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From: Kathy 'Alamea-Xian <alamea@protectivemakua.org>
Sent: Tuesday, August 16, 2022 9:37 AM
To: Standards of Conduct
Cc: mark.e.recktenwald@courts.hawaii.gov
Subject: Testimony for the Wednesday, August 17, 2022 convening of the COMMISSION TO IMPROVE STANDARDS OF CONDUCT
Attachments: 2022 08 16 - CSIC Testimony- KALAMEA-XIAN, PROTECTIVE MAKUA.pdf

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Aloha,

Please find attached to this email, my testimony for the Commission's meeting tomorrow, Aug 17, 2022. Mahalo for your assistance.

Kathy 'Alamea-Xian
Juris Doctor Candidate, 2024
William S. Richardson School of Law



www.protectivemakua.org
a nonprofit organization
501(c)3 pending

Our MISSION is to unite protective makua (parents) to reform family courts in Hawai'i to enable abused makua to report domestic abuse without fear of retaliation, bias, or the threat of losing custody of their children.

"Never doubt that a small group of thoughtful committed individuals can change the world. In fact, it's the only thing that ever has." ~ Margaret Mead

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August 16, 2022

COMMISSION TO IMPROVE STANDARDS OF CONDUCT

Hon. Daniel R. Foley (Ret.), Chair
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Nikos Leverenz
Barbara C. Marumoto
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Janet Mason
Florence T. Nakakuni

NOTICE OF MEETING

DATE: Wednesday, August 17, 2022
TIME: 2:00 p.m.
PLACE: VIA VIDEOCONFERENCE
Conference Room 309
State Capitol
415 South Beretania Street

**RE: TESTIMONY PERTAINING TO THE DIRE NEED FOR A STATUTORY
PROFESSIONAL CONDUCT CODE FOR QUASI-JUDICIAL ACTORS APPOINTED
BY COURTS IN CUSTODY AND DOMESTIC ABUSE MATTERS**

Aloha, Members of the Commission to Improve Standards of Conduct:

As you may know from my past work, I do not take up issues that are meritless. When I informed the legislature that police were having sex with prostituted-persons and calling it "investigations" some lawmakers did not take me seriously. That bill passed into law in 2012 and became a national embarrassment for Hawaii. When I alerted the legislature about the problem of human trafficking in Hawaii, I was told by most lawmakers that it wasn't an issue and there was no problem. It took 11 years to pass the law finally in 2016. This also was a national embarrassment for Hawaii due to the fact that we were the last state in the nation to pass such local statute (The law was recently amended/improved and by the current Attorney General Clare Connors.) When I alerted the legislature to the fact that human trafficking forms the economic engine for Hawaii's longline fishing industry, the issue was nearly immediately quelled and forgotten, but still an embarrassing reveal for Hawaii as the topic made national and international headlines for months.

These "whistleblown" topics did not go unnoticed. You already are aware that the Department of Justice has increased its presence here in Hawaii and are continuing their several

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investigations on political and law enforcement corruption. They have successfully investigated the state legislature, the City Council and its Corporation Counsel, HPD, and the Prosecutor's Office. The one area that the DOJ has not yet breached is our court system, which indeed receives funding from the DOJ, hence the DOJ has jurisdiction to investigate criminal constitutional violations e.g. 18 USC §§241, 242. This includes jurisdiction over the court and its quasi-judicial appointed officers such as GALs and Custody Evaluators (even private CEs).

In 2005, there have been at minimum over a dozen ICA and Supreme Court cases involving a widely discredited junk science known as “parental alienation” (also known as “coaching,” “child alienation,” “alienation,” “estrangement,” “rejection,” “brainwashing,” “influencing,” et cetera, and in all of those cases on the trial court level, the protective mothers reporting abuse had *all* of their custodial rights stripped from them without evidence linking causation of the courter-allegation of parental alienation which had been put forth as a *de facto* affirmative defense by abusive fathers—even when the abuse had been substantiated. **All of them.** Prior to 2005, when parental alienation was counter alleged by reported abusive fathers, mothers still were able to retain custody. *See* <https://protectivemakua.org/casesandsurvivors/highercourts>.

Parental alienation, again a junk science, was effectively codified into Hawaii’s custody laws in 2005, without cause, with the implementation of the added language of requiring “frequent, meaningful, and continuing contact” between a child and both parents, which promulgates a “presumption of joint custody” as in the best interests of the child. But this “presumption” is contrary to the best interests of children where domestic abuse exists. Here, the needless amendment to HRS § 571-46; 571-46.1; and 571-2; has in practice resulted in the pervasive preemption of reports of domestic abuse made by battered mothers and abused children, because of quasi-judicial third parties who discriminate against mothers and prejudice courts to preclude these abuses in the name of “alienation” and father-favored custody, merely upon the allegation. *See* <https://protectivemakua.org/issues/hawaiilaws>, *see also* <https://protectivemakua.org/parental-alienation>.

Furthermore, in 2007, this legislature amended HRS § 586-10.5 to allow DHS the power to investigate, police, and *adjudicate* matters of child abuse without a party's ability to present evidence in her defense in a court of law. This is a violation of the Separation of Powers Doctrine. Typically, CWS social workers with this overreach of power, merely hold Bachelor's Degrees in Social Work. They lack the credentials to investigate, assess, and handle evidence properly. They also infringe upon the jurisdiction of the police, prosecutors, and courts, in such overreach of authority in the most important cases our state encounters: domestic abuse. As a result, children die. e.g. Isabelle Kalua (age 6), Shaelyn Lehano-Stone (age 9), the Breyer children, Peter Boy Kema, the foster children of the Kipapa family, Fabian Garrett-Garcia, and countless others who are forced into reunification with their abusers.

I testify in the spirit of sincere concern and collaboration for the betterment of our State in the interests of justice and in upholding the Constitution. And I also say that out of all the past issues to which I have alerted this legislature and held as priority, this issue I bring to you now is the most important and should not go unheeded. But if it does, it will indeed become issues in

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higher courts and shall become revealed that the opportunity to reform these problems were ignored by Hawaii's leaders at the time.

QUASI-JUDICIAL OFFICERS OF THE COURT

There are two main areas upon which I have been focused as a policymaker. The first area pertains to third parties (CEs, GALs, CWS) afforded quasi-judicial powers by court in matters pertaining to TROs, domestic violence, child welfare, and child custody and how these quasi-judicial powers often conflict with the court's priority in deciding the best interests of a child as well as conflict with a protective parent's Constitutional rights.

I believe it is the court's impression that these third parties must abide by similar statutory rules of professional responsibility that attorneys must follow, but they do not. There is no code of professional conduct for CEs, GALs who are not attorneys, and CWS. Hence, they do not have to disclose any conflicts of interest, they are not mandated to provide all evidence to court, nor are they required to base conclusions of custody on any evidence.

There is also no accountability if they make any misstatements of any kind, intentional or not, in a court proceeding. Needless to say, this is highly problematic and has resulted in a complete corruption of the CE system as well as the Child Welfare System. And since in the case of private third parties, CEs are afforded quasi-judicial immunity, those injured have little to no redress. If they file complaints with the judiciary with regard to an unethical CE, they are often referred to the state RICO office which has no time limit on investigations. With regard to CWS, their qualified immunity, as public officers of the state, holds them completely beyond the scope of any accountability whatsoever, even when they knowingly violate a person or child's Constitutional rights. The results often are deadly as we have constantly seen in the news of children being returned to abusive parents/custodians or taken away from a protective parent due to bias and then given to abusive persons.

PAST EFFORTS FOR REFORM

In 2021, I had introduced [HB1933](#) which would have required private third parties working with children "covered persons" to abide by professional rules of conduct akin to those which attorney's must follow. (FYI, the state was reluctant to tackle the issue with CWS so opted to address the measure just to private third parties e.g. CEs, GALs, etc.)

Third parties invested with quasi-judicial authority and immunity to investigate reports of domestic violence or child sexual abuse are often untrained and are not prohibited from committing professional ethical violations such as non-disclosure of conflicts of interests; discriminatory bias on the basis of race, sex, religion, or gender; intentional omissions of evidence, intentional misstatements of facts, committing acts of intimidation or coercion, and other bad acts. Custody evaluators, GALs, and CWS, a federally funded state agency, abuse their power in these custody cases in such ways to unjustly and unconscionably favor fathers over mothers, triggered when domestic abuse by mothers is reported and abusive fathers counter-allege "parental alienation."

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As stated above, this discrimination is statutorily allowed by the “frequent, meaningful, and continuing contact” language inserted into HRS § 571-46 (a)(1), but also pursuant to § 571-46 (a)(5) (Criteria and procedure in awarding custody and visitation; best interest of the child), which reads:

... (5) The court may hear the testimony of **any person** or expert, produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that the person's or expert's testimony is relevant to a just and reasonable determination of what is for the best physical, mental, **moral**, and **spiritual** well-being of the child whose custody is at issue; ...

Id.

HRS §571-46(a)(5) is facially neutral but discriminatory in effect. It allows anyone to submit recommendations pertaining to their **subjective** moral and/or spiritual views of what is in the best interest of the child, which allows for discrimination on the basis of sex, race, or sexual orientation. And though the law purports to be permissive, its use is common practice by judges and the third parties invested with quasi-judicial authority and immunity mentioned above. (It is an established fact that many evangelical fundamentalist Christians do not believe a battered wife has the right to divorce her husband because of domestic abuse. See Lynne M. Baker, *Counselling Christian women on how to deal with domestic violence*, xv, 271 (2010), see also “Submit to your husbands”: Women told to endure domestic violence in the name of God, ABC News (2017), <https://www.abc.net.au/news/2017-07-18/domestic-violence-church-submit-to-husbands/8652028> (last visited Jun 15, 2022)).

The result of our improperly amended antiquated custody laws, is the state-sanctioned discrimination of mothers for reporting domestic abuse or incest, both arising from or resulting in, high-conflict custody court proceedings.

This discrimination happens daily in CWS child welfare investigations, child forensic interviews attended or supervised by CWS investigators, custody evaluation investigations, GAL interviews and representation of child victims, and in both TRO and Custody courts.

This problem is not new. In 2004 the Hawaii State Legislature convened a task force pursuant to S.R. No. 40, S.D. 2, “in order to address concerns regarding the misuse of legal interventions available to the Family Court.”
<http://capitol.hawaii.gov/session2006/studies/speccomrepno1.htm>

In its report, the legislative task force found substantial abuses with regard to custody evaluators and GALs and recommended reform. However, the following legislative acts that followed were de minimis and did not address the substantive issue of the report, which allowed the abuses to continue unchecked and unmonitored.

SOLUTIONS

The solutions to this pervasive problem running amok of our justice system involve the following:

- 1) Substantially increase State appropriations to the Hawaii Judiciary for allocation to all Circuits to hire more competent and experienced judges in their field of practice applicable to the type of court for which they are appointed;
- 2) Provide the judiciary with the funding needed for training judges to identify the **science-based** dynamics of child abuse, domestic violence, and coercive control (as defined by HRS § 586-1, amended in 2020);
- 3) Implement proposed legislation, currently drafted by service providers and advocacy groups, to implement a statutory code of Professional Responsibility for quasi-judicial third parties appointed by court in custody or domestic abuse matters (who do not possess a Juris Doctor, e.g. social workers, therapists, counselors, custody evaluators, etc.), regulated by the State DCCA RICO Division, Hawaii Civil Rights Commission, and/or the Judiciary's Office of Disciplinary Counsel to determine legal actionability through either civil or criminal standing, depending upon the type of offense and degree or pervasiveness of the violation(s);
- 4) Implement a statutory limit for the duration of RICO investigations;
- 5) Increase appropriations to regulatory departments identified for these matters to increase staff and resources to provide for sufficient regulation of violations and to streamline the complaint/whistleblower initiation process; and,
- 6) Require an objective science-based 5-year study auditing the effects of such measures, if passed into law, for recommended legislative improvements for these issues.

Our population is growing quickly, yet the funding to expand the resources needed to match the needs of this burgeoning process has not followed suit. It is long overdue.

Sincerely,



Kathryn 'Alamea-Xian,
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Interim Executive Director, Protective Makua