



# Lockwood & Hartley, ALC

## Excellence In Family Law

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Address:

Kailua Professional Cntr II  
40 Aulike St., Ste 314  
Kailua, HI 96734

Tel: 808-263-6900

Fax: 808 263-6982

Attorneys:

Steven L. Hartley  
Frank T. Lockwood  
Elsa F. M. McGehee  
Seth R. Harris  
Jennifer A. Young

Paralegal Staff:

Kalani Kim  
Elsie Miyashiro

Office Manager:

Stephanie Suzuki

Admin Assistant:

Eileen Tortuga

Intake Coordinator:

Renee Salmo

### *Legal Insights*

By Steven L. Hartley

As all parents know, children grow up very fast. One minute we are changing their diapers and teaching them to walk and the next minute we are teaching them to drive and getting them ready for the prom. We need to slow down and create quality time with our children every day. Here are just a few simple and helpful ideas:

1. Short Conversations. If you're running late and your child wants to talk to you, don't make promises to talk later. Short conversations now are better than no conversations at all. Take five or ten minutes for a quick talk with your child and make sure you follow up later when you have more time.
2. Turn Off the Car Radio. Take advantage of valuable time when you are driving home. Use this time to talk to your kids about the day's events. The commute time can be a great opportunity to stay in touch with your kids.
3. Don't Bring Your Work Home. As much as possible, try not to bring your work home with you. If you complain about work when you get home, so will your children. Instead of complaining, remind yourself of the importance of fulfilling your commitments to other people and make sure you do the same with regard to the promises made to your children.
4. Use Technology. Take advantage of today's technology to help keep your communication with your children open. A quick call from the road, a fax from work late at night, or a spontaneous e-mail (or even just a simple voice mail message just to say hello) will not only keep you connected with your kids, but it can also *make an otherwise bad day very good*.

This edition features an article about custody. Below are some links relating to child custody in Hawaii. If you have any questions about custody or any other family law question, please call us at (808) 263-6900.

Child Support Enforcement Agency  
<http://hawaii.gov/ag/csea>  
Parents And Children Together  
<http://www.pacthawaii.org/events.html>  
Hawaii Children's Justice Center  
<http://www.courts.state.hi.us>

### IN A NUTSHELL: THE BASICS OF CHILD CUSTODY

In Hawaii, as well as most other states in the U.S., both parents generally share custody and responsibility for their minor children. However, when family relationships break down and legal actions are filed, parents should know and understand their rights.

In the event a court or administrative agency becomes involved, the Best Interests of the Child standard is the guiding principle for determining rights and responsibilities related to children. Rightly so, the welfare of the minor child or children involved is the priority because they are the innocent members in a divorce or paternity action with no say as to how or when it will proceed, even though the impact on them can be immense.

The law generally favors involvement of both parents in the life of their child in all areas, even when the parents are no longer married or living together. However, if a parent's actions are harmful to the child, the court will not hesitate in limiting that parent's influence.

In evaluating the rights of parents to exert control over their children, the idea of custody is divided into two major areas: Legal Custody and Physical Custody. Legal Custody involves the right of parents to make the major life-decisions that impact their minor children, including educational and religious issues and decisions, as well as decisions regarding medical treatment, employment or military service before becoming an adult. Physical Custody involves the day-to-day care of the child, focusing mainly on where the child will reside. Both Legal Custody and Physical Custody can be awarded to one parent or shared between both.

For Legal Custody, the law favors involvement of both parents as much as reasonably possible in order to maintain the child's connection to both parents and allow the child's exposure to the cultural and ethnic tradition and history of both parents. Generally speaking, unless a parent has demonstrated a significant negative influence on the child, the law will not completely deny the parent's involvement in decision-making.

For Physical Custody, several factors must be considered. Often times geographic distance, drastically different work schedules, or transportation problems prevent the parents from being able to share custody, so the court will have to award physical custody to one parent. The parent receiving sole Physical Custody is almost always the parent who has been the caregiver for the child to that point, as that parent will likely have the more reasonable schedule and immediate ability to ensure that the child's needs continue to be met.

The parent not awarded sole Physical Custody is not prevented from seeing the child and will generally receive a timesharing schedule that accommodates his or her (and the child's) schedule. The length and type of visitation will vary depending on the age of the child, the home of the non-custodial parent, the geographic distance between locales for the two parents, and any other issues (such as if there is a restraining order between the parents, or a parent is required to have supervised visitation due to prior problems that affect the visitation schedule).

As stated above, these rules are governed by and derived from the general Best Interests of the Child standard. As such, they are not inflexible and rigid and must be applied accordingly in each case.