

Testimony via email to: [HMSTestimony@Capitol.hawaii.gov](mailto:HMSTestimony@Capitol.hawaii.gov)

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

COMMITTEE ON HUMAN SERVICES

Senator Suzanne Chun Oakland, Chair

Senator Les Ihara, Jr., Vice Chair

DATE: Thursday, January 28, 2010

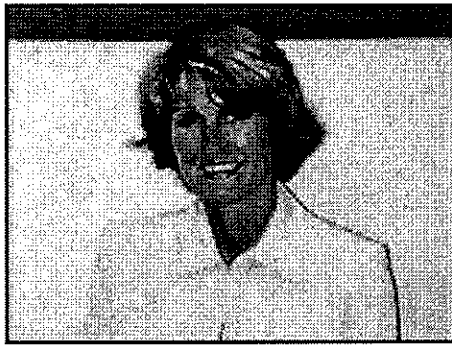
TIME: 1:50 pm

Place: Conference Room 016 State Capitol

SB 2028 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](mailto:cheem@umich.edu)



**I write in STRONG SUPPORT OF SB 2028**

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 casually 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 SB 2028 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. SB 2028 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.

## chunOakland5 - Michael

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**From:** Dara Carlin, M.A. [breaking-the-silence@hotmail.com]  
**Sent:** Monday, January 25, 2010 3:48 PM  
**To:** HMS Testimony  
**Subject:** Testimony for SB2028 to be heard January 28, 2010 at 1:50pm in Room 016

TO: Senator Suzanne Chun-Oakland, Chair

Senator Les Ihara, Vice-Chair

Members of the Committee Human Services

FROM: Dara Carlin, M.A.

Domestic Violence Survivor Advocate

881 Akiu Place

Kailua, HI 96734

DATE: January 28, 2010

RE: Support for SB2028, 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

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**chunOakland5 - Michael**

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**From:** Chris Lethem [crslethem@hotmail.com]  
**Sent:** Tuesday, January 26, 2010 10:31 AM  
**To:** HMS Testimony  
**Subject:** SB 2028 RELATING TO FAMILY COURT. Late Testimony in STRONG SUPPORT

Testimony via email to: [HMSTestimony@Capitol.Hawaii.gov](mailto:HMSTestimony@Capitol.Hawaii.gov)

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**SB 2028 RELATING TO FAMILY COURT. Late Testimony in STRONG SUPPORT**

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: Chris Lethem of Children's Right's Council**

The measure establishes minimal standards of practice relevant to custody awards and the criteria regarding those appointed to evaluate child custody issues. Importantly, it requires professional licensure for Custody Evaluators (CE's).

Hawaii remains one of the few states that have yet to develop minimal educational standards and continuing educational requirements for custody evaluators. Professional qualifications help to ensure that a level of excellence and objective criteria are implemented within a framework that mitigates gender bigotry and personal biases that have no basis in fact or reasoning. This would also provide a check and balance system to help assure personal loyalties aren't skewed toward friends or colleagues. By implementing education, accountability, objective criteria and a check and balance system, the opportunity to abuse one's role as a custody evaluator. An educated custody evaluator will be able to affect a more shared custody arrangement helping parents work together in a collaborative fashion. This in turn will help to minimize the impact of parents living in separate households. Family



court has been used to terrorize ex-spouses and punish non-custodial parents who fight for their children the opportunities available to children who are not in post divorce scenario. Best interest of the child is like a bad punchline to a sick joke. Isn't ironic that my kids still suffer from the abuse received by family court, even after they have reached the age of majority.

**The adversarial process of Family Court permanently damages children and parents. Though this is an incremental step, hopefully this adds another mechanism to move us away from litigation and promotes parental cooperation and collaboration.**

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**chunOakland5 - Michael**

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**From:** Myrna Murdoch [myrnam@hawaii.rr.com]  
**Sent:** Tuesday, January 26, 2010 9:45 AM  
**To:** HMS Testimony  
**Subject:** SB 2028 Late Testimony  
**Attachments:** Myrna B Murdoch.vcf

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TESTIMONY FROM: Myrna B. Murdoch

CEO Children's Right's Council

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. It is very sad and a poor reflection on the State of Hawaii that dog catchers and tree trimmers are

mandated by law and yet the people who have custody of our children have no education, no training or no accountability.

**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.**



Sen HMS committee  
Thurs, Jan 28, 2010  
1:50 pm  
Room 16

National Association of Social Workers

Hawaii Chapter

January 26, 2010

TO: Senator Suzanne Chun Oakland, Chair  
And members of the Senate Human Services Committee

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

RE: SB 2028 Relating to Family Court

Chair Chun Oakland and members of the Senate 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 SB 2028 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. SB 2028 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.