

Hawai'i Access to Justice Commission  
sponsors the

**2021 HAWAI'I ACCESS TO JUSTICE CONFERENCE**

**“ACCESS TO JUSTICE AND THE TIME OF COVID”**

Friday, June 25, 2021  
William S. Richardson School of Law  
University of Hawai'i, 2515 Dole Street  
VIA ZOOM

Workshop Summary<sup>1</sup>

10:40 - 12:00 “Impact of the Coronavirus Pandemic on Access to Justice”  
[Aviam Soifer, facilitator, Chief Justice Mark Recktenwald,  
Judge Joseph Cardoza (ret.), Heather Lusk, Nalani Fujimori  
Kaina] Discussion of the current impact of the pandemic on  
civil access to justice and forward-looking initiatives.

**1. Speaker 1: Chief Justice Mark Recktenwald (“CJ”)**

- a. Proceedings were limited due to COVID, court was limited to selective hearings, access to courts was paused
- b. Panning on how to reopen courts
  - i. 70 Jury trials now had
  - ii. Opened remote hearings
    1. Switching to the zoom platform
    2. Digital access issues: Digital divide; digital kiosks were developed and guides to where to find free Wi-Fi
  - iii. Where do we want to go with remote hearings? Echoing Hon. Nancy Gertner discussed
    1. Where do remote hearings increase access?
      - a. To avoid defaults
    2. Where do remote hearings affect procedural and substantive justice?
    3. Discretion v. guidelines; presumptions for remote hearings
    4. Are there cases or categories that remote hearings can increase participation?

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<sup>1</sup> This workshop summary was prepared by Makia Minerbi, Senior Staff Attorney, Windward Office, Legal Aid Society of Hawai'i.

- iv. Self-help centers are remote: 2400 consultations, with the help of volunteers
- v. Hopefully by end of the year there will be a road map to follow
- c. Q&A:
  - i. Vaccination status on access to court house?
    - 1. CJ: Currently masks required and social distance and precautions, vaccines are not required
  - ii. Vaccination at courthouse? (Q by Heather Lusk)
    - 1. CJ: Something the court can look into.

**2. Speaker 2: Judge Joseph Cardoza (ret.) (“J.Cardoza”)**

- a. In 1st and 2nd quarters of 2020 it was clear COVID would have a huge impact
  - i. Legal Service providers moved into action
- b. Access to justice
  - i. Created Corona virus task force
    - 1. Housing during best of times is a challenge in Hawaii, housing is a serious issue and the Pandemic made it worse
      - a. Tenants (“T”) could not pay rent,
      - b. Landlords (“LL”) faced financial challenges
      - c. Thousands of Ts faced evictions
      - d. Potential for chaos
    - 2. Losses
      - a. Of housing
        - i. Consequences are serious
          - 1. Homelessness
          - 2. Impact on access to education, health care, higher costs of living
    - 3. Responses
      - a. Eviction moratorium
      - b. Rent relief programs (120 million) best kept secret in town
        - i. Commission embarked on public forums
        - ii. Now rent relief programs have rent relief programs
        - iii. Administrative challenges, but Hawaii is successful
      - c. Legislature also amend the LL/T Code.  
Legislature was proactive and reached out to

stakeholders (LL attorneys' and T's attorneys, mediators, and non-profits) in doing so.

- ii. Two commission programs
  - 1. Volunteer attorney/assistants program
    - a. Have gone through extensive training
    - b. Can accept LL/T cases
    - c. VLSH will have a ready list of attorneys' and assistants when someone needs free representation: free counsel including those in the GAP (over income from legal aid)
    - d. This is a first step to free legal assistance in civil cases (civil right to counsel)
    - e. Qualifying applicants will have full and free representation
    - f. Program is available in 3rd circuit; and it offers mentoring to new attorneys
      - i. Call for volunteers: contact the 2nd circuit Maui County Bar Association
  - 2. Limited scope representation CLEs were offered to educate the bar about Rule 11.1
  - 3. Other areas of unmet legal needs include
    - a. Domestic violence
    - b. Elderly and patients confined in a hospital

**3. Speaker 3: Representative Della Au Belatti, Esq.**

- a. House majority legislator
- b. Leg perspective
  - i. Thinking about impacts on access to basic needs
    - 1. 50,000 people would be out of job
    - 2. Housing and food security was a concern
      - a. Needed to upgrade technology (e.g., unemployment center)
    - 3. A2J Commission was critical to addressing these issues
      - a. Attorneys helped staff unemployment center
      - b. The A2J provided the infrastructure and process to convene stakeholders quickly to address needs
        - i. Early awareness in June and July 2020 of an eviction crisis
        - ii. Mediation process was going to be essential, because rent relief would not

address the problem of the backlog in the courts

iii. Moratorium allowed people to stay at home

c. Stakeholders

1. Housing chair and vice chair met with advocates on both sides: David Chee, Esq., Tom Helper Esq., Dan O'Meara, Esq., Tracey S. Wiltgen Esq. (MCP)

2. Access to making laws

a. Having stakeholders connected and in place long before legislative session arose; technology allowed this to occur

3. As a result Legislature passed House Bill 1376:

a. Extending notice provision for nonpayment of rent

b. Prefilling requirements

c. It also put money on the table \$4,050,000 for mediation capacity increase

#### **4. Speaker 4: Heather Lusk, MSW, Executive Director of the Hawai'i Health and Harm Reduction Center**

a. Three issues on the streets

i. Some houseless did not know what COVID was, could not use public bathrooms because they were closed

ii. Although could not put together housing resources quickly, put technology in the ends of people that would be released from prison

1. 300 smartphones for people involved in criminal justice

2. These were the first smart phones for some of them

3. Virtual hearings allowed case managers and service providers to attend court and support success

iii. DOH opened isolation and quarantine sites:

1. disproportionately utilized by houseless

b. Looking ahead

i. What would it look like to provide this during normal times?

- ii. White paper about providing phone, housing, and stabilization
    - iii. A2J is not just a “front end” issue, but also “back end,” so people don’t cycle back into criminal justice system
  - c. Pacific Islanders were disproportionately affected
    - i. Developed language capabilities of staff
    - ii. Culturally appropriate deployed resources
  - d. Heather Lusk is also current Chair of Partners in Care: 60 members working on ending homeless
    - i. There was a coming tsunami of evictions
    - ii. Prior focus was on chronically homeless population
    - iii. How do we pivot to homelessness prevention?
      - 1. LL engagement process: education that by renting to these communities there are benefits:
        - a. Mitigation fund
        - b. Wrap around services that can support LLs and Ts if issues arise
  - e. Q&A
    - i. How does mediation help a T who is behind on rent many months?
      - 1. Della Au Belatti: There is a problem of some LL not wanting to access funds; funds are available for both current and back rent. Mediation will be a part of this process.
    - ii. How does one volunteer for T work that J.Cardoza described?
      - 1. J.Cardoza: Just give us a call in the 2<sup>nd</sup> circuit, Maui County Bar Association

**5. Speaker 5: Nalani Fujimori, Esq., Executive Director of the Legal Aid Society of Hawaii**

- a. Observations on COVID impacts
  - i. Case numbers first dropped at the start of pandemic
  - ii. As more business closed, we began to receive inquiries from:
    - 1. COFA community
    - 2. Tenants worried about eviction and moratorium rules
    - 3. Parents health and safety about child visitation; new federal and state advisements about protections and that were coming out daily
- b. Legal Aid’s response (Education)
  - i. Attorneys Connie Liu and Sergio Alcubilla helped to develop materials to education on legal rights

1. DOH relied on our information
2. Videos were placed on Facebook Live in various languages
  - a. how to apply for Unemployment benefits
  - b. 3,000 views by members of public.
- ii. Various unit did not stop working
  1. Homeless outreach did not stop going out.
    - a. Janet Kelly: finding her own way to make things happen
  2. GAL visits continued
- iii. Dan O'Meara led charge in educating community regarding housing rights under the moratoriums
- iv. Began to innovate the delivery of services
  1. Online intake was launched
    - a. Now comprises 20% of Legal Aid's intake
  2. Online, on-demand training on eviction moratorium
    - a. 500 views
- v. Staff learned to work over Teams plat forms
- c. Legal Aid's response (Litigation)
  - i. We advocated in challenging evictions
  - ii. Filed administratively complaints due to language access
- d. Legal Aid's response (Partnerships)
  - i. FEMA unit 6
    1. Text to legal aid services
  - ii. Worked with legislature and provided input into House Bill 1376:
  - iii. Conversation with court to improve access to access in hearings
- e. Housing
  - i. Legal Aid is present at all first circuit return dates on housing cases to provide information to residential tenant
  - ii. Member of the Windward Eviction Prevention Project to support local community action teams
  - iii. Partnering with HSBA and HCAP
  - iv. Providing information sheets in various languages
- f. Other patterns we are seeing
  - i. Rise in family law cases
  - ii. More kids entering foster care
  - iii. Unemployment cases
  - iv. Women represent 2/3 of landlord tenant cases
  - v. Shift to remote work
- g. Funding

- i. We've been lucky to have been provide funding during the pandemic
- ii. But this need will continue into the future

h. Q&A

- i. What are systemic policy change for increase A2J about houseless and those released from custody?
  - 1. Citations went up, low level homeless citation, not wearing masks (Did they even have masks?)
  - 2. Calling 911 is the main way to report a homeless. This is police response to a social issue. By citing people, we put them into a cycle--criminalization of poverty or behavioral health
  - 3. In sweeps people lose their IDs; it's hard to get new IDs during the pandemic
  - 4. How to provide a balance between the public users and needs of homeless?
  - 5. At the time, the prior prosecutor did not divert cases.
  - 6. New prosecutor looked at initiating diversion program in Waikiki. This was supported to start on June 1.
  - 7. Legislation was passed to decriminalize or divert to meet needs of defendant experiencing poverty or who have mental health needs
  - 8. CJ: this legislation was outgrowth or a forum that looked at diverting non-violent petty misdemeanors
  - 9. Community outreach courts: houselessness or involved in custody related to status of being houseless.
    - a. Converting fines to community services as a way to remove barriers
    - b. Judge Lendio presides at court in various sites around parts of Oahu.
- ii. How much of the online material is captioned for attorneys?
  - 1. Sup CT had captioning; now there AI bases systems being used

## **6. Looking forward Post-Pandemic**

a. **Nalani Fujimori, Esq.**

- i. We can provide services online; it's a way to give better access, e.g. for those with childcare issues; online intake has improved access with some intakes completed at 3:00 AM

- ii. Trying to find more flexibility for clients; parking lot signings; home visits; finding ways to meet clients where they are
  - iii. Importance of civil legal services: e.g., understanding moratorium, navigating a government agency
- b. Heather Lusk, MSW**
- i. Using cell phones
  - ii. Janet Kelly: bringing legal service to drop in center
  - iii. Telehealth: medical issues as a barrier to justice
  - iv. Pivot to help housing insecure not just chronic homeless
  - v. Hoping it's easier to link and sync these issues
- c. Della Au Bellati, Esq.**
- i. Improving access to broad band and digital services
    - 1. Improve Digital equity
  - ii. HB1191 for \$5 million; creates capacity in DEBDT to draw down huge federal funding from Biden administration, with a goal of increasing availability to broad band.
  - iii. This will improve areas such as
    - 1. Telehealth
    - 2. Education
  - iv. Looking at serving unserved and underserved people
  - v. Pilot program with DV survivors in 2020: the hope is to encourage DV cases where people can get treatment
    - 1. Added funding to DV services to judiciary budget
  - vi. Access to leg process (zoom) can remain and be joined with in-person participation
- d. J.Cardoza**
- i. More members in community are looking at our economy and tourism in a different way
  - ii. Housing sold to out-state-owners will probably have impact on access to justice
  - iii. Legal Service Providers are out in battlefield; they need to meet needs in community; they need to be funded and they need to be a priority; staying at same level of funding; over time means they are falling behind; not only government funding, including private funding is needed
- e. CJ**
- i. Acknowledged collaboration that resulted in amendments to the Landlord Tenant Code
  - ii. Thanked providers and voiced need to support them
  - iii. Hawaii Supreme Court held 30 oral arguments virtually
    - 1. Will continue to live stream oral arguments moving forward



- iv. Criminal justice research institute it will look at criminal justice system: what does data actually shows and how to ensure the protection of individual rights, increasing efficiencies and controlling costs.