

MAR 14 2012

SENATE CONCURRENT RESOLUTION

REQUESTING THE JUDICIARY TO ENSURE THAT THE ACCESS TO JUSTICE
COMMISSION'S TASK FORCE ON ADJUNCT PROVIDERS OF LEGAL
SERVICES INCLUDES AT LEAST AS MANY NON-LAWYERS AS LAWYERS
AND REPRESENTATIVES OF CERTAIN GROUPS.

1 WHEREAS, in a constitutional democracy under the rule of
2 law, public access to the justice system is as critical as
3 public access to the creation and implementation of the laws by
4 the legislative and the executive branches; and
5

6 WHEREAS, for many low- or moderate-income people, who make
7 up about a quarter of Hawaii's population, access to civil legal
8 services is essential for meeting basic human needs such as
9 sustenance, shelter, safety, health, and even child custody; and
10

11 WHEREAS, it is the policy of the State of Hawaii, as
12 mandated in the Hawaii State Planning Act, and more
13 specifically, section 226-24, Hawaii Revised Statutes, to assure
14 access to, and availability of, legal assistance, consumer
15 protection, and other public services which strive to attain
16 social justice; and
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18 WHEREAS, doing our best to ensure public access to basic
19 civil legal services is an affirmation of the founding
20 democratic ideal of justice for all, a matter of basic empathy,
21 and a foundation for social stability; and
22

23 WHEREAS, doing our best to ensure public access to basic
24 civil legal services helps alleviate the economic burden
25 associated with the failure to meet basic human civil legal
26 needs, as demonstrated by a 2006 Wisconsin study *Increasing
27 Access to Restraining Orders for Low-Income Victims of Domestic
28 Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse
29 Grant Program*; a 2009 Texas study *The Impact of Legal Aid
30 Services on Economic Activity in Texas: An Analysis of Current
31 Efforts and Expansion Potential*; and a 2012 Massachusetts study



1 *Civil Legal Aid Yields Economic Benefits to Clients and to the*
2 *Commonwealth: Some Benefits from FY11 Advocacy; and*

3
4 WHEREAS, according to the 2007 Assessment of Civil Legal
5 Needs and Barriers of Low- and Moderate-Income People in Hawai'i
6 ("2007 Assessment"), fewer than one in four low- and moderate-
7 income people (22.84 percent) receive help when they have a
8 civil legal need, and subsidized public interest legal service
9 providers serve fewer than one in three (29.33 percent)
10 individuals who contact them for assistance; and

11
12 WHEREAS, according to the 2007 Assessment, the areas with
13 the greatest unmet civil legal need for Hawaii's low- and
14 moderate-income people are housing (24 percent), family (23
15 percent), domestic violence, (8 percent), consumer (7 percent),
16 health (6 percent), public benefits (5 percent), and education
17 (5 percent); and

18
19 WHEREAS, the severity of unmet civil legal needs and the
20 funding crisis for public interest legal service organizations
21 in Hawaii have intensified since 2007 during the worst economic
22 downturn in the United States in over seventy years; and

23
24 WHEREAS, studies show that failure to address one basic
25 human civil legal need, such as housing, often compounds the
26 legal need - and associated costs for the State - in other
27 areas, such as domestic violence; health, including emergency
28 care, substance abuse, and psychiatric conditions; family,
29 including divorce, juvenile delinquency, and long-term
30 psychological effects on children due to family instability; and
31 education, including absenteeism and low achievement associated
32 with homelessness and dislocation; and

33
34 WHEREAS, chronically unmet basic human civil legal needs
35 can be distinguished from commercial civil legal needs and human
36 civil legal needs that may be more discretionary and less basic,
37 such as financial planning, or better served, such as personal
38 injury; and

39
40 WHEREAS, many of the specific types of chronically unmet
41 basic human civil legal needs, such as evictions or uncontested
42 divorces, manifest within discrete legal areas governed by



1 relatively stable law and predictable concept and fact patterns;
2 and
3

4 WHEREAS, the Judiciary, especially through the Hawaii
5 Access to Justice Commission ("Commission"), has made
6 extraordinary efforts to improve access to justice, notably
7 through creative indigent legal services surcharges and filing
8 fees; funding for subsidized public interest legal service
9 providers; enhanced pro bono lawyer services; enhanced
10 facilitation for *pro se* claimants; efforts to reduce language
11 barriers; a foreclosure mediation pilot program on the Island of
12 Hawaii; a higher small claims jurisdictional amount; increased
13 awareness of barriers to access to justice; better coordination
14 of legal service providers; and other initiatives; and
15

16 WHEREAS, in the Access to Justice Hui's 2007 report titled
17 *The Community Wide Action Plan: Ten Action Steps to Increase*
18 *Access to Justice in Hawai'i by 2010* ("2007 Community Wide Action
19 Plan"), the Hui recommended that the Judiciary encourage the
20 training and regulation of paralegals and paralegal practice to
21 meet particular types of unmet needs for legal services; and
22

23 WHEREAS, the Supreme Court of Hawaii affirmed the Access to
24 Justice Hui's recommendation for training and regulation of
25 paralegals by adopting Rule 21(b)(10) of the *Rules of the*
26 *Supreme Court of the State of Hawaii* in 2008, mandating that the
27 Commission endeavor to "increase effective utilization of
28 paralegals and other non-lawyers in the delivery of civil legal
29 services to low-income Hawai'i residents"; and
30

31 WHEREAS, at its March 14, 2011, meeting, the Commission
32 approved the creation of a task force on adjunct providers to
33 examine and develop recommendations to increase the
34 effectiveness of adjunct providers of civil legal services,
35 including paralegals, including the types of unmet need that may
36 be addressed by the adjunct provider, the types of limited
37 practice that may be most effective, and the types of education
38 and regulation that may be required; and
39

40 WHEREAS, the benefits to the public from a robust regulated
41 adjunct provider that serves relatively neglected critical and
42 substantive sub-areas of basic need are well known in the



1 medical field, where nurses and paramedics play a prominent role
2 in medical care; and

3
4 WHEREAS, a parade of sections of the American Bar
5 Association, consortia, commissions, committees, law journal
6 articles, and books have emphasized the importance of non-lawyer
7 adjunct providers of civil legal services in improving access to
8 civil legal services; and

9
10 WHEREAS, the white paper by Deborah L. Rhode and Dmitry Bam
11 entitled *A Roadmap to Justice*, which was presented at Stanford
12 University's 2008-2009 Roadmap to Justice forum, observed that
13 "[a]lmost all of the scholarly experts and commissions that have
14 studied the issue have recommended increased opportunities for
15 such [non-lawyer] assistance. Almost all of the major decisions
16 by judges and bar associations have ignored those
17 recommendations. The American Bar Association's ("ABA") most
18 recent initiatives in this area have attempted to strengthen
19 enforcement of unauthorized practice prohibitions against lay
20 competitors, and many state and local bars have launched similar
21 efforts. Yet research concerning nonlawyer specialists in other
22 countries and in American administrative tribunals suggests that
23 these individuals are generally at least as qualified as lawyers
24 to provide assistance on routine matters where legal needs are
25 greatest"; and

26
27 WHEREAS, studies such as *Lawyers and Non-Lawyers at Work* by
28 Professor Herbert Kritzer and "Contesting Professionalism:
29 Legal Aid and Nonlawyers in England and Wales," 37 *Law & Soc'y*
30 *Rev.* 765 (2003) by Richard Moorhead, et al., have empirically
31 demonstrated the safety and effectiveness of adjunct providers
32 of certain basic human civil legal services; and

33
34 WHEREAS, adjunct providers of civil legal services, as
35 employees of subsidized public interest legal service
36 organizations, would be able to deliver substantive basic civil
37 legal services to low-income people without supervision and at
38 lower cost, self-employed regulated adjunct providers would be
39 able to deliver basic civil legal services to moderate-income
40 people at lower cost, and both types of adjunct providers would
41 be effective pro bono providers of legal services; now,
42 therefore,



1 BE IT RESOLVED by the Senate of the Twenty-sixth
 2 Legislature of the State of Hawaii, Regular Session of 2012, the
 3 House of Representatives concurring, that the Judiciary is
 4 requested to ensure that the Access to Justice Commission's task
 5 force on adjunct providers of legal services includes at least
 6 as many non-lawyers as lawyers; and

7
 8 BE IT FURTHER RESOLVED that the Access to Justice
 9 Commission's task force on adjunct providers of legal services
 10 is requested to include a representative or representatives from
 11 each of the following categories:

- 12
 13 (1) Consumer groups and other associations of those with
 14 unmet basic human legal needs;
 15
 16 (2) Social service providers familiar with the
 17 consequences of unmet basic human civil legal needs;
 18
 19 (3) Evolved regulated adjunct providers, such as nurses
 20 and paramedics; and
 21
 22 (4) Offices within the Department of Commerce and Consumer
 23 Affairs that are familiar with the regulation of
 24 existing specialist adjunct providers of legal
 25 services; and
 26

27 BE IT FURTHER RESOLVED that certified copies of this
 28 Concurrent Resolution be transmitted to the Chief Justice of the
 29 Supreme Court of Hawaii, Access to Justice Commission, Director
 30 of Commerce and Consumer Affairs, President of the Senate,
 31 Speaker of the House of Representatives, Chair of the Senate
 32 Committee on Judiciary and Labor, and Chair of the House
 33 Committee on Judiciary.
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 35
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