

Annual Report

CENTER FOR ALTERNATIVE DISPUTE RESOLUTION
THE JUDICIARY, STATE OF HAWAII



Report No. 16
JULY 1, 2003 - JUNE 30, 2004

PRESENTED TO THE TWENTY-THIRD LEGISLATURE
PURSUANT TO HAWAII REVISED STATUTES, SECTION 613-4

December 2004

Judiciary Leadership

Ronald T. Y. Moon, Chief Justice
Thomas R. Keller, Administrative Director of the Courts

Center for Alternative Dispute Resolution **Elizabeth Kent, Director**

Board of Advisors

Annelle Amaral

Planned Parenthood of Hawaii
Advisor Since 2000
Representing Public at Large

Karen Blondin

Judge, First Circuit Court
Advisor Since 1998, Ex-Officio

Aaron Chung

Member, Hawaii County Council
Advisor Since 2004
Representing Hawaii State Association of
Counties

Holly Henderson

Advisor Since 1997
Representing Public at Large

Gordon Kem Lowry

Professor, Dept. of Urban & Regional
Planning
Advisor Since 1988
Representing Public at Large

Kathryn S. Matayoshi

Board of Water Supply
Advisor Since 1994, Ex-Officio

Mike McCartney

President & Chief Executive Officer
Hawaii Public Television-KHET
Advisor Since 1993, Ex-Officio

James T. Paul

Paul Johnson Park & Niles
Advisor Since 1988
Representing Legal Community

Mark E. Recktenwald

Director, Department of Commerce &
Consumer Affairs
Advisor Since 2004
Representing Executive Branch

Gerald Y. Sekiya

Cronin, Fried, Sekiya, Kekina & Fairbanks
Advisor Since 1999
Representing Legal Community

Kathleen N. A. Watanabe

Director, Department of Human Resources
Development
Advisor Since 2004
Representing Executive Branch

JoAnn A. Yukimura

Member, Kauai County Council
Advisor Since 2004
Representing Hawaii State Association of
Counties



December 2004

Ladies and Gentlemen:

I am pleased to convey the sixteenth Annual Report for the Hawaii State Judiciary's Center for Alternative Dispute Resolution (Center). The Center designs dispute resolution programs for state and county government, mediates and facilitates a limited number of referred cases, provides training and education in dispute resolution techniques, and oversees the Judiciary's Purchase of Service contract to provide accessible mediation services to the general public. The Center's focus is to assist state and county agencies in developing opportunities for early and fair resolutions of conflicts in lieu of more formal, costly legal strategies that often impede positive relationships.

The Center continues to encourage and promote dispute resolution services that permit the parties to create their own solutions. Review of the Center's activities over the past year will help you understand why the Center stands out as one of the effective links between the people and the government of Hawaii.

Sincerely,

RONALD T.Y. MOON
Chief Justice

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The focus of the Center for Alternative Dispute Resolution (Center) is to assist government agencies and departments in efficiently resolving disputes while providing opportunities for parties to build early and fair conflict resolutions.

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Reflections and Directions

(A message from the Center's Director)

Fiscal year 2003-2004 was a busy and successful year for the Center. We completed a review of the Center's mission and goals and embarked on a two-year plan to implement new strategic directions. The plan emphasizes change in social services by providing more opportunities for alternative dispute resolution.

The Brand Strategy Group (BSG) assisted us in (1) surveying and analyzing the public perception of the value of mediation and (2) offering ideas about how we can best communicate the value of mediation. Their report incorporated the ideas of major stakeholders, including other providers and ADR users, to create a "marketing plan." The next step is to implement the plan, which we will start in fiscal year 2004-2005.

We continue to hold a strict line on expenses. Approximately 60 percent of our budget consists of monies allocated for the Judiciary's contract to provide community mediation services.

The Judiciary recognized two of our staff members for their fine work: Pamela Martin received a Certificate of Commendation and Kathryn Nishiki was recognized with a "Spirit of the Judiciary" award. This year, we were fortunate to work with four student volunteers who conducted research while experiencing the workings of the Hawaii Judiciary system firsthand.

We look forward to another fulfilling year, continuing our work on existing programs and collaborating on the development of new programs. As you read this report, I hope you will share our pride for achievements this past year and the opportunities in fiscal year 2004-2005.

If you would like to learn more about the Center or would like copies of the Center's publications, please visit our website at <http://www.courts.state.hi.us/cadr> or call the Center at 808-539-4ADR(4237).

Aloha,

Elizabeth Kent



Programs

An important component of the Center's work is designing new ADR programs for state and county government. This helps avoid litigation and build early and fair conflict resolutions. Examples of the Center's work with the Family Court of the First Judicial Circuit and the Supreme Court follow.

Volunteer Settlement Master (VSM) Process

The Family Court of the First Judicial Circuit and the Family Law Section of the Hawaii State Bar Association collaborated to develop a new process to help divorcing couples settle financial and other issues.

Licensed attorney members of the Family Law Section serve as VSMs, and the VSMs are selected and appointed by the Senior Judge of the Family Court. The Family Court assigns a VSM to divorcing couples with whom the Family Court has an impending trial setting conference. Most cases, except for those involving restraining orders or domestic violence allegations, are appropriate for the VSM process. There is no cost to the divorcing couple for the services of the VSM.

Judicial Pre-Trial Assistant (JPA) Program

This program uses ADR techniques to bring families, social workers, attorneys, and other professionals together to work towards safe reunification of children and families and other timely permanent solutions in the child's best interest. JPAs are neutral third parties who assist judges on the Hawaii Revised Statutes, Chapter 587 (child abuse and neglect) calendar. The JPA help the parties explore whether an agreement in the best interest of the child and fair and acceptable to all parties can be reached. Agreements made in conference must be approved by the court and made part of a court order.



***Judge Doug McNish and Dr. Scott Hashimoto
visit the Center after a VSM session.***

Programs

(Continued)

Hawaii Appellate Conference Program (HACP)

The appellate mediation program started in March 1995. As it enters its tenth year, the program is dependent upon committed retired judges and retired and semi-retired attorneys who volunteer their expertise.

Since HACP's inception, 142 cases settled, seven cases partially settled, and 148 were returned to the appeal process. This fiscal year, 27 cases were included in the program. Types of cases and results are shown in the table below.

Type of Case 2003-2004	Total Cases 2003-2004	Settled Cases	Cases Returned to Docket	Withdrawn before Mediation	Pending
Real Property	8	2	5	0	1
Contract	6	2	2	1	1
Tort	5	3	2	0	0
Other	3	0	2	0	1
Agency Appeal	3	1	1	1	0
Family	2	0	1	0	1
Totals	27	8	13	2	4

Regardless of whether their case settled, parties and attorneys continue to report that they recommend the program and that mediators provide a valuable service.

This year, 26 mediators contributed 186 hours of voluntary service. During fiscal year 2003-2004, six additional mediators completed the training for appellate mediators. There are now 48 mediators on the roster.

Community Mediation Services

The Center administers a \$449,650 purchase of services contract with the Mediation Centers of Hawaii to provide mediation and related dispute resolution services statewide. There are centers located on Hawaii (Hilo and Waimea), Kauai, Maui, Molokai, and Oahu.

The community mediation centers provide trained mediators for cases referred by the courts and other administrative, law enforcement or justice system departments and agencies. In almost all cases, small claims and residential landlord/tenant summary possession cases are mediated at the courthouse.

A total of 309 active mediators provided mediation services through the community mediation centers. In fiscal year 2003-2004, they served 8,283 individuals.

Cases Opened in Fiscal Year 2003-2004

Type of Case	Number
Auto Accident	124
Business	53
Civil Rights	28
Condominium	40
Consumer/Merchant	515
Domestic	460
Education/Spec. Ed	47
Family	117
Friend	43
Job Related	70
Juvenile	114
Landlord/Tenant	1,021
Neighbor	111
Real Estate	50
TRO	347
Other	263
Total	3,403



Maui's newest volunteer mediators celebrate their graduation with Maui Mayor Alan Arakawa.

Direct Services

The Center provides direct mediation and facilitation services for a limited number of cases or situations that affect the public interest and are referred to the Center by appointed or elected state or county government officials. Before accepting a case, the Center applies criteria set by its Board of Advisors. The following are examples of direct services provided.

Child Welfare Services/Domestic Violence Providers

The Center is facilitating a meeting process between social workers from Child Welfare Services and advocates against domestic violence to address ways to more effectively serve the public. Initially, the Center conducted a conflict assessment and is now facilitating the work of a planning committee to address those issues.

Juvenile Justice Information Committee (JJIC)

The Center continues to work with JJIC to ensure a process encouraging candid and vigorous discussions on issues important to their activities. The JJIC was established to promote interagency cooperation and coordination in developing and managing an accurate, complete, timely, and fully integrated statewide juvenile justice information system.

Transparency Conference

On November 7, 2003, the Hawaii State Judiciary and Hawaii State Bar Association held a unique and dynamic conference on “Openness in the Courts” to address issues of transparency in the state court system. Feedback from numerous participants, which included nearly all state justices and judges, has been overwhelmingly positive. The Center assisted with planning the conference and facilitated small group work sessions.



From left: Guest speaker Judge Robert Alsdorf, Moderator David Fairbanks and Administrative Director Rick Keller share their views on improving transparency in the courts.

Judiciary Information Management System (JIMS)

Once fully implemented, JIMS will integrate the appellate, circuit, family and district courts through a unified database. The project will improve and streamline court processes and provide greater convenience to the public and the legal community. Implementation of the JIMS is an important priority for the Judiciary. Center staff facilitated many JIMS meetings.

Appellate Review Task Force

The Appellate Review Task Force, chaired by Justice Paula Nakayama, was created by Act 202, Section 83. The task force was established to review proposed changes to the appellate system of the courts and make recommendations to the Legislature for implementation of the proposed changes. The Center designed a meeting process for the task force.

ACT 59 -- Sexual Offenders

The Act 59 Task Force, created by the 2004 Legislature and chaired by Judge Dan Foley, was tasked “to engage in a comprehensive review of public access to information regarding persons convicted of sexual offenses and to recommend to the legislature amendments, if any, to existing procedures.” The Center developed a meeting process for the task force and facilitated the first meeting.

Training and Education

The Center promotes ADR through training and education. Our goal is for state and county employees to understand and appreciate the benefits of ADR and to help them develop communication and meeting facilitation skills.

Facilitation Training

The Center presents a two-day training course and a half-day refresher in basic meeting facilitation techniques. The training, available to state and county employees at no charge, provides basic introduction to meeting planning and facilitation techniques. The Center trained 51 employees in four sessions in fiscal year 2003-2004, including ten on Maui. The Center is developing a “beyond basics” facilitation class for 2005.

Graduates of the basic facilitation training are invited to participate in a facilitator/recorder pool. The pool list is distributed to all graduates to enable them to call on fellow graduates (or other experienced employees) to assist with meeting planning and facilitation. Participation is voluntary.

Department of Taxation Workshops

The Center designed and conducted two half-day communication workshops for the collections division of the Department of Taxation and trained approximately 30 employees. The workshop focused on negotiation techniques (e.g., use of open-ended questions, rephrasing, and effective listening) that could increase collections and enhance public satisfaction. The program may be expanded to include mediation of collections cases.

Waiawa Minimum Security Facility

This is a long-term project through which the Center will train all staff members in communication and the basics of mediation, and select staff as trainers in communication and mediation. This is an exciting opportunity involving groundbreaking work.

Family Court Mediation

The Center conducted a class for family court judges and staff to orient them to mediation and mediation tools.



Research and Outreach

Newsletter

The Center's newsletter, *ADR Trends*, is now distributed via e-mail. It is available on the Center's website at <http://www.courts.state.hi.us/cadr>. If you would like to be included on the distribution list, please e-mail the Center at cadr@courts.state.hi.us or call (808) 539-4237.

Publications

The Center maintains and distributes several publications explaining different dispute resolution processes and other related information (see list in Appendix C). These are distributed to libraries, individuals interested in mediation and, upon request, to the general public. Some publications are available on the Center's website.

Public Forums

The Center, The Mediation Center of the Pacific, Inc., and the Program on Conflict Resolution at the University of Hawaii offered a full and varied program of public forums on various aspects and activities in the field of ADR. The titles of the forums and panel members included:

- "ADR and the Media" -- Howard Dicus, Stephanie Kendrick and Kelli Abe Trifonovich
- "Mediation, Conciliation and Labor Law Reform in Vietnam" -- Ta Thi Bich Ha
- "Collaborative Law" -- Ray Zeason, Jameelah Peer, Dr. Richard Kappenberg
- "Empathy and Relationships" -- Dr. Amy Ebesu Hubbard
- "Mediation of Inheritance, Succession and Guardianship Disputes" -- Chuck Hurd, Jim Hoenig, and Tracey Wiltgen
- "Power Struggles in the Workplace: Does Workplace Mediation Work?" -- J.N. Musto, Karen Cross, and Bruce Barnes
- "Mediation with High Levels of Conflict" -- Dr. Sue Lehrke and Lou Chang
- "The Courts and ADR" -- Donna Stienstra
- "Evaluation of Collaborative Planning Models for Dispute Resolution: A Success Story in Land Use Planning" -- Dr. Thomas Gunton
- "Estate Planning and Probate Mediation" -- John Gromala
- "National Trends in Mediation & ADR" -- Kimberlee Kovach and Eric Galton
- "Labor Negotiations: A Discussion with the State's Chief Negotiator" -- Ted Hong
- "Forgive for Good" -- Dr. Fred Luskin
- "Arab-Israeli Conflict: War and Peace in a Historical Background" -- Dr. Benjamin Neuberger
- "The Impact of Mental Health Issues on Mediation: Mediating Cases with Narcissistic Personalities" -- James Hoenig, J.D., PhD and Craig Robinson, PhD.
- "Motivating Groups Toward Openness, Creativity and Collaboration" -- Lou Chang

Financial Statement

(Fiscal Year 2003-2004)

	APPROPRIATED	INTRA-PROGRAM TRANSFERS	INTER-PROGRAM TRANSFERS	ALLOCATED	EXPENDED	BALANCE
Personal Services	271,417	(1,441)	0	269,976	(269,976)	0
Purchase of Service and Other Expenses	429,158	(386)	25,000	453,772	(453,772)	0
Equipment	0	1,827	6,195	8,022	(8,022)	0
TOTAL	700,575	0	31,195	731,770	(731,770)	0

NOTE: Total purchase of services funds for mediation services was \$449,650.

Appendix A

Community Mediation Centers

***Kauai Economic Opportunity, Inc.
Mediation Program***

2804 Wehe Road
P.O. Box 1027
Lihue, HI 96766
Telephone: (808) 245-4077
Fax: (808) 245-7476

Kuikahi Mediation Center (Hilo)

614 Kilauea Avenue, Suite 5A
Hilo, HI 96720
Telephone: (808) 935-7844
Fax: (808) 961-9727

Mediation Center of Molokai

P.O. Box 1708
Kaunakakai, HI 96748
Telephone: (808) 553-3844
Fax: (808) 553-8014

Mediation Services of Maui

95 Mahalani Street
Wailuku, HI 96793
Telephone: (808) 244-5744
Fax: (808) 242-8444/249-0905

The Mediation Center of the Pacific

680 Iwilei Road, Suite 530
Honolulu, HI 96817
Telephone: (808) 521-6767
Fax: (808) 538-1454

West Hawaii Mediation Center

P.O. Box 7020
Kamuela, HI 96743
Telephone: (808) 885-5525
Fax: (808) 887-0525

Appendix B

Volunteers

Alvin Adams, Jr.
Elwin Ahu
James Aiona, Jr.
Daniel Bent
Addison Bowman
Karen Napua Brown
H. William Burgess
Robin Campaniano
John Campbell, Jr.
Benjamin Carroll, III
James Case
Valta Cook
Victor Cox
Masato Doi
JW Ellsworth
Raymond Engle
Claire Greve
Richard Guy
Ruby Hamili
Kenneth Hipp
James Hoenig

Jack Houtz
Walter Ikeda
Edward King
Robert Klein
Richard Komo
Evelyn Lance
Sharon On Leng
Rosalyn Loomis
Ivan Lui Kwan
Herman Lum
E. John McConnell
Douglas McNish
Wayne Minami
Willson Moore, Jr.
G. Richard Morry
Boyd Mossman
Frances Mossman
Gail Nakatani
Frank Padgett
Patricia Kim Park
Mario Ramil

Lillian Ramirez-Uy
Carleton Reid
Robert Richardson
William Richardson
Frederick Rohlfig
Frank Rothschild
Hiroshi Sakai
Keith Steiner
Frank Takao
Robert Toyofuku
Ted Tsukiyama
Jessie Varble
Betty Vitousek
Diana Warrington
Wilfred Watanabe
Timothy Woo, Jr.
Patrick Yim
JoAnn Yukimura
Hoyt Zia

2004 Summer Student Interns

Sachi Lamb
Tricia Nakamatsu
Robert Tauler
Josh Trevey



Appendix C

Available Publications

The following brochures and publications are available at no charge from the Center and on the Center's website at <http://www.courts.state.hi.us/cadr>:

- *ADR Trends* Newsletter
- The Center for Alternative Dispute Resolution
- The Center's Annual Reports
- Guidelines for Hawaii Mediators
- Mediation for Small Claims (Hawaii, Kauai, Maui, Molokai, Oahu)
- Probate Court Mediation
- Selecting a Mediator
- Selecting a Mediator/Facilitator for Public Policy Issues

These articles are available at the Center at no charge:

- Dispute Resolution Procedures
- An Overview of Dispute Resolution
- ADR Related Statutes and Rules
- Appellate Mediation in Hawaii
- Factors to Consider in Screening a Case for Mediation
- What is Facilitation?
- ADR & Your Lawsuit: How do they Mesh?
- When You Have Disputes. There Are Choices.
- Mediation: An Alternative to Court

Appendix D

[CHAPTER 613] CENTER FOR ALTERNATIVE DISPUTE RESOLUTION

SECTION

- 613-1 DEFINITIONS
- 613-2 ESTABLISHMENT OF THE CENTER FOR ALTERNATIVE DISPUTE RESOLUTION
- 613-3 BOARD OF ADVISORS
- 613-4 ANNUAL REPORT

[§613-1] Definitions. As used in this chapter, unless the context otherwise requires:

"Alternative dispute resolution" or "ADR" means methods, procedures, or techniques that are used to resolve differences voluntarily and that do not require a traditional and formal adjudicatory trial or contested hearing. These methods include, but are not limited to, mediation, contractual arbitration, fact-finding, consensus-building, and neutral-expert evaluation.

"Board" means the board of advisors of the center for alternative dispute resolution.

"Center" means the center for alternative dispute resolution.

"Government agencies" means the offices, departments, branches, and other subdivisions of state and county governments. [L 1989, c 346, pt of §2; am L 1991, c 131, §1]

[§613-2] Establishment of the center for alternative dispute resolution.

(a) There is established within the judiciary the center for alternative dispute resolution. The center shall facilitate the effective, timely, and voluntary resolution of disputes. Through these resolutions, it shall help reduce public and private costs of litigation and increase satisfaction with the justice system. The center shall accomplish its purposes by:

- (1) Providing, where feasible and agreed to by the parties, the consultative resources and technical assistance needed to achieve voluntary resolutions for cases that affect the public interest or the work of state and county agencies. These cases include but not be limited to:
 - (A) Public disputes involving actual or threatened court actions over the allocation or management of public resources or the siting of public facilities;
 - (B) Complex litigation cases in which a court or a regulatory or administrative agency has determined that the dispute involves multiple parties or formidable technical, procedural, or factual issues, or both;
 - (C) Policy roundtables in which the center, at the request of an executive, legislative, or judicial decision maker, convenes and chairs advisory discussions on matters pertaining to standards or rules; and
 - (D) Other cases directly referred by judges, legislators, agency heads, or appointed government officials
- (2) Promoting in a systematic manner the appropriate use of ADR; and
- (3) Disseminating to government agencies and to the community at large up-to-date information on the methods and applications of ADR.

(b) The center shall be organized, guided, and administratively maintained by the chief justice or the chief justice's designee. The chief justice shall appoint a director of the center. The director may hire staff necessary to accomplish the purposes of this chapter, including but not limited to an assistant director and a program specialist. The director, assistant director, and program specialist shall have substantial experience, training, and education in the methodologies of ADR. Employees of the center shall be exempt from chapters 76 and 77, shall not be considered civil service employees, but shall be entitled to any employee benefit plan normally inuring to civil service employees. [L 1989, c 346, pt of §2; am L 1991, c 131, §1]



[CHAPTER 613]
CENTER FOR ALTERNATIVE DISPUTE RESOLUTION
(continued)

[§613-3] Board of advisors.

(a) A board of advisors of the center for alternative dispute resolution, consisting of nine members, shall be appointed by the chief justice. The board shall:

- (1) Foster greater understanding of the center and its purpose by government agencies and by the general public;
- (2) Assist the center in disseminating information about the uses, applications, and advantages of ADR; and
- (3) Strengthen the acceptance and utilization of ADR by government agencies and the public.

(b) The board of advisors shall include two representatives from the executive branch, two from the legal community, two from the Hawai'i state association of counties, and three from the public at large. The board shall meet from time to time to review the center's work and to advise the chief justice and staff of the center regarding the use of ADR methods for matters involving or affecting government agencies and the general public. The board of advisors may add ex officio members as they deem beneficial or desirable to help achieve the center's purposes. All members of the board shall serve without pay. [L 1989, c 346, pt of §2; am L 1991, c 131, §1]

[§613-4] Annual report. The center shall submit a report on its activities to the legislature at least twenty days prior to the convening of each regular legislative session. [L 1989, c 346, pt of §2; am L 1991, c 131, §1]