



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

Thursday, February 25, 2010, 10:15 a.m.
State Capitol, Conference Room 329

by
Thomas R. Keller
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Concurrent Resolution No. 81, Requesting an Audit of Child Custody Proceedings Involving the Commission of Family Violence by a Parent, To Assess the Use and Application of Section 571-46, Hawaii Revised Statutes

Judiciary's Position:

The Judiciary takes no position on this resolution which requests a statewide audit of child custody proceedings in which family violence has been alleged to have been committed by a parent in the Family Courts, statewide, from January 1, 2004 through December 31, 2009, to assess the use and application of HRS Section 571-46(a)((9)-(14).

However, the Judiciary respectfully suggests that this statewide audit be limited to contested cases (and not cases in which the parties agreed to the terms of the divorce decree) and exclude cases where parties return to court after they have already been divorced.

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

From: Tina Stefanik [tina@stchrisport.com]
Sent: Wednesday, February 24, 2010 5:02 AM
To: HUS testimony
Subject: Testimony in Strong Support of HCR 81 - Requesting an Audit of Child Custody Proceedings

Testimony via email to: HUS testimony@Capitol.hawaii.gov

THE TWENTY-FIFTH LEGISLATURE

REGULAR SESSION OF 2010

COMMITTEE ON HUMAN SERVICES

REP. JOHN M. MIZUNO, CHAIR

REP. TOM BROWER, VICE CHAIR

DATE: Thursday, February 25, 2010

TIME: 10:15 a.m.

PLACE: Conference Room 329

State Capitol

415 South Beretania Street

HCR 81: RECOMMENDING THAT THERE BE AN AUDIT OF CHILD CUSTODY PROCEEDINGS

TESTIMONY FROM: Catina L. Stefanik

Affiliation: Angel Group

Recommendation: Conduct a thorough audit of the child custody proceedings held in Hawai'i Family Courts

Hawai'i Family Courts operate with closed-door policies, many times holding hearings "off the record" so that there is no public record of the corruption and sometimes even criminal processes that occur in Hawaii's court rooms. It should cause alarm that the action group H.A.L.T. (Help Abolish Legal Tyranny) gave Hawai'i a D+ on their report card. The reason alone should cause lawmakers to take note as to what is happening to the ohana and keiki of Hawai'i: "*Hawaii's system of judicial oversight is one of the most secretive in the nation... Hawaii's restrictions not only violate citizen's right to free speech, they also keep the general public in the dark about whether the system of judicial oversight is operating effectively.*"(http://www.halt.org/about_halt/press_releases/2008/jarc2008_hi.php)

The Hawai'i Family Court shuns due process and balks at following Hawai'i and even Federal statutes. Changes of custody occur without hearings, temporary restraining orders sometimes persist for years on end and the civil rights of court parties are blatantly violated. I have personally fallen victim to the corrupt processes of the First Circuit Family Court. It is my sincere hope that no other family endure the tyranny this court imposes over innocent families.

Catina L. Stefanik

Member, Angel Group

_____ Information from ESET NOD32 Antivirus, version of virus signature database 4892 (20100224)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

**TESTIMONY OF THE FAMILY LAW SECTION, HAWAII STATE BAR ASSOCIATION
IN OPPOSITION TO H.C.R. NO. 81
REQUESTING AN AUDIT OF CHILD CUSTODY PROCEEDINGS
INVOLVING THE COMMISSION OF FAMILY VIOLENCE BY A PARENT**

House Committee on Human Services
Thursday, February 25, 2010, 10:15 a.m.
Conference Room 329, State Capitol

Good morning, Chair Mizuno and members of the Committee:

My name is Tom Farrell. I am an attorney and the vice chair of the Family Law Section of the Hawaii State Bar Association. Our chair, Chunmay Chang, was unable to be here this morning.

The Family Law Section is comprised of over a hundred attorneys who practice primarily in Family Court. We handle child custody cases day in and day out, and quite a few of our clientele are either victims of domestic violence, have a child who is a victim of domestic violence, or are accused of committing domestic violence.

We oppose H.C.R. No. 81, which proposes that the Legislative Auditor conduct an audit of all child custody proceedings where family violence was alleged to have been committed by a parent to assess whether Family Court judges are correctly applying Section 571-46(a)(9) – (14), Hawaii Revised Statutes.

The proposition that the Legislative branch should in any way review judicial decisions in cases adjudicated in the courts is a gross violation of the doctrine of separation of powers, and an unprecedented assault on judicial independence. Under the Hawaii Constitution, the only entities that have the authority to review the decisions of trial judges for erroneous application of the law are the Supreme Court and the Intermediate Court of Appeals.

Besides constitutional objections, we seriously question whether this study is feasible. Perhaps the Legislative Auditor could issue an open call for anyone who thinks they were wrongly denied the benefits of the statute, and you would have a compilation of anecdotal cases of dissatisfied Family Court litigants. That would hardly constitute an “audit,” or be any sort of reliable study on which legislation or policy should be based.

What would a reliable study require? The Resolution is aimed all custody cases in which violence was alleged during a five year period. Custody is at issue in cases filed on the FC-D, FC-P, FC-DA, FC-M and UCCJEA dockets. There are at least five thousand FC-D cases filed each year, and while we don't have the judiciary statistics at hand, probably at least that number of FC-P and FC-DA cases, not to mention the FC-M and UCCJEA calendar. Except for the FC-DA cases, which all involve an allegation of family violence, none of these cases have any particular tracking mechanism designating that a domestic violence allegation has been made. So, potentially, the auditor would be looking at upwards of 50,000 cases just to determine which involve custody and domestic violence. Then, the auditor would have to determine which of them were settled by agreement, as compared to those that were decided by a judge. If only ten percent of these cases survive the winnowing process (and I suspect the figure is much higher),

the auditor would then have to read the complete case files, review any exhibits in evidence, and listen to the tape recording of proceedings to get an accurate picture of each case. Even if the auditor were able to engage in this massive undertaking, are the auditor's employees qualified to determine whether a judge has correctly applied the law?

We submit that the law itself may be so flawed as to make such a determination impossible. Section 571-46(a) refers to "a perpetrator of family violence." Our custody statute simply does not say what it takes to pin the label "perpetrator of family violence" on a parent. Given the tremendous loss of contact with one's children that one faces under subsections (9) – (14) --- a loss that is potentially worse than the incarceration --- more than minimal due process safeguards should attend any such determination.

Some say that the issuance of a protective order under Chapter 586 should be enough to trigger the penalties imposed under the custody statute. However in Chapter 586 cases, there is often no determination made of whether the allegations are true because the respondent simply agrees to the entry of a no-contact order. In cases where that does not occur, respondents are given very little due process protection. I have personally participated in cases where the respondent has as little as ten minutes to demonstrate to the court that a protective order is not necessary, otherwise the presumption is in favor of the petitioner and the order will enter.

Given the draconian penalties that our custody statute imposes once one is stigmatized with that label, it might be a good idea to define this person as one who has been convicted of Abuse of a Family or Household Member. That way, we have clear standards to apply and persons who face the penalties imposed under the custody statute are given a fair opportunity to defend themselves.

Finally, we point out that determinations that family violence have occurred are extremely difficult in many cases because there is often no corroborating evidence, and the issue turns entirely on the credibility of the alleged victim and the alleged perpetrator. Trial judges have to make determinations of credibility, and how one "audits" the correctness of such a decision is difficult to fathom. As the legislature recognized last year when it enacted subsection (16) of the custody statute, contestants in custody litigation frequently bring false and malicious allegations of abuse in order to gain a tactical advantage in the custody proceeding. Indeed, we wonder if that practice has been encouraged by the enactment of subsections (9) – (14), and whether the proposed legislative audit will encourage it even more.

Thank you for the opportunity to testify.

brower1-Traci

From: Tom Marzec [adamtm@lava.net]
Sent: Tuesday, February 23, 2010 5:58 PM
To: HUSstestimony
Subject: Testimony in SUPPORT of HCR81 audit of child custody proceedings, hearing on 25Feb10 at 10:15 am

To: Rep. John M. Mizuno, Chair
Rep. Tom Brower, Vice Chair
Committee on Human Services
Via email to: HUSstestimony@Capitol.hawaii.gov

From: Tom Marzec

Subj: Testimony in **SUPPORT** of **HCR81** audit of child custody proceedings

Hearing: Thursday, February 25, 2010; 10:15 a.m.; Room 329, State Capitol

As an advocate for family court reform, I support this type of an audit. Any neutral investigation and compilation of how the family court handles domestic violence allegations, determines if a finding of abuse is proven or not, and the associated impacts on custody during this process, is desirable. The State Auditor submitting findings and recommendations related to how this process works, for a broad number of cases, would be enlightening.

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

HEARING

DATE: Thursday, February 25, 2010

TIME: 10:15am

PLACE: Conference Room 329 State Capitol

HCR 81_ REQUESTING AN AUDIT OF CHILD CUSTODY PROCEEDINGS

TESTIMONY FROM: Melinda (Chee) Franklin

Affiliation: Angel Group and Hawaii Children's Rights Council

email: cheem@umich.edu



I write in STRONG SUPPORT OF
HCR81:
REQUESTING AN AUDIT OF
CHILD CUSTODY PROCEEDINGS

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.”

Background Information: I am a mother who was involved in protracted custody litigation. By profession, I am a licensed, board certified 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. 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. He then 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.

In 2009, 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."

Recommendation: I strongly support **HCR81: REQUESTING AN AUDIT OF CHILD CUSTODY PROCEEDINGS**

In Chee v Chee, a change of custody occurred without a Custody Evaluation – or a hearing! The Judiciary ignored previous findings of domestic violence:

Honolulu Police (HPD) were called after my ex-husband, Kevin Chee, punched me while I was holding our 18 month old son. Kevin Chee was ordered out of our home by HPD. Following our divorce, Kevin Chee retaliated by obstructing contact between me and our 4 children. He manipulated the Judiciary, as referenced above by the Opinion of the Hawai'i Intermediate Court of Appeals.

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

Respectfully submitted,

Melinda (Chee) Franklin,

Member, Angel Group, and Hawai'i Children's Rights Council

"Injustice anywhere is a threat to justice everywhere"

Dr. Martin Luther King Jr.

From: Chris Lethem [crslethem@gmail.com]
Sent: Thursday, February 25, 2010 8:03 AM
To: HUSTestimony
Subject: Testimony in SUPPORT of HCR81 audit of child custody proceedings with Amendments

To: Rep. John M. Mizuno, Chair
Rep. Tom Brower, Vice Chair
Committee on Human Services
Via email to: HUSTestimony@Capitol.hawaii.gov

From: Chris Lethem

Subj: Testimony in **SUPPORT** of **HCR81** audit of child custody proceedings **with Amendments**

Hearing: Thursday, February 25, 2010; 10:15 a.m.; Room 329, State Capitol

As a father my ex-wife took my children overseas under false pretenses and spent nearly two years working to get my children back to the U.S. only to be falsely accused of domestic violence as a means to gain a tactical advantage just prior to a custody trial. The personal cost to successfully defend myself against these allegations has now taken **over five years** of my life, hurt my reputation, cost me incredible sums of money. It also means I've lost precious time with my children I can never get back. My case exemplifies the need to reform the processes the family court implements to more effectively address allegations of domestic violence. To have the State Auditor submit findings and recommendations related to how this process works, for a broad number of cases, would be quite helpful.

Please amend the following section to read as follows:

BE IT RESOLVED by the House of Representatives of the Twenty-fifth Legislature of the State of Hawaii, Regular Session of 2010, the Senate concurring, that the Auditor is requested to conduct an audit of all child custody proceedings where family violence has been alleged to have been committed by a parent, that were heard by the Family Courts from January 1, 2004, through December 31, 2009, to assess whether the allegations were proven, unsubstantiated or found to be false. the consequences of these categories of allegations, and for the allegations where findings of family violence were made by the court the use and application of section 571-46(a)(9)-(14), Hawaii Revised Statutes; and

Chris Lethem Programming Svcs
Tel: 415.845.4370
email:crslethem@gmail.com