



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S. C. Keith-Agaran, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

Friday, March 20, 2015, 9:15 AM
State Capitol, Conference Room 016

WRITTEN TESTIMONY ONLY

by
Andrew C. Hipp
Director, Center for Alternative Dispute Resolution

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.

Testimony in Support of House Bill 492,

From Charlene Iboshi, Policy Advisory Board for Elder Affairs,
Legislative Sub-committee Member

Senate Judiciary and Labor Committee
Hearing, March 20, 2015 at 9:15 am,
Conf. Rm 016

To: Honorable Senator Keith S.C. Keith-Agaran, Chair, 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 for elder issues. The Alternative Dispute Resolution would be an alternative to costly and lengthy litigation. The expanded mediation services would handle the increasing number of issues involving decision-making disputes over the care, placement and handling of affairs of our elders. The State Policy Advisory Board for Elder Affairs, Legislative Sub-committee supports the bill.

With the “Silver Tsunami” swamping the resources available for 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. I, too, had care-giver responsibilities for my parents and mother-in-law, and understand the “strains” and misunderstandings siblings have when they do not live with the elder, but manage from “a distance.”

For the past 30 years, as a lawyer and Prosecutor, I have seen the legal system in Hawaii embrace alternative dispute resolution as a beneficial and cost-effective way to resolve conflicts. This is especially true when the dispute involves emotional issues involving those who will have an on-going relationship after the 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 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.

House Bill 492 provides additional funds to the Judiciary to expand alternative dispute resolution options involving elder-driven matters, and should not reduce the Judiciary’s current budget.

Thank you for the opportunity to testify. For the sake of the elders and their caregivers and extended family, please pass this funding bill. Additionally, consider incorporating the funding into the Judiciary’s bi-ennium budget package to provide the Judiciary with the flexibility to continue the program for a two year cycle.

MEDIATION CENTERS OF HAWAII, INC.

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March 17, 2015

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

TO: Senator Gilbert S. C. Keith-Agaran, Chair
Senator Maile S. L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor
Hawaii State Capitol, Conference Room 016

Re: HB 492 Relating to Appropriating Funds for the Judiciary to Contract With the Community Mediation Centers Throughout the State

Hearing: Wednesday, March 20, 9:15 a.m. Committee on Finance

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee on Judiciary and Labor:

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

Testimony

NOTICE OF HEARING
Thursday, March 19, 2015

Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Relating to the Judiciary
Bill No. and Title: H.B. 492
Appropriations funds for the Judiciary,
to Contract, With the Community Mediation Centers
Throughout the State of Hawaii.

by
Jessie M. Basquez
Director, Mediation Program, Kaua`i Economic Opportunity Incorporated (KEO).

My name is Jessie M. Basquez, the Mediation Director of Kaua`i Economic Opportunity Incorporated (KEO). I wish to testify in support of H.B.492 relating to the Judiciary to support the judiciary budget, in particular, to support the Mediation Centers of Hawaii (MCH).

The Mediation Centers of Hawai`i (MCH), is a state wide organization dedicated the development of Mediation services throughout the State of Hawai`i. There are five Mediation Community Centers throughout the State that serves the people of Hawaii collaboratively. Ku`ikahi Mediation Center (Hawaii); the Mediation of the Pacific (Oahu); Mediation Services of Maui doing business as Maui Mediation Services (Maui); Big Island Mediation Center doing business as West Hawaii Mediation Center (Hawaii); and KEO Mediation Program of Kauai Economic Opportunity Incorporated (KEO). These Mediation Centers have administered and provided Hawaii`s communities an affordable and informal process for disputing parties that empower the parties to communicate with each other in a manner that enables them to work towards a mutually agreeable resolution to their specific problem and when necessary, create agreements that are fair, efficient, durable and equitable. MCH firmly believes that the statewide organization strengthens each individual agency, upholds statewide standards for quality and fair mediation and in particular, keen towards the needs of those in poverty with special needs-and those who at times are not able to obtain a resolution to conflict.

Kauai Economic Opportunity, Incorporated (KEO) is a private, non-profit agency incorporated on March 16, 1965. KEO is a Community Action Agency on Kauai. Primarily KEO`s services are offered to the economically underprivileged members of the community, to alleviate the conditions of poverty and assist disadvantaged individuals and families to attain social and economic self-sufficiency.

KEO has assisted individuals, businesses, agencies, groups and organizations that represent the full spectrum of economic and social status of the island in its Mediation Program. KEO Mediation Program beginning in 1982, has been an important resource for the County of

Kaua`i in the public sector, the private sector, and the judiciary system. This translates to proficient, quality service for the members of the community and the judiciary system.

The KEO Mediation Program collaboratively works with other private and social service agencies in serving the members of the community. The Mediation Program has innovatively expanded services in new areas such schools, youth programs, organizations and private businesses through public awareness about Mediation as an alternative for dispute resolution.

Currently, the KEO Mediation Program is working with the faculty at Waimea and Kapaa High Schools, in the Student Peer Mediation Program. In collaboration with Kapaa, Waimea, Kauai high schools & KEO Kapaa High School Peer Mediation club will sponsor the first Peer Mediation Conference on Kauai. Approximately two hundred students are expected to attend the event this year. The KEO Mediation Program is participating in the planning of the conference.

Mediation strives for conflicting parties to agree to a resolution and most do. Although agreements are not always reached, participants frequently comment that the process helped them understand various perspectives, interests and needs of others that will benefit them in future interpersonal relationships. Mediation fosters communication and problem solving with individuals in all aspects of their lives. With the assistance of a trained neutral volunteer mediator, Kauai's residents have saved money and relationships which could have ended in an escalated conflict. In the past 12 month period KEO's Mediation Program facilitated, two hundred seventy one (271) mediation cases, serving approximately six hundred sixty three (663) individuals, involving conflict in the following areas: Landlord/Tenant, Consumer /Merchant, Real Estate, Small Claims, Family and divorce, unfair business practices, educational conflicts, condominium, temporary restraining orders, and restorative justice.

Through the provision of KEO's involvement an additional 50 student Peer Mediated cases were satisfied within the schools in the following areas: student verses student, rumors, restorative justice, and cyberbullying.

KEO provides ongoing trainings in Basic and Divorce Mediation. Providing Mediation opportunities for members of the community who are facing complex issues. Providing sufficient training to increase the volunteer mediator pool is crucial. The program utilizes team mediators for the Mediation Program, which may often require several mediations sessions. With sufficient Mediation training this would increase the volunteer mediator pool and help alleviate burnout.

KEO is most sensitive to the dire economic state of the State of Hawaii, but firmly believes that this program interferes in the ills of conflict and poverty and if not allowed to continue will result in a rampant increase in the negative behavior of conflict.

I thank you for your consideration of my testimony and your support on the Contract regarding the Mediation Centers of Hawaii, Community Mediation Centers, throughout the State of Hawaii.