

Motion and Affidavit for Post-Decree Relief

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 or Judgment of Paternity has already entered. More than one such motion can be filed in the Post-Decree period.

Motion and Affidavit for Post-Decree Relief

All 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

1. 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 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** dated current within sixty (60) days must be attached.
2. 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.
If modification of alimony is requested, Movant's **Income and Expense and Asset and Debt Statements** dated current within sixty (60) days must be attached.
3. 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 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.
4. If changes in other modifiable orders are sought, request them in paragraph 4. State with particularity the reason for the change.

B. Enforcement

1. If enforcement of child support and child support arrearages is sought, complete paragraph 1.
2. If enforcement of alimony and arrearages is sought, complete paragraph 2.
3. If enforcement of an obligation to make other payments is sought, complete paragraph 3.
4. If enforcement of other obligations is sought, complete paragraph 4.
5. **Relief** Check the appropriate box (a)-(h) to specify the particular type(s) of enforcement relief sought.

Note: For remedies (c) through (h) below you must:

1. Be familiar with the statute or rule which permits such relief.
2. Have complied with the statutes or rules including service of appropriate notices and summons.
3. Prepare any specialized orders necessary if the relief requested is granted.

C. Other Relief Sought

1. If contribution to the Movant’s legal expenses is sought, check the box next to numbered paragraph 1.
2. If an order requiring mediation is sought, check the box next to numbered paragraph 2.
3. 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.
4. Any other relief which has not been specifically requested in the preceding paragraph 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.

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 competed in part by the Movant, and in part by 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.
2. **Documents to be Produced** Check the box next to numbered paragraph 2 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.

Signing of the Order A Family Court Clerk will sign the Scheduling Order for Post-Decree Relief.

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 private civil process agent or get a friend or relative to serve him/her. The server 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 an 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.