

2019 Hawaii Access to Justice Conference
“Expanding Access to Civil Justice”
June 7, 2019

Workshop Summary

“Building Trust and Resolving Conflict Through Dispute Resolution”

Panel Presenters:

Tracey S. Wiltgen, Executive Director, The Mediation Center of the Pacific, Inc. (facilitator); **Paul Holtrop**, attorney with Johnson Mark, LLC, and **Julie Mitchell**, Executive Director, Ku`ikahi Mediation Center

This workshop focused on how mediation and dispute resolution processes can be developed and modified to address difficult issues such as debt collection, in non-adversarial, safe settings, including via telephone, video-conferencing, and online.

To lay the foundation for the presentation and ensuing discussion, it was reported that during the community meetings that were held across the state to gain a better understanding of the challenges faced by the underserved community as part of the 2017 Justice for All Project, many people described the court process as intimidating. Additional feedback gathered in the community meetings included that going to court was made worse by situations such as having to sit next to the person that they were requesting a restraining order against, the difficulty of finding the right court room, and the challenge of having to take time off from work. The stories reinforced that because many people find navigating the legal system scary and intimidating, they won't even show up for their hearing. Thus, other options, such as mediation and dispute resolution (“DR”), need to be available to provide people with the opportunity to be heard and to address their issues.

DR is less formal and are people-focused. Through the various stages of the process, trust is developed with the participants, enabling them to feel comfortable enough to work through their issues. One example that was shared in the presentation included debt collection mediation sessions conducted at Ku`ikahi Mediation Center (“KMC”) on the island of Hawaii. Typically, mediation sessions are scheduled at KMC with both participants initially meeting in a room together with the mediators, and then later moving to individual sessions. With the debt collection cases however, the KMC staff modified the process to allow the debtor to meet with the mediators at KMC's office, while the attorney representing the collection agency, participated via phone from their office on Oahu. Meeting with the impartial mediators at KMC's office and not having to meet face-to-face with the attorney, created a more comfortable, safe space for the debtor to work through the process with the assistance of the mediators. As

a result, realistic agreements were reached enabling the debtor to pay off their debt and avoid a court hearing process altogether.

The Mediation Center of the Pacific (“MCP”) shared a similar story in which debtors who refused to return the calls of the attorney representing the collection agency, were willing to participate in online mediation when contacted by MCP. The debtors were open to participating in the process because not only did they not need to face the attorney, but they could participate from the comfort of their home, at their own pace, after work hours. Once again, the safety and flexibility of the process that was provided, enabled the parties to reach agreements and dismiss pending court actions.

The panelists noted that DR is extremely valuable because unlike going to court, trust is built into each stage of the process. Initially, mediators “listen” to the stories of the participants who share details about their personal situation and the realities of their lives. Being “heard” is empowering, and mediators honor confidential information. The process gives the person a voice in a less stressful situation and with the assistance of the mediator, a dialogue can occur between the parties. The mediation process is generally concluded in one or two sessions at most. In court on the other hand, the parties may have to show up numerous times.

In the discussion that followed the presentation, the panel and members of the audience raised additional ideas regarding modifications that can be made to DR processes, to address a broad range of issues. For example, in high contention divorces, mediation can be conducted with the parties in separate rooms, never seeing or directly interacting with one another. For family conflicts involving the care of an elder member on the other hand, the parties may remain in the same room for the entire discussion, to encourage ongoing communication between the family members. The use of interpreters to prepare for DR, as well as during a DR process, and accommodations to enable individuals with disabilities to successfully participate, were also discussed as critical components to a successful process. Lastly, the importance of attorneys being effective advocates in DR, was highlighted. Effective advocacy in DR is different from being an effective advocate in court. Attorneys need to prepare their clients for the process, take time to listen to the opposing parties, be patient with the process, be realistic about possible outcomes and be prepared to be creative to reach a resolution.