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President Kelly appointed the following;

Senator Coghill, Chair

This occurred after the Special Session of the 16th Legislature and is not in the index or journal.

The only reference in the journal was June 29 when President Kelly appointed Senator Coghill to oversee the Office of the Ombudsman's Judicial Conduct Commission investigation regarding Judge Victor Carlson. (page 4423)

7-LS0594D ✓
Lauterbach
4/16/91

*Walter
OK*

CS FOR SENATE BILL NO. 100 (HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:

Referred:

Sponsor(s): **SENATE JUDICIARY COMMITTEE BY REQUEST**

A BILL

FOR AN ACT ENTITLED

1 "An Act eliminating a requirement that a court consider the findings and recommendations
2 of a neutral mediator when awarding shared child custody."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * Section 1. AS 25.20.090 is amended to read:

5 Sec. 25.20.090. **FACTORS FOR CONSIDERATION IN AWARDING SHARED CHILD**
6 **CUSTODY.** In determining whether to award shared custody of a child, the court shall consider

7 (1) the child's preference if the child is of sufficient age and capacity to form a
8 preference;

9 (2) the needs of the child;

10 (3) the stability of the home environment likely to be offered by each parent;

11 (4) the education of the child;

12 (5) the advantages of keeping the child in the community where the child
13 presently resides;

14 (6) the optimal time for the child to spend with each parent considering

- 1 (A) the actual time spent with each parent;
- 2 (B) the proximity of each parent to the other and to the school in which
- 3 the child is enrolled;
- 4 (C) the feasibility of travel between the parents;
- 5 (D) special needs unique to the child that may be better met by one parent
- 6 than the other;
- 7 (E) which parent is more likely to encourage frequent and continuing
- 8 contact with the other parent;
- 9 (7) [ANY FINDINGS AND RECOMMENDATIONS OF A NEUTRAL
- 10 MEDIATOR;
- 11 (8)] any evidence of domestic violence, child abuse, or child neglect in the
- 12 proposed custodial household or a history of violence between the parents;
- 13 (8) [(9)] evidence that substance abuse by either parent or other members of the
- 14 household directly affects the emotional or physical well-being of the child;
- 15 (9) [(10)] other factors the court considers pertinent.

SENATE BILL NO. 100

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 2/1/91
Referred: HES and Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the factors to be considered when awarding shared child custody."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 25.20.090 is amended to read:

4 Sec. 25.20.090. FACTORS FOR CONSIDERATION IN AWARDING SHARED CHILD
5 CUSTODY. In determining whether to award shared custody of a child, the court shall consider

- 6 (1) the child's preference ^{if the child is of sufficient age and capacity to form a}
7 preference; *as set forth to L. 8.9. as det. by private center*
8 (2) the needs of the child;
- 9 (3) the stability of the home environment likely to be offered by each parent;
- 10 (4) the education of the child;
- 11 (5) the advantages of keeping the child in the community where the child
12 presently resides;
- 13 (6) the optimal time for the child to spend with each parent considering
- 14 (A) the actual time spent with each parent;

1 (B) the proximity of each parent to the other and to the school in which
2 the child is enrolled;

3 (C) the feasibility of travel between the parents;

4 (D) special needs unique to the child that may be better met by one parent
5 than the other;

6 (E) which parent is more likely to encourage frequent and continuing
7 contact with the other parent;

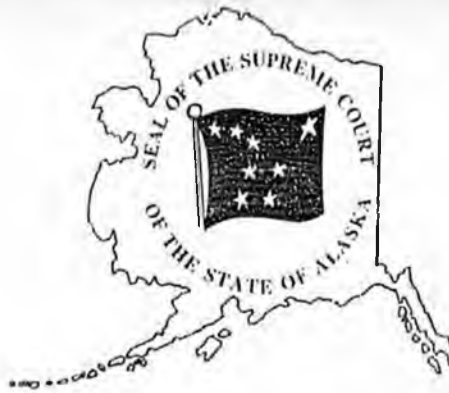
8 (7) any findings and recommendations of a custody investigator appointed by
9 the court [NEUTRAL MEDIATOR]; *et by default*

10 (8) any evidence of domestic violence, child abuse, or child neglect in the
11 proposed custodial household or a history of violence between the parents;

12 (9) evidence that substance abuse by either parent or other members of the
13 household directly affects the emotional or physical well-being of the child;

14 (10) other factors the court considers pertinent.

Revised



*Called
Chris
04 MAR 90*

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

February 15, 1991

303 K Street
Anchorage, AK 99501
(907) 264-8228

The Honorable Arliss Sturgulewski
Chairman, Senate HESS Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

I am writing to request that the HESS Committee schedule a hearing on Senate Bill 100, relating to the factors for consideration in awarding shared child custody, at its earliest convenience. This bill was introduced at the request of the Alaska Court System.

In December, 1988, Chief Justice Warren Matthews created the Task Force on Mediation in response to an instruction from the Fifteenth Legislature. The purpose of the task force was to evaluate the potential benefits of mediation to consumers and to the court system. In its report, issued in June, 1990, the task force recommended the statutory change contained in SB 100.

Currently, AS 25.20.090 reads in pertinent part:

In determining whether to award shared custody of a child the court shall consider

. . . .

(7) any findings and recommendations of a neutral mediator;

. . . .

After study, the task force concluded that this statute as currently written endangers the mediation process and runs

The Honorable Arliss Sturgulewski
February 15, 1991
Page 2

contrary to the majority view that mediation communications be kept confidential. The majority view also does not envision a mediator making a recommendation about the resolution of a dispute, should mediation be terminated without agreement. The mediator's role is to guide the parties to a mutual decision, and not to impose a decision (even in the form of a recommendation) upon the parties if they cannot reach a decision.

To correct this problem, SB 100 would substitute the term "custody investigator appointed by the court" for the term "neutral mediator." The court system currently employs custody investigators who are appointed in specific cases to assist the court in obtaining the facts needed to make custody decisions. The findings and recommendations of a custody investigator are more appropriate for a court's consideration than are the findings of a neutral mediator.

Thank you for your courtesy. Please contact me if you have any questions or comments concerning this legislation.

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh



February 18, 1991

Senator Sturgulewski, Chair
Senate H.E.S.E. Committee
PO Box V
Juneau, Ak. 99811

Re: Senate Bill 100

Dear Senator Sturgulewski,

The purpose of this letter is to inform you that we are strongly opposed to Senate Bill 100: An act relating to the factors to be considered in determining custody of a child. ~~Senate Bill 100: An act relating to the factors to be~~

As the law now stands the court can appoint a neutral mediator to interview both parents and the child(ren) to make a determination regarding if shared child custody is in the best interest of the child(ren), or the court may appoint the Custody Investigator's Office to make the recommendation.

We believe the elimination of the option to utilize a neutral mediator in these cases is a serious mistake because the Custody Investigators work for the court system, are not accountable for their decisions, are biased, and carry out their investigations in secrecy without either party having the option to record the interviews or to rebutt allegations made by the investigators.

On the other hand, neutral mediators in private practice are held accountable for their work, and if they are biased the public simply stops using them and finds one with a good reputation for objectivity.

The Custody Investigator's Office must be moved out of the secrecy of the court system before they are given any additional power over families and children in Alaska. This fact is stated clearly in testimony taken by the Senate Family Law Review Task Force. We would be happy to provide that information to you upon request.

We appreciate the opportunity to offer input on this important issue.

Sincerely,
Steven P. Strube
Steven P. Strube, President

*Dpt Nat Res
Instr.*
*Limit to ct - system
Board account
father*
*neutral mediator
investigator*
~~*Steven P. Strube*~~

PUBLIC OPINION MESSAGE

DEAR: SENATOR STURGULENSKI

NAME: EMIL PORTSCHELLER
TITLE: NATIONAL CENTER FAMILIES AND CHILDREN
ADDRESS: P03 1645
CITY: PALMER ZIP: 99645
PHONE: 746-3011

BILL NO: HB 93
SUBJECT: ~~CHILD CUSTODY~~ INVESTIGATORS
MESSAGE: & SB 100: WE STRONGLY URGE THE IMMEDIATE DEFEAT OF THE ABOVE PROPOSED
LEGISLATION. BOTH BILLS ARE A ROUSE FOR STRENGTHENING THE COURTS IN FAMILY
LAW CASES, PARTICULARLY THE CUSTODY INVESTIGATION OFFICE. WE RECOMMEND AS AN
ALTERNATIVE, SEPARATING THE CUSTODY INVESTIGATION FUNCTION OUT OF THE COURTS
INTO THE PRIVATE SECTOR. PLEASE CONTACT OUR OFFICE IMMEDIATELY

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COPIES: REPRESENTATIVES SENATORS

CARNEY	COTTEN
LARSON	HALFORD
BARNES	PEARCE
ELLIS	FISCHER
FINKELSTEIN	HOFFMAN
LEMAN	MENARD
M.W.MILLER	RODEY
LINCOLN	ADAMS
B.DAVIS	FRANK
C.DAVIS	COLLINS
HANLEY	
M.A.MILLER	
GONZALES	
DONLEY	
GRUENBERG	
PARNELL	
MARTIN	



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

May 3, 1991

The Honorable Arliss Sturgulewski
Chair, Senate HESS Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

Earlier this session, the HESS Committee held a public hearing on Senate Bill 100, relating to the factors to be considered in awarding shared child custody. As you will recall, this bill was introduced by request of the Alaska Supreme Court in response to a recommendation from the Task Force on Mediation.

The purpose of SB 100 is to advance the mediation process by amending AS 25.20.090. That statute lists the factors to be considered by a court when awarding shared custody of a child, including "any findings and recommendations of a neutral mediator." The task force concluded that this statute as written endangers the mediation process, and runs contrary to the majority view that mediation communications be kept confidential. The majority view also does not envision a mediator making a recommendation about the resolution of a dispute, should mediation be terminated without agreement. The mediator's role is to guide the parties to a mutual decision, and not to impose a decision, even in the form of a recommendation.

To correct this situation, the task force recommended that AS 25.20.090 be amended to substitute the phrase "custody investigator appointed by the court" for the phrase "neutral mediator." This substitution has the effect of codifying a court's inherent authority to appoint a custody investigator to assist it when determining child custody.

At the HESS Committee's first meeting on SB 100, members of non-custodial parents groups objected to this codification. On

The Honorable Arliss Sturgulewski
May 3, 1991
Page 2

review, I have determined that this codification is not needed to effectuate the purpose of the legislation; the mere deletion of the requirement that the findings and recommendations of a neutral mediator be considered by the court would suffice.

Accordingly, I would like to recommend that the HESS Committee adopt a committee substitute identical to CSHB 93 (HES). This version simply deletes from AS 25.20.090 the requirement that the findings and recommendations of a neutral mediator be considered by the court when determining child custody, without substituting a requirement that the findings and recommendations of a custody investigator be considered by the court. The court would retain the inherent authority to utilize custody investigators, but that authority would not be codified.

Thank you for your consideration. Please feel free to contact me if you have any questions or comments.

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh

Pamela Kirk, M.S.
Mediator
101 East 9th Avenue
Suite 5-A
Anchorage, Alaska 99501
(907) 274-2233

April 23, 1991

Senator Arliss Sturgulewski
Chairman
Senate Health, Education and Social Services Committee
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

RE: Senate Bill #100, an act relating to the factors to be considered in awarding shared child custody.

Dear Senator Sturgulewski:

My name is Pamela Kirk. I am a mediator in Anchorage, Alaska. I have been in Alaska for 11 years and have been providing mediation services for the last 2 years.

In reference to Senate Bill #100:

#7) "Any findings and recommendations of the custody investigator appointed by the Court (neutral mediator)"

I would like to indicate that a custody investigator is certainly not a neutral mediator and in no way should be considered as such. They are hired directly by the Court to do an investigation and to make recommendations to the Court. As a mediator who does divorce and dissolution mediation, the private mediation process is completely confidential and under no circumstances would I ever consider giving a recommendation to the Court if the mediation should fail and the dissolution or divorce should lead to litigation. I would ask you to please remove (neutral mediator) so that there can be no confusion that a custody investigator is considered to be a neutral party.

On a larger scale, Alaska utilizes ADR (Alternative Dispute Resolution) techniques infrequently. We are many years behind most of the other states in the development of ADR programs connected with the courts and not connected with the courts. Alaska could benefit by studying the other ADR programs developed in other states so that we would not have to "reinvent the wheel" and would profit from other research and mistakes.

It would be a shame not to have a well thought out plan on the establishment of ADR programs in the state from community justice centers to handle "small" disputes to mediation of multimillion dollar civil cases and everything in between. This "implementation of ADR in Alaska plan" would function so much better than a piecemeal, patchwork of various pieces of legislation submitted having to do with various ways of implementing various types of ADR in various places on various levels.

I was a member of the Alaska State Task Force on Mediation which was created under a mandate of the Alaska Supreme Court. The Task Force report contained a variety of recommendations. However, so far the Supreme Court Justice has yet to communicate with any of the former Task Force members regarding whether a permanent committee on ADR would be appointed to oversee the implementation of the Task Force recommendations.

It appears to me that a statewide task force on ADR would be a perfect forum to develop an "ADR implementation plan for Alaska." Enclosed you will find copies of some information on how Hawaii does "ADR."

Thank you very much for your consideration of these comments. If I can be of any further assistance, you may reach me directly at 274-2233.

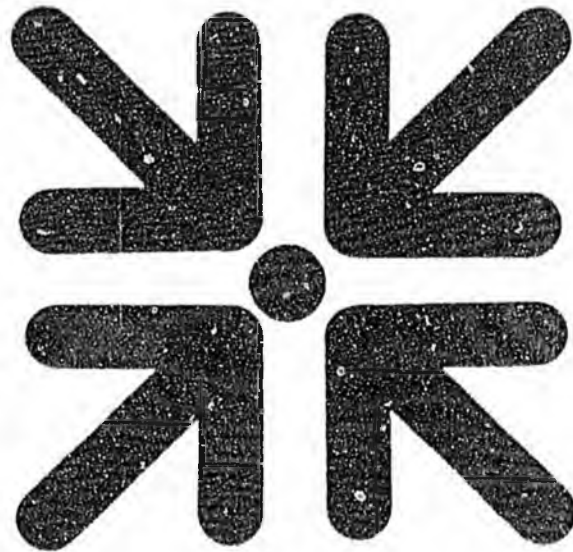
Sincerely,



Pamela Kirk

PK/sr
Enclosures

CENTER FOR



ADR



The Judiciary, State of Hawaii

A N N U A L R E P O R T

Fiscal Year 1989-1990

Center for Alternative Dispute Resolution
The Judiciary
Ali'iolani Hale
417 S. King Street
Honolulu, Hawaii 96813

Phone: 808/548-3080

Fax: 808/548-6002



SUPREME COURT OF HAWAII

ALIHOLOANI HALE

P. O. BOX 2560

HONOLULU, HAWAII 96804

CHIEF JUSTICE
HERMAN LUM
ASSOCIATE JUSTICES
FRANK D. PADGETT
YOSHIMI HAYASHI
JAMES H. WAKATSUKI
RONALD T. Y. MOON

January 25, 1991

Ladies and Gentlemen,

It gives me great pleasure to convey to you the second annual report of the State of Hawaii's Center for Alternative Dispute Resolution. In keeping with Act 346, the Center has brought a critical new dimension of dispute resolution services to the people and institutions of our State. Important and far-reaching cases have been resolved through the Center's services and many new and innovative uses of mediation have been pioneered. As you probably know, the State of Hawaii has a national and international reputation for leadership in this area. I am most proud of the role the Judiciary in general and the Center in particular has played in achieving this reputation and I commend the Center to you.

Sincerely,

A handwritten signature in dark ink, appearing to read "H. Lum", written over a light-colored background.

HERMAN LUM
Chief Justice

"Our society is at a critical juncture.
Constructive approaches for confronting
difficult social problems are essential
to managing our global future."

- Barbara Gray

Part I

OVERVIEW:

THE CENTER FOR ALTERNATIVE DISPUTE RESOLUTION

Hawaii's Center for Alternative Dispute Resolution was formally established by the Hawaii State Legislature in 1989. Prior to that, it was known as the "Program on ADR" which was started in 1985 with the assistance of the National Institute for Dispute Resolution. Its purpose is to mediate disputes that affect the public interest or that involve the agencies of state or local government. It also promotes the use of dispute resolution alternatives for conflicts that involve government agencies and educates government and community decision-makers and the public-at-large about the availability of dispute resolution options in the State of Hawaii.

The Center handles various types of disputes involving actual or threatened court action over the allocation of scarce resources or the siting of public facilities which involve government agencies, private interest groups, and community or environmental action groups. It also handles complex litigation cases in which a court, regulatory, or administrative agency has determined that the dispute involves multiple parties, formidable factual or legal questions, or unwieldy scientific or technical issues. The Center also convenes and chairs policy roundtables on matters pertaining to standards, rules, and regulations as well as other cases which have been referred by judges, legislators, agency heads, or elected or appointed government officials.

To accomplish its objectives, the Center uses various ADR methods including mediation, negotiation, expert fact-finding, neutral evaluation, mediated policy roundtables, mini-trials, and special proceedings tailored to individual case needs. Generally the Center becomes involved in a case or project at the request of an official from one of Hawaii's three branches of government. Once a request is received, one of the Center's staff members consults with all of the parties involved and assesses the potential for the use of ADR. The Center then assists them in identifying and selecting the best type of ADR process to be used, helps to develop ground rules and procedural agreements, facilitates the selection and appointment of an appropriate third party neutral(s), and provides administrative, case management, and backup support until the ADR process is completed.

To assist with its cases, the Center maintains a panel of qualified neutrals, all of whom have extensive training and experience in ADR methods, and all of whom mediate under the "Standards for Private And Public Mediators In The State Of Hawaii" promulgated by the State of Hawaii's Supreme Court in 1986. Approximately half of

the panel are attorneys and the rest bring expertise from other business or scientific disciplines. Center staff also serve as mediators on some cases. Normally, mediators work in teams and are selected and appointed in accordance with the wishes of the parties. Compensation for members of the panel is arranged on a case-by-case basis with the cost of mediation typically being shared by all participating parties on a pro-rata basis. Where one or more parties lacks the capacity to pay, the Center will make special arrangements to insure that ADR is available.

In addition to its case work, the Center gathers state-of-the-art information on ADR methods and applications and makes it available to state and local government agencies and the general public through its published reports and directories, and newsletters. The Center also assists the courts and other branches of government in the development of pilot ADR projects. It offers technical assistance by providing advice and consultation to government departments and administrative agencies that are considering ways of adding ADR protocols to their existing rules and procedures. For state or county government groups interested in strengthening their ADR capabilities, the Center provides brief training and education programs. The Center is also available to assist with research and evaluation efforts that promote the use of dispute resolution in cases affecting the public or the state and local government.

Part II

CASES AND PROJECTS

CASES

Since its inception in 1986, the Center has sought to make mediation services more broadly available to cases that directly involve the agencies of State and County government or that may be referred to it by governmental officials. More than 75 cases -- most of them involving large numbers of people and complex legal and technical issues -- have been handled by the Center's Panel of Mediators. The majority of these were either settled or streamlined to the satisfaction of all parties.

In Fiscal Year 89/90, the Center, in addition to its pending, carry-over load of nearly a dozen different cases, took in seventeen new cases. Two were filed law suits. Three were actions pending or destined to be heard before administrative and regulatory agencies. Another four were policy mediations referred to the Center by legislative resolutions and seven other cases involved the design and implementation of facilitated public participation procedures. One case was a pre-litigation matter. The new cases undertaken by the Center were as follows:

- * Lanaians for Sensible Growth (LSG) v. Castle and Cooke, Inc. Mediation of permitting disputes pending before the State Land Use Commission and the Maui Planning Commission over a proposed golf course and housing development on the island of Lanai. Agreements were reached and threatened administrative and judicial litigation was avoided.

- * Psychotropic Medication Roundtable (HR 334-90). A legislatively requested policy discussion centering on prospective prescriptive privileges for psychologists. Mediated discussions took place between June and December, 1990 and a report containing several consensus-based recommendations for improving the treatment of mental illness in Hawaii was forwarded to the Legislature.

- * Hawaii Medical Association (HMA) / Hawaii Academy of Plaintiff Attorneys (HAPA) HMA/HAPA. Informal discussions aimed at improving the definition of medical tort policy issues were convened and moderated by the Center at the request of a State Senator. Discussions are continuing.

- * Uninsured Motorist Roundtable (HR 253-90). A legislatively requested policy discussion aimed at clarifying issues and recommendations pertaining to public and private access to information on driving records. Meetings were held and a consensual report was forwarded to the Legislature.

- * Alternative Dispute Resolution Roundtable (HR 176-90). A legislatively requested policy discussion involving judges, attorneys, and private ADR providers focusing on proposed steps that would increase the use of mediation and arbitration in the courts. Discussions are still underway and a report to the Legislature will be made in February, 1990.

- * Strategic Planning, Department of Psychiatry, School of Medicine, University of Hawaii. A facilitated planning retreat requested by the Chairman and aimed at updating the department's mission statement and establishing departmental consensus on goals and objectives for the 1990s. Completed.

- * Files Hawaii v. Havlin Witkin et al. Mediation of a construction and product defects litigation involving multiple issues and parties. Mediation is still in progress.

- * Developmental Disabilities Roundtable. A policy dialogue requested by the Governor and involving State, County, and private, non-profit organizations. The Roundtable met in small and large group processes between May and December, 1990 and focused on issues relating to the improvement of purchase of services, agency coordination, and the delivery of services to the developmentally disabled. Consensual recommendations were reached and a report forwarded to the Governor.

- * Kamoe Family Lands. Mediation of a threatened litigation over rights to a large track of ancestral land inherited by an extended family of native Hawaiians. Agreements were reached and litigation was avoided.

- * Waikiki Community Center. Facilitation of a series of meetings between board members and United Way representatives over property management and service

planning issues. Issues were narrowed and agreements were reached.

- * Puna Planning. Facilitation and process design assistance to the County of Hawaii Planning Department regarding the organization and implementation of public input meetings centering on the Puna Community Development Plan. In progress.
- * Energy Interagency Role Clarification Task Force. Facilitation and mediation of a policy dialogue requested by the Department of Business and Economic Development and aimed at improving the coordination of agencies involved in energy and energy delivery services. Meetings successfully completed and a report was forwarded to DBED.
- * Kauai Sexual Assault and Rape Services. Mediation between two agencies involved in the delivery of State-funded sexual assault and family treatment services on Kauai. Working agreements reached.
- * State of Hawaii v. Kuliouou Valley Associates, et. al.. Appointment of a "Special Master" to manage and mediate a soils engineering and construction defects case involving a 20-home subdivision built under a turnkey contract for the State of Hawaii. Ongoing.
- * Commission on Persons with Disabilities. Mediation of an employer and employee dispute. Mediation process completed resulting in procedural agreements between the parties.
- * Waikiki Improvement Association. A series of facilitated input sessions for business, community and government leaders sponsored and requested by the Office of State Planning (OSP) and focused on the development of a long-range plan for the Waikiki area. Process completed.
- * Friends for Ewa. A series of facilitated meetings involving residents, specialists, government officials, unions, and landowners. Discussions focused on historic preservation of the Ewa Plantation Village and resulted in broad agreements between the participants.

TECHNICAL ASSISTANCE - TRAINING,
EDUCATION, AND SYSTEM DESIGN

In addition to its day-to-day work on mediation cases, the Center for ADR also provides various kinds of short and long-term technical assistance to the agencies and organizations of government. Routinely, the Center responds to informational requests from State and County departments seeking information on mediation, arbitration, and other dispute resolution methods. The Center also publishes various newsletters and directories aimed at enhancing public understanding about the availability and efficacy of ADR methods.

In the last fiscal year, the Center was involved in the following other activities and projects:

- * Court-Annexed Arbitration. Provided fiscal management of the First Circuit's CAP program. Planned, implemented, and helped conduct arbitrator trainings for 800 attorneys in the First, Second, Third, and Fifth Circuits. Advised the Judicial Arbitration Commission on rule and policy changes. Administered the external evaluation of the CAP by the University of Hawaii Program on Conflict Resolution.

- * District Court: Small Claims Mediation. Assisted the District Court of the First Circuit in the planning and implementation of a pilot mandatory small claims mediation project now underway in Oahu's urban and rural courts.

- * Family Courts: Divorce Mediation. Provided assistance to the Board of Family Court Judges and Directors regarding the development of a "second generation" divorce mediation program. The Center is currently helping to write standards and procedures for the pilot phase which is expected to begin in the Second Circuit in the next fiscal year.

- * Training: Intensive Mediation Course for Elected and Appointed Public Officials. The Center organized

and implemented its first intensive mediation skills training for 50 judges, legislators, and departmental administrators working in State and County Government. In conjunction with its Puna Planning project, the Center also trained 25 large-group facilitators in Hilo. Other trainings included mediation and meeting management for the Hawaii Housing Authority and a course on mediation for the Hawaii State Bar Association's Fee Dispute Program.

* Contracts for Private Providers. The Center administered -- and helped restructure -- the Judiciary's purchase-of-service contracts with the five State supported community mediation centers located on Oahu, Maui, Molokai, East and West Hawaii, and Kauai. It facilitated the development of a future master contract with a newly formed entity called Mediation Centers of Hawaii.

* National and International Assistance. The Center provided consultative, training, and technical assistance to the following other groups and organizations: the Center for International Commercial Dispute Resolution in Honolulu, Hawaii; the Australia Commercial Disputes Center and the State governments of New South Wales and Queensland; the Ohio Commission on Dispute Resolution and Conflict Management; the National Institute for Dispute Resolution in Washington, D.C.; and the State of Oregon's Dispute Resolution Commission.

During Fiscal Year 1989-1990, the Center was pleased to receive an Honorable Mention Justice Achievement Award from the National Association for Court Management and the Public Policy Award from the Mental Health Association of Hawaii.

Part III

LOOKING AHEAD

In the coming fiscal year, the Center intends to further develop and perfect its mediation, facilitation, and consensus-building resources and to make these methods available to a larger number of cases. To accomplish this goal, Center staff are planning to:

- * identify and train additional qualified mediators and facilitators, particularly on the islands of Kauai, Maui, and Hawaii;
- * take in and help resolve at least 25 new cases that are referred by the agencies of State and local government or that affect the public interest;
- * help pilot a new civil mediation project that would make mediation services more accessible in the Circuit Courts;
- * complete the evaluation and probable institutionalization of the pilot Small Claims Mediation Program now underway in the District Court of the First Circuit; and
- * assist the Board of Family Court Judges and Directors with the implementation of new statewide mediation procedures scheduled to begin on Maui in Fiscal Year 1990-1991.

The Center welcomes comments, inquiries, and suggestions by Hawaii's citizens and public officials.

Part IV

FINANCIAL STATEMENT

FY89-90 *

	FY89-90 APPROPRIATED	FY89-90 ALLOCATED	FY89-90 EXPENDED	FY89-90 LAPSED
PERSONAL SERVICES	\$232,712.00	\$173,989.00	\$101,326.00	\$72,663.00
OTHER CURRENT EXPENSES	\$569,628.00	\$635,794.00	\$599,282.00	\$36,512.00
EQUIPMENT	\$4,330.00	\$5,330.00	\$4,975.00	\$355.00
MOTOR VEHICLES	\$0.00	\$0.00	\$0.00	\$0.00

NOTES:

- * This Fiscal Year 1989-1990 financial statement reflects combined funds for the Center for Alternative Dispute Resolution (CADR) and the Court Annexed Arbitration Program (CAAP) of the First Circuit.
- * Lapsed funds in the Personal Services category reflect CAAP positions not fully filled through 6/30/90.
- * Funds from the Personal Services category were moved to the Other Current Expenses category to cover personal services contracts for staff members of CAAP (7/1/89-6/30/90) and CADR (7/1/89-9/30/89).
- * Because the CAAP was developmental during FY89-90, there was no historical basis for budgeting of CAAP Arbitrator honorarium funds (\$204,000.00). Revision of CAAP rules and the development of guidelines/procedures for case stipend payments needed to be completed prior to implementation of a statewide arbitrator training and an arbitrator case stipend payment system.

Part V

LEADERSHIP

Herman Lum, Chief Justice
Supreme Court of Hawaii

ADVISORY BOARD

Robert A. Alm, Director
Department of Commerce and Consumer Affairs

Karen Blondin, Acting Ombudsman
Office of the Ombudsman

Goro Hokama
Maui County Council

Mahealani Kamaau, Director
Native Hawaiian Legal Corporation

Russell Kokubun, Chairman
Hawaii County Council

Kem Lowry, Professor
University of Hawaii at Manoa

Harold Masumoto, Director
Office of State Planning

Ronald T. Y. Moon, Associate Justice
Supreme Court

James T. Paul, Esq.
Paul, Johnson, Alston & Hunt

William A. Stricklin, Esq.

STAFF

Peter S. Adler, Ph.d
Director

Dorothy D. Letts
Assistant Director

Karen T. Takahashi
Program Specialist

PANEL OF MEDIATORS

Peter S. Adler	Warren Haight
Sidney K. Ayabe	Jerry M. Hiatt
Ellen F. Banta	Steven Hisaka
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C A S E L O G

December, 1990

Code

LS = Law suit
PM = Policy mediation
F = Facilitation
A/R = Administrative/Regulatory
O = Other

CASE NO.	TYPE	DESCRIPTION
90-32	O	<u>Yukimura v. Kauai County Council.</u> Mediation of an impending lawsuit over interpretation of the County Charter vis-a-vis competing FY 90 administration and council budgets.
90-31	A/R	<u>Integrated Resource Planning Collaborative Process (IRPCP).</u> A facilitated consensus-building process aimed at narrowing differences of opinions regarding demand-side energy planning. Formal Hearings are being conducted by the Public Utilities Commission.
90-30	F	<u>Department of Agriculture and Livestock Industry.</u> Facilitation of a DOA organized meeting to consider the implications of a slaughterhouse and feedlot closing on Oahu. Short and long-term strategies were developed and a new livestock cooperative was formed.
90-29	F	<u>Waikiki Master Plan.</u> At the request of the Department of General Planning, facilitation of working groups (physical environment, transportation, and economics) for the purpose of developing a new master plan and investment strategy for the Waikiki district.
90-28	F	<u>Western Pacific Regional Fishery Management Council.</u> Facilitation of public input meetings for the Fishery Management Council.
90-27	LS	<u>Wai Utilities.</u> A multiparty law suit voluntarily referred by the Corporation Counsel and other parties who are seeking resolution of a complex contract litigation centering on material services to the Board of Water Supply.
90-26	F	<u>Life Foundation.</u> Design and implementation of two facilitated planning retreats (staff and board of directors) for the state-supported AIDS foundation.
90-25	O	<u>Bearrineu v. Animal Quarantine.</u> Mediation of a prospective lawsuit concerning animal care at the State's animal quarantine facilities.
90-24	F	<u>Kilauea Master Plan.</u> Facilitation and mediation assistance between developers, community groups and

the County of Kauai regarding the development of a master plan for the Kilauea area.

- 90-23 F Kauai Growth Management Plan. Design and implementation of a collaborative planning process using facilitated focus groups, a planning conference, and mediation assistance aimed at the development of a comprehensive growth management plan for the County of Kauai.
- 90-22 A/R Fazadin v. DLNR. Assistance requested by the Department of Land & Natural Resources for a dispute over a conservation district use application (CDUA) for a proposed single family use on Mount Olomana on the Island of Oahu.
- 90-21 A/R Takamoto v. Okamura. A client-lawyer fee dispute referred to the Center pursuant to the Mediation and Arbitration Rules of the Hawaii State Bar Association.
- 90-20 F UH Gender Issues Forum. Facilitated discussions between faculty and graduate students over gender issues in the Department of Political Science. Discussions emanate from prior grievances and disputes.
- 90-19 O Ocean Farms of Hawaii, Inc. Mediation of a threatened lawsuit between shareholders, directors, and officers in a multi-national high technology company.
- 90-18 PM Kalaupapa Child Visitation. Mediation among the residents of Kalaupapa concerning proposed policies of child visitation.
- 90-17 O H-3 Historic Site Interchange. Facilitated meeting over highway construction and historic sites preservation between the Department of Transportation and members of the Hawaiian community.
- 90-16 F CZM Assessment. Facilitation of statewide large and small group processes to identify issues, concerns, problems and solutions to be addressed in the evaluation of the Coastal Zone Management program.
- 90-15 F Ocean Resources Management Council. Facilitation of

statewide meetings dealing with approaches for identifying and protecting ocean resources.

- 90-14 A/R Lanaians for Sensible Growth (LSG) v. Castle and Cooke. Mediation of permitting disputes pending before the State Land Use Commission and the Maui Planning Commission over a proposed golf course and housing development on the Island of Lanai.
- 90-13 PM Psychotropic Medication Roundtable. A legislatively requested policy discussion centering on prospective prescriptive privileges for psychologists (HR 334-90).
- 90-12 PM Hawaii Medical Association (HMA) / Hawaii Academy of Plaintiff Attorneys (HAPA) MA/HAPA. Informal discussions over medical tort policy issues convened and moderated at the request of Senator Andy Levin.
- 90-11 PM Uninsured Motorist Roundtable. A legislatively mandated policy dialogue involving public and private agencies and organizations and dealing with the issue of access to information on driving records and the design of insurance rating alternatives.
- 90-10 PM ADR Roundtable. A legislative requested policy discussion involving judges, attorneys, and private ADR providers and focusing on proposed rule and statute changes aimed at increasing the use of mediation and arbitration in the courts (HR 176).
- 90-09 F Strategic Plan Development, School of Psychiatry, University of Hawaii. A facilitated planning retreat aimed at updating the department's mission statement and establishing goals for the 1990s.
- 90-08 LS Files Hawaii v. Havlin Witkin et al. Mediation of a construction and product defects litigation involving multiple issues and parties.
- 90-07 F Developmental Disabilities Roundtable. A policy dialogue with state, county, and private, non-profit organizations centering on issues relating to the improvement of purchase of services, agency coordination, and the delivery of services to the developmentally disabled.

- 90-06 O Kamoe Family Lands. Mediation of a threatened litigation over a large track of ancestral land inherited by a family native Hawaiians.
- 90-05 F Waikiki Community Center. Facilitation of meetings between board members and United Way representatives over property management and service planning issues.
- 90-03 F Puna Planning. Assistance to the County of Hawaii Planning Department with the design and implementation of facilitated public meetings centering on the Puna Community Development Plan.
- 90-02 F Energy Interagency Coordinating Committee. A policy dialogue requested by the Department of Business and Economic Development aimed at coordination of agencies involved in energy and energy delivery services.
- 90-01 A/R Kauai Sexual Assault and Rape Services. A mediation concerning the delivery of sexual assault and family treatment services on Kauai.
- 89-12 LS State of Hawaii v. Kuliouou Valley Associates, et. al.. Appointment of a special master to discovery to help facilitate resolutions in a soils engineering and construction defects case involving a 20-home subdivision built under a turnkey contract for the State of Hawaii.
- 89-11 A/R Commission on Persons with Disabilities. Mediation of a dispute arising from mutual grievances between an employer and employee.
- 89-10 F Waikiki Improvement Association. A series of facilitated input sessions for business, community and government leaders sponsored by the Office of State Planning (OSP) and focused on the development of a long-range plan for the Waikiki area.
- 89-08 F Friends of Ewa. A series of facilitated participation meetings aimed at involving residents, specialists, government officials, unions, and landowners in discussions over historic preservation of an old Plantation Village.

- 89-07 A/R Puna Geothermal Venture (Geothermal). Mediation conducted under County of Hawaii Rule 12 concerning the development of a well field and a 25 megawatt commercial geothermal power plant.
- 89-06 A/R Scientific Observation Holes (Geothermal). Mediation conducted under County of Hawaii Rule 12 concerning an application to drill four test bores to research underground steam resources.
- 89-05 F State Conference on Renewable Energy. Design and facilitation assistance to the Department of Business and Economic Development regarding participation programs for hydro, wind power, geothermal, and ocean thermal energy production.
- 89-04 A/R Port Pilots. Mediation of a lawsuit and regulatory conflicts concerning Hawaii's harbor pilots.
- 89-03 A/R Hanalei Boats. Mediation between the boat operators, the County of Kauai and a community group over tour boat impacts on the north shore of Kauai.
- 89-02 FM Mental Health Roundtable. A legislatively mandated policy dialogue involving state agencies and consumer and advocacy groups and centering on issues related to involuntary civil commitment and the delivery of services to the seriously disabled mentally ill.
- 89-01 A/R Mental Health Alliance and Department of Health. A mediation requested by State Senator Andy Levin involving the Mental Health Division (DOH) and mental health advocates. Issues centered on the development of budget provisos for the division's budget.
- 88-19 LS Airport Associates 1981 v. Theo Davies, Inc. A lawsuit over construction and defective performance of a large industrial air conditioning system.
- 88-18 A/R Liedke v. State of HI (Department of Education). Mediation of a dispute involving the development of individual educational plans (IEPs) and the provision of special education resources by the State of Hawaii.

- 88-17 LS Osborne v. Kaapuni Community Association, et al. A lawsuit over street and beach access encroachments in a private subdivision.
- 88-16 PM Geothermal Roundtable. A facilitated information exchange process between the state agencies and community advocacy organizations focusing on the development of geothermal energy on the Island of Hawaii.
- 88-15 O Hakipuu Stream. Mediation of a dispute between the community and the UH Aquaculture facility concerning noise and operations.
- 88-14 A/R Hasegawa v. State of Hawaii. Mediation of a dispute involving the development of an individual educational plan (IEP) and the provision of special education resources by the State of Hawaii.
- 88-13 LS Kapoho Beach Community Assn. v. Kapoho Land & Development. mediation of a class action lawsuit over road maintenance and road maintenance contributions in an unincorporated subdivision.
- 88-12 PM Family Court Strategic Planning Process. Facilitated planning and goal setting for the State's Family Courts and the development of consensus-based management objectives for the 1990s.
- 88-11 A/R Waimano Home Parent Association v. State of Hawaii. Mediation of a pre-litigation lawsuit over de-institutionalization of a state-run special care facility.
- 88-10 O Dispute between Kaluhiwas and HECO, Heeia Kea evictions. Mediation concerning the conditions of eviction from a utility-owned landholding.
- 88-09 † LS Kaiser Development Co. v. Stringer, et al. Mediation of a lawsuit over design and construction defects in a 25-home subdivision.
- 88-08 LS Nelson v. University of Hawaii Student Loan. Mediation of a dispute arising from repayment of a student loan.

- 88-07 LS State of Hawaii v. Haines. Mediation of a dispute over the alleged confiscation of commercial operator's equipment and harassment charges.
- 88-06 PM Condominium Leasehold Conversion Discussion Group. Mediation of a pending legislative matter centering on the issue of leasehold condominium conversion
- 88-05 LS Kahala Community Association v. Collin Fritz, et al. Mediation of a class action lawsuit concerning setback provisions affecting 800 homes.
- 88-04 O Kewalo Tenants and New Landlords. Conciliation meetings over rule enforcement, maintenance and eviction policies between residents and a new building owner.
- 88-03 LS Adams, et al. v. City and County of Honolulu. Mediation and formal arbitration of a lawsuit involving 200 property damage claims arising from the 1987 New Year's Eve Flood.
- 88-02 LS AOAO Park at Pearlridge v. Honfed Development et al. An assisted settlement conference process for a complex litigation case alleging construction defects and consequent water damage in a large condominium.
- 88-01 LS Powers, et al. v. Bergier, et al. Mediation of a multi-party and multi-issue lawsuit involving defamation and conflict of interest allegations by the Board of Directors of a large housing project.
- 87-11 PM Helicopter Roundtable. A 6 month mediation involving the County of Kauai, representatives of private helicopter companies, and environmental and community advocates and focusing on the regulation of the tour helicopter industry on the island of Kauai.
- 87-10 LS Kishi Trustees, et al. v. Peacock. Mediation of a complex business litigation case referred by Circuit Court judge on the Island of Maui and involving lessor and lessee issues.

- 84-09 LS Hawaii's Thousand Friends v. Kaiser Development Co., et al. Mediation of a class action lawsuit over maintenance and pollution from a private sewage treatment facility.
- 87-08 A/R Naki v. Smetich. Mediation of a threatened lawsuit over landholdings held in trust for a mentally incompetent individual on Oahu.
- 87-07 LS Dole, Del Monte, Velsicol v. State of HI. Mediation of a cluster of lawsuits seeking contribution to a previous settlement arising from heptachlor contamination.
- 87-06 LS Hou Hawaiians v. State of HI. Mediation of a lawsuit in the Federal courts over ceded land revenues and other issues related to native Hawaiian entitlements.
- 87-05 LS State of HI v. Frkel, et al. and State of HI v. Inryco, et al. Mediation, organization of a mini-trials, and Special Master involvement in two massive litigations over product and construction deficiencies at the State's Aloha Stadium.
- 87-04 LS Bishop Trust Co. v. Kiahuna Golf Village. Mediation of a complex business litigation over the financing of a land development on the Island of Kauai and referred by the Circuit Court.
- 87-03 FM Special Education Roundtable. Facilitated policy discussions between the State Department of Education and various advocacy groups over the management of I.E.P. disputes.
- 87-02 LS Acosta et al. v. Tamashiro, et al. Mediation of a complex litigation matter involving construction defects in a low income housing project built with public funding.
- 86-01 FM Water Code Roundtable. Facilitation and mediation of a ten-year policy impasse concerning the management of the State's fresh water resources.