



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary

Representative Karl Rhoads, Chair

Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 25, 2016, 2:00 p.m.

State Capitol, Conference Room 325

By

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Bill No. and Title: House Bill No. 1585 H.D. 1, Relating to Guardianship.

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

Judiciary's Position: The Judiciary supports the intent of this measure, and requests an amendment.

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

The measure, as introduced, proposed to prohibit a guardian from restricting the personal communication rights of a ward, including the right to receive visitors, telephone calls, and personal mail. The House Committee on Human Services amended the measure to provide the guardian with the discretion to restrict such communications, if deemed by the guardian to pose a risk to the safety and well-being of the ward. OPG requests a further amendment to the measure



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to allow a guardian to better protect a ward from communications that may be detrimental to the ward.

Under the current measure, a guardian would be able to restrict only those communications that pose a risk both to the safety of the ward and the welfare of the ward. OPG submits, however, that there are situations in which communications between the ward and another person do not threaten the ward's safety or physical security, but still pose a risk to the ward's welfare. For instance, OPG has a client who, after having suffered a stroke, is unable to speak and confined to her wheelchair and bed. Recently, the client's husband visited her in her long-term care facility and attempted to obtain her signature on a document that relinquished the client's future rights to annuity benefits. OPG was alerted to the situation by the facility's social worker and was able to intercede.

Another OPG client is developmentally disabled. The client's father has occasionally tried to call the client while inebriated, sometimes demanding to speak to his son in the middle of the night. OPG presently requires the client's father to first contact the guardian, who ensures that the father is sober before allowing him to speak to his son. Thus, OPG makes every effort to respect and preserve a ward's right of personal communication while protecting against threats to their health or welfare.

For the above reasons, we respectfully request that the bill be amended by substituting the phrase "safety and well-being of the ward" with the phrase "safety *or* well-being of the ward." As amended, HRS § 560:5-316(c)(2) would read:

[A guardian, without authorization of the court, shall not] Restrict the personal communication rights of the ward, including the right to receive visitors, telephone calls, and personal mail, unless deemed by the guardian to pose a risk to the safety or well-being of the ward.

Thank you for the opportunity to testify on this measure.