



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:
H.B. NO. 1585, RELATING TO GUARDIANSHIP.

BEFORE THE:
HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Tuesday, February 02, 2016 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Julio C. Herrera, Deputy Attorney General

Chair Morikawa and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but suggests a change to its wording.

This bill amends chapter 560, Hawaii Revised Statutes (HRS), relating to guardianships of incapacitated persons, in part by prohibiting an appointed guardian from restricting the personal communication rights of the ward, including the right to receive visitors, telephone calls, and personal mail.

This measure affects not only individuals appointed guardian of an incapacitated person, but also the Office of the Public Guardian (OPG). A state entity created pursuant to chapter 551A, HRS, the OPG is the guardian of last resort. It is appointed only when no other suitable person is available and willing to accept the responsibility. The concern with the wording of this bill is that it removes all discretion from the guardian in making decisions in the best interests of the ward, as they relate to personal communication. Many of the adult guardianship petitions filed by our office arise from adult abuse cases, under part X of chapter 346, HRS. This bill would limit the OPG's ability to restrict an alleged or confirmed perpetrator of adult abuse from having contact with the ward. This raises safety concerns for the ward, as well as potential liability for the State.

To address these concerns, we recommend inserting a qualifier to allow the guardian to take reasonable steps to ensure the safety of the ward. We suggest adding the following wording on page one starting from line 12:

“(2) Restrict the personal communication rights of the ward, including the right to receive visitors, telephone calls, and personal mail, unless deemed by the guardian to pose a risk to the safety and well-being of the ward.”

We respectfully ask the Committee to incorporate this recommendation before passing this bill.



FALK

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NASGA



House of Representatives
Regular Session of 2016
State of Hawaii
House Committee on Human Services
Representative Dee Morikawa, Chair
Representative Bertrand Kobayashi, Vice Chair

Re: Hearing on House Bill No. 1585 - Relating to Guardianship

Dear Chair Morikawa, Vice Chair Kobayashi & Members,

My name is Catherine Falk. My father was Peter Falk, a well-known actor most known for his role as Lt. Columbo.

I had a relationship with my dad for the forty years of my life that he was alive. Granted, we, like many families, had our ups and downs but we were always father and daughter. After my parents divorced, my father re-married and his second wife, twenty-two years his junior, became very controlling and was jealous of any relationship that he had with his daughters. My father maintained his autonomy and his relationship with us throughout the entire second marriage until he came face to face with Alzheimer's. Even with the onset of Alzheimer's, we were preparing for a Father's Day dinner in 2009. He was scheduled for hip replacement surgery just three days later. Father's Day came and went with no communication from him. We couldn't reach him by phone any longer. After his decline with Alzheimer's and the effects of his hip surgery, he was no longer able to speak for himself in an effort to continue maintaining the relationship with his daughters. After surgery, he was isolated from family and friends.

I didn't know where to turn for help. Was I supposed to call the police and file a report? Was I supposed to call APS for help? I didn't even know what APS was at the time and no one made that suggestion to me. Someone recommended that I should contact a probate lawyer to seek legal remedy.

In 2009, my former probate lawyer informed me that my only option to see my dad again was to file for conservatorship in probate court. I wasn't interested in controlling his estate or his care, only the

desire to visit with him. I told the judge that I didn't want conservatorship over the person or the estate that I just wanted to be allowed visitation rights to see my dad and to say goodbye to him before he passed away. I knew I was working against the clock with his health rapidly declining.

The judge told me she had never encountered an adult seeking visitation without the desire for a conservatorship. At the judge's discretion, she granted me visitation rights. This was after spending close to one hundred thousand dollars of my own money to prove to the court that I had a prior relationship with my dad and to visit with him. He was placed in a Conservatorship, which was not what I intended.

It was then, in 2010 that I asked my former probate lawyer to draft a "Peter Falk Bill", a visitation rights bill, to avoid a lengthy and costly court battle and potentially an unnecessary guardianship. In 2011, the Peter Falk Bill was drafted and my former probate lawyer handed the very first draft to California, Assemblyman Gatto, which passed in 2015. I took one of the amended drafts to other states to try to obtain sponsorship for the bill. When I went public about my bill, I learned very quickly by my partnering national organization, that my original bill was limited in scope and that it perpetuated unwanted guardianships in an effort to seek visitation rights.

My crusade was no longer about visitation between an adult child and an ailing parent. It became two separate but equal concerns for me. One concern is about people who experience isolation with Power of Attorney given to a spouse, relative or caretaker who abuses their powers, leaving very little choices to someone like me who had a relationship before the onset of isolation.

My second concern evolved from the overwhelming stories I received by those currently in guardianship experiencing isolation. I quickly recognized that guardians wield absolute power over their wards with their families torn apart while spending their life savings in litigation in an effort to just see their loved one. The incapacitated person, the person the law intends to protect, very often ends up dying alone and denied the solace of their family.

I drafted a proposal to the Uniform Law Commission to address both of my concerns. Our proposal was accepted by the ULC with the acknowledgement that both areas of the law need to be addressed in two different legislative bills within the ULC. One bill intended for reforming incapacitated persons' rights under guardianship law and the other bill in probate wills and estates law addressing accountability of the abuses of Power of Attorney resulting in isolation.

I decided to draft a comprehensive wards' rights, a human rights bill, addressing the majority suffering in isolation, incapacitated people under guardianship because I had learned that anyone like me, just seeking visitation with a loved in a under Power of Attorney could very likely end up in probate court into an unwanted, unnecessary guardianship.

Although guardianship was designed to protect, the best protection we have are our fundamental rights as citizens of this great country and those rights should not be removed unless there is no other choice. We were born into this world having unlimited access to those we chose to see and the right to decide who we don't wish to see. When we age, we don't automatically lose our rights and

we retain the same liberty and freedoms we were born with. When we become incapacitated, we would hope that the person caring for us has our best interest at heart but far too often that is not what happens when money, control, and greed all get in the way overpowering the person's best interest.

Our bill is designed to stop bad guardians from isolating their wards with no accountability for their actions. It protects the growing number of people who are currently falling through the cracks and have nowhere to go for help. Our bill is not designed to make it harder for good guardians to do their job. Conversely, our bill helps to impede those who are wrongfully isolating their wards with no accountability and without the oversight of the court.

Our bill advocates for and serves incapacitated people in guardianships, granting them the right to make their own decisions of who they wish to see or not to see- a natural right of freedom and liberty which should not be taken away simply because the person is under a guardianship. The bill serves many different populations including the elderly, people of disabilities, and those with mental health diagnosis. It will require the guardian to provide the burden of proof to a judge in order to over-ride an incapacitated person's wishes, which is sometimes necessary and prudent to protect the incapacitated person.

Granting the right of visitation to incapacitated persons will better protect them from isolation and reduce crimes against any vulnerable citizen under a guardianship. This piece of legislation will prevent abuse, neglect and exploitation, which can go undetected because the victim has no one to report the abuse to. With the fee shifting provision in our bill, it evens the playing field because currently, the estate pays all the guardian's legal fees. Many people now don't challenge the actions of guardians because they can't afford the legal fees and they fear that the guardian will drain the estate with legal bills. By giving the chance of winning legal fees from the guardian personally, and not the estate, it makes it worth the risk for someone to challenge the guardian and puts the guardian at risk of personally paying the fees. That would encourage challengers and discourage the guardians from pushing the legal battle."

I come here today, no longer just the daughter of Peter Falk, nor the person who fought to see my dad in his final years of life, or the person who had the idea for a visitation bill in 2009 for California! I am part of something much bigger and I am part of the solution to this national epidemic by joining forces with a national organization to combat isolation. I have been on this journey since the day I walked into probate court in 2009 fighting to see my father, dreaming of drafting legislation since my father's passing in 2011 all while advocating for others innate freedoms.

I never imagined as his daughter, that I or his family and friends would be confronted with the permanency of separation in the final years of his life. He was the most outspoken, vibrant, independent and funny father or man I ever knew. I loved him with all of my heart. I watched how he brought his mother's caretaker to justice in New York for financial exploitation when this caretaker was supposed to look after my grandmother but instead abused her emotionally and financially. My father worked with the District Attorney's office to press criminal charges for such conduct. My father is now gone but he left large footsteps, and I intend to follow them.

And as my dad always said, "Just One More Thing"...

I am submitting my testimony on behalf all of the most vulnerable citizens of Hawaii wrongly isolated and for the families of those citizens in isolation suffering terrible abuses.

I sincerely thank you for the opportunity to write. It is a privilege and an honor for me to share my story with you.

CATHERINE FALK
Catherine Falk Organization
Daughter of Peter Falk aka "Columbo"
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Edward Thompson, III

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 27, 2016 7:53 PM
To: HUS testimony
Cc: dylanarm@hawaii.edu
Subject: *Submitted testimony for HB1585 on Feb 2, 2016 09:00AM*

HB1585

Submitted on: 1/27/2016

Testimony for HUS on Feb 2, 2016 09:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	Individual	Support	No

Comments:

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