

Office of the Staff Judge Advocate, Legal Assistance Office
25th Infantry Division & U.S. Army Garrison – Hawaii
Building 2037 Schofield Barracks, Hawaii 96857
808-655-8607

DIVORCE AND SEPARATION BRIEFING

OAHU FAMILY COURT INFORMATION

Kapolei Family Court
Kapolei Judiciary Complex
4675 Kapolei Parkway
Kapolei HI 96707-3272
808-954-8000 (general information)
808-954-8290 (divorce and separation service center)

Hours: 7:45 a.m. to 4:30 p.m. Monday through Friday

FORMS

<http://www.courts.state.hi.us/> (General Hawaii Court Website)

-scroll over "For the Public" and select "Court Forms"

-Under "First Circuit, Oahu," select "Family Court"

http://www.courts.state.hi.us/self-help/courts/forms/oahu/family_court_forms.html (this URL will take you directly to the Oahu divorce forms)

Ho`okele Program (Kapolei Family Court)

Also known as the Self-Help Desk. The service center provides court users with brochures, *self-help packets, court forms, instructions, procedures, and one-on-one assistance in completion of court forms.* Staff also provides court users with referrals, addresses, and telephone numbers of outside agencies who may be better able to assist the court user.

Hours: 8 a.m. to 4 p.m.

Telephone: (808) 954-8290

Family Court Access to Justice (Kapolei Family Court)

Limited *legal assistance to unrepresented litigants involved in a civil case in the Family Court*, is a joint effort of the Hawaii State Judiciary, the Hawaii State Bar Association and the Family Law Section of the Hawaii State Bar Association.

Hours: first and third Thursday of every month from 11:30 a.m. to 1:30 p.m

Appointments: Call (808) 954-8290 or go to the Ho`okele Self Help Desk on the first floor of the Kapolei Courthouse. Walk-ins are also accepted during clinic hours.

DIVORCE FAQs

Should I file for divorce in Hawaii or another state?

As long as you have been in Hawaii for 6 months, you can file for divorce here. Hawaii is one of the easiest states in the country to obtain a divorce. If you wait to file in another state, you may have to wait until you fulfill their residency requirements (which vary by state). A state being your "home of record" will likely not count for residency requirements if you have physically resided somewhere else.

Do I need a separation?

There is no separation requirement in Hawaii. If you decide to draft a separation agreement with your spouse, it may not be enforceable in Family Court, although you may be able to enforce it in small claims court. A service member's command can enforce a separation agreement against the service member, but not against a dependent spouse. The separation agreement is separate from the divorce decree. Once the final divorce decree is issued, that will be the controlling document.

How long does it take to get a divorce in Hawaii?

If you and your spouse agree on the terms of the divorce, the process will take a few weeks, depending on how busy the court is. The court clerk will be able to give you an estimate of how many weeks it will take for your divorce to be finalized. If you and your spouse cannot agree, or go to court to fight over the terms, the process can take several months, or even over a year.

How much are court costs?

.You must pay \$215.00 if filing "Without Children" and no children are involved or \$265.00 if filing "With Children", even if there are no children together, but only from previous relationships. This must be paid at the courthouse when making the initial divorce filing. You can also request a fee waiver form if you are unable to afford the costs; the request will reviewed and may be granted depending on income and circumstances.

Do I have to go in front of a judge to get a divorce?

No, if you and your spouse agree on the terms of the divorce. You will simply fill out and file a series of documents. The Judge will review your documents and you will received your final divorcee decree in the mail.

Do I need a lawyer?

You do not need a lawyer to file for divorce, especially if you and your spouse can come to an agreement on all the terms of the divorce. If you foresee major disagreements on issues such as custody, visitation, alimony, child support, and property division you may want to consult an attorney.

My Spouse and I can't agree on anything, but we don't have money for a lawyer; what should I do?

If you and your spouse cannot agree, mediation is a great option. Mediation is an informal, private process in which a neutral third party, the mediator, helps people talk through their differences and negotiate solutions. In most cases, the court may order parties to mediation before it will hear a divorce dispute.

The Mediation Center of the Pacific, Inc. is a 501(c)(3) not-for-profit corporation that charges on a sliding scale, based on income.

Appointments: 808-521-6767

Web: <http://www.mediatehawaii.org/>

How do I get started with the paperwork?

Go to the website for the Oahu Family Court to find forms (see information on forms on page 1). The forms will include a checklist and detailed instructions.

If you don't have computer or printer access, you can also go directly to the Oahu Family Court in Kapolei to pick up a packet of forms with instructions.

What if we've already filed in a different state?

If you or your spouse has previously filed for divorce in another state, you must proceed with that state's divorce procedures unless the divorce has been dismissed by the courts. If your spouse has filed in another state, you cannot simply re-file in Hawaii. Either the party that first filed must file a motion to dismiss or the court has dismissed the lawsuit on its own due to inactivity, for a new divorce to be filed.

HAWAII'S KIDS FIRST PROGRAM

All cited forms on this page are available on the Family Court's website.

1. All couples with children, including step-parents, step-children and non-custodial parents must attend Hawaii's Kid First Program before being granted a divorce.
 - a. Both parties and children ages 6 -17 are required to attend.
 - b. If you have children under age 6, you will be required to coordinate child-care.

2. When filing your initial divorce documents, you will file a Notice to Attend Kids First:
<http://www.courts.state.hi.us/docs/form/oahu/1FE787.pdf>
 - a. After filing this document, you will receive a date and time to attend, usually several weeks after filing.
 - b. You will continue to file your divorce forms and move through the process as you await your class date, and it generally does not cause a delay in divorces.

3. Exceptions to Attending:
 - a. If you, your spouse, or the child are not on the Island, you may request an exception from attending. However, all parties on the Island will still have to attend, even if alone.
 - b. If you have a Restraining Order against the other spouse, you may request to attend on a different date.
 - c. If you are PCSing, Deploying, or leaving for extended training you may ask for an exception; however, they will need to see your orders. They may also accommodate an earlier class, if available.
 - d. You will not be granted an exception for work or school conflicts, inability to find child care, or other common logistical issues.
 - e. File this form to request an exception:
<http://www.courts.state.hi.us/docs/form/oahu/civil union with children/1FP835.pdf>

If you have further questions or concerns, please call Kids First: 808-954-8280

ARMY TEMPORARY FAMILY SUPPORT GUIDELINES

AR 608-99

An Army Service Member has an obligation to provide temporary support to dependents if they are separated. This support begins upon separation and ends when the final divorce degree is issued.

The service member is required to provide support in one of two ways:

1. Housing: If the dependent is living on post, the service member is not obligated to provide any additional money or support. The housing is considered the support.

OR

2. Money: If the spouse is not living on post, then the service member is obligated to pay his dependent spouse an amount determined by the BAH RC/T chart on the following page.
 - a. The default support payment is determined by the "with dependents" column.
 - b. If the service member has several dependents, and they live in different places, the required amount would be proportionally divided.
 - c. The service member can pay for certain expenses in place of the cash amount, such as rent, mortgage, utilities, etc.
3. Aside from the two provisions above, the Army has no authority to order a service member to provide more support.
 - a. A command cannot order a service member to pay more than the regulation requires, nor can it order a service member to provide additional support such as cars, groceries, or child-care supplies.
 - b. If the dependent spouse finds the temporary support to be insufficient, they can file a **Motion for Pre-Decree relief**. The form can be found with other divorce forms on the family court website, per the instructions on page 1. This is a way of asking the court to order the service member to provide more support than the Army regulations provide.

How to make sure the service member is abiding by the temporary support obligation:

Adherence to AR 608-99 is enforced by the service member's command. A spouse who is not receiving support under the regulations should speak to the service member's company commander. If the spouse does not receive help from the company commander, please make an appointment to see one of our legal assistance attorneys.

Dual Military Couples:

Generally, dual military couples do not provide support to one another. However, since only one service member receives the BAH with Dependents rate, that amount should be given to the custodial parent or divided accordingly.

ERD, HOUSING, HEALTHCARE, ID CARDS AND OTHER ARMY BENEFITS

There are a number of benefits enjoyed by service members and dependents. When separation and divorce occurs, many of *these benefits are not subject to the court's jurisdiction*. While the Legal Assistance Office is happy to help with the following issues, most of them are Army administrative issues that *must be dealt with through the proper offices or channels*.

On-Post Housing: This is a benefit to the service member, not the dependent. Therefore, once divorce proceedings are final, the dependant no longer has the right to remain in on-post housing. "If reunification is not possible, the military spouse remains a spouse until the marriage is legally dissolved. Where a Soldier is married to a Servicemember, the senior Soldier is considered the sponsor. *In cases where a sponsor and spouse are unwilling, or otherwise unable, to cohabit due to marital discord, the garrison commander, in consultation with the sponsor and the spouse and with the Staff Judge Advocate (SJA), will make a determination as to who, if either party of the marriage, will remain in housing.* Such determination should be made in consideration of the involvement of other dependent Family Members of the marriage. This determination will remain in effect until resolution of the marital situation (that is, reunification, legal separation, or divorce) or until the sponsor's PCS to a location beyond a 1-hour commuting distance or separation from the Service." (AR 420-1)

Early Return of Dependents (ERD): It is up to individual commands to decide whether to grant command-sponsored dependents an ERD. If you are not command sponsored, there is no obligation to facilitate your move off the Island. To initiate an ERD, call the service members commander and find out what their requirements are for an ERD. Please keep in mind, different commands may ask for different documentation, so do not rely on advice or experience of others – go directly to the command.

Healthcare: While dependent children (not stepchildren) will retain coverage eligibility under Tricare, the dependent spouse's coverage will terminate with the final divorce decree. There are narrow exceptions for long-terms marriages where the service member's service was 20+ years. See AR 600-8-14 for complete charts and information or visit a local DEERS office for more information.

Commissary & Exchange: Benefits to the dependent spouse will terminate with the divorce decree unless there are 20 years of overlapping marriage and military service.

ID Cards: Former spouses and former step-children must relinquish ID Cards upon divorce. Exceptions are made for former spouses with dependent children. See AR 600-8-14 for complete charts and information or visit a local DEERS office for more information. "If the service member is unable to retrieve ID Cards from former dependents voluntarily, if letters from the sponsor, member's commander, or issuing activity fail to retrieve the card, report the circumstances by letter or message to the appropriate installation security authority of the military installation nearest the unauthorized cardholder's address. Also, send a copy of the letter or message to all benefits and privileges facilities near the cardholder's last known address. Provide name of unauthorized card holder, description, date of birth, card expiration date, last known address, reason why the individual is no longer entitled to the card, the sponsor's name, grade, branch of service, organization, and last known address." (AR 600-8-14)

ALIMONY, CHILD SUPPORT, AND RETIREMENT

The amounts and terms of child support, alimony, and retirement benefits are decided during the divorce process, and incorporated into the final divorce decree. There is no legal obligation to provide the following support during a separation, unless otherwise ordered by a court.

Alimony: There is no law that guarantees alimony in Hawaii. If you and your spouse cannot agree on terms of alimony (amount, duration, etc) then the judge may decide for you. There are a number of factors considered when determining whether to award alimony, including: length of marriage, ages of parties, abilities and skills of parties, physical and emotional conditions, whether parties worked during the marriage, need, and many others. Long-term, or permanent alimony is very rare. In some cases, a judge might order one spouse to pay the other temporary alimony to allow the lesser-earning spouse to get back on their feet. A judge can also order a spouse to pay for vocational or other certification to allow the lesser-earning spouse to support themselves. *However, especially in cases of short marriages, manage your expectations, and understand that lifestyles and standards of living usually change with divorce.*

Child Support: Both parents have an obligation to support their children. In almost all cases, the non-custodial parent will pay the custodial parent child support. The support is determined through a mathematical formula, which can be found on the Family Court Website:
http://www.courts.state.hi.us/self-help/courts/forms/oahu/child_support.html

Retirement: There is a misconception that dependents in marriages lasting longer than 10 years, with 10 years of overlapping service, automatically receive a portion of the service member's retirement pay. However, unless that is specifically agreed upon and incorporated into the divorce decree, there is no obligation that the Servicemember will owe retirement to the former spouse. The 10 years of consecutive service overlapping with 10 years of marriage only entitles the spouse to a payment directly from DFAS, if the spouse retires and they are awarded a portion of that retirement. In addition, the language awarding retirement must be specific, as described in the Uniformed Services Former Spouses' Protection Act.

HOW TO GET STARTED: FIRST STEPS OF FILING AN UNCONTESTED DIVORCE IN HAWAII

1. Visit the Family Court Website and Access Divorce Forms (http://www.courts.state.hi.us/self-help/courts/forms/oahu/family_court_forms.html)
 - a. There will be two sets: One for "With Children" and one for "Without Children."
 - b. Couples with children from previous relationships but no children together will file "Without Children" but still be required to pay the \$265 filing fee and attend Kids First.
2. Carefully read over the first form: **Instructions and Checklist.**
3. If possible, sit down with your spouse and work out the terms of your divorce. It may be helpful to look at the **Divorce Decree Form** (last on the list of forms), because it will spell out all the issues that will need to be addressed.
 - a. It is very important that you are able to agree on all the terms at the beginning of the process, so that it does not become a contested divorce later.
4. Fill out the following forms:
 - a. **Complaint for Divorce**
 - b. **Summons to Answer Complaint**
 - c. **Matrimonial Action Information**
 - d. **Notice to Attend Kids First** (if there are children involved)
5. Make the correct number of copies of each (information on the online checklist) and take them to the Kapolei Courthouse to have them stamped.
6. Serve your spouse with the stamped complaint for divorce.
 - a. If you and your spouse agree on all terms, you can ask them to sign an **Appearance and Waiver Form**. This basically acknowledges receipt of a stamped complaint for divorce, and waives the formal service process.
 - i. You will also send them a signed copy of the filled out Divorce Decree.
 - b. If they do not want to sign the Appearance and Waiver form, you must have them properly served by someone 18 year or older, who is not a party to the case (in other words, not you). The person who serves process must then fill out a **Proof of Service Form**.
 - c. If your spouse is off-island, you may request that the court allow you to serve via certified mail (**Motion for Service by Mail**) or have someone else serve them legally in their state of residence.
7. You will then continue down the list of forms as applicable to you on the instructions, completing and filing each according to instructions on the website. Such required documents will include the Asset & Debt Statement by you and your spouse, the Income & Expenses Statement by you and your spouse, an affidavit by the Plaintiff, and the Divorce Decree signed by both parties.

2014 Non-Locality BAH Rates

Effective 1 January 2014

Pay Grade	Partial	BAH RC/T*		Differential*
		Without Dependents	With Dependents	
O-10	\$ 50.70	\$ 1,555.80	\$ 1,913.70	\$ 333.60
O-9	\$ 50.70	\$ 1,555.80	\$ 1,913.70	\$ 333.60
O-8	\$ 50.70	\$ 1,555.80	\$ 1,913.70	\$ 333.60
O-7	\$ 50.70	\$ 1,555.80	\$ 1,913.70	\$ 333.60
O-6	\$ 39.60	\$ 1,426.50	\$ 1,722.60	\$ 276.30
O-5	\$ 33.00	\$ 1,373.70	\$ 1,660.80	\$ 267.00
O-4	\$ 26.70	\$ 1,272.60	\$ 1,463.70	\$ 177.60
O-3	\$ 22.20	\$ 1,020.60	\$ 1,211.10	\$ 177.30
O-2	\$ 17.70	\$ 808.80	\$ 1,033.50	\$ 209.40
O-1	\$ 13.20	\$ 693.90	\$ 925.20	\$ 226.20
O3E	\$ 22.20	\$ 1,101.60	\$ 1,302.00	\$ 186.00
O2E	\$ 17.70	\$ 936.60	\$ 1,174.50	\$ 222.30
O1E	\$ 13.20	\$ 814.50	\$ 1,085.70	\$ 261.00
W-5	\$ 25.20	\$ 1,293.30	\$ 1,413.60	\$ 111.00
W-4	\$ 25.20	\$ 1,148.10	\$ 1,295.70	\$ 136.80
W-3	\$ 20.70	\$ 965.70	\$ 1,188.00	\$ 206.40
W-2	\$ 15.90	\$ 856.80	\$ 1,091.40	\$ 218.10
W-1	\$ 13.80	\$ 718.50	\$ 944.70	\$ 211.20
E-9	\$ 18.60	\$ 942.90	\$ 1,243.20	\$ 278.70
E-8	\$ 15.30	\$ 866.40	\$ 1,146.90	\$ 261.30
E-7	\$ 12.00	\$ 798.60	\$ 1,064.40	\$ 302.40
E-6	\$ 9.90	\$ 738.00	\$ 983.40	\$ 292.20
E-5	\$ 8.70	\$ 663.60	\$ 884.70	\$ 248.70
E-4	\$ 8.10	\$ 577.20	\$ 768.90	\$ 215.10
E-3	\$ 7.80	\$ 536.70	\$ 715.20	\$ 176.10
E-2	\$ 7.20	\$ 511.50	\$ 681.60	\$ 235.50
E-1 >4	\$ 6.90	\$ 511.50	\$ 681.60	\$ 278.70
E-1 <4	\$ 6.90	\$ 511.50	\$ 681.60	\$ 278.70

BAH RC/Transit rates are adjusted by the average change in housing costs; BAH-DIFF rates increase by the increase in the basic pay raise.