

From: [Douglas and Shana Kukila](#)
To: [Standards of Conduct](#)
Subject: Public comment for June 29, 2022 Hearing: DHS/CWS Standards; Revise HRS587A
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Attachments: [Standards of Conduct Conflicts of Interest SK June29 2022.pdf](#)

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Aloha,

Please see my comment attached.

You may reach me for any follow up questions via this email.

Mahalo for your important work,
Shana Kukila
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TO: Commission to Improve Standards of Conduct
RE: Public Comment for June 29, 2022 Hearing

Dear Commission Members,

Thank you for your time and dedication to improving the conduct of public servants in Hawai'i's government and judicial systems. My comment is in regard to the concerning civil, constitutional, and human rights violations within the Hawai'i Family Court and the State of Hawai'i Department of Human Services Child Welfare Systems. The following list of concerns are meant to give your commission the means to conduct a long-overdue audit of the process and procedures of state-initiated child removals in the context of a child and parent's civil, constitutional, and human rights, particularly the disabled and those who are victims of domestic violence.

There is a significant gap between federal regulations in government programs and HRS587A, the Hawai'i Child Protective Act, where both federal and state violations are occurring by unethical and seriously untrained government actors who have no business deciding the fate of the lives of mothers and children in their duty of care. In short, "qualified immunity" allows police, social workers, and other law enforcement officials to commit crimes such as perjury and conspiracy without consequence. Qualified Immunity, we have seen, is protecting bad actors and leading to fatal outcomes for children and families who suffer at the hands of unscrupulous government employees. Currently, without any real remedy besides costly litigation which is out of reach for most in society who interface with law enforcement, there will be no end to this corruption and more lives will be lost. SB2487 "Right of Action for Deprivation of Constitutional Rights" is a bill that did not make it through the legislature this year, but it would be another remedy: https://www.capitol.hawaii.gov/session2022/bills/SB2487_.htm

No child should enter the Hawai'i State foster care system and wind up missing, murdered, assaulted, or trafficked in any way.

Here is my personal experience, which has been formally reported to the Ombudsman, and several other appropriate governing bodies in the past, yet has not been thoroughly addressed:

My personal safety along with my civil, constitutional, and human rights (not to mention the safety and personal rights of my children) have been seriously violated by the DHS Child Welfare System as well as the Family Court System. My child is disabled and his Guardian ad litem (GAL) had no experience with a person with his disability. He therefore was ill-equipped and unable to properly represent my disabled child according to Title II and 504 of the Rehabilitation Act, even when I formally requested it of the court, a request that was categorically denied. Interestingly, this GAL was also the Chair of the Hawai'i County Council at the time (and he is now the Vice Chair), and I believe the court was biased towards him, even though he did not know much about the case and his client, my son. When I brought it up in court, I was told this was a non-issue. However, I believe the inept representation of my son led to a serious violation of my son's rights under Title II and 504, as well as a serious conflict of interest, as this same councilman used to be employed by the county as their Corporation Counsel, a fact never challenged in court before. How can he make the laws of a county and defend indigent clients at the same time, for 30 years? Many of his clients, like my son, do not have a voice, and I have heard from those who have similar experiences with this attorney.

During the first few months of the case, I filed a formal complaint to the Commission on Judicial Conduct about this and filed it with the family court, but then my case turned for the worst: fierce retaliation resulted. In court, I never had a chance because of his implicit power over the case. Social workers also used one year of my court time to destroy me, the Deputy Attorney General tried to criminalize me, and government workers lied under oath repeatedly in their testimony and in their reports. The attorney assigned to me presented evidence that would have proven my innocence, yet the DAG objected, and the judge declined the evidence. Social workers violated my 5th amendment rights when they collected evidence against me from child as well as from me without any attorney present and without telling us they were going to present it in court. They said if I admitted to abusing my children, I could have them back, but I couldn't lie under oath as they had asked of me. In lieu of my guilty admission, they attacked me. My court-appointed attorney seemed to only be there to push me to agree with the state position, not to properly represent me or my rights. I asked several times to represent myself and the judge denied my request. No attorney was willing to file an appeal on my part, either, even though their contract with the state requires 9 days from the final order filed to take it up higher, which resulted in a loss of my children and an inappropriate result. There was never a commitment to me or my rights, it was always just a feeling of pushing me to comply instead of what the state was doing wrong.

In their court reports, social workers and the GAL presented false statements, misrepresentations, wrong dates, wrong names, stating my children were "Indian" when they are not, and conspiracy to commit perjury and false witness and to hide pertinent facts about my child's life to the court such as his assault and overdose. My son was being assaulted on a school bus while in foster care, yet this was not brought to the attention of the judge at any time, either by his GAL or by social workers or the DAG. My son also overdosed while in foster care, yet this was also never reported to the judge or to me, the legal parent, even two years after this incident in which a social worker was involved. They were so focused on winning their case against me, they were blinded to what they were doing in violating our rights. The end result was that my child suffered significantly in the care of his foster parent and the state because he did not have adequate legal representation, an Individualized Service Plan as required by ADA, and did not have a resource caregiver properly trained in disabilities as called for in Title II and 504. These were violations of the law and at the very least, unethical.

It is gross negligence on the part of the state, who is liable whenever a child is injured in their duty of care.

Like other children who have gone missing, murdered, or assaulted, my son deserves justice and so do they. Like others whose rights have been violated in the protection of our own children, we all deserve justice.

What is the remedy for those parents, like me, who have been violated by the government when we have no attorney to represent us? Nobody wants to represent an indigent, unfortunate person in a lawsuit against the state, especially against child welfare. Personally, I do not have the answer, yet as a Commission, I respectfully request from you an audit of the state Child Welfare System (and revisit the most recent audit to see if there was federal/state compliance) as well as the entire process and protocol of child removals within the state of Hawai'i, and what is really going on when families are caught in the system. To date, almost half of all children are Hawaiian. This is also an issue of targeting one race, proof of implicit biases, discrimination, retaliation, criminal activity, and other conduct that are the lowest common denominator which should be exposed and weeded out of the systems that we depend on to keep our families safe, and if there are bad actors, they must be held accountable for their crimes against vulnerable children and families. When child welfare takes a child using the police department without a warrant or court order, this also should not be allowed without an arrest and conviction. No arrest, no removal. This also leaves the county police departments open to liability for violating the rights of children and families on behalf of the state.

Bottom line: state child welfare employees wield far too much power with far too little oversight, and this has to change. Children are being hurt and killed in foster care, and the state of Hawai'i owes them justice.

Areas of Concern to Address:

- 1) Children
- 2) Parents
- 3) DHS/CWS Personnel
- 4) County Police Department
- 5) Court-Appointed Attorney/Guardian Ad Litem (GAL)
- 6) Family Court Judges
- 7) Deputy Attorney General

1. Children

CIVIL RIGHTS (these are covered by DHHS federal guidelines; state should align with this)

- a) Title VI of the Civil Rights Act of 1964
- b) Title IX of the Education Amendments of 1972
- c) Section 504 of the Rehabilitation Act of 1973
- d) The Age Discrimination Act of 1975
- e) Title II of the Americans with Disabilities Act (ADA) of 1990
- f) The Multiethnic Placement Act of 1994, as amended by The Interethnic Adoption Provisions

2) Parents

CONSTITUTIONAL RIGHTS (many are violated during removal process)

AMENDMENT IV (seizing children and gathering information from parents without counsel is a violation of this right)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V (forcing parents to admit to the crime of abuse in an adjudicated hearing with no jury in order to get their children back is extortion and a violation of this right)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI (qualified immunity and anonymous reporting violates this right)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT VIII (it is cruel and unusual punishment to take a child from their parent without evidence of a crime: if no arrest, child should be released to legal parent(s))

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

THE FOLLOWING COVERS ALL ENTITIES LISTED BELOW:

- 3) DHS/CWS Personnel
- 4) County Police Department Personnel
- 5) Court-Appointed Attorney/Guardian Ad Litem (GAL)
- 6) Family Court Judges
- 7) Deputy Attorney General

DO COUNTY AND STATE EMPLOYEES KNOW THEIR OATH OF OFFICE?

FEDERAL GUIDELINES FOR CONDUCT OF PUBLIC SERVANTS (covers all county/state)

§ 2635.101 Basic obligation of public service.

(a) *Public service is a public trust.* Each [employee](#) has a responsibility to the United [States](#) Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the [Federal Government](#), each [employee](#) shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental [agency](#) regulations.

(b) *General principles.* The following general principles apply to every [employee](#) and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, [employees](#) shall apply the principles set forth in this section in determining whether their conduct is proper.

(1) Public service is a public trust, requiring [employees](#) to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) [Employees](#) shall not hold financial interests that conflict with the conscientious performance of duty.

(3) [Employees](#) shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An [employee](#) shall not, except as permitted by [subpart B](#) of this part, solicit or accept any gift or other item of monetary value from any [person](#) or entity seeking official action from, doing

business with, or conducting activities regulated by the [employee's agency](#), or whose interests may be substantially affected by the performance or nonperformance of the [employee's](#) duties.

(5) [Employees](#) shall put forth honest effort in the performance of their duties.

(6) [Employees](#) shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) [Employees](#) shall not use public office for private gain.

(8) [Employees](#) shall act impartially and not give preferential treatment to any private organization or individual.

(9) [Employees](#) shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) [Employees](#) shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) [Employees](#) shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) [Employees](#) shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those - such as Federal, [State](#), or local taxes - that are imposed by law.

(13) [Employees](#) shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) [Employees](#) shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable [person](#) with knowledge of the relevant facts.

(c) **Related statutes.** In addition to the standards of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18 U.S.C. [201](#), [203](#), [205](#), [208](#), and [209](#), are summarized in the appropriate subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to [employee](#) conduct are set forth in subpart I and [employees](#) are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally or as [employees](#) of their specific agencies. Because an [employee](#) is considered to be on notice of the requirements of any statute, an [employee](#) should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an [agency ethics official](#) as needed.

STATE GUIDELINES

STANDARDS OF CONDUCT (conflicts of interest)

Interest of Person Paying for a Lawyer's Service

[13]A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents, and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f) of these Rules. For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement, and the insurer is

required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict can reasonably be consented to and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts make representation impossible, regardless of a client's willingness to consent. In such situations, the conflict cannot reasonably be consented to because the lawyer involved cannot reasonably ask the client for consent and cannot provide independent, objective representation even if the client were to consent. See Comment [15] to Rule 1.7. When the lawyer is representing more than one client, the question of whether reasonable consent is possible must be resolved as to each client.

[15] The question of whether a perceived conflict of interest can reasonably be consented to is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their consent, after consultation, to representation burdened by a conflict of interest. Under paragraph (b)(1), the representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence) of these Rules. When a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such that it clearly calls into question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment.

[16] Paragraph (b)(2) describes conflicts that cannot be cured by consent of the client, because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the consent of the former client after consultation. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Paragraph (b)(3) describes conflicts that cannot be cured by securing the consent of the client or clients after consultation, because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(n)), such representation may be precluded by paragraph (b)(1).

Valid Consent

[18] Valid client consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(c) of these Rules (defining what valid consultation consists of). The information required depends on the nature of the conflict and the nature of the risks involved. The process of obtaining valid

consent in some instances will require a recommendation to consult independent counsel. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality, and the client-lawyer privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain consent of the client after proper consultation and to confirm the consent in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b) of these Rules. See also Rule 1.0(o) (writing includes electronic transmissions). If it is not feasible to obtain or transmit the writing at the time the client gives consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in the circumstances, the reasonable expectations of the other client, and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. In any case, advanced consent cannot be effective if the circumstances that materialize in the future are such as would make it unreasonable under paragraph (b) for the lawyer to seek consent.

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the client's consent. On the other hand, simultaneous representation of parties whose interests in litigation

may conflict, such as co-plaintiffs or co-defendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflicts of interest in representing multiple defendants in a criminal case are so grave that ordinarily a lawyer should decline to represent more than one co-defendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24]Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case, for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent consent by the affected clients after consultation, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25]When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Please consider the information above and take action upon it as a means to improve the safety and well being of Hawai'i's children and families.

Mahalo.