



**2015  
CHILD WELFARE LAW  
UPDATES**

# **HAWAI'I RULES OF COURT**

# HAWAI'I FAMILY COURT RULES

- Effective January 1, 2015.
- Major Changes to the HFCR.
- Motions Now Governed by HFCR Rule 10 (previously Rule 7).
- HFCR Rule 10 (d): Response to Motions.
  - Must file written response if supporting the motion or asking for a continuance. Per HFCR Rule 8 (d), response due one day before the hearing.
  - Non-Appearance is deemed waiver of objections.

# HAWAII RULES OF APPELLATE PROCEDURE (HRAP)

- Amendments to Clarify Procedures, effective July 1, 2015. Also, proposed ruled changes to clarify procedures, comment period ending August 14, 2015.
- HRAP Rule 25 (f). Change in Contact Information.
  - If representing a party in a case before an Appellate Court, must inform the Appellate Clerk within TEN days of the change, and
  - Update contact information in JEFS.

# APPELLATE CASES

# *Polm v. DHS,*

No. CAAP-13-0004020

(App. Dec. 30. 2014) (Memo.)

- Unidentified Perpetrator Case. One Month Old Child and Sibling Removed.
- Child and Sibling Returned to Father's Care Six Months later.
- Four Months later, Child Again Injured. Social Worker **Did NOT** Follow DHS' Procedures (As Stated in the "Green Sheets") in Assessing these Injuries, and later Injuries.
- Child later Died of Abusive Head Trauma.

## *Polm v. DHS*

- DHS held 50% liable for the Child's injuries.
- The Procedures in the "Green Sheets," the Child Protective Act and Hawai'i Administrative Rules created the standard of care for DHS.
- DHS breached the duty when the social worker did not follow the procedures

*A.C. v. A.C.*

134 Hawai'i 221, 339 P.2d 719  
(2015)



- The family court, in a child custody trial involving allegations of domestic violence, abused its discretion by strictly adhering to time limits.
- Court may set time limits, but must make an informed analysis of the time necessary afford each party a full and fair opportunity to present their case.
- Court must grant additional time if the proffered evidence is pertinent to the best interests of the child.

*Ohio v. Clark,*  
\_\_\_\_ U.S. \_\_\_\_, 135 S.Ct. 2173,  
\_\_\_\_ L.Ed. \_\_\_\_, 83 USLW 4484  
(June 18, 2015)

## *Ohio v. Clark*

- Criminal Defendant's 6th Amendment Right to Confrontation not violated when the trial court allowed testimony about the child victim's statements to the day care worker about the abuse.
- Day care worker was a mandated child abuse reporter. Statement was taken for purpose of reporting suspected child abuse.
- Statement was not testimonial: not taken for the purpose of obtaining evidence against the defendant.

*Kirkpatrick v. County of Washoe,*  
\_\_\_\_ F.3d \_\_\_\_, 2015 W.L. 4154039  
(July 10, 2015)

# *Kirkpatrick v. County of Washoe*

- 42 U.S.C. § 1983 Civil Rights Lawsuit against CWS social workers for removal of two year old from the hospital.
- When the State takes a child into foster care, the child is “seized” and is protected by the 4th Amendment.
- Parent does not have a 4th Amendment claim based on the child being taken into custody.
- The State’s taking the child into custody affects the parent’s 14th Amendment liberty interest to the care, custody and maintenance of his/her child.

# Federal Legislation

**PREVENTING SEX  
TRAFFICKING AND  
STRENGTHENING FAMILIES  
ACT, P.L. 113-183 (2014)**

- Enacted September 29, 2014.
- Effective Date September 29, 2015. One-Year Extension if State Legislation Required.
- Amendments to Title IV-E of the Social Security Act. Codified in 42 U.S.C. , Chapter 7, Subchapter IV, Title E.



## The Act Addresses the Following Subjects:

- Sex Trafficking, and Runaways from Foster Care:
- “Normalcy” for Children in Foster Care.
- Assisting Youth Transitioning Out of the Foster Care System.
- Improving Adoption Incentives and Extending Family Connection Grants.
- Improving International Child Support Recovery

# Sex Trafficking and Runaways

- Sex Trafficking of Children Under the Care of Child Welfare Agencies, and
- Children who Run Away from Foster Care.

# “Normalcy” for Children in Foster Care.

- “Reasonable and Prudent Parenting Standard” for Resource Caregivers.

# Assisting Youth Transitioning Out of the Foster Care System

# Improving Adoption Incentives and Extending Family Connection Grants

- DHS is Now Required to Notify the Parents of Siblings for Possible Placement, in Addition to those Family Members it is Required to Notify 30 Days After the Child is Taken into Foster Care.
- Siblings includes a Person Who Would Be a Sibling but, for the Termination of Parental Rights, i.e. Informing the Adoptive Parent of the Sibling.

# Enhancing a Better Response for Victims of Child Sex Trafficking

Title VIII of P.L. 114-22

Justice for Victims of Trafficking Act  
of 2015

The States (DHS) are Required to Assure and Describe in their CAPTA State Plans that they have:

- Provisions and Procedures Regarding Identifying and Assessing ALL Reports Involving Known or Suspected Child Sex Trafficking Victims, as defined by Federal Law.
- Provisions and Procedures for Training CPS Workers About Identifying, Assessing and Providing Services to Children who are Sex Trafficking Victims, including Efforts to Coordinate with State Law Enforcement, Juvenile Justice, and Social Service Agencies such as Runaway and Homeless Youth Shelters.

# The States are Required to Consider:

- Any Child who is the Victim of Sex Trafficking or Severe Forms of Sex Trafficking to be a Victim of “Child Abuse and Neglect” or “Sexual Abuse.
- The States have the Option to Apply this Definition to a Person who has not Reached Age 24.