



*The Judiciary, State of Hawai'i*

**Testimony to the House Committee on Finance**

Representative Sylvia Luke, Chair

Representative Scott Nishimoto, Vice Chair

Wednesday, March 4, 2015, 11:00 AM

State Capitol, Conference Room 308

**WRITTEN TESTIMONY ONLY**

by

Andrew C. Hipp

Director, Center for Alternative Dispute Resolution

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**Bill No. and Title:** House Bill No. 492, Relating to the Judiciary.

**Purpose:** Appropriates funds for the judiciary to enter into contracts with community mediation centers for mediation services.

**Judiciary's Position:**

The Judiciary supports the intent of House Bill No. 492 to appropriate funds for contracting with community mediation centers for mediation services. We do so, however, so long as it is not at the expense of any items in the Judiciary's current budget request. The Judiciary strongly supports the use of mediation and other forms of alternative dispute resolution (ADR) and welcomes any additional support from the Legislature.

Research shows that mediation and other ADR processes generally provide more satisfactory results, can resolve disputes in less time than a trial and can be far more economical. Although the Judiciary has already allocated \$400,000 in its budget to contract for these services, any increase in the funding for contracting for mediation and other ADR services would allow the Center for Alternative Dispute Resolution and our service providers to provide additional and/or enhanced services for the people of Hawai'i.



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We respectfully request, if the Legislature acts on House Bill 492 as proposed, that funding for this bill be in addition to the Judiciary's current budget request. Again, it is important that this not result in any decrease of items presently in the Judiciary's budget, as those items have been prioritized by the Judiciary.

Thank you very much for the opportunity to testify on House Bill 492.

## **MEDIATION CENTERS OF HAWAII, INC.**

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Tel: 521-6767 Fax: 538-1454 Email: mcp@mediatehawaii.org

February 7, 2015

**TESTIMONY FROM:** Tracey S. Wiltgen, Contract Administrator, Mediation Centers of Hawaii, Inc., and Executive Director, The Mediation Center of the Pacific, Inc.

**TO:** Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice Chair  
Committee on Finance  
Hawaii State Capitol, Conference Room 308

**Re:** H.B. 492 Relating to Appropriating Funds for the Judiciary to Contract With the Community Mediation Centers Throughout the State

**Hearing:** Wednesday, March 4, 11:00 a.m. Committee on Finance

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee on Finance:

### **The Mediation Centers of Hawaii supports HB 492.**

Mediation Centers of Hawaii (MCH) is a statewide nonprofit organization whose mission is to educate and empower the people of Hawaii to resolve conflicts peacefully by providing high-quality, accessible dispute resolution services. MCH serves the people of Hawaii through the collaboration of five community mediation centers located throughout the State: KEO Mediation Program of Kauai Economic Opportunity (Kauai); Ku'ikahi Mediation Center (Hawaii); The Mediation Center of the Pacific (Oahu); Mediation Services of Maui doing business as Maui Mediation Services (Maui); and Big Island Mediation Center doing business as West Hawaii Mediation Center (Hawaii). For the last twenty-four years, through these centers, MCH has provided Hawaii's communities with affordable and accessible dispute resolution services that empower people of all ages to resolve their disputes quickly. These five community mediation centers are the only dispute resolution options in the State for people in the low income and vulnerable populations.

Since its incorporation in 1991, MCH has opened more than 77,672 cases. Over the past three fiscal years (FY 2011-2014), an average of 3,168 cases per year were referred to MCH Centers, with 71% of those cases coming from the State justice system. Yet, despite this track record of success, over the years, funding for the centers has declined. In Fiscal Year 1991-1992, funding from the Judiciary's Center for Alternative Dispute Resolution (CADR) to MCH was \$528,529. Today the contract between CADR and MCH is \$400,000 and \$10,000 of those funds support the administration of the Family Court Volunteer Settlement Master Program in the First Circuit. Thus, the available funds to support community mediation and dispute resolution services is \$390,000 annually, which represents only 25% of the community mediation centers' total annual operating budgets.

## **Community Mediation Helps to Increase Access to Justice**

Over the past fifteen years, mediation has become the favored process for addressing legal disputes of all types. While people with financial resources hire private mediators and dispute resolution professionals to resolve their disputes, the community mediation centers are the only option for making these services available to the low income and vulnerable populations. Thus, the community mediation centers play a key role in increasing access to justice by providing affordable and accessible mediation and dispute resolution services in areas such as family, divorce, custody and visitation of children of unmarried couples, landlord/tenant matters and more. Equally important is the fact that while the adversarial nature of the legal system oftentimes further damages the relationship of those in the dispute, mediation and other dispute resolution processes used by the community mediation centers, help to restore communication and improve relationships. These outcomes serve to reduce future conflicts, and ultimately strengthen families and the communities they live in.

With added funding, the community mediation centers would be able to play an even greater role in helping to increase access to justice by helping more: divorcing couples negotiate the terms of their divorce without fighting; unmarried couples with children agree on time-sharing and co-parenting plans that focus on the needs of their children; landlords and tenants to negotiate payment plans that would enable the tenants and their families to remain in their homes; and families agree on family plans to support the needs of an elderly family member.

## **Mediation and Family Conferencing are Key Goals in the Hawaii State Plan on Alzheimer's Disease & Related Dementias**

A key goal of the community mediation centers is to create innovative programs that address pressing community needs, particularly for those in the low income and vulnerable populations. A current critical need in Hawaii is helping families talk and make plans and decisions together to support elderly members. The growing elder population and limited resources to support this population has placed huge strains on families. Family conflicts related to caring for an elderly member, particularly if that person has Alzheimer's disease or a related dementia, adversely impact everyone in the family. It is for this reason that the Hawaii State Plan on Alzheimer's Disease & Related Dementias has included mediation and family conferencing as one of its targeted goals.

When families don't talk about issues impacting an elderly family member, the needs of the elderly member are often not addressed or are not addressed in a timely manner, particularly when they are in the low income population. The elderly person may not be eating, taking medication, or able to perform other basic life functions and cannot afford to hire someone to assist. Bringing family members together through mediation or other dispute resolution process, enables them to discuss the situation, access available resources, and agree on plans that can help to ensure that the elderly family members receive the assistance they need.

To address these needs, the Mediation Center of the Pacific created the Kupuna Pono Program. This unique Program provides culturally sensitive processes for families from diverse backgrounds, to discuss their issues and simultaneously incorporate the recommendations of healthcare personnel and/or other professionals into a customized plan to support the elder.

Through the Program, families are more quickly able to agree on appropriate next steps to support their elder member including transitioning from medical discharge to home or assisted living, maintaining the dignity of the elder person, strengthening the family relationship, and eliminating the need for guardianship proceedings or other legal interventions.

While this Program is still in its formative stages, it has already demonstrated success with assisting families caring for an elder member. Because it is unlike any other program and is designed to meet the unique demographics of Hawaii, the Mediation Center has already received requests for the services on other islands. Unfortunately, it is currently only available on a limited basis on Oahu. Only with additional funding will the Program be able to grow and be extended to the neighbor islands. With the funding sought through HB 492, the Kupuna Pono Program would be made available to all families throughout the State through the community mediation centers.

**Community mediation is a critical resource in Hawaii. Additional funding support through HB 492 will enable the community mediation centers to help more of Hawaii's people work through their differences quickly, without the need for formal legal services.**

The many opportunities provided by the community mediation centers to prevent and resolve disputes quickly and affordably through culturally sensitive processes are a vital resource for Hawaii's residents. The services can mean the difference between: adult siblings creating a mutually agreeable plan to support an elderly parent vs. battling it out in an adult guardianship proceeding and permanently damaging their relationship; or a couple finalizing a divorce amicably vs. the escalation of emotions and potential violence. With additional funding, the community mediation centers would be able to assist many more people, particularly those in the low income and vulnerable populations, including the elderly and their families.

Your favorable approval of HB 492 is essential to grow community mediation in Hawaii.

Sincerely,



Tracey S. Wiltgen  
Contract Administrator



# Ku'ikahi Mediation Center

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March 3, 2015

**BOARD OF DIRECTORS**

Testimony From: Julie Mitchell, Executive Director, Ku'ikahi Mediation Center  
To: Rep. Sylvia Luke, Chair & Rep. Scott Y. Nishimoto, Vice Chair  
Committee on Finance  
Re: In support of HB 492  
Hearing: Wednesday, March 4, 2015 at 11:00 a.m.  
State Capitol, Conference Room 308

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Hawai'i Island United Way

Dear Rep. Luke, Rep. Nishimoto, and Committee on Finance,

Ku'ikahi Mediation Center supports HB 492, which appropriates funds for the judiciary to enter into contracts with community mediation centers for mediation services.

Ku'ikahi has long helped to bring about peaceful resolutions to conflicts in our community—since 1983 as a program of the Hawai'i Island YMCA, and from 2006 as an independent non-profit organization. We empower people to come together—to talk and to listen, to explore options, and to find their own best solutions. To achieve this mission, we offer mediation, facilitation, and training to strengthen the ability of diverse individuals and groups to resolve interpersonal conflicts and community issues.

Ku'ikahi Mediation Center is the sole non-profit mediation center serving East Hawai'i and one of only five in the state. Our agency helps individuals, families, organizations, businesses, schools, and others to find creative solutions to challenging situations. Mediation resolutions tend to be long lasting and help to improve relationships, promote understanding, and ultimately strengthen our community.

Mediation Centers of Hawai'i (MCH)

The Mediation Centers of Hawai'i (MCH) is a 501(c)(3) representing the five community mediation centers in the state. Since its incorporation in 1991, MCH has opened more than 77,672 cases. Over the past three fiscal years (FY 2011-2014), an average of 3,168 cases per year were referred to MCH Centers, with 71% of those cases coming from the State Judiciary. Despite this track record of success, funding for the centers has declined. In FY 1991-1992, funding from the Judiciary's Center for Alternative Dispute Resolution (CADR) to MCH was \$528,529. Today the contract between CADR and MCH is \$400,000 and \$10,000 of those funds support the administration of the Family Court Volunteer Settlement Master Program in the First Circuit. Thus, the available funds to support community mediation and dispute resolution services is \$390,000 annually, which represents only 25% of the community mediation centers' total annual operating budgets.

Impact

Mediation changes lives. Here are two stories that demonstrate the impact of our services.

Two adult stepsisters were referred to mediation by the court since one was seeking a restraining order against the other. It turns out the underlying issue was the care of their father/stepfather, who was ill and dying. When the mediator asked the stepsister seeking

**We empower people to come together—to talk and to listen, to explore options, and to find their own best solutions.**

Ku'ikahi Mediation Center is a 501(c)(3) nonprofit organization, donations to which are tax-deductible. We welcome your support!

the restraining order if that was what her stepfather would want, she realized it was not. The two women were then able to work out an agreement to stay away from one another while still spending time with their father/stepfather during his final few months.

A young man purchased the home he grew up in from his parents, who continued to live there with him and contribute to his mortgage payment. Unfortunately, his father lost his job due to a prolonged illness and no longer had sufficient income to contribute. Since the young man was unable to keep up with his mortgage payments, the lender filed a foreclosure case in court, which was referred to mediation. Following a mediation session between the borrower and the lender, the young man was offered and accepted a loan modification. He now plans to move one of his parents out of a care facility and back into the family home with him.

### Need

Our mediation services are provided on a sliding scale fee schedule, and no one is turned away for lack of funds. Over 50% of our clients have annual household incomes of under \$20,000. Community mediation services provide a critical alternative to litigation, especially for poor and indigent populations who cannot afford legal counsel and/or have a hard time navigating the legal system as pro se (self-represented) litigants. In this recovering economy of high debt defaults and home foreclosures, our services are often the only option for those with low or no incomes to resolve conflicts and move on with their lives.

With additional funding, we would be able to play an even greater role in helping to increase access to justice by helping more: homeowners negotiate loan modifications to avoid foreclosure; divorcing couples negotiate the terms of their divorce without fighting; unmarried couples with children agree on time-sharing and co-parenting plans that focus on the needs of their children; and landlords and tenants to negotiate payment plans that would enable the tenants and their families to remain in their homes.

### Kupuna Pono Program

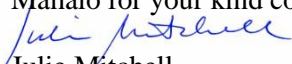
A current critical need in Hawai'i is helping families talk and make plans and decisions together to support kupuna. The growing elder population and limited resources to support this population has placed huge strains on families. Family conflicts related to caring for an elderly member, particularly if that person has Alzheimer's disease or a related dementia, adversely impact everyone in the family. It is for this reason that the Hawai'i State Plan on Alzheimer's Disease & Related Dementias has included mediation and family conferencing as one of its targeted goals.

Currently, the Mediation Center of the Pacific on O'ahu is piloting the Kupuna Pono Program. This unique program provides culturally sensitive processes for families from diverse backgrounds to discuss their issues and simultaneously incorporate the recommendations of healthcare personnel and/or other professionals into a customized plan to support the elder. Through the program, families are more quickly able to agree on appropriate next steps to support their elder member including transitioning from medical discharge to home or assisted living, maintaining the dignity of the elder person, strengthening the family relationship, and eliminating the need for guardianship proceedings or other legal interventions.

In 2014, Ku'ikahi was approached by Alan Parker, then Director of the County Office on Aging, to ask if we could offer the Kupuna Pono Program on Hawai'i Island. Only with additional funding will this program be able to grow and be extended to the neighbor islands via the five community mediation centers. With funding through HB 492, the Kupuna Pono Program would be made available to all families in Hawai'i.

Funding support through HB 492 will enable us to help more of Hawai'i's people work through their differences quickly, divert cases from our overburdened courts, and serve our most vulnerable populations.

Mahalo for your kind consideration,

  
Julie Mitchell  
Executive Director

From: mailinglist@capitol.hawaii.gov  
Sent: Saturday, February 28, 2015 4:16 PM  
To: FINTestimony  
Cc: anthony\_orozco@yahoo.com  
Subject: \*Submitted testimony for HB492 on Mar 4, 2015 11:00AM\*

**HB492**

Submitted on: 2/28/2015

Testimony for FIN on Mar 4, 2015 11:00AM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anthony Orozco	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**LATE**

Testimony in Support of House Bill 492 , From Charlene Iboshi  
Finance Committee Hearing, March 4, 2015 at 11:00 am, Conf. Rm 308  
Representative Sylvia Luke and Committee Members:

House Bill 492 is a Kupuna Caucus bill that provides funding to the judiciary to contract with community mediation centers throughout the state to handle the increasing number of issues involving decision-making disputes over the care, placement and handling of affairs of our elders.

With the "Silver Tsunami" swamping the resources available to handle our elders, family disputes are common over how to handle the affairs of our elders. The disputes may involve placements, division of property, how to care for the elders among children who are care-givers and extended family.

For the past 30 years, as a lawyer, I have seen the legal system in Hawaii embrace alternative dispute resolution as a beneficial and cost-effective way to resolve disputes. This is especially true when the dispute involves emotional issues involving those who will have an on-going relationship after an immediate dispute, such as neighbors or family members. Many times, a neutral mediator or facilitator guides all the parties to come up with a solution that is a "win-win" for everyone.

In the case of elders, sometimes because of cognitive deficits, the elders are unable to give their ideas to the resolve the matter. Thus, more innovative ways, similar to "ohana" conferencing are needed to get those who most care about the elders to develop sensible, fair and long-range solutions to issues involving the elders.

House Bill 492 provides the Judiciary funding to expand the services of the Mediation Centers to avoid costly and contentious litigation over those who do not agree about how to handle an elders' affairs, placement and care needs. This requires specialized training and different methods of dispute resolution.

These additional funds to the judiciary for expanded alternative dispute resolution options should not reduce their budget. Thank you for the opportunity to testify.