# Part 1

# Providing Legal Services to Unrepresented Litigants

1. Helping self-represented litigants
   1. **Helping those who:**
      1. Cannot afford an attorney
      2. Do not know the legal system well
      3. May feel overwhelmed in the process
      4. Do not know how to find a solution
   2. **Gaining trust quickly:**
      1. Establish yourself as an expert
      2. Introduce yourself
      3. Address client respectfully
      4. Use follow up questions to ensure your understanding of the problem
      5. Review the documents the clients may bring
      6. Utilize Ho’ohiki to look up the status for their case that has been filed
   3. **Be aware of potential problems:**
      1. English as a second language, may have difficulty speaking or understanding
         1. Speak slowly, use simpler terms
         2. Ask the Americorps member to dial the telephonic interpreter
      2. Lack of focus on the case
         1. Ask clarifying questions
         2. Avoid tangents
         3. Keep your clients focused on topic of their case
      3. Distractions
         1. May be unable to follow the complete directions of how to resolve their issues
         2. Empathize with your clients, understand there may be other factors at hand
      4. Repeat clients
         1. If it seems they have been to the AJR before ask about the advice they have been given before & why they are not following up on it
         2. Work with Americorps member to ask the client to come back after they have moved to the next step
   4. **Giving clear and concise advice:**
      1. Repeat back your understanding of the problem
      2. Have them to acknowledge your version is correct
      3. Provide clear legal advice for what to do in their situation, if possible
      4. If not, talk with Americorps member who may be able to assist with research or pointing the client in the right direction
      5. Assist them in drafting the documents or show them where the documents can be found and what to do next
      6. Write down and number the steps that the client must engage in
      7. It’s OK to say “I don’t believe you have a legal remedy to your problem”
2. Providing Advice
   1. **Applying Hawaii Professional Rules of Conduct 6.5**
      1. Allows attorney (under programs like the self-help centers) to provide short term, limited legal services, without an expectation that the attorney will provide continued representation
      2. You can assist anyone in the self-help center, without checking for a conflict, as long as you don’t know of a conflict that exists
   2. **Three Pre-Requisites to meet rule 6.5 (not needing to check for conflicts)**
      1. Representation must be through pro-bono programs, sponsored by a non-profit organization or the court (i.e. self-help centers)
      2. Must involve short term, limited, legal services (i.e. brief advice, helping to fill out forms)
      3. Client and lawyer must clearly understand there is no expectation for continued legal representation
         1. Intake form is used at the self-help center
         2. Form includes an agreement for short-term limited legal services that the client must sign
         3. Take the time to make sure your client understands this agreement
   3. **Administrative Documentation**
      1. Joint project between the Judiciary, Hawaii State Bar Association, Local Bar Associations, & Legal Aid Society of Hawaii
         1. Hawaii State Bar Association (HSBA):
            1. Malpractice insurance
            2. Funding for equipment
         2. Legal Aid:
            1. Training
            2. Support
            3. Americorps member
         3. HSBA & Local Bar Associations:
            1. Recruiting & staffing
         4. Judiciary
            1. Space
            2. Support
      2. **Video Training Viewing form**
         1. ~~Receive at least 1 MCPE credit for attendance~~
         2. ~~Other credits for watching other legal sections~~
            1. ~~Can be converted to MCLE after volunteering at least 2.5 hours for every hour that would be converted~~
      3. **Agreement to Participate form – acknowledges that you:**
         1. Are a licensed attorney
         2. Are in good standing with HSBA
         3. Provide contact information
         4. Understand this is a pro-bono project
         5. Cannot solicit clients to become paying clients
         6. Are no longer allowed to participate if you violate any policies
            1. May also be reported to office of disciplinary counsel
         7. May chose to represent a customer, pro-bono and must:
            1. Make the referral through LASH
            2. Must be at 200% of the federal poverty guidelines
         8. And your client will have an attorney client privilege relationship within the AJR
            1. You are responsible to review the limited relationship that you have with each client you assist
         9. Participation as a pro-bono attorney will be subject to oversight by the Judiciary, HSBA, & LASH
            1. You may be asked at any time end your participation, due to inappropriate conduct
         10. After 5 hours of volunteer time: convert to 2 hours of volunteering continuing legal education credits into 2 hours of mandatory continuing legal education credits
3. FAQ
   1. **Taking a case for full representation?**
      1. Cannot take case for full representation UNLESS it is pro-bono
      2. Refer to:
         1. Another legal service provider (if income eligible)
         2. HSBA referral line
   2. **Making referrals** 
      1. Look through list of potential referrals
   3. **Malpractice insurance**
      1. You are covered by HSBA insurance policy, as long as the Agreement to Participate form
   4. Americorps members at the self-help centers can be helpful in answering other questions

# Access to Justice Room Basics

1. Location:
   1. 3rd floor of Honolulu District Court in Legal Docs room
2. What to expect:
   1. Arrive early for your shift
      1. Americorps member will bring in the first client at 9:00am/11:00am
   2. Not necessary to bring any items
   3. Does not have access Lexis or Westlaw
   4. No income limits in AJR
      1. Can provide free, limited legal services to everyone
3. Resources:
   1. Binder will have substantive materials
   2. Brochures are mostly tenant focused
   3. No phones within the room
4. Hours:
   1. 9:00am-1:00pm – Monday, Wednesday, and first and third Friday of each month
5. Length of time of each session:
   1. Depends on how many clients are waiting
   2. Typically lasts 20-25 minutes
   3. If no one is waiting, you can go beyond this (until another client arrives)
6. What to do first:
   1. Go over intake form and go over the Agreement for Short-Term Limited Legal Services
   2. Make sure there are no conflicts of interests
      1. You don’t have to contact your office, just make sure there are no known conflicts
7. What to do after the session:
   1. Fill out the short form, which asks you for feedback – Attorney Notes & Feedback
   2. Have client fill out a satisfaction survey on the Access to Justice Room
8. Americorps members & Court Clerks are able to help with procedural questions and forms
   1. Blank District Court forms are in the room
9. If taking notes during the session, take notes on the Attorney Notes & Feedback form or attach your notes to this form
10. Everything is filed at the Honolulu District Court BUT there are 4 other Rural Courts (rural courts will not accept documents)
    1. If clients have questions about the date/time of their hearing double check the location first
    2. Each has different schedules for different hearings
       1. Ewa/Pearl City
       2. Kaneohe
       3. Wahiawa/Waialua
       4. Waianae at Kapolei
11. Jurisdictional amounts
    1. District Court
       1. $25,000 (except in cases of sum repossession or ejectment, no jurisdictional amount)
       2. $120 filing fee
       3. $30 fee If AJR client is a defendant looking to file a counterclaim
       4. Can apply for fee waiver if clients income qualify
    2. Small Claims Court
       1. $5,000
       2. Attorneys are allowed in small claims (except in security deposits)
12. Ho’ohiki – Court filing system
    1. Can use Ho’ohiki to identify which step in the process a client is in
    2. Give you better understanding of how to help them
13. Can further refer client to Legal Aid Society of Hawaii or Volunteer Legal Services
    1. LASH areas of practice (income guidelines in AJR):
       1. Family law
       2. Debt collection defense
       3. Foreclosures
       4. Bankruptcy
       5. Public benefits
       6. Tax representation
       7. Landlord tenant housing
       8. Fair housing
14. Volunteer Legal Services
    * 1. Provides similar services to LASH
      2. Pro-bono attorneys
      3. Income guidelines – assist individuals up to 250% of federal poverty guideline

# Access to Justice Room Q&A

1. How to advise clients who have had TROs denied
   1. Advise what the standard is to meet the issuance of a TRO
   2. Look at statute with client and the statement to see if it meets
2. How to advise clients who have a judgement, to collect on the judgement
   1. Help client understand if the judgement will be collectable
   2. Go through next procedural steps
3. General advise
   1. Understand the opportunity present to improve others’ lives

# Part 2

# Landlord Tenant Law

1. Section 8 housing
   1. HUD addendum has been made a part of the agreement Pg.2 of lease
   2. \*no side deals\* Illegal
   3. Landlord-tenant code applies
   4. Section 8 provider pays bulk of rent, section 8 tenant pays rest
   5. No right to renewal
   6. \*if eviction and writ of possession issued against them, they will lose the housing voucher
      1. Advise tenant to move
      2. Writ of possession won’t be issued against them 🡪 Saves housing voucher
      3. Writ of possession only issued if tenant doesn’t move
2. Other types of subsidized housing
   1. Identified by:
      1. Very low rent
      2. Lease looks different from residential realtor’s lease
      3. Lease for life as long as they do not violate their lease
3. Public Housing
   1. Run by Hawaii Public Housing Authority
   2. Landlord-tenant code does not apply – shouldn’t come to AJR
      1. Different administrative process within the HPHA
   3. Refer any clients to Legal Aid
4. Sum Repossession aka Eviction (depends on type of lease)
   1. **Fixed Lease**
      1. Written contract
      2. Terms are explained
      3. Rent is set for the period
   2. **Month-to-Month Lease**
      1. No written contract
   3. **Commercial Leases**
      1. Can be oral
      2. Up to one year
5. Reasons to prematurely end lease:
   1. **Fixed Lease**
      1. Tenant’s failure to pay rent
      2. Tenant’s violation of rules
      3. Tenant wrongfully quits dwelling
      4. Landlord does not move tenant in at beginning of contract/ not in the agreed upon condition
      5. Landlord’s failure to conform with rental agreement
      6. Within the first week, if the tenant doesn’t like the unit they can move out within the first week
      7. Problem with the unit which substantially deprives the tenant of the benefit and enjoyment of the agreement, and the landlord has been notified in writing, the tenant can terminate the lease
      8. Landlord locks the tenant out of the unit
      9. Fire or casualty occurs, without fault of the tenant
      10. \*If the tenant terminates the lease but the landlord was not at fault, the tenant must pay the rent until the remainder of the contract
          1. But the landlord must re-rent the unit in a reasonable time (1 month)
   2. **Month-to-Month Lease**
      1. If no fault but either wants to end the agreement
         1. Tenant must give 28 day written notice
            1. No reason is necessary
         2. Landlord must give 45 day written notice
            1. No reason is necessary
         3. If tenant stays after this period of time, they must pay double rent (prorated on a daily basis)
            1. After 60 days, there must be another 45 day written notice for the tenant
6. **Court Process – Possession & Damages**
   1. Landlord can file the complaint for Sum Repossession if a problem is not corrected (Must be filed in Honolulu)
   2. Landlord must serve the tenant
      1. Hearing date is 5 business days after the service
   3. **The Return Date (1st Hearing)**
      1. Tenant must agree or disagree to the allegations in the Complaint
      2. If agree
         1. Judgment of Possession and Writ of Possession granted
         2. Judgment effective immediately
         3. If damages not included in agreement, there will be a pre-trial for damages (1 month later)
      3. If disagree
         1. Schedule pre-trial conference the following Monday in courtroom 10A at 8:30am
      4. If tenant is not present, default judgement and landlord will regain possession
   4. If tenant missed the hearing they can file motion to set aside the default
      1. Must prove 3 things:
         1. There was good reason for missing the hearing
         2. There was a meritorious defense
         3. The landlord will not be prejudiced by reopening the case
      2. Must also file for ex parte motion to stay the execution of the writ
         1. If not, the writ will still be executed
   5. **Pre-trial**
      1. If no agreement has been made between two parties, will both be sent to mediation
      2. If agreement reached in mediation
         1. Mediator puts agreement into writing
         2. Tenant and landlord must agree and sign
         3. Judge then reads the agreement onto the court record
      3. If agreement is not reached, date will be scheduled for the trial
         1. Then each party must give names of witnesses who will be present
         2. Schedule a date to exchange exhibits
   6. **Trial for possession**
      1. Landlord will present first
      2. If landlord does not prove case, the tenant will present case
      3. If tenant wins, can remain in the unit & no further court dates
      4. If tenant loses
         1. There will be a judgment for possession and writ of possession
         2. Must be served by a process server or police officer
         3. Must remove all belongings from unit within 2 days
         4. If not removed the landlord can:
            1. Pack up things and put into storage (tenant must pay for storage fees)
            2. Sell things/give away to charity
            3. Tenant must be informed where belongings are and what can be done to retrieve them
   7. **Pre-trial scheduled for damages**
      1. Damages: Back rent, late fees, move out costs, cleaning, and repairs to the unit
      2. Pre-trial in Honolulu
      3. Trial date will be scheduled
   8. **Forms**
      1. The Complaint
         1. Must have lease, notice, and return of service attached
      2. Ex Parte Motion for Service of Process by Posting and Certified Mail
         1. Declaration of times that service was attempted
         2. After being granted, complaint serviced by certified mail
      3. Counterclaim
         1. May be mailed to the landlord (process server unnecessary)
         2. Ex Parte Application for Relief from Costs – tenant doesn’t have to pay fee for counterclaim if granted
      4. Ex Parte Motion for Default Judgment
         1. If tenant did not appear at the return date
      5. Motion to Set Aside Default Judgment and/or the Dismissal
         1. One party has missed a hearing then must prove the 3 things from above
         2. Ex Parte for Stay of Writ of Possession
      6. Motion for Reconsideration or New Trial
         1. A party wants a new trial
         2. Must be NEW evidence, that was not present at trial
         3. Present WHY it was not presented at trial
      7. Ex Parte Motion for Examination of Judgment Debtors
      8. Declaration Regarding Attorney Fees
7. **Illegal Evictions**
   1. Locking tenants out of unit or threat to lock tenants out
      1. File for Ex Parte Petition for Temporary Restraining Order and Injunction Against Lock Out
      2. If locked out overnight without a court order, tenant can either:
         1. Obtain a TRO and gain access to unit
         2. Terminate rental agreements
      3. Then can file complaint for damages
         1. May obtain up to 2 month’s rent or $1000, plus court costs and attorney’s fees
   2. Turning off the utilities or threat to turn of utilities
      1. File for Ex Parte Petition for Temporary Restraining Order and Injunction Against Utility Shut Off
      2. Then can file complaint for damages
         1. May obtain up to 3 month’s rent
8. **Security Deposits – Small Claims Court**
   1. No attorneys, no rights to appeal
   2. Security deposits may be held for damages to the unit or unpaid rent
   3. Cannot be used as last month’s rent unless mutually agreed upon
   4. Cannot be more than one month’s rent
      1. Can include additional amount for a pet deposit (cannot be more than one month’s rent)
      2. If a service/comfort animal, cannot request additional deposit
   5. Tenant must give a forwarding address to send the deposit to
      1. If not, will be sent to the landlord’s unit
   6. After tenancy ends, must return deposit within 14 days
   7. If not, receipts/estimates/invoices must be given to explain any amount of the deposit that is kept within 14 days
   8. If not returned or not written to within 14 days, can file for Return of Security Deposit
   9. Landlord must be served by either certified mail with restricted delivery and return receipt

# Part 3

# TRO in District Court

1. **Temporary Restraining Order (TRO):** A protective order from the court that tells a party that he or she cannot harass another party
   1. **Harassment**:
      1. Physical harm, bodily injury, or assault (or the imminent threat of)
      2. Intentional action directed at an individual that seriously and consistently alarms, disturbs, or bothers the individual, and serves no legitimate purpose and would cause a reasonable person to suffer emotional distress
2. Petitioner has right to live in a safe environment, free from threat or harm
   1. Can seek protection by obtaining a TRO against perpetrator
      1. Length of TRO:
         1. Ex Parte: 90 days (or until the date of TRO court hearing)
         2. Can extend protection for up to 3 years through the District Court
   2. TRO can be issued against any person where there is probable cause of harassment or threat of harassment may be imminent
3. Limitations of TRO in District Court (differs from TRO in family court):
   1. Respondent cannot be:
      1. A relative
      2. Married/previously married with petitioner
      3. Previously living with petitioner
      4. Someone who has child with petitioner
      5. Someone the petitioner was/is dating
4. Process of the District Court TRO
   * 1. Apply for Ex Parte TRO at the District Court
     2. Petitioner must provide ample amount of detail or petition can be denied
        1. Dates of abuse/threats
        2. Description of physical/psychological abuse
        3. Information of property damage
        4. Other documentation of harassment/abuse (medical/police reports)
     3. Pay $15 filing fee
     4. TRO granted, Respondent must be served a copy by the police
     5. Hearing must be no later than 15 days after TRO is granted
     6. TRO is effective after signed by judge but not enforceable until respondent is served
   1. To extend the order
      1. TRO/Injunction hearing is required
      2. Both parties have opportunity to present their case
      3. Judge can either dissolve TRO & dismiss petition OR issue an injunctive order up to the max 3 years
   2. Even with injunctive order, petitioner should take proper safety precautions
5. Enforcement of the TRO
   1. Broken by:
      1. Contacting petitioner
      2. Coming to petitioner’s home or workplace
      3. Destroying petitioner’s property
      4. Threatening petitioner
      5. Coming within a certain distance
      6. Any other prohibited acts by TRO
   2. If broken, petitioner should report it to 911 immediately

# Consumer Law & Debt Collection

1. **Assumpsit**: Legal process used to collect a debt from a borrower or to enforce a contractual obligation
   1. **Debts**:
      1. Contracts or credit obligations signed/cosigned
      2. Medical services (even if covered by insurance)
      3. Services provided by agreement (i.e. utilities)
      4. A spouses necessities of life incurred during the marriage
      5. Debts of one’s children and/or pets
   2. **Creditor**: Someone who is *owed* a debt
   3. **Debtor**: Someone who *owes* a debt
   4. **Collection agency**: Third party that attempts to collect the debt when the creditor is unable to
2. **Rules for debt collection:**
   1. Creditors & collection agencies must follow state and federal regulations under the Fair Debt Collection Practices Act (FDCPA)
   2. **Creditors & collection agencies are prohibited from:**
      1. Garnishing wages before obtaining judgment against debtor
      2. Taking any property unless it is used as collateral for loan/have a court order
      3. Threatening to send debtor to jail
      4. Threatening to have a debtor’s child taken away
      5. Harassing a debtor
         1. i.e. calling at unreasonable hours, repeated communication with intent to annoy/harass
      6. Telling third parties about the debt or collecting the debt
         1. i.e. cannot contact employers or other members of the household even when unable to get into contact with the debtor – violation of FDCPA
      7. Using obscene or profane language
      8. Threatening to take legal action UNLESS they intend to take the action and have the legal right to take the action
      9. Lying about the amount that is owed in an attempt to collect more fees
   3. **Under the affirmative duties, collection agencies must:**
      1. Give their company name, the name & address of original creditor – if asked by debtor
      2. In all forms of communication, must indicate they are making contact about the debt & all info received will be used to collect the debt
      3. Mail a letter within 5 business days from the first contact by phone stating:
         1. Total amount of debt
         2. Name & address of collection agency
         3. Name of original creditor
         4. Notice explaining the borrower has 30 days to mail a letter either disputing the debt and/or asking for verification of the debt
      4. Be licensed or registered to do business in Hawaii; contact 587-3222 to verify
      5. If any of the above are violated by creditor/collection agency there are grounds to file a lawsuit and/or counterclaims
   4. **If debt is validated and borrower is unwilling to pay debt, creditor and collection agency can:**
      1. Repossess and sell any goods that are collateral for the loan
         1. If goods are sold for less than what is owed, borrower may still owe the difference
      2. Call or write letters in an attempt to get debt paid – under FDCPA
      3. File suit in court
      4. Refuse to do business with the borrower
      5. With a court order, take wages via set off/garnishment
3. Court Process
   1. Borrower unable/refuses to pay debt
   2. **Answer date** – tell the court if borrower admits/denies the allegations
      1. Admit – immediate judgement is given
      2. Deny – next hearing is scheduled
   3. **Pre-trial** – gives opportunity for two parties to come to an agreement outside of court
      1. Court will confirm the settlement and dismiss both parties
      2. If not settlement is reached, another hearing will be scheduled for the trial
   4. If either borrower or creditor is not present for any of the court hearings, party that is present is given judgement by default
   5. **Post-judgement collection** – Means a Creditor can use to collect:
      1. Examination of judgement debtor
         1. Find out what is owed; place of employment; sources of income; and where bank accounts are to collect on debt
      2. Bench warrant can be placed on debtor if he/she does not go to examination
      3. Garnish a portion of wages
      4. Place a lien on any real or personal property worth over $1,000
   6. **Judgement proof**:
      1. Certain sources of income that are protected by law and cannot be collected
         1. **Protected income**:
            1. Welfare, supplemental security income, social security, social security and disability, temporary disability, unemployment compensation, workers compensation, pensions for government employees, most private pensions, veteran’s benefits, and child support
            2. If these are the only sources of income, the judgement cannot collect
            3. If creditor mistakenly tries to garnish money from bank account (assumes it is unprotected) bank must freeze account to determine if protected or not
      2. Through employment, debtor is earning less than $217.50/week (after taxes)
      3. An account at a bank that a debtor also owes money to; Bank has right to set off the debt
         1. **Set off**:
            1. Seize the money that is owed by the debtor directly from the bank account
4. Once debts have been paid off
   1. Creditor files for satisfaction of judgement, releasing debtor from obligation of collection or seizures
5. Statute of Limitations
   1. 6 years for debt collection
   2. Domestic judgement has expiration date of 10 years; possible to renew judgement another 10 years
   3. Foreign judgement must be registered within 4 years from original judgement

# Q&A Oahu First Circuit & District Court

District Court TRO

1. Many misconceptions about what the court is able to do through the TRO
   1. Go over statute of limitations and encourage mediation
2. For injunction must show threat of future harm
   1. Without threat of future harm, injunction may not be granted

Consumer Law

1. Not being able to pay a debt is not a defense
   1. Could be judgement proof at one time, but at another may not be
2. Free debt counselling services > debt consolidation companies; which charge fees
   1. Creditors/collection agencies don’t have to agree to consolidation