



Hon. Daniel R. Foley
Associate Judge
Intermediate Court of Appeals
Chair

HAWAII ACCESS TO JUSTICE COMMISSION

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December 30, 2015

Email transmission

repsouki@Capitol.hawaii.gov

Honorable Joseph M. Souki
Speaker of the House
Hawaii State Capitol
415 South Beretania Street, Room 431
Honolulu, HI 96813

Re: House Resolution No. 12, H.D. 1, Requesting the Hawaii Access to Justice Commission to Assemble Various State and Community Entities to Determine Which Agency or Organization Should Administer Funding for Civil Legal Services to Low- and Moderate-Income Individuals

Dear Speaker Souki:

Pursuant to House Resolution No. 12, H.D. 1, the Hawai'i Access to Justice Commission was requested to assemble a "working group of interested government agencies and community entities to conduct meetings to develop a plan for determining which agency or organization should administer funding for civil legal services."

The plan of the Working Group to Determine a Funding Administrator of Civil Legal Services¹ is hereby submitted.

The Working Group recommended that the Judiciary be assigned the administration of funding for civil legal services. The Working Group's plan was reviewed by the Hawai'i Access to Justice Commission on December 21, 2015, and was approved. The Commission supports all efforts in the plan by nonprofit organizations that provide civil legal services to the low-and moderate-income Hawai'i residents. The perspective of the Commission is to be all-

¹ A list of the Working Group's members is attached to the plan as Attachment A.

inclusive in terms of funding for all civil legal services that provide access to justice to those who are currently underserved.

The Commission commends the Working Group for its diligence in preparing the aforementioned plan. The Working Group met on Tuesday, August 11, 2015; Tuesday, September 15, 2015; Tuesday, October 20, 2015; Monday, November 9, 2015; and Tuesday, December 15, 2015.

If you have any questions, please telephone me at 539-4698, or email me at Daniel.R.Foley@courts.hawaii.gov.

Very truly yours,

A handwritten signature in black ink that reads "Daniel R. Foley". The signature is written in a cursive style with a long, sweeping tail on the letter 'y'.

DANIEL R. FOLEY
Associate Judge
Intermediate Court of Appeals
Chair
Hawai'i Access to Justice Commission

cc: Chief Justice Mark E. Recktenwald
Hawai'i Supreme Court

Plan for the Administration of Funding for Civil Legal Services

I. Working Group Recommendation

The Working Group recommends that funding in the amount of \$2,159,632¹ be provided from state general revenue funds (A funds) to maintain and restore civil legal services for low- and moderate-income individuals to pre-recession levels, specifically at least to the fiscal year 2008, through a purchase of service contract administered by the Judiciary which may seek the assistance of a nonprofit organization with at least five years' experience in administering grants to providers of civil legal services for indigents. The fund administrator shall receive not more than five per cent of the total amount allocated for these services each fiscal year as compensation for administering these grants. The Working Group is making this recommendation to address the recognized need for stable, ongoing funding of general civil legal services for the low- and moderate-income Hawai'i residents through purchase of service contracts. The Working Group believes that a comprehensive perspective for future funding of these civil legal services is essential rather than the current ad hoc approach.

II. House Resolution No. 12, H.D. 1

The House of Representatives of the Twenty-eighth Legislature of the State of Hawai'i, Regular Session of 2015, requested the Hawai'i Access to Justice Commission to assemble a working group of interested government agencies and community entities to conduct meetings to develop a plan for determining which agency or organization should administer funding for civil legal services.²

This Working Group was convened in August 2015 and included representatives from fifteen governmental bodies, agencies, entities, and non-profit organizations. A list of the members of the Working Group is included as Attachment "A."

It was requested that the plan include:

- 1) A history of state funding of civil legal services and the issues historically faced by civil legal service providers in providing service to low- and moderate-income individuals;

¹ This recommended amount does not include current recurring civil legal services funding for domestic violence services procured through the Judiciary or funding for Native Hawaiian rights legal services which is currently contracted through the Office of Hawaiian Affairs.

² The Hawai'i Senate issued a similar, but not identical Resolution: Senate Resolution No. 6, S.D. 1.

- 2) An analysis of the benefits and barriers to assigning the administration of funding for civil legal services to each of the participating agencies or organizations;
- 3) Recommendations on which agency or organization should administer funding; levels of funding for civil legal services; and if enabling legislation is necessary, a proposal for such enabling legislation.

III. History of State Funding of Civil Legal Services

A. The Importance of Legal Services to Low- and Moderate-Income Residents of Hawai'i

The “2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People in Hawai'i”³ found that only 1 in 5 low- and moderate-income people in Hawai'i have their legal needs met and only 1 in 3 who apply for legal assistance from legal service providers are able to be served.

The importance of legal services provided by organizations as the American Civil Liberties Union of Hawai'i, Domestic Violence Action Center, Hawai'i Appleseed Center for Law and Economic Justice, Hawai'i Disability Rights Center, Legal Aid Society of Hawai'i, Native Hawaiian Legal Corporation, University of Hawai'i Elder Law Project, and Volunteer Legal Services Hawai'i to the safety net of services provided for the most vulnerable in our community cannot be overstated. These services help to ensure that:

- A mother is able to get a restraining order and legal custody of a child, so that this child has stability and security, which is a foundation for being able to learn in school;
- A homeless person with disabilities is able to get identification and social security so that they can obtain permanent housing;
- A mother of four children is able to get child support and a portion of her husband's retirement instead of going on public assistance;
- Grandparents are able to take guardianship over their two grandchildren whose parents are using drugs rather than having the children enter the child welfare system;

³ Access to Justice Hui, Achieving Access to Justice for Hawaii's People: The Communitywide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai'i by 2010 and The 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People in Hawai'i, November 2007. This report will be referred to hereafter as the “Access to Justice Hui 2007 Report.”

- A labor trafficking victim from Laos is able to get his green card so that he can lawfully work and pay taxes;
- A senior is able to prepare for incapacity by completing an advanced health care directive and power of attorney for financial decisions so that his family need not go to court to seek guardianship over him to make those decisions;
- Private landlords are held to their responsibility to provide accessibility to their properties and to not discriminate against those with disabilities; and
- Native Hawaiians are able to engage in their traditional and customary practices for subsistence, cultural, and religious purposes.

Together these organizations, as members of the Hawai'i Legal Service Provider Consortium, help maintain a critical balance of justice in Hawai'i.

At the 2015 Access to Justice Conference sponsored by the Hawai'i Access to Justice Commission, Hawai'i Supreme Court Chief Justice Mark Recktenwald said:

One of the greatest challenges to equal justice today is the lack of effective access to our civil justice system. The reason is simple--people who have low or even moderate incomes cannot afford to hire an attorney to represent them in their civil legal cases. Although there are legal services providers like the Legal Aid Society of Hawai'i who do an amazing job representing indigent clients, they have nowhere near enough resources to meet the need. As a result, every year in Hawai'i, thousands of people must represent themselves in our civil courts, trying to navigate a system that is foreign to the average layperson. Many of them simply give up.

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 democracy. We are talking about fundamental human needs--housing, health care, the ability to participate in raising one's child. When these decisions are made without hearing every side of the story, the promise of justice for all rings hollow.

The fundamental human needs that Chief Justice Recktenwald references are exactly what the Hawai'i Legal Service Provider Consortium has been trying to meet.⁴

Unfortunately, the lack of available funding for legal services in Hawai'i for the poor make it impossible to serve all those who are in need of services. Members of the Hawai'i Legal Service Provider Consortium are supported by federal, state, and private funds. Not all organizations receive state funding, but for those who do, the funding received from the state is critical for on-going operations.⁵

B. Historic State General Revenue Funding (A Funds) for Civil Legal Services to the Low- and Moderate-Income Hawai'i Residents

Historically, the State of Hawai'i has supported civil legal services to the poor since at least 1976. State funding was provided at that time through contracts to the Legal Aid Society of Hawai'i. Over the years, state general revenue funding (A funds) for civil legal services has also been provided to the Hawai'i Disability Rights Center,⁶ Native Hawaiian Legal Corporation, Domestic Violence Action Center,⁷

⁴ See Hawai'i Consortium of Legal Service Providers, "Legal Service Providers Delivering Services to the Community," Hawaii Bar Journal, April 2011. This article describes one day in the life of the legal services providers. For example, on that one Valentine's Day, 2011, they had 824 calls with clients and 268 in-person contacts. The assistance included:

- assisting a homeless person with her application for SSI;
- helping a human trafficking victim with an application for legal immigration status;
- writing a guardian ad litem report which recommended reunification of a child with her mother;
- assisting a guardian with a power of attorney to enroll a child in school;
- making a call to an insurance agent to correct an error that showed a lapse of the life insurance policy;
- agreeing to represent a client in a custody case where the father is confirmed to have sexually molested the child;
- helping a victim obtain a restraining order;
- reviewing a child support order;
- counseling a client who was in tears after her collection hearing.

⁵ Of the members of the Hawai'i Legal Service Provider Consortium, the American Civil Liberties Union of Hawai'i, Hawai'i Appleseed Center for Law and Economic Justice, Hawai'i Disability Rights Center and the University of Hawai'i Elder Law Project do not receive general state revenue funds ("A" Funds) for the on-going provision of civil legal services to the low- and moderate-income individuals.

⁶ The Hawai'i Disability Rights Center was founded as Kahua Ho'omalua Kina (A Place for the Handicapped) in 1977 and shortly thereafter began doing business as the Protection and Advocacy Agency of Hawai'i.

⁷ The Domestic Violence Action Center was founded as the Domestic Violence Clearinghouse and Legal Hotline.

Volunteer Legal Services Hawai'i,⁸ and the Hawai'i Immigrant Justice Center,⁹ which merged with Legal Aid in 2010.

Over the last ten years, state general revenue funding for civil legal services has ranged from a low of \$968,711 during the recession to a high of \$3.2 million before the recession. Funding has been provided to organizations like the Legal Aid Society of Hawai'i ("Legal Aid") and Volunteer Legal Services Hawai'i ("Volunteer Legal") for general civil legal services and to organizations like the Domestic Violence Action Center ("DVAC"), the Native Hawaiian Legal Corporation ("NHLC"), the Hawai'i Immigrant Justice Center ("HIJC") and the Hawai'i Disability Rights Center ("HDRC") for more specialized civil legal services aimed at a particular population.

The amounts listed on the chart were gathered from each organization's records and only reflect state general revenue funding (A funds). Funds included in this chart are from both direct grant-in-aids to the respective organizations and through purchase of service ("POS") contracts. Details on the state general revenue funding (A funds) for each organization is specified below the chart.

⁸ Volunteer Legal Services Hawai'i was founded as Hawai'i Lawyers Care.

⁹ The Hawai'i Immigrant Justice Center was founded as Na Loio Na No Kanaka and was also known as Na Loio.

	General Civil Legal Services ¹⁰		Specialized Civil Legal Services ¹¹				Total
	Legal Aid	Volunteer Legal	DVAC ¹²	HIJC	HDRC	NHLC ¹³	
FY 06	\$ 649,000	\$ 200,000	\$ 499,556	\$ 249,475	\$ 165,505	\$ 530,482	\$2,294,018
FY 07	649,000	400,000	597,095	249,475	165,505	567,302	2,628,377
FY 08	810,000	600,000	642,718	422,496	165,505	592,302	3,233,021
FY 09	800,000	400,000	695,218	292,683	165,505	491,981	2,845,387
FY 10	0	0	495,631	0	No longer receiving any state general revenue funds	473,080	968,711
FY 11	0 ¹⁴	0 ¹⁵	632,548	Merged with Legal Aid		524,400	1,156,948
FY 12	720,000	300,000	482,534			524,400	2,026,934
FY 13	800,000	400,000	482,534			524,400	2,206,934
FY 14	400,000	250,000	500,384			524,400	1,674,784
FY 15	150,000	200,000	525,343			524,400	1,399,743
FY 16	400,000	200,000	481,087			524,400	1,605,457

1. Legal Aid Society of Hawai'i

Legal Aid Society of Hawai'i ("Legal Aid") has received state general revenue funds for the provision of general civil legal services to low-income people since the mid-70s. Until fiscal year 2005, a POS contract for civil legal services was issued by the Department of Labor's Office of Community Services. Since fiscal year 2005 Legal Aid received a grant-in-aid from the legislature, primarily through the Judiciary, except for years during the recession and in fiscal 2016 when a POS contract was issued through the Judiciary.

¹⁰ Funding for General Civil Legal Services was funded through the grant-in-aid process from fiscal year 2005 to fiscal year 2014. This year, General Civil Legal Services were funded through a purchase of service contract through the Judiciary, but only for fiscal year 2016. Previously, Legal Aid received funding through a purchase of service contract until fiscal year 2005 when it became a grant-in-aid. Volunteer Legal's funding had always been through the grant-in-aid process.

¹¹ Funding for Specialized Civil Legal Services for DVAC and NHLC is currently funded through the purchase of services process. Previous funding for HIJC was through the purchase of service contract process until fiscal year 2005 when it became a grant-in-aid. HDRC funding was always through a purchase of service contract process.

¹² The amount listed below for DVAC is only the portion received by the agency to provide civil legal services. This is estimated at 35% of the total funding received.

¹³ Funding for NHLC is provided through a POS contact from the Office of Hawaiian Affairs.

¹⁴ Act 191 of the 2010 allocated \$720,000 from the Emergency and Budget Reserve Fund to Legal Aid, but funds were never distributed.

¹⁵ Act 191 of the 2010 allocated \$200,000 from the Emergency and Budget Reserve Fund to Volunteer Legal, but funds were never distributed.

2. Volunteer Legal Services of Hawai'i

Volunteer Legal Services of Hawai'i ("Volunteer Legal") funding has primarily been distributed through a grant-in-aid since approximately 2006 to support its services to facilitate participation by pro bono attorneys to provide general civil legal services to the low-income people. The grant-in-aid was passed through the Office of Community Services for a number of years, but most recently has passed through the Judiciary except for those years in which no funding was provided and most recently in fiscal 2016 when a POS contract was issued through the Judiciary.

3. Domestic Violence Action Center

Domestic Violence Action Center ("DVAC") has been the recipient of a POS contract through the Judiciary since about fiscal year 1998 to provide an array of services for victims of domestic violence regardless of income. These services are not just limited to specialized civil legal services. The amounts listed in the chart represent, approximately 35% of the funding each year, which is the amount for specialized civil legal services to victims of domestic violence. All amounts listed were through POS contracts except for fiscal year 2015, which included a grant-in-aid for \$149,077.

4. Hawai'i Immigrant Justice Center

Hawai'i Immigrant Justice Center ("HIJC") received a POS contract to provide immigration and immigration-related legal services to the low-income people through the Department of Labor's Office of Community Service from the mid-80s until fiscal year 2005. From fiscal years, 2005 to 2009, HIJC received a grant-in-aid from the legislature, primarily through the Judiciary. When no funding was allocated for fiscal year 2010, HIJC merged with Legal Aid in January 2010 to ensure that immigration and immigration-related legal services would continue to be provided in the community. Since fiscal year 2009, no state general revenue funds have been allocated specifically for immigration and immigration-related services.

5. Hawai'i Disability Rights Center

Hawai'i Disability Rights Center ("HDRC") received state general revenue funds for the provision of legal services to those with disabilities since the early 1990s through a POS contract through the Department of Labor's Office of Community Service. When the recession hit, funding for civil legal services to those with disabilities ended in fiscal year 2009. These funds have not been replaced by general revenue funds.

6. Native Hawaiian Legal Corporation

Native Hawaiian Legal Corporation (“NHLC”) has received funding from the state to provide specialized civil legal services through a Native Hawaiian Land and Rights Project since 1998. Funding for services are allocated through a POS contract through the Office of Hawaiian Affairs.

C. Definitions

1. “General Civil Legal Services”

General Civil Legal Services may include divorce or family break-up, problems related to making or receiving child support payments, child custody, tax problems, consumer debt, Native Hawaiian rights, civil rights, workers’ compensation, unemployment insurance, education, exploitation or abuse of a senior citizen, consumer fraud, job discrimination, housing, domestic violence, public entitlements, estate planning, immigration, health services, employment.¹⁶ These services refer to all areas of law in which civil legal services may be needed.

2. “Specialized Civil Legal Services”

Specialized Civil Legal Services may also include all the areas of law encompassed under General Civil Legal Services, but are generally targeted at a particular population, for example, survivors of domestic violence, Native Hawaiian, immigrants, or those living with disabilities.

3. “Low-income”

Low-income means income at or below 125% of the federal poverty guidelines. In 2015, this amount is \$2,905 monthly for a Hawaii household of 4; annually, \$34,860.

4. “Moderate-income”

“Moderate-income” means income at or below 250% of the federal poverty guidelines. In 2015, this amount is \$5,810 monthly for a Hawaii household of 4; annually, \$69,720.

¹⁶ See Access to Justice Hui, Achieving Access to Justice for Hawaii’s People: The Communitywide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai’i by 2010 and The 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People in Hawai’i, November 2007, pp. II-25, et seq.

IV. Analysis of Benefits and Barriers to Certain Agencies or Organizations

Each of the agencies or organizations participating in the Task Force who could potentially play a role in the administration of funding for civil legal services discussed the benefits and barriers for their agencies' involvement.

A. Judiciary

The Judiciary's strategic plan incorporates its commitment to strive to improve access to justice and continue to support, where possible, the mission of the Hawai'i Access to Justice Commission. The Judiciary partners with various community organizations and legal services providers to establish, maintain, and expand access to justice projects that provide legal information, advice, or resources to the public.¹⁷

Further, the Judiciary has experience administering contracts and programs that support its core mission and currently contracts with the Hawaii Justice Foundation to administer distribution of funds from the Indigent Legal Assistance Fund according to a statutory formula.¹⁸

The barriers for the Judiciary's administration of civil legal services funding center around conflict and impartiality issues. The Judiciary is concerned that administering the funding of particular entities who appear before the courts may conflict or appear to conflict with the Judiciary's core mission, as an independent branch of government, to administer justice in an impartial, efficient, and accessible manner in accordance with the law. In addition, the Judiciary's impartiality may be compromised by the necessity of measuring and evaluating the efficacy of funding recipients' delivery of legal services, including legal representation before the courts.

Furthermore, the Judiciary is concerned that independence of funding recipients may also appear to be compromised by a perceived need to cooperate with the courts and Judiciary administration in order not to compromise funding.

Of significant concern to the Judiciary, is that if additional funds are not provided by the Legislature, funding civil legal services within the Judiciary budget will reduce the funds available for other judiciary programs, including POS contracts for treatment and prevention.

¹⁷ Recent projects include the Self Help Centers and Access to Justice Rooms at the courthouses, A2J interactive interview software, Know Your Rights presentations in public libraries, the training of public librarians, and curriculum development in civic education for schools.

¹⁸ See Haw. Rev. Stat. § 607-5.7.

B. Department of the Attorney General

The mission of the Department of the Attorney General is to provide excellent legal and public services in a timely manner. The Attorney General, who is appointed by the Governor, is the chief legal officer and chief law enforcement officer of the State of Hawai'i. The Department of the Attorney General employs 180 attorneys and over 500 professional and support personnel to assist the Attorney General in fulfilling the responsibilities of the office.

The Department of the Attorney General is familiar with the numerous areas of law in which civil legal services are provided. It has one division, the Crime Prevention Justice Assistance Division that has some experience applying for grants to assist the criminal justice system and does administer some smaller grants for civil legal services. The Department of the Attorney General also issues civil legal service contracts for representation of the State in matters involving complex and/or highly specialized areas of law.

The two key barriers in becoming the administrator for civil legal services funding are that the Department of the Attorney General does not have experience or personnel for administering grants and contracts for the provision of civil legal services to low- and moderate-income individuals on the scale contemplated by the resolutions and may be in conflict given that it is usually called upon to advise and represent state agencies with respect to contracts.

C. Department of Human Services

The mission of the Department of Human Services is to provide timely, efficient, and effective programs, services, and benefits for the purpose of achieving the outcome of empowering Hawaii's most vulnerable people; and to expand their capacity for self-sufficiency, self-determination, independence, healthy choices, quality of life, and personal dignity.

The Department of Human Services administers some contracts for civil legal services and has experienced staff to administer contracts. The subject matter, however, in which contracts are issued are limited to the Social Security Administration, domestic violence related issues, and issues related to support for families with dependent children working toward self-sufficiency. The population is also restricted to families with dependent children that are experiencing legal barriers as a result of domestic violence, families in domestic violence shelters, and immigrants experiencing domestic violence. These contracts generally use federal funds.

Two of the issues raised as potential barriers with the Department of Human Services is that contract staff is currently maxed out, and there could be potential conflicts in that some civil legal services work that might be funded may include representation of individuals against the Department of Human Services.

D. Department of Labor and Industrial Relations, Office of Community Services

The Office of Community Services (“OCS”) assists Hawaii’s low-income, immigrant, and refugee populations to overcome and alleviate workforce barriers to economic self-sufficiency through an array of community-based programs and services. The OCS primarily contracts and administers program services on behalf of the state and federal governments and allocates funds using a competitive POS process unless the funding source authority directs award to a specific organizations.

The OCS presently manages a wide array of contracts to help low-income, immigrant, and other disadvantaged communities increase economic self-sufficiency. As such, the OCS is familiar with the issues related to these communities and has extensive experience administering contracts and programs (i.e., GIAs, POS contracts, grants). The OCS presently administers a Legal Advocacy for Families and Children program using federal funding from the Department of Human Services. This program may have been transferred to the OCS in the past because the Office did manage civil legal services-related contracts until 2004.

The OCS staff has the capacity to administer another funding source (assuming two to three more contracts at about \$3 million a year). No additional staff would be needed to administer a few more contracts.

However, the OCS lacks legal expertise and the subject matter expertise about these programs. For POS contracts, OCS must overcome this by involving subject matter experts in: (1) the request for proposals (“RFP”) development and (2) RFP evaluation process. For some programs, OCS has an advisory board that provides insight and guidance about the programs.

The Executive Director and the staff of the OCS serve at the will of the Governor. While the OCS can presently commit that it can administer civil legal services funding appropriated by the Legislature to fulfill its intent, it cannot guarantee that future administrations will do so as well. The OCS believes, in contrast, the Chief Justice of the Hawai‘i Supreme Court is a stable leader who can provide consistent policy guidance and execution.

E. Department of Accounting and General Services

The Department of Accounting and General Services plans, directs, and conducts centralized accounting, auditing, risk management, property management, surplus programs, inventory management and central purchasing programs; manages a variety of general services that include central records storage, records management assistance, operation and maintenance of state buildings and grounds, maintenance and repair of public school buildings and grounds on the neighbor islands, central mail and messenger services, parking, motor pool, survey of state lands, the planning, design, engineering and construction of public works, centralized office leasing services, electronic data processing and telecommunications. The Department of Accounting and General Services does not discern any recognizable benefit accruing to the Department of Accounting and General Services by administering the funding for civil legal services

Furthermore, the Department of Accounting and General Services does not have any subject matter expertise necessary to administer and procure services for civil and pro bono legal services and is unfamiliar with the myriad of issues related to low income, immigrant, indigent, and other disadvantaged persons. The Department of Accounting and General Services believes that there are other governmental, nonprofit, and entities better suited to effectuate the goals and objectives of civil legal services delivery. In addition, it does not have the financial and personnel resources necessary to manage the administration of funding for civil legal services.

F. Department of Budget and Finance

The Department of Budget and Finance, headed by the Director of Finance, administers the State budget, develops near- and long-term financial plans and strategies for the State, and provides programs for the improvement of management and financial management of State agencies. While the Office of the Public Defender is administratively attached to the Department of Budget and Finance, the Department of Budget and Finance has little to do with the operation of that office.

The Department of Budget and Finance does not have any subject matter expertise and does not have the financial and personnel resources necessary to manage the administration of funding for civil legal services. It believes that there are other agencies and offices better suited to administer a contract for civil legal services.

G. The Hawai'i Justice Foundation

The Hawai'i Justice Foundation is an independent, tax-exempt grant-making organization whose sole purpose is to achieve justice for Hawaii's people. The Foundation was established in 1969 as a vehicle for philanthropic law-related projects in the State of Hawai'i. The membership of the Foundation is made up of lawyers, lay advocates, social scientists, judges, volunteer mediators and arbitrators, paralegals, notaries public, guardians ad litem, social workers, court clerks, court reporters, and anyone else who believes in reasoned problem-solving and the rule of law.

The Hawai'i Justice Foundation's charter goes back a long time and is broad enough to encompass the administration of civil legal funding. The Hawai'i Justice Foundation is also familiar and accustomed with these issues and managing funding, and its Board of Directors is comprised of a variety of individuals so it would help on the impartiality issue.

The potential concerns about the Hawai'i Justice Foundation's involvement is that it has a one-person staff and would require some additional funding support to take on the distribution of civil legal funding.

V. Recommendations

A. The Judiciary is the Best Agency for Administering State Civil Legal Services Funding with the Assistance of a Non-Profit Organization with Experience Allocating Funding to Civil Legal Services Organizations, if Necessary.

The Working Group evaluated the benefits and barriers of the various organizations and agencies in deciding that the Judiciary was the appropriate state agency to house the administration of the funding for civil legal services for the low- and moderate-income residents.

With its mission to administer justice in an impartial, efficient, and accessible manner in accordance with the law, the Judiciary, as an independent branch of government, and the leadership of Chief Justice Recktenwald, the Judiciary is already oriented toward increasing access to justice.

The recommendation of the Judiciary as the best home for the administration of state civil legal services funding, however, does require that issues such as the potential conflict of interest and impartiality raised by the Judiciary be addressed as well as insuring that the addition of such funding does not impact funding for Judiciary's operations.

The Working Group is cognizant of these concerns and recommends that the Legislature be clear that the funding of civil legal services to the low- and moderate-income people in Hawai'i not be taken from the Judiciary's general operating funds, other important POS contracts, or other critical needs.

Furthermore, given the concerns with respect to impartiality, the Working Group recommends that the Judiciary be allowed to contract, if necessary, with a non-profit organization that has experience allocating funding to civil legal services organizations.

B. Level of funding

For the fiscal year 2017 state funding general revenue funding (A funds), the Working Group recommends that funding for civil legal services, that has been supported through grant-in-aid funding, be restored to the pre-recession level of fiscal year 2008 in the amount of \$2,159,632¹⁹ to meet on-going needs and restore previous levels of services.

It is uncontroverted that the need for civil legal services continues to be great. Civil legal service assistance in the State of Hawai'i is one of the areas that the State has failed to adequately fund despite the fundamental role that justice and access to justice plays in our democracy.

In the "Access to Justice Hui 2007 Report," it was determined that only 1 in 5 low- and moderate-income people in Hawai'i had their civil legal needs met. Ultimately, the goal of our society should be to meet 100% of these legal needs in the community.

As such, the Working Group advises the Legislature that additional funding will be needed in the future to meet the civil legal needs of low- and moderate-income people of Hawai'i. To this end, an independently funded study will be conducted in the upcoming year to look more broadly at the impact that civil legal services makes in preventing and reducing larger costs to the state as well as what it would take to meet 100% of the civil legal needs in Hawai'i so that the Legislature has a true sense of what funding will be required. This study will also recommend a future target amount for state general revenue funding of all civil legal services in state.

¹⁹ This recommended amount does not include current recurring civil legal services funding for domestic violence services procured through the Judiciary or funding of Native Hawaiian legal services which is currently issued by the Office of Hawaiian Affairs.

C. Enabling legislation

The Working Group recommends that the Legislature consider legislation or take other action that will fund general civil legal services in the amount of \$2,159,632 per year as a recurring line item in addition to the Judiciary base budget and to allow the Judiciary to contract with a non-profit organization with at least five years of experience allocating funding to civil legal services organizations.

ATTACHMENT A: WORKING GROUP

<u>Organization</u>	<u>Representative</u>
Hawai'i Access to Justice Commission:	Rona S. Y. Fukumoto, Commissioner Carol K. Muranaka, Commissioner
President of the Senate:	Senator Brickwood Galuteria
Speaker of the House:	Representative Karl Rhoads
Judiciary:	Sherrie L. Seki, Special Assistant to the Administrative Director of the Courts
Department of the Attorney General:	Patricia T. Ohara, Deputy Attorney General
Department of Human Services:	R. Malia Taum-Deenik, Project Specialist & Complaint Liaison, Office of the Director
Department of Labor and Industrial Relations, Office of Community Services:	Rona M. Suzuki, Executive Director
Department of Budget and Finance:	Neal H. Miyahira
Department of Accounting and General Services:	Robin J. Yahiku, Special Asst. to the Comptroller
Hawaii Justice Foundation:	Gary M. Slovin, partner, Ashford & Wriston
Legal Aid Society of Hawaii:	Nalani Fujimori Kaina, Executive Director
Volunteer Legal Services Hawaii:	Michelle D. Acosta, Executive Director
Domestic Violence Action Center:	Nanci Kreidman, Executive Director
Hawaii Disability Rights Center:	Louis Erteschik, Executive Director
Hawaii Appleseed Center for Law and Economic Justice:	M. Victor Geminiani, Co-Executive Director; Gavin Thornton, Co-Executive Director