



The Judiciary, State of Hawaii

Testimony to the House Committee on Human Services

Representative John M. Mizuno, Chair

Representative Jo Jordan, Vice Chair

Monday, March 14, 2011, 9:00 a.m.

State Capitol, Conference Room 329

by

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Deputy Chief Judge/Senior Judge

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 958, S.D.2, Relating to Family Court

Purpose: 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. Effective July 1, 2050. (SD1)

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 958, S.D. 2 and offers the following comments.

This bill seeks to limit the appointment of custody evaluators to a registry of persons who file annual declarations with the Court. These declarations would be retained by the Court and made available to the parties for no less than 12 years from the date of the filing of the initial declaration. This declaration includes such information on the custody evaluator as: 1) current license and expiration date; 2) any certification or qualifications from other states; 3) training; 4) experience, including the total number of investigations and reports performed and appointed acquired in the immediately preceding year; 5) specifics re specialized training; 6) any criminal convictions, pending criminal charges, civil actions to which the custody evaluator was or is a party, complaints to a professional licensing agency or ethics enforcement body resulting in public discipline, order of protection against the custody evaluator; 7) any disciplinary action, etc. A current annual declaration is a prerequisite to being qualified to testify in the court. The Board shall not accept for filing any incomplete declaration.



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There must be some discretion to appoint an expert not listed in this registry. The facts of the case and/or needs of a child may require such appointment. For example, a nationally renowned expert in autistic children may provide critical insights to the Court, but would be excluded from testifying in a custody case unless that expert completed an annual declaration. Also, since private custody evaluators are paid for by the parties and not the state, the court should have the discretion to appoint a professional agreed upon by the parties. For practical purposes, there may be cases in which there is no custody evaluator on the registry who is available or willing to take the case for reasons such as the complexity of the case, the parties are unable to pay at the custody evaluators' rates, or the concerns regarding the children may be outside the expertise of the listed professionals.

Approximately 20 professionals on Oahu, 9 on Maui (including Molokai and Lanai), and 4 on the Big Island, have conducted custody evaluations in the past. Given the small number of available professionals on the neighbor islands, the practical implications of this bill may be that parties on the neighbor islands may need to select custody evaluators on Oahu, which will increase litigation costs.

The word, "certification," (page 8, line 11) should be deleted since, according to the bill itself, the Judiciary is not required to certify any professional on the list.

Court staff who conduct custody evaluations should be exempt from this bill. The Family Court of the First Circuit is the only circuit with a specialized unit of social workers who are trained to provide child custody evaluations in cases with parties who meet the indigency guidelines. Due to budget cuts, the Second Circuit (Maui) has a position who conducts custody evaluations for indigent parties on a half-time basis only. The First Circuit had a divorce caseload of 7,535 cases in Fiscal Year 09-10 and the Second Circuit had a divorce caseload of 996 cases.* The other circuits (Hawaii and Kauai) do not have staff who perform such evaluations.

HRS Section 467E-6(2) exempts social workers employed by a federal, state or county government agency in a social work position from the licensing requirements. The Judiciary wishes to clarify that these Judiciary employees would be exempt from the policies in this bill and that such an exemption should be included in the definition of "child custody evaluator." Accordingly, we respectfully suggest the amendment noted below (p.2, Section 2, line 16):

"Child Custody Evaluator" means an investigator or professional, appointed by the court, to investigate and report concerning the care, welfare, and custody of any minor child of the parties under section 571-46(a)(4) [~~.-] excluding social workers employed by the Judiciary.~~



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Pursuant to Act 149 of 2008, the Judiciary convened and obtained the assistance of a child custody advisory task force to review and make findings and recommendations relating to court-appointed child custody evaluators. The task force concluded that there was not enough of a "demand" for this particular sub-specialty curriculum or course of study leading to certification or a degree, except as was discussed by the Association of Marriage and Family Therapists. Also, the Task Force determined that there were not enough practitioners performing these services to warrant findings and recommendations (including resource needs) regarding the minimal requirements for custody evaluators.

Thank you for the opportunity to provide testimony on this matter

* The Judiciary, State of Hawai'i, 2010 Annual Report – Statistical Supplement