

**INSTRUCTIONS FOR PRE-DECREE
AND POST-DECREE MOTION FILINGS
IN THE FIRST CIRCUIT FAMILY COURT
(EFFECTIVE DECEMBER 16, 1996)**

The Family Court of the First Circuit has amended the forms used to request pre-decree and post-decree relief in FC-D (divorce) cases. The new forms amend the forms which have been in use since April 1995. Those forms should be discarded once the new forms take effect. These amendments are necessary in order to accomplish the following:

- (a) The implementation of the First Circuit Family Court's new procedures for scheduling hearings on Motions for Pre-Decree Relief and Motions for Post-Decree Relief as set forth in the Family Court's memorandum dated October 16, 1996.
- (b) The implementation of Act 60 from the 1996 legislative session which requires a new form of restraining order relating to the use and possession of firearms.

The Family Court's new 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 and which are filed starting December 16, 1996 will be set for hearing at 8:00 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 and which are filed starting December 16, 1996 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 II must be submitted with all initial motions for Pre-Decree Relief, where appropriate. The Court Clerk will assign a Kids First II 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, 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 to the Movant current Income and Expense and Asset and Debt Statements.
- (j) For example, a Motion for Pre-Decree Relief which is to be personally served within the Circuit and which is filed anytime between January 6 and 10, 1997 would normally be set for hearing on January 29, 1997. Noon on January 17, 1997 would be the deadline for the Movant to serve the motion on the Respondent. Noon on January 17, 1997 would also be the deadline for Movant to file and serve any supplement to the motion. Noon on January 24, 1997 would be the deadline for the Respondent's written response, if any, and it would also be the deadline for the Respondent to file and serve his or her current Income and Expense and Asset and Debt statements, if the motion seeks financial relief.
- (k) 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.

Copies of the new forms are attached. The calendaring changes implemented by the new forms are effective on January 1, 1997. The new forms must be used for motions filed on and after December 16, 1996. They may not be used before then. The forms which have been in use since April 1995 must be used for motions filed through December 13, 1996. In the event that a motion filed on or before December 13, 1996 cannot be served in time to make it returnable by the last Monday in December, the Movant shall submit an Amended Order for Hearing on Motion. The new forms which are attached are described as follows:

- (a) Motion and Affidavit for Pre-Decree Relief and Attachments (Custody/Visitation Statement, Continuation Sheet, Order for Pre-Decree Relief)
- (b) Motion and Affidavit for Post-Decree Relief and Attachments (Custody/Visitation Statement, Continuation Sheet, Request for Conference or Short Trial, Scheduling Order for Post Decree Relief)
- (c) Proof of Service
- (d) Motion for Service by Mail and Affidavit; Order for Service by Mail
- (e) Amended Order for Hearing on Motion

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 of the information required in the top half of the upper right-hand box on 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) paragraph(s) 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 the 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 to the Respondent's name, address, date of birth, social security number and telephone 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 sign 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 by 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. Conform all copies to reflect the hearing date and time. The box next to paragraph 2. is pre-checked to set forth the deadline for service of the motion. The box next to paragraph 3. is pre-checked to set forth the deadline for the submission of any supplements, including further affidavits, to the motion. The box next to paragraph 4. is pre-checked to set forth the deadline for the presentation of a written response to the motion. Check the box by numbered paragraph 5. to require the Respondent to produce financial information but only if paragraphs 2., 3., 4. and/or 5. in the motion are checked and completed.

B. FINDINGS REGARDING FIREARMS Check the box next to numbered paragraph 1. if paragraph 11. in the motion is checked and completed. Check the box next to numbered paragraph 2. if paragraph 13. in the motion is checked and completed.

C. DOMESTIC ABUSE RESTRAINING ORDER Check the box next to numbered paragraph 1. if paragraph 10. in the motion is checked and completed. Check the box next to numbered paragraph 2. if paragraph 12. in the motion is checked and completed.

D. FINANCIAL AND CUSTODY RESTRAINING ORDER Check the box next to numbered paragraph 1. if paragraph 8. in the motion is checked and completed. Check the box next to numbered paragraph 2. if paragraph 9. in the motion is checked and completed.

E. SERVICE OF MOTION Check the box next to numbered paragraph 1. to require service of the motion and attachments by a police officer. Service by a police officer in a domestic abuse case is strongly recommended, although not required. A police officer effecting service has certain rights and responsibilities which other process servers do not. Check the box next to numbered paragraph 2. if paragraph 11. in the motion is checked and completed.

EFFECTIVE DATE OF RESTRAINING ORDERS The restraining orders contained in paragraphs C.1., D.1., and D.2. of the Order for Pre-Decree Relief are effective upon their service on the Respondent and remain in effect until the further order of the Family Court.

ENFORCEMENT AND PENALTIES The violation by the Respondent of a restraining order is a criminal act. The order requires its enforcement by all police and other law enforcement officers.

SIGNING OF ORDER A Family Court clerk will sign the Order for Pre-Decree Relief unless any of paragraphs B.1., B.2., C.1., C.2., D.2., E.1., or E.2. are checked, in which case a Family Court judge must sign the order.

B. MOTION AND AFFIDAVIT FOR POST-DECREE RELIEF AND ATTACHMENTS

GENERAL INSTRUCTIONS The Motion and Affidavit for Post-Decree Relief, and the appropriate attachments, are used to request every type of available relief in a case where a Divorce Decree has already entered. More than one such motion can be filed in the post-decree period.

MOTION AND AFFIDAVIT FOR POST-DECREE RELIEF All of the relief sought, and the reasons why it is sought, must be clearly stated in the Motion for Post-Decree Relief.

CAPTION The caption on the first page of the motion must conform to the caption in all of the other pleadings in the case. Provide all of the information required in the top half of the upper-right hand box on the first page of the motion. Check the appropriate boxes to show all of the attachments which accompany the motion.

A. MODIFICATION If orders are sought changing legal custody, physical custody and/or visitation, request them in paragraph 1. State with particularity why the change sought is best for the involved child/ren. If a change in an existing alimony order is sought, or if the establishment of alimony where alimony has been reserved is sought, request it in paragraph 2. State with particularity how the circumstances of the parties have changed materially since the last alimony order entered, or alimony was reserved. If a change in child support is sought, state what specific change is requested in paragraph 3. State with particularity how the circumstances of the parties and/or the subject child/ren have changed materially since the last child support order entered. If changes in other modifiable orders are sought, request them in paragraph 4. State with particularity the reason for the change. If modification of custody and/or visitation is requested, a completed Custody/Visitation Statement and the Movant's Income and Expense and Asset and Debt Statements current within sixty (60) days must be attached. If child support modification is requested, the Movant's Income and Expense and Asset and Debt Statements dated current within sixty (60) days must be attached. If the Respondent's financial circumstances are known, a Child Support Guidelines Worksheet should be attached. If alimony modification is requested, the Movant's Income and Expense and Asset and Debt Statements current within sixty (60) days must be attached.

B. ENFORCEMENT If enforcement of child support arrearages is sought, complete paragraph 1. If enforcement of alimony is sought, complete paragraph 2. If enforcement of an obligation to make other payments is sought, complete paragraph 3. If enforcement of other obligations is sought, complete paragraph 4. Complete paragraph 5. to specify the particular types of enforcement relief sought.

C. OTHER RELIEF SOUGHT

If contribution to the Movant’s legal expenses is sought, check the box next to numbered paragraph 1. If an order requiring mediation is sought, check the box next to numbered paragraph 2. If an order for a social study by the Family Court on custody and/or visitation disputes involving the subject child/ren is sought, check the box next to numbered paragraph 3. Any other relief which has not been specifically requested in the preceding paragraphs of the motion should be requested in paragraph 4. 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.

SIGNATURE AND ACKNOWLEDGMENT The Movant must sign 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 modifying 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.

REQUEST FOR CONFERENCE OR SHORT TRIAL

This part is optional. If both parties have agreed to request a conference with the Family Court in lieu of an initial hearing on the motion, check the first box and indicate the earliest date on which a conference should occur. If the parties agree that a short trial on the motion should be scheduled, check the second box and indicate the earliest date on which a short trial should occur. Do not request both a conference and short trial. If either a conference or a short trial is requested, check the third box and state with particularity why the parties believe that a conference or a short trial would be preferable to an initial hearing on the motion. Where a conference or a short trial is requested, both parties, or their attorneys, must sign.

SCHEDULING ORDER FOR POST-DECREE RELIEF The Scheduling Order for Post-Decree Relief directs the Respondent to respond to the Motion for Post-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:

- 1. **ORDER TO APPEAR** If a conference or a short trial has not been requested, check the box next to numbered paragraph 1. Do not fill in the blank; the Family Court will. If a request for a conference or short trial is made, and it is denied by the Family Court, the Court will complete numbered paragraph 1. appropriately. Conform all copies to reflect the hearing date and time.
- 2. **SERVICE** If a conference or a short trial has not been requested, check the box next to numbered paragraph 2. If a request for a conference of a short trial is made, and it is denied by the Family Court, the Court will check the box next to numbered paragraph 2.
- 3. **AMENDMENTS** If a conference or a short trial has not been requested, check the box next to numbered paragraph 3. If a request for a conference or a short trial is made, and it is denied by the Family Court, the Court will check the box next to numbered paragraph 3.
- 4. **RESPONSE** If a conference or a short trial has not been requested, check the box next to numbered paragraph 4. If a request for a conference or a short trial is made, and it is denied by the Family Court, the Court will check the box next to numbered paragraph 4.
- 5. **DOCUMENTS TO BE PRODUCED** Check the box next to numbered paragraph 5. to require the Respondent to produce financial information, but only if paragraphs A.1., A.2. and/or A.3. in the motion are checked and completed.
- 6. **APPROVAL OF STIPULATION TO WAIVE RETURN** If the Family Court approves either a request for a conference, or a request for a short trial, the Court will check the box next to numbered paragraph 6.
- 7. **SETTING OF PRETRIAL CONFERENCE** If the Family Court approves a request for a conference, the Court will check the box next to numbered paragraph 7. and indicate the date and time of the conference. Conform all copies to reflect the hearing date and time.

8. SETTING OF SHORT TRIAL If the Family Court approves a request for a short trial, the Court will check the box next to numbered paragraph 8. and indicate the date and time of the short trial. Conform all copies to reflect the hearing date and time.

SIGNING OF ORDER A Family Court clerk will sign the Scheduling Order for Post-Decree Relief. If a request for a conference or short trial is included in the motion, the clerk will first seek the approval of a Family Court judge before the clerk signs the order.

C. MOTION FOR SERVICE BY MAIL AND AFFIDAVIT; ORDER FOR SERVICE BY MAIL

INSTRUCTIONS AND USE Complete the Motion for Service by Mail and Affidavit; Order for Service by Mail where the Respondent will be served by registered or certified mail other than on the island of O‘ahu. The caption must conform to the caption in all of the other pleadings in the case. Provide all of the information required in the upper right-hand box. Provide the Respondent’s mailing address in the box in the center. The Movant must sign the motion in the presence of a notary. Check the appropriate boxes at the bottom to show which pleadings will be served by mail.

D. PROOF OF SERVICE

INSTRUCTIONS AND USE If the Respondent is to be served on the island of O‘ahu by an authorized process server, complete the Proof of Service. The caption must conform to the caption in all other pleadings in the case. Provide all of the information required in the upper right hand box. Check the appropriate box under the heading “Documents Served” to show what documents will be served. The process server will complete the Proof of Service and file it with the Family Court once service has been made or, despite due and diligent search, service cannot be made.

E. AMENDED ORDER FOR HEARING ON MOTION

INSTRUCTIONS AND USE The forms which have been in use since April 1995 must be used for motions filed through December 13, 1996. This form should be used in the event that a motion filed on or before December 13, 1996 cannot be served in time to make it returnable by the last Monday in December, such that the motion must be heard after January 1, 1997. This form is also used to reset a hearing on a motion filed on or after December 16, 1996 where service cannot be made in a timely fashion.

II. PROCESSING OF FORMS AND OTHER CONCERNS

OTHER SOURCES OF INFORMATION The Fifth Edition of the Hawai‘i Divorce Manual includes extensive information regarding pre- and post-decree practice and related matters. The Divorce Manual is available at the Hawai‘i Supreme Court Library (Ali‘iolani Hale) and all branches of the Hawai‘i State Library. The Family Court staff will not provide legal advice in the completion of motion forms.

PREPARATION AND SIGNATURE

All documents must be typed. All documents must be signed in ink.

Staple all forms together at the top, except for the Proof of Service and the Motion for Service by Mail and Affidavit; Order for Service by Mail.

MEDIATION

The Family Court requires mediation in custody or visitation disputes unless there is a strong reason not to mediate (e.g. domestic violence, the parties reside in different jurisdictions, etc.).

FAMILY COURT EDUCATIONAL PROGRAMS The Family Court’s Kids First Program provides assistance to divorcing parents and their children. For information regarding this program call 954-8281.

INCOME AND EXPENSE STATEMENT The Movant’s Income and Expense Statement current within sixty (60) days must be submitted with any application for an order for, or modification of, financial or monetary relief of any kind, except for an award of attorney fees and enforcement proceedings. Where the Movant receives income on a periodic basis, the income information must correspond to the Movant’s pay statement. Gross income is income before taxes and other payroll deductions. The Movant should provide his or her best estimate of current and anticipated regular monthly expenses. Both the Income and Expense and Asset and Debt Statements are signed under penalty of perjury.

ASSET AND DEBT STATEMENT The Movant's Asset and Debt Statement current within sixty (60) days must be submitted with any application for an order for, or modification of, financial or monetary relief of any kind, except for an award of attorney fees and enforcement proceedings. The Asset and Debt Statement should reflect all assets and liabilities both solely and jointly owned and owed. As much as possible, reflected account balances should correspond to the most recent statements received.

CHILD SUPPORT GUIDELINES WORKSHEET For instructions as to the completion of the Child Support Guidelines Worksheet refer to Family Court General Memorandum No. 3 (effective November 1, 1994) available at Family Court - Judicial Services Branch (Fourth Floor, Kapolei Court Complex, 4675 Kapolei Parkway, Kapolei, HI).

PRESENTATION OF DOCUMENTS TO THE FAMILY COURT

Deliver the original and no less than three copies of the motion and attachments, the appropriate service document, and all other pleadings to be processed, to Family Court-Judicial Services Branch, Kapolei Court Complex, 4675 Kapolei Parkway, Fourth Floor. The Family Court staff will review the documents submitted. A Family Court clerk or judge will sign as necessary. A Family Court staff member will call to advise that the documents are available for pick up. The Family Court staff will not respond to calls regarding the status of documents except in an emergency. Approved documents retrieved from Court Management Services must be filed. There is no filing fee to file a motion in a divorce case. Documents are filed with the Legal Documents Branch of the First Circuit Court (first floor, Kapolei Court Complex, 4675 Kapolei Parkway or first floor, Ka'ahumanu Hale, 777 Punchbowl Street). Legal Documents will retain the original of all documents except the original Proof of Service, if submitted. Retain all file-marked copies. Request at least two certified copies. A certified copy must be served on the Respondent.

SERVICE A certified copy of a motion must be served on the Respondent. If a deputy sheriff is used to serve the Respondent on O'ahu, special written instructions must be completed. They are available at the Sheriff's Division, Department of Public Safety, District Court Building, 1111 Alakea Street, Second Floor. If a motion is to be served within the Circuit by a police officer, service documents must be taken to the substation which is nearest to the anticipated place of service. If a motion is to be served by personal service outside the Circuit, a motion authorizing such service must be approved. Service by certified or registered mail on a Respondent who resides away from the island of O'ahu must be made in accordance with the Motion for Service by Mail and Affidavit; Order for Service by Mail. Once personal service is completed, the serving officer will complete and file the Proof of Service. Once service by mail has been accomplished, a Statement of Mailing must be filed by the Movant.

Revisions to Pre- & Post-Decree Instructions 10-16-96