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Via E-mail With Hard Copy to Follow

February 12, 2010

Stephanie Edelstein
Program Counsel
Legal Services Corporation
Office of Program Performance
3333 K Street, N.W.
Washington DC 20007

RE: Draft Program Quality Visit Report

Dear Stephanie:

We thank you again for your visit along with John Eidleman, Janet Labella and Tim Watson in September. This past year has been a difficult one for the Legal Aid Society of Hawai'i, especially with funding cuts and the need to find new resources to ensure that legal services continued to be available in light of growing need. Your visit was a timely one and we appreciate the time and effort of your team in attempting to understand the complexities and difficulties that legal service providers have throughout the country with shrinking resources.

We are in receipt of your report sent on January 13, 2010 and for the most part believe that the report is a fair and accurate review of our program, including our strengths and the challenges that we like other legal service providers around the country face. We appreciate your feedback and will take all of your comments to heart to improve our services to the people of Hawai'i. While honored by your team's recognition of the quality work that our staff provides and the insight on ways to improve our service delivery, some of the more critical of LSC's recommendations require unrestricted funding which frankly is limited in these economic times.

As to specific factual inaccuracies of the report:

Summary of Findings

Page 4, First Paragraph, Second to Last Sentence: This sentence indicates that some staff lack needed computer capacities, including sound and CD-ROM drives. Because of costs, a need to ensure on-going back-ups and universal access to the same programs, we made the decision a number of years ago to shift to a terminal services environment. In recognition, however, of the need for CD-ROM drives for social security work, we have ensured that there is at least one computer with sound and a CD-ROM in each office.

Page 5, First Paragraph, Second Line: Please note that "the Campaign for Justice," is actually called "the Justice Campaign"

||= LSC

Finding 1: LASH was a key participant in a 2007 comprehensive statewide assessment of legal needs, and has taken steps to implement its recommendations as appropriate.

Page 5, Last Paragraph, Last Sentence: This sentence states that “There is no date set for the next needs assessment,” however the Hawaii Access to Justice Commission has actually set a date for the next needs assessment to occur five years after the first meeting of the Commission (which was held on July 23, 2008). It is in the Hawaii Supreme Court Rule 21 which created the Commission:

“(14) Conduct a statewide assessment of unmet civil legal needs among low-income people in Hawai‘i in five years after the Commission holds its first meeting to measure the progress being made to increase access to justice.”

A copy of the rule is attached to this letter.

Finding 9: LASH has the capacity to perform effective legal work despite staffing, funding, and geographic challenges.

Page 13, First Paragraph, Last Sentence: Please note that there were only two attorneys at the time of your visit that teach courses at the University of Hawaii’s William S. Richardson School of Law – Stephen Duck and Angela Lovitt.

Finding 11: Some LASH legal representation appears to be grant driven and lacking a strategic focus.

Page 14, Last Paragraph: The grants we pursue all fit within the priorities established each year by the Board of Directors and provide necessary services to the client population. Our grants allow us to provide much needed legal services to children, families, those losing their homes, and those with disabilities. We attempt to balance the need for routine services and complex litigation within current budgetary limits and LSC restrictions. If the critique in this finding is meant to address the need for more complex litigation which it appears to do later in the paragraph and is made clear in the recommendation, LSC must be much clearer to us as grant recipients that complex litigation is the type of work it is interested in us pursuing and should change its expectations with respect to providing legal services in “routine legal areas” as resources are limited especially in these economic times.

Finding 12: LASH has systems for legal work management and supervision that are designed to assure high quality representation, but these systems are not always followed.

Page 16, First Paragraph: All advocates attend the program’s staff retreat/training and not the public benefits training. Further, despite reduced funding, staff was sent to mainland trainings on fair housing, family/abuse, foreclosure, and housing trainings, in addition to MIE trainings. In December, we did decide to remain with LexisNexis through negotiations directly with our local vendor and were able to get a better rate rather than through LSC which had not during the time of our negotiations received better rates.

Page 16, Second to Last Paragraph: Hawai'i's location presents unique problems regarding sending staff for trainings. We actively access scholarships wherever possible and while waiver of conference fees is often available, the cost of travel from Hawai'i to the mainland can range from \$400 to upwards of \$1,000 depending on the time of year and location. In addition, hotel and per diem, make any mainland training an investment of \$1,500 - \$2,000 per person.

Finding 13: While staff, in general, have the resources they need to support their work, there are areas where technology could be improved.

Page 17, Second to Last Paragraph: This paragraph indicates a lack of access to technology sufficient to support their work. Within our economic limitations, we do provide the technology necessary for staff to do their work. The choice to move to the "thin-client" model was carefully contemplated by the organization in order to ensure back-ups, centralization and uniformity of access for all staff. In making this choice, we moved to "thin-clients" which are not like normal computers, but have made available in each office a computer with a CD-ROM and sound for the uploading of social security materials to the advocate's drive (there is a short-cut on the computer). While this "thin-client" model is not the norm in legal services or in many business practices, it has allowed us to meet requirements such as maintenance and back-ups with limited costs (i.e. we no longer need to pay for weekly trips to neighbor island offices for updates and to ensure that branch office staff conduct back-ups, etc.). Further, the incidence referred to in this paragraph about sending the CD-ROM to the Honolulu office for conversion to an accessible format happened on one occasion, when the computer with the CD-ROM was broken. There have been no other incidences other than that.

There is also a statement as to it being unclear as to whether all offices have ready access to necessary document printing capacity and supplies. This issue we believe was raised in the exit interview and referred to concerns in the Hilo office over printing capacity. For clarification, please understand that the Hilo office does have printers that are readily accessible, however there had been an on-going discussion regarding whether the office should have a "back-up" printer in addition to the printer that they have and the copier which can print.

Finding 14: LASH effectively integrates private attorneys into its legal representation and client services.

Page 18, Second to Last Paragraph, Third Sentence: For clarification, Rule 6.1 is a rule of the Hawaii Rules of Professional Conduct and not a rule of the Supreme Court.

Finding 17: LASH has not been successful in recruiting and retaining client eligible board members.

Page 22, Second Full Paragraph: We believe that we have been making diligent efforts to recruit and retain client eligible board members and that the finding as stated does not recognize these efforts. We believe that the wording for this finding should be "LASH has had on-going difficulties in recruiting and retaining client eligible board member." Further, we believe that the recommendation should state, "LASH should continue to work diligently to fill vacant client board of director positions and should provide training and other support to client board members to improve retention and participation."

Finding 18: LASH is well-managed and administered, and appears to have weathered well the recent leadership changes.

Page 22, Last Paragraph, Second Sentence: At the time of your visit, the current executive director had been with the program for ten years not eleven years. The current executive director started on March 10, 1999.

Finding 19: LASH maintains an effective human resources administration and policies, although the degree to which the policies are followed is not always clear.

Page 24, Second to Last Paragraph: Only staff salaries over \$30,000 were reduced by 4% and there was a salary freeze, not a freeze on hiring. Further, we believe that there should be some recognition given to the Management and Board of Directors for helping to keep staff morale high in that Management and the Board of Directors made a concerted effort to keep the staff informed throughout discussions about budgetary issues.

Finding 21: LASH has effective systems for resource development and diversified funding sources.

Page 26, Last Paragraph, First Sentence: LASH's private bar campaign is called "Justice Campaign" not "Campaign for Justice."

Page 27, IV.21.1: The recommendation indicates that LASH should ensure that its various grants support its strategic plan and core mission. All of the grants which LASH currently has are in line with the priorities adopted by the Board of Directors each year.

Thank you for this opportunity to provide comment. During these tough economic times, we will attempt, as we are financially able, to meet the recommendations in your review of our program. We appreciate your candor and review of our program.

Please feel free to contact me at (808) 527-8014 or at nafujim@lashaw.org should you have any additional questions.

Sincerely,



M. Nafani Fujimori Kaina
Executive Director

Attachment

(2) A "qualified legal services provider" for the purposes of this rule is a not-for-profit legal services organization that receives or is eligible to receive funds from the Indigent Legal Assistance Fund and has an actively licensed Hawai'i attorney who supervises pro bono publicus attorneys.

(d) Limitations.

(1) Except for the acts and services performed in association with a qualified legal services provider, a pro bono publicus attorney shall not otherwise engage in the practice of law.

(2) The pro bono publicus attorney shall not be paid by the qualified legal services provider, but the qualified legal services provider may reimburse the pro bono publicus attorney for actual expenses incurred while rendering services. The qualified legal services provider shall be entitled to receive any court-awarded attorney's fees for representation rendered by the pro bono publicus attorney. Collection of any money from the client, including but not limited to reimbursements for expenses incurred, shall be handled exclusively by and through the qualified legal services agency.

(e) Duties of qualified legal services provider. A qualified legal services provider who engages the services of a pro bono publicus attorney shall file a sworn statement with the Hawai'i State Bar that:

(1) Provides the name of the pro bono publicus attorney; and

(2) States that the pro bono publicus attorney will not be paid compensation, that the pro bono publicus attorney will be covered by the provider's malpractice insurance, agrees to notify the Hawai'i State Bar, within ten days, when association with the pro bono publicus attorney has ceased, states that the pro bono publicus attorney has read and is familiar with the Hawai'i Rules of Professional Conduct, and states that the qualified legal services provider has verified that the pro bono publicus attorney has not been disciplined within the last fifteen (15) years in any jurisdiction.

(Added June 27, 2002, effective July 1, 2002; amended October 16, 2007, effective December 1, 2007.)

Rule 21. ACCESS TO JUSTICE COMMISSION.

(a) Creation. There shall be a commission to be known as the Hawai'i Access to Justice Commission (the "Commission").

(b) Purpose. The purpose of the Commission shall be to substantially increase access to justice in civil legal matters for low- and moderate-income (together "low-income") residents of Hawai'i. To accomplish this, the Commission shall, along with such other actions as in its discretion it deems appropriate, endeavor to:

(1) Provide ongoing leadership and to oversee efforts to expand and improve delivery of high quality civil legal services to low-income people in Hawai'i.

(2) Develop and implement initiatives designed to expand access to civil justice in Hawai'i.

(3) Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low-income Hawai'i residents.

(4) Increase and stabilize long-term public and private funding and resources for delivery of civil legal services to low-income Hawai'i residents.

(5) Maximize the efficient use of available resources by facilitating efforts to improve collaboration and coordination among civil legal services providers.

(6) Increase pro bono contributions by Hawai'i attorneys through such things as rule changes, recruitment campaigns, increased judicial involvement, and increased recognition for contributors.

(7) Reduce barriers to the civil justice system by developing resources to overcome language, cultural, and other barriers and by giving input on existing and proposed laws, court rules, regulations, procedures, and policies that may affect meaningful access to justice for low-income Hawai'i residents.

(8) Encourage lawyers, judges, government officials, and other public and private leaders in Hawai'i to take a leadership role in expanding access to civil justice.

(9) Educate governmental leaders and the public about the importance of equal access to justice and of the problems low-income people in Hawai'i face in gaining access to the civil justice system through informational briefings, communication campaigns, statewide conferences (including an annual summit

to report on and consider the progress of efforts to increase access to justice), testimony at hearings, and other means, and increase awareness of low-income people's legal rights and where they can go when legal assistance is needed.

(10) Increase effective utilization of paralegals and other non-lawyers in the delivery of civil legal services to low-income Hawai'i residents.

(11) Increase support for self-represented litigants, such as through self-help centers at the courts.

(12) Develop initiatives designed to enhance recruitment and retention of attorneys who work for nonprofit civil legal services providers in Hawai'i and to encourage law students to consider, when licensed, the practice of poverty law in Hawai'i.

(13) Encourage the formation of a broad coalition of groups and individuals to address ways to alleviate poverty in Hawai'i.

(14) Conduct a statewide assessment of unmet civil legal needs among low-income people in Hawai'i five years after the Commission holds its first meeting to measure the progress being made to increase access to justice.

(c) Membership.

(1) NUMBER OF MEMBERS AND TERMS OF OFFICE. The Commission shall consist of 22 members, with staggered terms. The initial members (other than the chair and the four members appointed under subsection (3)(vii) below) shall draw their terms by lot so that five members shall serve a term ending on December 31 of the year of appointment, six shall serve a term ending on December 31 of the year following the year of appointment, and six shall serve a term ending on December 31 of the second year following the year of appointment. All subsequent appointments of such members (other than appointments to fill vacancies as described in subsection (2)) shall be for terms of three years or until his or her successor is appointed. Such members shall not be appointed to serve more than two successive terms, but an initial term of any member that is less than 30 months shall be disregarded for purposes of this limitation. Governmental representatives appointed under subsection (3)(vii) shall rotate by their terms of office or at the will of the appointing authority. Terms shall run on a calendar year basis, except that

a member shall continue to serve until his or her successor is duly appointed.

(2) VACANCIES. A vacancy in the office of a member shall occur upon (i) the written resignation, death or permanent incapacity of such member, (ii) the determination by the applicable appointing authority that there has been a termination of a position held by such member that was the basis of such member's appointment to the Commission and that the appointing authority wishes to replace such member with a new appointee, or (iii) for such other cause as shall be specified in the bylaws, rules or written procedures of the Commission. Upon the occurrence of a vacancy, the appropriate appointing authority shall appoint a successor member to serve the remainder of the term of the vacating member.

(3) APPOINTMENT OF MEMBERS. Members of the Commission shall be appointed as follows:

(i) The Chief Justice of the Supreme Court shall appoint five members to the Commission as follows: (A) the Chief Justice or an Associate Justice of the Supreme Court and (B) four other judges who the Chief Justice shall endeavor to appoint from different judicial circuits and to include at least one circuit court judge, one family court judge, and one district court judge.

(ii) The Hawai'i State Bar Association (the "HSBA") shall appoint four members to the Commission as follows: (A) two representatives of the HSBA, who may be officers, directors or the Executive Director of the HSBA; and (B) two active HSBA members who have demonstrated a commitment to and familiarity with access to justice issues in Hawai'i and who are not currently serving as an HSBA officer or director, one of whom shall be from a law firm of ten or more attorneys. At least one of the attorneys appointed by the HSBA shall be from an Island other than O'ahu.

(iii) The Hawai'i Consortium of Legal Services Providers (the "Consortium") shall appoint six members to the Commission as follows: (A) four representatives of Hawai'i nonprofit civil legal services providers; and (B) in consultation with the Chief Justice of the Supreme Court, two non-attorney public representatives not directly associated with any such provider who have demonstrated a commitment to and familiarity with access to justice issues in Hawai'i. The initial members of the Consortium shall be the American Civil Liberties

Union Hawai'i, Domestic Violence Action Center, Hawai'i Disability Rights Center, Legal Aid Society of Hawai'i, Mediation Center of the Pacific, Na Loio, Native Hawaiian Legal Corporation, University of Hawai'i Elder Law Program of the Richardson School of Law, and Volunteer Legal Services Hawai'i. Other civil legal services providers may be added to, and members may resign or be removed from, the Consortium as determined by the vote of a majority of the then members of the Consortium.

(iv) The Hawai'i Justice Foundation (the "Foundation") shall appoint one member to the Commission, who shall be an officer, director or the Executive Director of the Foundation.

(v) The Dean of the University of Hawai'i William S. Richardson School of Law shall appoint one member to the Commission, who may be the Dean.

(vi) The Hawai'i Paralegal Association shall appoint one member to the Commission, who shall be a paralegal with a demonstrated interest in equal access to justice.

(vii) The Governor of Hawai'i, the Attorney General of Hawai'i, the President of the Hawai'i Senate, and the Speaker of the Hawai'i House of Representatives shall each be entitled to serve on the Commission or to appoint one member, provided that any appointee of the Governor shall be drawn from the Executive branch of government, any appointee of the Attorney General shall be a Deputy Attorney General, any appointee of the President of the Senate shall be a state Senator, and any appointee of the Speaker of the House shall be a state Representative.

(4) **COMMUNITY WIDE REPRESENTATION.** In making appointments, the appointing authorities shall take into account the effect of their appointments on achieving a Commission composed of members who are residents of different islands in Hawai'i and who reflect the diverse ethnic, economic, urban, and rural communities that exist in the Hawaiian Islands.

(d) **Officers.** The Chief Justice of the Supreme Court shall designate from among the members of the Commission a chair and a vice chair of the Commission. The chair, who shall be the Chief Justice or the Chief Justice's designee, shall serve an initial term of one year and thereafter shall be designated at such times as the Chief Justice shall determine. The vice chair shall be designated for a term of two years, provided that such term shall

expire at any earlier date on which the term of the vice chair as a member of the Commission shall expire or be terminated. The Commission shall select such other officers as it deems necessary and useful. Terms of all officers shall run on a calendar year basis, except that an officer shall continue in office until his or her successor is duly designated or selected. Designations or selections to fill officer-vacancies shall be for the remainder of the term of the vacating officer.

(e) **Bylaws, Rules and Procedures.** The Commission may adopt bylaws, rules or operational procedures as it deems necessary for and consistent with Sections (c), (d) and (f) through (j) of this rule.

(f) **Committees and Task Forces.** The Commission may create such committees and task forces, and appoint such committee and task force members, as it deems necessary or desirable to facilitate the work of the Commission. The Commission shall designate a chair of the committee or task force. The Commission may appoint to the committee or task force persons who are not members of the Commission. The role of committees and task forces shall be advisory, and they shall make such recommendations to the Commission as the members of such committees and task forces deem appropriate. Meetings of committees and task forces shall be at the call of the chair or at the call of at least 20% of the members of the committee or task force. A quorum consisting of not less than one-third of the then-appointed and serving members of a committee or task force shall be necessary at a duly called meeting to adopt a recommendation to the Commission.

(g) **Meetings, Quorum, and Voting.** The Commission shall meet at least quarterly and shall have additional meetings at the call of either the chair or at least seven members upon at least ten days prior notice. A quorum consisting of not less than one-third of the members of the Commission then in office shall be necessary to transact business and make decisions at a meeting of the Commission. On any votes taken at a meeting of the Commission, the chair shall vote only in the event of a tie.

(h) **Staff and Funding Support.** It is anticipated that staff and funding support for the Commission will be provided by a combination of private and public sources of financial and in-kind support.

(i) **Recommendations.** Any recommendations by the Commission shall be made in the name of the Commission only, and not in the name of the individual members or the institutions or entities they represent.

(j) **Reports and Review.**

(1) **ANNUAL REPORTS.** The Commission shall file with the Supreme Court an annual report describing its activities during the prior 12-month period and deliver a copy of the report to the Executive Director of the IISBA.

(2) **THREE-YEAR REVIEW.** Three years after the Commission holds its first meeting, the Supreme Court shall evaluate the progress made by the Commission toward the goal of substantially increasing access to justice in civil legal matters for low-income Hawai'i residents.

(Added April 24, 2008, effective May 1, 2008.)

Rule 22. MANDATORY CONTINUING PROFESSIONAL EDUCATION AND VOLUNTARY CONTINUING LEGAL EDUCATION.

(a) **Mandatory Continuing Professional Education.** Except as otherwise provided herein, every active member of the Bar shall complete at least 3 credit hours per year of approved Mandatory Continuing Professional Education (MCPE). Qualifying professional education topics include the Hawai'i Rules of Professional Conduct, legal ethics and related topics, law office management, client trust account administration, bias awareness and prevention, access to justice, case and client management, and malpractice insurance and prevention.

(b) **Voluntary Continuing Legal Education.** In addition to MCPE, all active members of the Bar are encouraged to complete 9 or more credit hours per year of approved Voluntary Continuing Legal Education (VCLE).

(c) **Carry Forward of Credit Hours.** A member may carry forward from the previous reporting period a maximum of 3 excess MCPE credit hours. To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.

(d) **Mandatory Certification, Reporting, and Record Keeping.** Each active Bar member shall annually:

(1) certify the number of approved MCPE hours completed during the preceding year or carried forward, and

(2) report the number of approved VCLE hours completed during the preceding year, specifying the number of such hours, if any, satisfied by section (e)(4) of this rule. A member shall maintain records of approved MCPE credit hours and of approved VCLE credit hours for the 2 most recent reporting periods, and these records shall be subject to audit.

(e) **Courses and Activities.** The requirements of this rule may be met, subject to prior approval as set out in sections (f) and (g) of this rule, by:

(1) attending approved courses or activities, including but not limited to, presentations conducted in-house or for Inns of Court, bar sections, professional legal organizations, and the like;

(2) preparing for and teaching approved professional education courses or activities. Two hours of preparation time may be certified or reported for each hour of time spent teaching, *i.e.* 3 hours may be claimed for teaching a 1 hour course;

(3) studying approved audio, video, or other technology-delivered professional education courses or activities; and

(4) with regard to the VCLE standard of this rule, up to 3 hours of that standard may be satisfied by providing *pro bono* service, as defined in Rule 6.1 of the Hawai'i Rules of Professional Conduct.

(f) **Approved Courses or Activities.** Courses and activities sponsored by the Hawai'i State Bar Association (HSBA) or the American Bar Association, and classified by the IISBA as MCPE or VCLE, qualify for credit under this rule.

(g) **Approval and Accreditation Authorization.** The HSBA is authorized to approve or disapprove:

(1) other educational courses and activities for mandatory or voluntary credit and

(2) applications by an entity for accreditation as a course or activity provider. Approved courses and activities may include, but are not limited to, courses and activities conducted in-house or sponsored by Inns of Court, bar sections or other professional legal organizations. Accreditation shall constitute prior approval of MCPE and VCLE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the IISBA. The HSBA shall establish the procedures, minimum