Hawai`i State Bar Association
Committee on Judicial Administration

2018 CIVIL LAW FORUM

Ali`iolani Hale
Supreme Court Building, Room 101

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I. INTRODUCTION

As described in the *Board Policy Manual* of the Hawai'i State Bar Association ("HSBA"), the Committee on Judicial Administration ("JAC") [1]

> Maintains a close relationship with the judiciary on matters of mutual concern to the bench and bar, monitors and formulates recommendations to the Board concerning legislation affecting the judiciary, studies and reports on subjects of judicial conduct and discipline, and coordinates activities of the HSBA relating to improvement of the judiciary and administration of justice.

Following a successful Bench-Bar Conference in 2013, the JAC decided to develop a forum concept to focus on certain issues in the civil and criminal areas[2] separately. These forums take place every other year, alternating with the Bench-Bar Conferences.

The JAC acknowledges the generous support of Hawai'i Supreme Court Chief Justice Mark E. Recktenwald for the venue and for the committee's activities. The JAC is grateful for the logistics assistance by the Judiciary's Judicial Education Office (Dawn M. Nagatani and Martha Hamada).[3]

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[1] The HSBA JAC members for the year 2018, comprised the following co-chairs and members: Hawai'i Supreme Court Justice Simeon R. Acoba, Jr. (ret.), co-chair, Steven J. T. Chow, co-chair, Hawai'i Supreme Court Associate Justice Richard W. Pollack; Judge Joel E. August (ret.); Judge Brian A. Costa, Judge Ronald Ibarra (ret.); Judge Shirley M. Kawamura, Judge Randal G. B. Valenciano, , Hayley Y. C. Cheng, Dennis W. Chong Kee, Kahikino Noa Dettweiler-Pavia, Vladimir P. Devens, Kirsha K. M. Durante, Don J. Gelber, William A. Harrison, Edward C. Kemper, Carol K. Muranaka, Kyleigh F. K. Nakasone, Lester D. Oshiro, Audrey E. Stanley, and Kevin K. Takata.

[2] The 2018 Criminal Law Forum took place on Wednesday, September 26, 2018.

[3] Others who assisted with the Forums include Jaye Atiburcio, Grace Ginoza, Curt Shibata, and Mark Santoki. Funding for the refreshments was provided by the HSBA. Additional funding for the 2018 Forums was provided by Dispute Prevention & Resolution, Inc., Marr Jones & Wang, LLP, Justice Simeon R. Acoba, and The Pacific Law Group.

II. WELCOME AND OPENING REMARKS

Steven J.T. Chow, co-chair of the JAC, welcomed and thanked attendees on behalf of the JAC. He explained that the JAC coordinates activities relating to the improvement of the judiciary and the administration of justice. This year, the 2018 Civil Forum ("Forum") focused on the reform of civil law practice in Hawai‘i.

Chief Justice Mark Recktenwald thanked the Forum's organizers, presenters, and attendees, and acknowledged that the Forum has the potential to shape how future cases are adjudicated in circuit court. He explained that there are profound changes affecting the judiciary and civil litigation.

In 2008, the American College of Trial Lawyers and the Institute for the Advancement of the American Legal System conducted a national survey of lawyers who represented both plaintiffs and defendants to understand how the civil justice system was performing. The survey illustrated significant concerns about the judicial process with respect to civil litigation. Respondents were particularly concerned that civil litigation takes too long and costs too much. As a result, the federal and state judiciaries began rethinking civil litigation and developed initiatives to reduce the cost and delay.

After the survey, the Conference of Chief Justices created a Civil Justice Improvements Committee to study the initiatives and to propose recommendations for the improvement of the civil litigation process. The Civil Justice Improvements Committee reviewed a million cases from across country. It was surprised to find that tort cases had "largely evaporated" as they only amounted to seven percent of the overall caseload. Two thirds of the cases involved contract, debt collection, and landlord-tenant matters. The Civil Justice Improvements Committee concluded that if civil courts do not change, they will meet the "fate of travel agents and hometown newspapers, enemies undone by customer expectations but not adequately replaced."

On that note, Chief Justice Recktenwald observed that the judiciary faces challenges from external forces. For example, Amazon and eBay adjudicate customer conflicts using artificial intelligence.

Chief Justice Recktenwald emphasized that the time has come to have a more focused discussion on civil justice reform. In July 2018, he created the Task Force on Civil Justice Improvements ("Task Force"), chaired by Chief Judge Craig H. Nakamura (ret.), with David M. Louie and Clare E. Connors serving as Vice-Chairs. The Task Force has been working diligently to craft new ideas for civil justice reform. This Forum provided the Task Force with an opportunity to share its preliminary ideas and to obtain feedback from the participants. Judge Rhonda A. Nishimura (ret.), served as reporter for the Task Force, which plans to produce a final report in July 2019.

Chief Justice Recktenwald concluded by thanking the JAC, the Task Force, the HSBA (including HSBA President Howard K.K. Luke and HSBA Executive Director Patricia Mau-

Shimizu), his staff, the Judicial Education Office, Chief Judge Nakamura (ret.), and the Forum attendees for being part of the discussion to shape the civil justice in Hawai‘i.

III. CIVIL JUSTICE IMPROVEMENTS TASK FORCE

Chief Judge Nakamura (ret.) explained that the Task Force was established to recommend ways to reduce costs and delay and to streamline civil litigation in circuit court. He explained that the Task Force focused on improvements in the circuit courts instead of considering reforms within both district and circuit courts simultaneously, because it would have been difficult and unwieldy given the major differences between the courts.

The Task Force considered a number of sources, such as recent rule changes and initiatives implemented by other states and federal courts, the report and recommendations of the Civil Justice Initiative by the Conference of Chief Justices, and the reports and recommendations of the American College of Trial Lawyers and the Institute for the Advancement of the American Legal System on civil justice reforms. The Task Force considered whether best practices in other jurisdictions will work well in Hawai‘i.

The Task Force is divided into four committees: (1) case triage or tiering, (2) case management, (3) discovery, and (4) expedited trials and other innovations.

Chief Judge Nakamura explained that the Task Force is still gathering information and seeking input from bar members and judges. Ideas and proposals raised by the Task Force at the Forum were preliminary. The Task Force has not decided on its ultimate recommendations to Chief Justice Recktenwald, so Chief Judge Nakamura encouraged comments and input from the Forum's participants.

A. CIVIL JUSTICE IMPROVEMENTS: CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES[4]

(Panel: Judge Randal G. B. Valenciano, Roy K. S. Chang, Lisa W. Munger, and Nadine Y. Ando)

Lisa Munger presented “The Road Not Taken,” which was an overview of case tiering in other states. Several states tried a form of tiering called “Differentiated Case Management” (“DCM”), which is a rule-based system that assigns civil cases to processing tracks based solely on the case type or amount in controversy at the filing of complaint. For example, in Colorado, civil cases where the amount in controversy is less than $100,000 receive an early trial date and depositions, interrogatories, and document requests are prohibited. Utah assigns cases to one of three tiers, which permit different levels of discovery based on the amount in controversy. In Utah, discovery beyond the tier to which the case is assigned is extraordinary and only permitted after

[4] The Case Triage or Tiering Committee is looking at allocating the right amount of discovery and judicial resources proportional to the needs of the case. The members of this Committee are: Judge Randal G. B. Valenciano, Nancy J. Budd, Caroline S. Otani, Lisa M. Munger, Roy K. S. Chang, and Nadine Ando.

the parties complete all discovery in the assigned tier. Arizona has a three-tiered system that begins with an amount in controversy as a presumption but considers other factors.

Munger explained that, while the DCM system is an important concept, its practice has fallen short of its potential. DCM systems offer little flexibility because the two factors used in setting tiers, case type and amount in controversy, do not reliably forecast the amount of judicial management that cases demand. In fact, the DCM system provides too much process for the vast majority of cases. While the amount in controversy and case type may be predictive of discovery complexity, other factors, such as whether litigants are represented, are stronger indicators of the need for court involvement. This rule-based system provides more framework for cases than is needed. The Committee found that it is more effective to allow for other considerations; a concept known as "case-sizing." The three general concepts or categories of case-sizing include three paths: "streamlined," "complex," and "general."

The first path involves streamlined case management and is applied to cases with uncomplicated facts, settled law, a limited number of parties, routine issues of damages and liability, few witnesses, few anticipated pretrial motions, limited discovery, and limited court intervention. In this pathway, the court will calendar court dates, give deadlines for key stages, and set a firm trial date. Trial will last one to two days.

The second path is a complex pathway for cases that have multiple legal issues, requiring close court supervision. Cases involving complex law, numerous parties and witnesses, voluminous documentary evidence, and high interpersonal conflicts fall in this pathway. A single judge would be assigned for the life of the case.

The last path is a general pathway for cases that do not fit the streamlined or complex pathways.

Roy Chang's presentation was entitled, "Grand Central Station." He explained that part of the goal is to create a system where cases are resolved in a shorter period with a reduced cost. The Committee created a track system for cases: regular trial, expedited trial, and expedited alternative dispute resolution.

The track assignment would be made after the answer is filed and the parties have met and conferred. This deferred assignment would account for a situation where the complaint is relatively straightforward, but a complex counterclaim or cross claim has subsequently been raised. The parties could agree on a track after the meet and confer. If the parties cannot agree, the issue could be addressed at a Rule 16 conference. There would be a settlement conference approximately three months after a Rule 16 conference, and a second settlement conference or mediation three months after the first settlement conference.

Proposed Track 1 is similar to the current procedure in which cases undergo arbitration through the court-annexed arbitration program ("CAAP") with trial as an option if a party is not satisfied with the outcome of arbitration. The Committee believes that Track 1 tort cases should automatically enter the CAAP program, with the option to opt out.

While there was interest in whether CAAP caused unintended consequences and whether more jury trials were needed to determine settlement values, it was generally agreed that the CAAP report is widely used for settlement values, as it is less expensive than the costs of expert witnesses at trial.

The decision whether a case falls in Track 2 could be based on the size of the case, time, or resolution. If the focus is on resolution, the process can be advanced, and the parties can have an expedited trial. One option is to increase the district court's and small claims court's jurisdiction, with the caveat that the cases are given a firm trial date. Another option is to have one-day bench trials to expedite resolution particularly if the dispute is limited to damages or other discrete issues.

The Committee also proposed the option of a track 2 sub-track in which a case would have a six-person circuit court jury trial of approximately two days in length. This sub-track would require the parties to narrow the issues and prepare a compact case. This option would also be advantageous for jurors given the limited time allocated to the trial.

Track 3 is arbitration. Only parties that agree to this track would be placed into it. The process under this track may involve arbitration of discrete issues in a case, or the case in its entirety. Consideration was given to the possibility of having the judge assigned to the case sit as the arbitrator, which would result in less cost to the parties. A significant concern associated with that option is the possibility that a judge serving as an arbitrator could also sit as the trier of fact in the event that the arbitration was unsuccessful.

Nadine Ando's presentation was entitled, "In A Perfect World We Can All Agree, However…" She explained that most courts in states where track assignment is practiced make the decision of assigning cases to a track. The parties do not have a role in this decision. The idea of letting the parties make the track assignment decision is novel and requires the parties to mutually assess the issues and decide whether the case has potential to be resolved expeditiously. If the parties cannot agree, the court, following initial disclosures and a settlement conference, would make a track determination. Outstanding issues include determining a default track and how to switch tracks if a change is merited.

The Forum attendees were receptive to the idea of case triaging or tiering. The attendees recognized that this idea encompasses a monumental culture change regarding discovery and procedure, as the quality and extent of communication between opposing counsel is often limited. Discussion on how to achieve this culture change ensued. One idea that was raised was to use sanctions to ensure compliance with the rules. Rules should specify that when parties violate the rules, sanctions will result.

There was also discussion of unintended consequences, such as parties using tracks or the rules to their advantage. Early Rule 16 conferences may provide some protection from abuse because the parties agree to the discovery track. Additionally, the subsequent settlement conference will be an opportunity to test compliance with good faith selection of the trial track.

There was discussion as to whether Hawai‘i state courts would follow federal courts and prohibit discovery until after the meet and confer period. One attendee explained that he had to defend a case where the plaintiff filed the same claim in federal and state court and immediately began noticing depositions in state court.

B. CIVIL JUSTICE IMPROVEMENTS: CASE MANAGEMENT[5]

(Panel: Judge Jeannette H. Castagnetti, Steven J. T. Chow, Elijah Yip)

Judge Castagnetti explained that active and early case management, including setting the trial schedule early, shortening time for discovery, and having litigants available for settlement conferences, is viewed as one of best ways to reduce costs and delays in civil litigation.

Elijah Yip explained the key differences in the procedure and history of a case filed on the same date in federal and state court. After the filing of an answer, the process and procedure diverge. Most importantly, nothing happens in state court until approximately eight months after the filing, whereas in federal court the parties meet with the court and each other within two months after the filing of an answer. They are also required to submit initial disclosures. Other differences are listed below:

Comparison of Major Case Management Milestones in State and Federal Court

	STATE	**FEDERAL**
Answer	20 days after complaint served – HRCP 12(a)	21 days after complaint served (60 days if defendant is federal officer or employee) -FRCP 12(a)
First mandatory meeting of parties	Face-to-face meetingprior to filing of Plaintiff's pretrial statement -HCCR 12(b)(6)	Rule 26(f) conference - no later than 21 days before Rule 16 conference - FRCP 26(j)(l); L.R. 26.1(a)
First mandatory filing (besides responsive pleading)	Plaintiff: Initial pretrial statement – within 8 months after complaint filed – HCCR	Rule 16 Scheduling Conference Statement—7 days before Rule 16

[5] The Case Management Committee is looking at ways to streamline the litigation process and reduce cost and delay, such as including judicial involvement early in the case to set a trial date and resolve issues concerning the scope of discovery. The Committee members are: Judge Jeannette H. Castagnetti, Steven J. T. Chow, Elijah Yip, Russell A. Suzuki, Cynthia K. Wong, Geoffrey K. S. Komeya, and Clare E. Connors.

	12(b) Defendant: Responsive pretrial statement –within 60 days after initial statement filed—HCCR 12(h)	scheduling conference – L.R. 16.2(b) Rule 26(f) Report—within 14 days after Rule 26(f) conference (i.e., 7 days before Rule 16 scheduling conference) – L.R. 26.1(b)
First mandatory meeting with court	Trial setting conference—>10 months after complaint filed (see below)	Rule 16 conference – typically set approx. 60 days after complaint filed
Trial setting conference	1st Cir.: scheduled within 60 days after initial pretrial statement filed – HCCR 12(c)(1). 2nd, 3rd, 5th Cir.: scheduled if counsel request conference after failing to agree on trial weeks within 60 days of filing initial pretrial statement – HCCR 12(c)(2)	Rule 16 conference – typically set approx. 60 days after complaint filed
Initial disclosures	Not applicable	Due within 14 days after Rule 26(f) conference – FRCP 26(a)(1)(C)
Expert disclosures and report	No specified deadline but can be set by agreement of parties in Trial Setting Order	Due date set by Rule 16 Sched. Conf. Order – FRCP 16(b)(3), L.R. 16.2(a)(6). Absent court order, due at least 90 days before trial date or for case to be ready – FRCP 26(a)(2)(D)(i)
Pretrial statement	Initial – within 8 months after complaint filed – HCCR 12(b) Responsive – within 60 days after initial statement filed – HCCR 12(h)	Due date set by Rule 16 Sched. Conf. Order – L.R. 16.6. Typically, approx. 50 days before trial
Discovery motions	N specified deadlines	Per standard Rule 16 Sched. Conf. Order, all discovery

		motions and conferences must be heard no later than 30 days before discovery deadline
Discovery cutoff	60 days before trial date – HCCR 12(r)	Set by Rule 16 Sched. Conf. Order. Unless otherwise ordered, all discovery must be completed no later than 35 days before scheduled trial date – L.R. 16.3
Dispositive motions deadline	No less than 50 days before trial date – HRCP 56	Set by Rule 16 Sched. Conf. Order. Typically set before discovery cutoff
Settlement conference	May be ordered by court at any time before trial – HCCR 12.1(a). Typically set at the trial setting conference	May be scheduled as the court may direct – L.R. 16.5. Typically set at the Rule 16 conference

Yip explained that if the current system evolves to a system where trial, discovery, and disclosure deadlines are set in the beginning of the case, there may be a change in culture and mindset as to how case management is approached.

Many expressed satisfaction with case management in the federal courts. However, it was widely acknowledged that federal courts have fewer cases and magistrate judges assist with case management and disposition. Given their workload, there was concern about the availability of state judges for Rule 16 conferences. One Forum attendee suggested that state judges should have volunteer case managers or be assisted by a practitioner who would be appointed in the same manner as a CAAP arbitrator.

Others recommended that the federal system did not need to apply to all cases, and certain cases, such as those involving foreclosure, malpractice, and debt collection could be exempt.

Discussion ensued about having a scheduling conference within three or four months of filing the answer (instead of within 60 days) as one-third of all cases end in a stipulation for dismissal by the time the pretrial statement is due.

There was discussion whether courts or the parties control the pace of litigation. Lawyers with heavy caseloads are setting cases in the year 2020 when, in reality, most cases will settle. On that basis, courts might consider setting a trial regardless of the parties' schedule. Courts expect attorneys to be prepared to proceed to trial when a trial date is set based on the availability of

counsel, yet, motions to continue are filed and the court's calendar becomes backlogged. One Forum attendee recommended having two trial dates: a primary and a backup, and 30 days before the primary setting, there should be a status conference to see if the parties are on track for primary or backup setting.

There was discussion whether to change the good cause standard for continuances. In Utah, the scheduled dates are firm and continuances, even if stipulated, are not granted except in extraordinary circumstances. If such a standard was set, it would be unlikely that parties would request continuances.

There was discussion about the federal courts sometimes setting trials regardless of the parties' state court trial schedules. The Committee mentioned that one jurisdiction has a rule that addresses cooperation between state and federal courts in setting trial dates.

The parties discussed how to make the new rules compatible with the functions of the judiciary and its staff. There should be a careful examination as to whether circuit court judges have sufficient resources to handle the changes, as most judges carry 600 to 700 cases. One Forum attendee explained that changes may create challenges for neighbor island judges, who handle civil and criminal cases and who already have limited time to dedicate to jury trials. For instance, a two-week trial on O‘ahu may take six weeks on the neighbor islands.

There was also discussion about creating incentives to resolve cases. There is an incentive in federal court to have cases done within three years. In state courts, cases can be as old as eight years. Old cases present unique challenges for judges with a case load of 600. The Judiciary may want to consider a business-minded model that considers the number, age, and time to disposition of cases for expediency's sake.

Forum attendees raised the following ideas:

- There should be a staggered deadline for bona fide settlement offers to allow the defendant time to confer with the insurance carrier and other entities or individuals that have settlement authority. It would be helpful if the offer letter includes an analysis or justification for the amount offered.

- Attorneys should be required to sign declarations attached to the confidential statement saying they have made an offer in compliance with the rules.

- Deadlines should be enforced, or sanctions should be mandatory if the parties do not follow the rules. For example, the Idaho Rules of Civil Procedure explains the types of sanctions available if the parties do not submit the required documents by the scheduling conference.

C. CIVIL JUSTICE IMPROVEMENTS: DISCOVERY[6]

(Panel: *Judge Henry T. Nakamoto, Judge Keith K. Hiraoka*)

Judge Keith K. Hiraoka and Judge Henry T. Nakamoto, co-chairs of the Discovery Committee, raised the question whether state courts should incorporate principles of proportionality in discovery that are found in the Federal Rules of Civil Procedure.

Rule 26(b) of the Federal Rules of Civil Procedure provides as follows:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

The Committee offered a proposed revision to HRCP Rule 26(b) for discussion as follows:

> (b) Discovery Scope and Limits.
>
> (1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense *and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.* Information within this scope of discovery need not be admissible in evidence to be discoverable.

(Language in italics are the proposed changes.)

It was mentioned that the proposed rule would help with risk management, as an attorney could rely on the rule as a way of shielding himself/herself from potential malpractice claims if certain discovery is not uncovered or pursued.

There was discussion whether the Committee was considering changing the current language regarding discovery "reasonably calculated to lead to the discovery of admissible evidence" or the amount and timing of depositions. The Committee mentioned that it was not focused on changing that language or depositions specifics, as the Committee was tasked on

[6] The Discovery Committee is looking at ways to make discovery more efficient, effective, and proportional. The Committee members are: Judge Keith K. Hiraoka, Judge Henry T. Nakamoto, Susan Ichinose, Jeffrey H. K. Sia, Judith A. Pavey, and Eric K. Yamamoto.

finding ways to improve the discovery process and another permanent rule-making committee was focused on those issues.

The Committee invited comments whether the concept of proportionality should be introduced into the Hawai‘i rules and whether the amount of discovery should be set at a Rule 16 conference.

One Forum attendee asked if the federal judges have expressed any thoughts on the implementation of the proposed rule. Judge J. Michael Seabright, Magistrate Judge Barry M. Kurren, and Magistrate Judge Kevin S.C. Chang spoke with the Task Force and were excited proponents of the 2015 amendment to Fed. R. Civ. P. Rules 26 which reinforced proportionality in defining the scope of discovery. Judge Seabright emphasized that the rule change helped to create a mindset change, because now parties are aware of proportionality in discovery and tailor discovery requests accordingly. One attendee explained that under the amended Fed. R. Civ. P. Rule 26, the scope of discovery is narrower, leading to fewer discovery disputes, limited discovery requests, and compromise in discovery.

One Forum attendee mentioned reviewing or incorporating Federal Rules of Civil Procedure Rule 37 involving sanctions because discovery and sanctions are connected.

There was discussion about incorporating Federal Local Rule 37 regarding discovery sanctions and letter briefs. It was acknowledged that cases become stalled in discovery disputes and submitting letter briefs is an expedited process to resolve the disputes. This process gives the court and the parties flexibility in reaching a resolution, as the court can issue a ruling on the briefs, have an informal conference, or a full hearing. The briefs can be attached to the record or the court's ruling for purposes of appellate review. No attendee had any negative experience with the federal letter briefing process. One concern was whether state courts had sufficient resources.

Currently, some judges invite status conferences for discovery disputes where the judge gives a non-binding inclination on the record, which has been helpful in resolving disputes.

There was discussion on the precise definition of proportionality and whether resolving discovery motions has become easier or more difficult since its use. The new federal rule has been in existence since December 1, 2015, and case law exists that explains proportionality. One Forum attendee explained that it has been used in federal court to limit discovery requests.

The Committee also was analyzing whether there should be mandatory witness and expert disclosures and asked for input whether to include rules requiring early disclosure of witnesses and documents. While such a rule may not make sense in foreclosure cases, in other cases not subject to CAAP, it might be helpful.

Many expressed satisfaction with the federal rules, noting that they are explicit, require early disclosures, and expedite discovery. In contrast, state court judges handle witness disclosures differently, which creates inconsistencies among judges and circuits. One attendee mentioned that receiving discovery early is helpful in evaluating the case. On the other hand, there has been

concern that standardized deadlines create difficulties for plaintiffs' attorneys who do not want to retain experts if settling the case is likely. Perhaps the rules can require disclosures of expert names if retained, with the possibility that parties can amend disclosures.

The Committee raised the issue whether discovery requests and responses should be served by email. The attendees seemed to agree that service by email would be beneficial but may not be appropriate for cases involving is a *pro se* practitioner without email.

D. CIVIL JUSTICE IMPROVEMENTS: EXPEDITED TRIALS[7]

(Panel: Judge Peter T. Cahill, William B. Heflin, Summer M. M. Kupau-Odo, Daniel O'Meara)

Committee members agreed that trial track selection should be a mandatory process made by the courts because problems are likely to arise if the parties have discretion. The Committee thought the expedited trial track should be the default with parties having the option to opt out. In determining whether to exclude a case from the expedited trial track, the courts could consider the complexity of the case, number of parties, complexity of the facts, likelihood of dispositive motions, significant interests to the public, or any factor that demonstrates the assignment would substantially affect a fair and just resolution of the matter. The Committee also believed that having a trial date set early is appealing, because the parties are required to focus on the case.

The Committee mentioned that foreclosures take the longest to resolve, sometimes two to three years, and suggested a separate track for foreclosures. The Committee also considered that there should be a more robust system for agency appeals, which do not have any assistance programs for unrepresented parties.

The Committee explained that the courts must become business-oriented with a mission and vision statement. Judge Cahill's own mission statement is to ensure the Hawai‘i courts are the choice of those who seek resolution of legal disputes in a prompt and efficient manner at a reasonable cost. Judge Cahill's vision statement is to create and implement improvements to civil justice that incorporate needs of those seeking access to justice today and for the next fifty years.

The Committee suggested eliminating Circuit Court Rule 12. All non-jury trials with damages less than $250,000 should receive an expedited trial setting. It was suggested that judges should forego written findings, and instead, either rule from the bench or issue a short decision

[7] The Committee is addressing expedited trials and other innovations and is looking at ways to innovate, preserve, and revitalize trials. Resolution of disputes by jury trial, which is the most transparent means of resolution, is decreasing. Innovations such as expedited trial settings, reduced discovery, limitations on time to present a case, reduced number of jurors, and prior agreement on a range of damages are possible ideas to increase the efficiency and economy of resolving cases by trial. The Committee members are: Judge Peter T. Cahill, William B. Heflin, Summer M. M. Kupau-Odo, Daniel O'Meara, and Edmund W. K. Haitsuka.

(without findings) within 45 to 60 days after the hearing or trial. Parties are entitled to know the result expeditiously so they can advise their clients.

Judge Cahill explained that the Committee is considering increasing the CAAP amount. More CAAP hearings and trials will impact settlement values. He also suggested modifying the appellate rules to allow for an expedited appeal if a trial occurs on an expedited trial track. There was discussion about exhibits and the fact that some attorneys submit voluminous exhibits that are never moved into evidence. Streamlining exhibits must be part of an expedited trial.

IV. ADVISORY JURY TRIALS

(Panel: Judge Joel E. August (ret.), Judge Eden Elizabeth Hifo (ret.), April Luria, Roy J. Bell, III)

The panel discussed summary trials, where a jury issues a verdict after listening to a summary of the evidence and closing statements. The verdict is not binding.

Judge Eden Elizabeth Hifo (ret.) explained that the parties would normally decide to have an advisory jury only after settlement negotiations were unsuccessful. The advisory trials must be used in select cases involving the right circumstances and attorneys who have already attempted to settle the case. While she was presiding over a case and considering the option for an advisory trial, she also required that the parties have an agreement to keep their last and final offer on the table until the verdict was received.

In Judge Hifo's experience, the advisory jury was usually scheduled within two weeks of the settlement conference. The jury pool would give Judge Hifo leftover jurors, she would distribute juror cards to the attorneys, excuse any juror who had obvious conflicts, and then proceed with a short half-day trial. The jurors were not informed that they were rendering a non-binding decision. Over five years, she completed twenty advisory jury trials, and all but one case settled after learning the verdict. For the one case that did not settle after a pro-defense verdict, the plaintiff took the matter to trial and lost. The parties received feedback from the jury after it decided the case.

April Luria described her experience with a summary trial. Her case involved a wrongful death action where the identification of the defendant was questionable. After a settlement conference, the parties decided on a summary trial. The parties created a stipulated statement of facts in lieu of live testimony and gave a closing statement. The jury found liability against the defendant, but damages were much lower than the plaintiff expected. Luria thought it was a beneficial exercise because she was able to explain to her client that she received an adverse finding, and the plaintiff's attorney's expectation of damages was not borne out by the advisory trial. She explained a possible downside was showing theories and arguments to the opposing side.

Roy Bell explained his experience with an advisory jury trial in 2006. It was a disputed liability case where damages were not in dispute. The parties delivered an opening statement and had their clients testify. The verdict was for the plaintiff, but less than the demand, and the case

settled. Bell explained that the process is beneficial because the parties prepare for the trial without the burdensome medical exhibits or extensive witness preparation that would have otherwise been required in an actual trial.

The advisory trial process allows the parties to prepare for trial, give a presentation to a jury, and in some cases find out the effectiveness of witnesses. They also can speak with the jurors to obtain feedback on their presentations of the case.

V. SCOPE OF INDEPENDENT MEDICAL EXAMINATIONS

(Panel: Vladimir P Devens (moderator), Michael R. Cruise, Calvin E. Young, Frances G. Brewer, D.C., and Chet Nierenberg, M.D.)

The panel discussed whether independent medical examinations ("IME") should be recorded or whether there should be an independent observer in the examination. From a defense perspective, Calvin Young expressed the view that attorneys or parties who retained the expert should be allowed to have more control over the process. From the plaintiffs' perspective, Young acknowledged a plaintiff needs to be protected during the examination, because counsel is not present.

Michael Cruise explained plaintiffs' position on recording IMEs. He explained that the consensus among forensic physicians, the American Association in Psychiatry, and others is that there is no justification not to record the examination and no ethical prohibitions in doing so. In fact, many recommend it, and in the event of controversy, there is an objective record as opposed to a credibility contest. Research shows there is no proof that recording negatively impacts the quality of exams, and the only hurdle is obtaining the consent of examinee. The issue is the use of the recording.

Young presented the defense perspective. There are a number of defense practitioners who are adamant about not having a camera because it will affect the integrity of the exam and increase expense. There was no consensus among the defense attorneys he spoke with whether the IME should be recorded, but there was a consensus that if the IME is recorded, then the defense should be able to use it. He explained that the pool of IME doctors may shrink if IMEs are recorded.

Dr. Brewer presented the doctors' perspective. He explained that in his twenty-five years of evaluations, when a recording or another person is present, the safe space doctors seek to create for the patient changes. No physician he spoke with thought it was a good idea to allow a third-party evaluator or recording during the exam because doing so will inhibit the patient from talking freely during the examination or prevent the patient from disclosing information. Some parts of the examination are so sensitive that the examiner may not include them in the report if they bear no relationship to the issue the examiner is evaluating. .

Dr. Nierenberg explained that he has conducted IMEs for thirty-five years. In his view, research has reliably demonstrated that any form of observation influences examination and changes the examinee's presentation. He explained that older, more experienced physicians will

refuse to do examinations if they are recorded. A good IME report explains the standards that were used to determine if the patient is credible, and observation is unnecessary.

An attendee raised the idea that examiners should be given immunity from suit by the plaintiff for additional damages. The Hawai‘i Supreme Court has determined in *Seibel v. Kemble*, 63 Haw. 516, 523, 631 P.2d 173, 177 (1981), that a court-appointed psychiatrist is entitled to absolute immunity from civil claims brought by the plaintiff. However, in 2006, the Virginia Supreme court held that the plaintiff could sue the IME doctor for the additional damages caused by the psychologist. *See Harris v. Kreutzer*, 271 Va. 188, 202, 624 S.E.2d 24, 32 (Va. Sup. Ct. 2006). Dr. Nierenberg explained that there are layers of protection for a doctor, including having a chaperone in the room for a physical exam and having the patient complete a satisfaction survey.

VI. CLOSING REMARKS

Justice Simeon R. Acoba (ret.) thanked the participants, the JAC members, Chief Judge Nakamura (ret.) and the Task Force members, Chief Justice Recktenwald, the Judicial Education Office, and judiciary staff. He expressed his hope that the Forum was informative for all participants and noted the impact the Forum discussions might have on future judicial proceedings and the improvement of the practice of law.

VII. LIST OF PARTICIPANTS

Bench/Judicial Participants:

Justice Simeon R. Acoba (ret.), Judge James H. Ashford, Judge Joel E. August (ret.), Judge Derrick H.M. Chan, Judge Gary W.B. Chang, Judge Jeffrey P. Crabtree, Judge Lisa M. Ginoza, Judge Ronald Ibarra (ret.), Justice Sabrina S. McKenna, Judge Craig H. Nakamura (ret.), Judge Greg K. Nakamura, Justice Paula A. Nakayama, Judge Rhonda A. Nishimura (ret.), Justice Richard W. Pollack, Chief Justice Mark E. Recktenwald, Justice Michael B. Wilson.

Bar/Attorney Participants:
Dennis W. Chong-Kee, Steven J.T. Chow, Kahikino Noa Dettweiler-Pavia, Vladimir P. Devens, Marie M. Gavigan, M. Victor Geminiani, Gary G. Grimmer, C. Michael Heihre, Susan Ichinose, Steven T. Iwamura, Joseph K. Kamelamela, Edward C. Kemper, Robin M. Kishi, Derek R. Kobayashi, Leslie R. Kop, Sunny S.J. Lee, David M. Louie, Sharon V. Lovejoy, David J. Minkin, Traci Rei G. Morita, Carol K. Muranaka, Kyleigh F.K. Nakasone, Zale T. Okazaki, Brad S. Petrus, Stefan M. Reinke, Kenneth S. Robbins, Woodruff K. Soldner, Audrey E. Stanley, Kevin P.H. Sumida, Russell A. Suzuki, Stephanie E.W. Thompson, Brian W. Tilker, Mark G. Valencia, Alan Van Etten, Cynthia K. Wong, Deborah K. Wright, Nathan H. Yoshimoto.

Panelists:
Nadine Y. Ando, Judge Peter T. Cahill, Judge Jeannette H. Castagnetti, Roy K.S. Chang, Roy J. Bell, III, Francis G. Brewer, Michael R. Cruise, William B. Heflin, Judge Eden Elizabeth Hifo (ret.), Judge Keith K. Hiraoka, Summer M.M. Kupau-Odo, April Luria, Lisa W. Munger, Judge

Henry T. Nakamoto, Dr. Chet Nierenberg, Daniel J. O'Meara, Judge Randall G.B. Valenciano, Elijah Yip, Calvin E. Young.

Court Administrators and Judiciary Staff:
Michelle D. Acosta, Sandy Kozaki, Daylin-Rose H.Y.L.G. Heather, Brandon M. Kimura, David Lam, Cheryl Salmo, Mark Santoki.

Hawai`i State Bar Association
Committee on Judicial Administration

2018 CRIMINAL LAW FORUM

Ali`iolani Hale
Supreme Court Building, Room 101
Tuesday, September 26, 2018

Hawai`i State Bar Association
Committee on Judicial Administration

2018 CRIMINAL LAW FORUM REPORT

I. INTRODUCTION

As described in the *Hawaii State Bar Association ("HSBA")'s Board Policy Manual*, the Committee on Judicial Administration ("JAC")[1]

> Maintains a close relationship with the judiciary on matters of mutual concern to the bench and bar, monitors and formulates recommendations to the Board concerning legislation affecting the judiciary, studies and reports on subjects of judicial conduct and discipline, and coordinates activities of the HSBA relating to improvement of the judiciary and administration of justice.

Following a successful Bench-Bar Conference in 2013, the JAC decided to develop a Forum concept to focus on certain issues in the criminal areas[2] and civil areas[3]separately. These Forums take place every other year, alternating with the Bench-Bar Conferences.

The JAC acknowledges the generous support of Hawai'i Supreme Court Chief Justice Mark E. Recktenwald for the venue and for the committee's activities. The JAC is grateful for the logistics assistance by the Judiciary's Judicial Education Office (Dawn Nagatani and Martha Hamada).[4]

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[1] The HSBA Committee on Judicial Administration in 2018 comprised the following co-chairs and members: Hawai'i Supreme Court Associate Justice Simeon R. Acoba, (ret.), Co-Chair; Steven Chow, Co-Chair; Judge Joel August (ret.), Hayley Cheng, Judge Brian Costa, Dennis Chong Kee, Kahikino Noa Dettweiler-Pavia, Vladimir Devens, Kirsha Durante, Don Gelber, William Harrison, Judge Ronald lbarra (ret.), Judge Shirley Kawamura, Edward Kemper, Carol K. Muranaka, Kyleigh Nakasone, Lester Oshiro, Hawai'i Supreme Court Associate Justice Richard Pollack, Audrey Stanley, Kevin Takata, and Judge Randal Valenciano.

[2] The Criminal Law Forum subcommittee members included Hawaii Supreme Court Associate Justice Simeon R. Acoba, Jr. (ret.), Hayley Y. C. Cheng, William A. Harrison, Judge Ronald Ibarra (ret.), First Circuit Court Judge Shirley M. Kawamura, Lester D. Oshiro, Hawaii Supreme Court Associate Justice Richard W. Pollack, and Kevin K. Takata.

[3] The 2018 Civil Law Forum took place on October 16, 2018.

[4] Others who assisted with the Forums include Jaye Atiburcio, Grace Ginoza, Curt Shibata, and Mark Santoki. Funding for the refreshments was provided by the HSBA. Additional funding for the 2018 Forums was provided by Dispute Prevention & Resolution, Inc., Marr Jones & Wang, LLP, Justice Simeon R. Acoba, and The Pacific Law Group.

II. WELCOME AND OPENING REMARKS

William A. Harrison welcomed the attendees and thanked everyone for participating in this important event. He explained that, as in the past, the Forum was organized with the intent of considering significant issues involving the effective administration of justice and the overriding purpose of the Forum was to stimulate ideas and to look for possible solutions to systemic issues, which would lead to improvements in the criminal justice system.

He introduced and specifically thanked Hawai‘i Supreme Court Chief Justice Recktenwald whose leadership has been instrumental in supporting these informative Forums and for the commitment of the judiciary in working with other state agencies in encouraging open and effective communication between the bar and the judiciary.

Chief Justice Recktenwald expressed his gratitude to the JAC for the Forums and the past Bench-Bar Conferences, which he stated, “evolved into something special.” He noted that these Forums and the Bench-Bar Conferences have been a best source of input from the bar, and the judiciary seriously considers the matters discussed and subsequently, identifies innovative ideas for the courtrooms. Chief Justice Recktenwald noted that all four chief judges from the circuits, the senior court administrators, and several judges from across the state were present at the Criminal Law Forum and were there to listen to these discussions.

He explained that after the JAC writes its reports on the Forums and Bench-Bar Conferences, he meets with the chief judges and court administrators to decide on the recommendations that can be feasibly implemented. Subsequently, he writes an article for the Hawaii Bar Journal that reports on the judiciary’s efforts regarding the ideas discussed. The Chief Justice said:

> It holds us more accountable and enables us to be able to hear from you and get better. I am so grateful to each of you for the time that you are willing to spend. I cannot emphasize enough how important it is to us to be able to get your ideas and hear your thoughts on important issues we will be talking about today.

He mentioned that two years ago the Criminal Law Forum focused on pretrial reform. It was the first significant statewide conversation on pretrial release and bail reform and prompted the legislature to establish a Pretrial Reform Task Force to review the system. That Task Force with 31 members was chaired by Judge Rom Trader, and Judge Shirley Kawamura served as the reporter, and the Task Force will be submitting its report to the legislature recommending changes to the system.

The second Task Force that Chief Justice Recktenwald mentioned is the Task Force on Effective Incarceration Policies chaired by Justice Michael Wilson. That Task Force reviewed all aspects of the current prison system, alternatives to incarceration, and prison systems in Europe. A report will also be submitted to the legislature this session.

Chief Justice Recktenwald expressed his appreciation to the Task Forces, chairs, and members for their hard work and thanked the participants for their exchange of ideas.

III. COURT ISSUES

(*Panel: Kevin K. Takata (moderator), Judge Randal Valenciano, Judge Greg Nakamura, Judge Paul Wong, Judge James Kawashima, Brook Mamizuka (ACS Intake-PSI Section Administrator), and Leonard Sensui (ACS-Supervision I Section Administrator).*

A. Rule 48 and Dismissals

Public concerns regarding overcrowded dockets, which lead to delays that ultimately result in Rule 48 and speedy trial dismissals of cases, have been heavily documented by the media. The commonly cited reasons for the dismissals usually involve (1) court congestion; (2) witness problems; and (3) discovery production and delays.

First Circuit District Court:

Judge James Kawashima indicated that the judges are trying to get a better handle on the number of Rule 48 dismissals. The district courts are using a spreadsheet to keep track of cases in the First Circuit District Court. He noted there are a small minority of cases that are dismissed by Rule 48 violations, as opposed to for example, Rule 9 violations.[5]

There is a concerted effort by the courts to try to schedule cases so as not to overburden the various court dockets. This has resulted in fewer cases that were dismissed due to overcrowded dockets over the last two years. Recently, there appear to be fewer complaints registered by the parties. The flexibility and cooperation by everyone on both sides have been a contributing factor.

Importantly, the defense has been accommodating in agreeing to and in obtaining continuances as needed.

Other courtrooms have been opened to cover the overflow cases. The prosecution, defense, and judges have also been cooperative in taking those extra cases if dockets permit. Most of the alternate courts have been opened for DUI cases. There have been some issues with the movement of court clerks, who primarily were handling civil cases and were transferred to criminal cases; but this should become less of an issue as the clerks gain experience and training.

The docketing calendar previously discussed was initiated by Judge Ashford when he sat in the DUI court. That calendar helps to see the big picture and allows ready access to the days that are full and those days that are open, so available slots can be filled. It assures more consistency and avoids setting matters that are clearly not able to proceed. This helps remove some of the gamesmanship involved in setting cases.

[5] Rule 9 of the Hawai'i Rules of Penal Procedure ("HRPP") requires warrants to be served "without unnecessary delay." See *State v. Lei*, 95 Hawai'i 276, 21 P.3d 880 (2001).

The court is also limiting the number of cases each attorney can set in a courtroom to eliminate the concerns that some attorneys overbook a date to ensure Rule 48 problems will occur. Therefore, for the most part, the court is taking steps to address congestion issues so that congestion does not become a greater problem.

First Circuit Court:

Judge Paul Wong indicated that they have been quite lucky as there have been very few Rule 48 dismissals in the First Circuit Court. If there are Rule 48 problems, judges are now willing to start two trials a week in their courtrooms to alleviate the Rule 48 problems.

There is a concern, however, in not being able to serve grand jury bench warrants timely as this has led to some Rule 48 problems. Under HRPP Rule 9, a warrant needs to be served without undue delay. In some cases when a defendant is first brought to court, there may already be Rule 48 issues because of the time it took to serve the defendant. This is where most of the First Circuit Court Rule 48 problems arise.

Third Circuit Court:

Judge Greg Nakamura indicated that they have few Rule 48 dismissals in the Third Circuit Court. The other judges in the circuit are willing to accommodate problems by taking trials if necessary.

Fifth Circuit Court:

On Kauai, both Circuit Court judges are willing to cover for one another if there is a Rule 48 issue and a case needs to proceed. Judge Randal Valenciano noted that the Chief Justice instituted a requirement that the courts maintain a Rule 48 monthly report. The Fifth Circuit found a weakness in the system when cases were transferred from District or Family Court to Circuit Court. When a defendant appeared and asked for an attorney, Family Court was calendaring an initial appearance three plus months out. This would, in effect, consume one-half of the Rule 48 clock. Then when a defendant returned to court and requested a jury trial it would take another three weeks to a month for the case to move from Family Court to Circuit Court. By that time, four months would have already been exhausted.

After the court learned of this problem, the court has been trying to compress this time to two weeks, which is still significant in lost time. The court routinely inquires of the prosecution at arraignment its calculation of the Rule 48 date, then based on that date appropriately sets the matter for trial. However, if that Rule 48 date is miscalculated, the court may not learn of this until close to or possibly after the date trial has been set. Another reason for dismissals in the Fifth Circuit is due to Rule 9 issues. Unfortunately, the police do not keep good records of their attempts to serve, therefore it becomes difficult for the prosecution to argue for and meet its burden of proof that service is being affected without undue delay.

B. Discovery Issues

First Circuit Court:

There are discovery issues in DUI courts dealing with questions of what is potentially discoverable, e-filing problems, and general production delays. Since Rule 48 is not tolled by discovery issues, the court tries to keep close control over such disputes. A new issue that will surely arise is the question of the newly instituted body camera and its producible video evidence and discovery. Such body camera discovery is downloaded via a link. Therefore, theoretically, such discovery should not be a problem.

Questions have arisen whether the video may be tampered with, but that issue has been addressed by the company that provides the download link by providing that link to both the prosecution and defense.

Third Circuit Court:

Judge Nakamura stated there have been no reported problems with body cameras or discovery in the Third Circuit.

Fifth Circuit Court:

It appears that the Fifth Circuit has several practical issues concerning body camera files. On Kauai, the challenge is not obtaining body camera discovery, because it is readily available for counsel to download and view. It is having custody defendants review their body camera discovery. The Department of Public Safety ("DPS") will not necessarily allow defendants the opportunity to review their video discovery. The Kauai DPS facilities do not have the capability of allowing the defendants the ability to review the video evidence. Some of the body camera evidence is quite lengthy, and the facilities have had an issue with any required extensive viewing. Therefore, counsel has alternatively asked the court to allow for viewing at the courthouse. This is not a convenient alternative, so the court has had several challenging discussions with the DPS about the problem. This has presented trial problems as the court is receiving motions concerning the inability to properly review the body camera evidence prior to trial. Judge Valenciano posits that this issue will probably become an interesting problem on Oahu when body cameras become more readily implemented by law enforcement. Judge Valenciano anticipates that Oahu will indeed have technological problems when inmates start requesting the right to view their video discovery.

First Circuit District Court:

Judge Kawashima recognizes there may be an issue in this regard as the body camera evidence becomes more prevalent in the Oahu courts. Oahu counsel noted that OCCC allows counsel to make advance arrangements to bring in laptops to review body camera videos. However, it is still a new development on Oahu and the possible problems of viewability may not have yet been fully recognized and assessed.

C. Witness Availability

All Circuits:

The consensus in all circuits is that witness availability is generally not a problem, except for Family Court domestic violence cases. In the Fifth Circuit domestic abuse cases, the court stated that many times reluctant witnesses, who are either trying to reestablish their relationship or leave the relationship, are involved and do not want anything to do with the defendant and the court. Since Kauai is such a small community, the defense probably knows more about the complainant than the police. Therefore, at pretrial, the court will often find out from the defense that the witness may have moved off island, not to return. If the prosecution is not ready, this may result in a dismissal.

D. Court Inclinations on Motions

Counsel believe that providing inclinations in advance of hearings will make preparation, hearing time, and arguments more efficient, additionally it adds transparency in such matters.

First Circuit District Court:

Judge Kawashima provides informal inclinations and will address this in chambers on the day of the hearing. He believes that by providing the inclinations he can focus the parties on the specific issues to be addressed. However, in criminal cases constitutional issues are at stake, where defendants must be present when deciding these matters, and because of this, he recognizes that judges must be mindful not to prejudge matters.

A practical question was raised as to how far in advance after a motion is filed in JEFS do the judges receive and review the motion before a hearing. Theoretically as much as two weeks in advance, but most often, the judge may read the motion the day of the hearing. It was noted that most of the motions are standard motions, which have been routinely heard and decided on. However, if the issue is new or novel, it is the obligation of the attorney to notify the court in advance of the hearing of this situation, so that adequate time can be set aside to review the motion.

First Circuit Court:

Judge Wong will not provide "inclinations." He notes that there are some motions that are filed by the parties to comply with required due diligence responsibilities. On those standard motions, all parties are aware of the nature and likelihood of disposition. On new or hot button topics and matters, the court will seek a full briefing and argument on the motion. Most parties that appear before the court are aware that the court will likely question the parties because the court may change its thinking on the matter based upon what is heard in court.

Judge Wong indicated that with respect to review of motions in his courtroom the motions are reviewed personally by him well prior to the hearing.

Third Circuit Court:

Judge Nakamura normally prefers not to provide inclinations because he wants to have the flexibility of considering what may be brought forth at the hearing on the motion before rendering a decision. At the hearing, he will ask questions of the parties to direct them to focus on an issue of concern.

Fifth Circuit Court:

The hearing on the motion may add to the decision-making process. Therefore, Judge Valenciano welcomes the hearing before deciding the motion. Many times, motions are filed on Kauai by attorneys to create action on the cases. He does not want to interrupt that give-and take-process between the parties by providing inclinations. Concerns have been raised that when the court provided inclinations, the court's action led to comments that "he prejudges cases." For those reasons, the court is disinclined to give inclinations.

Judge Valenciano indicated he reads all motions himself. He reads them often two to three times before deciding on the motion.

E. Sentencing Reform

There is a national trend toward use of better risk assessment tools, less incarceration, shorter probationary periods and early termination of probation. Will Hawai'i follow this movement?

First Circuit Court:

Judge Wong noted that sentencing is the most difficult aspect of his job. In his experience, in most cases some aspect of drug addiction was involved. Rehabilitation thus became the primary focus when drug addiction is of concern. He reviewed the statistics on crime and found some startling numbers. In 2016-2017, there were 4,399 property crimes at the Circuit Court level statewide.[6] Ninety-two percent of these cases were driven by drug addiction and most of these were B and C felonies. Many of these defendants will be back in the community within ten years, therefore courts need to consider rehabilitation. Probation is the primary sentence for rehabilitation purposes. Overall, statistics have shown there has been a decrease in crime, and there are many reasons for the decrease. Rehabilitation may be a significant factor in such decrease.

When it comes to recidivism the "maxed out"[7] individual tends to recidivate more than probationers. Statistics suggest that 66% of maxed-out individuals as compared to 22% of probationers recidivate. New offenses are committed by one out of two maxed-out individuals as

[6] These statistics are referenced in the "2016 Review of Uniform Crime Reports" found at: https://ag.hawaii.gov/cpja/files/2017/08/Crime-in-Hawaii-2016.pdf.

[7] Individuals that have been incarcerated for the full term of their imposed sentence.

opposed to one out of five probationers. Therefore, it is clear probation works, and it does not pose a public safety concern.

Conditions of probation are fashioned based upon the nature of the offense and the individual probationer.

F. Use of Risk Assessment Tools

Adult Client Services ["ACS"] uses as a risk assessment tool, "Level of Service Inventory-Revised," commonly referred to as the "LSI-R" in evaluating a defendant for sentencing and release purposes. It identifies areas in which probationers need assistance, programming, and monitoring. It looks to addiction issues, family issues, as well as reporting concerns.

Third Circuit Court:

In the Third Circuit, Judge Nakamura rarely has a presentence report ["PSI"] to work with, as most times, sentencing is based on plea agreements. Part of the problem in the Third Circuit is not having adequate resources to provide PSIs in every case. The court uses the practice of presentence release to preview a defendant's compliance between the plea hearing and sentencing. This gives the court a sense as to the kind of sentence necessary to impose in an individual case. The court believes that there is no disadvantage in not having a PSI, and normally there is not much discretion because the court is generally relying upon the plea agreement. A comment received from a Big Island attorney supported the notion that the system works well, and a PSI is only needed if a motion for revocation of probation or release is filed against a defendant.

Fifth Circuit Court:

Judge Valenciano almost always asks for a PSI for several reasons: (1) to review the raw data concerning the nature of the offense, such as the police reports; (2) to see if the defendant meets with the probation officer (this fact is of importance as it shows whether the defendant will comply with the court's orders at the outset); and (3) to make sure the court has as much information as possible to render the best decision, regarding an appropriate sentence.

G. Trend Toward Shorter Probation

First Circuit Court:

Judge Wong stated that the statistics have now proven that if a probationer recidivates it usually occurs within 13 months of probation. It is during this time that a probationer is usually supervised. After that period, supervision is normally decreased if there is compliance, and probationers are generally placed on "bank" status.[8]

[8] "Bank" is a low-level supervisory status.

Judge Wong usually entertains one early probation termination motion every four or five months. The normal reasons for such motions are relocation or job issues. ACS officers on Oahu do not provide opinions as to whether they support or oppose early termination motions.

Third Circuit Court:

Judge Nakamura entertains about two to three such motions every month, and these defendants generally serve over one-half of their probation term. Usually the motion is supported by the probation officer.

Fifth Circuit Court:

Judge Valenciano now reviews numerous motions for early termination, because unlike in the past, probation officers no longer advise defendants to file such motions. As a result, defense attorneys are routinely filing early termination motions when one-half of a defendant's sentence has been completed. Normally on Kauai, defendants complete the entire term of probation. Policies on each matter differ, and it depends whether it is crime of violence or similar criteria.

First Circuit District Court:

Judge Kawashima indicated that there have not been any significant changes in the First Circuit District court sentences.

H. Trial Scheduling on Neighbor Islands

Concerns have been raised by First Circuit counsel as to the length of trials on the neighbor islands, as the neighbor island court dockets include civil and family matters in addition to criminal cases.

Third Circuit Court:

Judge Nakamura indicated that on the Big Island criminal trials are scheduled every week except for the last week of the month. The Third Circuit tries to accommodate travel for neighbor island attorneys. One attorney noted that he had a murder trial on the neighbor island that took six weeks to complete because the court had only three days a week available as trial days. The court explained that the Hilo calendars are mixed calendars with criminal, civil, and other matters set on different days. In addition, there are drug court, arraignment, motions calendars, and custody matters docketed. If Judge Nakamura has a trial, the other judges will try to handle many of the other matters on his calendar.

A comment was made that there needs to be more firm trial court dates, otherwise it is extremely difficult to coordinate expert witnesses who are critical to the case. A suggestion was also made that the Chief Justice should consider the possibility of moving judges from another court or even the civil calendar to accommodate the court congestion, especially where it involves

a complex case. Firm trial dates should be the goal for a more efficient management of the criminal calendar, especially when expert witnesses are involved.

Fifth Circuit Court:

On Kauai, there are two circuit court judges, one district court judge, and one family court judge. Each week, 10-15 criminal trials and one civil trial is set. Therefore, everyone is competing for the same trial week. The court has pretrial conferences that establish the priority for trials. As the trials get closer to the scheduled date, some cases will normally fall out and settle, and the remainder will be further prioritized. The trials that do not go forward will be continued. The two circuit court judges handle both civil and criminal cases. The court also handles Drug Court and HOPE probation.

Judge Valenciano's Thursdays calendar is usually busy with non-trial matters, so it will be difficult to schedule trial time on Thursdays. Judge Valenciano indicated that Kauai has additional courts that could accommodate visiting judges. However, even if judges were brought in there is not enough staff (court, bailiffs, and sheriffs) to accommodate the judges. Support staff would need to accompany the visiting judge.

First Circuit Court:

Judge Wong noted that in the First Circuit firm trial dates are provided if there is an appropriate reason given such as witness availability issues. Judge Wong does not set more than one firm trial date in his court on any given week.

I. Probation Reporting and Compliance Issues

Attorneys are seeking to find and understand methods to improve probation reporting, compliance, and revocation issues.

ACS Supervisor Leonard Sensui described generally how current probation officers manage their cases. Probation utilizes the LSI-R (Level of Service Inventory-Revised) method to determine risk-appropriate supervision. Probation does not want to put a probationer in a supervisory status that does not match his level of service assessment, otherwise the probationer is set up for failure.

Prior to recommending probation revocation, ACS will do their best to work with the probationer. There is an inaccurate impression that ACS will quickly move to revoke probation after a violation. ACS tries to modify behavior if they see a problem, especially if it is a drug problem. When it becomes a safety concern, ACS will inform the probationer it will have to report the conduct to the court. From time to time, ACS has been reprimanded by judges who believe ACS waited too long to bring the matter to the attention of the court.

ACS tries to use motivational tools with a client. Sensui noted that ACS has changed from the old ways of probation as a "hammer," to a more empathetic body. ACS works on a probationer's self-esteem.

Probation officers are currently classified as social workers, which has changed the mindset of the ACS officers. For instance, Sensui has his master's degree in social work, as well as his Certified Substance Abuse Counseling ["CSAC"] certificate. The attitude in the office is different than previously. The probation officers are more collegial than the probation officers of old.

1. Reporting Issues:

Probationers often have problems making their appointments. ACS gives them an appointment card, which lists their next date. The probationers are encouraged to purchase inexpensive journals to assist with recording their obligations, and the probationers are expected to call if there is a problem. Sometimes ACS must send appointment letters to reconfirm meeting dates. If ACS is not able to reach a probationer, then a warning letter may be issued noting there may be serious consequences for the next failure to respond.

2. Compliance issues:

ACS tries to refocus clients on the endgame - completing probation. ACS does this, so the clients focus on completing their probation requirements. Probation often will provide them with options to make it easier to comply.

Homeless clients present a unique problem due to contact issues. ACS tries to accommodate the homeless probationer's lack of resources, but it is the probationer's obligation to comply. Unfortunately, all too often it will take a bench warrant to get the probationer's attention and compliance.

J. Fast Track of Cases

Streamlining the disposition of certain types of cases such as first offenders, property crimes, non-violent offenses, as well as possible alternatives to court intervention should be explored.

First Circuit Court:

Judge Wong stated that the First Circuit has no systematic way to fast-track a case. He welcomes any parties' input and agreement to move cases faster and will accommodate the parties' agreement to do so.

Third Circuit Court:

Judge Nakamura indicated that in their circuit they have established a fast-track schedule for certain cases. There are prerequisites for fast-tracking a case. The requirements are that the defendant: (1) is not on probation; (2) is not on supervision; (3) has no other pending cases; (4) is

not subject to a mandatory minimum term; (5) is charged with a non-violent B felony; and (6) is charged with a violent C felony that is not a sex offense. If those criteria are met, the court sets an expedited schedule. The expedited schedule is as follows: (1) trial is scheduled 90 days from the date of arraignment; (2) within 10 days of arraignment, the State must submit a plea offer to the defense; (3) all discovery must be provided by the State within 30 days after arraignment; (4) defendant must meet with defense counsel within 38 days of arraignment to discuss the case and plea offer(s); (5) pretrial motions deadline is 42 days after arraignment;(6) a defendant must accept or counter the State's offer within 45 days of the arraignment; and (7) a pretrial conference is scheduled within 55-60 days of arraignment and the defendant must be present.

Third Circuit Court:

Judge Valenciano noted that in the upcoming Civil Law Forum the discussion will be about civil justice reform. The concepts of "triage" case tracking will be discussed: getting cases in, assessing the case, and placing the case in certain tracks. Assignment of the tracks will dictate how the case is managed. Since the criminal bench and bar have been discussing different problems facing criminal case management, this "justice reform" concept should also be reviewed for criminal cases as well. For instance, certain cases can be placed in individualized tracks where a probation term could be decreased, such as a first offender type of situation. That would limit the need for early termination of probation motions. Drug cases, property crimes, misdemeanors, and other offenses may be better dealt with under this reform concept. Judge Valenciano challenged the criminal bench and bar to consider a "Criminal Justice Reform" initiative for future conferences and forums.

IV. MENTAL HEALTH ISSUES

(Panel: Kirsha K. Durante (moderator), Justice Simeon R. Acoba (ret.), Judge Shirley Kawamura, Dr. Janet Phillips (HSH-Forensic Coordinator), Dr. Keith Pedro (AMHD – Director of Services), Dr. Brenda Bauer-Smith (Supervisor, DOH Court Evaluations Branch), Debbie Tanakaya (Deputy Attorney General), and Darcia Forester (Deputy Public Defender)).

A. Training for Examiners

Concerns have been voiced as to the need for better training, involving the legal standards to be applied in HRS § 704 reports and evaluations.

Court Evaluations ["CE"] is one branch of the Adult Mental Health Division ("AMHD"). The branch is tasked with Hawai'i Revised Statutes ["HRS"] §704 assessments and evaluations. The branch receives orders from Circuit, Family and District courts statewide. The branch has six full-time examiners, two part-time examiners, and the director. CE branch caseloads are quite high–significantly above the national average. The CE branch receives approximately 1,440 assessment requests a year. This breaks down to approximately 120 assessment requests per month.

The CE branch is now fully staffed, thus § 704 examinations, reports, and evaluations are being completed more promptly. The average amount of time to complete an assessment is now 45 days, a decrease from the previous time frame of 58 days. Due to present staffing, requests for court continuances have diminished.

At present, the CE branch has no formal certification training. However, the branch conducts monthly staff meetings, where a segment is dedicated to training.

The branch is seeking to add more independent examiners to the appointment list. No examiners have been added to the list since the 2012 certification training. The CE branch wants to make sure those who will be added are properly vetted and qualified.

Although the branch lacks certification training, the branch has established certain policies and procedures to determine if a person is properly qualified to be an examiner.

The branch looks at several factors in order to determine if a potential examiner is qualified. These factors include: (1) licensure; (2) whether an applicant participated in the 2012 clinical training; (3) whether an applicant has prepared forensically related evaluations; (4) whether an applicant received certification in another state; (5) whether an applicant has prepared assessments before; (6) whether an applicant has previously provided court testimony; and (7) whether an applicant has specialty training in a forensic field.

Question: Is there any training on report writing? Can you explain why there is such a divergence in written reports? In one case, there may be a detailed 80-page report, and another report may be a scant three pages.

Unfortunately, there is no formal training in report writing. There is a wide range of standards in the writing of a report, and it appears the divergence may be just a matter of style. Some minimalist writers have the expectation that more detail will be forthcoming during testimony at the court hearing. While others may be more comfortable in issuing an opinion, which includes detailed reasons for the findings. Other examiners are not as comfortable preparing a detailed report. Occasionally, the report writer expects attorneys to follow up with questions if a narrative needs clarification.

Question: Do examiners receive legal training to assist them with defining the legal criteria and standards?

There is an expectation that examiners are familiar with the basic legal criteria. The Hawai'i State Mental Health designated examiners have that knowledge. There is no current procedure in place where examiners are trained by attorneys or court personnel; however, that is a practical suggestion that should be considered.

Question: There are occasions when a client may have already had multiple reports prepared on a variety of prior cases. Does the next appointed examiner review past forensic reports in preparation for writing the current report or do they start anew? Is there a bank of reports that the examiners can rely on for previous information?

No report bank is maintained. The AMHD branch does not receive copies of the 704 reports. The examiners are required to file an original and a copy of their report with the court. Sometimes examiners will see reports that have been gathered by the probation department on certain cases or are part of the court record. The branch tries to reassign the same examiner to do a report on a prior patient.

Questions: Why has the number of examiners been limited since 2012? What are the criteria for choosing doctors? What is the recruitment process? The statutes set out exactly what should be included in the reports, so why is it that there are no templates used to standardize reports? What can the courts do to help in this regard?

The list of examiners has been frozen. Previously it was very easy to get on to the list. However due to increased standards and additional criteria, recruitment has been difficult. The last time there was a department recruitment, a position remained open for two years. The department received a handful of applicants who could not meet the new criteria. Since 2012, five people were interested in applying to be placed on the list, but three of them would not have met the standards and criteria. The pay rate is also a significant consideration in filling positions.

There are also complaints that it can be difficult to obtain examiners for the court hearings, because they are either too busy or because of the fees that examiners are paid for court testimony.

The court handles compensation for the independent examiners. AMHD should also be involved in the compensation process for the independent examiners. The branch understands that attorneys are required to pay exorbitant fees for an examiner's time. There should be parameters or limits as to what fees could be charged. Although there is no formal process, if there are independent examiners who are charging too much or are difficult to track down for a hearing, the attorneys should forward those complaints to Dr. Bauer-Smith.

B. Professional Evaluations and Quality Assessments of Examiners

Hawai'i needs to implement a system where examiners are assessed and evaluated on a routine basis.

The CE branch is proposing a Hawai'i Administrative Rule ["HAR"] that sets forth a required evaluation process by senior forensics' examiners or the forensics chief and will establish a mentoring process for examiners.

The implementation of a quality review procedure has been considered by AMHD since 2011. In the proposed HAR draft (no set timeframe on completion), AMHD is looking at the evaluations and peer review process and is hopeful that these concerns will be addressed in the HAR.

It is clear examiners are not using the same legal standard in all fitness reports. This quality review issue is also in the process of being addressed in the proposed HAR. AMHD is looking at the evaluations and a peer review process to remedy this problem. AMHD is hopeful that these

concerns will be addressed in the adoption of the HAR. In the absence of the expected adoption, one can lodge complaints on matters with the AMHD branch.

Another concern that has been voiced is that reports are not setting forth the appropriate legal standards on "fitness to proceed" and "penal responsibility." The recent trend is to have opinions such as "marginally fit" or "fit with a caveat" in 704 reports. This is clearly not the legal standard. One panelist indicated that fitness is a fundamental legal standard, which all examiners are required to comprehend and thus should be able to address in 704 reports. However, it is readily acknowledged that the determination of "dangerousness" can be a more difficult issue to report. The 704 statute on fitness and personal responsibility is not ambiguous. Examiners should be reporting definitively as to how mental illness is affecting a defendant's responsibility or fitness to proceed.

The American Law Institute in drafting the model penal code acknowledged that the standard definition of "substantial capacity to assist or lack thereof" – provided some flexibility. However, "lack of substantial capacity" does not equate to "marginal lack of capacity." Therefore, it would be helpful for the examiners to track the statutory language.

How courts can help:

- Different counties have different orders and these court orders should be standardized. The number of requested assessments is quite high; therefore, consideration should be made to determine if a defendant may be under the influence of drugs before moving to appoint a 704 panel;
- The preparation of a training video and accompanying reading material, which sets forth both the legal standard and case law, to familiarize the examiners with their forensic, medical, and legal responsibilities;
- Establishing formal legal training for examiners within the branch;
- Completion of the proposed HAR, which would formalize requirements for recruitment and selection of examiner, training and education of examiners and standardization of reporting procedures.

C. Mental Health Court

The history, admission criteria, and goals of mental health court are reviewed and discussed.

The Mental Health Court was established in 2005 through Judge Marsha Waldorf and is a specialty court that redirects offenders from jail to community-based treatment with intensive supervision. The court helps to deal with public safety issues and to support the recovery of defendants diagnosed with severe mental illness.

The court's primary goals are to (a) increase the number of offenders with serious mental illness to be redirected from incarceration to treatment; (b) reduce the number of days offenders with serious mental illness spend in jail; (c) reduce recidivism rates among offenders with serious mental illness; (d) exhibit clear communication, patience, and an understanding of mental illness

in the courts; (e) improve collaboration among the First Circuit Court, executive branch agencies, county agencies, and non-governmental nonprofit organizations that work with offenders with serious mental illness.

The Mental Health Court is different from regular probation, HOPE, or other specialty courts in that there is an acknowledgement of the client's mental illness; progress is assessed on a case by case basis; supervision is designed to reinforce treatment; and treatment is in collaboration with community providers.

The Mental Health Court Team is comprised of the judge, deputy prosecuting attorney, deputy public defender, court-based clinician, representing the Department of Health, AMHD, and the Mental Health Court Probation Team consisting of a supervisor and two senior Probation Officers.

The eligibility criteria for admission to the Mental Health Court is that the person has a serious and persistent mental illness, an illness that has continued or is likely to continue for more than 12 months and which results in functional impairment that interferes with the person's ability to function independently in an appropriate and effective manner; is fit to proceed; has a minimal history of violence; and is amenable to treatment. The exclusions include violence, sex offenses, and chemical dependence as a primary diagnosis.

Referrals are initiated by the defense attorney starting with an application form, then a pre-exam discussion, and a post-exam discussion resulting in a Mental Health Petition Hearing. There are four Mental Health tracks: Track 1 is for defendants who have not yet been charged of a misdemeanor or felony; Track 2 is for defendants that have been charged, but have not yet faced adjudication; Track 3 is for defendants who have not been found guilty, but are pending sentencing; and Track 4 is for defendants who are facing revocation of deferred acceptance of guilty plea or probation.

The graduation requirements occurs in four phases: Phase 1, the defendant must have stable housing and establish financial entitlements; Phase 2, the defendant shows progression through treatment and services, has shown medication stability and management, and is clean and sober; Phase 3, the defendant establishes a relapse and crisis plan, has improved family functioning, and has educational and vocational training; and in Phase 4, the defendant has a sponsor and mentors in the community and has long-term stable housing and has an aftercare plan.

Since 2005, the Mental Health Court in Oahu has had 104 graduates, and the period between 2015 through April 2018, the program has had 21 graduates, and 66% have not been rearrested since 2015.

D. Adult Mental Health Division ("AMHD") Services

The apparent lack of AMHD services throughout the criminal justice system for defendants both in and out of custody has been of great concern to all.

Dr. Keith Pedro discussed the fact that numerous AMHD resources are indeed available throughout the state. A list of the types and location of the services available are as follows:

Case Management and Support Services

- Community-Based Case Management (CBCM) (Statewide)
- Bi-Lingual Interpreter Services (Oahu)
- Homeless Intensive Case Management (ICM-Plus) Pilot Project (Oahu)
- Homeless Outreach (Oahu, Hawai'i, Maui, and Kauai)
- Peer Coach (Oahu, Hawai'i, Maui, and Kauai)
- Representative Payee (Oahu, Hawai'i, and Maui)

Community Housing

- 24 Hour Group Home (Oahu, Hawai'i, and Maui)
- 8-16 Hour Group Home (Oahu, Hawai'i, Maui, and Kauai)
- Semi-Independent Housing (Oahu, Hawai'i, Maui, and Kauai)
- Shelter Plus Care (S+C) for the Homeless (Oahu, Hawai'i, Maui, Molokai, and Kauai)
- Supported Housing/Bridge Subsidy (Oahu, Hawai'i, Maui, Molokai, and Kauai)
- Therapeutic Living Program (TLP) (Oahu)
- Transitional Housing, Safe Haven (Oahu, Hawai'i, and Maui)

Crisis Services

- Crisis Line of Hawaii (Statewide)
- Crisis Mobile Outreach (CMO) (Statewide)
- Crisis Support Management (CSM) (Statewide)
- Licensed Residential Services (LCRS) (Oahu, Hawai'i, and Maui)

Forensic Services

- Clinical Assessment & Referral Services: Court Based Clinician (Oahu)
- Community Based Fitness Restoration (Statewide)
- Community Release Exit Support and Transition Program (CREST) (Statewide)
- Consultation/Liaison w/ Law Enforcement and Public Safety Dept. (Statewide)
- Consultation with Specialty Courts -Mental Health Court (MHC) (Oahu)
- Court Ordered Forensic Evaluation Services (Courts Branch) (Statewide)
- Forensic Coordination (Statewide)
- Hale Imua (Oahu)
- Honolulu Police Department Central Receiving Div. Services (Oahu)
- Pre-Booking Jail Diversion (Oahu)
- Post-Booking Jail Diversion (Statewide)

Psychosocial Rehabilitation Services

- Clubhouse (Oahu, Hawai'i, Maui, Molokai, and Kauai)
- Hawaii Certified Peer Specialist Program (Statewide)
- Supported Education (SE) (Oahu, Hawai'i, Maui, Molokai, and Kauai)

- Supported Employment (SE) (Oahu, Hawai'i, Maui, and Kauai)
- Transitional Employment (TE) (Oahu, Hawai'i, Maui, Molokai, and Kauai)

Treatment Services

- Day Treatment (Oahu and Maui)
- Hospitals (Inpatient, General, Non-Forensic) (Oahu, Hawai'i, Maui, and Kauai)
- Hospitals (Inpatient, Specialty/State, Forensic) (Oahu -State Hospital)
- Intensive Outpatient (IOP) Hospital (Oahu)
- Outpatient Treatment (Statewide)
- Specialized Residential Treatment -Mental Health (Oahu, Maui)

Other Services

- Expanded Adult Residential Care Home (E-ARCH) (Oahu)
- Primary Behavioral Health Integrated Care (Oahu)
- Substance Abuse and Mental health Services Administration (SANHSA) Supplemental Security Income (SSI)/Social Security Disability Insurance (SSDI) Outreach, Access and Recovery (Soar) (Statewide)

A full and comprehensive description of the AMHD array of services by county can be accessed at: http://health.hawaii.gov/amhd/files/2013/06/AMHD-Array-of-Services.pdf.

V. FOLLOW UP ON PRETRIAL RELEASE

Pretrial release was the topic of discussion at the 2016 Criminal Law Forum and it was recommended that a task force examine and make recommendations regarding criminal pretrial practices and procedures. The 2017 Legislature promulgated House Concurrent Resolution 134 to create such a task force.

Judge Rom Trader presented a status report of the HCR 134 Task Force[9] regarding pretrial detention and release. The Task Force was asked to examine and, possibly, recommend revisions to Hawai'i's criminal pretrial practices and procedures that would address flight risk and public safety while maximizing pretrial release. The Task Force was also asked to identify and define

[9] The Criminal Pretrial Task Force ("Task Force"), was convened by the Hawai'i State Judiciary, to carry out the requests in House Concurrent Resolution No. 134, H. D. 1, Regular Session of 2017, ("HCR 134") as follows:

> (1) Examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures to increase public safety while maximizing pretrial release of those who do not pose a danger or a flight risk; and
> (2) Identify and define best practices metrics to measure the relative effectiveness of the criminal pretrial system, and establish ongoing procedures to take such measurements at appropriate time intervals.

best practices to measure the relative effectiveness of Hawai'i's present pretrial bail and release system.

Judge Trader was appointed Chair of the HCR 134 Task Force, Judge Shirley Kawamura was the Reporter. The committee was comprised of 31 stakeholders representing all counties on a statewide basis. The committee met from the latter part of 2017 through August 2018 and produced a preliminary draft report.

The committee met diligently over this period examining the strengths and weaknesses of the current system and listened to presentations by bail bondsmen, the ACLU, and the federal Pretrial Services Office. The Task Force recommended the following measures: increasing the alternatives to arrest by expansion of the issuance of citations and diversion options; eliminating money bail for low risk, non-violent offenders, focusing on homeless and enlargement of community-based resources; setting bail in reasonable amounts, considering the defendant's financial circumstances; allowing 24/7 posting of bail/bonds; setting prompt bail hearings and furnishing earlier risk assessments; acquiring more resources for the Intake Service Centers; providing more judicial education for judges involved in release decisions; and utilizing better validation and risk assessment tools.

The final report was due to the Hawai'i State Legislature in December 2018.[10]

[10] A copy of the report is now available at: http://www.courts.state.hi.us/wp-content/uploads/2018/12/POST_12-14-18_HCR134TF_REPORT.pdf.

VI. LIST OF PARTICIPANTS

Bench/Judicial Participants:

Justice Simeon R. Acoba (ret.), Judge Joseph E. Cardoza, Judge Derrick H. Chan, Judge Harry Freitas, Judge Melvin H. Fujino, Judge Lisa M. Ginoza, Judge James Kawashima, Judge Ronald Ibarra (ret.), Judge Shirley M. Kawamura, Justice Sabrina McKenna, Judge Greg K. Nakamura, Justice Richard Pollack, Chief Justice Mark E. Recktenwald, Judge Rom Trader, Judge Randal G. Valenciano, Justice Michael Wilson, and Judge Paul B. K. Wong.

Bar/attorney participants:

Kenji Akamu, Susan Arnett, William Bagasol, Bill Bento, David Bettencourt, Jonathan Burge, Jason R. Burks, Hayley Cheng, Kirsha Durante, Allison Clarkin, Tiffany Chang, Charles Cryan, Gilbert C. Doles, Chad Inoki, Darcia Forester, Byron Fujieda, Catherine Gibson, Richard Gronna, William A. Harrison, Brook Hart, Jeffrey Hawk, Randall Hironaka, Chastity Imamura, Andrew Isono, Tracy Jones, Matthew Kajiura, Richard Kawana, Tana Kekina-Cabaniero, Andrew Kennedy, Chad Kumagai, Jeen Kwak, Marcus Landsberg, IV, Ben Lowenthal, Howard Luke, Clarissa Malinao, Carol K. Muranaka, Landon Murata, Jamie C. Nakano, Jeffrey Ng, Robert Olson, Stanton Oshiro, Tommy Otake, Michelle Puu, Keith Shigetomi, Richard Sing, Joanna Sokolow, Scott Spallina, James Tabe, Kevin Takata, Debbie Tanakaya, Chris Van Marter, Jerry Villanueva, Kelden Waltjen, and Mark Yuen.

Panelists

Dr. Brenda Bauer-Smith, Dr. Michael Champion, Brook Mamizuka, Dr. Keith Pedro, Dr. Janet Phillips, and Leonard Sensui.

Court Administrators and Judiciary Staff:

Michelle Acosta, Daylin-Rose Heather, Brandon Kimura, Sandy Kozaki, David Lam, and Lester D. Oshiro.