

## Pro Se Membership Program



# UNDERSTANDING ALL THINGS CHILD CUSTODY-HAWAII



By Tracey Bee  
The Divorce Solutionist

# A STEP- BY-STEP E-GUIDE

BY TRACEY BEE

[WWW.THEDIVORCESOLUTIONIST.COM](http://WWW.THEDIVORCESOLUTIONIST.COM)

## **LEGAL AND PHYSICAL CUSTODY IN HAWAII**

There are two types of child custody in Hawaii: physical and legal custody. "Physical custody" refers to where the child lives. A parent with physical custody lives in the same household as the child. If it serves a child's best interests, a judge may award parents shared physical, also called "joint physical custody".

Parents with joint custody will both have substantial time with their child, but their parenting time won't necessarily be equal. For example, in a joint custody relationship one parent might have the child Monday through Thursday morning, and the other parent would have the child from Thursday after school until Sunday night. See Haw. Rev. Stat. § 571-46.1 (2020).

"Legal custody" is a parent's right to make major medical, educational, or religious decisions on the child's behalf. In most cases, a judge will order parents to share legal custody so that both parents have a say in the child's upbringing. In cases where the parents have a contentious relationship, shared legal custody might not be in a child's best interests.

## CUSTODY DETERMINATION & BEST INTEREST OF A CHILD

Parents can reach their own custody agreements, subject to court approval. Some parents are able to negotiate a settlement agreement on their own or during a mediation session. In cases where parents can't agree, a judge will have to decide custody and visitation at trial.

In either situation, a judge will ensure that the custody arrangement meets a child's needs. Unlike many other states, Hawaii's child custody laws don't outline specific factors a judge should consider in a custody case.

Instead, a judge must assess any factor that affects a child's safety, health, and well-being. Generally, a court will look at the following factors to determine a child's best interests:

- the child's relationship each parent
- each parent's physical and mental health
- each parent's desire for custody
- each parent's willingness to put the child's needs first
- each parent's history of caring for the child
- each parent's willingness to encourage a relationship between the child and the other parent
- the child's health, emotional, and educational needs
- a child's wishes if of a sufficient age, intelligence, and maturity
- the child's relationship with siblings and extended family
- each parent's past or current drug or alcohol abuse
- either parent's history of domestic violence, and
- any other factor the court deems relevant. See Haw. Rev. Stat. § 571-46 (2020).

Hawaii custody laws presume that a parent who has committed family violence should not be entitled to sole or joint physical custody of a child. The law assumes that a child would not be safe in that parent's care. However, a parent can overcome that presumption by showing adequate safety measures are in place to ensure the child's safety and well-being.

A judge will watch for signs that a child is being coerced and will only let a child who can express an independent opinion testify in a custody proceeding.

## MODIFICATION OF CUSTODY

It is possible for one or both parents to request a modification to their child custody arrangement. If both parents have discussed and agree to a modification, and it does not harm the child in any way, their request will generally be granted and the modification will become legally binding. Should only one parent wish to make a modification, he or she will need to submit the request to the court – at that time, that parent will carry all the burden of proof as to why the modification should be made and what benefits the child will see from a change in their schedule.

The points the requesting parent will need to prove to the judge will include:

- The request modification is needed due to a significant change in the parent's and/or child's circumstances that makes the current child custody arrangement hard to follow
- That the request for modification will benefit the child in some way
- That the request for modification will benefit the child in such a way that it will outweigh the disturbances they will experience from the change

It has been found that reoccurring disturbances to a child's schedule or living situation can be detrimental to their well-being – because of this, Hawaii family courts will only honor a child custody modification if it is absolutely needed. This is why there is such a heavy burden on the requesting parent to prove the modification will be beneficial to the child in order to have their request approved.

Modification and relocation requests are handled in the same way in the Hawaii family court system – if both the parents agree to the relocation of the custodial parent, then a judge will just need to sign off on the request in order to make it legally binding. If one parent is making the request for relocation, he or she will need to prove why the relocation is necessary and how the relocation will be beneficial for the child involved.

Some of the areas of interest the judge will look at when reviewing a relocation request include, but are not limited to, the following:

- How old the child or children are
- The gender of the child or children
- If the child or children have any learning or physical disabilities that need to be accommodated
- The strength and dynamics of the relationship between the child or children and the custodial parent
- The strength and dynamics of the relationship between the child or children and the non-custodial parent
- Why the custodial parent is making the request for relocation
- What benefits the child or children will experience from the relocation, including any educational opportunities, better medical care, closer proximity to extended family members and so on

Depending on the age of the child or children, who they would prefer to reside with (while the court will take this into consideration, it will not be the sole basis of their decision)

## **GAL IN HAWAII**

[§587A-16] Guardian ad litem. (a) The court shall appoint a guardian ad litem for a child to serve throughout the pendency of child protective proceedings under this chapter.

## **RECUSAL OF JUDGE**

[https://casetext.com/statute/hawaii-revised-statutes/division-4-courts-and-judicial-proceedings/title-32-courts-and-court-officers/chapter-601-courts-generally/section-601-7-disqualification-of-judge-relationship-pecuniary-interest-previous-judgment-bias-or-prejudice#:~:text=Any%20judge%20may%20disqualify%20oneself,the%20pending%20suit%20or%20action.&text=Subsection%20\(a\)%20derived%20from%20C2%A7,of%20the%20Hawaiian%20Organic%20Act.&text=See%20JC%20Canon%202.&text=State%20v.](https://casetext.com/statute/hawaii-revised-statutes/division-4-courts-and-judicial-proceedings/title-32-courts-and-court-officers/chapter-601-courts-generally/section-601-7-disqualification-of-judge-relationship-pecuniary-interest-previous-judgment-bias-or-prejudice#:~:text=Any%20judge%20may%20disqualify%20oneself,the%20pending%20suit%20or%20action.&text=Subsection%20(a)%20derived%20from%20C2%A7,of%20the%20Hawaiian%20Organic%20Act.&text=See%20JC%20Canon%202.&text=State%20v.)

## **RULES OF CONDUCT FOR JUDGES**

### **CANON 1**

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

### **CANON 2**

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DI **CANON 3**

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE DUTIES OF JUDICIAL OFFICE.

## **ATTORNEY ETHICS**

[https://www.courts.state.hi.us/docs/court\\_rules/rules/hrpcond.htm](https://www.courts.state.hi.us/docs/court_rules/rules/hrpcond.htm)

# Tracey Bee

THE DIVORCE SOLUTIONIST

Former Family Law attorney with almost 20 years in Family Court. Providing services geared specifically towards the self-represented.

- ✓ Family Court Strategist,
- ✓ Coach & Consultant
- ✓ Mediator
- ✓ Parent Coordinator
- ✓ Blogger



862.800.7850

DIVORCECOACHESQ@GMAIL

WWW.THEDIVORCESOLUTIONIST.COM

FB Group: ProSe (Self Represented)

Divorce & Custody



@THEDIVORCESOLUTIONIST



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