

## **“Increasing Access to Justice --What’s Mediation Got to Do With It?”**

**Panelists: Honorable Judge Kanani Laubach, Honorable Judge Adrienne Heely Caires (Ret.), Bevanne Bowers, Executive Director, Maui Mediation Services, and Julie Mitchell, Executive Director, Ku`ikahi Mediation Services.**

**Panel Moderator: Tracey Wiltgen, Executive Director, The Mediation Center of the Pacific**

In response to over-crowded courts, the high cost of litigating, and the desire for a different approach for addressing community conflicts, in the late 1960s and 70s, community mediation blossomed across the country. Hawaii followed the trend with the creation of The Mediation Center of the Pacific on Oahu, Kauai Mediation Center, Maui Mediation Services, and Ku`ikahi Mediation Center and West Hawaii Mediation Center on the island of Hawaii.

The Hawaii courts quickly embraced mediation referring small claims, landlord-tenant, domestic, and other matters to every center. And while mediation has grown over the years and there are now many private mediation providers whose costs and approaches can vary significantly, the community mediation centers remain the only affordable dispute resolution option for individuals in the low-income and vulnerable populations.

Today, the five centers collectively manage over 5,000 cases annually including opening 4,369 new cases last year and mediating 2,403 cases involving 11,776 mediator hours. 1,586 of the cases mediated were referred directly from the district, circuit, and family courts in the areas of landlord-tenant, consumer-merchant, domestic, and restraining orders. All areas in which access to justice is most needed.

To ensure mediation is accessible for all, the community mediation centers work closely with the courts in their respective circuits, as well as partner with legal service providers such as Legal Aid and Volunteer Legal Services, other nonprofit organizations serving critical community needs including Catholic Charities and the Council for Native Hawaiian Advancement, and more.

Judges Laubach and Heely Caires described a variety of approaches to increase access to justice at court including incorporating Turbo court, the use of forms, the continued use of zoom, different types of calendars, the self help desks, and more recently, QR codes that can quickly connect parties to the required forms and other resources.

The judges also stressed the importance of the partnerships between the courts and the community mediation centers noting that mediation is a way for people to feel good in their community, it helps people communicate, and even if there is no agreement, mediators narrow the issues so there is clarity when the parties return to court.

Mediation center Executive Directors Bevanne Bowers and Julie Mitchell, shared that with community mediation, the mediators are trained in a facilitative approach that empowers

the parties themselves to make their own decisions. The parties in mediation are helped to feel as comfortable as possible by providing interpreters, keeping parties separate when they don't want to be in the same room, ensuring they are "heard" and they have a voice in the process, and directing them to the resources they need to make informed decisions. Thus, community mediation is less threatening for the mediation participants than going to court.

It was emphasized that with court ordered mediations, when the judges explain the process before sending the parties to mediation, it lays the foundation for a productive process. Additionally, when attorneys participate, client preparation and education to be open to options for resolution is critical.

Challenges to mediation including language barriers, technical challenges, and power imbalances are all addressed through process design and support provided by the community mediation centers. Parties have the option of participating in person or via Zoom. And if they want to participate via Zoom and don't have the equipment or comfort level to do so, every mediation center offers the option of participating via Zoom at their office. Interpreters are used during the intake process, as well as during the mediation, and power imbalances are addressed by allowing support persons to participate, as well as through the use of private and joint sessions.

The greatest challenge noted, was encouraging the use of mediation early, before going to court. The Judges and the Executive Directors agreed that accessing mediation early was preferred, and more likely to result in a settlement. Ideas for promoting early mediation were solicited from the workshop participants.

In conclusion, the panel agreed that the answer to the question of "what's mediation got to do with access to justice", is "mediation leads to resolution." Equally important community mediation results in greater satisfaction of the parties than going to court. They leave feeling heard and empowered to reach agreements that work for them.