

by Tracey S. Wiltgen

Across the state, five non-profit community mediation centers—Kauai Economic Opportunity Mediation Center, Ku‘ikahi Mediation Center, Maui Mediation Services, The Mediation Center of the Pacific, and West Hawaii Mediation Center—are helping to increase access to justice by providing affordable and accessible mediation and dispute resolution processes for all. Throughout the year, Hawaii’s community mediation centers assist thousands of people with negotiating creative agreements that meet their unique situations. Divorcing couples and unmarried couples with children agree on time-sharing and co-parenting plans that meet the needs of the children. Landlords and tenants work out payment plans. Distressed homeowners and lenders agree on loan modifications, short sales or cash for keys. Families caring for an elder member develop family plans to support the values and needs of the elder member, and more.

In his welcoming remarks at the 2015 Access to Justice Conference, Chief Justice Recktenwald stated that, “Ensuring that every person’s voice is heard when their legal rights are threatened is not a luxury – rather it is at the very foundation of the legitimacy of our courts, and therefore, our democra-

Community Mediation Centers Increase Access to Justice



Mediators in training at Ku‘ikahi Mediation Center.

cy. We are talking about fundamental human needs – housing, health care, the ability to participate in raising one’s child. . . .” Unfortunately, due to the large volume of cases, most judges are limited in the amount of time they can actually dedicate to listening to every litigant before them. A critical component of the mediation process on the other hand, is ensuring that every participant is heard.

A key responsibility of an effective mediator is to listen to each party to fully

understand not only the facts of the case, but to also learn the underlying needs and interests of each person. When the parties feel heard and understood, their emotions subside and they are able to more realistically negotiate and problem solve. Equally important, mediators also help the parties in dispute to truly hear each other for the first time and gain an understanding of each other’s perspectives, as well as clarify and focus on the specific issues needing resolution, thus enabling them to more readily agree on solutions. This is frequently the experience at the community mediation centers with divorcing couples, homeowners and lenders, landlords and tenants, families and more. Feedback provided by some of the mediation participants include:

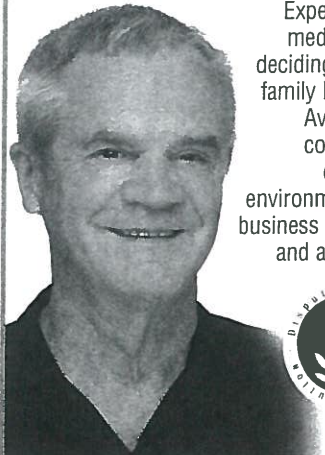
- “I appreciate the mediator for taking the time to hear out our

different sides of the situation and for helping us resolve our differences with scheduling, and working together for our son’s interest.”

- “Our mediators were amazing. We never talked so much and agreed on something in 8 months!”

- “My hope is that this agreement will help us to move forward and to communicate better. This will greatly benefit our daughter now and for the long-term.”

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• "Thank you for this process. It opens the door for communication on both sides. Resolved the issues and future problems."

Having the opportunity to be heard and understood is only one of many reasons why mediation has grown in popularity over the past twenty years as the preferred approach to resolving disputes big and small. Mediation is generally faster and less expensive than going to court. Mediation discussions are confidential and either party may end the process at any time. Equally important, a mediation settlement can be crafted to meet the individual needs and interests of the participants, and the participants themselves are responsible for designing the specific content of that mutually-agreed upon settlement.

Consider for example, a small claims matter in which what one party really wants is his/her property returned, or the completion of a repair of a car or roof, or even an apology, rather than a monetary settlement. Under Hawaii Revised Statutes ("HRS") § 633-30, a district court judge is limited to deciding whether or not money is owed and, if yes, how much should be paid. Through mediation, on the other hand, any innovative resolution that does not violate the law may be crafted by the parties themselves.

By providing an opportunity for the participants to be innovative and to play an active role in fashioning their own agreement, mediation is a powerful forum to address almost any civil dispute. Given this fact and all of the other advantages of mediation, its not surprising that most cases are now settled through mediation. Complex, costly litigation is avoided when mediators are hired to assist the parties in negotiating creative solutions. And while mediation has grown and the number of private mediators continues to increase, the community mediation centers play a more critical role in ensuring that individuals in low income and vulnerable populations likewise have access to quality mediation services for a low or no fee.

Each year, the community mediation centers assist thousands of individuals to prevent and resolve disputes and those numbers continue to grow. In fiscal year 2014-2015 ("FY14-15"), 8,280 clients were served through the various centers around the islands and 3,688 cases were managed (an increase of 10% from the prior fiscal year). Furthermore, 64% of the new cases opened during FY14-15 were cases pending in one of the district, circuit or family courts throughout the state. Altogether 2,303 cases were mediated over the course of the year.

Because mediation is fast, efficient, and less expensive than going to court, it has become the favored approach for people with financial resources and the attorneys who represent them. The community mediation centers provide the same opportunity for people with limited financial means. In fact, it is a more comfortable process for pro se individuals who can't afford representation. There are no rules of evidence or confusing legal jargon. More importantly, unlike the judicial system, the focus of mediation is the resolution of disputes, not identifying winners and losers. When parents are fighting over where their children will live, a tenant wants to work out a viable payment plan with a landlord to stay in their home, or a family is in conflict regarding the care of an elder family member, the focus should be on finding a resolution, not fighting it out in court.


Because mediation plays such a vital role in increasing access to justice, the community mediation centers must continually strive to provide a high volume of services while ensuring that those services are fair and of the highest quality. To do so, the centers provide regular support and training for the mediators who provide their services pro bono; collaborate with the civil legal service providers and other resources in the community; and design programs to address specific needs in each circuit.

Currently, a total of 304 individuals (approximately 50% of whom are attorneys), volunteer their time to conduct

more than 7,030 hours of mediation annually for the community mediation centers. To provide these services, every mediator is required to complete, at a minimum, a twenty-four hour basic mediation training. In addition, advanced mediation and specialized training in divorce mediation, foreclosure mediation, small claims mediation, civil rights mediation, condominium mediation, elder mediation, and special education mediation are also required at various centers providing those specific services. The Mediation Center of the Pacific also recruits attorneys and others with subject matter expertise in specific areas such as family law, civil rights, condominium law and more, to be trained as specialized mediators to provide pro bono mediation services in these areas.

Proper preparation of the parties prior to a mediation session may include referrals to Legal Aid Society of Hawaii, Volunteer Legal Services Hawaii, the University of Hawaii Elder Law Program, the district and family courts' Access to Justice Rooms, credit counselors and other community resources to ensure that they have the information they need to make informed decisions. Collaborations between various legal service providers and community mediation centers also involve direct outreach to individuals in the community to help them understand the various options and steps they may take to address the legal issues they are facing. For example, in the Second Circuit, Maui Mediation Services ("MMS") provides regular support to the Self Help Center at the Wailuku Courthouse. The Self Help Center relies on volunteer attorneys to assist prospective and pro se litigants with district court and family court civil matters. A MMS volunteer is regularly stationed at the center during its weekly operating hours of 9:00 am to 12:00 pm on Thursdays to inform Maui County residents about mediation and to help them determine whether or not mediation is appropriate in their situation.

Finally, while each of the mediation centers provide similar mediation programs for small claims, summary posses-



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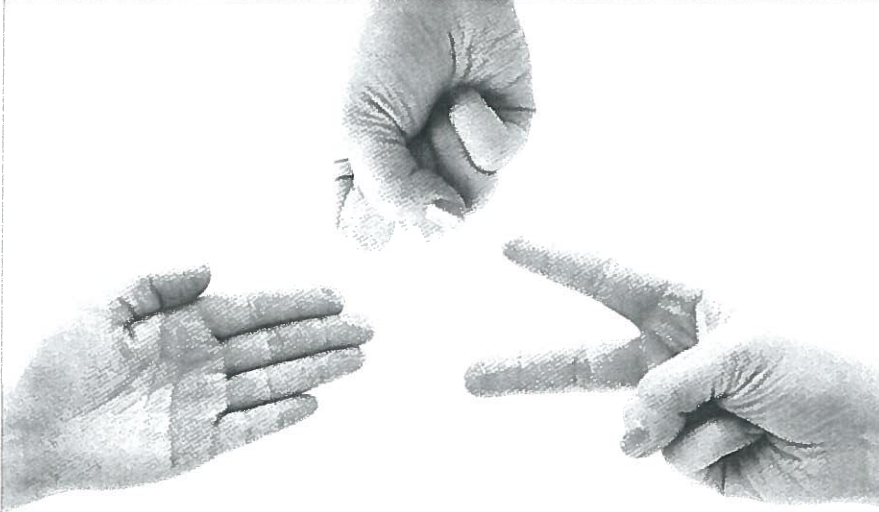
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sion and domestic matters, each have also created programs to meet the unique needs in their respective judicial circuits. For example, through a partnership between the Third Circuit Court and Ku'ikahi Mediation Center ("KMC") and West Hawaii Mediation Center ("WHMC"), lenders and borrowers have the opportunity to utilize mediation services prior to or during a judicial foreclosure proceeding. Through the program, borrowers may request mediation and, if deemed appropriate by the court, are scheduled to participate in a mediation session at one of the mediation centers. Since its inception in 2011, 179 homeowners have been helped to stay in their homes. "The mediation process provides relief to homeowners within a process they can access and understand," says Judge Greg Nakamura. "When compared to the court process, mediation is more informal and parties have more time to negotiate and, hopefully, reach a joint agreement on the terms."

In the Fifth Circuit, Kauai Economic Opportunity Mediation Program ("KEO") has a Working Agreement with the Office of the Prosecuting Attorney, County of Kauai to provide mediation services for interested victims of property crimes and minor assaults. Through the Victim-Offender Mediation Program ("VOM"), the victims have the opportunity to meet with their offenders in a safe and structured setting. Through VOM, the offenders are held directly accountable while the victims are provided with the support they need to enable them to put closure on the incident and move on in their lives.

Finally, in the First Circuit, The Mediation Center of the Pacific ("MCP") created the Adopt-A-Court Mediation Program to ensure that a sufficient number of trained mediators are available on-site at all district courts, where mediation is a mandatory process for small claims and summary possession matters. Through this Program, MCP reached out to businesses across Oahu to recruit them to "adopt" the district court

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Repainted, refreshed mediation room at Wahiawa District Court, complete with paintings to set the stage for successful mediations.

located in their local area and have members of their management team trained to serve as volunteer mediators. To date, two companies have participated in the Program. The Islander Group adopted the Wahiawa Court and Hawaiian Cement adopted the Ewa Court. Their response to the Program was so enthusiastic that the CEO of the Islander Group, Steve Holmberg, even took the initiative to roll up his sleeves to repaint and "spruce up" the mediation room at the Wahiawa Courthouse. Being a true mediator who strives to help the parties feel as comfortable as possible to increase their chances of reaching a settlement, Holmberg stated that, "I believe that it (the spruced up room) actually makes our mediations a bit easier as the room has a more comfortable and tranquil feel to it."

These are just a few examples of the varied programs and services provided by the community mediation centers that help to increase Access to Justice. According to the Department of Justice, Access to Justice is guided by the three principles of: Promoting Accessibility; Ensuring Fairness; and Increasing Efficiency. With the assistance of the more than 304 mediators who currently provide their services pro bono, Hawaii's five community mediation centers play a critical role in adhering to these principles. Kauai Economic Opportunity Mediation Center, Ku'ikahi Mediation Center, Maui Media-tion Services, The Mediation Center of the Pacific, and West Hawaii Mediation Center are committed to providing high quality, yet affordable and accessible mediation and dispute resolution services that enable Hawaii's low income and vulnerable

populations to be heard, and to negotiate solutions that allow them to resolve their disputes and move on in their lives.

Tracey S. Willgen is the Executive Director of the Mediation Center of the Pacific, a 501(c)(3) non-profit corporation that serves more than 7,000 people annually.

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