

INSTRUCTIONS FOR PRE-DECREE AND POST-DECREE MOTION FILINGS IN THE FAMILY COURT OF THE FIRST CIRCUIT

The Family Court of the First Circuit's procedures for scheduling hearings on *Motions for Pre-Decree Relief* and *Motions for Post-Decree Relief* are as follows:

- (a) All *Motions for Pre-Decree Relief* which are to be personally served within the Circuit will be set for hearing at 8:00 a.m. or 8:30 a.m. on a date certain, usually the Wednesday of the third week following the week in which the motion is filed.
- (b) All *Motions for Post-Decree Relief* which are to be personally served within the Circuit will be set for hearing at 1:30 p.m. on a date certain, usually the Wednesday of the third week following the week in which the motion is filed.
- (c) All *Motions for Pre- and Post-Decree Relief* which are to be personally served within the Circuit must be served on the Respondent by no later than noon on the Friday of the first week following the week in which the motion is filed.
- (d) If service of a *Motion for Pre- or Post-Decree Relief* is to be made other than by personal service within the Circuit, a hearing date will be set sufficiently far in the future to allow service more than 20 days prior to the hearing on the motion.
- (e) If service of a *Motion for Pre- or Post-Decree Relief* is to be made other than by personal service within the Circuit, a motion for an order authorizing service in the manner desired must be presented to the Court when the motion is filed. If it is not, the Court Clerk will assume that service will be by personal service within the Circuit, and schedule the hearing date accordingly.
- (f) A Notice to Attend Kids First must be submitted with all initial *Motions for Pre-Decree Relief*, where appropriate. The Court Clerk will assign a Kids First date. Ordinarily, the date will be the Wednesday evening one week before the hearing date.
- (g) If service does not occur in a timely manner, the Movant's counsel (or the Movant, if pro se) shall appear before the Family Court on the date and time set for the hearing, and state what attempts were made at service, and why service could not be accomplished. A new hearing date will be set by the Family Court. If service does not occur, and the Movant or Movant's counsel does not appear on the date and time set for the hearing, the motion will be dismissed without prejudice for failure to prosecute.
- (h) Any supplement to a *Motion for Pre- or Post-Decree Relief*, including a further supporting affidavit, must be filed and served on the Respondent by no later than noon on the Friday of the first week following the week in which the motion is filed.
- (i) Any written response by the Respondent to a *Motion for Pre- or Post-Decree Relief* must be filed and served on the Movant by no later than noon on the Friday of the week immediately preceding the week in which the motion is to be heard. If the motion seeks financial relief,

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the Respondent must provide the Movant with a copy of his or her two most recent pay statements, last W-2 statement, and last federal individual income tax return and file with the Family Court and provide the Movant current *Income and Expense* and *Asset and Debt Statements*.

- (j) A Movant with an emergency situation (domestic violence, extreme hardship, application for a kick-out order, etc.), may submit an ex parte motion for an order to set the hearing on an earlier date certain or on the first Wednesday 48 hours after service.

I. COMPLETION AND USE OF FORMS

A. MOTION AND AFFIDAVIT FOR PRE-DECREE RELIEF AND ATTACHMENTS

GENERAL INSTRUCTIONS

The Motion and Affidavit for Pre-Decree Relief, and the appropriate attachments, are used to request every type of available relief in a case where a Divorce Decree has not yet entered. More than one such motion can be filed in the pre-decree period.

MOTION AND AFFIDAVIT FOR PRE-DECREE RELIEF

All of the relief sought and the reasons why it is sought, must be clearly stated in the *Motion for Pre-Decree Relief*.

CAPTION. The caption on the first page of the motion must conform to the caption in the initial pleading in the case. The motion can be filed at the same time as the initial pleading. Provide all the information required in the top half of the upper right-hand box of the first page of the motion. Check the appropriate boxes to show all of the attachments which accompany the motion. Check the box indicating that the case is a “Domestic Abuse Case” if (and only if) paragraphs 10 and/or 11 in the motion are checked and completed.

- 1. CUSTODY AND VISITATION.** If orders are sought regarding legal custody, physical custody and/or visitation, request them in paragraph 1. State with particularity why the arrangement sought is best for the involved child(ren). Use the *Continuation Sheet* as necessary. Any custody and/or visitation request must be supported by a completed *Custody/Visitation Statement* and the Movant’s *Income and Expense* and *Asset and Debt Statements*. They must be dated current within sixty (60) days.
- 2. CHILD SUPPORT.** State the amount of child support requested. The Movant’s *Income and Expense* and *Asset and Debt Statements* must be attached. They must be dated current within sixty (60) days. If Respondent’s financial circumstances are known, a *Child Support Guidelines Worksheet* should be attached.
- 3. ALIMONY.** State the amount of alimony sought. The Movant’s *Income and Expense* and *Asset and Debt Statements* must be attached. they must be dated current within sixty (60) days.

4. **LEGAL FEES.** State the amount requested. The Movant's *Income and Expense and Asset and Debt Statements* must be attached. They must be dated current within sixty (60) days.
5. **OTHER PAYMENTS.** If orders are sought requiring the Respondent to make other payments, request them in paragraph 5. The Movant's *Income and Expense and Asset and Debt Statements* must be attached. They must be dated current within sixty (60) days.
6. **MEDIATION.** If an order requiring mediation is sought, request it in paragraph 6.
7. **CUSTODY STUDY.** Complete paragraph 7 to request an order for a social study by the Family Court on custody and/or visitation disputes involving the subject child(ren). The Family Court will, in some cases, appoint a special guardian ad litem for the subject child(ren). The appointment of such a guardian may be requested in paragraph 14. Where there is the appointment of a special guardian ad litem, a social study is usually not ordered.
8. **FINANCIAL RESTRAINING ORDER.** Paragraph 8 requests the entry of a restraining order prohibiting the unreasonable transfer of assets or incurring of indebtedness to preserve the economic status quo in the pre-decree period. The reasons justifying such a restraining order must be stated.
9. **RESTRAINING ORDER REGARDING CHILDREN.** Complete paragraph 9 to request a restraining order which prohibits the removal of the subject child(ren) pending the determination of custody and visitation issues in dispute. The reasons for the restraining order must be stated.
10. **DOMESTIC ABUSE RESTRAINING ORDER.** Complete paragraph 10 to request a restraining order prohibiting domestic abuse. A request for such a restraining order must state what physical and other abuse has occurred in the past and/or what abuse has been threatened.
11. **PRESENCE OF FIREARMS.** If the presence of firearms is suspected, paragraph 11 must be completed to show what firearms may be involved, their location, any history of the use of firearms, and the basis for any concern about the future use of firearms.
12. **RESPONDENT'S EMPLOYMENT CIRCUMSTANCES.** If the Respondent is a police officer, sheriff, some other law-enforcement officer, a member of the Armed Forces of the State of Hawai'i, a member of the Armed Forces of the United States, an employee of the State of Hawai'i, or an employee of the United States, paragraph 12 in the motion must state the Respondent's occupation, and include the name and address of the Respondent's supervisor. Depending on the Respondent's particular employment circumstances, the effect of a restraining order regarding firearms may vary.
13. **INFORMATION REGARDING RESPONDENT.** Information as the Respondent's

name, address, date of birth, telephone number, and last four digits of his/her social security number must be provided if paragraph 11 of the motion is checked and completed.

14. **OTHER RELIEF SOUGHT.** Any other relief which has not been specifically requested in the preceding paragraphs of the motion should be requested in paragraph 14. Examples include an order appointing a special guardian ad litem, an order referring designated financial issues to a special Family Court-appointed master, etc. Depending on the special and/or limited nature of the particular other relief sought, a separate motion may be presented at the option of the Movant.
15. **INVOLVEMENT IN OTHER CASES.** Paragraph 15 must be checked to indicate whether the Movant has ever been a party to any other legal proceeding.
16. **HISTORY OF PARTICIPATION.** The extent of the Movant's historic and present involvement in all other legal proceedings must be reflected in paragraph 16.

SIGNATURE AND ACKNOWLEDGMENT.

The Movant must the motion in the presence of a notary.

CUSTODY/VISITATION STATEMENT.

The Custody/Visitation Statement must be completed in its entirety if the motion seeks orders regarding legal custody, physical custody and/or visitation of the subject child(ren).

CONTINUATION SHEET.

Use the Continuation Sheet where space in the motion, or any of the attachments, is insufficient. A separate affidavit signed by the Movant may be included as part of the motion. If a separate affidavit is included, it must be listed as one of the attachments noted in the upper right-hand box on the first page of the motion.

ORDER FOR PRE-DECREE RELIEF.

The Order for Pre-Decree Relief directs the Respondent to respond to the Motion for Pre-Decree Relief and, depending on the contents of the motion, includes other orders. It is completed in part by the Movant, and in part by the Family Court, as follows:

- A. **ORDER TO APPEAR.** The Family Court will fill in the hearing date in paragraph 1. If service is to be made by personal service within the circuit, the Family Court will fill in a date certain, usually the Wednesday three weeks after the motion is filed. If service is to be made other than personal service within the circuit, the Family Court will set a hearing date sufficiently far in the future to allow the required 20 day notice to the Respondent.