



Crisis and Promise: The 2009 Hawaii Access to Justice Conference

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Photos by Spencer Kumura

Over two hundred people came together for the first annual Hawaii Access

to Justice Conference (Conference) on June 24, 2009, to explore how we might more effectively address the unmet civil legal needs of Hawaii's low- and moderate-income people. Associate Justice Simeon R. Acoba, Jr., Chair of the one-year-old Access to Justice Commission (Commission), and moderator for the event,

explained that the annual Conference is an opportunity for us to review progress made by the Commission, and to consider where future efforts should be directed in order to creatively advance access to justice objectives.

Between the early welcoming remarks by Justice Acoba and the refrain of "Hawaii Aloha" in the afternoon, a significant number of substantive issues relating to Hawaii's longstanding access to justice problem were presented and discussed. While there was considerable anxiety expressed at this first Conference regarding the formidable challenges involved in meeting greater needs with fewer resources in difficult economic times, there was also a sense of hope regarding the potential for creative responses to these challenges.

CRISIS

"Change is like the Banzai Pipeline. It waits for no one, and is decidedly short on forgiveness." Chief Justice John T. Broderick, New Hampshire Supreme Court

Both of the statewide Hawaii legal needs assessments undertaken during the past fifteen years have demonstrated that the civil legal needs of most of Hawaii's people of moderate income or below are not met. In his opening remarks,



Conference moderator Justice Acoba mentioned the main findings of *The 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People in Hawaii*, which were then further detailed by Legal Aid Society of Hawaii Executive Director Nalani Fujimori Kaina. These findings include the following:

- Only 1 in 5 low- and moderate income Hawaii residents have their civil legal needs met;
- Legal service providers are able to help only 1 in 3 of those who do contact them for assistance; and
- Areas of significant unmet civil legal needs include housing, family, domestic violence, and consumer issues.

To illustrate the severe nature of the need and the critical role of the legal service provider, Russ Awakuni, a lawyer with the Legal Aid Society of Hawaii, present-

ed one client who had been victimized by a mortgage rescue scam. Unlike many others less fortunate, this client and her family are still in their home, thanks to successful defense by Legal Aid of multiple eviction efforts, and litigation to get back the title to their home.

In his mid-day address, featured speaker Chief Justice John T. Broderick, Jr. of New Hampshire observed that for the past several decades, the state courts have found themselves playing an expanded role in resolving society's problems. He observed that the state courts handle more than 98% of all justice

needs—over 47 million cases per year—and noted that half or more of the courts' work relates to the family: divorce, domestic violence, guardianship, juvenile delinquency and so on. He suggested that the growing demands on state court judges and staff are largely the result of stresses on the family, as well as a gradual decline in civic, community, and religious institutions and organizations.

The limitations of self-representation

In the judgment of Chief Justice Broderick of New Hampshire, the single greatest challenge confronting America's state courts in the first decade of the 21st century is the rising number of self-represented litigants, the vast majority of whom simply cannot afford a lawyer. He asked attendees whether they think it would be appropriate to tell an uninsured individual who came into the emergency room, "we can't provide medical advice about your abdominal pain, but there are some fabulous illustrated textbooks over there, and

the instruments have been recently sterilized. Good luck.”

The compelling nature of the need at the court was vividly portrayed by an Oahu family court judge, Michael Broderick. He explained that most of the parties who appear in court on the paternity calendar, for example, are poor, uneducated, often drug- or alcohol-addicted persons, often exhibiting mental health conditions, and often sharing a house with eight to twelve people, if living in a house at all. “So when I hear people talking about giving them basic information and having them represent themselves, that simply doesn’t add up,” he said. Just a week before the Conference, he’d learned that the court had lost, due to funding cuts, the help of lawyers from the Legal Aid Society of Hawaii who had been drafting the orders for the parties in the 20 to 25 paternity cases that come before him each Thursday.

Stresses on the public interest providers

During the worst economic downturn in the past seventy years, much of the funding for public interest legal service organizations has disappeared, requiring that difficult choices be made regarding cuts to staff and programs. This has occurred at the same time that the number of low- and moderate-income people needing civil legal assistance, with not only family and housing but many other personal plight matters, has significantly increased. The current state of crisis from the perspective of these nonprofit legal services organizations was clearly articulated during a panel discussion on the subject of funding moderated by Washington Chief Justice Richard Guy (retired). Nalani Kaina, Moya Gray, Executive Director of Volunteer Legal Services Hawaii, and Robin Kobayashi, Executive Director of Hawaii Immigrant Justice Center (fka Na Loio), described some of the recent loss of state funding that

these and other nonprofits had suffered. They have had to shift from a model focused on doing the work that clients need, to a model focused on doing the work that will be funded, and on sustainable, for-profit projects that cannot address the needs of most of the clients formerly served.

Barriers to public access

Conference attendees were given an opportunity to sense the frustration and personal risk associated with a number of other barriers to public access during audience participation, role-play presentations and commentary by Tracey Wiltgen, Executive Director of The Mediation Center of the Pacific, Robin Kobayashi, Nanci Kreidman, CEO of the Domestic Violence Action Center, and James Pietsch, Professor, William S. Richardson School of Law and Director of the University of Hawaii Elder Law Program. After attendees struggled to answer representative questions that might be faced by a person attempting to navigate the legal system, barriers associated with language, culture, and the interrelations between the various departments and resources within the legal system itself were illustrated within a poignant narrative based on an actual client (a Cambodian picture bride and an abusive spouse capable of manipulating the legal system).

PROMISE

“Keep making waves—change is essential. And only through change will we fulfill the promise of our founding documents.” - Chief Justice



John T. Broderick, New Hampshire Supreme Court

Not all aspects of Hawaii’s access to justice crisis could be articulated at the Conference, and not all of the problems that were articulated could be effectively engaged that day. That is the critical responsibility of the Access to Justice Commission and its committees during the months to come. But some of the promising ideas for helping to address some of the above-mentioned aspects of the crisis were reviewed at the Conference, each of which is being furthered or explored by the Commission.

Increasing pro bono

Hawaii Access to Justice Commission Chair Simeon Acoba has taken a leadership role in a campaign to encourage Hawaii’s lawyers to commit to the goal of 50 hours per year of pro bono services set by *Hawaii Rules of Professional Conduct* Rule 6.1. At the Conference, Justice Acoba acknowledged a number of professional groups that have already committed to satisfying Rule 6.1.

Family Court Judge Michael Broderick reported that he’d recently received calls from two young lawyers interested in helping with the paternity calendar following the loss of the assistance of Legal Aid. He also received a positive response when he contacted three of the largest law firms in Hawaii to ask whether any associate lawyers could assist in a pro bono fact-finder capacity for the Family Court. He expressed confidence that there are many lawyers who are interested in helping the court, and he encouraged the Conference attendees to develop a creative way to match such volunteers with the needs.

“Making rain”

During the panel discussion of the funding aspect of the access to justice crisis, Hawaii State Senate President

Colleen Hanabusa said that the Commission should not give up asking the Legislature for an increase in the Indigent Legal Assistance Fund (ILAF). However, she stressed the importance of locating other funding sources, given the importance of money for access to justice, and the vulnerability of funding sources that are subject



to decision-makers in the legislative or the executive branch. The Hawaii Consortium of Legal Service providers, the Hawaii Justice Foundation, and the Commission will continue to actively seek and develop such funding streams.

Justice Acoba noted that although the Commission is not a lobbying mechanism, it does support legal service providers by passing relevant resolutions and joining providers in visits to legislators. He mentioned that the Commission may need to consider more aggressive efforts, perhaps even the creation of a separate foundation that would be authorized to lobby.

Realizing the full evolution of the adjunct provider

During the panel discussion of non-traditional approaches to meeting civil legal needs, the author observed that many of the civil legal needs that are going unmet fall on the relatively routine end of the spectrum of services and he argued that such services would be most efficiently delivered by adjunct providers who specialize in them. Such an adjunct provider would complement the primary provider and enhance pro bono, pro se support, unbundling, and other approaches to addressing the need. The audience was invited to imagine how much less efficient the delivery of healthcare services would be without regulated, trained adjunct providers such as nurses and paramedics.

Robert LeClair, Executive Director of the Hawaii Justice Foundation, added that he knows that expanded utilization of paralegals can work. He explained that

between 1978 and 1982, during his tenure with the Legal Aid Society of Hawaii, 30 paralegals were employed under VISTA and through other compensation. The number of clients served went from 4,500 to 38,500 per year under this program.

Affirming the right to universal civil representation

During the discussion of non-traditional approaches, Robert LeClair observed that most people are in favor of access to justice in principle, and pointed out that it is actually relatively inexpensive, quoting American Bar Association estimates of an annual per person requirement that is less than 5% of the annual amount spent per person for Medicare. He argued that an affirmation of the right to counsel in civil cases, analogous to the affirmation of the right to counsel in criminal cases, would be the ultimate solution to the access to justice problem. It would move the discussion from whether we have enough money in the Legislature to give to the poor or whether the providers have behaved this year, to what is necessary to meet the mandate, he said.

In his midday address, Chief Justice Broderick referenced the American Bar Association's unanimous resolution, in 2007, in favor of a universal right to civil representation. He also mentioned that exploration of the feasibility of universal representation for civil litigants was among the recommendations made by a citizen's task force that examined the court system in New Hampshire a few years ago. He too suggested that a civil right to counsel may prove to be the only universal solution, and he observed that the emer-

gence of state access to justice commissions is a great start to generate the requisite public and legislative awareness.

Each of the above promising initiatives are being explored by the Commission and were among the recommended goals selected by the four breakout groups at the end of the Conference. Many other

recommended priority goals for the Commission were identified during the four breakout groups at the end of the Conference, to enhance pro bono, pro se facilitation, and alternative dispute resolution approaches to improving access to justice, and to increase focus on the unmet need and public awareness of the available services. The Commission's committees are also exploring many other initiatives that could not be substantively discussed at this year's Conference and were not prioritized in its breakout groups. One major example is the concept of unbundled legal services.

In her concluding remarks, Family Court Judge Evelyn Lance (retired) observed that pro bono is admirable but can fill only a small part of the need, and money is very important but will always be far from adequate. She said that she feels that the concrete developments of the Commission and its Conference are evidence that we may be at the beginning of a "paradigm change," noting that not only streamlining but also systemic changes are being contemplated. Justice Acoba, in his opening remarks at the Conference, quoted United States Supreme Court Justice Lewis Powell, Jr.: "Equal justice under law is not just a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. It is fundamental that justice should be the same, in substance and availability, without regard to economic status." Many of us are hopeful that Hawaii's new Commission will be willing to support and implement the bold, fundamental changes necessary to fulfill this promise.