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TESTIMONY OF THOMAS D. FARRELL
Regarding House Bill 1701 Relating to Family Courts
and House Bill 1694 Relating to the Judiciary Child and Spouse Abuse Special Account

Committee on Human Services
Rep. Dee Morikawa, Chair

Tuesday, February 2, 2016, 9:00 a.m.
Conference Room 329, State Capitol

Good morning Representative Morikawa and members of the Committee:

HB 1701 should logically be addressed first, because HB1694 is primarily a measure to finance one of its provisions. I oppose both.

HB 1701would require family court to first hold an evidentiary hearing on the issue of family violence whenever that claim is raised in order to determine---if the judge can---whether family violence actually occurred. Typically, in divorce and paternity cases, claims of family violence are raised in the context of contested child custody, but the motions raising those claims often include other claims such as temporary use of a residence or vehicle, temporary support orders, and other financial issues. If the intent of this proviso is to require two separate hearings on motions of this type, this will clog up an already overburdened court, and drive up the cost of legal services for the litigants who will now have to pay their lawyers for two hearings. If the intent of this proviso is not to require two separate hearings, then I fail to see the point of it. By the way, if someone really wants a quick determination on family violence, one need only file a *Petition for Protection* under Chapter 586, and generally there will be a hearing on that petition in a very short time and a determination of whether "abuse," as that term is statutorily defined, has occurred. Most child custody litigants know this, which may explain why the vast majority of contested child cases involve the filing of a Chapter 586 petition, first.

Another proviso of the bill requires child custody evaluators to have qualifications relevant to the subject of family violence. I have previously advocated the repeal of the family court's authority to appoint custody evaluators. I won't revisit that argument today, although if they are the family court's appointees, it seems to me that it is the province of the judicial branch, and not you, to determine what training and qualifications they must possess.

Yet another proviso of the bill says that if the proceeding does not involve mental health issues, a person will not be disqualified for appointment as a child custody evaluator solely because the person does not hold a degree relating to mental health. I was not aware that this was a problem

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crying out for a solution. Current law permits Licensed Clinical Social Workers to serve as custody evaluators, as well as any other person who meets "nationally recognized competencies and standards of practice in child custody evaluations." A change in the law is not needed.

Still another provision prohibits use of a parent's good faith allegation of family violence as a factor that weighs against the parent in determining child custody or visitation. If it is truly made "in good faith," I can't imagine that it would. Similarly, a bad faith allegation should assuredly be a negative factor for someone seeking custody. However, there are substantial protections in Section 571-46, HAW. REV. STAT. that require the court to find, "by clear and convincing evidence," that there has been "willful misuse" of the protection from abuse process, and further require the court to articulate express findings on that issue before considering a false allegation in an award of custody. Once again, this is a problem that doesn't need fixing.

Finally, the bill would require family court judges and professional personnel to complete ongoing training in the latest "best practices and research in domestic violence advocacy." First of all, judges are not supposed to be advocates for anybody; they are supposed to be neutral and impartial. Second, I believe the premise is flawed Section one of HB 1694 states that judges are often unable to determine the validity of domestic violence claims, and posits that the answer is more training. In court, a determination as to whether one party committed domestic violence---a determination that can have devastating consequences---is based on evidence. You don't need to train the judge to have preconceived notions. Moreover, our family court judges already participate in training on domestic violence---you can ask Judge Browning more about that. I can tell you it is a recurring topic at the Family Law Section of the Bar, and our judges often participate with us, in addition to whatever in-house training that the judiciary does. I believe it is highly inappropriate for the legislative branch to micromanage the judicial branch in this manner. A healthy respect for the separation of powers doctrine would not be amiss here. Finally, I am concerned that this could be misused by groups who have their own unique agendas and philosophy regarding domestic violence as a vehicle to try to indoctrinate judges in their particular point of view, particularly in light of HB 1694. Domestic violence is repulsive, but it deserves dispassionate analysis, not propaganda.

Now as for House Bill 1694, that would set aside $2 from marriage license fees to make sure the Judiciary can pay for training that you are going to mandate in HB 1701. However, that money must go to "trainers who have hands-on experience in the field." I wonder who that would be. Could this be a funding grab by certain non-profits? Well, in my law firm we have plenty of experience in domestic violence, although I'm not sure what the author means by "hands on." So if you pass this, perhaps I'll form DVEC---The Domestic Violence Education Center---so I can get in on the action.

Both of these bills should be held in this Committee.

Thank you for the opportunity to testify this morning.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 31, 2016 5:04 PM
To: HUStestimony
Cc: kalen.holbrook@gmail.com
Subject: *Submitted testimony for HB1694 on Feb 2, 2016 09:00AM*

HB1694
Submitted on: 1/31/2016
Testimony for HUS on Feb 2, 2016 09:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Kalen Holbrook	Individual	Support	No

Comments:

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Edward Thompson, III

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 01, 2016 7:59 AM
To: HUStestimony
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Subject: *Submitted testimony for HB1694 on Feb 2, 2016 09:00AM*

HB1694
Submitted on: 2/1/2016
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Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	Yes

Comments:

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