

Hawaii Family Law- Jurisdiction and Service of Process

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Adoption Proceeding – Jurisdiction

HI Rev Stat §578-1 – Who May Adopt; Jurisdiction; Venue.

Any proper adult person, not married, or any person married to the legal father or mother of a minor child, or a husband and wife jointly, may petition the family court of the circuit in which the person or persons reside or are in military service or the family court of the circuit in which the individual to be adopted resides or was born or in which a child placing organization approved by the department of human services under the provisions of section 346-17 having legal custody (as defined in section 571-2) of the child is located, for leave to adopt an individual toward whom the person or persons do not sustain the legal relationship of parent and child and for a change of the name of the individual. When adoption is the goal of a permanent plan recommended by the department of human services and ordered pursuant to section 587A-31, the department may petition for adoption on behalf of the proposed adoptive parents. The petition shall be in such form and shall include such information and exhibits as may be prescribed by the family court.

Adoption Proceeding – Service/Notification Requirements

HI Rev Stat §578-2 – Consent to Adoption

(a) Persons required to consent to adoption. Unless consent is not required or is dispensed with under subsection (c) hereof, a petition to adopt a child may be granted only if written consent to the proposed adoption has been executed by:

- (1) The mother of the child;
- (2) A legal father as to whom the child is a legitimate child;
- (3) An adjudicated father whose relationship to the child has been determined by a court;
- (4) A presumed father under section 578-2(d);
- (5) A concerned natural father who is not the legal, adjudicated, or presumed father but who has demonstrated a reasonable degree of interest, concern or responsibility as to the welfare of a child, either:

- (A) During the first thirty days after such child's birth; or
 - (B) Prior to the execution of a valid consent by the mother of the child; or
 - (C) Prior to the placement of the child with adoptive parents;
- whichever period of time is greater;

- (6) Any person or agency having legal custody of the child or legally empowered to consent;
- (7) The court having jurisdiction of the custody of the child, if the legal guardian or legal custodian of the person of the child is not empowered to consent to adoption;
- (8) The child to be adopted if more than ten years of age, unless the court in the best interest of the child dispenses with the child's consent.
- (b) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse, if the adult is married.
- (c) Persons as to whom consent not required or whose consent may be dispensed with by order of the court.
 - (1) Persons as to whom consent not required:
 - (A) A parent who has deserted a child without affording means of identification for a period of ninety days;
 - (B) A parent who has voluntarily surrendered the care and custody of the child to another for a period of two years;
 - (C) A parent of the child in the custody of another, if the parent for a period of at least one year has failed to communicate with the child when able to do so;
 - (D) A parent of a child in the custody of another, if the parent for a period of at least one year has failed to provide for the care and support of the child when able to do so;
 - (E) A natural father who was not married to the child's mother at the time of the child's conception or birth and who does not fall within the provisions of subsection (a)(3), (4), or (5);
 - (F) A parent whose parental rights have been judicially terminated under the provisions of sections 571-61 to 571-63, or under the provisions of any other state or other law by a court or other agency having jurisdiction to take the action;
 - (G) A parent judicially declared mentally ill or intellectually disabled and who is found by the court to be incapacitated from giving consent to the adoption of the child;
 - (H) Any legal guardian or legal custodian of the child sought to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after examination of the person's written reasons for withholding consent, is found by the court to be withholding the person's consent unreasonably;
 - (I) A parent of a child who has been in the custody of a petitioner under this chapter for a period of at least one year and who entered the United States of America as a consequence of extraordinary circumstances in the child's country of origin, by reason of which extraordinary circumstances the existence, identity, or whereabouts of the child's parents is not reasonably ascertainable or there is no reasonable means of obtaining suitable evidence of the child's identity or availability for adoption;
 - (J) Any parent of the individual to be adopted, if the individual is an adult eligible for adoption under subsection (b); and
 - (K) A parent whose parental and custodial duties and rights have been divested by an award of permanent custody pursuant to section 587A-33;
 - (2) Persons whose consent may be dispensed with by order of

the court. The court may dispense with the consent of a parent who comes within subsection (a)(3), (4), or (5) herein, upon finding that:

(A) The petitioner is the stepfather of the child and the child has lived with the child's legal mother and the petitioning stepfather for a period of at least one year;

(B) The father is a concerned father as provided by subsection (a)(5), herein, and has not filed a petition to adopt the child, or the petition to adopt the child filed by the father has been denied; or

(C) The father is an adjudicated, presumed, or concerned father as provided by subsections (a)(3), (4), or (5), herein, and is not a fit and proper person or is not financially or otherwise able to give the child a proper home and education.

(d) Presumption of paternity. A man is presumed to be the natural father of a child if:

(1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

(2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(A) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred days after its termination by death, annulment, declaration of invalidity, or divorce; or

(B) If the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;

(3) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; and

(A) He has acknowledged his paternity of the child in writing filed with the department of health;

(B) With his consent he is named as the child's father on the child's birth certificate; or

(C) He is obligated to support the child under a written voluntary promise or by court order;

(4) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(5) He acknowledges his paternity of the child in writing filed with the department of health, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted. If the acknowledgment is filed and not disputed by the mother and if another man is not presumed under this section to be the child's father, the department of health shall prepare a new certificate of birth in accordance with chapter 338.

(e) Notice of hearing; minor parent; consent authorizing selection of adoptive parents. No hearing of a petition for adoption shall be had unless each of the living parents of the child who falls within the provisions of subsection (a) and who has not consented to the proposed adoption, but who is alleged to come within the provisions of subsection (c)(1)(A), (B), (C) and (D) or (c)(2) of this section, and any man whose name appears as father on the child's birth certificate, shall have had due notice, actual or constructive, of the allegations of the petition and of the time and

place of the hearing thereof. Such notice need not be given to any parent whose parental rights have been legally terminated as hereinabove provided or whose consent has been filed with the court.

The minority of a child's parent shall not be a bar to the right of such parent to execute a valid and binding consent to the adoption of such child.

Any parental consent required hereunder shall be valid and binding even though it does not designate any specific adoptive parent or parents, if it clearly authorizes the department of human services, or a child placing organization approved by the department under the provisions of section 346-17 or some proper person not forbidden by law to place a child for adoption, to select and approve an adoptive parent or parents for the child.

HI Rev Stat §578-4 – Notice to Resident Nonconsenting Legal Parent Whose Rights Have Not Been Terminated. If a legal parent to whom notice must be given as aforesaid is a temporary restraining order may not have binding effect in any other family court proceeding, including child custody determinations under section 571-46, and the court in such proceedings may give de novo consideration to the facts and circumstances alleged in making later determinations affecting the parties, including determination of custody and visitation.

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