



## *The Judiciary, State of Hawai'i*

### **Testimony to the Senate Committee on Judiciary and Labor**

Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, March, 14, 2016, 10:00 a.m.  
State Capitol, Conference Room 016

By

Moira T. Chin  
Director, Office of the Public Guardian

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**Bill No. and Title:** House Bill No. 1585 H.D. 2, Relating to Guardianship.

**Purpose:** Prohibits the guardian of an incapacitated person from restricting the ward's personal communication rights, unless deemed by the guardian to pose a risk to the ward's safety or well-being.

**Judiciary's Position:** The Judiciary supports this measure.

The Office of the Public Guardian (OPG) of the Hawai'i Judiciary serves as court-appointed guardian of last resort for approximately 720 incapacitated adults, statewide, who have no family or friends willing and able to act as guardian. Persons served by OPG include the developmentally disabled, mentally ill, elderly, and persons with brain injuries, substance abuse problems, or non-elderly dementia. The majority of OPG's new cases are referred by Adult Protective Services, Department of Human Services, for adult victims of financial exploitation, self-neglect, and abuse.

OPG recognizes that the lives of its wards are enriched through visits, phone calls, and mail from family members and friends. OPG is also aware, however, that it is sometimes necessary to restrict a ward's communications when such contacts may prove harmful. Besides threats to a ward's safety or physical security, there may be potential harm to a ward's financial security or emotional well-being. For instance, OPG interceded when the husband of one of its wards visited her in her long-term care facility and attempted to obtain her signature on a document that relinquished her rights to future benefits; this particular client is unable to speak, and confined to her bed and wheelchair. In another situation, the father of one of OPG's wards



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would sometimes call in the middle of the night, and while inebriated, demanding to speak to his son. OPG presently requires the ward's father to first contact the guardian, who ensures that the father is sober before allowing him to speak to his son.

This measure strikes a balance between the rights of wards to engage and communicate with others, and the duty of guardians to make decisions regarding the ward's support, care, education, health, and welfare.

Thank you for the opportunity to testify on this measure.



**FALK**  
~  
**NASGA**



The Senate  
The Twenty-Eighth Legislature  
Regular Session of 2016  
State of Hawaii

Senate Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

**Re:** Hearing on House Bill No. 1585, HD2 - RELATING TO GUARDIANSHIP  
**Date:** Monday, March 14, 2016  
**Time:** 10:00am  
**Place:** Conference Room 016

**Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee,**

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"  
2500 Monterey Road  
San Marino, CA, 91108  
(626) 755-5000