



**HAWAI`I
ACCESS TO JUSTICE
COMMISSION**

ANNUAL REPORT FOR 2012



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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 2012.

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
- Hawai'i 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 2012 are listed below:

	Name	Appointed By	Term Ends
1.	Hon. Daniel R. Foley (CHAIR as of June 30, 2010)	Chief Justice	12/31/15
2.	Jill M. Hasegawa (VICE-CHAIR)	Hawai'i State Bar Association	12/31/14
3.	Hon. Simeon R. Acoba, Jr. (Former Chair from May 2008 until June 29, 2010)	Chief Justice	12/31/15
4.	Hon. Greg K. Nakamura	Chief Justice	12/31/12
5.	Hon. Joseph Cardoza	Chief Justice	12/31/14
6.	Hon. Trudy Senda	Chief Justice	12/31/15
7.	Derek Kobayashi	Hawai'i State Bar Association	12/31/13
8.	B. Martin Luna	Hawai'i State Bar Association	12/31/14
9.	Shannon L. Wack	Hawai'i State Bar Association	12/31/13
10.	L. Dew Kaneshiro (Volunteer Legal Services of Hawai'i)	Hawai'i Consortium of Legal Services Providers	12/31/14



11.	M. Nalani Fujimori Kaina (Legal Aid Society of Hawai'i)	Hawai'i Consortium of Legal Services Providers	12/31/15
12.	Moses Haia (Native Hawaiian Legal Corporation)	Hawai'i Consortium of Legal Services Providers	12/31/13
13.	Nanci Kreidman (Domestic Violence Action Center)	Hawai'i Consortium of Legal Services Providers	12/31/13
14.	Jean Johnson (Non-attorney public representative)	Hawai'i Consortium of Legal Services Providers in consultation with Chief Justice	12/31/15
15.	Scott S. Morishige (Non-attorney public representative)	Hawai'i Consortium of Legal Services Providers in consultation with Chief Justice	12/31/14
16.	Gregory Markham ¹	Hawai'i Justice Foundation	12/31/12
17.	Dean Aviam Soifer	William S. Richardson School of Law	12/31/13
18.	R. Elton Johnson, III	Hawai'i Paralegal Association	12/31/13
19.	Patricia McManaman	Governor	n/a
20.	Mary Anne Magnier	Attorney General	n/a
21.	Hon. Clayton Hee	Senate President	n/a
22.	Hon. Della Au Belatti	House Speaker	n/a

B. Committees

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.

Administration Committee

[Associate Justice Simeon R. Acoba, Jr. (Chair), David Reber (Vice Chair), Associate Judge Daniel R. Foley, L. Dew Kaneshiro, Jill Hasegawa, Derek Kobayashi, Carol K. Muranaka, Tracey Wiltgen]

- Assist the Chair of the Commission in developing an agenda for each Commission meeting, and assist in arranging for presenters and written or electronic materials in support of agenda items
- Assist in developing a budget for the Commission, including identifying potential sources of funding, and providing reports on the status of operations relative to budget

¹ The Hawai'i Justice Foundation board approved the appointment of Gary M. Slovin to the Commission after the end of Mr. Markham's term.



- Assist in providing administrative and logistical assistance to the Commission and its committees and task forces

Annual Report Committee

[Jill Hasegawa (Chair), Judge Karen Nakasone (Vice Chair), Associate Justice Simeon R. Acoba, Jr., Carol K. Muranaka, David Reber, Nichole Shimamoto]

- Assist in preparing an annual report of the activities of the Commission for filing with the Supreme Court in accordance with Rule 21(j)(1)

Committee on Education, Communications and Conference Planning

[Dean Aviam Soifer (Chair), Carol K. Muranaka (Vice Chair), Rep. Della Au Belatti, Sonny Ganaden, Sen. Clayton Hee, Mihoko Ito, Elton Johnson, Robert LeClair, Leila Rothwell Sullivan, Loren Walker]

- Assist in organizing an annual summit for the presentation of access to justice issues
- 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
- Assist in developing strategies for educating governmental leaders and the public about the importance of equal access to justice and of the problems low- and moderate-income people in Hawai'i face in gaining access to the civil justice system, including through informational briefings, communication campaigns, statewide conferences, testimony at hearings and other means
- Increase awareness of low- and moderate-income people's legal rights and where they can go when legal assistance is needed
- Assist in developing a communications strategy and preparing communications consistent with that strategy
- Encourage judges, lawyers and legal services providers to prepare a series of articles on access to justice topics for publication in the *Hawai'i Bar Journal* and other media

Committee on Funding of Civil Legal Services

[Gregory Markham (Chair), Rebecca Copeland, M. Nalani Fujimori Kaina, Robert LeClair, L. Dew Kaneshiro, Dean Aviam Soifer, Kanani M. Tamashiro, Wilfredo Tungol]

- Make recommendations and provide advocacy in support of establishing a permanent "home" for the legislative funding of providers of civil legal services to low- and moderate-income individuals so that funding for such services may be stable and secure
- Make recommendations and provide advocacy in support of increased legislative funding of civil legal services providers



- Make recommendations and provide advocacy in support of increased funding for civil legal services providers by the federal Legal Services Corporation and other federal and state agencies
- Make recommendations and provide advocacy in support of increased funding of civil legal services through the indigent legal services filing fee surcharge and other measures
- Assist legal services providers in exploring additional public and private funding sources and in developing programs or projects for which funding may be sought
- Make recommendations in collaboration with the Judiciary, the HSBA, law firms, and other employers of lawyers, to encourage attorneys to provide substantial financial support to legal services providers, including additional amounts in years when such attorneys do not meet the aspirational pro bono goals of Rule 6.1 of the Hawai'i Rules of Professional Conduct (HRPC)

Committee on Increasing Pro Bono Legal Services

[L. Dew Kaneshiro (Chair), Rebecca Copeland, Linda Ichiyama, Derek Kobayashi, Kanani Michelle Tamashiro, Jan Tamura, Audrey Stanley, Jeanilou Torrado, Shannon Wack, Tracey Wiltgen]

- 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, including developing effective recruitment campaigns
- Make recommendations concerning ways to develop a culture of commitment to pro bono service among Hawai'i's lawyers
- Maintain a list of legal services providers and others that offer opportunities for pro bono service, describe the nature of those opportunities and explore and assist providers in increasing the opportunities they provide for such service
- Make recommendations concerning ways to make providing pro bono service more attractive to attorneys, such as by assisting in developing resources for the pre-screening of cases, ensuring proper training, providing support and recognizing service
- Make recommendations concerning ways in which the Commission, the Judiciary and the HSBA -- acting alone or in partnership with others -- can encourage attorneys to provide higher levels of pro bono service
- Make recommendations concerning ways to encourage law firms and others who employ lawyers (including governmental agencies and corporate law departments) to promote greater pro bono service among their attorneys



- Make recommendations concerning ways to encourage retired lawyers and judges to provide pro bono or staff legal services to low- and moderate-income individuals

Committee on Initiatives to Enhance Civil Justice

[Judge Greg Nakamura (Chair), Kristin Shigemura (Vice Chair), Earl Aquino, Lincoln Ashida, Shawn Benton, Mihoko Ito, Elton Johnson, Laura Kaakua, Michelle Moorhead, George Zweibel]

- Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low- and moderate-income Hawai'i residents
- Study best practices in other jurisdictions and develop and recommend new initiatives to expand access to justice in Hawai'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 nonprofit civil legal services providers in Hawai'i, which may include:
 - Establishment by the Hawai'i legislature of a student loan repayment assistance program to help full-time, nonprofit civil legal services attorneys pay back their student loans
 - Adoption by the Hawai'i Supreme Court of rules to permit attorneys actively licensed to practice law by the highest court of a state or territory of the United States or the District of Columbia or Puerto Rico and who are working on staff or volunteering pro bono for nonprofit civil legal service providers to practice in that capacity for up to one year without being admitted to practice law in Hawai'i
- Make recommendations concerning ways in which paralegals and other non-lawyers may assist in meeting specified unmet civil legal needs, including whether ethical or procedural rules would need to be changed to accommodate such assistance

Law School Liaison Committee

[Moses Haia (Chair), Mary Anne Magnier (Vice Chair), Mark Arimoto, Katie Bennett, Jean Johnson, Linda Kreiger, Calvin Pang, James Pietsch, Dean Aviam Soifer]

Make recommendations concerning ways to:

- Expand efforts to create and develop law student interest in the practice of poverty law by increasing existing clinical programs and instituting new ones to serve the needs of low- and moderate-income populations
- Emphasize, as part of the professional responsibilities curriculum, a lawyer's ethical duty under Rule 6.1 of the Hawai'i Rules of Professional



Conduct (HRPC) to perform pro bono legal services and the ways this obligation can be met

- Develop opportunities with legal services providers, and sources of additional funding, to support law students' efforts to meet the 60 hour pro bono graduation requirement in a manner consistent with addressing the needs of low- and moderate-income populations
- Encourage and recognize the involvement of faculty members in efforts to promote equal justice by, for example, testifying in support of access to justice legislation, accepting pro bono cases, serving on boards of organizations that serve the legal needs of low- and moderate-income populations, contributing financially to organizations that serve the legal needs of low- and moderate-income people and filing amicus briefs in proceedings affecting legal services to the underserved
- Develop more public interest summer and academic year clerkships and obtain grants for summer internships and clerkships that serve low- and moderate-income populations

Committee on Maximizing Use of Available Resources

[M. Nalani Fujimori Kaina (Chair), Nanci Kreidman (Vice Chair), Marianita Lopez, David Reber, Tracey Wiltgen]

- Obtain information from all civil legal services providers and programs concerning the services they each provide, how they deliver those services and the ways in which they work with other programs to make the most efficient use of their collective resources
- Make recommendations concerning ways to ensure that:
 - There is an efficient and effective referral system of clients to the "right" program and among programs
 - Innovative methods of legal services delivery are explored and used
 - New ways to utilize technology to meet current unmet legal needs, including a centralized access to justice website, are implemented where appropriate
 - Mediation and other alternative dispute resolution methods for resolving legal problems are utilized when appropriate
 - Outreach efforts are coordinated among legal service providers as well as with social service providers, agencies and other organizations
- Explore with existing providers of legal services for low- and moderate-income residents current gaps in their provision of legal services and make recommendations concerning how their services might be expanded, which may include:
 - Increasing the types of legal problems for which assistance is offered



- Expanding office and clinic locations
- Extending office hours to include evenings and weekends
- Make recommendations concerning ways to expand outreach and publicity regarding possible legal solutions for problems and the availability of legal services to the public, which may include:
 - Locating outreach sites in areas convenient to potential clients
 - Engaging in partnerships with community groups and agencies
 - Publicizing services and programs in low- and moderate-income communities

Committee on Overcoming Barriers to Access to Justice

[B. Martin Luna (Chair), Calvin Pang (Co-Vice Chair), Jennifer Rose (Co-Vice Chair), Russ Awakuni, Jean Johnson, L. Dew Kaneshiro, Nanci Kreidman, Mary Anne Magnier, Kristina Toshikiyo]

- 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:
 - Providing multilingual services, including increasing the number of available staff and 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 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
- 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

Committee on the Right to Counsel in Certain Civil Proceedings

[Shannon Wack (Chair), Mary Anne Magnier, Brandon Ito]

- Study developments in other jurisdictions with respect to the establishment and implementation of a right to counsel in certain civil proceedings where basic human needs are at stake, such as sustenance, safety, health or child custody



- Make recommendations concerning the types of civil matters in which the rights or issues involved are of such fundamental importance that counsel should be provided in Hawai'i, assess to what extent attorneys are available for such matters and make recommendations on how to assure that counsel is available

Committee on Self Representation and Unbundling

[Judge Trudy Senda (Chair), Derek Kobayashi (Vice Chair), Sarah Courageous, Jerel Fonseca, Victor Geminiani, M. Nalani Fujimori Kaina, Victoria Kalman, Jo Kim, Jay Kimura, Justin Kollar, Daniel Pollard, Kristina Toshikiyo, Shannon Wack]

Members of this Committee may also serve on a joint committee with the Supreme Court's Committee on Professionalism. Although the joint committee will need to determine its agenda, this Committee of the Commission may study and make recommendations concerning ways to:

- Create, staff, and fund self-help centers that are connected to every courthouse in Hawai'i in order to provide real-time assistance to low- and moderate-income individuals
- Design programs to make courts more "user-friendly" to low- and moderate-income individuals
- Provide information to self-represented litigants on where they can receive legal assistance
- Reduce barriers encountered by self-represented litigants in the court system, e.g., by using plain English and translations into other languages, and by simplifying procedural rules
- Make changes to court rules and statutes that would streamline and simplify substantive areas of the law, e.g., family, housing and landlord-tenant law
- Make changes to court rules in order to permit limited representation or "unbundled" legal services, and if achieved, make recommendations concerning continuing legal education programs and other ways of promoting unbundling as a way to meet currently unmet legal needs and empowering individuals to represent themselves



II. 2012 ACCESS TO JUSTICE CONFERENCE

Over 280 individuals attended the fourth annual Access to Justice Conference on Tuesday, June 12, 2012 at the William S. Richardson School of Law, University of Hawai'i at Manoa. The theme of the conference was "JUSTICE IN JEOPARDY: Expanding Access to Justice in Challenging Economic Times."

Dean Avi Soifer and Robert LeClair served as co-emcees for the conference. They emphasized that the purpose of the conference was "to look at where we have been and where we are going."

A. Morning Session

Chief Justice Mark R. Recktenwald remarked:

We come together today to continue charting the course toward ensuring that there is equal justice for all in our civil legal system. Five years ago, we embarked on an ambitious endeavor -- identifying and then addressing the civil legal needs of the most vulnerable members of our society. We took up that challenge in many different ways, including by creating the Access to Justice Commission in 2008. Over the past four years, the Commission has worked tirelessly toward the goal of increasing access to justice. From advocating for amending laws and rules, to encouraging attorneys to increase their commitment to pro bono service, to supporting these annual conferences, the Commission has brought about significant changes to increase awareness and to improve access to justice for Hawai'i's citizens. Please join me in thanking the Commission, particularly its Chair Judge Daniel Foley and his predecessor Justice Simeon Acoba, for their leadership and for the great work of the Commission.

...

We may not have the financial resources that some other states have at their disposal, but we have something that, in the end, may be even more valuable: the commitment of talented people who care, and who are willing to work hard to make a difference. The roots of our commitment to justice in Hawai'i runs deep, from the great sovereign we honored this past weekend, to the wise jurist after whom this school is named, to the volunteer attorneys, legal aid staffers, and countless others who work long hours to make sure there is justice for those who might not otherwise be able to obtain it.

Judge Daniel R. Foley, Chair of the Commission, followed Chief Justice Recktenwald and told the audience that he was a civil rights attorney before his time on the bench. His role model was Justice Thurgood Marshall, who was born in the segregated South; argued before all-white judges and juries;



prevailed in *Brown v. Board of Education*; and married a legal secretary from Hawai'i and visited here often. In a 1987 speech on Maui, the bicentennial of the United States Constitution, Justice Marshall stated that he celebrated the evolution of the Constitution, not the making of the document. Justice Marshall explained that the Constitution alone was flawed in that it discriminated against African Americans and women, and enshrined slavery, but that the amendments to the Constitution ended slavery, gave women the right to vote, and introduced equal rights. Judge Foley remarked, "We are continuing his legacy here today. We have a wonderful partnership in this room."

The Legislative Forum, facilitated by Dean Soifer, featured Senator Clayton Hee, Senator David Ige, and Representative Marcus Oshiro.

Dean Martha L. Minow of Harvard Law School, who is also the Vice Chair of the Legal Services Corporation, gave the keynote speech and provided insights and challenges for increased access to justice.

Pursuing access to justice for our disadvantaged and vulnerable neighbors holds the promise of direct and immediate relief of suffering and enduring fortification of the laws that make us all free and secure.

It is not just that it feels good to have the chance to help those in need, nor is it simply the duty to help that accompanies luck – for there is so much luck that separates those who can help from those who need help. Connecting low-income people in need with legal assistance enables them to find or keep their housing, their jobs, their physical safety, their families, their benefits--and restores and renews all of our faith in law, justice, and the promise of America.

This year, our nation has reached a sad historic high. Nearly 1 in 5 Americans – 63 million people – now qualify for federally-supported civil legal assistance, because they live at or below 125% of the poverty level. . . . Many people will have to proceed without a lawyer but access to justice can still be enhanced.

There are powerful examples here in Hawai'i and elsewhere about ways to support people who cannot afford or obtain legal representation, including with:

- Self-help clinics at courts, agencies, and on-line (for example, court-based clinics to assist self-represented individuals are growing in Louisiana, Illinois);
- Mediation programs, connected with courts and community agencies;
- Law School clinics;



- Law reform to simplify forms for divorce, consumer, and other civil matters, to assist especially those proceeding pro se;
- On-line access—facilitated by courts—to uniform forms for basic legal matters and assurance that these will be accepted by courts across the entire state;
- Bar rules authorizing limited scope presentation; and
- Lawyers working with libraries to enhance user-friendly access to legal resources.

Still, there is and will foreseeably be a powerful need for actual legal advice and representation. In a recent survey of trial judges from 37 states, and Puerto Rico, more than 60 percent of the responding judges reported that unrepresented litigants failed to present necessary evidence, committed procedural errors, performed ineffective cross-examination, and failed to proffer enforceable orders to the court.

What to do? We need to redouble efforts to promote pro bono legal representation and reduce obstacles to it.

Following the keynote speech by Dean Minow, there were two morning concurrent workshops:

“Implicit Bias: An Obstacle to Access to Justice,” was led by Professor Calvin Pang of the William S. Richardson School of Law (“Law School”), along with fellow Law School professors: Justin Levinson and Mari Matsuda.

“Strengths and Limitations of Pro Bono,” was led by Bob LeClair, with panelists: Associate Justice Sabrina McKenna, Bill Hunt, and Regan Iwao.

B. Afternoon Workshops

There were five concurrent workshops for the first afternoon session:

“Overcoming Disability Barriers” was facilitated by Louis Erteschik and Jean Johnson. There were 22 attendees² at this workshop.

“Innovative Strategies to Enhance Civil Justice” was facilitated by Associate Justice Simeon R. Acoba, Judge Ronald Ibarra, Representative Della Au Belatti, and Derek Kobayashi. There were 73 attendees at this workshop.

² The number of attendees for each workshop is approximate since people were allowed to float from one workshop to another.



“Aging, Family Dynamics, and Caregiver Dilemmas” was facilitated by Professor James Pietsch, Dr. Lenora Lee, and Professor Michael Cheang. There were 51 attendees at this workshop.

“Overcoming Linguistic and Cultural Barriers” was facilitated by Christine Kubota and Dew Kaneshiro. There were 29 attendees at this workshop.

“Native Hawaiian Legal Issues” was facilitated by Camille Kalama, Derek Kauano, and Sharla Manley. There were 32 attendees at this workshop.

There were five concurrent workshops for the second part of the afternoon:

“Limited Scope Representation and Expansion of Roles” was facilitated by Judge Trudy Senda, Janet Hunt, and Victorialei Nohea Nakaahiki. There were approximately 51 attendees at this workshop.

“The Foreclosure Crisis Update” was facilitated by Tracey Wiltgen, Steve Levins, James Paige, and Jo Ann Uchida Takeuchi. There were approximately 43 attendees at this workshop.

“Issues Immigrants Face” was facilitated by G. Gary Singh, John Robert Egan, and Tatjana Johnson. There were approximately 47 attendees at this workshop.

“Effectively Communicating with Low-Income Clients” was facilitated by Judge Joel August (ret.) and Russ Awakuni. There were approximately 42 attendees at this workshop.

“Ongoing Housing Crisis” was facilitated by Judge Hilary Gangnes, M. Victor Geminiani, and Delia L’Heureux. There were approximately 29 attendees at this workshop.

C. Closing Session

In closing the conference, Dean Minow and Justice Acoba presented their thoughts on the future direction of access to justice. Justice Acoba observed:

The Commission has proposed, initiated, coordinated, and evaluated numerous ATJ initiatives. I believe the Commission has succeeded in many of its initiatives because by and large, the



constituent members of the Commission have been unified in purpose, and concerned beyond the interests of their own organizations, with the overall progress of ensuring equal justice for all. . . .

So, in closing, is justice in jeopardy? I think not--if we move in the direction of agreement of purpose, goodwill, cooperation, and commitment to effectuating the rule of law for all, as we have in the past. This is the direction we should take going forward, to ensure that justice will not be in jeopardy in the future.

The 2012 Access to Justice Conference was another very successful event. The attendees who submitted evaluations for the conference found it “extremely helpful” or “very helpful.”





III. SELF-HELP CENTERS

In 2012, four self-help centers opened: in the Hilo courthouse in June, in Honolulu in August, in the Maui courthouse in August, and at the courthouse in Kapolei in December. The self-help centers are a collaboration of the Judiciary, the Commission, HSBA (in particular the HSBA Committee on the Delivery of Legal Services to the Public), Legal Aid Society of Hawai'i, the AmeriCorps program, and the county bar associations (Hawai'i County Bar Association, Kauai County Bar Association, and the Maui County Bar Association).

A. Hilo Self-Help Center

The Hilo Self-Help Center is located on the first floor of the Hilo courthouse, and is open twice a week (Monday and Friday) from 11:15 a.m. to 12:45 p.m.

The June 29, 2012 grand opening ceremony for the self-help center was marked with the presence of Chief Justice Mark Recktenwald and Judge Ronald Ibarra, Third Circuit Administrative Judge. Darien Nagata, president of the Hawai'i County Bar Association, acknowledged the assistance of the Judiciary, the Hawai'i State Bar Association, the Legal Aid Society and the members of the Hawai'i County Bar Association for their work in the vision, concept, training, and implementation of the Self Help Center. Judge Greg Nakamura and Lester Oshiro, Chief Court Administrator, were instrumental in the concept, coordination and opening of the Self Help Center.

Training for the Center was coordinated with the Judiciary, Legal Aid Society of Hawai'i, and the county bar association. Participating in the training were Judges Barbara Takase, Lloyd Van De Car, and Nakamura along with Nalani Fujimori Kaina, executive director of Legal Aid Society of Hawai'i, and Charles Hite, Legal Aid Society of Hawai'i attorney.

B. Maui Self-Help Center

The Maui Self-Help Center is located on the first floor of Hoapili Hale, and is open from 9:00 a.m. to noon on Thursdays. Residents on Molokai, Lanai, and in Hana will also be able to have access to the Center by cell phone.

Chief Justice Recktenwald attended the opening of the Maui Self-Help Center. Judge Rhonda Loo, Judge Joel August (ret.), Nicole Forelli, Legal Aid Society of Hawai'i attorney, and Jennifer Oana, former president of the Maui



County Bar President, who all were actively involved in the coordination of the Center, also attended the opening with other bar members.

C. Access to Justice Room at the Honolulu District Court

The Access to Justice Room (AJR) at the Honolulu District Court is located on the third floor of the Honolulu district court building at 1111 Alakea Street. It is staffed by a volunteer attorney on Mondays and Wednesdays, 9:00 a.m. to 1:00 p.m. and an AmeriCorps representative from 8:30 a.m. to 1:30 p.m. The AJR provides short-term legal advice to self-represented litigants on district court civil matters such as landlord-tenant, debt collection, and temporary restraining order and injunction against harassment (involving non-family members or parties who have not been in a dating relationship) issues.

The soft opening of the AJR occurred on July 23, 2012. The grand opening occurred on August 10, 2012, with remarks by Chief Justice Mark Recktenwald and First Circuit Chief Judge Derrick Chan. Chief Justice Recktenwald said, "In recent years, we have seen increases in the number of individuals who have had to represent themselves in civil proceedings because they could not afford an attorney. Many of these self-represented parties struggle with the judicial system because they don't understand the process and what is expected of them. Our Access to Justice Room is intended to help them navigate the system more effectively, which in turn helps the system run more smoothly."

D. Access to Justice Room at the Kapolei Courthouse

The Access to Justice Room (AJR) at the Kapolei Courthouse is open on the first and third Thursday of every month from 11:30 a.m. to 1:30 p.m. Appointments are made for the clinic through the Ho`okele Self Help Desk on the first floor of the Kapolei Courthouse.

On December 7, 2012, over fifty individuals attended the Grand Opening and Dedication Ceremony of the Kapolei AJR. Senior Family Court Judge R. Mark Browning acknowledged Chief Justice Mark Recktenwald's continuing vision that people have equal access to justice. "The opening of the Kapolei Access to Justice Room reflects his passion and desire to help people," said Judge Browning.

Chief Justice Recktenwald praised "the amazing folks in the bar" and the importance of the self-help centers. "If people cannot participate meaningfully, this compromises the integrity of the system," said Chief Justice Recktenwald. "The key is attorney volunteers and this room is part of



a statewide system. The bar has stepped up to the challenge.”

Steve Hartley, then chair of the Family Law Section, shared with the audience that this project could not have been accomplished without Judge Browning’s commitment. “Judge Browning refused to let the project die despite the funding issues,” he said. “After the professional liability insurance coverage was resolved, it allowed me and the Family Law Section to recruit the necessary volunteers. This project was important to all of us because we share Chief Justice Recktenwald’s vision regarding access to justice for all. . . . This is also a way for us, the volunteers, to help to dispel the negative images that still exist in the general public regarding attorneys. We want to show the community that we do recognize the needs of those who cannot afford to hire private attorneys and want to make sure that all have access to the legal resources available in court.”

Several other judges who attended the ceremony, including Judge Sheri Iha, Judge Catherine Remigio, Judge Derrick Chan, Judge Jennifer Ching, Judge Lanson Kupau, Judge Barbara Richardson, and Judge Christine Kuriyama. The volunteer attorneys recognized by certificates at the ceremony included: Richard Diehl, Seth Harris, Steve Hartley, Marianita Lopez, Mari Kishimoto, Elsa McGehee, Dyan Mitsuyama, Elizabeth Paek, Jackie Thurston, and Carol Tribbey.

Kahu Kekapa Lee blessed the Kapolei AJR.

E. Kauai Self-Help Center

The Kauai Self-Help Center opened in the fall of 2011 and so far has served hundreds of self-represented litigants. The Center is open every week day from 9:00 a.m. to noon.

In December, Chief Justice Recktenwald visited the center to present awards to the volunteers. He praised the court staff and attorneys for improving access to justice initiatives of the judiciary and presented each volunteer with a certificate of commendation.

The Kauai Legal Aid office has staffed the Kauai Self-Help Center with an attorney or paralegal at least four mornings a week, and private attorneys round out the remainder of the week. In 2012, approximately 325 self-represented litigants were assisted by volunteers at the Center. Deputy Chief Judge Trudy Senda commended Legal Aid and the Kauai Bar Association for volunteering at the center.





IV. COMMUNITY BRIEFINGS

A. Parish of St. Clement Briefing, January 11, 2012

The first community briefing of the Commission occurred on Wednesday, January 11, 2012 at the Parish of St. Clement, Parish Hall, 1515 Wilder Avenue, Honolulu, Hawai'i. The briefing was an opportunity to discuss the importance of equal access to justice in Hawai'i, to describe the past and ongoing work of the Commission, to explain the resources available to the public, and to collect community input regarding the needs for increased access to justice for all.

Over fifty people attended the event, including representatives from several non-profit legal service organizations. Judge Daniel Foley, Chair of the Commission, and Hawai'i Supreme Court Chief Justice Mark Recktenwald provided welcoming remarks. Chief Justice Recktenwald stated:

This is a time of great innovation and promise for the cause of access to justice in Hawai'i. We have a real opportunity to make history, by significantly expanding access to justice for people who have been left behind for much too long. Although much work remains to be done, the judiciary is committed to working with our partners in the community to meet those challenges and to provide justice for all.

B. Windward Community College Briefing, May 9, 2012

The second community briefing was at the Windward Community College on Wednesday, May 9, 2012. Chief Justice Recktenwald, Associate Judge Daniel Foley, Representative Della Au Belatti, Senator Clayton Hee, Dean Aviam Soifer, Representative Jessica Wooley, Tracey Wiltgen, Nalani Fujimori Kaina, Sonny Ganaden, Elton Johnson, Hilary Nakasone, Raina O'Keefe, David Kopper, and Jon Kawamura shared news of the Commission's work and to address any issues raised by community members.

C. Waianae District Park Briefing, December 11, 2012

The last community briefing of the year occurred on Tuesday, December 11, 2012 at Waianae District Park. Dean Soifer acted as facilitator, with remarks by Chief Justice Recktenwald and Justice Acoba. Chief Justice Recktenwald described the Judiciary's efforts in improving access to the judicial system, including the implementation of self-help centers throughout the different judicial circuits. Justice Acoba explained the Commission's role and the different initiatives and accomplishments of the Commission. Representatives



from Domestic Violence Action Center, Hawai'i Appleseed Center for Law and Economic Justice, Legal Aid Society of Hawai'i, Native Hawaiian Legal Corporation, and Volunteer Legal Services Hawai'i provided brief descriptions of their services and were available after the formal presentation to answer questions at their respective tables.



V. PRO BONO CELEBRATION

“The pursuit of equal justice for all is truly a noble endeavor.”

*-- Hawai`i Intermediate Court of Appeals Associate Judge
Daniel R. Foley, Chair, Hawai`i Access to Commission*

The Pro Bono Celebration on October 23, 2012 at Aliiolani Hale recognized Hawai`i’s outstanding pro bono attorneys for 2012. Sponsoring the event were the Hawai`i Access to Justice Commission, Hawai`i State Bar Association (“HSBA”), ACLU Hawai`i, Hawai`i Appleseed Center for Law and Economic Justice, Domestic Violence Action Center, Hawai`i Disability Rights Center, Legal Aid Society of Hawai`i, Native Hawaiian Legal Corporation, The Mediation Center of the Pacific, University of Hawai`i Elder Law Program, Volunteer Legal Services of Hawai`i, and the William S. Richardson School of Law.

Rule 6.1 of the Hawai`i Rules of Professional Conduct (HRPC) provides that a lawyer should aspire to provide at least 50 hours of pro bono services annually. Honored were individuals who expended many more hours than the minimum.

A. Opening Remarks

Chief Justice Mark Recktenwald of the Hawai`i Supreme Court welcomed all and thanked the sponsoring organizations for making the event a reality. He remarked:

Since its creation in 2008, the Access to Justice Commission made significant strides in making the civil legal system in Hawai`i more accessible. One of the Commission’s most successful initiatives has been increasing pro bono service, both by encouraging attorneys to volunteer, and by providing increased opportunities for them to do so. The Commission has moved forward on several different fronts, including soliciting pro bono commitments from law firms and individuals, adopting model pro bono policies, recommending specific rule changes, and partnering with stakeholders to open self-help centers in our courts.

The progress we have made in opening those centers has been truly extraordinary. About two years ago, the HSBA sponsored a day-long meeting at the state Capitol at which about 25 stakeholders got together for the first time to discuss the idea of establishing such centers in Hawai`i. One year later—in fall of 2011—the first such center



was opened in our courthouse on Kauai. Since then, we've opened centers in Hilo, Honolulu, Kapolei, and just last week, in Wailuku, Maui. I was at the opening of the Maui center, and there was incredible excitement from the Maui bar and community over that center's potential to help meet the needs of self-represented parties in the second circuit.

With the opening of that facility, we now have self-help centers operating in every circuit of the state. In two short years, we've gone from an idea being talked about by a couple of dozen people in a conference room at the capitol, to a network of centers from Hilo to Lihue providing assistance to people whose voices might not otherwise be heard. There is a simple lesson to be drawn from this experience—never underestimate the power of a group of people who are committed to an idea and are willing to work to achieve it. We've seen it in the self-help centers, and we've seen it over and over again in Hawai'i in recent years as attorneys have stepped up to do what's right by providing pro bono service in a variety of different contexts.

Today, we honor a select group of those attorneys who have been truly outstanding in their commitment. They have distinguished themselves in many different ways: from conducting workshops and neighborhood legal clinics, serving as guardian ad litem, ensuring that low-income families have access to health care and food stamps, providing invaluable guidance to establish a new legal nonprofit, writing amicus briefs, and providing free legal assistance to the elderly. But they share something in common as well, which is that each of them epitomizes the highest ideals of the legal profession and public service, and are well deserving of the honor they receive today.

In closing, this is a time of great innovation and promise for the cause of access to justice in Hawai'i. Because of the commitment of everyone here, we have made significant strides forward in the years since our Commission was formed.

B. Recipients

Sean K. Clark

Business Law Corps nominated Sean Clark for his instrumental role in the launch and implementation of the Business Law Corps ("BLC") as a new legal nonprofit entity in January 2012. Clark began working on BLC matters in May 2011, when he and his colleagues at Goodsill Anderson Quinn & Stifel agreed to be BLC's founding law firm.

Since then, he assisted BLC in many ways, including the review of BLC's 501(c)(3) application to the Internal Revenue Service, joining BLC's



Board of Directors, speaking to the media about BLC, and working on pro bono client matters as the point person at the Goodsill law firm. Clark also provided invaluable guidance on fundraising opportunities and lawyer recruitment, including suggesting the idea for the upcoming lawyer event and reception. In short, BLC would not be where it is today without his significant contributions and support.

Blaine Rogers

Hawai'i Appleseed Center for Law and Economic Justice (“Hawai'i Appleseed”) and the Hawai'i Disability Rights Center nominated Blaine Rogers for his outstanding pro bono efforts ensuring that low-income families have timely access to food stamps, Micronesians have access to life-sustaining health care, and disabled adults are properly assessed for the services they need.

Hawai'i Appleseed, Rogers, and pro bono partners, Alston Hunt Floyd & Ing (“AHFI”), successfully represented 8,000 Micronesian residents in a federal class action law suit aimed at enjoining the State from severely restricting health care provided to them. Among the many restrictions to health care was an elimination of all dialysis and chemotherapy treatment that would have resulted in the immediate deaths of over 100 people who suffered from kidney failure.

The case, *Sound v. Koller*, argued that the implementation of the new health program, called the Basic Health Hawai'i (“BHH”), violated low-income Micronesian residents’ due process rights by failing to provide adequate notice to residents and their equal protection rights by basing the State’s action on the alienage of Compact of Free Association residents. An order enjoining the State from implementing the program was issued by the federal district court. The State tried again to implement the BHH program health restrictions and a second case was brought, *Korab v. Koller*, arguing that the decision to selectively single out certain minority groups for disparate access to critical medical services is unconstitutional, as it discriminates based on national origin and alienage in violation of the Equal Protection Clause of the Fourteenth Amendment. The court again enjoined the State from proceeding with the reductions in care because it violated the constitutional protections of equal protection. The Abercrombie administration has appealed that order to the Ninth Circuit Court of Appeals. The argument before the court was held in September. The decision is pending.

Rogers and pro bono partners at AHFI also joined with Hawai'i Appleseed to file a federal class action lawsuit against the Hawai'i Department of Human Services to correct the Department’s ongoing and persistent failure



to process in a timely manner, applications for Hawai'i's poorest families who seek food stamps under the Supplemental Nutrition Assistance Program. Federal rules require processing of applications to take no longer than 30 days. The State's failure to process applications in a timely manner meant that thousands of households were waiting for four months and longer before being determined eligible to receive this federal benefit. After arguments, United States District Court Judge David Ezra issued an order enjoining the State from continuing the delay and ordered immediate action to improve delivery systems and fully comply with the 30-day time frame for all applications by December 31, 2012.

The Disability Rights Center nominated Rogers for his representation in a class action case against the State's Adult Mental Health Division. Thanks to the many hours that he dedicated to the case, approximately 280 members of the plaintiff class were deemed eligible to receive a reassessment for state mental health services. As a result, many of these individuals qualified for mental health services that were previously denied.

Each of these cases was extremely complex and time consuming. Rogers sacrificed a significant amount of time normally available for his family and private practice in order to make a real difference in the lives of thousands of low-income and disabled individuals and families in Hawai'i.

Miriah Holden

The Legal Aid Society of Hawai'i nominated Miriah Holden for her contribution as a pro bono guardian ad litem. A guardian ad litem is appointed in every child welfare case to look out for the child's best interest. They are independent fact-finders and child advocates whose responsibilities include visiting with the child and following up on the progress of parents and other parties with the goal of either reunification or permanency for the child.

Holden has been steadfast in her commitment since October 2010 and is currently working on her third and fourth cases. Her cases have not been easy, some with multiple children and others highly contested. She is dedicated to doing a good job for the children she is appointed to assist and is extremely conscientious in her work. She also coordinates the Hawai'i High Schools' Mock Trial Program and volunteers at other YLD service projects.

Holden is the current District Representative for the American Bar Association for District 33 (Alaska and Hawai'i) as well as a director of the HSBA's YLD. She earned her J.D. from the William S. Richardson School of Law and also holds both an MBA and BBA from the University of Hawai'i at Manoa, Shidler College of Business.



Charles H. Hurd

The Mediation Center of the Pacific nominated Charles “Chuck” Hurd for his steadfast commitment and work to increase access to justice for Hawai'i's low-income and vulnerable populations through mediation. Over the past ten years he has donated hundreds of hours volunteering his services as a mediator to assist parties in addressing a myriad of issues, particularly in the civil rights and elder arenas.

In addition to providing direct mediation services pro bono, Hurd has served on the Boards of the Mediation Center of the Pacific, Mediation Centers of Hawai'i and the Association for Conflict Resolution Hawai'i. He is currently a co-chair for the ADR Section of the HSBA. In his capacity as a director and co-chair for the respective organizations, he has worked to strengthen mediation, as well as develop new programs that will assist Hawai'i's most vulnerable, particularly the elderly. Thanks to the time and energy he has devoted, the Mediation Center created a new Kupuna Pono program that offers specialized mediation and family conferencing for elders and their families.

Hurd's pro bono accomplishments also include many long hours he dedicated this past year to conducting research and writing an amicus brief on behalf of the Mediation Center of the Pacific and Mediation Centers of Hawai'i to protect confidentiality in mediation and support the work of community mediation centers throughout the State. These are only a few examples of the important work he has done pro bono. Despite the many hours he has already given, he continues to lead the way in strengthening mediation and increasing access to justice.

Scott C. Suzuki

Scott Suzuki was nominated by the University of Hawai'i Elder Law Program (“UHELP”) for the many pro bono hours he has devoted and continues to devote to the program. Through UHELP, he has assisted Professor James H. Pietsch in providing free legal assistance to seniors residing on Oahu, given lectures for the elder law courses, advised students in the Elder Law Clinic, and helped research recent developments in elder law.

To further support Hawai'i's elder population and their families, Suzuki is an active member of the Alzheimer's and Other Dementias Task Force that is dedicated to strengthening resources and laws to support families and caregivers of Alzheimer and dementia patients.



Suzuki is also an advocate for populations with special needs. He is Hawai`i's only member of the Special Needs Alliance, a national, non-profit organization consisting of some of the most credentialed public benefits and disability law attorneys in the country, committed to helping individuals with disabilities, their families, and the professionals who represent them.

Gavin K. Doi

No one really knows when Gavin K. Doi began volunteering for Volunteer Legal Services Hawai`i ("Volunteer Legal"). He preceded all the current employees. He has set aside countless hours from his busy private family law practice to provide *pro bono* services through Volunteer Legal. He is a regular at the Neighborhood Legal Clinics, conducts Uncontested Divorce Workshops, takes cases for full representation, and mentors young attorneys interested in family law.

Doi is also a great supporter of Volunteer Legal behind the scenes. He helps formulate policies as a member of the Volunteer Development Committee; he is a sounding board for management; he even drafts grant requests. He is an enthusiastic proponent of *pro bono*. Through enthusiasm and example, he inspires other attorneys to volunteer. He is truly an exceptional *pro bono* hero.

C. Presentation of Plaques

Hawai`i Intermediate Court of Appeals Associate Judge Daniel R. Foley, Chair of the Hawai`i Access to Justice Commission ("Commission"), introduced each of the honorees and presented the recognition plaques. Representative Della Au Belatti, a commissioner on the Commission, also presented legislative certificates to each of the honorees.

Associate Justice Simeon R. Acoba, former chair of the Commission, commended the honored attorneys who made a difference in people's lives and exemplify the promise made in the attorney's oath that due consideration is given to those without access to justice. He stated:

One of the objectives of the Commission is to increase *pro bono* contributions of attorneys. The Commission has promulgated model *pro bono* policies for law firms and for government agencies. Visits to law firms and government agencies have been made to encourage service. Court rules have been clarified to enable judges to take part in *pro bono* activities. Last year the Commission proposed, and the Supreme Court adopted, a rule that would allow attorneys who could not do *pro bono* work to contribute \$500 in lieu of the recommended hours of *pro bono* service. And the Commission has sponsored events, like this one, to commemorate *pro bono* week across the nation.



We do not have a mandatory pro bono service requirement, but we are one of seven states that require mandatory reporting of pro bono work. In 2007, when mandatory reporting was instituted, lawyers contributed 198,000 hours in pro bono service. In 2008, 204,000 hours; in 2009, 232,000 hours; in 2010, 231,000 hours. I'm not certain if this can be sustained, but the bar seems to have responded well to the request for pro bono services.

Paraphrasing ABA Pro Bono Day material, Justice Acoba, said, "They *did* good. They *did* Justice because -- They *did* pro bono."





VI. OTHER ACTIVITIES

A. Appellate Pro Bono Project

The Commission approved the formation of a task force to work on an appellate pro bono project that would provide pro bono help in civil cases for indigent parties. The Task Force members are: Associate Justice Simeon R. Acoba, Jr., Chief Judge Craig Nakamura, Dew Kaneshiro, Rebecca Copeland, Audrey Stanley, Brandon Segal, and Matthew Chapman.

The committee examined the two types of models: Ninth Circuit model where the court plays an active role and a Texas model where the court is not actively involved.

B. Statewide Foreclosure Mediation Program

The Commission submitted to the Hawai'i Supreme Court a proposal for a statewide foreclosure mediation program. The proposal was not mandated at this time. Although the Court recognized the positive benefits of such a statewide approach, there were concerns that the program may not fit the needs of each circuit and that the continued financial constraints in the Judiciary's budget made it unable to redirect significant resources to support such a statewide program.

C. Unbundling Project

The Commission is considering a proposal to allow limited scope representation. Currently, Hawai'i Rules of Professional Conduct, Rule 1.2 provides as follows:

Rule 1.2. SCOPE OF REPRESENTATION.

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which the objectives are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the objectives of the representation if the client consents after consultation.



(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

The Commission is considering amendments to Rule 1.2 that would allow the “objectives of the representation” to be limited if the client consents in writing after consultation. In addition, there would be an exception from providing such a consent in writing in the following situations: (1) an initial consultation with any attorney; (2) pro bono services provided through a nonprofit organization, a court-annexed program, a bar association, or an accredited law school; or (3) services provided by a nonprofit organization funded in whole or in part by a federal, state, or county government. Under consideration is a new Rule 11.1 on the limited appearance and withdrawal of an attorney.

D. Proposed Amendment to Hawai'i Rules of Evidence, Rule 1101

The Commission is examining a proposal to amend Rule 1101 of the Hawai'i Rules of Evidence so that the rules of evidence would not apply where one or more parties is not represented by counsel in civil proceedings in the state district court or family court. This proposal is similar to the inapplicability of these rules in the small claims courts pursuant to HRE Rule 1101(d)(4).³

³ HRE Rule 1101, Applicability of Rules, provides:

(d) Rules inapplicable. The rules (other than with respect to privileges) do not apply in the following:

- (1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104.
- (2) Grand jury. Proceedings before grand juries.
- (3) Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary hearings in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.
- (4) Small claims. Proceedings before the small claims division of the district court



In formulating this proposal, there is an awareness that the number of self-represented litigants is increasing. These parties who appear pro se are unfamiliar with the evidentiary rules and the proposed amendment seeks to address this issue.

The inequality in the courtroom was recognized by the Conference of Chief Justices and the Conference of State Court Administrators who passed a resolution in support of expanding Rule 2.2 of the ABA Model Code of Judicial Conduct to expressly reference cases involving self-represented litigants.

E. ABA Access to Justice Commission Expansion Project

The Commission applied for a Phase II grant from the ABA Access to Justice Commission Expansion Project, which was “making grants to strengthen the Access to Justice commission movement nationally by facilitating development of new Access to Justice commissions and expanding agendas and promoting innovative initiatives in existing commissions.”⁴ The Phase II grants are to “promote innovation and to enable existing Access to Justice Commissions to expand the scope of their activities and undertake initiatives in new areas beyond existing work.”⁵

With Hawai'i Justice Foundation as the Commission's fiscal sponsor, the ABA Access to Justice Commission Expansion Project awarded the Commission \$20,000 for three projects:

- Language services (which may include translation of informational brochures) to meet the needs of LEP self-represented litigants accessing the Self-Help Centers in each judicial circuit
- Seminars to educate lawyers about language access
- Conference to educate court and staff and attorneys about implicit bias

Members of the Commission's Committee on Overcoming Barriers and the Roundtable participants are involved in three working groups to complete the projects in 2013.

⁴ Notice of the grant application deadlines at http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_

⁵ *Id.*