



**2013
CHILD WELFARE LAW:
STATUTORY, CASE LAW
AND OTHER LAW
UPDATES**

**Hawaii Rules of Professional
Conduct**

- On June 25, 2013, the Hawaii Supreme Court Adopted the “New” Hawaii Rules of Professional Conduct, Effective January 1, 2014.
- http://www.courts.state.hi.us/docs/court_rules/pdf/2013/2013_hrpc_ada.pdf
- Summary of Noteworthy Amendments:
http://www.courts.state.hi.us/legal_references/attorneys/rule_changes_for_01_01_14.html

HRAP Rule 40.1 (a) (3)

- 30-Day Extensions of Time to File Applications for Writ of Certiorari with the Hawaii Supreme Court.
- The Rule Authorized the Appellate Clerk to Grant an Extension from 30 Days to 60 Days from the Entry of the Judgment on Appeal
- Amendment Changed the Rule to Authorizing the Appellate Clerk to Grant a 30-Day Extension from the Original Due Date (30 Days from the Entry of the Judgment on Appeal).
- http://www.courts.state.hi.us/docs/court_rules/pdf/2014/2013_hrap40.1am_ada.pdf

Uninterrupted Scholars Act P.L. 112-278

Amends the
Family Educational Rights and
Privacy Act of 1974
(FERPA),
20 U.S.C. § 1232g

- Authorizes Educational Agencies and Institutions (DOE) to Disclose a Student's Educational Records to Child Welfare Agencies (DHS), **WITHOUT** Parental Consent:
 - The Child Welfare Agency is Legally Responsible for the Care and Protection of the Student in Accordance with State Law, and
 - Not Disclosed to Other Agencies and Organizations, Unless they are Engaged in Addressing the Student's Educational Needs.
- 20 U.S.C. § 1232g (b) (1) (L)

- Authorizes the Release Pursuant to a Lawful Court Order or Subpoena, **WITHOUT** Prior Notice to the Parent (and without Parental Consent) when:
 - The Parent is a Party to a Court Proceeding Involving Child Abuse and Neglect, and
 - The Order/Subpoena is Issued in the Context of the (Child Welfare) Proceeding.
 - Exception to the Notice Requirement When a Student’s Educational Record is Disclosed Pursuant to Court Order or Subpoena.
- 20 U.S.C. § 1232g (b) (2)

**SUMMARY DISPOSITION
ORDERS
&
MEMORANDUM OPINIONS**
(See Handout)

In re A.S.,
____ Haw. ____, ____ P.3d ____,
No. CAAP-11-0001065,
2013 WL 1284349
(App. March 28, 2013) ; *cert.*
granted July 25, 2013.

Slip Opinion Available at
http://www.courts.state.hi.us/docs/opin_ord/ica/2013/March/CAAP-11-0001065op.pdf

Adoptive Couple v. Baby Girl,
____ U.S., ____, 133 S.Ct. 2552,
____ L.Ed.2d ____, 81 USLW 4590,
2013 WL 3184627 (June 25, 2013).

Slip Op. Available at
http://www.supremecourt.gov/opinions/12pdf/12-399_8mj8.pdf

- This Case was a “Pure Voluntary” Adoption Case. There was **NO** Underlying or Related State Child Welfare Case, or State Child Welfare Agency Involvement.
- The U.S. Supreme Court Reversed the South Carolina Supreme Court’s Decision Affirming the Family Court’s Denial of the Adoption Petition because the Adoptive Couple Failed to Prove the Indian Child Welfare Act (“ICWA”), 25 U.S.C. §§ 1901 et seq., Standards to Terminate the Indian Father’s Parental Rights Pursuant to 25 U.S.C. § 1912 (f) and (d).

- The U.S. Supreme Court **did not** address the Issue (the Question Presented) of Whether the Indian Father, a Registered Member of the Cherokee Nation but who was Never Married to the Non-Indian Mother, was a “Parent” as defined by 25 U.S.C. § 1903 (9).
- 25 U.S.C. § 1903 (9) Excludes “the Unwed Father” Where Paternity Has Not been “Acknowledged or Established.
- U.S. Supreme Court Assumed that the Indian Father was a “Parent.”

- The “Heightened” Termination of Parental Rights (“TPR”) Standard in 25 U.S.C. § 1912 (f): **does not** Apply when the Indian Parent never had Custody of the Indian Child.
 - the Indian Father “Abandoned” the Indian Child While the Mother was Pregnant, and
 - Did Not Provide Financial Support, and Attempt to Form a Relationship until the Indian Child was Four Months Old (When the South Carolina Adoption Petition was Filed).

- Based on the language of 25 U.S.C. § 1912 (f):

No Termination of Parental Rights May be Ordered in Such Proceeding in the Absence of a Determination, Supported by Evidence Beyond a Reasonable Doubt, Including Testimony of Qualified Expert Witnesses, that the **Continued Custody of the Child by the Parent or Indian Custodian** is Likely to Result in Serious Emotional or Physical Damage to the Child.

- The “Active Efforts” Requirement under 25 U.S.C. § 1912 (d) **did not** Apply because there was no Legal Relationship (Indian Family) to breakup:
 - The Indian Father “Abandoned” the Child Before the Indian Child’s Birth.
 - The Indian Father Never had Legal or Physical Custody.

- Based on the Language of 25 U.S.C. § 1912 (d):
 - Any Party Seeking to Effect a Foster Care Placement of, or Termination of Parental Rights to, an Indian Child under State Law Shall Satisfy the Court that Active Efforts have been made to Provide Remedial and Rehabilitative Programs Designed to Prevent the **Breakup of the Indian Family** and these Efforts have Proved Unsuccessful.
 - There was no “Indian Family” to Breakup.

25 U.S.C. § 1915 (a) Adoption Preferences

- The 25 U.S.C. § 1915 (a) Adoption Placement Preferences Do Not Bar the Adoption by a Non-Indian Family When No Other Eligible Candidates Seek to Adopt the Indian Child.
- The Adoption Preferences are Only Applicable When Persons with the Preference come Forward Asking to Adopt the Indian Child.