The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Chris Lee , Chair
Representative Joy A. Buenaveentura, Vice Chair

Tuesday, February 11, 2020 at 2:00 p.m.
State Capitol, Conference Room 325

by
Christine E. Kuriyama
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: House Bill No. 2379, Relating to Divorce.

Purpose: Grants exclusive original jurisdiction in matters of annulment, divorce, and separation and other certain cases to the family court of the circuit in which an applicant is domiciled at the time the application is filed. Repeals the requirement that a person be domiciled or physically present in the State for a continuous period of at least three months before filing for divorce. Repeals the requirement that a person be domiciled or physically present in the State for a continuous period of at least six months before completing a divorce.

Judiciary's Position:

As the jurisdictional requirements set forth in HRS § 580-1 are a matter of policy for the Legislature to determine, the Judiciary does not take a position on this bill. Notwithstanding, we offer the following observations:

1. Although we do not have an ability to accurately predict the increase at this time, this bill will only increase the number of divorce cases filed.
2. While the filing of the divorce may be easier for a plaintiff, the court will have the same obligations to insure fair process, property division, and orders in the children’s best interests.
3. The parties may also find that they are stymied in resolving property issues. The court will not have jurisdiction over real property situated outside the State of Hawai‘i.

4. The Uniform Child-Custody Jurisdiction and Enforcement Act ("UCCJEA") will apply and the court will not have jurisdiction over child custody issues. This would require cases to be filed in two jurisdictions, i.e., Hawai‘i and the home state of the children.

5. The increase of filed cases will have a negative impact on the time frame in which divorce cases are resolved. In other words, these new cases involving a plaintiff who may not have a significant connection or contact with the State of Hawai‘i will compete with all other cases for the same judicial resources.

Thank you for the opportunity to comment on this bill.

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TESTIMONY OF ANTHONY A. PERRAULT
Regarding HB 2379, Relating to Divorce
Rep. Chris Lee, Chair/Rep. Joy A. San Buenaventura, Vice Chair
Tuesday, February 11, 2020 2:00 p.m.
Conference Room 325, State Capitol

Good afternoon Representative Chris Lee and Members of the Judiciary Committee:

I support the passage of House Bill 2379 because it will settle the longstanding ambiguity of the Family Court's jurisdiction and ensure that people who file for divorce in Hawaii do not lose the protection of the Court on account of circumstances beyond their control.

The problem with HRS 580-1 is that circumstances can lead the Family Court to have jurisdiction to initiate a divorce but not jurisdiction to grant the final divorce itself. For example, if a military member moves to Hawaii and files a Complaint for Divorce, according to *Puckett v. Puckett*, 94 Haw. 471 (App. 2000), the Family Court has jurisdiction over the case because the family is domiciled in Hawaii – i.e., present in Hawaii with the intent to remain.

The Court can, therefore, make temporary orders to stabilize the family, such as awarding child support and alimony, sole occupancy of a residence, and (after 6 months) custody and timesharing of children. But, if the plaintiff is subsequently transferred away from Hawaii before she has made an "application" asking the Court to grant the final divorce, the Court may lose jurisdiction over the case, and the parties may have to begin the process again in another state which may not yet have jurisdiction over the parties and/or their children. It should be noted, that it is not clear when a party has made an "application" asking the Court to grant the divorce.

When parties depart Hawaii without a final Divorce Decree, if the state(s) to which they have moved has a time requirement before it acquires jurisdiction over one or both of the parties, then the parties may have nowhere to turn for relief and protection. And if the Hawaii case is dismissed, any temporary orders issued by the Court are vacated.

Losing the protection of the Family Court is especially concerning in cases of domestic abuse where a spouse has fled her/his abuser. Occasionally, an abused spouse files for divorce and then flees Hawaii to escape her/his abuser. The abused spouse is still actively participating in the divorce process and wanting to complete the divorce. But as HRS 580-1 is presently written, the abused spouse cannot ask the Court to grant the final divorce unless she/he moves back to Hawaii for a period of six (6) months or commits perjury by stating an intent to return and

continue to be domiciled in Hawaii. The six (6) month prior requirement may cause the abused spouse to return to Hawaii and put her/himself and/or their children in danger of further abuse.

LATE

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Testimony for JUD on 2/11/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen M Gawrys	Dr. eileen gawrys. board of directors, Domestic Violence Action Center	Support	No

Comments: