

A large, stylized letter 'S' is the central graphic element. The left half of the 'S' is white and set against a black background, while the right half is white and set against a red background. The text 'QUESTIONS & ANSWERS' is printed in a black, serif font on the red portion of the 'S'.

QUESTIONS
& ANSWERS

YOUR GUIDE TO THE SMALL CLAIMS COURT

The Judiciary
State of Hawai'i
District Court
of the First
Circuit

*This Guide is provided to you to give general information about the procedures used in District Court. However, you should understand that the District Court staff is **not** permitted to give legal advice to any party and does **not** draft legal documents for litigants.*

Anyone requiring such services should consult an attorney licensed to practice law in Hawai‘i.

*In accordance with the **Americans with Disabilities Act**, if you require an accommodation or assistance, please contact the District Court Administration Office at **PHONE NO. 538-5121, FAX 538-5233, or TTY 539-4853.***

WHAT IS SMALL CLAIMS DIVISION?

It is a division of the District Court in which certain types of claims between two or more parties are decided by a judge in a simple and informal manner. The law and rules regarding the jurisdiction of the Small Claims Division are set forth in Chapter 633, Hawai‘i Revised Statutes, as amended and the Rules of the Small Claims Division of the District Courts.

WHO ARE THE PARTIES?

A person who files a claim is called the plaintiff and the person against whom a claim is filed is called the defendant.

CAN A PARTY BE REPRESENTED BY AN ATTORNEY?

YES, except that if the case involves a claim for the return or retention of a security deposit under a residential rental agreement, then neither party may be represented by an attorney.

Generally, attorney’s fees are not awarded unless specifically provided by law. Therefore, if you hire an attorney, then you are responsible for paying the attorney’s fees.

WHAT TYPES OF CASES CAN BE FILED IN THE SMALL CLAIMS DIVISION?

The Small Claims Division may only handle the following cases:

- A. 1) Cases for the recovery of money where the amount claimed does not exceed \$5,000 excluding any interest and costs that may be awarded by the court.
- 2) A counterclaim by the defendant against the plaintiff where the amount claimed is no more than \$25,000, plus interest and costs that may be awarded by the court.
- B. Cases to resolve a disagreement over a security deposit between landlord and tenant involving a residential landlord and tenant relationship.
- C. Cases for the return of leased or rented personal property worth less than \$5,000 where the amount claimed owed for that lease or rental is less than \$5,000 exclusive of interest and costs.
- D. Cases for the recovery of damages or for repossession based upon the unauthorized removal of shopping carts, shopping baskets or similar devices from the premises of any business establishment.

IS THERE A SMALL CLAIMS DIVISION ON EACH ISLAND? YES.

O'AHU

1111 Alakea Street
3rd Floor
Honolulu, HI 96813
Ph. (808) 538-5629

HAWAI'I

777 Kilauea Street
Hilo, HI 96720
Ph. (808) 961-7400

Keākealani Building, Rm. 219
Kealakekua, HI 96750-9014
Ph. (808) 322-8700

Waimea Civic Center
67-5175 Kamamalu
Kamuela, HI 96743-0746
Ph. (808) 885-4615

KAUAI

3970 Kā'ana Street
Līhu'e, HI 96766
Ph. (808) 482-2303 or
(808) 482-2300

MAUI

2145 Main Street, Rm. 106
Hoapili Hale
Wailuku, HI 96793
Ph. (808) 244-2969

MOLOKA'I

P.O. Box 284
Kaunakakai, HI 96748
Ph. (808) 553-5451

LĀNA'I

P. O. Box D
Lāna'i City, HI 96763
Ph. (808) 565-6447

ARE THERE ADVANTAGES TO FILING A CASE IN THE SMALL CLAIMS DIVISION?

The procedure is simple, informal and cases will usually be resolved more quickly.

WHAT ARE THE OFFICE HOURS FOR FILING DOCUMENTS?

Office hours are Monday through Friday, 7:45 a.m. to 4:30 p.m., for the filing and processing of documents, hours are Monday through Friday, 8:00 a.m. to 4:15 p.m. The civil division payment window closes at **4:15 p.m.** and will not accept money for the payment of costs and/or filing fees after that time.

HOW IS THE DEFENDANT NOTIFIED OF THE FILING OF A CLAIM?

- A. In most cases, the clerk will prepare a notice stating the date, time and place at which the defendant must appear in court to answer the claim. You may wish to contact the specific court as to whether assistance will be provided. The plaintiff is responsible for notifying the defendant of the claim and the court date by serving a copy of the Statement of Claim, and a copy of the notice, upon the defendant.
- B. If the defendant is found within the judicial circuit to which the district court belongs, the Statement of Claim and notice may be served on the defendant by either of the following ways:
- 1) The plaintiff may send the Statement of Claim and notice to the defendant by registered or certified mail, restricted delivery, with return receipt requested before the trial date. On the trial date, the plaintiff **must present** to the judge the receipt for registered or certified mail issued by the post office showing when the papers were mailed and the return receipt showing the date of delivery and the signature of the defendant. Without these receipts, a plaintiff may not be able to prove to the satisfaction of the court that the papers were delivered to the defendant in order to obtain a judgment by default if the defendant does not appear in court.

- a) If the claim is for the return or keeping of the security deposit in a residential landlord and tenant relationship, the return receipt may show delivery of the registered or certified mail to the defendant at any place.
 - b) Except as stated in (a) above, the return receipt must show delivery of the registered or certified mail to the defendant at a place situated within the judicial circuit in which the claim was filed.
- 2) The plaintiff may take the Statement of Claim and notice and request the services of a civil process server to serve the papers on the defendant.
 - 3) Any person who is not a party and is over the age of 18 may serve the papers on the defendant. The plaintiff must file a return of service prior to the trial date signed by the person who served the papers, verifying that the defendant was served the documents.
 - 4) The plaintiff may personally serve the statement of claim and notice upon the defendant if:
 - a) The plaintiff obtains the defendant's signature acknowledging service or
 - b) A witness not related or employed by the plaintiff accompanies the plaintiff at the time the plaintiff serves the papers upon the defendant and the witness either files a document verifying that he or she witnessed the papers being served upon the defendant or the witness appears at the trial date verifying to the court that he or she witnessed plaintiff serving the papers upon the defendant.

WHAT DOES IT COST TO NOTIFY THE DEFENDANT OF THE CLAIM AND WHO PAYS THE COST?

- A. The plaintiff must pay the fees charged by the post office if service is made by certified or registered mail.
- B. If the papers are given to a civil process server for service, the plaintiff must pay the process server a fee for serving the papers plus a mileage fee, which will vary according to the distance the process server must travel. There are no costs to the plaintiff if the plaintiff personally serves the papers himself or herself pursuant to the appropriate service procedure.

- C. If the plaintiff wins the case, the court may add the amount of such costs to the judgment entered against the defendant.

MUST THE DEFENDANT ANSWER THE STATEMENT OF CLAIM IN WRITING?

NO. A defendant may verbally admit or deny the plaintiff's claim at the trial date.

ARE THERE DISADVANTAGES OF FILING A CASE IN THE SMALL CLAIMS DIVISION?

There is no right to appeal from a judgment of the Small Claims Division. The decision of the judge is final.

WHAT STEPS MUST I TAKE TO FILE A CLAIM IN THE SMALL CLAIMS DIVISION?

You must file a Statement of Claim with the Service Center or clerk of the court. Upon request, the Service Center or clerk will furnish the necessary forms to file a small claim, but the clerk CANNOT GIVE ANY LEGAL ADVICE.

WHAT DOES IT COST TO FILE A STATEMENT OF CLAIM?

The filing fee is \$35.00. If you claim financial hardship the fee may be waived by a judge.

WHERE MUST THE CLAIM BE FILED?

- A. The State of Hawai'i is divided into four judicial circuits:
- 1) First judicial circuit (O'ahu);
 - 2) Second judicial circuit (Maui, Moloka'i, Lāna'i, Kaho'olawe, and Molokini);
 - 3) Third judicial circuit (Hawai'i).
 - 4) Fifth judicial circuit (Kaua'i, Ni'ihau, and Ka'ula).
- B. Each judicial circuit has been divided geographically into several divisions.

C. There is a circuit court and a district court in each judicial circuit.

- 1) The circuit court is located in one place, except for the Island of Hawai‘i (Kona and Hilo).
- 2) The district court is divided into geographical divisions. **The District Court of the First Judicial Circuit** is divided as follows:

LOCATION OF DIVISION

COURTHOUSE

Honolulu
(Red Hill to
Hawai‘i Kai)

Honolulu
1111 Alakea Street
Honolulu, HI 96813

‘Ewa
(Hālawā to
Makakilo)

Pearl City
870 Fourth Street
Pearl City, HI 96782

Wai‘anae
(Nānākuli to
Ka‘ena Point)

Kapolei
4675 Kapolei Parkway
Kapolei, HI 96707

Wahiawā
(Poamoho to
Kīpapa Gulch)

Wahiawā
1034 Kilani Avenue
Wahiawā, HI 96786

Waialua
(Waimea to
Waialua)

Wahiawā
1034 Kilani Avenue
Wahiawā, HI 96786

Ko‘olaupoko
(Waimānalo to
Kualoa)

Kāne‘ohe
45-939 Po‘okela Street
Kāne‘ohe, HI 96744

Ko‘olauloa
(Kualoa to
Waimea)

Kāne‘ohe
45-939 Po‘okela Street
Kāne‘ohe, HI 96744

D. The claim must be filed:

- 1) In the division where the defendant resides.
- 2) If the defendant does not reside in the judicial circuit, then in the division where the claim for relief arose. If the claim for relief arose outside of the judicial circuit, then in any division where the defendant can be found.
- 3) If there are defendants residing in different divisions, then in the division where the claim for relief arose. If the claim for relief arose outside of the judicial circuit, then in any division where any defendant can be found.
- 4) In security deposit disputes, in the division where the defendant resides, or where the property is located, if the defendant resides out of state.

On O‘ahu, all small claims documents are to be filed at the office of the District Court of the First Judicial Circuit, Civil Division, located on the Third Floor, Kauikeaouli Hale, 1111 Alakea Street, Honolulu, Hawai‘i 96813.

WHAT CAN A PARTY DO IF HE/SHE IS UNABLE TO ATTEND THE TRIAL DATE?

Forms to have your case continued may be obtained from the clerk. Type in the necessary information on the form. A request for continuance should be submitted at least 10 days before the trial date.

It is the requesting party’s responsibility to provide a copy of the request for continuance to the other party and if the request is approved by the judge, you must inform the other party of the new trial date before that date.

WHAT HAPPENS IF THE PLAINTIFF IS NOT PRESENT AT THE TIME AND PLACE SET FOR THE TRIAL?

The case may be dismissed.

WHAT HAPPENS IF THE DEFENDANT IS NOT PRESENT AT THE TIME AND PLACE SET FOR THE TRIAL?

If the defendant has been properly served with the Statement of Claim and Notice of the court date, the plaintiff may win judgment by default, and the judge may require the plaintiff to present evidence to prove his/her claim at the court date.

WHAT IS MEDIATION?

Contested small claims may be ordered to mediation. This is a process involving the plaintiff, defendant, and a trained mediator. During mediation, the mediator will attempt to resolve the dispute between the parties.

If an agreement is reached by the parties through mediation, the claim is usually dismissed and the plaintiff avoids having to return to court and incurring more costs in trying to collect on a judgment. If the parties are unable to reach an agreement through mediation, the parties will return to court for a trial before the judge that same day, time permitting.

WHAT SHOULD THE PLAINTIFF AND THE DEFENDANT DO IN PREPARATION FOR THE TRIAL?

If mediation is unsuccessful the plaintiff and defendant will be required to present the facts in their own words or through documents submitted to the court.

If you have any witnesses who support your position, bring them to court, for example, persons who witnessed an automobile accident, repaired the damaged property, or has first-hand knowledge of the case.

If a witness will not come to court voluntarily or cannot get permission to leave work to come to court, the court can be asked to issue an order to compel the witness to appear at the trial. A subpoena is used for this purpose. The party asking for the subpoena must pay witness fees and mileage. The subpoena must be submitted to the Small Claims division for approval of the judge before the trial date. The judge may include the amount paid as witness fees and mileage as part of the judgment entered against the losing party.

Bring to court any documents or papers that relate to the case. The type of documents or papers that may be helpful include, but are not limited to, the following:

1. Any written contracts (for example rental agreements, promissory notes, receipts, agreements to repair property, etc.);
2. Any letters that might have passed between you and the other party;
3. Any bills, paid or unpaid, and canceled checks having to do with the case;
4. Any repair bills or written estimates of repair prepared by qualified persons;
5. Photographs of any damaged property.

WHAT HAPPENS AFTER THE COURT DECIDES THE CASE?

If the plaintiff wins, the judgment must be prepared in written form and filed with the court. Assistance can be requested from the Service center or clerk of the court.

CAN A DEFENDANT FILE A CLAIM AGAINST THE PLAINTIFF?

YES. This is called a counterclaim. Upon request, the clerk of the court will furnish the necessary forms to file a counterclaim. There is a filing fee of \$10.00 for filing a counterclaim.

Court forms are available at 1111 Alakea Street, Third Floor, Honolulu, Hawai'i or at www.courts.state.hi.us.

HOW IS THE PLAINTIFF NOTIFIED OF A COUNTERCLAIM?

If there is sufficient time before the trial date, the counterclaim may be served by mail. If not, a copy should be handed to the plaintiff at the time of the trial. The date of the trial may be continued at the request of the plaintiff if he/she needs additional time to prepare a defense to the counterclaim.

CAN THE PLAINTIFF OR THE DEFENDANT DEMAND A JURY TRIAL?

YES. If there is a Counterclaim filed for more than \$5,000, then either party may have the case transferred to the Circuit Court for jury trial upon a timely request.

A demand for jury trial must be filed before the trial in Small Claims Court begins, and the \$200 payable to the District Court must be deposited with the clerk. Upon approval by the presiding judge, the matter will be transferred to the Circuit Court for trial by Jury, and a transfer fee will be paid at the Circuit Court.

Neither party will have the right to a jury trial if the Counterclaim is for \$5,000 or less, or if the Statement of Claim is for a matter over which exclusive jurisdiction has been granted to the Small Claims Court.

CAN THE CASE BE TRANSFERRED FROM THE SMALL CLAIMS DIVISION TO THE REGULAR CLAIMS DIVISION OF THE DISTRICT COURT?

- A. Cases involving the security deposit in a residential landlord and tenant relationship and cases involving the repossession of shopping carts, shopping baskets or similar devices must remain with the Small Claims

Division. They cannot be transferred to the Regular Claims Division by either party. They cannot be transferred to the Circuit Court for trial by jury.

B. Pursuant to Section 633-27 of the Hawai‘i Revised Statutes, effective January 1, 1992, no case filed in the Small Claims Division shall be transferred to the Regular Claims Division unless the transfer is agreed to by the Plaintiff. If a case is transferred from the Small Claims Division to the Regular Claims Division:

- 1) The trial will be scheduled on a date to be set by the judge of the Regular Claims Division.
- 2) At the trial, rules of evidence will be applied.
- 3) Each party’s right to appeal the judge’s decision will be preserved.
- 4) The party who requested the transfer will be responsible for paying the transfer fee.

WHEN WILL THE CASE BE HEARD?

The clerk will set a trial date not less than 5 nor more than 30 days from the date of filing the Statement of Claim, subject to continuances that may be granted by the court.

Upon the filing of your Statement of Claim, the court clerk will assign a specific date and time for your trial and include that date on the Notice contained in your Statement of Claim. Your case will appear on the court calendar on the specified day.

HOW MUCH NOTICE WILL THE DEFENDANT HAVE OF THE TRIAL DATE?

The defendant must be notified at least 48 hours before the trial date. In other words, the summons must be served on the defendant or, if mailed, received by the defendant at least 48 hours before the trial date.

WHAT IF THE DOCUMENTS ARE NOT SERVED UPON THE DEFENDANT BEFORE THE ASSIGNED COURT DATE?

The plaintiff must appear on the assigned court date and ask the Court to continue the matter. The certified copy of the claim must be taken to the clerk to be up-dated before it can be served again.

CAN THE LOSING PARTY APPEAL?

There is no right of appeal from a judgment of the Small Claims Division.

CAN THE LOSING PARTY ASK THE COURT TO RECONSIDER THE JUDGMENT?

The losing party may ask the court to alter or set aside the judgment within 10 days after filing of the judgment. For example, the losing party may seek to correct a mistake made in computing the amount of the judgment or present new evidence discovered after the time of the trial which could not have been presented at the time of trial.

ONCE THE JUDGMENT IS FINAL, WHAT STEPS MAY BE TAKEN TO COLLECT IT?

The methods to collect the judgment are governed by State and Federal laws and regulations. The court cannot act as the collection agency for the judgment creditor or give you legal advice as to what steps to take. If you have any questions as to the best means to enforce your judgment against the defendant, you should consult a licensed attorney for appropriate advice.

Court forms for collection proceedings are also available at 1111 Alakea Street, Third Floor, Honolulu, Hawai‘i 96813 or at www.courts.state.hi.us.

IS THE JUDGMENT DEBTOR (the losing party) REQUIRED TO PAY THE COST OF COLLECTING THE JUDGMENT?

YES, the debtor must reimburse the judgment creditor for certain costs.

WHAT MUST A PLAINTIFF DO IF HE/ SHE RECEIVES PAYMENT IN FULL FROM THE DEFENDANT?

If payment is received before a judgment is filed, you must file a request to dismiss the case. If payment is received after the judgment has been filed, you must file a **SATISFACTION OF JUDGMENT**. The Service Center or clerk of the court will furnish you with the necessary forms.

WHAT SHOULD I WEAR TO COURT?

Please dress appropriately. No shorts, slippers, or tank tops should be worn in court.

Head gear should be removed unless worn for religious reasons and sunglasses are not to be worn in court unless for medical reasons.

WHERE DO I PARK?

Parking is very limited. You might find it easier to take the bus or have someone drop you off. If you choose to drive, please allow yourself sufficient time to find parking.

Ali'i Place, 1099 Alakea Street, across the street from the Honolulu District Court, provides parking at public rates. There are also metered stalls along Richards Street. The Court does not validate or reimburse for parking.

Please observe all tow away or other restricted street signs as you will be responsible for any citations or tow away charges.

IF I HAVE OTHER QUESTIONS, WHO CAN HELP ME?

For further information, ask or call the Service Center or any of the clerks of the District Court of the First Judicial Circuit. The District Court of the First Judicial Circuit provides 24-hour recorded information at 538-5151 or visit the Judiciary website at www.courts.state.hi.us. The Service Center phone number is 538-5629.

NOTE: *The Service Center staff and court clerks will only assist you on procedural matters. They are **NOT** permitted to give legal advice. Please consult with an attorney on matters pertaining to the law.*



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