



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Human Services

The Honorable John M. Mizuno, Chair
The Honorable Tom Brower, Vice Chair

Monday, January 25, 2010, 8:30 a.m.
State Capitol, Conference Room 329

by
Thomas R. Keller
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1936, Relating to Family Court

Purpose: Establishes a program in the family court for the registration of child custody evaluators. Allows board of family court judges to adopt certification of child custody evaluators.

Judiciary's Position:

The Judiciary respectfully submits the following comments on this bill.

First, the Family Courts statewide employ social workers who are trained to provide custody evaluator services to indigent parties. The Family Court of the First Circuit has a specialized unit. HRS Section 467E-6(2) exempts social workers employed by a federal, state or county government agency in a social work position from the licensing requirements. The Judiciary wishes to clarify that these Judiciary employees would be exempt from the policies in this bill and that such a provision would be included in the definition of "child custody evaluator."

Accordingly, we respectfully suggest the amendments noted below:



House Bill No. 1936, Relating to Family Court
House Committee on Human Services
January 25, 2010
Page 2

(p.2, Section 2, lines 14-17)

“Child custody evaluator” means an investigator or professional, appointed by the court, to investigate and report concerning the care, welfare, and custody of any minor child of the parties under section 571-46(a)(4), excluding social workers employed by the Judiciary.

Second, given the current budget situation, the Judiciary has no resources to establish, maintain and monitor this registry.

Third, the Judiciary has no resources to certify these custody evaluators. Pursuant to Act 149 of 2008, the Judiciary convened and obtained the assistance of a child custody advisory task force to review and make findings and recommendations relating to court-appointed child custody evaluators. The task force concluded that there was not enough of a “demand” for this particular sub-specialty curriculum or course of study leading to certification or degree, except as was discussed by the Association of Marriage and Family Therapists. Also, the Task Force determined that there were not enough practitioners performing these services to warrant findings and recommendations (including resource needs) regarding the minimal requirements for custody evaluators.

Last, the provisions of this bill which prohibit expert testimony unless the “expert” is included in this registry are inconsistent with the Hawai’i Rules of Evidence (HRS Chapter 626).

Thank you for the opportunity to provide testimony on this matter.

Testimony via email to: HUStestimony@Capitol.hawaii.gov.

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON HUMAN SERVICES

Rep. John M. Mizuno, Chair
Rep. Tom Brower, Vice Chair

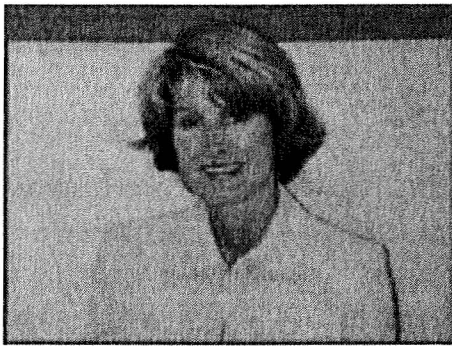
DATE: Monday, January 25, 2010

TIME: 8:30am

Place: Conference Room 329 State Capitol

HB 1936 RELATING TO FAMILY COURT : Establishes a program in the family court for the registration of child custody evaluators. Allows board of family court judges to adopt certification of child custody evaluators.

TESTIMONY FROM: Melinda (Chee) Franklin Affiliation: Hawaii Children's Rights Council and Angel Group, email: cheem@umich.edu



I write in STRONG SUPPORT OF HB 1936

Mahalo nui loa to Rep. John Mizuno for his sponsorship of this bill. The measure establishes standards of practice pertinent to custody awards and criteria regarding those appointed to evaluate child custody. Importantly, it mandates professional licensure for Custody Evaluators (CE's). To protect the public, it is important to establish criteria for custody determinations as well as professional qualifications for those who perform these evaluations.

Custody determinations have been recently commented upon by the Hawaii Intermediate Court of Appeals (ICA). On June 19, 2009, as a Pro Se party, I won my Appeal # 28843 in the ICA. The ICA's *Memorandum Opinion* discusses custody determinations by the family court:

“As evidenced by this case, custody disputes are particularly susceptible to dueling allegations of misconduct and abuse. Absent a true emergency, ex- parte custody proceedings can provide fertile ground for a misuse of the judicial process.”

Absent robust standards of practice for custody determinations, misuses of judicial processes have been rationalized by the Judiciary as follows:

- Furlough Fridays
- Budget constraints
- Short staffed
- Moving the court to Kapolei

Background Information

I am a mother who has been involved in protracted custody litigation. By profession, I am a licensed nurse practitioner. I care for patients with cancer. I have been recognized by my alma mater, the University of Michigan, for humanitarianism and scholarly excellence. Following my divorce from my ex-husband, Kevin Chee (a Honolulu attorney with Chee and Markham), our custody arrangement was Joint physical and legal. After our divorce our 4 children resided primarily with me on the mainland. Their father had liberal visitation. This “Joint” custody arrangement was really a sham, contrived by him so that he could pay minimal child support. The court allowed for this. That showed prejudice. After 4 years, on the final day of his summer visitation, Kevin Chee did not send our children back to their primary residence with me on the

mainland. In November, 2000, he maneuvered an Ex-Parte change of custody to Sole for himself, and attached a Temporary Restraining Order (TRO) blocking me from all contact with our 4 children. The TRO persisted for 7 years! Ongoing custody litigation left me with insurmountable debt.

Last year, as a Pro-Se litigant, I finally won my Appeal # 28843 in the Hawai'i ICA. In their *Memorandum Opinion* pertinent to my Appeal, the ICA states:

***“Before the children’s relocation to Hawai’i pursuant to the 1999 stipulated custody order, Mother had been the primary caretaker for the children. Even after the children’s relocation, Mother enjoyed liberal time-sharing rights. By prohibiting all contact between Mother and her children, the November 2000 Ex Parte Orders effected a draconian change in the custodial arrangements. Yet, the family court permitted the November 2000 Ex Parte Orders to stand without ruling on the validity of the allegations on which the orders were based or the continued necessity for the orders.*”**

We further hold that, if a family court determines that an emergency situation requires an immediate change of custody, then the ex parte order changing custody must include notice of: (1) a post-deprivation hearing, promptly set; and (2) the grounds for this extraordinary measure. A parent deprived of custody in this manner must be given a prompt and meaningful opportunity to address the allegations supporting the immediate change of custody.

Here, with respect to the November, 2000 Ex-parte Orders, the family court did not comply with requirements set forth in Doe. The family court did not hold a prompt post-deprivation hearing to address the allegations supporting the change in custody over the children from joint to father’s sole custody or the restraining orders prohibiting mother from any contact with the children. Indeed,

despite Father's only seeking *temporary* sole custody of the children, and (presumably) *temporary* restraining orders prohibiting contact by Mother, the November 2000 Ex Parte Orders remained in effect for years without any substantive review by the family court. Thus the November 2000 Ex Parte Orders cannot stand."

I strongly support HB 1936 because it establishes standards of practice for CE's. It allows for Complaints regarding CE's to permit customer input regarding their efficacy and veracity. Without robust standards of practice, unlicensed CE's submit biased reports with impunity. Custody evaluation processes must be open to input regarding investigative methods, diagnostic reasoning, recommendations and potential bias. HB 1936 mandates professional licensure for Custody Evaluators. Professional licensure serves a purpose:

1. Demonstrates accountability to the public at large
2. Validates specialty knowledge
3. Reflects commitment to the profession

Unless there are standards of practice pertinent to custody awards and criteria regarding those appointed to evaluate child custody, injustice, such as my children and I have suffered, will continue.

Respectfully submitted,
Melinda (Chee) Franklin

"Injustice anywhere is a threat to justice everywhere" Dr. Martin Luther King Jr.

HEARING

DATE: Monday, January 25, 2010

TIME: 8:30am

PLACE: Conference Room 329

State Capitol

415 South Beretania Street

RE: HB1936 Child Custody Evaluators

POSITION: **Support**

To: Rep. John M. Mizuno, Rep. Tom Brower, Vice Chair, Rep. Della Au Belatti,
Rep. Joe Bertram, III, Rep. Mele Carroll, Rep. Scott Y. Nishimoto, Rep. Maile S.L. Shimabukuro,
Rep. Ryan I. Yamane, Rep. Gene Ward,

From: Jocelyn L.Y Galase

My name is Jocelyn Galase. I'm a former foster youth in the state of Hawaii. I Support bill HB1936. I agree that assigning a child custody evaluator to investigate and report concerning the care, welfare, and custody of any minor child is necessary in custody disputes.

I work directly with foster youth at the Hawaii Foster Youth Coalition. I see the negative psychological effects that being separated from their families cause. Being a foster youth myself, I personally know many of these negative effects.

If this bill passes and we have evaluators, I believe that the amount of youth that go into care will decrease and the cost to pay for these evaluators will even out through the cost decrease in the number of foster youth the state will have to pay for. This will also prevent youth who really don't need to be taken, from being placed in care and suffering these negative effects unnecessarily.

Thank you for your attention and consideration of my opinion,

Jocelyn L.Y Galase
91-848 Kehue Street
Ewa Beach, HI 96706
(808)699-5185

brower1-Traci

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Saturday, January 23, 2010 12:23 PM
To: HUS testimony
Subject: HB1936 to be heard Monday, 01/25/10 at 8:30am in Room 329

TO: Representative John Mizuno, Chair

Representative Tom Brower, Vice-Chair

Members of the Committee Human Services

FROM: Dara Carlin, M.A.

881 Akiu Place

Kailua, HI 96734

DATE: January 25, 2009

RE: Support for HB1936, Relating to Family Court, with amendments

For the 20- 25% of Hawaii divorces that cannot be amicably decided outside of the courtroom, how child custody is handled and determined is an important and serious matter for all involved. Sadly, Hawaii has bestowed the title "Child Custody Evaluator" upon some whose professional qualifications, knowledge and "skills" range from inadequate at best to corrupt at worst. This is not intended to be a bandwagon statement as I have come across a handful of exceptional Child Custody Evaluators who are attentive to the statutes that provide the boundaries within which they can operate, astute in identifying issues of abuse when abuse was not disclosed or a part of the divorce action and who've been clinically sensitive and accurate when coming to their conclusions BUT I've also seen Child Custody Evaluators wouldn't know child sexual abuse even if their own children were being victimized.

In terms of the law, one frequently used Child Custody Evaluator in the First Circuit asked me "What's that?" when I asked if she took the rebuttable presumption against custody to a perpetrator of family violence into account. Considering this was a Domestic Violence case, this was a particularly disturbing reply to hear (AND she ended up recommending sole physical/legal custody of the children to the abuser). Actually, this CE had the audacity to chastise my survivor mom comparing her divorce to her own saying that at least SHE had waited until her children were grown before divorcing her ex (but the CE's ex-husband was also not sexually abusing their children so there might be a TAD difference in divorce circumstances if you ask me).

To ensure the protection of children and to assure that Child Custody Evaluators are selected and maintained based upon their competency, professionalism and sound moral character, I propose that the following language be included:

On Page 5 (5)

... with these reports subject to independent third party review to ensure that the conclusions reached in these cases were consistent with Hawaii state statutes and determined without bias, influence of monetary contributions (or lack thereof) or the use of "junk science" such as Parental Alienation or Parental Alienation Syndrome which has been condemned by the National Council of Juvenile and Family Court Judges.

Child Custody Evaluators with a proven record of poor, inappropriate, illegal or bad determinations through prior case review SHOULD NOT be allowed to do more of the same without correction of their previous errors. The damage done by a mistake on their part does not erase the ongoing consequences for the children and the chance of correction remains within reach.

On Page 5 (7)

...; any Child Custody Evaluator who has been found guilty of violence towards another - to include child abuse, spousal abuse or any form of Domestic Violence - shall be banned and prohibited from eligibility as a Child Custody Evaluator.

If someone's been found guilty of raping a child, we wouldn't be inclined to support that individual's pursuit of becoming a pediatrician, teacher, daycare provider or even babysitter no matter how "sorry" that person would be or regardless of how well he or she were liked - there are THOUSANDS of professions to choose from that do not entail working directly with children. Likewise, if someone has been found guilty of violence against another, they should be prohibited from having access to vulnerable populations and prevented from being in a position of power and control, judgement or evaluation. Again, there are MANY other capacities in which someone with such a conviction could serve - child custody evaluation should NOT be one of them.

The children of divorce in Hawaii deserve better than Child Custody Evaluators who pursue this standing to make a name or make a buck for themselves. Thank you for this opportunity to provide testimony in this matter.

Most respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate

brower1-Traci

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Most respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate

brower1-Traci

From: Tom Marzec [adamtm@lava.net]
Sent: Monday, January 25, 2010 7:31 AM
To: HUS testimony
Subject: 25Jan10 Testimony in **STRONG SUPPORT** of HB1936 Custody Evaluator Registry

January 25, 2010

To: Rep. John M. Mizuno, Chair
Rep. Tom Brower, Vice Chair
Committee on Human Services

From: Tom Marzec

Subj: Testimony in **STRONG SUPPORT** of **HB1936** Custody Evaluator Registry

Hearing: Monday, January 25, 2010; 8:30 a.m.; Room 329, State Capitol

This bill was developed by a working group focused on improvements in family court. As a member of that working group, I urge you to pass this bill in order to create a registry of child custody evaluators and to begin a process for developing standards of practice and certification for child custody evaluators.

Family Court previously kept a list of child custody evaluators and the registry created in this bill would benefit the public and the courts. A previous senior family court judge issued a memo (no longer in effect for other reasons) which required an annual declaration by child custody evaluators not unlike the registry requirements in this bill.

The Board of Family Court Judges is the best suited entity to decide how to handle the requirements of this bill and a subsequent concurrent resolution is intended to create the necessary task force to develop an education/training curriculum for child custody evaluators -- which is the first step towards eventual certification.

The performance of effective custody evaluations is critical to the courts determination of what is in the best interests of the child. This bill does not establish those standards, but does start laying the groundwork to ensure our child custody evaluators meet the requirements to perform effective evaluations.

Your consideration of these issues is appreciated.



House HUS committee
Monday, Jan 25, 2010
8:30 am
Room 329

National Association of Social Workers

Hawaii Chapter

January 24, 2010

TO: Rep. John Mizuno, Chair
And members of the House Human Services Committee

FROM: Debbie Shimizu, LSW
National Association of Social Workers, Hawaii Chapter

RE: HB 1936 Relating to Family Court

Chair Mizuno and members of the House Human Services Committee, I am Debbie Shimizu, Executive Director of the National Association of Social Workers, Hawaii Chapter (NASW). I am testifying in **SUPPORT of HB 1936 Relating to Family Court.**

NASW participated in the SCR 52 Task Force and the continuing meetings during the last interim. More specifically I was involved in the working group that reviewed the child custody evaluation process, the qualifications and selection process for custody evaluators. There was concern that there was no systematic process used by the Court for selecting custody evaluators and that there were no standards established for qualifications and training of child custody evaluators. HB 1936 develops standards of practice and establishes a registry of child custody evaluators.

I believe this is a good first step to addressing the current situation in Family Court and look forward to further discussion on this issue.

Thank you for the opportunity to testify.