

**Family Court of the Third Circuit  
State of Hawai'i**

**Ronald Ibarra**  
Senior Judge  
**Aileen Lum**  
Director

**District Family Judges**  
Ben H. Gaddis  
Victor M. Cox

**MEMORANDUM**

To: Third Circuit Court Judges and Bar  
From: Ronald Ibarra, Senior Family Court Judge  
Date: October 11, 1996

**PROOF OF UNCONTESTED DIVORCE THROUGH AFFIDAVIT**

Pursuant to Sections 580-5, H.R.S, the Family Court of the Third Circuit authorizes parties to and uncontested divorce to prove the case through an affidavit rather than by court appearance. Exact legal proof of every point is required in the affidavits.

The following process will be used in affidavit only cases:

1. The Affidavit of Plaintiff must be filed with the documents clerk before the case is set.
2. The Affidavit of Plaintiff must contain legal proof of every point required (see the sample affidavit attached). Utilize the attached sample as a guide and only include paragraphs in the affidavit which apply to your case. Be sure to include any other information in the affidavit which is necessary or would be helpful to the judge.

Such matters as circumstances justifying a variance from either child support guidelines or matters affecting the partnership model for division of property must be stated or you risk rejection of the proposed decree.

3. If not previously filed, the following documents must be filed with the Affidavit:
  - a. One or more of the following documents as proof of service:

- (1) Appearance and Waiver. The Appearance and Waiver must be filed in all non-default uncontested cases. It must be both hand-dated and signed

by the Defendant after the complaint has been filed. Family Court Rule 8(g) requires that the Appearance and Waiver “shall be filed within a reasonable time before the date of hearing.” If the Appearance and Waiver is not current within six months of the time of setting, the Plaintiff must submit a Notice of Hearing to the Defendant and file the Notice of Hearing with the Family Court Clerk at the time the case is set.

(2) Proof of Service, Statement of Mailing, or Affidavit of Publication:

- (a) Upon Defendant. If no Appearance and Waiver is filed, Proof of Service of the Complaint by personal service, Statement of Mailing with a return receipt signed by Defendant, or Affidavit of Publication must be provided if proceeding either by default or by agreement.
- (b) Upon Corporation Counsel. Proof of Service of the Complaint upon Family Support Division of Corporation Counsel must be filed if any party has a child who is a recipient of Aid to Families with Dependant Children (AFDC).

b. Income and Expense Statement and Asset and Debt Statements of Plaintiff and Defendant: Current financial statements must be filed by Plaintiff and Defendant unless Defendant has filed an Appearance and Waiver or is in default. Each party must hand-date and sign in black ink each of his/her statements.

- (1) Plaintiff. Plaintiff’s filed Income and Expense Statement and Asset and Debt Statement must reflect financial information that is current within 60 days of the setting date (not the hearing date) of the case. Plaintiff’s statements should reflect all known assets held in joint or sole names of the parties.
- (2) Defendant. Plaintiff must submit to the counter clerk either: (a) Defendant’s filed Income and Expense Statement and Asset and Debt Statement current

within 60 days of the setting of the case, or (b) A letter addressed to the Presiding Judge explaining why current financial statements are not available.

- c. Child Support Guidelines Worksheet (if applicable): Plaintiff must submit a filed copy of the child support guidelines worksheet in all cases where the parties have minor and /or dependent children. The worksheet must be signed by Plaintiff and Plaintiff's attorney and Defendant and Defendant's attorney if possible.
- d. Agreement Incident to Divorce (if applicable): All agreements must be filed, hand-dated and signed by both parties in black ink. The agreement should be signed before a notary or signature or counsel should appear on the agreement.
- e. Paternity Judgment (if applicable): If any minor children born during the marriage are not fathered by the husband, the case must be placed on the contested divorce calendar unless the paternity of the natural father has already been adjudicated in a paternity action. See Hawai'i Divorce Manual, 5th ed., Section 7 for appropriate procedures.
- f. Proposed Decree: A signed original decree and copies must be provided to the Family Court counter clerk together with the Certificate of Absolute Divorce.

Signatures: Stipulated decrees shall be signed by both parties and their attorneys. Each party must also hand-write the date in black ink next to his/her signature. If the decree incorporates and Agreement Incident to Divorce, only opposing counsel needs to sign the decree "approved as to form."

- g. Order for Income Assignment (if applicable): Plaintiff shall submit an original of the Order for Income Assignment (OIA) and copies to the Family Court counter clerk together with the decree. If no OIA is submitted because the obligator has no periodic income, or the parties have elected direct payments to the custodial

parent, and the defendants of the obligor parent are not receiving public assistance benefits, this should be explained in the Affidavit of Plaintiff. The Decree should nevertheless order that child support will be paid by OIA as soon as the obligor receives periodic income, and should further require the obligor to notify the Child Support Enforcement Agency in writing of the name and address of the employer or other payer as soon as he receives such income.

- h. Order Granting Motion: If Plaintiff is proceeding by default, a filed copy of the Order Granting Motion for Default must be submitted in all affidavit cases at the time the case is set. Otherwise, a hearing on a motion for default should be scheduled at the time of the uncontested divorce and the Notice of Motion will reflect the same date and time as the uncontested divorce.

4. In the affidavit only cases, the case file including all documents will be reviewed by the assigned judge on or about the date of the hearing. The judge, after a hearing without appearances, will note the disposition on the court's calendar as follows: a) granted; b) decree to be resubmitted (with corrections); or c) court hearing with appearances required.

Copies of the rejected decrees to be returned to attorneys (with the judge's notations) will be placed in the attorney's jacket for corrections. Copies of the rejected decrees to be returned to pro se parties (with judge's notations) will be mailed to Plaintiff for corrections and resubmittal to the court.