

**HAWAII STATE BAR ASSOCIATION
COMMITTEE ON JUDICIAL ADMINISTRATION**

**REPORT OF THE
2022 FAMILY LAW FORUM**

May 2023

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ACKNOWLEDGMENTS

The Hawaii State Bar Association Committee on Judicial Administration was established for the purpose of maintaining a close relationship with the Judiciary on matters of mutual concern to the bench and bar. Since 2012, the Bench-Bar Conferences and in alternate years, the Criminal Law Forums, Civil Law Forums, and Family Law Forums have been positive and constructive because of the enthusiasm of Hawai'i Supreme Court Chief Justice Mark E. Recktenwald, who has supported the endeavors of the committee. The committee appreciates his dedication in making these efforts a priority.

The committee acknowledges the time and work everyone has put into planning, organizing and making the Family Law Forum a success. The committee appreciates those that have assisted as moderators and panelists for the Forum: Judge Brian Costa, Judge Andrew Park, Judge Jessi Hall, Judge Adrienne Heely, Judge Darien Nagata, Judge Stephanie Char, Lynn Hecht Schafran, Elladine Olevao, Caroline Cobangbang, Valerie Grab, Madeline Tomasino-Reed, Kevin Adaniya, and Tom Tanimoto. Special thanks to Lisa Lum for the technical support, Hayley Cheng for the behind-the-scenes guidance and assistance, and Erin Kobayashi for being the reporter.

Hawai'i State Bar Association
Committee on Judicial Administration

REPORT OF THE 2022 FAMILY LAW FORUM

I. WELCOME

The Family Law Forum held on Friday, October 21, 2022 opened with remarks from the following distinguished individuals: Hawai'i Supreme Court Justice Simeon R. Acoba (ret.), co-chair of the Judicial Administration Committee; Hawai'i Supreme Court Chief Justice Mark E. Recktenwald welcomed participants on behalf of the Judiciary; Vladimir Devens, co-chair of the Judicial Administration Committee; HSBA President Shannon Sheldon; and Judge Brian A. Costa, District Family Court Judge of the First Circuit.

II. DOMESTIC VIOLENCE AND THE EFFECTS ON CHILDREN: "LITTLE PITCHERS, BIG EARS: HOW DOMESTIC VIOLENCE IMPACTS DEVELOPING BRAINS – NATURE AND NURTURE, NEUROSCIENCE AND ACES"

A. Case Discussion and Overview

Lynn Hecht Schafran's¹ presentation focused on how domestic violence affects children's brains. She mentioned a short news article by The Associated Press dated June 15, 2022 titled "Supreme Court Rules with American Woman in Bitter Custody Dispute." The article focused on the United States Supreme Court's unanimous decision overturning the order issued by a United States District Court Judge of the Eastern District

¹ Lynn Hecht Schafran is Senior Vice President of Legal Momentum and has been the Director of Legal Momentum's National Judicial Education Program to Promote Equality for Women and Men in the Courts since 1981.

of New York mandating the return of a child to Italy despite finding that the child would be at “grave risk of psychological harm” because of the father’s physical and emotional abuse of the mother.

As Ms. Schafran explained, the lower court’s finding that the “grave risk of harm” to the child could be mitigated by simply keeping his parents apart was completely inaccurate and did not recognize or appreciate the complexity of domestic violence and its impact on a child. Ms. Schafran’s notes, the article by The Associated Press, and excerpt from the Memorandum Decision and Order issued by the Eastern District of New York are attached as Appendix A.

The December 2012 Report of the Attorney General’s National Task Force on Children Exposed to Violence: Defending Childhood, Protect, Heal, Thrive, reported that children’s exposure to violence, including domestic violence, is “a national crisis with effects lasting well into adulthood.” Ms. Schafran explained that exposure to violence, whether as a direct victim or witness, has a profound impact on children’s developing brains and poses significant implications for the courts. The challenge, she described, is holding perpetrators of domestic violence accountable while both acknowledging the harm to victims and enabling offenders to change (e.g., many offenders experienced violence in their own childhood homes).

B. Hawai‘i’s Custody Statute and the Neurological Differences between the Perpetrator and Victim

Ms. Schafran complimented Hawai‘i’s custody statutes, highlighting Hawai‘i Revised Statute section 571-46(a)(9) (2008), which prioritizes “the safety and well-being of the child and the parent who is the victim of family violence.” She explained that central

to a child's well-being and safety was not living in an environment of fear and toxic stress. She then described on the neurological differences between the perpetrator of domestic violence and the victim, including her PowerPoint presentation illustrating that the perpetrator is not stressed, the prefrontal cortex is in control, and thinking and behavior are planned, practiced, and habitual. On the other hand, the victim is afraid, overwhelmed, the fear circuitry is in control, attention, and thoughts are driven by the perpetrator's actions, and the victim's behavior is controlled by survival reflexes and habits from childhood.

Ms. Schafran explained the victim's state of constant anxiety and fear is often manifested in how the victim may appear – often frazzled and upset while the perpetrator may appear cool, articulate, and calm (e.g., can recite events in chronology). As a result, the perpetrator may present as more credible than the victim. Ms. Schafran recited the adage, "don't judge a book by its cover." She further indicated that neuroscience informs why domestic violence impacts a child's development.

C. First Impressions: Exposure to Violence and a Child's Developing Brain (Video)

The video, "First Impressions: Exposure to Violence and a Child's Developing Brain" which was created by the California Attorney General's Office and available on YouTube was presented. The video explained that a baby's brain is undeveloped at birth waiting for experiences to help shape it. A baby or young child's brain is thus more vulnerable. Previously, it was believed that young children are not affected by domestic violence because they do not know what is happening, unfortunately, young children are the most severely impacted, resulting in dramatic and lifelong consequences. For

example, a baby absorbs the internal state of the victim parent, which is characterized by stress, anxiety, and constant fear.

The video demonstrated that children who are exposed to domestic violence are chronically stressed, have difficulty bonding and forming attachments, and manifest itself in unwanted or disruptive behaviors. A child exposed to domestic violence adopts a survival strategy and is in constant crisis mode. This affects his or her ability to learn. Surprisingly, children exposed to violence have more mental health issues than those children who actually experienced physical abuse. While the video focused on babies and small children, Ms. Schafran affirmed that children of all ages are affected by domestic violence. She noted that children exposed to domestic violence need to talk about their feelings. It is important that they receive critical messages about what they have experienced (e.g., it is not your fault).

D. The Impact of Domestic Violence on a Child's Brain and the Sensitization to the Defense Circuitry

Ms. Schafran highlighted the expert witness testimony in Saada v. Golan, the case referenced in the beginning of her presentation. The expert witness, Dr. Edward Tronick, a leading child development expert and member of the Developmental Brain Science Program of the University of Massachusetts, testified:

[E]xposure to domestic violence has immediate effects on young children's cognitive, social, and emotional development and their ability to "regulate stress." It also has a physiological effects and both immediate and long-term effects on the brain structure and organization ... [E]xposure to domestic violence could have particularly severe effects on a child as young as B.A.S. because of the state of brain development at that age. Continued exposure or re-exposure to domestic violence, whether directed at the child or witnesses by the child, has a cumulative effect on the child and increases the likelihood of later effects.

Ms. Schafran also referenced the book, “What Happened to You?” by Dr. Bruce D. Perry (2021), which found:

Biologically speaking ... continuous trauma can weaken remaining neural pathways to the thinking part of the brain and strengthen neural pathways to the survival part, thus bypassing the thinking part, which makes some children less capable of coping with adversity as they grow up.

She then presented on the impact of sensitization to the defense circuitry. Ms. Schafran illustrated this using a slide by Christopher F Wilson, Psy.D. that drew a correlation between the length of time a person is exposed to violence and the impact on his or her assessment of what is a “threat.” The longer a person is exposed, the more heightened his or her defense circuitry becomes and the more difficult it is to “come down” from this state.

E. Adverse Childhood Experiences (ACE) Study

Ms. Schafran discussed the Adverse Childhood Experiences (ACE) Study, which explains how crucial children’s experiences inside and outside the home are to their lifelong mental, physical and emotional health and behavior. She stated that domestic violence is a learned behavior.

In the video, “How Childhood Trauma Affects Health Across a Lifetime,” Dr. Nadine Burke Harris explained that the ACE Study was a collaboration between California HMO Kaiser Permanente and the Center for Disease Control from 1995-1997, featuring 17,337 responses from mostly white, well-educated patients. The study asks ten questions about physical and sexual abuse, neglect, and household dysfunctions such as substance abuse, criminal household member, and domestic violence (observed or perpetrated).

The study was created after Dr. Vincent Felitti, head of preventative medicine at Kaiser Permanente, found that 56% of his obesity patients reported childhood sexual abuse. At the time, he was running a weight loss study and interviewing patients who had dropped out of the study. Dr. Felitti's curiosity as to whether there was a correlation between obesity and childhood abuse led him to work with Dr. Robert Anda of the Center for Disease Control to create the ACE Study. The ACE Study found that childhood abuse, household dysfunction, and other forms of adversity were common and linked to elevated risks of mental health problems and physical illness, including heart disease, across a person's lifespan.

The ACE Study uses the ACE Score, which is a total count of the number of ACEs reported by the respondent. The ACE score is used to assess the total amount of stress during childhood and has demonstrated that as the number of ACEs increase, the risk for health problems, such as alcoholism and alcohol abuse, chronic obstructive pulmonary disease, depression, liver disease, risk for intimate partner violence, multiple sexual partners, sexually transmitted diseases, smoking, suicide attempts, unintended pregnancies, and adolescent pregnancy among others, increases in a strong and graded fashion. The higher the score, the greater the risk is for all aspects of a person's health over their lifespan.

F. The Convergence of Neurobiology and Epidemiology

Subsequent to the advent of the ACE study, the neuroscience covering children's developing brains evolved. The neuroscience explains how growing up in fear bathes the highly plastic developing brain in stress hormones that literally shape brain structures and circuits.

Ms. Schafran referenced an article titled “The Enduring Effects of Abuse and Related Adverse Experiences in Childhood: A Convergence of Evidence from Neurobiology and Epidemiology” published in 2004 by a group of eight neuroscientists, pediatricians, physicians, and public health experts, including Dr. Felitti and Dr. Anda, regarding the detrimental effects of traumatic stress on developing neural networks and on the neuroendocrine systems that regulate them. Specifically, the “convergence of evidence from neurobiology and epidemiology calls for an integrated perspective on the origins of health and social problems through the lifespan.” The article can be accessed at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3232061/pdf/nihms340170.pdf>.

She further explained that in a safe environment when the child has a nurturing relationship with a caregiver, moderate stress produces resilience. Children learn to deal with everyday stress. Toxic stress², however, produces a permanent “alarm state.”

Referring to Dr. Bruce Perry’s lecture, “Maltreatment and the Developing Child: How Early Childhood Experience Shapes Child and Culture — Differential “State” Reactivity”, available at <http://www.lfcc.on.ca/mccain/perry.pdf>, Ms. Schafran related that in the “alarm state,” the baseline state of arousal is altered. The result is that children are physiologically in a state of alarm, of “fight or flight,” even when there is no external threat or demand. For example, when a stressor arises such as an argument with a peer or a demanding school task, children can escalate to a state of fear very quickly. As another

² E.g., [T]he abuser creates a pervasive atmosphere of crisis in his house”, Lundy Bancroft, *Understanding the Batterer in Custody and Visitation Disputes* (1998); Repeated activation of the “fight or flight” reaction “results in pathologic changes in multiple systems over time; some experts refer to this effect as the biologic embedding of stress.”, Megan Bair-Merritt, et al., *Silent Victims – An epidemic of Childhood Exposure to Domestic Violence*, *New England Journal of Medicine* (2013).

example, when faced with a typical exchange with an adult, perhaps a teacher in a slightly frustrated mood, the child may over-read the non-verbal cues such as eye contact or touch. In short, compared to their peers, traumatized children may have less capacity to tolerate the normal demands and stresses of school, home, and social life.

Ms. Schafran further described that toxic stress could produce “fear conditioning” early in a child’s life. Over time, neutral stimuli elicit fear, and the emotional memory of fearful events becomes strong and stable. This adversely impacts social interaction, behavior, and a child’s ability to learn. The more prolonged the stressor, the greater the likelihood of long-term symptoms over the lifespan. While a calm child can focus on a teacher’s words and engage in abstract cognition, a child in an alarm state is less efficient at processing and storing verbal information. The traumatized child lives in an aroused state, ill-prepared to learn from social, emotional, and other life experiences. The child is living in the moment and may not fully appreciate the consequences of his or her actions. Ingesting alcohol and/or drugs magnifies this effect.

Children subjected to toxic stress often display symptoms linked to the neurobiology of their major coping adaptation. The neurochemical system of the dissociating child is predisposed to somatic complaints, withdrawal, helplessness, dependence, anxiety disorders, and major depression. The neurochemical system of the fight or flight child is also susceptible to symptoms related to persistent hyperarousal such as increased startle response, serious sleep disorders, anxiety, hyperactivity, conduct disorder, Attention Deficit and Hyperactivity Disorder, and post-traumatic stress disorder.

Ms. Schafran explained that children raised in an environment of persistent exposure to domestic violence are more likely to be violent themselves as children and

adults. This behavior is likely linked to their being in constant fight or flight mode and the cognitive distortions fear produces. She also suggested that courts can help to protect children through orders that end the exposure to domestic violence and support the protective, non-abusing parent.

**G. Custody Evaluators, Fact Finders, and the Custody Investigation Unit
– Determining Custody in the Hawai'i Family Courts**

Ms. Schafran emphasized the importance of training for those who evaluate families for the courts. She endorsed specialized training for those who make recommendations regarding custody and neuroscience education in the impact on children of exposure to domestic violence. This approach should guide decisions regarding the best interest of a child. Educational programs should address ending the child's exposure to domestic violence, supporting the protective parent in order to promote healing and promoting the child's needs for trauma-informed care and treatment.

She further recommended that judges should require anyone seeking appointment as a guardian ad litem or custody evaluator to demonstrate knowledge of domestic violence and the relevant social science and neuroscience. Ms. Schafran also urged the courts to establish a standardized form for guardian ad litem and custody evaluators for use in evaluations and reports that includes reporting of violent acts that occurred. She suggests judges encourage stakeholders in domestic violence cases (e.g., attorneys, law enforcement, mental health professionals, social workers), parents, schools, and the community to educate themselves about the harm caused by domestic violence to children and to take a holistic, integrated approach.

H. Hawai'i Coercive Control Law and Post-Abuse Separation

Ms. Schafran noted Hawai'i is one of few states that statutorily acknowledge coercive control.³ She advise developing a bench card with behaviorally-based questions to ascertain whether an individual is or is not safe. For example, does the party require the other party to share his or her password for various accounts? Is a party able to visit the party's family? She mentioned that a person may exert control by monitoring the other party's activities, deciding what they wear, where they go, with whom they socialize, and persuading their partner checking up on them is an expression of love.

She explained that post-separation abuse is an ongoing pattern of "intimate terrorism" encompassing weaponizing children, physical and sexual violence, psychological abuse, economic/financial abuse, legal abuse, and tactics that isolate and discredit victims from their community and support systems. She noted that often the termination of the parents' relationship does not end the domestic abuse and coercive control; perpetrators furious at losing control of their partner are more likely to seek child custody, manipulate the courts, perpetrate post-separation abuse and coercive control, and yet be awarded custody. She detailed "admirable fathering" wherein the father may appear to be caring, concerned, and indulgent, but exercises subtle manipulation (e.g., blames mother for everything, makes statements like "your mom makes me cry" or "you're the only one who loves me"). She also reminded participants that children and young people can be direct victims and survivors of coercive control.

Ms. Schafran's PowerPoint presentation is attached as Appendix B.

³ Hawai'i Revised Statute Section 596-1 defines coercive control.

III. DEPARTMENT OF HUMAN SERVICES' CHILD WELFARE SERVICES

The Honorable Andrew Park, District Court Judge of the Family Court of the First Circuit moderated the discussion of the Department of Human Services, Child Welfare Services Division.

A. Overview

Simeona Mariano, Deputy Attorney General for the Department of Human Services⁴, and Elladine Olevao, Branch Administrator for Child Welfare Services (CWS), provided an overview of the CWS process. Ms. Mariano described the three ways in which the Department becomes involved with a child and/or family; (1) a direct call through the Department's hotline, (2) a call through the Honolulu Police Department (e.g., arrest of a parent), or (3) by court order (e.g., restraining order, divorce case). The CWS has a 24-hour hotline (1-800-832-5300). Ms. Olevao detailed the process when a call comes into CWS and the CWS assessment in accordance with Chapter 587A, Hawai'i Revised Statutes that follows:

- All calls go through the reporting line.
- In-person reporting is available at the local CWS office.
- CWS will conduct a safety and risk assessment to determine if a report is accepted or referred to Voluntary Case Management, or the family strengthening program.

⁴ Ms. Mariano disclosed that she was presenting in her individual capacity and not on behalf of the Department.

- Within four hours, a social worker is assigned to follow up a report of abuse and neglect and must meet with the victim/child within 48 hours from receipt of the report.
- Timelines established by state or federal law guide the timing of the process and response.
- Social workers have 60 days to make an assessment of whether abuse neglect occurred or will occur within the next 60 days.
- The social worker must assess whether the child can remain safely in the home.
- If the child cannot remain safely in the home, the Department will take the necessary steps to remove the child. The Family Law Division of the Department will prepare and file a petition within 3 working days from the child's removal from the home.
- The filing of the petition triggers specific deadlines.

Ms. Mariano described the three types of petitions that may be filed by the Department requesting the following: (1) temporary foster custody (TFC), (2) foster custody, and (3) family supervision. She further explained that:

- A petition for TFC is used when a child is at imminent risk of being harmed or threatened with harm and must be removed from the family in order to assure his or her safety.
- A petition for Foster Custody is used when a child needs to remain out of the family home in order to assure his or her safety. A petition is filed if, regardless of the efforts of the family, changes are not made to the family

home to allow the safe return of the child within 90 days. (The family can agree to out-of-home placement by signing a voluntary consent for foster placement.)

- A petition for family supervision is used when the child is able to remain in the family home because the child's parents are willing and able to provide a safe family home with the assistance of a service plan and oversight of the court is necessary to ensure compliance with services which will insure the safety of the child.

The presenters also discussed the various hearings involved in the CWS cases, which in part, ensure the Department is held accountable for its efforts in each case. For example, the court holds periodic review hearings every six months. The court will review the parents' progress with services, assess whether the child can be safely returned to the family home, and ensure the child's needs are being met. The Department and the guardian ad litem will file reports for the court's review.

The permanency hearing in CWS cases was detailed. The permanency hearing is held every twelve months from the child's initial date of entry into foster care or within thirty days of a judicial determination that the child is an abandoned infant or that aggravated circumstances are present and reasonable efforts to reunify a child and family are not required. In this hearing, the court must determine if the child is to be returned to the legal custodian, placed for adoption and parental rights terminated, placed permanently with a fit and willing relative, or placed in another planned permanent living arrangement.

It was further explained that the Department files a motion to terminate parental rights if the child's family is not willing and able to provide a safe family home, even with the assistance of a service plan, within a reasonable period of time (which is not to exceed two years from the child's date of entry into foster care).

Those involved in a CWS case include the child, parents, attorney for the Department, guardian ad litem for the child, resource caregiver (or foster parent), and attorneys (e.g., parents may have court-appointed legal counsel or hire private attorneys; sometimes a child has his or her own attorney). It was also noted interpreters are available when needed.

Reunification is the goal in CWS cases whenever possible, and efforts are made to keep children with their families, if safe and appropriate. It was disclosed that the Department has over one hundred contracts with various providers to provide services to children and families. Currently, there are about 1,800 children in foster care statewide.

The presenters also provided information about Family First Hawai'i, established by the Family First Prevention Services Act, with the premise that families can often provide safe and loving care if they have the support and services they need. Family First Hawai'i works in collaboration with CWS and other stakeholders, through federal funds, toward the ultimate goal of preventing children from entering the foster care system while incorporating the culture and values of Hawai'i families. Ms. Olevao explained that children who are of native Hawaiian and/or Pacific Island descent are disproportionately represented in CWS matters at nearly twice the rate of children who are of Caucasian ethnicity.

B. Participants in Child Welfare Service Cases

Caroline Cobangbang, who serves as a court-appointed guardian ad litem for children in CWS matters, stated that her role is to promote and protect the needs and the best interest of the child. Once there is an open case (i.e., a petition has been filed), a child is assigned a guardian ad litem. As a guardian ad litem, she represents children who may be in foster care or still in the home under family supervision. Ms. Cobangbang stated that she is present at the first hearing in the case and is separate a part, and independent of the Department of Human Services. She stated that she can make suggestions in the case, file motions on behalf of the child, and is a party in the matter. She further explained that as the guardian ad litem, she participates in regular review hearings, provides reports to the court, and is involved in obtaining information and working with providers involved in the case (e.g., child's school, child's therapist).

Valerie Grab, Executive Director, and Madeline Tomasino-Reed, Managing Attorney, co-founders of The Children's Law Project of Hawai'i,⁵ a non-profit public interest law firm based on Hawai'i island and established in 2017 explained that their mission is to elevate the practice of child welfare law on the island. They serve as guardian ad litem for foster children and children who are involved in the court system (e.g., truancy cases, juvenile law offender cases, or custody dispute cases), as well as representing non-parent caregivers in guardianship and adoption proceedings. They believe that holistic advocacy requires more than meeting with the child every quarter and submitting a report every five and one-half months. To be effective guardian ad litem,

⁵ Additional information about The Children's Law Project of Hawai'i can be found at <http://www.clphi.org>.

comprehensive reviews of all systems that affect the child are necessary, including areas such as the child's education (especially if they receive special education or have disciplinary issues) and physical and mental health. Guardian ad litem need to be active in other proceedings involving the child (e.g., domestic abuse case) and diligent with respect to matters affecting the child (e.g., parents' participation in services, Ohana conferences), and they will accompany a child, for example, if they testify in a criminal matter.

Ms. Grab talked about the challenges facing guardian ad litem, including the need to have a wide breadth of knowledge on different subject areas to effectively represent children. The Children's Law Project provides support and trainings for guardian ad litem and resource centers (located in Hilo and Kona) that provide a safe and confidential environment where guardian ad litem can interview their clients and caregivers. The Child Law Project also provides a library with resource materials for guardian ad litem. There are also material and information available from the National Association of Counsel for Children.

In the First Circuit, children are encouraged to come to court, if for example, they want to meet with the judge presiding over their case or see what the courtroom looks like. The guardian ad litem will assist in the coordination and accompany the child.

Ms. Tomasino-Reed presented information about representing parents in CWS cases. She expounded on the emotional challenges of the practice and the immediate need to assess whether they will challenge the state's actions (e.g., removal of the child). As counsel for parents, they assist their clients in deciding whether to agree to certain

services and advocate for services that will meet their needs and help them to reunify with their child.

Kevin Adaniya provided information about the Oahu Child Welfare Mediation program launched in 2009, incorporating best practices from well-established mediation programs in California. The program's goals are to keep children safe and to more quickly return them safely home or provide them with a safe, permanent alternate home. The program seeks to empower parents to fully participate in their cases, use social worker's expertise efficiently and effectively as much as possible, engage in mutual decision-making, and develop plans, conditions, and court orders that are in a child's best interest, and protect the rights of the parties.

A mediation referral is typically made when a case is set for trial. The presiding judge will inquire with the attorneys whether the case should be set for mediation and will determine if mediation is appropriate. The court will schedule the mediation prior to the trial. Common case issues include adjudication (i.e., whether the child has been harmed or threatened with harm to justify the continuation of the case), whether a continuation of foster custody or a return of the child to a parent under family supervision is appropriate, termination of parental rights, and the permanent plan for a child such as adoption or guardianship. He explained that there may be many participants in a CWS case mediation⁶, including counsel for the Department and parents, the parents, social worker, guardian ad litem, and sometimes the resource caregiver.

⁶ There are three mediators who currently service the program: Katherine Bennett, Dr. Barbara Higa Rogers, and Kevin Adaniya.

The court will hold a pretrial conference after the mediation. If a full agreement has been reached, the court will set aside the trial. If a full agreement has not been reached, the court will conduct the pretrial conference in preparation for the trial. The Child Welfare Mediation program committee receives input from participants and stakeholders and makes adjustments to the program whenever necessary. The committee also provides statistics on mediation outcomes. Statistics from the program as of the fiscal year ending on June 30, 2022 are as follows:

- Twenty-three cases were referred to mediation.
- Of those cases, 43.5% of those cases were fully settled at the time of the mediation.
- Of the cases that were not fully settled at the time of mediation, partial agreements were reached in 31% of those cases.
- A trial was held in only about one-third of the cases that were referred to mediation.

A video featuring Delia Ulima, Melissa Mayo, and Anastasia Neumann from HI H.O.P.E.S. (Hawai'i Helping Our People Envision Success) Initiative was presented. Ms. Ulima is the HI H.O.P.E.S. Manager at EPIC Ohana. Ms. Mayo serves as the Pono Process Lead at EPIC Ohana and a member of the HI H.O.P.E.S. Board. Ms. Neumann serves as the Pono Process Navigator and a member of the HI H.O.P.E.S. Board. Both Ms. Mayo and Ms. Neumann shared their impactful experience as youth in foster care.

The initiative helps young people, primarily those between the ages of 14 and 26, successfully transition from foster care to adulthood by providing access to education, employment, financial assistance, health care, housing, and family and other relationship

connections. The initiative works with public and private partners on the state and local level to improve policies and practices, promote youth engagement, and create community partnerships.

There are five Boards on East Hawai'i, West Hawai'i, Oahu, Kauai, Maui serving the island comprised of current and former foster care youth between the ages of 14 and 26. The mission of the Boards is to educate, advocate, and collaborate for improvements in the foster care system and better outcomes for foster youth. The youth boards also serve as the youth advisory council to the Child Welfare Services Branch.

Ms. Ulma highlighted HI H.O.P.E.S. efforts in the last several years, including, sibling connections, Imua Kakou (program that assists young adults transition from foster care), social capital efforts, Foster Youth Bill of Rights, and the Pono Process (an additional support for children and youth in foster care to use in the event their rights are not being honored or upheld).

Ms. Mayo further detailed the Pono Process from the filing of a grievance via website, email, phone, or text message to the efforts to assist the young person in reaching a resolution. Additional information about the Pono Process is available at <http://ponoprocess.org>. More information about HI H.O.P.E.S. can be found at <http://www.hihopes.org/>.

C. Questions and Answers

Judge Park facilitated questions from participants directed to the presenters, which provoked the following additional information:

- The term “long term foster care” is no longer used in CWS cases and was replaced by the term “Alternative Planned Permanent Living Agreement” or

“APPLA.”

- There is discussion about making mediation in Child Welfare Service matters available on the neighbor islands, although one mediation was held in a CWS matter in the Third Circuit.
- About two-thirds of CWS’ contracts with third-party providers are available statewide.
- Resources (e.g., financial assistance) and services are available for a child and their resource family after legal guardianship.

D. Statewide Overview

Judges from each circuit participated in the forum and provided information about the operations, procedures, and needs related to CWS matters in their respective circuit.

1. First Circuit

The Honorable Jessi L. Hall provided information regarding the First Circuit’s operations with respect to CWS cases, including the following:

- First Circuit is unique in that there are four judges in the juvenile division with each judge having a rotating schedule with one week dedicated to CWS cases (i.e., week 4). This allows CWS cases to be heard every day.
- A case will continue to be heard before the same judge.
- If there are related cases (e.g., FC-P, FC-DA, FC-D), a judge is able to call those cases and address the needs of the matter (e.g., amend orders). Every effort, however, is made to have the same judge handle the CWS case from beginning to end.

Judge Hall also provided information about the special courts available in the First Circuit, including Family Drug Court (focuses on parents who come into the system due to their substance abuse issues by providing additional support and services to help them address those issues), Zero to Three Court (cases involving children from birth to three-years old focusing on reunification as quickly as possible), Juvenile Drug Court, Girls Court, and Truancy Court (focused on attendance in school for Waianae Intermediate, Wahiawa Middle School, and Kapolei Intermediate, although referrals can be made from any middle or intermediate school throughout the island). She also described a new program, the Early Education Intervention program, which just launched this school year. The program focuses on truancy in the elementary level and addressing what may be preventing parents from getting their child to school.

Judge Hall discussed the need for attorneys for parents in CWS cases statewide. She noted that it is a contract position and any attorney interested in serving as counsel for parents should apply. Each circuit has its payment plan/scale. The First Circuit is exploring creating a mentorship program for attorneys interested in serving as counsel for parents. The court also offers training for any interested attorneys. Judge Hall explained that even taking one case would be helpful and greatly appreciated.

2. Second Circuit

The Honorable Adrienne N. Heely shared the following information regarding matters in the Second Circuit (which include cases for the islands of Maui, Molokai, and Lanai):

- There are currently two full-time judges presiding over Family Law matters: Judge Heely and Judge James Rouse, who is not yet able to preside over CWS cases due to his prior employment.
- There are four per diem judges assisting the Court: Judge Lance Collins, Judge Michelle Drewyer, Judge Matson Kelly, and Judge Loren Tilley.
- For Maui, CWS hearings are every Tuesday and contested hearings are on Friday. For Molokai and Lanai, they are held once a month every third Wednesday for Molokai and the fourth Thursday for Lanai.
- Judges will be reconvening travel to Molokai and Lanai.
- Currently, there are approximately 291 active FC-S cases. From January 2022 to October 2022, there were 79 new cases.
- Similar to the First Circuit, counsel for parents are provided by contract, but cannot be retained in a related case (e.g., domestic abuse or paternity cases).
- Mediation in CWS cases is being discussed, and the court is looking forward to starting mediation as funds become available.
- The court is working on running aging reports to monitor CWS cases and ensure statutory deadlines are met.

Judge Heeley discussed the special programs in the Second Circuit, including Imua Kakou and “Dream Days” (collaboration between the Court, HI H.O.P.E.S. and EPIC Ohana to bring agencies and youth together to provide resources and services). Family Drug Court and Juvenile Drug Court were temporarily suspended during the pandemic, but hopefully will reconvene.

3. Third Circuit

The Honorable Darien W.L. Ching Nagata provided the following information for the Third Circuit:

- There are several new judges presiding over Family Law matters on the Hawai'i island.
- Judge Nagata and Judge Jeffrey W. Ng preside over matters in Hilo, Judge Jill M. Hasegawa presides over cases in Waimea, and Judge Joanne E. Sokolow presides over matters in Kona. Judge Kimberly B.M. Taniyama is currently handling all CWS cases for Judge Sokolow due to her prior employment.
- There is a shortage of guardian ad litem and attorneys for CWS cases.
- In Hilo, CWS cases are heard on Thursdays and Fridays, and some Mondays. Judge Nagata and Judge Ng split the CWS cases evenly. Judge Nagata presides over general matters on Thursday and evidentiary hearings are held in the afternoons (e.g., adjudication, termination of parental rights, adoptions, legal guardianships). Judge Ng replicates the same general schedule on Friday. Evidentiary hearings are also scheduled on Mondays if available.
- In Waimea, Judge Hasegawa will use the last Wednesday of the month for CWS cases.
- In Kona, Tuesday mornings are generally dedicated to CWS cases, but evidentiary hearings may be set on Thursday or Friday.

- In all districts, hearings may be set based on the court's availability as needed.
- If possible, related cases may be set together based on the circumstances. JIMS allows the judges to track related cases and coordinate hearing dates.
- The CWS mediation program, modeled after the First Circuit, is available in the Third Circuit.

Judge Nagata also talked about the Third Circuit's Truancy Court, Adoption Day (also referred to as Ohana Day), and Teen Day (featuring a mock trial in court and prizes and giveaways for youth and in coordination with various stakeholders).

4. Fifth Circuit

The Honorable Stephanie R. S. Char shared the following information about the Fifth Circuit:

- Two full-time judges serve the Family Court, including Judge Char and Judge Gregory Meyers. Judge Char currently sits on the CWS calendar every Thursday generally from 10:00 a.m. until the close of business, depending on the matters that need to be heard.
- There are eight to nine attorneys on the court-appointed list for guardian ad litem or parent counsel in CWS cases; one to two Court Appointed Special Advocates (otherwise referred to as "CASA"); and one deputy attorney general on the island of Kauai.
- Judge Char presides over divorce matters, and Judge Meyers presides over paternity matters. They have no problem issuing orders in cases related to pending CWS cases as needed.

- In terms of special programs, they are currently limited. Donations such as stuffed animals, board games, toys for children, and gift cards are received from private attorneys and different entities and designed to encourage children to attend court hearings.
- In 2022, 27 petitions were filed. Prior to the pandemic, there were typically 25 to 30 new cases each year. During the height of the pandemic, the court saw upwards of 45 petitions filed.
- The court is trying to have mediation started in CWS cases, but there are challenges (e.g., need for electronic equipment). There is a volunteer mediation program in effect comprised of attorneys practicing in the area of family law, but it is currently only utilized in divorce and paternity matters.

Judge Char relayed that the Imua Kakou program has been extremely successful.

5. Questions and Answers

Judge Park facilitated questions from participants directed to the judges and the following information was provided:

- The Second Circuit requires all contracted guardian ad litem, counsel for parents, and CASA to participate in the Court's 40-hour CASA training. The CASA training is held once a year and follows a statewide curriculum.
- For the Third Circuit, training is required for court-appointed guardian ad litem and counsel for parents. The Children's Law Project provides various types of training and would be a resource to consider. Contracts for parents' counsel run every 2 years, but it is possible to obtain a contract mid-term.
- For the Fifth Circuit, court-appointed counsel for parents and guardian ad

litems are paid on an hourly basis (versus a contract). Judge Char noted that the court would be accommodating with respect to requests for virtual appearances as appropriate for attorneys who may be from other circuits.

- For the First Circuit, guardian ad litem are not individually contracted. Contracts are through the Legal Aid Society of Hawai'i or a private group of guardian ad litem.

IV. FAMILY LAW CASE LAW UPDATE

Tom Tanimoto presented the family law update, which is attached as Appendix D.

Dyan Mitsuyama concluded the Forum by thanking all participants.

2022 FAMILY LAW FORUM PARTICIPANTS

The HSBA Committee on Judicial Administration in 2022 was comprised of the following co-chairs and members: Hawai'i Supreme Court Associate Justice Simeon R. Acoba, Jr. (ret.), Co-Chair; Vladimir Devens, Co-Chair; Judge Ronald Ibarra (ret.), Judge Blaine J. Kobayashi, Judge Brian Costa, Judge Rowena A. Somerville, Chief Judge Randal G. Valenciano, Judge Wendy DeWeese, Judge Summer M. Kupau-Odo, Judge M. Kanani Laubach, Judge Clarissa Malinao, Hayley Cheng, Dennis Chong Kee, Steven J.T. Chow, Kahikino Noa Dettweiler, Kirsha K.M. Durante, Tred Eyerly, Daylin Rose Heather, Edward C. Kemper, Erin Kobayashi, Simeona Mariano, Dyan Mitsuyama, Carol K. Muranaka, Kyleigh F.K. Nakasone, Richard Sing, Audrey E. Stanley, Wilson Unga, and Dawn West.

The Family Law Forum Subcommittee was comprised of the following committee members: Judge Brian Costa, Judge Wendy DeWeese, Dyan Mitsuyama, Simeona Mariano, and Erin Kobayashi.

APPELLATE JUDGES AND ADMINISTRATION

Honorable Mark E. Recktenwald, Chief Justice, Hawai'i Supreme Court
Honorable Todd W. Eddins, Associate Justice, Hawai'i Supreme Court
Honorable Sabrina S. McKenna, Associate Justice, Hawai'i Supreme Court

Honorable Keith K. Hiraoka, Associate Judge, Intermediate Court of Appeals
Honorable Sonja M. McCullen, Associate Judge, Intermediate Court of Appeals
Honorable Karen T. Nakasone, Associate Judge, Intermediate Court of Appeals
Honorable Clyde J. Wadsworth, Associate Judge, Intermediate Court of Appeals

Lisa T.K.O. Lum, Special Assistant to the Administrative Director of the Courts
Craig Hirayasu, Probations Administrator, Second Circuit
Kari-Lynn Wakakuwa, Special Services Branch Administrator, Second Circuit
Marsha Yamada, Deputy Chief Court Administrator for Client Services, Second Circuit
Dean Hiraki, Deputy Chief Court Administrator for Client Services, Third Circuit
Cheryl Salmo, Deputy Chief Court Administrator for Operations, Third Circuit

JUDGES

Judge Stephanie Char
Judge Rebecca Copeland
Judge Jessi Hall
Judge Jill Hasegawa
Judge Adrienne Heely
Judge Dyan Medeiros
Judge Gregory Meyers
Judge Darien Nagata
Judge Courtney Naso

Judge Jeffrey Ng
Judge Elizabeth Paek-Harris
Judge Andrew Park
Judge James Rouse
Judge Natasha Shaw
Judge Joanna Sokolow
Judge Kimberly Taniyama
Judge Matthew Viola
Judge Bryant Zane

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P. Gregory Frey
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Noah Gibson
Valerie Grab
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Geoffrey Hamilton
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Stephen Hioki
Tiffany Ige
Ann Isobe
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Franz Juan
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Harlan Kimura
Mari Kishimoto Doi
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Michael Lee
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Katie Lukela
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Annabel Murray
Paula Nakata
Lianne Onishi
Andrew Park
Patrick Pascual
Anthony Perrault
Ellen Politano
Judith Schevtchuk
Shannon Sheldon
Randal Shintani
Scott Shishido
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Paul Soenksen
Gemma-Rose Soon

Erin Sugita
Jo-Ann Takara
Gay Tanaka
Tom Tanimoto
Madeline Tomasino-Reed
Lynne Toyofuku
Carol Tribbey
Justin Tsai

Jessica Uchida
Sheila Vierra
Maria Williams
Aaron Wills
Trina Yamada
Cheryl Yamaki
Rebecca Yonashiro
Sandra Young

OTHER GUESTS

Lynn Hecht Schafran, Senior Vice President of Legal Momentum
Patricia Mau-Shimizu, Executive Director, Hawai'i State Bar Association

APPENDICES

Appendix A	Lynn Hecht Schafran's Notes; The Associated Press dated June 15, 2022 titled "Supreme Court Rules with American Woman in Bitter Custody Dispute"; Excerpt from the Memorandum Decision and Order issued by the Eastern District of New York
Appendix B	PowerPoint Slide Presentation by Lynn Hecht Schafran
Appendix C	Order Appointing Guardian Ad Litem; The Duties of a Guardian Ad Litem
Appendix D	Family Law Forum Case Law Summary

APPENDIX A

**“Little Pitchers, Big Ears: How Domestic Violence Shapes Developing
Brains--Nature and Nurture, Neuroscience and ACES”
by Lynn Hecht Schafran**

**Hawaii State Bar Association
Judicial Administration Committee
Family Law Forum
October 21, 2022**

***Little Pitchers, Big Ears:
How Domestic Violence Shapes Developing
Brains – Nature and Nurture,
Neuroscience and ACEs***

**Lynn Hecht Schafran, JD
Director
National Judicial Education Program**

To prepare for discussion at the start of the Forum please read in advance the short news article and decision excerpt listed below and provided on the following pages.

***“Supreme Court Rules with American Woman in
Bitter Custody Dispute”***

The Associated Press, June 15, 2022

***Saada v. Golan*
Eastern District of New York
August 31, 2022
Excerpt from District Court’s Ruling on
Remand from the Supreme Court**

**Note from Forum speaker Lynn Hecht Schafran, JD,
Director, National Judicial Education Program
Re**

**“Supreme Court Rules with American Woman in
Bitter Custody Dispute”
The Associated Press, June 15, 2022**

and

**Saada v. Golan
Eastern District of New York
August 31, 2022
Excerpt from District Court’s Ruling on
Remand from the Supreme Court**

On the next few pages you will find a short news article about the Supreme Court’s decision in a case called *Golan v. Saada*, and an excerpt from the district court’s decision on remand in a case called *Saada v. Golan*. Despite the reversal of names, both cases involve the same parents and the same case. The name change is due to the fact that the case began in the district court as a petition under the Hague Convention on the Civil Aspects of International Child Abduction, brought by the father, ISACCO JACKY SAADA, while the appeal to the Supreme Court was brought by the mother, NARKIS ALIZA GOLAN.

I have been involved in these cases as an *amicus* since 2019.

The Hague Convention on the Civil Aspects of International Child Abduction provides that a child wrongfully removed from his or her country of habitual residence should be quickly returned – if possible by six weeks after the suit is initiated.

There are very few exceptions to the requirement for return.

One of them is Article 13(b) which provides that return is not required if “*there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.*”

Supreme Court rules with American woman in bitter custody dispute

By **MARK SHERMAN** The Associated Press, Updated June 15, 2022, 12:53 p.m

<https://www.bostonglobe.com/2022/06/15/nation/supreme-court-rules-with-american-woman-bitter-custody-dispute/>

The justices ruled unanimously Wednesday for an American woman who is involved in a bitter international custody dispute with her Italian husband over their young son.

The high court threw out lower court decisions ordering the return of the boy to Italy despite finding that he would be at “grave risk of psychological harm” because of the father’s physical and emotional abuse of the mother. The child, now around 6, has been living in the U.S. with his mother since 2018.

Federal courts in New York ruled that judges must try to return children to their usual country of residence by imposing conditions that would mitigate the risk, under the international Hague Convention on child abduction.

Writing for the Supreme Court, Justice Sonia Sotomayor said judges have ample discretion to refrain from ordering a child returned, if they find “the grave risk so unequivocal, or the potential harm so severe, that ameliorative measures would be inappropriate.”

The justices ordered a new look at the case with that discretion in mind.

It’s beyond dispute, Sotomayor wrote that the relationship between Narkis Golan, a US citizen, and Isacco Saada, an Italian, “was characterized by violence from the beginning.” They met at a wedding in Milan in 2014, were married a year later, and had their son a year after that.

“The two fought on an almost daily basis and, during their arguments, Saada would sometimes push, slap, and grab Golan and pull her hair. Saada also yelled and swore at Golan and frequently insulted her and called her names,

often in front of other people. Saada once told Golan's family that he would kill her. Much of Saada's abuse of Golan occurred in front of his son," Sotomayor wrote.

There is no evidence Saada was abusive toward the child.

Golan left Italy with the child in 2018 and hasn't returned.

Under the court order the Supreme Court rejected Wednesday, the child would have lived with his mother in Italy and the father would have supervised visits. Saada would not be allowed to have any contact with Golan for a year.

The case is Golan v. Saada.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ISACCO JACKY SAADA,

Petitioner,

MEMORANDUM DECISION AND
ORDER

— against —

1:18-CV-5292 (AMD) (RML)

NARKIS ALIZA GOLAN,

Respondent. .

ANN M. DONNELLY, United States District Judge:

EXCERPT ON REMAND FROM THE U.S. SUPREME COURT

August 31, 2022

“As I have explained before at length, the grave risk of harm to B.A.S. comes from a single source—the violence between his parents. That risk, while serious, can be readily mitigated by keeping his parents apart. Because both the protective order and the \$150,000 payment are designed to ensure the respondent and the petitioner remain separate, they properly prioritize B.A.S. 's physical and psychological safety.”

Note: The \$150,000 payment was one of the ameliorative measures the judge imposed.

“Finally, the petitioner will give the respondent \$150,000, a substantial sum that will enable the respondent to establish herself in Italy and provide for B.A.S. 's heightened educational needs.” (The boy has autism.)

APPENDIX B

“Little Pitchers, Big Ears: How Domestic Violence Shapes Developing Brains--Nature and Nurture, Neuroscience and ACES”

PowerPoint presentation

by Lynn Hecht Schafran

Little Pitchers, Big Ears: How Domestic Violence Shapes Developing Brains – Nature and Nurture, Neuroscience and ACEs

Lynn Hecht Schafran, Esq.

Director, National Judicial Education Program

Legal Momentum

Hawaii State Bar Association

Judicial Administration Law Committee Family Law Forum

October 21, 2022



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Discussion



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Saada v. Golan

ANN M. DONNELLY, United States District Judge:
EXCERPT ON REMAND FROM THE U.S. SUPREME COURT
August 31, 2022

"As I have explained before at length, the grave risk of harm to B.A.S. comes from a single source—the violence between his parents. That risk, while serious, can be readily mitigated by keeping his parents apart. Because both the protective order and the \$150,000 payment are designed to ensure the respondent and the petitioner remain separate, they properly prioritize B.A.S.'s physical and psychological safety."

3

The U.S. Attorney General's National Task Force on Children Exposed to Violence reported in 2012 that children's exposure to violence, including domestic violence is "a national crisis with effects lasting well into adulthood."

– *Report of the Attorney General's National Task Force on Children Exposed to Violence: Defending Childhood, Protect, Heal, Thrive* (December 2012)

4

Hawaii Custody Statute (2008)

(9) In every proceeding where there is at issue a dispute as to the custody of a child...

(A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence; ...

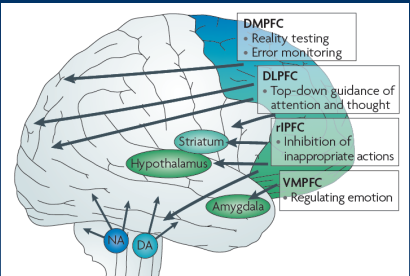
(10) A court may award visitation to a parent who has committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the parent who is a victim of family violence;

Hawaii Revised Statutes 571-46, (2008)

5

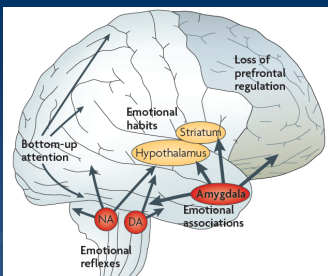
DOMESTIC VIOLENCE AND CHILDREN: NEW KNOWLEDGE FROM NEUROSCIENCE

6



Perpetrator

- Not stressed
- Prefrontal cortex in control**
- Thinking and behavior:
 - Planned
 - Practiced
 - Habitual



Victim

- Afraid, overwhelmed
- Fear circuitry in control**
- Attention and thoughts driven by perpetrator actions
- Behavior controlled by survival reflexes and habits from childhood (incl. abuse)

Slide courtesy of Dr. Jim Hopper, Harvard Medical School

7

The New Knowledge

- The neuroscience maps the social science
- We know ***what*** exposure to domestic violence does to children's development – neuroscience tells us ***why***

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Domestic Violence and Children: New Knowledge from Neuroscience

- *First Impressions: Exposure to Violence and a Child's Developing Brain* (video)
- Lynn Hecht Schafran, *Domestic Violence, Developing Brains, and the Lifespan: New Knowledge from Neuroscience*, THE JUDGES' JOURNAL, Summer 2014 at 32 – in your conference materials

9

First Impressions: Exposure to Violence and a Child's Developing Brain



10

Saada v. Golan Expert Witness Testimony

"[E]xposure to domestic violence has immediate effects on young children's cognitive, social, and emotional development and their ability to "regulate stress." It also has physiologic effects and both immediate and long-term effects on the brain structure and organization... [E]xposure to domestic violence could have particularly severe effects on a child as young as B.A.S. because of the state of brain development at that age. Continued exposure or re-exposure to domestic violence, whether directed at the child or witnessed by the child, has a cumulative effect on the child and increases the likelihood of later effects."

*Dr. Edward Tronick, Leading Child Development Expert
Developmental Brain Science Program, U. Massachusetts, Boston*



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Dr. Bruce D. Perry What Happened to You? (2021)

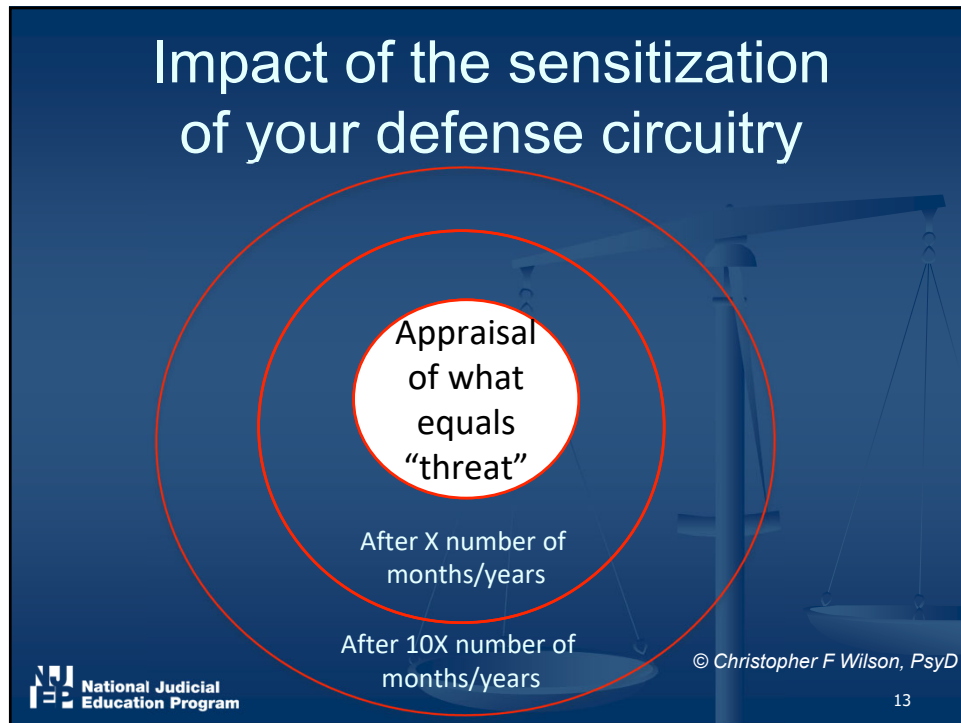
"Biologically speaking....continuous trauma can weaken remaining neural pathways to the thinking part of the brain and strengthen neural pathways to the survival part, thus bypassing the thinking part, which makes some children less capable of coping with adversity as they grow up".



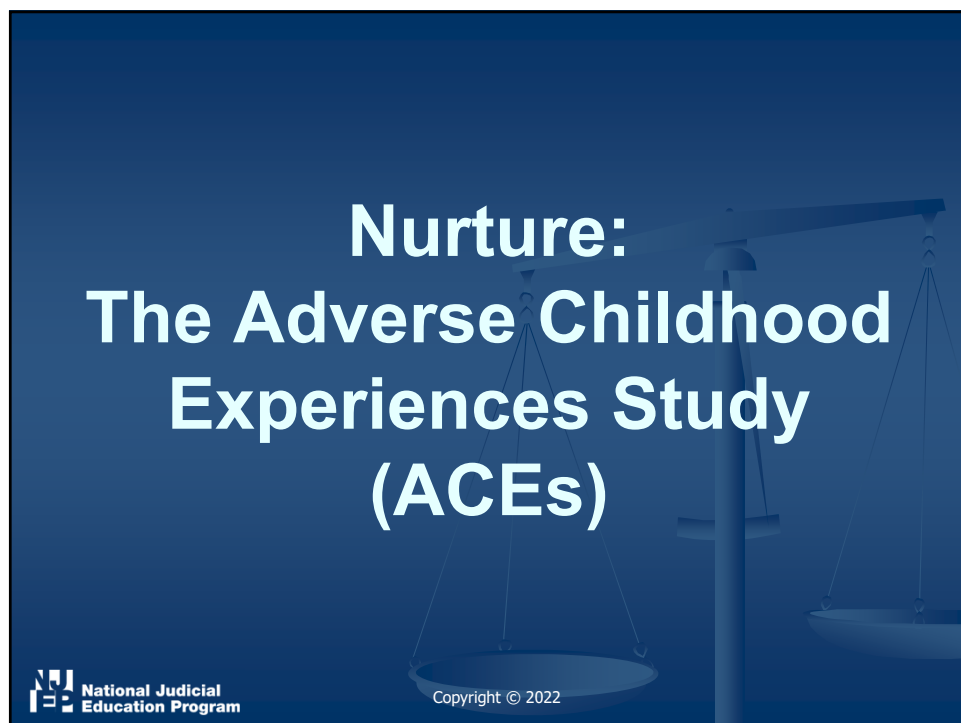
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Video



Dr. Nadine Burke Harris, *How Childhood Trauma Affects Health Across a Lifetime*, 16:12



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Adverse Childhood Experiences (ACE) Study

- Collaboration between California HMO Kaiser Permanente and the CDC
- 17,337 responses from mostly white, well-educated patient sample
- Questions about childhood physical and sexual abuse, neglect, and household dysfunctions including exposure to domestic violence
- Childhood traumatic stressors have mental and physical effects over the lifespan



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ACE Questionnaire: Domestic Violence Questions

- Was your mother (or stepmother) sometimes, often, or very often:
 - Pushed, grabbed, slapped, or had something thrown at her?
 - Kicked, bitten, hit with a fist, or hit with something hard?
 - Repeatedly hit over at least a few minutes?
 - Threatened with or hurt by a knife or gun?

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ACE Study Major Findings

The ACE Study uses the ACE Score, which is a total count of the number of ACEs reported by respondents. The ACE score is used to assess the total amount of stress during childhood and has demonstrated that as the number of ACEs increase, the risk for the following health problems increases in a strong and graded fashion:

- | | |
|------------------------------------------------|----------------------------------------|
| ■ Alcoholism and alcohol abuse | ■ Risk for intimate partner violence |
| ■ Chronic obstructive pulmonary disease (COPD) | ■ Multiple sexual partners |
| ■ Depression | ■ Sexually transmitted diseases (STDs) |
| ■ Fetal Death | ■ Smoking |
| ■ Health-related quality of life | ■ Suicide attempts |
| ■ Illicit drug use | ■ Unintended pregnancies |
| ■ Ischemic heart disease (IHD) | ■ Early initiation of smoking |
| ■ Liver disease | ■ Early initiation of sexual activity |
| | ■ Adolescent pregnancy |

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A Convergence of Neurobiology and Epidemiology

- What do we know from studying the brain?
- What do we know from studying disease patterns?
- How do the findings map and explain each other?

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Toxic Stress

- “[The] abuser creates a pervasive atmosphere of crisis in his house.”
 - Lundy Bancroft, *Understanding the Batterer in Custody and Visitation Disputes* (1998).
- Repeated activation of the “fight or flight” reaction “results in pathologic changes in multiple systems over time; some experts refer to this effect as the biologic embedding of stress.”
 - Megan Bair-Merritt, et al., *Silent Victims—An epidemic of Childhood Exposure to Domestic Violence*, *New England Journal of Medicine* (2013).

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The “Alarm State”

- Baseline state of arousal altered
- Always on high alert
- In a “fight or flight” state even when no external threat or demand is present
- Dissociation

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Fear Conditioning

- Toxic stress can produce “fear conditioning” even in early life
- Gradually, neutral stimuli elicit fear
- Emotional memory of fearful event becomes strong and stable over time
- Impacts social interaction, behavior, learning ability

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Impact of Toxic Stress on Children

- Children display symptoms linked to their major coping mechanisms, e.g., depression or persistent hyperarousal.
- Toxic stress interferes with ability to learn.
- Prolonged toxic stress increases likelihood of long-term mental and physical health problems over the lifespan.

23

Toxic Stress Interferes with School and Learning

- Calm child can focus on teacher's words and engage in abstract cognition
- Alarm state child is less efficient at processing and storing verbal information
- Hippocampus shrinkage as a result of prolonged stress/"fight-or-flight" undermines learning and memory

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How Can Courts Protect Domestic Violence-Exposed Children and Help Them Heal?

- End the exposure to domestic violence.
- Support the protective, non-abusing parent

25

Custody Evaluators, Fact Finders, and the Custody Investigation Unit – Determining Custody in the Hawaii Family Courts

- Many custody evaluators do not have specialized training on the impact of children's exposure to domestic violence and mistakenly believe it does no harm.

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Custody and Visitation

- Judges and Court-Related Professionals should participate in education about the neuroscience of domestic violence exposure for children and how it should inform decisions on the best interest of the child
- Judges should require anyone seeking appointment as a guardian *ad litem* or custody evaluator to demonstrate knowledge of domestic violence and the relevant social science and neuroscience
- Courts should establish a standardized form for guardians *ad litem* and evaluators to use in custody evaluations and reports

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Judicial Leadership

- Encourage education for all stakeholders in domestic violence cases – e.g., attorneys, law enforcement, mental health professionals, social workers – about the harm of domestic violence exposure for children.
- Encourage education for parents, schools, and the community about the harm of domestic violence exposure for children.
- Encourage a holistic, integrated approach among all these stakeholders.

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The Power of a Judge

In any case in which a child has been exposed to domestic violence or is at risk of exposure in the future, **“judges hold the integrity of a developing child’s brain in their hands.”**

- Jack P. Shonkoff, M.D., is a professor at Harvard’s School of Public Health, Graduate School of Education, and Medical School and is Director of Harvard’s university-wide Center on the Developing Child.

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Hawaii Coercive Control Law

SECTION 5. Section 596-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

“Coercive control” means a pattern of threatening, humiliating, or intimidating actions, which may include assaults, or other abuse that is used to harm, punish, or frighten an individual.

“Coercive control” includes a pattern of behavior that seeks to take away the individual’s liberty or freedom and strip away the individual’s sense of self, including bodily integrity and human rights, whereby the “coercive control” is designed to make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior including:

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SECTION 5. Section 586-1, Hawaii Revised Statutes, is amended as follows. [Examples listed in the statute]

- (1) Isolating the individual from friends and family;
- (2) Controlling how much money is accessible to the individual and how it is spent;
- (3) Monitoring the individual's activities, communications, and movements;
- (4) Name-calling, degradation, and demeaning the individual frequently;
- (5) Threatening to harm or kill the individual or a child or relative of the individual;
- (6) Threatening to publish information or make reports to the police or the authorities;
- (7) Damaging property or household goods; and
- (8) Forcing the individual to take part in criminal activity or child abuse.

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Monitoring Activities

- A person may exert control by deciding what someone wears, where they go, who they socialize with, what they eat and drink, and what activities they take part in. The controlling person may also demand or gain access to the partner's computer, cell phone or email account.
- The perpetrator may also try to convince their partner that they want to check up on them because they love them. However, this behavior is not part of a healthy or loving relationship.

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Saada v. Golan

ANN M. DONNELLY, United States District Judge:
EXCERPT ON REMAND FROM THE U.S. SUPREME COURT
August 31, 2022

"As I have explained before at length, the grave risk of harm to B.A.S. comes from a single source—the violence between his parents. That risk, while serious, can be readily mitigated by keeping his parents apart. Because both the protective order and the \$150,000 payment are designed to ensure the respondent and the petitioner remain separate, they properly prioritize B.A.S.'s physical and psychological safety."

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Post-Separation Abuse

- Often the end of the parents' relationship does not end the domestic abuse
- Batterers, furious at losing control of their partner, are more likely than other fathers to seek custody, manipulate the courts, perpetrate Post-Separation Abuse and yet be awarded custody.

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Post-Separation Abuse cont.

Post-Separation Abuse is an ongoing pattern of “intimate terrorism” and intimate partner violence perpetrated after separation. It encompasses:

- physical and sexual violence
- psychological abuse (harassment, intimidation, and stalking)
- economic/financial abuse
- “mesosystem” abuse (tactics that isolate and discredit victims from their community and support system)
- legal abuse
- weaponizing children

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Thank You

For More Information, Contact:

Lynn Hecht Schafran, Esq.

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Legal Momentum

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lschafran@legalmomentum.org

(212) 413-7518

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APPENDIX C

**Order Appointing Guardian Ad Litem for Minor Child/Children;
The Duties of a Guardian Ad Litem**

STATE OF HAWAII FAMILY COURT FIRST CIRCUIT		ORDER APPOINTING GUARDIAN AD LITEM FOR MINOR CHILD/CHILDREN		Case Number FC-S No. 22-
IN THE INTEREST OF Born on		GUARDIAN AD LITEM (Name, Address, & Phone No.) CAROLINE COBANGBANG, ESQ. #6906 P.O. Box 893476 Mililani, HI 96789 Phone: (808) 626-8111 (Service Contract)		
		FOR MINOR CHILD/CHILDREN: NAME(S)		
<p>Good cause appearing, IT IS ORDERED that pursuant to Hawaii Revised Statutes Sections 587A, 571-8.5(a) (8) and HFCR 17 (c), the person indicated above be appointed guardian ad litem to protect and promote the needs and best interests of the minor child/children named above, until final disposition of the case or unless sooner discharged by the court, subject to "The Duties of a Guardian Ad Litem (GAL)" set forth on the reverse of this Order Appointing Guardian Ad Litem for Minor Child/Children and incorporated herein.</p> <p>IT IS ALSO ORDERED that said guardian ad litem shall serve effective: <u>2022</u> throughout the pendency of the child protective proceedings, unless sooner discharged by the court. The guardian ad litem shall serve without bond and</p> <p><input type="checkbox"/> as a volunteer of the CASA/Volunteer Guardian Ad Litem Program, said Program having the authority to act on behalf of the volunteer;</p> <p><input type="checkbox"/> without compensation but shall receive reasonable costs; or</p> <p><input checked="" type="checkbox"/> shall receive reasonable fees and costs.</p> <p>Fees and/or costs may be paid by the court, unless the party for whom counsel is appointed has an independent estate sufficient to pay such fees and costs. The court may order the appropriate parties to pay or reimburse the fees and costs of the guardian ad litem.</p> <p>IT IS FURTHER ORDERED that the guardian ad litem shall:</p> <ol style="list-style-type: none"> (1) Be allowed access to the child; (2) Have upon presentation of this order to any agency, hospital, organization, school, individual or office, including but not limited to the Clerk of this Court, human services and/or child caring agencies, public or private institutions and/or facilities, medical and mental health professionals, law enforcement agencies and the Attorney General, the authority to inspect and receive copies of any records, notes, and electronic recordings concerning the child that are relevant to these child protective proceedings, even without the consent of the child or individuals and authorized agencies who have control of the child; (3) Hold any information received from any such source as confidential, and shall not disclose the same except to the court and where allowed by the court, to other parties to this case, and where provided by law; (4) Be given notice of all hearings and proceedings including but not limited to administrative, family, civil, criminal, grand juries or appellate; and all conferences including but not limited to multi-disciplinary team meetings, individual educational program meetings or interagency cluster meetings, involving the child and shall protect the best interests of the child therein, unless otherwise ordered by the court; (5) Have face-to-face contact with the child in the child's family or resource family home at least once every 3 months; (6) Report to the court and all parties, in writing, at six-month intervals, or as ordered by the court, regarding such guardian ad litem's actions taken to ensure the child's best interests, and recommend how the court should proceed in the best interests of the child; (7) Inform the court of the child's opinions and requests; and (8) Appear at all court hearings to advocate for the child's best interests, providing testimony when required. 				
DATE Kapolei, Hawai'i		Judge of the above-entitled Court		
cc: DAG/DHS – GAL for Child/Children- Caroline Cobangbang, Esq. Parent(s) Court Officer: Mindi Munar				

THE DUTIES OF A GUARDIAN AD LITEM (GAL)

The Guardian Ad Litem (GAL) is a full participant in the court proceeding and is the only party whose sole duty is to protect the child's needs and interests. The GAL assumes the role of an advocate for the child's interests and no way represents the petitioner (usually an agency) or the respondents (usually the parents or custodians).

In fulfilling this child-centered role, the GAL performs five important and interrelated duties. The GAL:

1. Acts as an independent fact finder (or investigator) whose task it is to review all relevant records and interview the child, parents, social workers, teachers and other persons to ascertain the facts and circumstances of the child's situation.
2. Ascertains the interests of the child, taking into account the child's age, maturity, culture and ethnicity including, as appropriate, explaining the court proceedings to the child in language and terms that the child can understand and maintaining a trusting meaningful relationship with the child via face-to-face contact.
3. Seeks cooperative resolutions to the child's situation within the scope of the child's interest and welfare.
4. Provides written reports of findings and recommendations to the court at each hearing to assure that all the relevant facts are before the court, unless otherwise ordered by the court.
5. Promptly provides a written report to the court if the services are not being made available to the child and/or families, if the family fails to take advantage of such services, or if such services are not achieving their purpose and brings to the court's attention any violation of orders, new developments or changes.

APPENDIX D

**Family Law Case Update
by Tom Tanimoto**

2022 FAMILY LAW FORUM

CASELAW UPDATE WITH SOME THOUGHTS AND REFRESHERS (NOT REFRESHMENTS)

BY TOM TANIMOTO

COATES FREY HACKETT & GIBSON, AAL LLLC

The contents herein are not intended to be, nor construed as legal advice.

1

UP FIRST

- Refresher and Guidance on Coercive Control in FC-DA cases.
- Haven't seen any Hawaii cases yet on this issue, so California seems the place to look.

2

Domestic Abuse

- "Domestic abuse" means:
- (1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse, *coercive control*, or malicious property damage between family or household members;

See Haw. Rev. Stat. §586-1 (emphasis added).

3

TROs and Coercive Control in Hawaii

Haw. Rev. Stat. §586-1 defines coercive control as follows:

"Coercive control" means a pattern of threatening, humiliating, or intimidating actions, which may include assaults, or other abuse that is used to harm, punish, or frighten an individual. "Coercive control" includes a pattern of behavior that seeks to take away the individual's liberty or freedom and strip away the individual's sense of self, including bodily integrity and human rights, whereby the "coercive control" is designed to make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior including:

- (1) Isolating the individual from friends and family;
- (2) Controlling how much money is accessible to the individual and how it is spent;
- (3) Monitoring the individual's activities, communications, and movements;
- (4) Name-calling, degradation, and demeaning the individual frequently;
- * (5) Threatening to harm or kill the individual or a child or relative of the individual;
- (6) Threatening to publish information or make reports to the police or the authorities;
- * (7) Damaging property or household goods; and
- (8) Forcing the individual to take part in criminal activity or child abuse.

4

SOME THOUGHTS ON COERCIVE CONTROL

- In recent days, I've heard of more FC-DA cases where the term "coercive control" has been raised.
- With respect to FC-DA cases where *only* coercive control has been alleged as the cause of action (if there is such a case) what kind of court rulings have folks seen?
- How about in FC-D or FC-P/FC-PA cases?
- What differentiates "[e]xtreme psychological abuse [defined in chapter 586 as] an intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual, and that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer extreme emotional distress," from **coercive control**?
- The two are statutorily distinct, to be sure.

5

Haw. Rev. Stat. §580-10(d) *inter alia*

- "Whenever it is made to appear to the court after the filing of any complaint, that there are reasonable grounds to believe that a party thereto may inflict physical abuse upon, threaten by words or conduct, or harass the other party, the court may issue a restraining order to prevent such physical abuse, threats, or harassment, and shall enjoy in respect thereof the powers pertaining to a court of equity."
- This section doesn't contain the words "coercive control." However, does it nonetheless, authorize a court to enjoin coercive control? Maybe in certain cases.

6

What about Haw. Fam. Ct. R. 65?

- The rule is more general and allows for an applicant to request an order restraining someone from doing something.
- This rule, and Haw. Rev. Stat. § 580-10 are clearly more useful in cases where contact between the parties (and with children) is still desired or necessary, and safety is less of a concern.

7

Restraining Orders and Coercive Control

- *L.R. v. K.A.*, a case from California, was decided on July 27, 2021, and discussed during the 2021 Bar Convention Update;
 - Many examples were cited in terms of what the California appeals court, deemed to fall under the category of coercive control. Some of them are below are provided as guidance.
 - A former boyfriend, repeatedly contacted a former girlfriend, and showed up at the latter's home unannounced;
 - Husband downloaded text messages from Wife's phone and used them in court;
 - Ex-boyfriend enrolled in three of ex-girlfriend's college classes to keep track of her activities; and
 - Husband refused to hand over the parties' child to wife, until she would speak with him, and on one occasion, demanding that she hold his hand and kiss him.

8

Oogjen v. Pagan (unpublished)

California Court of Appeals, Fourth District, Second Division, decided August 5, 2022

- A more recent case from California.
- BACKGROUND OF THE PARTIES
- Oogjen obtained a 3 year protective order against Pagan, and the latter appealed. During the TRO proceedings, Oogjen was 26 and Pagan was 73. Oogjen also had a 7 year old son with another man.
- Pagan previously dated Oogjen's mother, and Oogjen knew Pagan since she was 8 years old.
- When Oogjen was 17, Pagan offered her money in exchange for a sexual relationship.
- The parties eventually "married," but never cohabitated. Oogjen believed Pagan's story that the marriage was not binding, but merely a ploy to protect her son from his biological father, and thereby, legally establish an avenue for Pagan to ultimately adopt him. The marriage was in fact, a legal one.

9

THE ALLEGED COERCIVE CONDUCT

- "Oogjen described various controlling and coercive behaviors by Pagan that prevented her from ending their arrangement sooner than she did." *Id.* at 2
- "He would use her son as a form of leverage over her, threatening to report that she was an unfit mother and have him 'taken away,' or to tell her son about their 'deal.'" *Id.*
- "He would threaten to distribute nude photographs and videos of her, or to expose private aspects of her personal and medical history." *Id.*
- "He controlled her finances, and had 'full access' to all of her accounts and records, including her phone and her text messages." *Id.*
- "He meddled in her relationships with friends and family, including by discouraging her from forming new friendships." *Id.*

10

Oogjen v. Pagan, con't.

- “He forbade her from discussing their *arrangement* with anyone, though he ‘encouraged’ her to ‘go date, go find a husband, everything,’ so their own relationship would be ‘covered up.” *Id.* (emphasis added)
- “If Oogjen attempted to refuse Pagan’s sexual demands, sexual relations ‘would still happen regardless.’ Pagan owned guns, and when he was upset or angry he would threaten to use them on her (‘I will pop one in your ass’).” *Id.*
- “Around 2018, Pagan purchased a house adjacent to Oogjen’s mother’s house, where Oogjen lived with her son, ostensibly to ‘protect’ Oogjen. According to Oogjen, her son had expressed that he is now scared to play in the backyard because Pagan is always watching’ him and is ‘very mean’ to him.” *Id.*

11

Oogjen v. Pagan

- There are more instances of alleged coercive conduct by Pagan, including sending Oogjen’s boyfriend an array of text messages, and a nude picture of her. *Id.* at 3
- Pagan was also alleged to have informed Oogjen’s boyfriend of certain private facts about her, and referred to her as a liar. *Id.*

12

Oogjen v. Pagan

- DID THE ADOPTION “PROMISED” BY PAGAN EVER OCCUR?
- NO, IT DID NOT.
- It may be thematic in other cases, where a promise to do something, may very well exert (at least partial) control over a party, because he/she believes they truly need something, and that only the alleged abuser can fulfill that need. Hence, the “controlled” party acquiesces in the controlling party’s inappropriate behavior, while patiently awaiting the latter to fulfill the promise.
- The *Oogjen* court ultimately affirmed the entry of the protective order.

13

Some FC-DA Statistics

- See the Judiciary State of Hawaii 2021 Annual Report Statistical Supplement, available at <https://www.courts.state.hi.us/wp-content/uploads/2021/12/AD-P-751-StatsRpt2021.pdf>
- This supplemental report issued at the end of 2021, covers the period from July 1, 2020 to June 30, 2021
- Table 17 of the report, has some figures for the entire State with respect to the number and type, of filed and pending family court cases.

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Statewide filings from July 1, 2020 to June 30, 2021

- Divorce – 4292
- Annulment – 4
- Separation – 7
- Paternity – 1412
- UIFSA – 233
- Adoptions – 411
- Guardianships of the Person – 517
- Haw. Rev. Stat. §586 (a.k.a., the FC-DA Statute) – **4833**

15

The National Intimate Partner
and Sexual Violence Survey:
2010 Summary Report

- Released by the Centers for Disease Control and Prevention
- National Center for Injury Prevention and Control
- Division of Violence Prevention
- Released on November, 2011
- Available at https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf

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NISVS Continued

- From page 46 of the Report:
- Table 4.9 states that the Lifetime and 12 month Prevalence of Psychological Aggression by an Intimate Partner – U.S. Women, NISVS 2010, for “Any Coercive Control” are respectively, 48,972,000 and 12,689,000.
- Table 4.10 states that the Lifetime and 12 month Prevalence of Psychological Aggression by an Intimate Partner – U.S. Men, NISVS 2010, for “Any Coercive Control” are respectively, 48,105,000 and 17,253,000.
- More men than women, according to this report, are reported to face coercive control over a 12 month period.

17

CASES

- NOW ON TO SOME SELECT CASES
- We’ll go over: no-fault vis a vis property division, requests for relief in a default scenario, joint legal custody/tiebreaking authority, visitations gone bad and grandparent visitation rights.

18

Crofford v. Adachi
February 28, 2022
Published Hawaii Supreme Court Decision

- On *certiorari* review, the Supreme Court held that the parties' marital agreement and addendum are contrary to public policy, since its terms pertaining to property division, require a determination of whether a party engaged in misconduct. This is in light of the fact that Hawaii is a no-fault state.
- **ANALYSIS**
- The opinion noted that Hawaii became a no-fault divorce state in 1972, thereby eliminating fault as a grounds for divorce. Haw. Rev. Stat. § 580-41 is the no-fault statute, which allows for a divorce upon only certain grounds, including an irretrievably broken marriage, but not for fault. However, even prior to such legislation, the court previously determined many years earlier, that conduct was not relevant to the issue of property division.
- Although Husband did not contest whether he violated the terms of the marital agreement, if he had chosen to do so, the family court would have to determine fault.
- The court analyzed case law from various jurisdictions that are split with respect to the enforceability of marital agreements that punish misconduct. California and Iowa courts have invalidated conduct-based marital agreements, alongside strong policies favoring no-fault divorces, which Hawaii has adopted.
- Accordingly, an agreement that bases property division, on misconduct or fault, is not enforceable as it is contrary to Hawaii's no-fault divorce policy.

19

MD v. JR
July 29, 2022
Memo Opinion from ICA (unpublished)

- **BACKGROUND**
- Mother appeals from a family court order which entered default against her, and terminated Father's child support obligations to their adult child. She contends that the court erred by entering default and conducting a proof hearing, after which, the court granted relief beyond the four corners of Father's motion.
- **DISCUSSION AND CONCLUSION**
- Father filed a Motion for Post-Decree Relief (seeking a \$700.00 reduction in his child support payments) on May 22, 2018, which was scheduled for a contested hearing on November 16, 2018. Mother filed a motion to continue the hearing, which the family court denied. However, the court allowed mother to appear by phone to explain why she wanted a continuance. Twenty minutes prior to hearing, Father filed a document entitled, "[Father's] Objection to Allow [Mother] to Appear by Telephone at November 16, 2018 Evidentiary Hearing on [Father's] Motion for Post-Decree Relief Filed 5/22/2018[.] Motion for Default," seeking a termination of child support. At hearing, Mother failed to appear in person or via telephone, and the court entered default against her, terminated Father's child support obligations and accorded him a \$700 credit per month from September 1, 2017 towards any child support arrearages.
- The ICA found that Mother was not served with Father's request to terminate child support, said request being embodied in his Motion for Default, which was the motion filed 20 minutes prior to hearing. As a court cannot grant relief that is different or greater than that which was sought in Father's Post-Decree Motion, the default judgment is void.
- The ICA also determined that because Mother had filed an opposition and position statement as to Father's prior post-decree motions, and attended an earlier hearing on same, it was an abuse of discretion to enter default against her.
- Thus, the default judgment was vacated.

20

Why Discuss *MD v. JR*?

- I thought this case was important to the extent that it made clear that you can't just add on more requests for relief in court, that were not set forth in the motion at bar.
- We've all tried making an oral motion to address things that "come up."
- What's everyone's record of success, in terms of making oral motions on substantive issues?
- Oral motions for attorney's fees and costs are a different creature.

21

Thoughts on *MD v. JR*

- Many of us have or will encounter situations where we assume certain issues are so related to the matter at hand, that relief will be granted as to those issues, despite the motion at bar not specifically requesting such relief. For example, does a change in physical custody from joint to sole, necessitate a recalculation of child support, notwithstanding the absence of any request to modify same? Or, can the court, order a change in physical custody, despite the absence of a resulting and specific visitation schedule being requested?
- We also have or will encounter a situation where the opposing party defaults on a Motion to Set. Will failing to attach a proposed divorce decree to a position statement, or a proposed order to Pre/Post Decree motions, lead to gaps or holes in the decree/order that is ultimately issued?

22

IT'S ALL ABOUT GETTING NOTICE RIGHT?

- **DUE PROCESS**

23

SIDE NOTE

- I recall a time when parties to a divorce needed to be very careful when placing global settlements on the record, in lieu of, or without, an actual agreed-upon decree being filed as an attachment to an expedited order.
- Unless the entire decree was read, word for word into the record, there was an anecdotal – as far as I know – risk that any Rule 58 disagreement as to its terms, could result in the court, possibly entering only what was placed on record, be it bullet points, or summarized terms, as the final decree of divorce.
- To try and close *some* of the gaps, be it on default or an agreement, consider this next case.

24

Retutal v. Retutal Case
ICA CAAP 10-000126
Decided August 29, 2014

- Certain boilerplate is likely permissible, even if not placed on record.
- Consider this provision – “Any intentionally undisclosed asset owned by a party at the time of divorce, shall be awarded to the other party.”
- Can a court, *sua sponte*, add such a provision to a divorce decree?
- Yes.
- “A family court is authorized . . . to augment the settlement agreement by adding reasonable, nonsubstantive enforcement provisions.” Such language is deemed neutral and applies equally to both parties and is not prejudicial to any party, with respect to an agreement that was silent as to said issue.

See page 2 of the slip opinion.

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Furthermore. . .

- If party A filed a motion requesting certain relief, is it appropriate for party B to seek relief by way of an opposition memorandum, as opposed to a cross-motion?
- E.g., party A files a motion seeking sole physical custody of a child. Can party B request sole physical custody of the child through an opposition memo? Or does party B have to file a separate cross motion seeking said relief?
- It’s safer to file a cross motion. Arguably, if the court denies party A’s motion, there’s no other moving papers or motion, before the court.
- Perhaps its theoretically possible to file a counterclaim to a motion instead of a cross-motion?
- I personally wouldn’t do it.
- LOL.

26

KS v. RS

May 27, 2022

Published Supreme Court Decision

- The primary issue on appeal centered on whether the family court can order joint legal custody with tie-breaking authority to a parent. While there were additional points of appeal raised by Mother, here, we will focus only on the legal custody issue.
- **RE: JOINT LEGAL CUSTODY AND TIE BREAKING AUTHORITY**
- The ICA analyzed case law from other jurisdictions, as well as Hawaii statutory authority, and determined that in the exercise of its discretion, a court is not precluded from ordering joint legal custody with tie-breaking authority, so long as such is in a child's best interests.
- There are obvious signs of the *Waldecker* case which underlie this opinion.

27

TF v. RD

May 9, 2022

Summary Disposition Order

- Father appeals from a post-decree order that required both parties to consent in writing to any travel undertaken by Father, with the minor child. The ICA affirmed.
- **BACKGROUND**
- Father obtained an ex parte order allowing him to travel from March 28, 2019 to April 2, 2019 with the minor child to Alaska (from Maui) by claimed in the underlying motion that such travel was authorized by the parties' divorce decree, but inhibited by Mother's refusal to cooperate.
- Subsequent to Father's travel with the minor child, Mother filed a motion to modify certain custody orders. Father's ex parte motion allowing him to travel to Alaska, with the minor child, was a pertinent part of Mother's moving papers. Therein, she stated that Father arranged for her to be served with the ex parte order, under the pretense of effectuating visitation. Mother claimed that she was not allowed to speak to the minor child during the trip, and said child returned to Maui, emotionally and psychologically damaged, which was confirmed by a licensed clinical social worker. As a result, the child required therapy. The social worker also reported that the child was fearful of being taken away again, and that any off-island travel should be planned in advance.
- The family court therefore issued an order, providing that it was in the child's best interest to allow Father to travel off-island, only if the parties' mutually agreed to such, in writing.
- **DECISION**
- On appeal Father claimed the family court abused its discretion, violated his constitutional right to travel and erroneously admitted evidence of his visitation history with the minor child.
- The ICA found that the family court's order requiring travel by consent, was supported by the record and based on the statutory best interest factors. As for the other points of error claimed by Father, the ICA noted that Father failed to cite to the record or any legal authority in support of his position, and as such, those contentions were deemed waived.

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TF v. RD

- This case illustrated the power of an expert witness, such as a psychologist, counselor, therapist, social worker, etc., to testify as to a child's psychological condition following a visit with a parent.
- We may encounter clients who inform us that a minor child doesn't want to visit with the other parent, or is afraid of visiting. Is it a safe assumption that there must be something bad going on?
- While I'm no expert, kids may often "like" the less-strict parent more, which without more, is usually insufficient to alter the balance as to what is in their best interests. E.g., "fun-time parent" vs. "school-time parent."

29

SC v. JC v. TG & AG (intervenors)

April 14, 2022

Published ICA Opinion

- Father appeals from an order denying his post-decree request to modify a Colorado court's order granting maternal grandparents, visitation with the subject children for a period of one week during spring each year, one week for Christmas each year, and two weeks for summer, each year. Specifically, Father requested that maternal grandparents' visitation occur only in Hawaii, where the children reside. The children's Mother had previously passed away.
- The record did not indicate that the Colorado order was ever appealed, and therefore, the family court deemed it valid and enforceable.
- Earlier in the proceeding, the family courts in Hawaii and Colorado, conferred as to jurisdiction, resulting in the latter relinquishing the matter to the former, as it was the children's home state.
- The harm to the child standard applies in this case where maternal grandparents overcame the presumption favoring Father's request to modify visitation, specifically, to limit their visitation within the State of Hawaii. A parent has a fundamental right to raise their child in the face of a third party, nonparent's request for visitation, so long as the parent's decision to deny such visitation does not result in harm to the child.

30

What were the Findings in *SC v. JC, et. al.*?

- Maternal grandparents and other family from Mom's side, are the only connection the children have with their Mother, who was at one time, their primary caregiver.
- Maternal grandparents have a significant relationship with the children.
- The children will suffer significant harm without visiting their maternal grandparents in Colorado, where they lived with mother and were raised by her for a good part of their life.

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Thank you.

- I would like to thank the organizers of the Family Law Forum, and specifically, attorney Dyan Mitsuyama for giving me the opportunity to present today on recent and select family law cases and associated issues.
- I also thank all of you for taking the time to somehow, listen to me on this Friday afternoon.



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