

## **INSTRUCTIONS FOR SERVICE BY MAIL AND POSTING IN LIEU OF PUBLICATION**

### **Follow These Instructions If:**

- You are trying to get a divorce but you cannot locate your spouse.

AND

- You have already tried to serve the divorce papers to your spouse by mail, and you were unsuccessful.

AND

- You cannot afford to pay the cost of notifying your spouse about the divorce by publishing a notice in the newspaper.

## **INSTRUCTIONS FOR SERVICE BY MAIL AND POSTING IN LIEU OF PUBLICATION**

Note: These instructions are an addition to, and should be read together with, the separate Uncontested Divorce packet. These instructions apply only to Service by Mail in Lieu of Publication (“in lieu of” means instead of). Be sure to read the other Divorce forms and instructions which explain the process, and identify the documents necessary, for the filing of a divorce.

1. The Law: The Plaintiff in a divorce must deliver the divorce documents to the Defendant according to the rules of service. Service means getting copies of the documents certified (a certified copy has a Clerk’s signature and a raised stamp on the copy) at the courthouse, and hand delivered (by a civil process server or by any person, other than the Plaintiff, who is over 18 years old) to the Defendant.

If the Defendant lives outside of Maui County, the Court may allow the Plaintiff to serve the Defendant the documents by certified or registered mail (with a return receipt requested and directions to deliver the documents to the Defendant only).

If the Plaintiff cannot locate the Defendant to serve the divorce documents, a legal notice must be published in the newspaper.

*If the Plaintiff cannot afford the costs of publication, and the Plaintiff has made careful efforts to locate the Defendant (including an attempt to serve the Defendant by mail), the Plaintiff may ask the court for permission to deliver the divorce documents by (1) mail and by (2) posting the documents at the courthouse that will hear the case.*

If the court grants the Plaintiff’s request for this type of service, the Plaintiff must mail certified copies of the divorce documents to the Defendant and to the Defendant’s closest known relative (if any can be found) by certified or registered mail with a return receipt requested and directions to deliver the documents to the addressee only. Copies must also be posted at the Courthouse that will hear the case.

Service is complete 30 days AFTER mailing. However, the law also gives the Defendant an additional 20 days to respond. Therefore, the divorce will not be granted until after this 50 day period.

2. The Process: If (1) you are unable to locate your spouse after careful and serious efforts (including an attempt to serve the Defendant by mail) and (2) you are impoverished and cannot afford the costs of publication, and (3) you wish to request a court order that service by mail and posting be permitted in lieu of publication, please follow the steps below:

Step 1: Complete the following forms:

- *Ex Parte Motion for Service by Mail and Posting in Lieu of Publication*
- *Order [ ] Granting [ ] Denying Ex Parte Motion for Service by Mail and Posting in Lieu of Publication*
- *Affidavit of Plaintiff*

Step 2: Take the forms to the Family Court Documents Section on the 1st floor at the Courthouse, 2145 Main Street Room 106, Wailuku. The Clerk will review the documents, tell you when to sign the documents, and tell you how many copies are needed. Leave the documents with a Clerk and they will contact you after the Judge has reviewed the documents. Allow at least 2 weeks for processing.

Step 3: If your order is granted, bring all documents:

- *Complaint for Divorce*
- *Summons to Answer Complaint*
- *Ex Parte Motion for Service by Mail and Posting in Lieu of Publication*
- *Affidavit of Plaintiff*
- *Order [x] Granting [ ] Denying Ex Parte Motion for Service by Mail and Posting in Lieu of Publication*
- *Notice to Attend Kids First* (if the parties have minor children)

to the Family Court Document Section on the 1st floor at the Courthouse, 2145 Main Street Room 106, Wailuku. The Clerk will tell you how many copies are needed. Be sure to ask that at least **3** copies of EACH document be CERTIFIED (signed and stamped by the Clerk). Leave 1 CERTIFIED copy of EACH document with the clerk for POSTING (the Clerk will then file a *Declaration of Posting*). Use the 2 certified copies of EACH document for mailing to the Defendant and to the Defendant's closest known relative.

Step 4: Mail one set to the Defendant and one set to the Defendant's closest known relative by registered or certified mail, return receipt requested, with directions to deliver to addressee only. Keep the postal receipts which show that you mailed the documents to each person. These receipts will need to be stapled to the appropriate Exhibit number in your *Plaintiff's Affidavit of Mailing in Lieu of Publication*, as Exhibit "1" for Defendant and Exhibit "3" for Defendant's relative.

Step 5: When you receive the envelope returned as undeliverable, or a signed return receipt, staple these receipts to the appropriate Exhibit number in your *Plaintiff's Affidavit of Mailing in Lieu of Publication*, as Exhibit "2" for Defendant and Exhibit "4" for Defendant's relative.

**Step 6:** Complete the *Plaintiff's Affidavit of Mailing in Lieu of Publication*. Do not sign the form. Bring the completed form to the Family Court Document Section on the 1st floor at the Courthouse, 2145 Main Street Room 106, Wailuku. The Clerk will tell you when to sign the form, and how many copies are needed.

**Step 7:** If at least FIFTY (50) days have passed since you mailed the documents to the Defendant as stated in Step 4 and if you have complied with Steps 4, 5 and 6, then file the Request for Non-Hearing Uncontested Divorce and submit your final documentation to the Family Court Documents Section on the 1st floor at the Courthouse, 2145 Main Street Room 106, Wailuku. Since the law provides that the Defendant has an additional 20 days after this 30 day period in which to respond to the Court, your hearing will not be scheduled until at least 50 days have passed since you first mailed the documents to the Defendant. Follow the divorce packet instructions for information about submission of the final documents.

**Americans with Disabilities Act Notice**



If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:

Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: [adarequest@courts.hawaii.gov](mailto:adarequest@courts.hawaii.gov). The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.