

# Chief Justice Mark E. Recktenwald

## Responds to Reports of the 2016 Civil and Criminal Law Forums

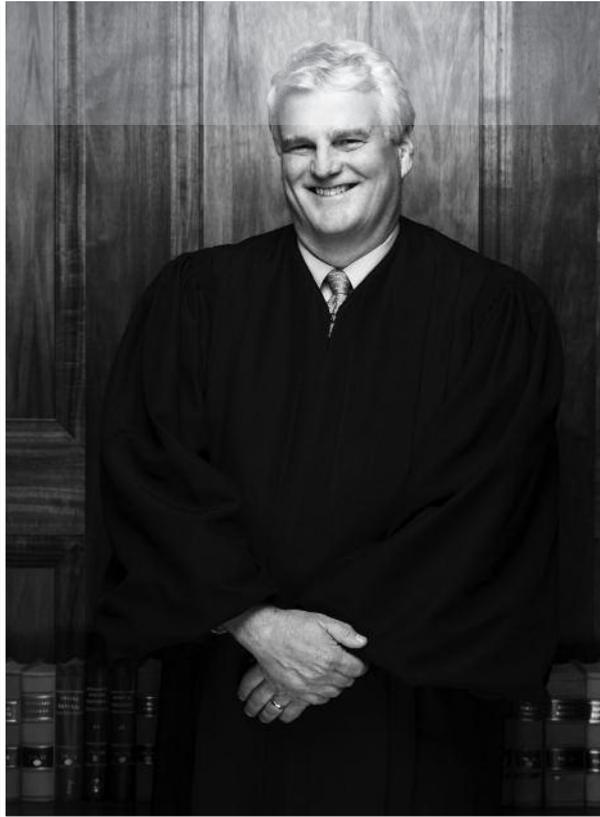
On behalf of the Hawaii State Judiciary, I would like to thank the attorneys and judges who participated in the September 2016 Civil and Criminal Law Forums. I would also like to thank the HSBA Committee on Judicial Administration, and in particular, co-chairs Associate Justice Simeon R. Acoba (ret.) and Steven J.T. Chow for organizing the forums. Over one hundred and seventy members of the bar, bench, and judiciary administration participated in the forums. We appreciate the work of the committee members in preparing reports of the forums.

As with the comments and suggestions from previous bench-bar conferences and forums, the reports of the 2016 Civil and Criminal Law Forums are reviewed and considered by me, our Chief Judges, and the Administrative Director of the Courts. In addition, the reports have been provided to all of our judges. Several ideas from the 2016 forums have already been implemented, and others are in the process of implementation or are the subject of ongoing discussions.

### CRIMINAL LAW FORUM

Multiple sessions at the Criminal Law Forum focused on pretrial release. The Criminal Law Forum also featured panel discussions concerning appearances by custody defendants, probation practices for misdemeanors and petty misdemeanors, and proof of compliance hearings.

The pretrial release sessions began with an in-depth discussion of pretrial procedures in Hawaii's four circuits. Additionally, guest speakers and experts from state agencies and the United States District Court for the District of Hawaii, as well as Arizona's Administrative Office of the Courts, led informative ses-



sions on the history of bail, characteristics of effective pretrial justice systems, pretrial release conditions in addition to or in lieu of cash bail, and reform efforts in the federal system and other states, providing attendees with an excellent foundation for the breakout sessions.

The report of the forum recommended establishment of a task force to review pretrial release procedures. Consistent with this recommendation, House Concurrent Resolution ("HCR") 134 was supported by the Judiciary and adopted by both the House and Senate. Pursuant to HCR 134, the Judiciary will convene a statewide task force to examine and recommend

changes to pretrial release practices and procedures. The task force will be comprised of stakeholders with significant roles in the criminal pretrial system,<sup>1</sup> and will report to the Legislature before the start of the 2019 Session.

The potential for "down time in court" when custody defendants are not transported to court in a timely manner was raised. The Judiciary is aware of criminal practitioners' tight schedules and the negative impacts for both prosecuting and defense attorneys when the appearance of a custody defendant is delayed. Chief Judge Browning is engaged in ongoing discussions with the deputy chief judges and stakeholders.

Some concerns were raised regarding the frequency with which formal probation is ordered for defendants convicted of misdemeanors and petty misdemeanors. We have reviewed probation statistics and discussed practices of the First Circuit District Court. The First Circuit District Court also has regular meetings with key stakeholders, including representatives from the Public Defender's and Prosecuting Attorney's offices, to identify operational issues and collaborative strategies

to improve district court services on Oahu.

The Judiciary appreciates that proof of compliance hearings affect the calendars of prosecuting and defense attorneys, as well as the courts. The Judiciary is discussing methods of ensuring compliance with financial obligations such as restitution, fees, and fines, and is actively looking into alternatives to proof of compliance hearings. We are open to examining compliance and review hearings not mandated by statute.

In January, the Judiciary Information Management System (“JIMS”) was rolled out for circuit court criminal cases. This advance can help enable greater efficiencies in criminal post-adjudication processes.

## CIVIL LAW FORUM

The Civil Law Forum featured informative panel discussions on recent legislation, electronic discovery and rules requiring early disclosure, arbitration cases and concerns, expert disclosure in federal and Hawaii courts, and civil justice reform strategies.

With regard to expert witness disclosures, panelists highlighted the predictability provided by Federal Rules of Civil Procedure (“FRCP”) Rule 26’s expert disclosure deadlines and the discretion afforded to judges under Hawaii Rules of Civil Procedure (“HRCP”) Rule 26(b)(5). As a majority of the panel recognized the benefits of FRCP Rule 26, the question of whether to amend the expert disclosure provisions of HRCP Rule 26, with FRCP Rule 26 as a model, has been

referred to the Permanent Committee on Rules of Civil Procedure and Circuit Court Civil Rules for its consideration.

The Judiciary appreciates the discussion of civil justice reform and potential methods of encouraging settlement and expediting cases in circuit courts. In May, a Hawaii team, including the Administrative Director of the Courts, circuit and district court judges, representatives from the legal community, and myself, attended a summit focused on civil justice reform, where we gained greater understanding of and discussed effective reform efforts and strategies in other jurisdictions. The Judiciary continues to investigate civil justice improvement strategies, and welcomes any suggestions from the bar.

Improvements to the civil



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justice system are critical to achieving the goal of increasing access to justice. In November 2016, Hawaii was named a recipient of a Justice for All Grant of nearly \$100,000. The Judiciary is part of a core team engaging with others across the state to clarify needs and develop a plan to expand our efforts. In April 2017, the core team held the project's first state-wide listening session, where stakeholders from across the state came together to provide input. The Judiciary is also committed to sustaining and strengthening existing access to justice efforts. Thanks to strong support from the HSBA and county bar associations, law firms, and members of the bar, our self-help centers and other initiatives continue to improve access to justice. A special thanks to the Access to Justice Commission and the legal services providers throughout the state who are stalwart leaders in these initiatives.

### CONCLUSION

Once again, I thank all of the participants for their commitment to improving the administration of justice in Hawaii. The Judiciary looks forward to working with the bar on these and other topics to make our services more efficient and accessible.

<sup>1</sup> The task force will include representation from: the Chief Justice, judicial officers and court administrators from each circuit court, the House and Senate, the Department of the Attorney General, the Department of Public Safety's Intake Services Center, each county's Prosecuting Attorney Office and police department, the Office of the Public Defender, the Hawaii Association of Criminal Defense Lawyers, the Department of Health, the Chairperson of the Board of Trustees of the Office of Hawaiian Affairs, and the Department of Public Safety.

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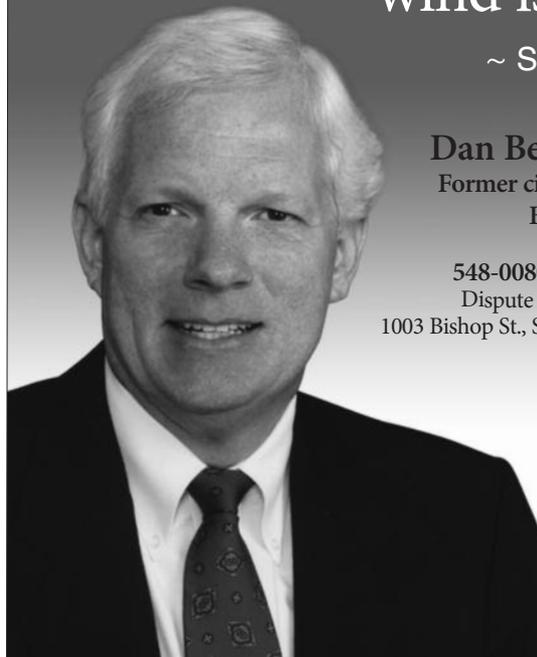
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~ Seneca (5BC - 65AD)



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