



***The Judiciary, State of Hawaii***

**Testimony to the Senate Committee on Human Services**

The Hon. Suzanne Chun Oakland, Chair

The Hon. Josh Green, Vice Chair

Tuesday, February 5, 2013

1:15 p.m.

State Capitol, Conference Room 016

by

R. Mark Browning

Deputy Chief Judge/Senior Judge

Family Court of the First Circuit

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 1226, Relating to Family Court

**Purpose:** Clarifies the appointment requirement and qualifications for child custody evaluators.

**Judiciary's Position:**

The Family Court takes no position on this bill but offers the following comments.

Page 4, line 1: We take no position on keeping a "registry" but please be advised that this will be a list of persons who have expressed the desire to perform these services and who are able to meet the requirements of this bill.

Page 4, line 2: The Family Court is able to ascertain whether a person meets the qualifications of this bill (e.g., whether a person has been certified as a doctor in this state). However, a determination of "qualified" under this bill does not "qualify" the person as an expert qualified to testify as an expert in a specific case. The latter determination is made only on a case-by-case basis. For example, a person who has been qualified in multiple past cases may not be qualified in a specific case that might require a different sort of professional specialty.



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Page 3, lines 3-4: The Family Court assumes that "on call" means that the person will take a case if he/she is available and wishes to take the case. In other words, "on call" does not mean that a person will be forced to take a case either at the last minute or unwillingly.

Page 4, lines 5-7: Except in the context of a specific case, the family court has no authority to discipline professionals. If the family court is given a responsibility to field complaints, the best we would be able to do is to refer the complainant to the appropriate professional certifying / governing body so that the complainant can file his/her own complaint. This would also be important since we would want to avoid false expectations and misunderstandings about the scope of what family court can do. If the professional board refuses to act because it determines that the custody evaluation is outside the scope of their authority, then the complainant would also have the option to sue the custody evaluator directly.

The court is unsure about the import of the new language found on page 6, line 18 to page 7, line 6. This language appears to limit the court's ability to appoint custody evaluators in cases which may have child abuse and neglect issues. Such a mandated change may severely hamper the court's ability to gain more information than what is provided by the disputing parents and/or their supporters.

Thank you for the opportunity to submit testimony on this bill.