



Access to Justice Through Mediation

by Tracey S. Wiltgen

Over the past few years, mediation has come to the forefront as a preferred approach for settling disputes. Articles published in the *Honolulu Advertiser* in 2005¹ and the *Pacific Business News* in January 2008² reinforced this trend. A companion article in the *Honolulu Advertiser* suggested that in an improving economy people are less likely to file lawsuits.³ However, the fact remains that in a depressed economy such as that which we are currently experiencing, less expensive, quick, creative approaches to resolving disputes through mediation are critically needed. Over the past six months, requests for mediation have risen by more than 20% at the Mediation Center of the Pacific alone.

While everyone is impacted by the severe economic decline, individuals in the low income population struggle more than ever. The *2007 Access to Justice Hui Report* found that only 22.8% of low-income residents in Hawai'i who have legal needs actually receive assistance. Today, despite the increased efforts of legal service providers, such a study would most likely indicate that those needs are even greater. For example, 58% more of the Mediation Center of the Pacific's clients in 2008 were members of the poor and gap group populations than in 2007.

In a study conducted by the Center for Analysis of ADR Systems in Chicago, Illinois, they found that family, housing and consumer matters are the greatest areas of

need for the poor and low-income populations and should be the focus of mediation.⁴ Particularly in challenging economic times, a successfully mediated agreement can mean the difference between being homeless and working out a payment plan to save a family home; losing precious time with one's children or developing a co-parenting plan with an ex-spouse; severing family ties or building relationships with siblings to care for aging parents. These issues impacting basic human needs and more are addressed daily at the Mediation Center of the Pacific with the support of professional mediators, more than 40% of whom are attorneys, who provide the services pro bono.

In trying times like these, mediation is needed more than ever. It should be the first option people consider before stopping payments on their mortgage or the nursing home that is caring for their elderly parents. Mediation is a no-risk step in times of high risk. It is a creative process that can be adapted to meet diverse local and cultural needs. No one size fits all.

The need for more mediation services to support the growing number of people in the low-income population provides an opportunity for additional attorneys to provide pro bono services through mediation. A key action step in the *2007 Access to Justice Report* is to "Develop a Culture that Values Providing Pro Bono Services." Once legal advice is provided by attorneys working with Legal Aid Services of

Hawai'i, Na Loio, Volunteer Legal Services of Hawai'i, and other legal service providers, mediation offers the perfect opportunity to assist individuals in quickly negotiating solutions to issues that require immediate attention.

The Mediation Center of the Pacific is grateful for the assistance of the 80 attorneys who provided pro bono mediation services for 624 of the more than 5,000 individuals served by the Mediation Center in 2008. With their continued support and the commitment of the other 120 mediators who volunteer their services, even more people will be assisted in reaching settlements with landlords, lenders, spouses, employers, and more, in 2009.

¹ Ken Kobayashi, *Mediation of Cases Rises in Popularity*, HONOLULU, ADVERTISER, January 3, 2005.

² Linda Chiem, *As Mediation Spreads, Courts See Drop in Cases*, PACIFIC BUSINESS NEWS, January 18, 2008.

³ Ken Kobayashi, *State lawsuits down by 13%*, HONOLULU ADVERTISER, January 3, 2005.

⁴ Susan M. Yates, *Accessing Justice Through Mediation: Pathways for Poor and Low Income Disputants*, Center for Analysis of Dispute Resolution Systems, 2007.

Tracey S. Wiltgen is the Executive Director of The Mediation Center of the Pacific, Inc. She is a member of the Administrative, Pro Bono and Maximizing Use of Available Resources Committees for the Access to Justice Commission, and Co-Chair of the ADR Section of the HSBA.