

March 27, 2017; When Deploying Parents Can't Agree

In this, my last column on Guam's new military deployment law, I'll discuss what happens when the parents of minor children can't agree on the temporary custody terms needed to guide them during the deployment. This is the situation where the law has its most powerful impact because the results under the Uniform Deployed Parents Custody and Visitation Act can differ significantly from the way courts have traditionally handled such matters.

At any time after a parent receives a deployment notice, either parent may file a motion to determine custodial responsibilities with the appropriate court. Under the Act, the court can only grant a temporary custody order. A deployment itself cannot be used as grounds to permanently change an existing custody order.

The court *must* expedite the hearing and when necessary, allow electronic testimony from the deploying parent. If the parties had a prior written agreement, or the court had already entered an order designating custodial responsibility in the event of a deployment, that agreement or order will stand unless the opposing parent can prove significantly changed circumstances - not be based solely on the deployment itself.

Most significantly, the Act authorizes the judge to grant temporary caretaking authority to a nonparent if the judge finds it is in the child's best interest. Traditionally, courts have ruled that parents always have the first right to the custody of their child. So, if one parent wasn't able to exercise custody because of deployment, the child was routinely sent to live with the other parent, regardless of the circumstances. Under the Act, this is no longer the case.

A classic example where this may arise is when a divorced military parent with primary physical custody of a child has remarried. If the nonparent has established a close bond with the child prior to the deployment, and the child is attending school, the judge may find that allowing the child to remain in the nonparent's custody during deployment is in the child's best interest. In such a situation, the judge must specify what decision-making powers are granted to the non-parent - education, religious training, healthcare, extracurricular activities, and travel.

In addition, under the Act a judge can allow limited contact between the child and a nonparent who has a "close and substantial relationship" with the child. For example, if a child's grandparent routinely spends time with the child, the judge may order that the custodial parent allow these meetings to continue during the term of the deployment.

The court order must also include a provision for liberal contact during deployment between the deploying parent and the child, including electronic communications, unless such communication is contrary to the child's best interest.

Visitation provision must also be made for instances when the deploying parent is on leave or otherwise available to spend time with the child during deployment.

Although the Act precludes the parties themselves from changing an existing child support order during the term of the deployment, the judge may do so if the circumstances merit such a change.

Hopefully, the new Act will encourage separated or divorced military parents to reach an amicable agreement on custodial issues surrounding deployment. When this isn't possible, the Act ensures a smoother transition for their children.