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COURT APPOINTED SPECIAL
ADVOCATES PROGRAM

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SPECIAL PROCEEDING TO
UNSEAL PORTIONS OF CHILD
PROTECTIVE ACT PROCEEDING

Case No. 1FFM-24-0000019
(Special Proceeding)

INTERESTED PARTY COURT
APPOINTED SPECIAL ADVOCATES
PROGRAM'S SUBSTANTIVE JOINDER
TO DEPARTMENT OF HUMAN
SERVICES' "MEMORANDUM IN
OPPOSITION TO MOTION TO UNSEAL
PORTIONS OF CHILD PROTECTIVE ACT
PROCEEDING OF ISABELLA P. KALUA
F.K.A. ARIEL SELLERS" FILED APRIL 1,
2024 (JEFS dkt. 47); MEMORANDUM IN
SUPPORT OF SUBSTANTIVE JOINDER;
CERTIFICATE OF SERVICE

Judge: Honorable Matthew J. Viola
Hearing Date: None

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INTERESTED PARTY COURT APPOINTED SPECIAL ADVOCATES PROGRAM'S
SUBSTANTIVE JOINDER TO DEPARTMENT OF HUMAN SERVICES' "MEMORANDUM
IN OPPOSITION TO MOTION TO UNSEAL PORTIONS OF CHILD PROTECTIVE ACT
PROCEEDING OF ISABELLA P. KALUA F.K.A. ARIEL SELLERS" FILED APRIL 1, 2024

Interested Party Court Appointed Special Advocates Program ("CASA"), by and through its undersigned attorneys, submits this substantive joinder to Department of Human Services' ("DHS") "Memorandum in Opposition to Motion to Unseal Child Protective Act Proceeding of Isabella P. Kalua f.k.a. Ariel Sellers[.]" filed on April 1, 2024, pursuant to Rule 10(a) of the Hawai'i Family Court Rules and Rule 7.2(g)(1)(A)(i) of the Rules of the Circuit Courts of the State of Hawai'i.

CASA agrees with DHS's position that this Court should deny Public First Law Center's ("Public First") "Motion to Unseal Portions of Child Protective Act Proceeding of Isabella P. Kalua f.k.a Ariel Sellers" (JEFS dkt. 1) because Public First failed to establish that unsealing such records "serves some other legitimate purpose." HRS § 587A-40(a) (2018). CASA requests the same relief sought by DHS's memorandum in opposition and asserts additional arguments in support of DHS's position in the attached memorandum in support.

DATED: Honolulu, Hawaii, April 22, 2024.

STATE OF HAWAII

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MEMORANDUM IN SUPPORT OF
SUBSTANTIVE JOINDER

MEMORANDUM IN SUPPORT OF SUBSTANTIVE JOINDER

CASA substantively joins in DHS’s “Memorandum in Opposition to Motion to Unseal Child Protective Act Proceeding of Isabella P. Kalua f.k.a. Ariel Sellers[,]” because Public First failed to establish that unsealing the requested Child Protective Act (“CPA”) proceeding records “serves some other legitimate purpose[,]” as required by HRS § 587A-40(a).

I. ARGUMENT

HRS § 587A-40(a) (2018) provides, in relevant part:

(a) The court shall keep a record of all child protective proceedings under this chapter. Written reports, photographs, x-rays, or other information that are submitted to the court may be made available to other appropriate persons, who are not parties, *only upon an order of the court*. The court may issue this order upon determining that such access is in the best interests of the child or *serves some other legitimate purpose*.

(Emphasis added.) Public First maintains that the Hawai‘i Supreme Court in *Kema v. Gaddis*, 91 Hawai‘i 200, 982 P.2d 334 (1999) “recognized that . . . public understanding can be a legitimate purpose for disclosure” of CPA proceeding records. JEFS dkt. 1 at PDF 12 (citing *Kema*, 91 Hawai‘i at 206, 982 P.2d at 340). *Kema*, however, supports a determination that the CPA proceeding records pertaining to Isabella should remain sealed.

In *Kema*, a reporter from the Honolulu Advertiser wrote to the family court seeking information about the disappearance of Peter Kema, Jr. (“Peter Boy”). 91 Hawai‘i at 202, 982 P.2d at 336. Judge Gaddis granted the limited release of information through an ordered synopsis¹ completed by DHS, but denied the release of all other court records. *Id.* at 202-03, 982 P.2d at 336-37. Judge Gaddis, in applying the predecessor to HRS § 587A-40,² determined that the limited release of information was in the “best interests of [Peter Boy]” and served the legitimate interest of potentially “assist[ing] authorities in locating [Peter Boy].” *Id.* at 202, 982 P.2d at 336.

¹ Judge Gaddis required that the synopsis was to include the following:

(1) the injuries suffered by Peter Boy when he first came to the attention of DHS; (2) the circumstances and allegations that caused Peter Boy once again to come to the attention of DHS; (3) all known accounts provided to the DHS and law enforcement authorities regarding the disappearance of Peter Boy, including (a) the location of the child when last seen, (b) the names of persons the child was alleged to have been with, (c) the date the child was last seen, (d) a photograph of Peter Boy, and (e) any other information or allegations that might help the public locate Peter Boy.

Kema, 91 Hawai‘i at 202-03, 982 P.2d at 336-37.

² The version of HRS § 587-81 (1993) to which the *Kema* court applied provided, in relevant part:

The court shall keep a record of all child protective proceedings under this chapter. The written reports, photographs, x-rays, or other information of any nature which are submitted to the court may be made available to other appropriate persons, who are not parties, only upon order of the court after the court has determined that such access is in the best interest of the child or serves some other legitimate purpose[.]

Kema, 91 Hawai‘i at 202 n.2, 982 P.2d at 336 n.2 (quoting HRS § 587-81 (1993)). This language remained largely unchanged through the recodification of the CPA in 2010. *Compare* HRS § 587A-40(a) *with* HRS § 587-81.

About a month later, the Honolulu Advertiser petitioned the family court for access to all of the confidential records of the child protective matter involving Peter Boy and his siblings. *Kema*, 91 Hawai‘i at 203, 982 P.2d at 337. The Honolulu Advertiser argued that unsealing the child protective matter record served two legitimate purposes: (1) “advance and protect the welfare of [Peter Boy]”; and (2) “assist[] the community in understanding what had transpired in Peter Boy’s case.” *Id.* Judge Gaddis granted, in part, Honolulu Advertiser’s petition, ordering a redacted version of the closed child protective matter to be open to public inspection. *Id.* at 204, 982 P.2d at 338. And even though Judge Gaddis acknowledged “the impact that additional media exposure [could] have on the other children in the family[,]” *id.* at 203, 982 P.2d at 337; he decided that “[i]t seems likely that additional publicity about these children would be potentially harmful and would not be in their best interest[,]” *id.* (emphasis omitted). Peter Kema, Sr. petitioned for a writ of mandamus to prevent any disclosure of the child protective matter records. *Id.* at 204, 982 P.2d at 338.

The supreme court recognized that while the release of further information to the media might serve some legitimate purpose, “the overriding concern of the Child Protective Act in determining whether to release such information remains the best interest of the children involved.” *Kema*, 91 Hawai‘i at 205-06, 982 P.2d at 339-40. “The interests of other parties and non-parties seeking information[,]” the court stated, “is *not as compelling* as the interests of the children involved.” *Id.* at 206, 982 P.2d at 340 (emphasis added). Despite Judge Gaddis’s effort to redact all information relating to Peter Boy’s siblings, the court determined that the “release of Peter Boy’s file would ultimately result in the release of a large number of documents related to the other children, a result unintended by Judge Gaddis and contrary to the intent and purpose of [the CPA].” *Id.* Because the cases were “inextricably intertwined” and release of redacted

information was not in the best interest of Peter Boy’s siblings, the supreme court enjoined Judge Gaddis from releasing the requested information. *Id.*

In this case, Public First confirms that “[t]he purpose of disclosure is not to help find a missing child.”³ JEFS dkt. 1 at PDF 13; *see also* JEFS dkt. 49 at PDF 4 (“The purpose here is not to help find Isabella.”). Instead, it claims that unsealing the requested portions of the CPA proceeding will allow the public to examine how Isabella’s case was handled and help ensure that other children do not meet that same fate. *See* JEFS dkt. 1 at PDF 13; JEFS dkt. 49 at PDF 4. These claimed legitimate purposes are nearly identical to those rejected by the supreme court in *Kema* because “the best interest of the children involved” are paramount to the interests of non-parties, like Public First or the public in general, seeking access to confidential CPA records. *See Kema*, 91 Hawai‘i at 205-06, 982 F.2d at 339-40.

The requested CPA proceeding records, like the second set of records requested in *Kema*, may likely involve a substantial amount of information pertaining to each of Isabella’s siblings that were also adopted by the Kaluas. *See* JEFS dkt. 1 at PDF 22, 34, 36, 42; JEFS dkt. 47 at 17-18. The information of Isabella’s siblings are therefore likely “inextricably intertwined” in Isabella’s CPA proceeding records. As such, the release of the requested portions of Isabella’s CPA proceeding records – even if redacted – will result in the release of a large number of documents related to Isabella’s siblings; a result, while unintended, runs contrary to the intent and purpose of the CPA. *See In re FG*, 142 Hawai‘i 497, 505, 421 P.3d 1267, 1275 (2018) (noting the purpose of the CPA is to serve the best interests of the children affected) (citing HRS § 587A-2 (Supp. 2016)). Thus, this Court cannot permit the requested portions of Isabella’s

³ This purpose, however, was the exact purpose that was deemed legitimate by Judge Gaddis (and viewed with tacit approval by the supreme court) in the first release of information in *Kema*. 982 Hawai‘i at 205-06, 982 P.2d at 339-40.

CPA proceeding records to be unsealed, even if redacted, because there is no legitimate purpose advanced by Public First to satisfy HRS § 587A-40(a). *See Kema*, 91 Hawai‘i at 206, 982 P.2d at 340.

Public First also asserts that the four “legitimate state purposes” set forth in Hawai‘i Administrative Rule (“HAR”) § 17-1601-6(16) support its request to unseal portions of Isabella’s CPA proceeding records. JEFS dkt. 1 at PDF 9-11. Specifically, Public First maintains that the Legislature, in enacting the current version of the CPA in 2010, “declined to amend the [legitimate purpose] standard[,]” which “is strong evidence that the Legislature endorsed DHS’s recitation of ‘legitimate purposes’” in HAR § 17-1601-6(16). JEFS dkt. 1 at PDF 11. Public First’ attempt to employ some version of the *in pari materia*⁴ cannon of statutory interpretation and the agency deference standard⁵ to lend some guidance on the unambiguous meaning of “legitimate purpose” in HRS § 587A-40(a) is merely a distraction. *See Fragiao v. State*, 95 Hawai‘i 9, 18, 18 P.3d 871, 880 (2001) (“[W]here the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning.” (citation omitted)).

⁴ HRS § 1-16 (2009) provides:

Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called in aid to explain what is doubtful in another.

The supreme court observed that “the *in pari materia* canon is used to resolve statutory ambiguity, not create it.” *State v. Obrero*, 151 Hawai‘i 472, 478, 517 P.3d 755, 761 (2022).

⁵ This standard requires that “courts accord persuasive weight to administrative construction and follow the same” “where an administrative agency is charged with the responsibility of carrying out the mandate of a statute which contains words broad and indefinite in meaning[.]” *In re Water Use Permit Applications*, 105 Hawai‘i 1, 9, 93 P.3d 643, 651 (2004).

HRS § 587A-40(a) makes clear that “[t]he *court* shall keep a record of all child protective proceedings under this chapter.” (Emphasis added). HAR § 17-1601-6, unlike HRS § 587A-40(a), does not control or even relate to the disclosure of CPA proceeding records in possession of the family court; instead, this rule controls the disclosure of DHS’s records – defined as “all written, oral, electronic information gathered and maintained by the department [of human services] in its State central registry or in physical records[.]” HAR § 17-1601-2 – “pursuant to a legitimate *state* purpose[.]” HAR § 17-1601-6 (emphasis added). While “[a] court may look to ‘subsequent legislative history or amendments to confirm its interpretation of an earlier statutory provision[.]’ *Keliipuleole v. Wilson*, 85 Hawai‘i 217, 225, 941 P.2d 300, 308 (1997) (citation omitted), Public First’ reliance on the definition of “legitimate *state* purpose” in HAR § 17-1601-6(16) – which is different than the “legitimate purpose” phrase used in HRS § 587A-40(a) – is misplaced because this rule does not constitute either subsequent legislative history or an amendment to HRS § 587A-40(a) upon which this Court can rely. Thus, in light of the extensive statutory protections for CPA proceeding records,⁶ this Court is not bound by the definition of “legitimate state purpose” in HAR § 17-1601-6(16).

⁶ The supreme court also recognized the existence of extensive statutory protections of the confidentiality of CPA records:

The CPA provides for the confidentiality of records, and requires that its proceedings be closed to the general public and held without a jury. HRS § 587A-40; HRS § 587A-25 (Supp. 2016). Further, family court records in many types of cases involving children are not available for public inspection. HRS § 571-84 (Supp. 2016). Hawai‘i also provides for the confidentiality of DHS records regarding reports and investigations of child abuse or neglect, and the intentional unauthorized disclosure of a report or record of a report to DHS constitutes a misdemeanor. HRS § 350-1.4 (Supp. 2016).

In re FG, 142 Hawai‘i at 505, 421 P.3d at 1275.

CASA agrees with DHS’s position that Public First’ alternative request for a synopsis to be prepared by Special Master Stephen W. Lane must also fail. Judge Gaddis, in *Kema*, ordered DHS to prepare a synopsis for the Honolulu Advertiser, along with all other media representatives, to serve the legitimate interest of “assist[ing] authorities in locating [Peter Boy].” *Id.* at 202, 982 P.2d at 336. However, as previously emphasized, Public First confirmed that “[t]he purpose of disclosure is not to help find Isabella.” JEFS dkt. 49 at PDF 4; *see also* JEFS dkt. 1 at PDF 13. Public First cites no authority, and CASA finds none, that permits this Court to direct Special Master Stephen W. Lane to prepare a synopsis absent a “legitimate purpose.”

II. CONCLUSION

CASA requests and substantively joins in the request of DHS to deny Public First’ “Motion to Unseal Portions of Child Protective Act Proceeding of Isabella P. Kalua f.k.a Ariel Sellers[,]” filed on January 12, 2024. JEFS dkt. 1.

DATED: Honolulu, Hawaii, April 22, 2024.

STATE OF HAWAII

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that, on the date indicated below, a true and correct copy of the foregoing document was duly served upon the following parties through the US Mail, postage prepaid, or electronically by the Judiciary Electronic Filing System:

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