INSTRUCTIONS for
UNCONTESTED DETERMINATION OF PARENTAGE ACTIONS
IN THE FIFTH CIRCUIT FAMILY COURT (KAUA'I)

WHAT IS AN "UNCONTESTED PARENTAGE ACTION"?

An "Uncontested Parentage Action" allows parties to establish (or dis-establish) a parent-child relationship without a Court hearing by submitting specific documents to the Court. The documents must satisfy the legal requirements for establishing (or dis-establishing) a parent-child relationship.

If the Court approves the documents (specifically, the proposed *Judgment of Parentage*) that are submitted prior to the scheduled hearing, the parties will not have to attend the hearing. The process may only be used if there is a full agreement between the parties regarding who are the parents of the Child(ren).

If the parties also have a complete agreement regarding custody, visitation (a.k.a. timesharing), and/or child support, those agreements may also be submitted as part of the "Uncontested Parentage Action" for Court approval by using a separate stipulation.

WHO CAN FILE AN UNCONTESTED PARENTAGE ACTION?

An "Uncontested Parentage Action" can only be filed by one of the following types of parents: Birth Parent, Presumed Parent, Alleged Genetic Parent, or a Functional Parent. For definitions, See STEP 2, paragraph #2 at page 7 – "Definitions of Types of Parents Who Can File an Uncontested Parentage Action" and Appendix A attached to these instructions.

NOTE: PARTIES SHOULD PROCEED WITH AN "UNCONTESTED PARENTAGE ACTION" ONLY IF THERE IS COMPLETE AGREEMENT AS TO WHO THE PARENTS OF THE CHILD(REN) ARE. IF PARENTAGE IS DISPUTED, THE PARTIES WILL NEED TO ATTEND A HEARING IN COURT AFTER THE PETITION IS FILED AND PROPERLY SERVED.

BEFORE YOU START:

Read through these instructions before you start to fill in the forms. These instructions explain which forms need to be completed, when they need to be filed with the Court, and what you need to do to have the Court review and approve the "Uncontested Parentage Action" prior to your scheduled hearing.

Proceeding with an "Uncontested Parentage Action" means that no one has to appear in Court for a hearing if (1) your documents are properly completed, (2) all the necessary steps described in these instructions have been followed, and (3) the Court has approved your documents (specifically, your proposed *Judgment of Parentage*) prior to your scheduled hearing. If the Court has any questions or concerns about your documents, you may be required to submit corrected documents or appear at the hearing.

Be sure to read each document and form thoroughly and make sure you understand what it says. You should not sign any court documents you do not agree with or you do not understand.

IF YOU NEED ASSISTANCE:

Court staff is not allowed to give legal advice or assist you in the completion of the documents for an "Uncontested Parentage Action." However, you have the option to seek legal advice and other services as set forth below:

Legal Assistance: If possible, you should seek the assistance of an attorney. If you cannot afford to have an attorney fully represent you, consider talking to an attorney to discuss your legal rights and duties or having an attorney provide limited representation by reviewing (or possibly preparing) your documents. You can research attorneys on your own or you may call the following organizations for assistance:

HAWAIʻI STATE BAR ASSOCIATION
Lawyer Referral and Information Service
Telephone: 808-537-9140

KAUA'I SELF-HELP CENTER
Volunteer attorneys provide free limited legal advice to unrepresented litigants.
Telephone: 808-909-2836 (Mondays & Thursdays 10 a.m. – 12 p.m.)

The following organizations offer self-help clinics or may offer legal services to people who fall within certain income brackets:

LEGAL AID SOCIETY OF HAWAIʻI
Telephone: 808-536-4302 or (800) 499-4302

VOLUNTEER LEGAL SERVICES HAWAIʻI
Telephone: 808-528-7046

If there have been incidents of domestic abuse, you may want to call the following organizations for assistance and advice to decide whether an "Uncontested Parentage Action" is appropriate:

DOMESTIC VIOLENCE ACTION CLEARINGHOUSE
Telephone: 808-531-3771

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE (Statewide Resources) at: www.hscadv.org.

Mediation Services: If you need assistance from neutral third parties to reach complete agreements, mediation may be able to help. You may research mediation services on your own. One community-based mediation center is:

THE MEDIATION CENTER OF THE PACIFIC, INC.
Telephone: 808-521-6767

The Mediation Center of the Pacific provides trained mediators to help people reach agreements outside of court. Mediation is available for a fee which is determined based on each party's income.

REFERENCE MATERIALS:

The following legal references are available online or at the Fifth Judicial Circuit Law Library, 3970 Ka'ana Street, Lihu'e, Hawai'i:

HAWAI'I REVISED STATUTES (Chapter 584A, Uniform Parentage Act)

HAWAI'I FAMILY COURT RULES

HAWAI'I COURT RECORDS RULES

JUDICIARY WEBPAGE (www.courts.state.hi.us)

FILING FEES REQUIRED TO OPEN YOUR PARENTAGE CASE: (Cash or Personal Check, Money Order/Cashier's Check payable to: CHIEF CLERK, Fifth Circuit)

Initial Filing Fee:	$100.00
Surcharge:	+$65.00
Parent Education Surcharge	+$50.00
Computer System Surcharge	+$50.00
TOTAL	**$265.00**

If you feel you cannot afford the filing fees, you may wish to contact the Legal Aid Society of Hawai'i (phone: 808-536-4302 or 800-499-4302) or Kaua'i Self-Help Center (phone: 808-909-2836 - Mondays & Thursdays 10 a.m. – 12 p.m.) to help you ask the Court to waive the filing fee.

You may also obtain a fee waiver request from the Legal Documents Branch located on the first floor at the Pu'uhonua Kaulike Courthouse, 3970 Ka'ana Street, Lihu'e, Hawai'i.

FILE-STAMPING OR FILING YOUR DOCUMENTS:

Once completed your documents must be filed with the Court. If you represent yourself, you can file your documents in person at the Courthouse. Once the initial documents (e.g., the Petition) are filed, you may choose to register for the Judiciary Electronic Filing and Service System ("JEFS") and file the rest of your documents electronically. You are not required to register for JEFS, however, if you do not register for JEFS, you simply continue to file your documents in person at the Courthouse.

In Person Filing. Documents are filed (and file-stamped) by the Court at the following location and during the following times:

Pu'uhonua Kaulike Courthouse Legal Documents Branch 3970 Ka'ana Street Lihu'e, Hawai'i
Hours: 8:00 a.m. to 4:15 p.m., Monday through Friday Except State Holidays

Electronic Filing. To file documents electronically, self-represented litigants must first register for a JEFS account after the initial documents are filed. Parties who choose to file electronically must ensure they are able to upload their documents to JEFS and must also use proper document codes to upload their documents. Failure to do so will result in delays in case processing which could lead to possible dismissal of the action.

PLACING THE CASE ON THE COURT CALENDAR FOR REVIEW.

If you do not have an attorney, consider having your documents reviewed at the Kauai Self-Help Center (Monday and Thursdays 10 a.m. – 12 p.m.) or at the Legal Documents Branch both located on the first floor of the Pu'uhonua Kaulike Courthouse. The Legal Documents Branch staff will review your documents for completeness and make sure that all necessary documents have been completed and submitted for judicial review. Please note: the Legal Documents Branch does not provide legal advice.

After filing the initial documents [see Step 1 below] and paying the filing fees (or receiving a fee waiver), the filing clerk will issue a case number that needs to be included on all the subsequent Court documents and will schedule a hearing date on the *Summons*.

If you are filing documents in person at Court, you should include self-addressed stamped envelopes for all parties to the case when you submit the final documents to complete the "Uncontested Parentage Action" [see Steps 2 to 4 below]. The Court will then mail the file-stamped final judgment and orders to each party. If no self-addressed stamped envelopes are provided, the parties will be required to download their documents from eCourt Kokua or pick up their final documents at Court.

AFTER JUDICIAL REVIEW:

After the proposed *Judgment of Parentage* for the "Uncontested Parentage Action" is submitted for review, a judge will consider whether the proper documents have been submitted and whether all the legal standards have been met. If the Court approves the documents, the final judgment and/or orders should be filed within four (4) to six (6) weeks.

If the proposed *Judgment of Parentage* is denied, requires corrective action, or requires a hearing, the Petitioner who initiated the action will be notified. Please follow the instructions provided for correction or appear at the hearing, whichever applies. Failure to do so could result in the dismissal of the action without prejudice. Re-filing the case later may require new filing fees.

STEPS TO OBTAIN AN UNCONTESTED DETERMINATION OF A PARENT-CHILD RELATIONSHIP (A.K.A. PARENTAGE)

STEP 1: STARTING A PARENTAGE CASE. (NOTE: THESE INITIAL DOCUMENTS MUST BE COMPLETED IN ALL PARENTAGE CASES.)

1. To open a parentage case, the person filing the Petition (the "Petitioner") will need to complete, sign and date the following initial documents:

    a. *Petition to Determine Parentage*
    b. *Summons*
    c. *Parentage Action Information*
    d. *Notice of Confidential Information*
    e. *Notice to Attend Kids First* (the clerk will sign this form and provide a Kids First date)

2. After completing the initial documents (listed in #1 above), the Petitioner must file them with the Court.

    - Self-Represented Litigants. Self-represented Petitioners must file their initial documents in person as described on page 4 of these Instructions. Bring your original, completed, signed, and dated initial documents (along with the filing fee or an *Ex-Parte Motion to Waive Filing Fees*) to the Courthouse.

    - Attorneys. Attorneys must file the initial documents through JEFS. Upload the required documents into JEFS and pay the filing fee.

3. Upon filing, the Petitioner will receive a case number which will need to be included on all subsequent documents filed in the case. The clerk will also assign a hearing date to the case on the *Summons*. The Petitioner is responsible for serving the *Summons* and all other filed documents on all Respondents. (Please note that failure to appear at a hearing after being served may result in the entry of default against a party who does not appear and/or other appropriate action including but not limited to, dismissal of the action or the entry of default judgments in favor of the non-defaulting party.)

4. If the parties have an agreement regarding parentage and wish to have the hearing set aside, all remaining documents required to finalize the "Uncontested Parentage Action" (see Steps 2 - 3) should be submitted as soon as possible and no less than three (3) days prior to the scheduled hearing.

STEP 2: COMPLETE APPROPRIATE AFFIDAVITS IN SUPPORT OF PARENTAGE AND SIGN BEFORE A NOTARY.

1. Only the following types of parents can file an "Uncontested Parentage Action":

    a. Birth Parent;
    b. Alleged Genetic Parent;

c. Presumed Parent; and
d. Functional Parent.

2. Definitions of Types of Parents Who Can File an "Uncontested Parentage Action". (For the definitions of all types of parents under the Uniform Parentage Act, see Appendix A attached to these Instructions.)

Alleged Genetic Parent: an individual who is alleged to be, or alleges themself to be, a genetic parent of a child whose parentage has not been adjudicated. In an "Uncontested Parentage Action", determination of whether an "alleged genetic parent" is a parent can be based on (1) genetic testing or (2) an admission by the alleged genetic parent in writing. See HRS §584A-601.

Birth Parent: an individual who gave birth to a child conceived through natural sexual relations. Does not apply to an individual acting as a surrogate.

Functional Parent: an individual who can establish all of the following factors by clear and convincing evidence:
(1) resided with the Child(ren) as a regular member of the Child(ren)'s household for a significant period;
(2) engaged in consistent caretaking of the Child(ren);
(3) undertook permanent responsibilities of a parent without expectation of compensation;
(4) held out the Child(ren) as the individual's own;
(5) established a bonded and dependent parental relationship with the Child(ren);
(6) another parent of the Child(ren) fostered or supported the bonded and dependent relationship; and
(7) the continued relationship is in the Child(ren)'s best interest.

Presumed Parent: includes the following:
(a) an individual married to the birth parent at the time the child was born;
(b) an individual who terminated marriage to the birth parent by divorce, annulment or separation agreement and the child was born within 300 days of the termination of marriage;
(c) an individual who marries the birth parent after the child is born and who asserts parentage of a child
(i) by signing a Voluntary Acknowledgment of Parentage form that is filed with the Department of Health or
(ii) by agreeing to be named as a parent on the child's birth certificate and is named on the birth certificate;
(d) an individual who resided in the same household with the child before the child reached the age of majority and openly held out the child as their child;
(e) an individual who submits to court-ordered genetic testing and the results do not exclude the possibility of parentage of the child.

3. Required Affidavits. Affidavits are the sworn statements of the parties attesting to the facts needed for the Court to grant the "Uncontested Parentage Action". Each type of parent must provide specific qualifying facts and meet specific standards of proof to establish or disestablish parentage. Each party seeking to establish or disestablish parentage must complete the appropriate affidavit, sign the affidavit before a notary public, include documents (if any) in support of their affidavit, and attest to the truth and authenticity of those documents (e.g., birth certificate, DNA genetic test).

a. *Affidavit of Birth Parent*. A "birth parent" is established when a party gave birth to the subject Child(ren), and the party conceived the Child(ren) through natural sexual relations.

b. *Affidavit of Presumed Parent*. A "presumed parent" can be established through a legal relationship between a party and the "birth parent". For example, when a child is born during a marriage, including during a separation or divorce, the spouse of the birth parent is presumed to be a parent unless the presumption is overcome by a judicial proceeding. The specific elements for each type of "presumed parent" are stated on page 7 above.

In some cases, the presumption can be rebutted by clear and convincing evidence to disestablish the presumption of parentage. This affidavit may also be used to disestablish parentage of a "presumed parent" if the legal requirements are met.

c. *Affidavit of an Alleged Genetic Parent*. An "alleged genetic parent" may be established by a genetic test or an admission by an individual who alleges they are the genetic parent of a child. This affidavit may also be used to deny genetic parentage if the legal requirements are met.

d. *Affidavit of Functional Parent*. A "functional parent" is established based on seven (7) factors regarding the relationship between a party and the subject Child(ren). All seven (7) factors must be proven by "clear and convincing evidence" and the testimony of another parent in support of establishing a functional parent. This affidavit is very fact intensive.

STEP 3: FINAL AGREEMENTS AND WAIVERS. You must prepare a proposed *Judgment of Parentage* that reflects your agreement with the other parent(s) for the Court's review and approval. If you also have a full agreement with the other parent(s) as to custody and/or visitation (a.k.a. timesharing) arrangements, then additional proposed stipulated orders regarding custody, visitation and/or support can be submitted for approval as part of the "Uncontested Parentage Action" packet. See Steps 5 - 7 below.

All proposed judgments, stipulated orders, and waivers submitted as part of an "Uncontested Parentage Action" must be agreed to by the parties.

1. Proposed *Stipulated Judgment of Parentage*.

a. If only parentage is being determined, use the proposed *Stipulated Judgment of Parentage*. This judgment, once approved, will determine the parent-child relationship for all future purposes.

b. This document is what will notify the Court that your uncontested packet is ready for judicial review. Therefore, if you are filing electronically through JEFS, it must be filed with the correct document category and document type for it to be processed as an uncontested matter.

c. Please note: If the parties reach a full agreement determining parent-child relationships but are unable to reach full agreements on custody issues, visitation (a.k.a. timesharing) issues, and/or child support issues, then a Motion for Relief after Judgment or Orders may be filed to have the Court rule on any contested issues. This Motion should be filed after the Judgment of Parentage is filed.

2. *Appearance and Waiver*.

a. The Respondent(s) to the "Uncontested Parentage Action" must complete, sign, and date an *Appearance and Waiver* document. This signals to the Court that there is a full agreement, that the Respondent waives certain rights, and that the parties seek to conclude the matter without appearing in Court for a hearing.

b. This document should NOT be completed until after carefully reviewing and signing the proposed judgments and orders being submitted to the Court.

PLEASE NOTE BY SIGNING AND SUBMITTING THE APPEARANCE AND WAIVER, THE RESPONDENT AGREES TO ALL THE TERMS IN THE JUDGMENT (AND ANY ORDERS) AND IS ASKING THE COURT TO ENTER FINAL JUDGMENT WITHOUT A HEARING.

3. After completing the documents described in Step 2, Step 3, and Steps 5 and 6 (if applicable), file the documents with the Court. Self-represented litigants who have not signed up for JEFS must file in person at the Courthouse. JEFS users must file through JEFS.

STEP 4: JUDGE REVIEWS DOCUMENTS FOR APPROVAL

1. Once the proposed *Stipulated Judgment of Parentage* is filed, a Judge will review it and all the documents filed in the case.

a. **If the Judge grants (approves) your Judgment** and signs your *Stipulated Judgment of Parentage*, certified copies will be sent to both the Petitioner and the Respondent(s) if self-addressed stamped envelopes were provided. If no envelopes were provided, certified copies of the Judgment and orders will be available for the Petitioner and the Respondent to download on eCourt Kokua or for pick up from the Courthouse at the Legal Documents Branch.

b. **If the Judge denies your Judgment**,

(i) the Petitioner may receive a denial letter with instructions to correct any errors. Once the errors are corrected, the uncontested documents may be resubmitted for review, or

(ii) the parties may be required to appear at the previously scheduled hearing. The Petitioner is responsible for serving the Respondent(s) with the *Summons* (as well as other filed documents) if that has not yet been done. Failure to appear at a hearing after being served may result in the entry of default against a party who does not appear, and/or other appropriate action including but not limited to, dismissal of the action or the entry of default judgments favor of the non-defaulting party.

[STOP: DO NOT COMPLETE STEPS 5 THROUGH 7 UNLESS THE PARTIES HAVE COMPLETE AGREEMENTS REGARDING CUSTODY, VISITATION (A.K.A. TIMESHARING) ARRANGEMENTS, AND/OR CHILD SUPPORT.]

PLEASE NOTE IF THE PARTIES AND MINOR CHILD(REN) RESIDE TOGETHER AS AN INTACT FAMILY THERE IS NO NEED FOR ORDERS AWARDING CUSTODY, VISITATION, AND/OR CHILD SUPPORT.

STEP 5: PREPARE PROPOSED STIPULATED ORDER FOR CUSTODY, VISITATION, AND SUPPORT. The parties may also submit their agreements regarding custody, visitation (a.k.a. timesharing) and/or child support to the Court and have these agreements filed as orders.

1. *Proposed Stipulated Order Regarding Custody, Visitation, and Support.*

a. Complete this stipulated order if you have a full agreement as to how the parties intend to co-parent their Child(ren). Custody issues include legal and physical custody, and a visitation (a.k.a. timesharing) schedule.

(i) Legal custody means the ability to make legal decisions on issues that affect the health, education and general welfare of the Child(ren).

(ii) Physical custody means where the Child(ren) resides or spends most of their time.

b. You may also use this stipulated order if you have agreements regarding child support. See Steps 6 and 7.

STEP 6: COMPLETE AND FILE THE FOLLOWING DOCUMENTS FOR CHILD SUPPORT. Complete Steps 6 and 7 if child support is agreed upon.

1. *Child Support Guidelines Worksheet (CSGW)*

a. A party seeking an award of child support will need to calculate the monthly support owed. Instructions can be found on the judiciary website at: https://www.courts.state.hi.us/child-support-guidelines.

b. The required information includes: each party's monthly gross income, monthly child care costs (if any) and the monthly cost of the health care insurance premium for the Child(ren).

c. Once completed, the Petitioner and Respondent(s) must sign, date, and file the CSGW.

2. Child support is paid in two ways: (a) through the Child Support Enforcement Agency (CSEA) or (b) directly between the parties.

a. If payment will be through the CSEA, an Income Withholding Order/Notice of Support must be submitted to the Court and served as explained in Step 7.

b. If payment will be made directly between the parties, a *Supplemental Affidavit Re: Direct Payment of Child Support* must be filed with the Court. This document certifies the parties have agreed that child support will be paid directly to the receiving parent (obligee) without the need for wage garnishment, or government enforcement. **PLEASE NOTE THAT THE DIRECT PAY METHOD CAN ONLY BE APPROVED IF THE CHILD DOES NOT RECEIVE ANY FINANCIAL ASSISTANCE OR SUPPORT FROM THE GOVERNMENT.**

STEP 7: FINAL ACTION FOR SUPPORT – USE ONLY IF CHILD SUPPORT PAYMENTS ARE BEING MADE THROUGH THE CHILD SUPPORT ENFORCEMENT AGENCY

This step is to be completed after the Judge reviews, signs, and enters orders for child support.

1. Mail one (1) certified copy of the *Judgment of Parentage,* the *Stipulated Order Re: Custody, Visitation and Support Orders,* and the *Income Withholding Order/Notice of Support* to the Child Support Enforcement Agency (CSEA).
- Send via certified mail with a return receipt requested.

2. Mail one (1) certified copy of the *Income Withholding Order/Notice of Support* to the employer of the parent paying child support.

- Send via certified mail with a return receipt requested.

3. Complete the *Statement of Mailing: Exhibits "1" and "2" (Re: Income Withholding Order/Notice of Support)* for the employer mailout.

- Exhibit 1: white and green receipt for Certified Mail received upon mailing.
- Exhibit 2: green card Domestic return receipt signed by the employer.
- Completion serves as proof that a certified copy of the *Income Withholding Order/Notice of Support* was mailed to and received by the employer.

4. File the *Statement of Mailing: Exhibits "1" and "2" (Re: Income Withholding Order/Notice of Support)*.

- **If filing in person**, bring the original to the Courthouse.
- **If filing through JEFS**, upload the required documents into JEFS.

5. Mail one (1) file-stamped copy of the *Statement of Mailing: Exhibits "1" and "2" (Re: Income Withholding Order/Notice of Support)* to the employer, to the Child Support Enforcement Agency (CSEA), and to the Respondent.

-If this document was **filed through JEFS**, you will need to print-out a file stamped copy from eCourt Kokua and make appropriate copies to mail.

APPENDIX A
DEFINITIONS OF TYPES OF PARENTS

Acknowledged Parent: an individual who signs an acknowledgement of parentage with the birth parent to establish the parent-child relationship. The acknowledgment must meet the requirements of HRS § 584A-402 and is the equivalent of an adjudication by the court.

Adjudicated Parent: an individual who has been adjudicated (i.e., determined to be) a parent by a court with jurisdiction.

****Alleged Genetic Parent:** an individual who is alleged to be, or alleges themself to be, a genetic parent of a child whose parentage has not been adjudicated. Does not include a "presumed parent", an individual whose parental rights have been terminated or declared not to exist, or a donor. See HRS § 584A-601 for adjudicating parentage of an alleged genetic parent.

****Birth Parent:** an individual who gave birth to a child conceived through natural sexual relations unless they were acting as a surrogate.

****Functional Parent:** an individual who can establish the following seven factors by clear and convincing evidence: (1) the individual resided with the Child(ren) as a regular member of the Child(ren)'s household for a significant period; (2) the individual engaged in consistent caretaking of the Child(ren); (3) the individual undertook permanent responsibilities of a parent without expectation of compensation; (4) held out the Child(ren) as the individual's own; (5) the individual established a bonded and dependent parental relationship with the Child(ren); (6) another parent of the Child(ren) fostered or supported the bonded and dependent relationship; and (7) that the continued relationship is in the Child(ren)'s best interest.

Intended Parent: an individual who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction or who enters into a surrogacy agreement.

****Presumed Parent:** an individual who is deemed a legal parent based on a presumption in the law, including, (a) an individual married to the birth parent at the time the child was born; (b) an individual who terminated marriage to the birth parent by divorce, annulment or separation agreement and the child was born within 300 days of the termination of marriage; (c) an individual who marries the birth parent after the child is born and who asserts parentage of a child by signing a Voluntary Acknowledgment of Parentage that is filed with the Department of Health or agrees to be (and is) named as a parent on the child's birth certificate; (d) an individual who resided in the same household with the child before the child reached the age of majority and openly held out the child as their child; (e) an individual who submits to court-ordered genetic testing and the results do not exclude the possibility of parentage of the child. In some cases, the presumption can be rebutted by clear and convincing evidence and disestablish the parentage of the presumed parent.

** indicates the types of parents who can file for an uncontested parentage action.