Family Court of the First Circuit — THE JUDICIARY • STATE OF HAWAI'I
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FRANCES Q.F. WONG
SENIOR JUDGE

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CIRCUIT COURT JUDGE

RHONDA A. NISHIMURA
CIRCUIT COURT JUDGE

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July 31, 2008

MEMORANDUM

TO: Family Court Judges and Staff
Department of Human Services
Department of Education
Department of Health
Attorneys and Guardians ad Litem (in H.R.S. Chapter 587 cases)
Family Law Division, Department of the Attorney General
Child Law Section, Hawaii State Bar Association
Foster Families Program

FROM: Frances Q. F. Wong
Deputy Chief Judge/Senior Family Court Judge

Bode A. Uale
Lead Judge, Juvenile Division

RE: Family Court Policies Regarding Youth Attendance in Court for H.R.S. Chapter 587 Cases

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The Family Court judges of the First Circuit have agreed to the following policies and will be applying them in their courtrooms. Although the statewide family court judges have already adopted a general policy welcoming youth's participation in their proceedings, the judges of the first circuit will be applying the following guiding procedural principles effective October 1, 2008 (*i.e.*, for all hearings on and after October 1, 2008).

Youth aged 14 years and older shall appear at all post-adjudication hearings in their H.R.S. Chapter 587 cases unless they are unable to be located, unwilling to appear, or the court has determined it is against their best interest. We request that the Department of Human Services (DHS), other foster and permanent custodians, and the

child's guardian ad litem (GAL) support this endeavor and they will encourage both the youth and the families they live with to participate. At a minimum, the child and the family he/she resides with will be noticed (either orally or in writing) by the GAL no later than two weeks prior to the hearing. The GAL's filed report will report on the date and the manner of notice given.

The GAL report will inform the court whether the child will be appearing. If the child declines to attend, the GAL will inform the court the reasons given by the child, the GAL's analysis of the reasons given, and how the GAL attempted to educate the child on the advantages of his/her involvement in court proceedings (including specific advantages and services offered by various agencies and/or under John Chafee Foster Care Independence Program). These children may, if they wish, write a letter to the judge instead.

In all cases, the court retains the discretion and authority to order a child's presence.

Judges will attempt to conduct hearings in a manner assuring the safety and well-being of the youth. For example, in sex abuse cases, the review could be bifurcated so that the youth can appear first without the presence of the abuser in the courtroom. Similarly, the judge may request that all "non-essential" persons leave the courtroom for the duration of the hearing. The court will also act on requests by youth who want to bring a trusted significant adult who may not be a party to the action. We ask that the GALs and the DHS assist us by providing us with the necessary information in time so that appropriate arrangements can be fashioned in advance of the hearing, consistent with the safety of the child and due process considerations for the child, the parents, and the other parties. The Child Witness Room may be available for use while the case is waiting to be heard. Any youth using this room must be accompanied by DHS or the GAL. Please request this through the court officer. Similarly, DHS and/or the GAL shall inform the court officer and/or the judge if they believe that extra security will be required in and/or outside of the courtroom.

We acknowledge that youth will not want to come to hearings if they believe the hearings are irrelevant and bothersome. We ask your help to avoid this outcome.

We recognize that, for a variety of reasons, youth may not wish to attend hearings regularly and/or frequently or it may not be a child's best interest to attend the usual court proceedings. Therefore, the court will be establishing Birthday Reviews (the settings will begin in October which means that the actual hearings will not begin until 2009). These hearings may take place in the afternoon. The next regularly scheduled review/post-disposition hearing in a given case will be set within one month prior to the child's birthday. However, besides any other necessary tasks, a primary purpose will be to celebrate the child. Therefore, the child will be expected to attend. If a child is simply too fragile to deal with substantive matters, the hearings can be tailored to their best interests and could simply be a celebration for the youth and a reminder to the rest of us regarding the focus of the case; directly after (or even at a different time), a more

substantive hearing can be held with the child's presence waived. Strong consideration should be given to securing the presence of siblings at these birthday reviews.

Children 13 years old and younger are similarly welcomed in our courtrooms. However, we recognize that there are many more considerations regarding their presence in our courtrooms and so we will approach these cases on a "case-by-case" basis.

In foster custody cases, the DHS is responsible to arrange transportation to court and to ensure that the necessary excuses have been made to the school. In family supervision cases, the parents will be responsible for these tasks but both the DHS and the GAL should monitor the arrangements so that no child is prevented from attending due to the parents' actions/inactions.

The DHS and the GAL have joint responsibility of preparing any child for court and to "debrief" them after court and/or arrange for their debriefing by a trusted adult. Preparation should include, without limitation, knowing who will be present, courtroom "etiquette", and making a list of comments and/or questions to present during the hearing. "Debriefing" should include, without limitation, ensuring that the child understands what occurred in the courtroom and listening to and noting the youth's feedback about what "worked" and specific ideas for making hearings better for young people. Foster parents are also encouraged to attend court proceedings. However, if the foster parents are not present, DHS must tell them what happened so that the foster parents can best support the child.

Thank you for your anticipated cooperation.