

Hawai'i Access to Justice Conference
"Access to Justice and the Time of COVID"
June 25, 2021

Workshop Summary¹

**"Different Dispute Resolution Approaches:
Modifying the Process for the Issues and the People"**

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Mediation organizations saw increased ATJ challenges than prior to COVID
ATJ is easier for some than to others (harder on unrepresented parties
"Simplify the necessary, strip away the unnecessary"
It's what is going to help the people not what we think
Mediation itself doesn't create ATJ, but modifications to the process can help

Guidelines most important for mediation/interaction from the client perspective:

- 1) Meet people where they're at
- 2) Empathy
- 3) Design a space that's safe and allows your clients to have voice
- 4) Equal access, equal voice
- 5) Focus on the level of engagement of participants
- 6) Give people time to think about things
 - a. Using time as a strategy (i.e. giving only limited time to sign an agreement) can be bad for pro se clients as they may need more time to think things through
- 7) Balance access to justice
- 8) Participant engagement and comfort level of process
- 9) Access to justice in mediation to include child care, interpreters

Dispute Resolution Organizations:

1. *EPIC 'Ohana*
 - a. Effective Planning & Innovative Communication, or "EPIC"
 - b. Mission: Families are the foundation of our community, and their well being is inextricably linked to the health and prosperity of the community, state, and nation. EPIC 'Ohana, Inc. works to strengthen 'ohana and enhance the welfare of children and youth

¹ This workshop summary was prepared by Katharine Munk, Paralegal, Legal Aid Society of Hawai'i.

through transformative processes that are respectful, collaborative and solution oriented.

- c. Services and Programs
 - i. 'Ohana Conferencing: Family Group Decision Making for families in child welfare
 - 1. Operating via Zoom
 - ii. Youth Circles
 - 1. Working with caseworkers to create plans
 - 2. Operating via Zoom
 - iii. Family Finding & Connections
 - iv. HI HOPES/Youth Advisory Council
 - v. Family Wrap Hawai'i
 - vi. Independent Living Collaborative

2. *Family Mediation Hawai'i*

- a. Private mediation and collaborative law firm focused on supporting families in conflict to reach agreements and avoid litigation.
- b. "It doesn't have to get ugly"
- c. Services and Areas of Practice
 - i. Divorce
 - ii. Paternity/Custody
 - iii. Child Welfare
 - iv. Adoption
 - v. Legal Guardianship of an Incapacitated Adult or a Minor
 - vi. Premarital, Marital, and Post-Marital Agreements
 - vii. Family Trust Disputes
- d. Counsel to the client: "Mediation is the your last chance to control the outcome of your case before the judge does it for you"

3. *Mediation Center of the Pacific*

- a. 501©(3) nonprofit serving O'ahu
- b. Mission: Provide high quality mediation and dispute resolution services that are affordable and accessible
 - i. The only community mediation center on island serving low-income people
- c. Programs:
 - i. Community
 - 1. Landlord-Tenant
 - 2. Neighbor disputes
 - 3. Workplace
 - 4. Family issues
 - 5. Consumer-Merchant
 - ii. Specialized
 - 1. Divorce
 - 2. Custody
 - 3. Civil Rights

- 4. Special Education
- 5. Elder issues
- iii. Access ADR
 - 1. Customized process
 - 2. Ability to pick mediator from the list
- d. Accessibility:
 - i. Interpreters
 - ii. Sliding scale fees
 - iii. Informal, comfortable settings
 - iv. “Keep Separate” accommodation
 - v. Different formats
 - 1. In person, Zoom, telephone, browser-based chat
 - a. *During COVID, mediation is available in person on a limited basis if there is a barrier to not participate via Zoom (i.e. elderly, disabled, tech access limited)*
 - vi. Private rooms at the office
 - vii. Mediator training

4. *The Judiciary*

- a. Mission: Administer justice in an impartial, efficient, and accessible manner in accordance with the law
- b. Innovative Court Services (some in-person, some remote, some mixed)
 - i. In-Court Mediation Services
 - ii. Self-Help Centers
 - iii. Community Outreach Courts
 - iv. eFiling
 - v. eReminder
 - 1. www.courts.state.hi.us/ereminder
 - 2. Courtesy notification system for any member of the public with a specific upcoming Court date
 - 3. Litigant can sign up for up to three notices via e-mail or text message of upcoming Court date
 - vi. Video Remote Proceedings
 - vii. Online Document Drop-off
 - viii. Online Dispute Resolution (ODR)
 - 1. A public-facing digital space for parties to resolve their dispute or case
 - 2. Court-implemented ODR is hosted or supported by the judicial branch and designed specifically to meet the needs of the public (not lawyers, judges, or court staff)
 - 3. ODR can include tools for gathering legal information, exploring options, and managing a case from beginning to end without setting foot in a courthouse

4. Small Claims ODR: Document Management → Negotiation → Mediation
 - a. Considerations: Basic and False Assumptions
 - b. Goals: Self-service, Court participation, speedy resolution

Consideration/Tips from the Panel Q&A:

1. As the facilitator, learn to read your client. Make sure you're taking time outs and giving the client breaks. Read the body language of your client. Leave the room so the parties can consult together without a stranger watching and listening to them.
2. A lot of the clients want less, not more. Clients want to get through the dispute and solve the issue. They want to control the outcome, but don't have the time or money to go through heavy litigation. Find a way to balance 1) honoring the client's desire to figure things out between the parties and 2) following the Court's guidelines and giving proper counsel & advice. Example: Understanding that the client doesn't want to pay child support, but also not wanting the Court to bounce the divorce.
3. Mediators have no legal power. It's a safe space for people to talk. People often get intimidated because they think it's part of Court but it's not.
4. There is confidentiality with the Mediation Center of the Pacific. There are confidentiality documents to sign.

Tech Considerations:

1. Some clients prefer videoconference/telephone because they won't have to worry about running into the other party in the waiting room or in the parking lot (i.e. domestic violence considerations)
2. Clients can feel safer in their own homes that can lead to better mediation sessions. While in a space they are comfortable and familiar with, sometimes they'll share things they normally wouldn't.

Technology won't solve all our issues in modifying client access to justice in mediation. However, it can work well for some clients. Differing mediation methods work for different clients, so consider their tech access, personality, etc. in where you refer them.