people from the criminal justice system.

Chief Justice Recktenwald remarked that a lot of progress has been made. For example, the state has removed some of the barriers to using assisted community treatment as an alternative to civil commitment. Assisted community treatment allows individuals to remain in the community, subject to receiving ongoing treatment. There were a few initiatives that have not been implemented. One initiative was to establish a drop-off center as a place where police officers can bring individuals to engage with doctors and nurses and receive opportunities for treatment rather than entering the criminal justice system. This is a practice that works well in Arizona.

Workshop Summaries

What follows are a few summaries of the various afternoon concurrent workshops at the conference.

“Alternatives to Incarceration in the Juvenile Justice System”⁴



Judge Jessi Hall, Carla Houser, Tatiana Lehane

This workshop was presented by Carla Houser, executive director of the Residential Youth Services and Empowerment, a nonprofit entity, and District Family Court Judge Jessi Hall.

In 2018, Hawai'i started working on the juvenile justice system to transform to a therapeutic, healing system which is opposed to incarceration.

Residential Youth Services and Empowerment (RYSE) helps youth who experienced homelessness by offering access center and shelter services in Kailua, Oahu. Youth who are between 14 and 24 years old are welcome to seek services at the access center. RYSE observed disproportionately people coming from Waianae and Kalihi. RYSE provides safe and temporary living space and offers education, counseling, and life skills training.

In the Judiciary, there have been several reforms of the juvenile justice system. In 2001, the juvenile drug program has been implemented. Youth with substance abuse must go to court every week. In 2004, the Girl's Court was created. The girls must go to the court once a month to attend a class and run a cohort so that they can support each other.

In 2010, the Juvenile Detention Alternative Initiative (JDAI) was implemented. JDAI focuses on rehabilitation and building skills for youth. Since JDAI was implemented, the incarceration rate of detention centers and Hawaii Youth Correctional Facility has positively changed. In 2013, substance use, mental health, and residential program has been implemented as a part of the juvenile justice reform. Insufficient residential services for youth in Hawai'i still exists as one of the biggest problems.

The current focus is to reduce court involvement for youth issues, create more resources for the family, and refer cases to other agencies and community partners. Courts also want to show that they are helping and providing support

⁴ Makoto Messersmith, an attorney with Legal Aid Society of Hawai'i, prepared a summary of this workshop.



for youth. Many people have stigma for dealing with the Judiciary, so the courts try to remove the stigma. There is a program called “Sparks program.” The program helps youth to find their interest in their individual life. Once each of them determines what their spark is, they are offered to work with someone who has knowledge of the interest.

In 2015, the truancy court was back. It expanded to three more schools to find barriers to families, which have not been able to send the children to school. This program has been so successful, and no family needed to be brought to the court.

In the future, Judge Hall expressed her vision to have “culture court” to connect the youth to their culture and community. In 2020, 4,300 youth were arrested. Forty-eight percent of them were either Native Hawaiian or Pacific Islanders. The Judiciary extensively try to learn from successful courts for indigenous population in New Zealand, Australia, and Canada. There must be an understanding of the difference between Native Hawaiian youth and Pacific Islanders. Some of them are not in their homeland.

“For the Public Good’ -- Pro Bono -- Obligation or Opportunity?”

[Judge Joseph E. Cardoza (ret.) (moderator), Hawai'i Supreme Court Justice Simeon R. Acoba, Jr. (ret.), Caroline Peters Belson, volunteer attorney from Maui]⁵

The Hawai'i Access to Justice Commission was founded in May 2008 pursuant to Rule 21 of the Hawai'i Supreme Court Rules. The purpose of the Commission was to substantially increase access to justice in civil matters for low- and moderate-income residents of Hawai'i, a purpose that arose out of a 2007 Access to Justice Hui Report, that found a) legal service providers are able to help only one in three of those persons who contact them for assistance; and b) only one in five low- and moderate-income Hawai'i residents have their legal needs met.

The 22-member Commission had fourteen objectives including implementing initiatives, supplementing long-term funding of delivery of civil legal services, increasing pro bono contributions by Hawai'i attorneys, and educating the public about the importance of access to justice. The full description of these objectives and the work done by the Commission can be found online at the Hawaii Justice Foundation website or the Hawai'i State Judiciary website.

⁵ Caroline Peters Belson prepared this summary with the assistance of her co-presenters, Justice Simeon Acoba and Judge Cardoza.

Rule 6.1 of the Hawai'i Rules of Professional Conduct provides that a lawyer should aspire to provide at least 50 hours of pro bono services per year. In lieu of providing 50 hours of pro bono services, a lawyer may contribute at least \$500 each year to the Hawai'i Justice Foundation or entity that provides legal services at no fee, or a reduced fee.



Justice Simeon Acoba, Carolyn Belsom, Judge Cardoza

For the years 2020-2022, 55-62% of the attorneys who held active membership in the Hawaii State Bar Association (HSBA) reported contributing pro bono services while 18-26% of government attorneys reported contributing pro bono services. Of the total HSBA membership during this period, 34-41% of the member attorneys reported providing pro bono services in the average amount of 52-60 hours per member attorney.

Since government attorneys make up roughly 20% of the active HSBA membership, in moving forward, the Commission might consider developing a model pro bono policy that would establish guidelines for government employers and attorneys and encourage government attorneys to engage in pro bono activities. The model policy would address issues for government attorneys when faced with pro bono services, namely, a) pro bono activity conflicts with their employment duties; b) they may appear to be using public resources for private benefit; and c) there may not be legal malpractice coverage for pro bono services. Moreover, there are no exceptions within existing government policies and practices for providing pro bono services.

There are some model policies one can look at when trying to create a pro bono policy, including 1) Model Pro Bono Policy for Hawaii Law Firms, 2) Model Policy for Government Attorneys, 3) Performing Pro Bono Work by the Corporation Counsel, City and County of Honolulu, and 4) Hawaii Judicial Pro Bono Policy. Possible consideration should be given to a) exploring an amendment to the state statutes to permit pro bono services by deputy attorneys general, b) encouraging county corporation counsel offices and county prosecutor offices to adopt pro bono programs, c) exploring an amendment to the state statutes to permit the public defenders office to adopt a pro bono program, d) inviting smaller government legal offices to adopt a pro bono program or policy, e) encouraging government lawyers to contribute to pro bono services on an individual private basis, and f) encouraging financial support and/or increasing the suggested \$500 Rule 6.1 contribution.



Upon further examination of Rule 6.1, it is clear that our system of law depends on equal access to the privileges and protections that pro bono representation can provide. Such services level the playing field for clients who are not able to pay for capable representation. The benefits for the pro bono attorney include learning new skills, making career connections, and boosting one's professional profile. For law firms, there is the opportunity to train associates, recruit law students and other lawyers, enhance the firm's public reputation, and develop business. In providing pro bono services, an attorney supports the goals of the justice system, contributes to the public good, and improves the lives of others.

The opportunities to participate in pro bono services are numerous and varied. One such opportunity is volunteering to provide legal information to self-represented litigants through the Self-Help Centers within each of the State's five circuits. Operating remotely, volunteer attorneys dispense legal information to callers who have or intend to have claims pending in the District Courts. The most common areas of law for a caller are family law, landlord/tenant matters, and small claims/collection matters. During any hour, a volunteer attorney may handle, on average, three callers.

There are many types of recipients of pro bono services, but they all are real people with real needs for whom a volunteer attorney can make a world of difference. The demand for pro bono services is high. Statistics show that every licensed attorney in the United States would have to provide 180 hours of pro bono services every year in order to provide 1 hour of service to every household with an unmet civil legal need.

Sign up with one of these Hawai'i legal services providers:

- Legal Aid Society of Hawai'i
- Volunteer Legal Services Hawai'i
- Native Hawaiian Legal Corporation
- Domestic Violence Programs
- Mediation Programs
- Volunteer Court Navigator Program
- Commission's Committee on Increasing Pro Bono Legal Services and the HSBA Delivery of Legal Services to the Public Committee
- The Mediation Center of the Pacific
- The Legal Clinic (Immigration Law and Justice Network-Hawaii)

Pro bono is both an ***obligation*** and an ***opportunity*** to make a difference.

“Access to Justice and Diversity, Equity, and Inclusion”

[Lisa T.K.O. Lum, Special Assistant to the Administrative Director of the Courts, Dean Camille Nelson, District Family Court Judge Rebecca Copeland, and Isaac Moriwake, managing attorney of the Mid-Pacific Office of Earthjustice]⁶

The panel on Diversity, Equity, and Inclusion (DEI) began with Judge Copeland’s working definitions of the terms.

Diversity. Judge Copeland defined diversity as the presence of people with different characteristics, beliefs, and life experiences. It includes race, ethnicity, gender, national origin, tribe, caste, thinking, and communication styles.

Equality. Judge Copeland noted that equity is different from equality. Equality relates to giving people the same opportunities and resources, but we all have different experiences and starting points. Accounting for these differences (e.g., the different experiences of lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) individuals, or individuals with different cultural backgrounds) allows us to strive for more equitable outcomes.

Inclusion. Judge Copeland described inclusion as striving to ensure that all individuals feel a sense of belonging and feel that their views are valued. An inclusive environment invites participation of all people and does not call on any one person to represent an entire community.

Dean Nelson opened her remarks by inviting attendees to think about how they would design backward the world in which they want to live. When thinking about DEI, we can imagine three people standing outside a solid fence and trying to see an event on the other side. Equality would give each person the same sized box to stand on, but equity would allow us to consider options such as giving a taller box to a shorter person, offering a different solution to a person with mobility issues, and perhaps tearing down the fence. Historically the legal profession is the least diverse of all American professions. She encouraged attendees to think intentionally about tracking, mentoring, and



Isaac Moriwake, Judge Rebecca Copeland,
Dean Camille Nelson, Lisa Lum

⁶ Teri-Ann Nagata, a member of the Commission’s Committee on Education, Communications, and Conference Planning, prepared this summary.



disaggregating data to determine who is missing from the profession. Long before law school, we should be recognizing talent and creating access and opportunity.

Isaac Moriwake described the first DEI panel in the history of the Access to Justice Conference as timely. He noted that he recently visited the Supreme Court Law Library and observed that it had a shelf of anti-racist literature, an indication that the conversation is spreading.

Judge Copeland echoed the panel's comments and encouraged attendees to think intentionally about including people who are missing from conversations. For example, what are we missing when it is difficult for individuals with injuries or disabilities to access public spaces by themselves, or when mothers advocate for their LGBTQI children but are not themselves part of the LGBTQI community?

Lisa Lum discussed DEI efforts at the Judiciary. The Judiciary has provided implicit bias training for judges and judiciary employees since 2019, has included an instruction on implicit bias in its civil and criminal jury instructions, and, following the killing of George Floyd, sponsored a virtual series of conversations on confronting racial injustice. The Judiciary has started to improve data collection relating to judges and employees, and it hopes to improve data collection relating to court users. The Judiciary has a DEI working group that includes employees from across the state who discuss topics such as encouraging a sense of belonging, providing internal trainings regarding sexual and gender minorities, microaggressions, and Micronesian culture.

Another priority has been increasing access for speakers of *‘Ōlelo Hawai‘i*. The Judiciary established an *‘Ōlelo Hawai‘i* interpreter policy and the Judiciary History Center provides training in *‘Ōlelo Hawai‘i*. Johanna Chock Tam, the Judiciary's *‘Ōlelo Hawai‘i* Program Administrator, discussed efforts to increase *‘Ōlelo Hawai‘i* throughout the court system through efforts such as an *‘Ōlelo Hawai‘i* court interpreter course.

What facets of DEI resonate with you the most? How have you incorporated DEI into your roles? Dean Nelson responded by discussing intersectionality. Ensuring that individuals feel that their full selves belong and are empowered takes intentionality, work, and effort. Effort is most impactful when leaders create a position with power, a seat at the table, and funding. DEI requires investment that tracks the investment we put into other departments.

Judge Copeland shared that she has been able to make small but important advances at the Judiciary on behalf of the LGBTQI community because Chief Justice Recktenwald empowered her with resources and support.



Mr. Moriwake described racism as a systemic institutional problem, present in the environmental movement and in Hawai'i. In Hawai'i, we must combat not only racism, but also settler colonialism. At Earthjustice, there has been an effort to work toward partnerships. In each case, Earthjustice asks itself not only how it can win, but also how it can empower its clients and the community.

Dean Nelson discussed the Law School's being named one of most diverse law schools in the nation. She noted that there is always more work to be done. For example, she thinks about questions such as: How do individuals ambulate around the law school? How do we invite inclusion? Who is missing in this space? Whose voices do we not hear? When do people opt out and why? How can we make systems and structures more inviting so we can attract and retain faculty, staff, and students?

What are your thoughts on DEI efforts in organizations? Should those efforts be led by a dedicated position or office, or by a working group? Mr. Moriwake shared that DEI efforts are led by a dedicated employee at Earthjustice. Efforts started with committees of employees, but committees were hindered because employees were addressing DEI in addition to performing their other work and had no authority. Eventually, Earthjustice created an office to address DEI issues. This institutionalized leadership's commitment to DEI. The resulting conversations have been messy and painful, but it has been a uniformly good thing to start these conversations and grapple with these issues.

Judge Copeland shared that she was not sure how organizations could effectively pursue DEI without creating a dedicated office to ensure that efforts are made throughout the organization.

Dean Nelson shared that it is important to have people dedicated to guiding us in DEI conversations. These conversations are difficult. Tyre Nichols' death, for example, raised disquieting and traumatizing questions about intersectionality and the culture of the Memphis police force.

How do individuals continue to push for DEI in the face of pushback that feels disheartening on many levels? Dean Nelson observed that individuals are feeling pushback because they are seeing progress. Individuals need to continue having open conversations with open hearts and trying to do something positive, even if the issue does not directly affect them or their families.

Mr. Moriwake encouraged attendees to embrace their kuleana to make Hawai'i the best it can be. The antidote to backlash is more diversity. Legal history in Hawai'i includes success stories and advances such as a diversified Hawai'i Supreme Court, Chief Justice William S. Richardson, public beaches,



water rights, Native Hawaiian rights, and marriage equality. We have a privilege and responsibility in Hawai'i to continue the good work that Hawai'i has been doing in the DEI space.

Judge Copeland encouraged attendees to keep doing the hard work of advocating for DEI. She also encouraged attendees to extend grace to themselves and others as they have these difficult conversations.

Dean Nelson added that DEI efforts should be backed by investment, which makes DEI efforts more durable. While it is important for organizations to have missions, visions, and values, their money should follow who they say they are and who they want to be.

How does DEI affect your organizations? Judge Copeland noted that the Judiciary has an extremely broad anti-discrimination policy and offers substantial DEI training for judges.

Mr. Moriwake discussed how DEI has affected Earthjustice's legal practice. For example, when the Hawai'i Supreme Court recognized a constitutional right to participate in ratepayer cases, the Public Utilities Commission created a new docket on energy equity and energy justice. There are now efforts to broaden access to clean energy and to engage the community when there are large solar or wind projects proposed.

Dean Nelson shared that DEI affects several lines of thinking. For example, when thinking about succession planning, leaders can consider whether they are in conversation with people who are not like them. There is not a space in the legal profession in which DEI and justice concerns do not exist. In addition to literature on DEI in law firms and the Judiciary, literature on particular sections, such as the patent bar, has started to consider what the future will look like and whether sections of the profession would benefit from having more diverse viewpoints.

Judge Copeland discussed a need to be comfortable going into the community, and Mr. Moriwake described the hard work that Earthjustice has done to address DEI in hiring and retention.

What consequences do you expect from the U.S. Supreme Court's upcoming decision on affirmative action? Dean Nelson described a need to be intentional about parsing the decision and to look to states such as California and Michigan and the changes that they have made to their admissions policies following their state propositions prohibiting affirmative action in public education. She noted that the Law School will be considering such questions as what is our mission,

what resources do we have, and what does state law have to say about this mission?

What is one takeaway that attendees can take back to their organizations? Mr. Moriwake encouraged attendees to instill a learning culture in their organizations and to move past cancel culture. Judge Copeland encouraged attendees to do an honest assessment of their organizations and to recognize that small efforts, such as an email recognizing Pride Month, may not be enough. Dean Nelson shared that, in the same way that organizations prepare for changes in the budget or interest rates, they should be preparing for changes relating to DEI and affirmative action.

“20 Years After Paoakalani, Native Hawaiian Access to Justice.”

[Makalika Naholowa‘a is the executive director at the Native Hawaiian Legal Corporation (NHLC) and Devin Kamealoha Forrest is a research specialist and attorney at NHLC. Zachary Alaka‘i Lum is the executive director of Kahuli Leo Le‘a, a nonprofit organization.]⁷

Since western contact, Hawai‘i and her native people (“Kānaka Maoli”) have experienced monumental changes. From changes in landscape and communities, to changes in customs and spirituality, Kānaka have adapted to the ever changing tides and rising waves of change. Important inflection points in Kānaka Maoli history through these changes include the shift to a more western legal system in Hawai‘i in 1840, and the subsequent evolution of that system from the monarchical period, through the illegal overthrow and republic era, and into statehood.



Devin Kamealoha Forrest, Zachary Alaka‘i Lum, Makalika Naholowa‘a

The legal outcome of these changes is a unique body of law reflecting this specific history, with dominant Western legal foundations incorporating elements of pre-Western and pre-US Hawaiian laws and culture, as well as contemporary Kānaka lead legal protections for traditional and customary lifeways and practices. Hawai‘i’s unique laws among states in the US on property and traditional and customary practices are good examples. While these laws have experienced extensive constitutional development,

legislative development, and judicial review, not all areas are as mature and

⁷ This summary was prepared by Makalika Naholowa‘a and Devin Forrest.



battle tested. Protection for Kānaka Maoli traditional knowledge, cultural property, and intellectual property (“Kānaka IP”) has had very little bandwidth spared in Hawai‘i’s legal community and legislative work. As a result, exploitation and abuse of Kānaka IP has been a serious problem impacting Kānaka Maoli economic justice, cultural integrity, and consumer protection for generations.

In response, an ‘Aha was held by Kānaka Maoli cultural practitioners and community leaders in October 2003. Those gathered grounded their efforts in the collective right of Kānaka to self-determination, Kānaka concepts of cultural property, and an urgent need to address the threat of theft and commercialization of these cultural assets. Not only did they recognize a need for this work to protect Kānaka, culture, and the ‘āina of Hawai‘i, but also to protect all people. The harm from Kānaka IP abuse could range from consumer deception and confusion to physical, emotional or spiritual damage due to the improper stewardship, transmission, and use of Kānaka IP. With these goals, they produced a historic document calling for change; The Paoakalani Declaration.

The Paoakalani Declaration articulated the breadth of Kānaka IP from a Kānaka cultural and historical perspective, including a cursory list of specific manifestations of Kānaka IP and related Kānaka property interests. However, unlike Western IP regimes, the Paoakalani Declaration did not seek private rights of exclusive control and use for authors, inventors, or commercial actors. The Declaration instead requires that Kānaka IP is stewarded in a culturally appropriate way to maintain both the tangible and intangible integrity of Kānaka Maoli culture. In part, this calls for *sui generis* protection within a Western legal regime and is similar to calls for indigenous traditional knowledge and cultural property protections by many other native people across the US and around the world.

Unfortunately, twenty years later, Kānaka IP abuses have continued unabated with scant enforceable law providing the protections called for in the Declaration. For example, the Hawaiian Language (“‘Ōlelo Hawai‘i”), an invaluable and fundamental component of Kānaka IP, enjoys almost no legal protection from abuse in Hawai‘i State and US law, and is essentially offered in pieces as privately owned IP assets to anyone willing to use it commercially and pay government registration fees. Indeed, there is at least one case that was decided by the Trademark Trial and Appeal Board that treated the language similar to “dead” languages. Though this was not a precedential decision, it signals that ‘Ōlelo Hawai‘i might not even enjoy some of the protections against non-distinctive protection that Western language do, and there’s questions about how the foreign language equivalence doctrine applies. With no protection, Hawaiian words have been disrespectfully appropriated, exploited, and abused



in ways that result in a degradation of Native Hawaiian language and culture, while also giving products a veneer of cultural legitimacy luring unaware consumers and devalue the market for authentic cultural experiences and creative expression.

There's been action in recent years posing cause for cautious optimism that progress is coming, though certainly slow and measured. Following numerous incidents of abuse in the last decade resulting in substantial Kānaka Maoli outcry, in Hawai'i and on the continent, the Hawai'i State Legislature passed resolutions in 2019 and 2023 that would create a working group to address the need to better protect Kānaka IP.⁸ Additionally, in 2021, a large contingent of Kumu Hula ratified the Huamakāhikina Declaration on the Stewardship of Hula which outlined the basic precepts and methods of knowledge stewardship relating to hula. This was the first time since Paoakalani that a group of practitioners gathered to outline clear concrete rules and practices that have been done to maintain the integrity of their practice. Though promising, however, none of this is legally enforceable protection for Kānaka IP.

In the coming years, there is room for concurrent progress via numerous channels. There is room for Kānaka IP and other indigenous people's IP needs to be better recognized by international bodies, like the United Nations, and for member states like the US government to correspondingly implement laws that honor the cultural property rights for indigenous peoples articulated in the UN Declaration on the Rights of Indigenous People. There is room at the state level for efforts like the report to be prepared by the Native Hawaiian Intellectual Property Working Group being convened following this year's resolution, and for the legislature to seriously weigh and implement their recommendations. There is also room in our present judicial system for decisions grounded in existing law to better protect Kānaka IP. Finally, there is room for industry to commit to proactive efforts to avoid engaging in Kānaka IP abuse, and for individuals and organizations to support and resource Kānaka Maoli efforts to advocate for change and access services needed to use existing legal tools to protect Kānaka IP.

“Hawai'i Elder and Vulnerable Adult Abuse Laws and Decisional Capacity Considerations”

[Professor James Pietsch, director of the University of Hawai'i Elder Law Program and Dr. Marvin Acklin, board-certified clinical, assessment and forensic psychologist]⁹

⁸ House Concurrent Resolution 155 adopted in 2019 and Senate Concurrent Resolution 191 adopted in 2023 both called for the creation of a Native Hawaiian Intellectual Property working group.

⁹ Teri-Ann Nagata prepared this workshop summary.



Professor James Pietsch and Dr. Marvin Acklin

Professor Pietsch began the workshop by providing an overview of the laws that govern diminished capacity and elder and vulnerable adult abuse.

Diminished capacity. Professor Pietsch explained that there are multiple facets of legal thinking about diminished capacity, including decisional capacity, capacity and undue influence, and assessments of capacity. As to decisional capacity, there are different standards for specific legal

transactions under statutory and case law. For example, the standard of capacity to make a will is set forth in HRS 560:2-501 and was interpreted by the Intermediate Court of Appeals in *Estate of Coleman*, 615 P.2d 750 (1980); capacity to make health care decisions is set forth in HRS § 327E-2; and capacity is also defined under the Adult Protective Services Act, HRS § 346-222. As to undue influence, the elements are susceptibility, opportunity for the exertion of undue influence, disposition to exert undue influence, and the result (the so-called “SODR” factors that were described in *In re Estate of Herbert*, 90 Haw. 443, 979 P.2d 39 (1999)).

Separately, there is a standard of diminished capacity that applies to conservatorships, and there is a standard that applies to being incapacitated.

The ethical guidelines for assessing capacity are set out in Model Rule 1.14 and the comments to the rule.

Elder and vulnerable abuse laws. Professor Pietsch explained that there is no overall Hawai'i law directed at preventing elder and vulnerable adults abuse. Instead, there is a wide range of laws and legal remedies that can be used to protect elder and vulnerable persons. These laws and legal remedies include the penal code (certain statutes provide enhanced penalties for crimes targeting older, disabled, or vulnerable victims), the Long-Term Care Ombudsman Program, the Medicaid Fraud Control Unit, Elder Justice Act, the Hawai'i Disability Rights Center, domestic violence laws, restraining orders, consumer protection laws, civil remedies, powers of attorney, and the Adult Protective Services Act.

The Adult Protective Services Act (APS), HRS ch. 346, part X, identifies certain mandated reporters of abuse. The APS Unit of DHS is required to



investigate reports of alleged abuse against vulnerable adults and take steps to prevent further abuse, including taking legal action in family court.

Assessments of capacity. Dr. Acklin described several different methods of assessing decisional capacity, including the Mini Mental State Examination and the Clinical Dementia Rating. The MacArthur model for assessing capacity involves an assessment of cognitive function, a consideration of other variables, and determination of the degree of an individual's competence. Dr. Acklin summarized by stating that the forensic assessment model for capacity is designed to operationalize and link clinical facts to statutory elements based on a foundation of behavioral science.

In response to a question regarding opposing assessments, Dr. Acklin stated that it is not uncommon for experts to disagree. At that point, the expert's methodology comes into play. A forensic expert should be able to demonstrate that the data and analysis supports his or her conclusion. At times, judges must decide which assessment is more persuasive, or the parties may need to consult another expert.

In response to a question regarding assessments of individuals with medical conditions, Dr. Acklin stated that he normally will rely on medical records. He will ask if an individual's condition is reversible, for example.

In response to a question regarding desirable changes in the APS law, Professor Pietsch stated his belief that elder law practitioners can work with the legal tools they have. A larger concern is the lack of resources.

Professor Pietsch and Dr. Acklin concluded the session by discussing the difficult questions that may arise in these cases. For example, if a child brings in his or her parent to meet with an attorney, does the parent have capacity to enter into a contract with the attorney? Does the individual who requires an assessment have capacity to consent to evaluation? Does an individual require an immediate protective order, services, or treatment?

“Housing Stability and Mediation: Where We’ve Been and Where We’re Going”

[Tracy Wiltgen, executive director of the Mediation Center of the Pacific, was the moderator of this session, with Julie Mitchell, executive director of Ku‘ikahi Mediation Center, Diane Petropulos, board member of Maui Mediation Services, and Gina Agustin, mediation program manager of West Hawai'i Mediation Center.]¹⁰

¹⁰ Tracey Wiltgen prepared this summary.

Over the past two years, mediation played a critical role in helping landlords and tenants negotiate workable solutions before an eviction process was filed. Hawaii's one-year early eviction mediation program created in response to Act 57 by the five community mediation centers throughout the state, (Kauai Economic Opportunity Mediation Program, Ku'ikahi Mediation Center in East Hawai'i, Maui Mediation Services, The Mediation Center of the Pacific on Oahu, and West Hawai'i Mediation Center) resulted in 1,415 landlords and tenants reaching agreement and staying out of court. In addition to the positive outcomes, many valuable lessons were learned, and important partnerships were formed.

Historically, the community mediation centers throughout the State provided mediation for landlord-tenant and eviction matters. Prior to the pandemic, most of the eviction mediations were conducted on-site at court by the volunteer mediators recruited and trained by each center. Overall, there was about a 50% rate of agreement, with about 30% of the agreements resulting in the tenant moving out of the unit. In contrast, the statistics from the Act 57 mediation program which ran from August 7, 2022 to August 6, 2023, the community mediation centers collectively mediated 1,660 cases, with 1,415 or 85% reaching agreement.

To achieve this successful outcome, there were many lessons learned. First, the program needed to be created quickly and ensure the services were available virtually. Therefore, a sufficient number of mediators needed to be recruited and trained to mediate via zoom. Independent contractor mediators were recruited, as well as volunteer mediators. Additionally, electronic signature programs and filing options were incorporated into the case management process. Dedicated staff were hired to quickly manage and schedule the high volume of cases that were handled through the program. And finally, partnerships with the various rental assistance programs proved critical in helping tenants and landlords reach agreements that would allow the tenant to remain in the residence.



Tracey Wiltgen, Diane Petropoulos, Julie Mitchell, Gina Agustin

Partnerships were absolutely crucial to the success of the Program. Legal Aid Society of Hawai'i was a major partner. They created a wide variety of helpful documents, such as Act 57 Eviction Notice Requirements, Tenant Rights and Responsibilities, Landlord Rights and Responsibilities, What to Do if Evicted,



plus they regularly updated these helpful documents. They also created educational videos for the public. And Legal Aid attorneys appeared with the mediation centers on countless webinars, radio programs, public access TV programs, and more.

The legislators who initiated Act 57, Representatives Troy Hashimoto and Nadine Nakamura, also helped get the word out to residents in a variety of ways, including also coordinating and holding webinars, radio, and TV presentations. The numerous Emergency Rental Assistance Program providers such as Catholic Charities Hawaii, Council for Native Hawaiian Advancement, and Hawaiian Community Assets were critical partners in making sure landlords and tenants could access available funds. The rental assistance providers, homeless services providers, housing navigators, financial counselors, and others made cross-referrals, provided warm handoffs, and sometimes were available for consultation during mediations or even participated in mediation sessions. The respective counties and other funders made it possible to quickly ramp up the program with the infrastructure and staffing needed to handle such a massive influx of cases. And last, but certainly not least, the courts and judges communicated regularly with their respective mediation centers.

While the Act 57 Early Eviction Mediation Program ended, the number of evictions continue to rise, and the mediation centers are only able to offer early mediation on a limited basis as funding permits. To address the continued high volume of evictions, Hawaii Appleseed and the mediation centers introduced HB1439 at the 2023 legislative session to establish another one-year pre-eviction mediation program paired with dedicated rental relief for tenants and landlords who agreed on payment plans. And while the bill did not pass, due to the continued success of early mediation, similar legislation will be proposed again in 2024.

“Access to Justice and Restorative Justice”

[Lorenn Walker, director at Hawai'i Friends of Restorative Justice, First Circuit District Court Judge Leslie Hayashi (ret.), Jeannie Lum, Hawai'i Friends of Restorative Justice's K-12 school programs coordinator and education consultant]¹¹

This session focused on exploring three questions: What is restorative justice? What are its origins? And what is its future?

¹¹ Judge Leslie Hayashi (ret.) prepared this summary.



What is restorative justice?

Restorative justice focuses on the person that has been harmed. The process allows the harmed person to express their feelings and to think about what could happen to make them feel “repaired.”

The process has to allow for everyone who has been affected to participate. Their feelings must also be taken into consideration.

Origins of restorative justice

Restorative justice has its roots in ancient and indigenous cultures all over the world. For example, the aboriginal beliefs that all things in the universe are part of a single and interconnected through relationships captures the essence. Therefore, when a person is harmed, a relationship is violated, and that injury needs to be addressed. Healing carries a duty, and that duty does not rest solely with the offender – all factors that contributed to the offense need to be identified.

According to Peter Senge, at one point all cultures and societies had a form of restorative justice. However, western societies moved away from restorative justice.

According to John Braithwaite, that decisive move came with the Norman conquest of much of Europe at the end of the Dark Ages. Transforming crime into a matter of fealty to and felony against the king, instead of a wrong done to another person, was a central part of the monarch’s program of domination of his people.

Many in the restorative justice field believe that the interest in North America was rekindled when an experimental victim-offender reconciliation program was started in Kitchener, Ontario in 1974.

The Zehr Institute webpage describes this re-interest as follows:

It emerged as an effort to correct some of the weaknesses of the western legal system while building on its strengths. An area of special concern had been the neglect of victims and their needs; legal justice is largely about what to do with offenders. It has also been driven by a desire to hold offenders truly accountable. Recognizing that punishment is often ineffective, restorative justice aims at helping offenders to recognize the harm they have caused and encouraging them to repair the harm, to the extent it is possible. Rather than obsessing about whether offenders get what they deserve, restorative justice focuses on repairing the harm of crime and engaging individuals and community members in the process.



The 70s is also a time when legislatures pass bills creating victims' bill of rights. This included requesting restitution, a way for the defendant to compensate the victim. In addition, the rise of alternative dispute resolutions began to offer solutions that were based on rehabilitation rather than retribution. Concerns over growing prison populations also contributed to a need to seek alternatives.

Core principles of restorative justice

According to Howard Zehr, the father of modern restorative justice, the assumptions behind restorative justice are:

- (1) crime violates people and relationships;
- (2) justice aims to identify needs and obligations
- (3) so that things can be made right;
- (4) justice encourages dialogue and mutual agreement;
- (5) gives victims and offenders central roles; and
- (6) is judged by the extent to which responsibilities are assumed, needs met, and healing (of individuals and relationships) is encouraged.

These principles boil down to these three values:

- Respect
- Responsibility
- Relationship

Future of Restorative Justice

Although Zehr speaks in terms of criminal law, restorative justice blurs the line between criminal and civil wrongs by focusing on the harm done and the solutions required for healing, rather than the action itself or the need for punishment.

Therefore, the principles of restorative justice are applicable to both criminal and civil conflicts where a wrongdoing is at issue. Already it is being applied in the juvenile justice setting and is widely used in schools. Public housing is another area suitable for restorative justice. Family law matters including child custody, property division and elder care benefit from restorative justice. Wills and probate are other areas where restorative justice principles can be of value. Environmental concerns are beginning to embrace restorative justice principles. Although restorative justice cannot be a panacea for every situation, whenever there is a broken relationship, restorative justice may be the key to healing it.

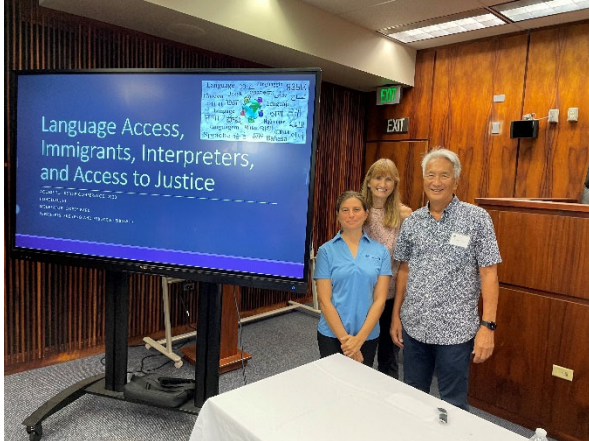
Other concurrent afternoon workshops were:



Lise Vaughan-Sekona, Tia Roberts Hartsock, Venus Rosete-Medeiros

“Access to Justice in Child Welfare”: Lise Vaughan-Sekona, who is the Program Development Manager at EPIC ‘Ohana, Inc., Venus Rosete-Medeiros, Chief Executive Officer of Hale Kipa, Inc., and Tia Roberts Hartsock, executive director of the newly established Office of Wellness and Resilience in the Office of the Governor, discussed the Malama ‘Ohana proposal, which would bring together those directly affected by the child welfare system in a collective impact process that is desperately needed.

“Language Access, Immigrants, Interpreters, and Access to Justice”: Corey Park, board president of The Legal Clinic, which provides legal services to low-income immigrants in the state; Rebecca Leibowitz, managing attorney at the Hawaii Immigrant Justice Center; and Dr. Suzanne Zeng, who taught at the University of Hawai'i conference interpreting skills, court interpreting, and medical interpreting, discussed meaningful access to the justice system and other governmental services.



Rebecca Leibowitz, Dr. Sue Zeng, Corey Park

Closing Plenary: “Building Trust and Understanding about Civil Access to Justice”

[Nancy Gertner, Regan Iwao, Robert LeClair]¹²

Regan Iwao, Treasurer and Director for the Legal Aid Society of Hawai'i and Director for the Hawai'i Justice Foundation, opened the final plenary by

¹² Teri-Ann Nagata, a member of the Commission's Committee on Education, Communications, and Conference Planning, prepared this summary.

expressing his appreciation for the support of everyone in attendance in terms of increasing access to justice. Through the efforts of many dedicated and devoted individuals, the future looks promising.

Mr. Iwao shared three takeaways from earlier sessions of the conference. First, we can leverage virtual hearings to make legal services more affordable and to enhance access to justice, but the promise of virtual hearings must be balanced against potential problems, including a potential loss of gravitas, context, and empathy. Second, in our criminal courts, access to lawyers and resources may not necessarily give criminal defendants access to justice. Third, we have an overwhelming number of resources and services available. It may be difficult for individuals to navigate through all of the different resources and services when they need help.

Robert LeClair agreed that it is difficult to navigate through resources and services. Although there are many organizations that offer assistance, there are never enough resources at any one organization. Some ideas being considered at the Access to Justice Commission include creating a single source of information. This would not solve the problem of limited resources and capacity, however.

One of the most promising solutions we have left is more extensive use of para-professionals. One idea would be to fund pilot programs to allow paralegals to perform certain functions under attorney supervision such as representing others in landlord-tenant hearings, child support hearings, or mediation. This system would work well if paralegals received meaningful supervision and review of their work.



Robert LeClair, Nancy Gertner, Regan Iwao

Judge Gertner spoke about the commitment she observed at the conference. The camaraderie among the individuals doing the hard work of increasing access to justice was incredibly impressive.

Regarding criminal injustice, Judge Gertner commented on the irony of having many resources available, including presentence report writers, probation officers, marshals, and addiction programs. Judge Gertner dealt with many criminal defendants

who were suffering from addiction. In the criminal context, Judge Gertner was limited to punishing these individuals and hoping that they would receive



assistance in prison. One example was Damien Perry, a criminal defendant she sentenced to four years in prison after writing a sentencing memo discussing the bullet fragments lodged in Mr. Perry's brain. When Mr. Perry was released from prison, he was expected to attend programs for psychological and educational issues. Because he was homeless after his release, however, he was unable to find transportation to these programs. Programs and services would have been much more meaningful if they had been offered before he was a felon on probation.

In response to a question about staying motivated, Mr. LeClair shared several promising facts, including funds from the Interest on Lawyers' Trust Account (IOLTA) Program and legislature, committed legal services providers, excellent pro bono attorneys, and a caring judiciary.

Judge Gertner shared that the work keeps her going. States like Hawai'i, Massachusetts, California, and Oregon can feel like bubbles, but attendees should make an effort to take themselves outside their bubbles. When Judge Gertner telephoned the individuals she had sentenced, she took solace in knowing that she was doing her best to humanize a system that in many ways was inhumane. If she could make the system a little more human, she could make a very big difference.



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III. 2023 PRO BONO CELEBRATION

The Hawai'i Access to Justice Commission ("Commission") again organized the Pro Bono Celebration in the Hawai'i Supreme in celebration of the National Pro Bono Week in October 2023. With support from the Hawaii Justice Foundation ("HJF"), Hawaii State Bar Foundation, and the Hawaii State Bar Association ("HSBA"), the Commission coordinated a high school essay contest as part of the event as well as a celebration of the volunteer attorneys who assist the state's low- and moderate-income individuals.

Second Circuit Chief Judge Joseph Cardoza (ret.), Chair of the Commission, provided opening remarks via Zoom.

We know that there is a severe imbalance between the demand for civil legal services in our nation and the supply of civil legal services needed to meet the needs of those of low- and moderate-income. This imbalance has grown dramatically over the last 40 years.

The civil legal system today relies on certain interventions to address the problem of imbalance between the demand for and availability of civil legal services. Two of these interventions involve self-help centers and pro bono civil legal services. The many volunteers who will be recognized today are critically important to providing civil legal services to the many who are unable to pay for legal representation. We thank each and every volunteer for your dedicated service and humbly ask that you continue to serve the people of Hawai'i. Equally important, please encourage others to join your team of outstanding volunteers. We are thankful that you are a part of the solution to meeting the legal needs of our community. Each and every person and entity recognized today makes a real difference in the lives of those in need of essential civil legal services.

Hawai'i Supreme Court Chief Justice Mark Recktenwald described the self-help centers as the signature project of the Hawai'i Access to Justice Commission. He noted that 36,000 people have been helped across the state. Chief Justice Recktenwald acknowledged the legal services providers who stepped up after the Maui wildfires in August. He described how the Maui public defender's office and the prosecuting attorney's office came together to help; the HSBA hotline developed quickly; and the attorneys on Maui provided necessary counsel to those affected by the disaster.

Former Commission Chair, Hawai'i Supreme Court Justice Simeon Acoba (ret.) mentioned that the Preamble to the Hawai'i Rules of Professional Conduct



states that a lawyer as a member of the legal profession is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice. Justice Acoba described the attorneys being honored as individuals “whose commitment and contributions have reached extraordinary heights in meeting the principles of the Code.” He explained that the legal service providers “are at the core of equal justice efforts in our community. The awardees have been chosen from their ranks or from their volunteers who exemplify the commitment to equal access.”

The honorees for 2023 who were selected by the legal services providers were as follows:

Jim Davy

The ACLU of Hawai'i honored Jim Davy and described his work as follows:

Davy is the founder of All Rise Trial & Appellate, which represents individuals, nonprofit organizations, unions, and other groups in public interest impact cases involving prisoners' rights, law enforcement misconduct, criminal justice reform, labor rights, racial justice, gender equity, gun safety, digital privacy, and other issues involving civil liberties. Davy has been a volunteer attorney supporting the ACLU of Hawai'i's work since 2020. Among other work, Davy has authored multiple amicus briefs on behalf of the ACLU of Hawai'i in cases involving police misconduct. Davy has also provided invaluable trial and appellate advice in those cases. With his contributions, the ACLU of Hawai'i has been able to more effectively advance its work to reimagine policing in Hawai'i. The ACLU of Hawai'i appreciates and celebrates Davy's commitment to using the law to support people fighting back against more powerful interests.

Maile Osika, Madisson Heinz, Kristin Holland, and Paul Alston

The Hawai'i Disability Rights Center honored Maile Osika, Madisson Heinze, Kristin Holland, and Paul Alston for their work on a federal case. The Center described their activities as follows:

The Dentons US LLP's team of Maile Osika, Madisson Heinze, Kristin Holland, and Paul Alston were honored for their work on a federal lawsuit against the State of Hawai'i Departments of Education (DOE) and Human Services to secure access to Applied Behavior Analysis (ABA) therapy for students with Autism in public schools. This case was filed in 2018 and challenged, among other things, the DOE's long-standing policy not to allow privately funded ABA providers onto public school campuses to provide medically necessary ABA therapy to students. The

lawsuit also challenged that the DOE's determination whether a child needs ABA therapy for educational purposes cannot replace a medical determination of need for ABA therapy, and for Medicaid eligible children who are entitled to the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit, that the DHS failed to ensure that prescribed medically necessary ABA treatment is provided during school. The Dentons team assembled experts to educate the court on why ABA therapy is so critical for a child with Autism in key developmental windows and why it is so important for ABA to be provided across settings (i.e., in school, home, and elsewhere). To date, the court has not reached the merits of the case.



Chief Justice Mark Recktenwald, Maile Osika, Madisson Heinze, Louis Erteschik

In 2020, the State prevailed in the trial court on a summary judgment motion on a procedural basis, and it took nearly two years for the judge to issue a final written order. This team of Dentons lawyers persisted. They appealed and continued to work with the State in an attempt to resolve the case directly. The case is currently pending before the Ninth Circuit Court of Appeals. The issues on appeal now turn on critical legal questions such

as whether a federal and state designated protection and advocacy agency (P&A) such as Hawaii Disability Rights Center, can bring a claim challenging a systemic DOE policy on behalf of its constituents without first ensuring those constituents have exhausted their administrative remedies under the Individuals with Disabilities Education Act (IDEA). Another question is whether claims that seek relief not available under IDEA, but relate to services needed in school, must be exhausted through the administrative process. The Dentons team assembled thoughtful and persuasive briefing on these issues. They also garnered support from several national organizations who submitted amicus briefing including, The National Health Law Program, The National Disability Rights Network, National Autism Law Center, Autism Legal Resource Center, LLC, and Council of Autism Service Providers.

The Hawaii Disability Rights Center would not otherwise have the resources to pursue such years-long litigation, seeking to secure critical services for Hawaii's children with autism, without the hard work and support of this relentless Dentons team.

Gary Slovin



Chief Justice Recktenwald, Gary Slovin,
Mihoko Ito

Hawaii Justice Foundation honored Gary Slovin and described his activities as follows:

Gary Slovin has had a phenomenal impact on funding for access to justice in Hawaii and has been dubbed a true “access to justice warrior.” He is an attorney and professional lobbyist who has always been willing to donate his time and expertise to supporting causes he believes in. Throughout the many decades of his career, he has devoted himself to supporting numerous social and non-profit causes as part of his work. He has served on the boards of Goodwill Hawaii, Honolulu Theatre for Youth and Helping Hands Hawaii, to name a few.

In the mid-1990s, he was the driving force behind the creation of the statutory Indigent Legal Assistance Fund (ILAF), which utilizes surcharges on select court filings to provide funding for legal service providers. ILAF is administered by the Hawaii Justice Foundation (HJF) on behalf of the Judiciary. The Program originally provided \$300,000 per year to qualifying grantees, but in 2011 Gary and his lobbying partner Mihoko Ito worked on successfully increasing the surcharge amounts. This has enabled yearly funding of \$1,000,000 to the participating organizations. Additionally, Gary has served for many years on the HJF Board and on the Hawaii Access to Justice Commission, where he has given wise counsel and provided pro bono lobbying services for HJF and Hawaii’s legal service providers. Gary embodies the positive results that can be achieved when members of the private bar are willing to give freely of their time and expertise to expand access to justice. All of us involved in HJF are proud to call him our great friend and mentor.

Aurora Jaqueline Nevarez Mena

The Hawaii State Bar Association honored Jacky Mena, an attorney in the Third Circuit, who tirelessly volunteers her time. Her activities were described as follows:

Jacky has represented members of the Hawaii island community in resolving legal issues during some of the most difficult times of their lives. She has also dedicated much of her free time to providing pro bono services, assisting more than 300 people on a pro bono basis, and volunteering at various legal clinics in the third circuit.

When the Judiciary and the HCBA were embarking on the enormous task of updating the Third Circuit Court online forms, Jacky was the perfect person to serve on the committee. After months and months of meetings and tireless work, the committee submitted new and updated forms which will be made available on the Judiciary's website to assist litigants and attorneys. Jacky's diligent efforts were critical to the committee's success, as she painstakingly revised each form not only for content, but formatting as well. Thereafter, Jacky was asked to consider serving as the volunteer managing attorney of the Hilo Self-Help Center. Managing the Self-Help Center is no easy task, and despite the many challenges, including a global pandemic, Jacky and the team have always found a way to keep the Center running and available to the community, even when it means staffing the center herself in addition to all of her other duties.

The special thing about Jacky is that not only has she given so much of her time and energy to the community, but she does it quietly, humbly, and without the need for recognition. She is focused, tireless, reliable, and always has a smile on her face. She cares deeply about Hawaii's community and is continuously working to better the lives of the people in it. HSBA congratulates Jacky on all of her amazing work.



Chief Justice Recktenwald, Jacky Mena, Rhonda Griswold

Sean Hartlieb

The Legal Society of Hawaii honored Sean Hartlieb, an attorney who resides on the island of Kaua'i, where he currently practices general civil litigation and criminal law. Legal Aid described his activities as follows:

Sean graduated from the William S. Boyd School of Law in May 2017 and became licensed to practice in the State of Hawaii in June 2018. His career ambition is to become the best attorney that he can be, which includes serving the Kaua'i community. His long-term dream is to develop himself in cyberlaw and partake in legislative discussions surrounding the legal and ethical ramifications of artificial intelligence and brain-computer interfaces.



Chief Justice Recktenwald, Sean Hartlieb, David Kopper

Sean began volunteering at the Kauai Self-Help Center in 2020. The Kauai Self-Help Center provides legal information to approximately 400 patrons a year. Through his volunteer work at the center, Sean assists approximately 72% of those patrons. He enjoys providing pro bono services to the people of Kauai and helping his community. He is thankful that his current schedule allows him the freedom to provide pro bono services when he is able.

Zachary McNish

The Native Hawaiian Legal Corporation honored Zachary McNish who founded McNish Law in 2016. The Native Hawaiian Legal Corporation described Zachary's activities as follows:

With over ten years of legal and business management experience, Zach offers efficient services and strategic perspective for clients. Prior to forming McNish Law, Zach held numerous in-house legal positions in Hawaii, including Executive Vice President and General Counsel of Distributed Energy Partners, a Honolulu-based photovoltaic solar company that has installed over 20MW of commercial and utility-scale solar in Hawaii, Legal Counsel of RevoluSun LLC, one of Hawaii's largest residential photovoltaic solar contractors, and Associate Corporate Counsel at Hoku Scientific. Zach also spent several years as an associate attorney at the law firm Alston Hunt Floyd & Ing and began his

legal career by clerking for Magistrate Judge Barry M. Kurren in the United States District Court for the District of Hawaii.



Chief Justice Recktenwald, Zachary McNish, Makalika Naholowa'a

Prior to attending law school, Zach served in the Peace Corps in Panama and subsequently founded the nonprofit organization Native Future to support efforts for Panamanian indigenous communities to gain legal title to their lands.

Bruce McEwan

The Mediation Center of the Pacific, Inc. honored Bruce McEwan and described his activities as follows:

Bruce McEwan exemplifies the heart of the pro bono celebration in his service over many years, mediating disputes and improving the conflict resolution skills of the people of Oahu. Bruce has been involved with The Mediation Center of the Pacific (MCP) since 1981. In that time, he mediated thousands of cases, from pet disputes to workplace conflicts to separating couples to civil rights issues. From 2016 to 2022 alone, he mediated in 486 sessions for a total of 1316 hours. Bruce is always ready to mediate at the last-minute when another mediator is sick or unavailable, so the clients can complete their mediation in time, especially when they have a court hearing scheduled.

He also mentors incoming MCP mediator apprentices and assists with public and in-house training to ensure that mediation continues to be a high-quality and affordable option for people to resolve their disputes. He educates the public on mediation at more



Chief Justice Recktenwald, Bruce McEwan, Tracey Wiltgen

fairs, presentations, and workshops than can be counted, as well.

In addition to providing direct services and mediation education, he also served on the Board of Directors of MCP for approximately 30 years, taking on the responsibilities of President on three different occasions, the last time in 2015 – 2017. He has demonstrated a steadfast dedication to improving people's lives by providing them with the ability to resolve their own disputes quickly and cost-effectively. MCP is grateful to Bruce for his many years of service and congratulates him for this well-deserved recognition.

Lily Ling, Marie Laderta, and Daniel Kawamoto



Chief Justice Recktenwald, Lily Ling, Marie Laderta, Daniel Kawamoto, Rachel Figueroa

Volunteer Legal Services Hawaii (VLSH) honored Lily Ling, Marie Laderta, and Daniel Kawamoto for regularly assisting individuals with VLSH's driver's license reinstatement programs. VLSH described their activities as follows:

Lily Ling retired in 2021, after working as a staff attorney and later as the Executive Officer of the Labor and Industrial Relations Appeals Board. She earned her Juris Doctorate in Law from the William S. Richardson School of Law, University of Hawai'i and she obtained her Bachelor's degree in Political Science at the University of Hawai'i, at Manoa. As of today, Lily has helped approximately 28 VLSH clients and has logged over 140 pro bono hours since she started volunteering with VLSH in 2019.

Marie Laderta is currently working as a board member at the Labor and Industrial Relations Appeals Board. She earned her Juris Doctorate in Law from The John Marshall Law School, Chicago, Illinois. Prior to that she obtained her Bachelor's degree from Marquette University,



Milwaukee, Wisconsin. Marie has helped approximately 13 VLSH clients and has logged over 65 pro bono hours since she started volunteering with VLSH in 2021.

Daniel Kawamoto currently runs his own office, The Law Office of Daniel Kawamoto, specializing in criminal defense. He earned his Juris Doctorate in Law from the University of Law in San Diego, California. Prior to that he obtained his Bachelor's degree from the University of California at Berkeley. Daniel has helped approximately 22 VLSH clients and has logged over 110 pro bono hours since he started volunteering with VLSH in 2019.

All three volunteers continued assisting Hawaii's most vulnerable residents throughout the pandemic when relief was needed the most.

Access to Justice Rooms Volunteers

The volunteer attorneys who staffed the Access to Justice Rooms at the Honolulu District Court and the Ronald T.Y. Moon Judiciary Complex in Kapolei were also recognized. In her acknowledgments of the volunteers, Judge Melanie May remarked:

One million dollars. What could you do with one million dollars?

One million dollars would cover the monthly food costs for approximately 700 families.¹³

One million dollars would cover the monthly rent for an average two-bedroom apartment in West Oahu for 445 approximately families.¹⁴

One million dollars would cover legal fees for court appointed counsel for approximately 666 misdemeanor cases in District Court.¹⁵

¹³ Average food costs for a family of four: \$1426.90. (Source: USDA Food and Nutrition Service, U.S. Department of Agriculture, Official USDA Thrifty Food Plan Costs: Alaska and Hawaii, September 2023.)

¹⁴ Average monthly rent for 2-bedroom apartment on West Oahu: \$2,246 (Source: Hawaii Business Magazine, "Rents Soar Across Hawaii, with no End in Sight" (July 11, 2023).)

¹⁵ Court appointed counsel fees for jury-waived misdemeanors: \$1,500. See Haw. Rev. Stat. § 802-5(b)(5).



One million dollars is also the estimated value of pro bono legal services provided at the Honolulu Access to Justice Room since its inception, if calculated at a modest billable rate of \$180/hour.

In its ten-year history, volunteer attorneys have contributed approximately 5,800 pro bono hours assisting self-represented litigants at the Honolulu Access to Justice Room.

These attorneys have helped people from all walks of life with a range of civil issues, including landlord-tenant disputes, temporary restraining orders, and small claims. Individually, they assisted individual clients with individual cases. But collectively, they have done so much more.

Collectively, they have educated the public about the judicial system.

Collectively, they have elevated the legal profession by dispelling the negative stereotypes about lawyers.

Collectively, they have strengthened communities by increasing access to justice.

Today we thank and recognize the firms and organizations who generously shared their time and talent with the Access to Justice Room, as well as individual attorneys who volunteered independent of their affiliation with any firm.

The law firms and offices who staffed the Honolulu Access to Justice Room in particular months in 2023 were: Case Lombardi, Damon Key Leong Kupchak Hastert, Marr Jones & Wang, Yamamoto Caliboso Heatherington, Office of Disciplinary Counsel, Chun Kerr, McCorriston Miller Mukai MacKinnon, Roeca Luria Shin, Schlack Ito, Carlsmith Ball, Cades Schutte, Goodsill Anderson Quinn & Stifel, Bronster Fujichaku Robbins, Hawaii Filipino Lawyers Association, Starn O'Toole Marcus & Fisher, and Hawaii Women Lawyers.

The individual attorneys who volunteered were Lloyd Lim, Matthew A. Cohen, Mike Goodman, Thomas Berger, and Steve Nichols.

The individual attorneys who volunteered at the Kapolei Access to Justice Room were Alan Okamoto, Amberlynn Otara Alualu, Andrea L.G. Graf, Carol Akemi Tribbey, Curtis M. Kam, Richard Diehl, Donna David Green, Dyan K. Mitsuyama, Ellen B. Politano, Elsa Fay Menor McGehee, Gemma Rose Poland Soon, Jacqueline Elizabeth Thurston, Kevin S. Adaniya, Lynnae Lai Lan Lee, Mari Lei Kishimoto Doi, P. Gregory Frey, Sara Jo Buehler, Seth Raymond Harris, Shannon Kim Hackett, Stephen T. Hioki, and Tom S. Tanimoto.



Other Volunteers Honored

The Appellate Pro Bono Program Volunteers recognized were Troy Young, Eitan Arom, Sharla Manley, and Daniel Gluck.

The Divorce Volunteer Settlement Masters recognized were Marrionnette L.S. Andrews, Cheryl Y. Arakaki, Jennifer L. Chan, Bradley R. Chong, Everett Cuskaden, William C. Darrah, Richard J. Diehl, Gavin K. Doi, Huilin Dong, Thomas D. Farrell, Shelby N. Ferrer, P. Gregory Frey, Noah H. Gibson, Donna D. Green, Geoffrey Hamilton, Seth R. Harris, Denise M. Havicon, Stephen T. Hioki, Debbie A. Jew, Curtis M. Kam, Kevin S. Kimura, Charles T. Kleintop, Erin M.C.L. Kobayashi, and Jacqueline Y.M. Kong.

The Volunteer Settlement Masters for Divorce and Paternity recognized were Judge John C. Bryant (ret.), Sara Jo Buehler, Christian P. Gray, Steven L. Hartley, Ann S. Isobe, Katherine M. M. Lukela, Timothy Luria, Justin L. Sturdivant, Carol A. Tribbey, Lynnae L. L. Lee, Kendal A. Luke, Elsa F. M. McGehee, Lynne Jenkins McGivern, Dyan K. Mitsuyama, Naoko Cordeiro Miyamoto, Blake T. Okimoto, Anthony Allan Perrault, Alethea K. Rebman, Stephanie A. Rezents, Gregory L. Ryan, Judith A. Schevtchuck, John W. Schmidtke, Scott Sullivan, Gemma-Rose P. Soon, Jo-Ann Kaoru, Paul A. Tomar, Molly S. Turpin, Mitchell S. Wong, Sheila Vierra, and Craig G. H. Yim.

Additional Volunteer Settlement Masters for paternity recognized were Kevin S. Adaniya, Nicole K. Cummings, Stacy Fukuhara-Barclay, Karl Eric Phillips, Pablo P. Quiban, and Isaac K. Smith.

The Appellate Mediator volunteers were recognized for their service in a segment led by the Hawaii State Judiciary Center for Alternative Dispute Resolution's Appellate Mediation Program Administrator Anne Marie Smoke. They included Justice Simeon R. Acoba, Jr. (ret.), Judge Riki May Amano (ret.), George B. Apter, Judge Joel E. August (ret.), J. William Busch, Robin K. Campaniano, Thomas W. Cestare, Corlis J. Chang, Louis L.C. Chang, Charles W. Crumpton, Justice James E. Duffy (ret.), Jacqueline L.S. Earle, David H. Franzel, Judge Max W.J. Graham (ret.), Jerry M. Hiatt, Judge Mahilani E.K. Hiatt, Judge Eden Elizabeth Hifo (ret.), Kenneth B. Hipp, Judge Douglas H. Ige (ret.), Elizabeth Kent, Judge Walter S. Kirimitsu (ret.), Judge Robert G. Klein (ret.), Ralph R. La Fountaine, Judge Rosalyn Loomis (ret.), Stanley Majka, Georgia K. McMillen, Judge Douglas S. McNish (ret.), Judge Marie N. Milks (ret.), Richard C. Mosher, Judge Gail C. Nakatani (ret.), Judge Rhonda A. Nishimura (ret.), Judge Maura M. Okamoto (ret.), Patricia Kim Park, Justice Richard W. Pollack (ret.), Judge Shackley F. Raffetto (ret.), Judge Karl K. Sakamoto (ret.), Judge Sandra A. Simms (ret.), Judge Leland H. Spencer (ret.), Thomas L. Stirling, Judge Allene K. Suemori (ret.), Owen K. Tamamoto, Judge Michael A. Town (ret.), Arne Werchick, and Judge Andrew P. Wilson (ret.).



Judge Cardoza explained that the Hawai'i Supreme Court authorized the establishment of a Volunteer Court Navigator Program in the Second Circuit in 2018.

Volunteer Court Navigators are present during civil court proceedings and assist those appearing who are unrepresented by counsel. The program was rather unique when first established in Hawai'i. It has since taken hold in many states throughout our nation.

During the past five and one-half years countless numbers of individuals, many of whom were making their first court appearance, were assisted by Volunteer Court Navigators. In the Second Circuit, Navigators are typically retirees from different walks of life who assist unrepresented persons find the right courtroom, determine if any special services are required, answer questions to help familiarize unrepresented persons with court proceedings, as well as many other services.

Pamela LaVarre, a Department of Commerce and Consumer Affairs retiree, and Diane Sueno, a retired school teacher, were recognized as Volunteer Court Navigators on Maui, who were present every week for over five years. "The program has been a huge success thanks to their dedication," said Judge Cardoza.

The five winners of the Commission's statewide high school essay contest were additionally recognized for their essays on "A Day in My Life As A Volunteer, a Lifetime of Lessons Learned." Chief Justice Recktenwald, 2023 HSBA bar president Rhonda Griswold, and Intermediate Court of Appeals Chief Judge Lisa Ginoza identified the students: Maiyah Panis-Vuong from Waiakea High School, Arianna Rector from Haleakala Waldorf School, Rafael Firme from Campbell High School, Satomi Lakin from Iolani High School, and Esther Lim from Leilehua High School. The law firms acknowledged for providing the cash awards for the students were Gilbert C. Doles, Attorney at Law, Law Offices of Alen M.K. Kaneshiro, Lukela & Kobayashi, Tamashiro Sogi & Bonner, and Schlueter, Kwiat & Kennedy.

This annual event honors those dedicated individuals who inspire others through their selfless provision of critical civil legal services to those who would otherwise go unrepresented.



APPENDIX

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IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the

RULES OF THE SUPREME COURT OF THE STATE OF HAWAI‘I

ORDER PROMULGATING A NEW RULE 7 OF THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI‘I
(By: Recktenwald, C.J., McKenna, and Eddins, JJ., and
Intermediate Court of Appeals Chief Judge Ginoza, and
Intermediate Court of Appeals Associate Judge Leonard,
assigned by reason of vacancies)

IT IS HEREBY ORDERED that current Rule 7 of the Rules
of the Supreme Court of the State of Hawai‘i is replaced with a
wholly new Rule, effective upon entry of this order, as follows:

**Rule 7. SUPERVISED LAW-STUDENT INTERN LIMITED PRACTICE
OF LAW.**

7.1. Purpose. This Rule sets forth conditions under which a law-student intern may engage in the limited practice of law. These conditions balance three considerations:

- (1) protecting the consumer of legal services,
- (2) expanding access to justice by allowing qualified and duly-supervised law-student interns to provide legal services, and
- (3) developing legal skills, professional judgment, and ethical behavior in law-student interns through supervised legal services.

7.2. Definitions.

(a) A “law-student intern” is an individual enrolled and in good standing as a Bachelor of Law (LL.B.) or Juris Doctor (J.D.) candidate at a law school fully or provisionally accredited by the American Bar Association (ABA) who has successfully completed legal studies amounting to one-third of the course work required for graduation from that law school.

(b) A “supervising lawyer” is a member in good standing of the Hawai‘i bar who assumes the duties of supervising a law-student intern under this Rule and who is ultimately responsible for the activities of the law-student intern.

(c) A “clinical program” is a practice-focused law course administered under the direction of a faculty member of a fully or provisionally ABA-accredited law school, in which satisfactory completion entitles a qualified law student to receive academic credit. This may include a law school’s clinic courses, as well as its externship or field-placement program.

(d) A “law practicum” is an experienced-based law-practice program that is not a clinical program. It is designed and implemented by a supervising lawyer to enable a law-student intern to provide competent, ethically sound legal services, especially, but not necessarily limited to, financially or socially disadvantaged individuals in this state.

7.3. Qualification procedures for law-student interns.

(a) For a law-student intern engaged in a clinical program or a law practicum, the supervising attorney must, before the law-student intern is authorized to practice, file at the supreme court the following documents:

(1) a declaration from the supervising attorney, containing the attorney’s bar number, business address, telephone number, and email address, acknowledging the duties imposed by this Rule;

(2) a declaration from the law-student intern, demonstrating the law-student intern fulfills the criteria set forth in Rule 7.2(a) of this Rule; and

(3) a signed oath administered as set forth in Rule 7.9 of this Rule.

Authority to practice shall commence the day after the filing date of the last document filed.

(b) The supervising attorney must inform the client that the law-student intern is performing supervised work for the client and obtain the client’s signed, written consent to the law-student intern’s supervised work. Exclusively in the case of a government office or agency, or a state or local political subdivision, the consenting “client” would be the relevant attorney general, executive director, chairperson, chief counsel, or prosecuting attorney.

7.4. Appearances by law-student interns.

(a) A law-student intern may appear in any court or administrative tribunal in this state in which a licensed attorney may appear, including related discovery events, on behalf of a client, provided that the client’s written consent, with the signature of the supervising attorney, is filed in the record of the court or administrative tribunal before or at the time of the law-student intern’s first appearance in a matter.

(b) Unless prohibited by statute or ordinance, a law-student intern may also appear in any matter on behalf of the United States, the State of Hawai‘i, or any state political subdivision, subject to the requirements of subsection (a) of this section.

7.5. Permissible law-student intern activities.

Any law-student intern with the knowledge and approval of a supervising lawyer and the client may also engage in the following activities:

- (1) Counsel and advise clients, interview and investigate witnesses, negotiate the settlement of claims, pursue or oppose relief by procedural motion, as well as prepare and draft legal instruments, pleadings, briefs, abstracts and other documents. Any document requiring signature of counsel, and any settlement or compromise of a claim, however, must be signed by the supervising lawyer; and
- (2) Render assistance to clients who are inmates of penal institutions or other clients who request such assistance in preparing applications and supporting documents for post-conviction legal remedies.

7.6. Duration of law-student intern authorization and compensation limitations.

(a) The law-student intern may continue to serve so long as the law-student intern is enrolled in a clinical program or is participating in a law practicum as defined by Rule 7.2 of these Rules; authorization to serve shall cease upon any removal of good standing of the supervising attorney or law-student intern or the termination of such enrollment or participation. The supervising attorney shall file at the supreme court a written notice of any change in the good-standing status of either the supervising attorney or the law-student intern and shall similarly file a written notice of the law-student intern's departure from enrollment in the clinical program or participation in the law practicum. After graduation, the law-student intern may continue to represent a client in cases initiated before graduation if such representation is deemed appropriate by the supervising lawyer, but in no case shall the continued representation under this Rule extend beyond the swearing-in date of the next bar examination.

(b) A law-student intern shall neither ask for nor receive any compensation or remuneration directly from the client for services rendered to a client, but this shall not prevent a supervising lawyer, a law school, or public agency from paying compensation to a law-student intern or from making such charges for services as such lawyer, law school, or public agency may otherwise properly require.

7.7. Supervision of law-student intern practice.

The supervising lawyer shall counsel and assist the law-student intern who practices law pursuant to this Rule, and shall provide professional guidance in every phase of such practice with special attention to matters of professional responsibility and legal ethics.

7.8. Miscellaneous.

(a) **Disciplinary liability.** Law-student interns practicing pursuant to this Rule shall be governed by the rules of conduct applicable to lawyers generally, but the termination of practice referred to in Rule 7.6 shall be the exclusive sanction for disciplinary infractions which occur during authorized practice; except that such disciplinary infractions may be considered by a court or agency authorized to entertain applications for admission to the practice of law. Nothing in this provision shall limit the disciplinary liability of the supervising attorney.

(b) Other lawful acts. Nothing contained in this Rule shall affect the right of any person to do anything that person might lawfully do were this Rule not in existence.

(c) Immunity. Except for use by an attorney-admission or disciplinary authority or judicial-selection authority of any jurisdiction in which the law-student intern is admitted to practice or seeks to practice, information submitted to this court shall be absolutely privileged and no lawsuit predicated thereon may be instituted. Members of this court and the staff performing duties and functions under this Rule shall be immune from suit and liability for any conduct in the course of their official duties.

7.9. Oath.

A law-student intern shall swear the following oath before an individual authorized by law to administer oaths, and shall then submit written proof thereof to the supervising attorney, for filing with this court, as required by Rule 7.3(a) of this Rule:

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of Hawai‘i, and that I will at all times conduct myself in accordance with the Hawai‘i Rules of Professional Conduct.

As an officer of the courts to which I am admitted to practice, I will conduct myself with dignity and civility towards judicial officers, court staff, and my fellow professionals.

I will faithfully discharge my duties as a law-student intern in the courts of the state to the best of my ability, giving due consideration to the legal needs of those without access to justice.

Subscribed and sworn to before me this ____ day of _____, 20__.

[NAME OF LAW-STUDENT INTERN]

[NAME OF OATH-ADMINISTRATOR]

Jurisdiction

DATED: Honolulu, Hawai‘i, July 27, 2023.

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Katherine G. Leonard

