

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 or Judgment of Paternity 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.

- 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 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 dated current within sixty (60) days.
- Child Support** State the amount of child support requested. The Movant's **Income and Expense and Asset and Debt Statements** must be attached and dated current within sixty (60) days.. If the Respondent's financial circumstances are known, a **Child Support Guidelines Worksheet** should be attached.
- Alimony** State the amount of alimony sought. The Movant's **Income and Expense and Asset and Debt Statements** must be attached and dated current within sixty (60) days.
- Legal Fees** State the amount of legal fees sought. The Movant's **Income and Expense and Asset and Debt Statements** must be attached and dated current within sixty (60) days.
- 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 and dated current within sixty (60) days.
- Financial Restraining Order** Paragraph 6 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.
- Restraining Order Regarding Children** Complete paragraph 7 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.

8. **Domestic Abuse Restraining Order** Complete paragraph 8 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.
Presence of Firearms If the presence of firearms is suspected, paragraph 8d and 8e 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.
HRS 580-10 Restraining Order An HRS 580-10 Restraining Order must be attached.
9. **Ex Parte Motion** Check the appropriate box(es) if you would like paragraph(s) 6, 7, or 8 granted *ex parte* which means that the orders become effective as soon as the Judge signs the order and it is served to the respondent.
10. **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 8 of the motion is checked and completed.
11. **Other Relief Sought** Any other relief which has not been specifically requested in the preceding paragraphs of the motion should be requested in paragraph 11. 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.
12. **Involvement in Other Cases** Paragraph 12 must be checked if there are no other cases involving the parties.
13. **History of Participation** The extent of the Movant’s historic and present involvement in all other legal proceedings with the other party must be reflected in paragraph 13.

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.

Scheduling Order for Pre-decree Relief

The Scheduling 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. 1. **Order to Appear** The Family Court will fill in the hearing date in paragraph **A-1**.

2. If the box next to paragraph A-2 is checked, the parties will be required to submit financial information to each other and the court within the time allotted described in the paragraph.

B. **Restraining Orders** The Family Court Judge must sign the Scheduling Order if any boxes in Paragraph 9 of the Motion were checked. **Please Note: ALL REQUESTED EX PARTE ORDERS ARE SUBJECT TO THE JUDGE’S REVIEW AND MAY BE DENIED.**

1. **Financial Restraining Order** Check the box next to numbered paragraph 1 if paragraph 6 and paragraph 9 regarding paragraph 6 of the motion is checked.
2. **Custody Restraining Order** Check the box next to numbered paragraph 2 if paragraph 7 and paragraph 9 regarding paragraph 7 of the Motion is checked.

HRS 580-10 Restraining Order Check this box if paragraph 8 and paragraph 9 regarding paragraph 8 of the motion is checked. An HRS 580-10(d) Restraining Order **must be submitted** with this Order subject to the Family Court Judge’s review if paragraph 8 of the Motion is completed.

SERVICE You must properly give (“serve”) the other party a certified copy of the documents.

If Respondent is in the State: Someone (other than you) 18 years or older must hand-deliver the Motion + attachments to the Respondent(s). Either hire a civil process agent or get a friend or relative to serve him/her. The civil process agent or person serving must fill out and sign the *Proof of Service*, which tells the court the Respondent was served. If you hire a process server, give the process server 3 blank copies of the *Proof of Service* to complete. If you don’t hire a process server, make 3 copies of the completed *Proof of Service*. File the original and copies with the filing clerks.

Proof of Service If the Respondent is to be served on the island of Maui by an authorized civil process agent or someone over the age of 18 that is not a party to the case, 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 civil process agent or person serving will complete the “Date,” “Time,” and “Place” sections of the Proof of Service** once service has been made or, despite due and diligent search, service cannot be made. If possible, have the server obtain the Respondent’s signature somewhere on the *Proof of Service*.

If Respondent is on the mainland, or in another country: You need permission from the Judge to serve by mail (*Motion for Service by Mail and Affidavit; Order for Service by Mail*). Once you get permission, send the Motion + attachments, along with a file-stamped copy of the Motion and Motion to the Respondent by **registered or certified mail, return receipt requested, restricted delivery to the addressee only**. Keep the receipt from the Post Office and wait for the return receipt card to come back, signed by the Respondent, indicating that the Respondent received the documents. Complete the *Statement of Mailing* and staple both Post Office receipts to the second page, then make 3 copies and file it with the filing clerks.

Processing of Forms and Other Concerns

Other Sources of Information The Fifth Edition of the Hawaii Divorce Manual includes extensive information regarding pre- and post-decree practice and related matters. The Divorce Manual is available at the Law Library and all branches of the Hawaii State Library.

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 or, financial or monetary relief of any kind, except for an award of attorney fees and enforcement proceedings. Where the Movant receive 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 statement received.

Child Support Guidelines Worksheet For instructions as to the completion of the Child Support Guidelines Worksheet refer to the Child Support Guidelines Worksheet Instructions included in the packet.

Presentation of Documents to the Family Court

Deliver the original and no less than two copies of the motion and attachments, the appropriate service document, and all other pleadings to be processed to 2145 Main Street, Room 106, Wailuku, Hawaii.

You may need to leave the documents for processing by the Family Court. Check back in one or two days in the *Pro Se* court jacket in Room 106 or provide a self-addressed stamped envelope (be sure there is enough postage) to get the filed documents mailed to you. A Family Court Clerk or Judge will sign as necessary. Your court date will be scheduled for about a month or more after filing.

There is a \$15.00 filing fee for a Paternity Motion payable in Cash, Money Order or a cashier's check. Legal Documents will retain the original of all documents. Retain all file-marked copies. Request at least two certified copies. Remember, a certified copy must be served on the Respondent.

PLEASE NOTE: After court you may need to prepare an order if your motion is granted.