



Supreme Court — THE JUDICIARY • STATE OF HAWAII

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Mark E. Recktenwald
CHIEF JUSTICE

**Chief Justice Mark E. Recktenwald's
Remarks to American Judicature Society-
Hawai'i Chapter 2010 Annual Meeting
December 2, 2010**

Good afternoon and aloha everyone.

Before I begin, I would like to take this opportunity to introduce the judiciary's new administrative director, Rodney Maile. Rod is a graduate of the William S. Richardson School of Law, and served for many years as senior hearings officer at the Department of Commerce and Consumer Affairs. Most recently, he served as deputy director of DCCA.

I'd also like to recognize the extraordinary contributions of Rick Keller, who just retired as administrative director, and Walter Ozawa, who will be retiring from the deputy administrative director position at the end of this month. They are outstanding leaders and public servants, and I'm very fortunate to have had the opportunity to work with them.

Also, I note that Chief Justice Moon is here. Since old habits die hard, I'd like to make a brief report to my former boss. This morning, the supreme court held

oral argument in the new Ronald T.Y. Moon Courthouse in Kapolei. As far as we are aware, it's the first time that the court has held an argument away from our home in downtown Honolulu. We want to make the court more accessible to the community and the bar, and judging from the large number of people who attended today's argument, it was a good first step.

It's an honor for me to appear before AJS-Hawai'i. As many of you know, until recently I served on the board of AJS-Hawai'i. During that time, I concluded that AJS provided a unique and valuable perspective on issues relating to the administration of justice in Hawai'i. Now, with the perspective of my new position as chief justice, I feel even more strongly about the value of AJS and its work.

Indeed, there are currently four AJS special committees that are preparing or have just completed reports on issues that are crucial to our system of justice, including (1) the effect of the economy on the judiciary, judicial independence and effectiveness, (2) judicial careers and selectivity, (3) the rules regarding mediation in civil cases, and (4) discovery issues. Each of those issues is critical in its own right, and I would like to share some thoughts about them with you today.

First, these have been difficult economic times

for all of Hawai'i, and the Judiciary has been no exception. In the last two years, the Judiciary's general fund appropriation has been reduced by \$19.7 million, or 13.1% of its overall budget, while demand for Judiciary services has increased due to the impact of the difficult economy on our citizens. Two-day per month furloughs of judiciary employees, which were instituted in November, 2009, have eliminated over 600,000 available staff hours of work. These reductions in our available resources have had substantial negative effects throughout the judicial system, by reducing, delaying and in some cases eliminating important services.

Notably, Hawaii's families and most vulnerable citizens have been significantly impacted. The time it takes to process an uncontested divorce has doubled. The wait time for children to participate in the Kids First program in Kapolei, which seeks to alleviate the impacts of divorce by having children attend group counseling sessions, has more than doubled. Indeed, there have been instances of children who were not able to attend counseling sessions until after their parents' divorce was finalized. At the Children's Justice Centers, some child abuse victims and witnesses have had to wait through a three-day furlough weekend before being interviewed. Particularly in very young children, even a brief delay in conducting such

interviews can affect recall of details of their alleged abuse or the incident witnessed.

Justice has been delayed in civil cases as well. The number of pending civil cases in our district courts increased by 98.2% from FY2008 through FY2010. The number of civil cases being filed in circuit court has increased 19.6% over the last two fiscal years, particularly in areas which are linked to the health of the economy. Not surprisingly, since the resources available to address that increased caseload have been reduced, the median age of pending circuit court civil cases has increased by more than 40 percent. By prolonging the time it takes to resolve civil disputes, the cost and uncertainty of litigation increases, and our community's efforts at economic recovery are hindered.

There have been effects in criminal cases as well. Twenty-four adult probation positions were eliminated in the first circuit, including positions in high risk areas such as the sex offender unit and the domestic violence unit. This has left individual probation officers supervising as many as 180 such defendants, as opposed to the recommended national standard of not more than 120 defendants per officer. By stretching our probation officers too thin, we compromise their ability to ensure that probationers gain control over the problems, such as drug abuse, that landed

them in trouble with the law in the first place. Having defendants successfully complete probation saves money for taxpayers in the long run, since the average cost of supervising a probationer is less than \$2 per day, while the cost of incarcerating an inmate is approximately \$137/day.

In sum, adequately funding the state court system is an investment in justice, and an investment in our democracy, that cannot be compromised even during tough economic times. The judiciary has prepared a report entitled Justice in Jeopardy which sets forth the impacts that I have discussed, as well as many others. I have brought copies of that report here for you today if you would like to review it.

In order to address these impacts, the judiciary's proposed budget will request funding to eliminate furloughs and get our employees back to work full time. While that will still leave the judiciary short of the funding levels that existed prior to the economic crisis, we believe that it a necessary step that will enable us to begin reversing the negative impacts that have resulted from the reductions to our budget.

As I mentioned earlier, another AJS committee is looking at judicial careers and selectivity, which is an issue that also has an economic component. In 2009, in response to the economic crisis, the legislature reduced the

salary of state judges by 5%, and deferred annual judicial pay increases which had been mandated by the state salary commission. Thus, absent further action by the legislature, the judiciary will be mandated by law over the course of FY 2012 and 2013 to restore judges' pay to the levels previously established by the commission.

Accordingly, our budget request will seek funding for that purpose, since absent such funding we would be required to divert resources from other areas. In making that request, we fully understand that this issue has to be considered by the legislature in a much broader context, including the status of furloughs and the economy as a whole, and that the legislature will likely be considering a variety of alternatives. As the legislature considers the various options, it should be noted that there is a correlation between judicial compensation and the ability to attract and retain the best possible people to serve as judges. In 2009, when judges' pay was reduced, a total of nine judges, with more than 160 years of combined experience, retired. That correlation will be an important factor for the legislature to consider as it addresses the difficult budget choices that lie ahead.

The remaining two AJS committees that I mentioned at the start are addressing what, at first blush, may seem like largely unrelated subjects: discovery, and in

particular, electronic discovery, and the rules governing mediation. However, I believe that those subjects are very much related to the broader issue of access to justice, because they are both potentially part of the solution to the challenges we face in ensuring that all of our citizens have meaningful access to the justice system regardless of their economic circumstances.

I have previously described those challenges to access to justice as a "crisis." That was a word that I did not choose lightly, but I thought it was appropriate given the convergence of factors that we've seen during the difficult economic times of the last few years: substantial cuts in state support for legal services providers, coupled with substantial increases in civil filings.

We need to address that situation on a number of different fronts, including through

- providing support for legal services providers,
- increasing incentives for attorneys to provide pro bono services,

- increasing support for pro se litigants, such as the concept of self-help centers that was discussed at a recent conference sponsored by the Hawai'i State Bar Association,

- reducing the cost and complexity of civil litigation, through means such as increasing the

jurisdictional limit for small claims court, and streamlining discovery in a way that does not negatively affect the rights of litigants,

-and providing increased opportunities for alternative dispute resolution (ADR), and by ensuring that ADR is conducted in a manner that is fair and transparent.

It is in these latter two areas—the cost of litigation, and the efficacy of ADR—that the current AJS committees have much of value to offer. As discovery of electronically-stored information becomes more prevalent, the cost of discovery will increase unless we adopt rules that provide for the production of such information at a reasonable cost and that minimize the burdens of compliance. And as the use of ADR becomes more prevalent, we must update our rules to ensure that there is fundamental fairness in how mediators are selected, that avoid conflicts and make the process more transparent, that address cost issues, and that ensure that mediation is not used to put pressure on parties to settle when they do not wish to do so voluntarily. Our current rules are very brief, and we appreciate the input that the AJS mediation committee has provided on the judiciary's proposals to provide more specific guidance to parties and the courts.

In closing, I have spoken today at some length about the budget challenges facing the judiciary. But

although those challenges are daunting, there is much positive news to report. Across the judiciary, there is a real commitment to finding more efficient and effective ways to serve the public. The HOPE probation program, which is based on the simple premise of holding probationers immediately accountable when they use drugs or fail to report to their probation officer, has achieved reductions in recidivism of more than 50%. We are increasing the number of defendants in the program here on Oahu, and expanding its use on the neighbor islands.

We are also expanding our JIMS electronic case management system, and thereby converting more of the judiciary from paper-based systems. JIMS has already enabled us to address some long-standing and seemingly intractable problems, such as delays in issuing bench warrants and collection of fines and assessments. Just this fall, we expanded JIMS to include appellate filings at the supreme court and the ICA. Attorneys are now able to file appeals and submit briefs and motions from their computers, at any time of day, and serve them on other parties who have consented to electronic service. In the years ahead we will bring electronic filing to the criminal courts, followed by the civil and then family courts.

This transition from paper to electronic case management will have substantial benefits. One is the

convenience that goes with being able to file electronically rather than in hard copy. Another is transparency.

Previously, anyone who wanted to know the status of a case on appeal had to call the clerk's office; now, the appellate docket sheets are available on-line, 24/7. The third is efficiency. The fewer transactions that judiciary employees have to process by hand, the more efficient they will be. And finally, this transition will empower our employees to rethink our business processes and find ways to make them more efficient.

In sum, the role of the judiciary has evolved substantially over the years, from simply deciding cases to helping, in many instances, to solve the underlying problems and alleviate the impacts of those problems. We have embraced that broader role, and believe that we have done it well. But we need the resources to ensure that we live up to the public's high expectations for us, whether it be deciding cases promptly, or helping children cope with the trauma of divorce, or helping a probationer overcome the drug problem that landed him in trouble with the law. We know that there are many competing demands for our state's scarce resources, and that we cannot reasonably seek a greater share of those resources without first ensuring that our own house is in order and that we are using the resources that we do have in the most effective and

efficient way possible. That is exactly what we have tried to do through initiatives such as HOPE probation and the JIMS system, and we will continue looking for more such initiatives in the years ahead.

I would like to thank AJS-Hawai'i for this opportunity to appear before you today, and for all that you have done to further the cause of justice in Hawai'i. I look forward to working with you in the years ahead. Thank you and aloha.