

Hawai'i Access to Justice Conference
"Access to Justice and the Time of COVID"
June 25, 2021

Workshop Summary¹

"Family Law and Access to Justice"

Panel presenters: Gemma-Rose Poland Soon, facilitator, Judge Rebecca Copeland, Tom Farrell, and Angelina Mercado

Family Law and Access to Justice: Discussion of the impact of the pandemic on domestic violence and the Family Court with a focus on the addition of coercive control to restraining order cases.

Impact of the Pandemic on Domestic Violence:

- The world saw a domestic abuse crisis during the COVID-19 pandemic. As more people stayed home, many victims were locked in with their abusers, and some domestic abuse support services were put on hold.
- Domestic violence incidents rose in the United States by about 8.1% after the imposition of pandemic-related lockdowns, many according to an analysis by the national on COVID-19 and Criminal Justice. Many believe that this rise is actually much greater.
- Why? Experts theorized that economic issues exacerbated factors associated with domestic violence, such as unemployment, financial insecurity and stress from child care and homeschooling. Ongoing job loss, government inaction, judicial backlogs and many other facts have all contributed to what the United Nations is calling a "shadow pandemic."
- 46% on increase on hotline calls for DV.
- What is going on in HI? - Lack of resources, COVID-19 restrictions, COVID-19 fear (I.e., if abuser arrested will catch COVID in prison? - will my abuser be released from prison because of COVID?)

Impact of the Pandemic on the Family Court:

- Courts shut down in March 2020
- Courts closed until April 30, 2020
- Select proceedings, including those on Petitions for Orders for Protection

¹ This workshop summary was prepared by Shaela Garces, Paralegal, Legal Aid Society of Hawai'i.

- Operationally – no negative impact – increased access for how public can join I.e., zoom, WebEx and by phone.
- Decrease in cases seen at court house – (public) don't know courts open
- Decrease in cases at court does not necessarily mean DV has decreased
- Common theme seen: multi-family (generation) dwelling issues

Coercive control -- control of another person's behavior by using force or threats or by causing fear

- Power and control wheel
- Using Intimidation: Example: not physically hitting the person, but possibly objects around them.
- Using Emotional Abuse: name-calling, putting you down,
- Using Isolation
- Minimizing, denying, blaming AND gas-lighting
- Using children or another 3rd party
- Using Privilege
- Using Economic Abuse: threatening to cancel someone's insurance to stop from seeking medical attention, withholding stimulus payments

"Yes, the court is definitely looking at these aspects (power and control wheel) of DV when it comes to Orders of Protection, especially at the ex parte level. The new definition (of DV) allows nuances for what is going on in someone's life."

HRS 586-1 Statutory definition

- Australian origin
- Hawaii became first in nation to adopt coercive definition
- Some serious concerns on vagueness – particularly pointed out on 1,2,3...
- Example provided on issue with HRS 586-1 STATUTORY DEFINITION: A client took spouse's car keys away because she was taking drugs – he did not want her to drive; however, that could be seen as power and control.

Petition for an order of protection

Adds a box for coercive control

Standard of Review/Burden of Proof

- Domestic abuse has occurred or there is an imminent threat of abuse
- Respondent has failed to show cause why the order should not be continued
- A protective order is necessary to prevent domestic abuse or a recurrence of abuse
- Burden of Proof: Preponderance of the evidence

Judges can explain what preponderance of the evidence is to parties - The

difference between criminal and civil cases

- a lot of pro se respondents. 50%+1.

Judge decision: "Whoever I believe more than the other between each allegation."

What helps Honorable Copeland – definitions – fitting into some kind of legal standard/definition.

Access to Justice Considerations

- Access to DV resources
- Access to the courts/court resources
- Access to technology
- Help for the self-represented
- Justice for Respondents
- Implication of finding of abuse on custody determinations
- Other barriers to access to justice

Misc. Notes

- Family court is looking to switch over to zoom starting next month
- Access for Respondents
- VLSH, clinics 2-3 times a month
- Honorable Copeland has not seen a negative effect on credibility in DV hearings
- Argument that it may be a bit more difficult with being in person with masks over their faces