

QUESTIONS
& ANSWERS

YOUR GUIDE TO THE SMALL CLAIMS COURT

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

*By order of the Chief Justice: This office shall **NOT** give legal advice to any party or draft legal documents for them.*

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



*In accordance with the **Americans with Disabilities Act**, as amended, and other applicable state and federal laws, if you require a reasonable accommodation for a disability when working with a court program, service or activity, please contact the ADA Coordinator at (808) 961-7424, FAX (808) 961-7411, or email adarequest@courts.hawaii.gov at least ten (10) working days in advance of your hearing or appointment date.*

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 only where the amount claimed does not exceed \$5,000 exclusive of interest and costs, except as provided by section 633-30, Hawai‘i Revised Statutes, as amended.

2) A counterclaim by the defendant against the plaintiff where the amount claimed is no more than \$40,000, plus interest and costs that may be awarded by the court.

B. Cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship; and

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) 538-5151

HAWAI‘I

Hale Kaulike
777 Kilauea Avenue
Hilo, HI 96720
Ph. (808) 961-7515

Keākealani Building, Room 219
79-1020 Haukapila Street
Kealakekua, HI 96750
Ph. (808) 322-8700

Waimea Civic Center
67-5187 Kamamalu Street
Kamuela, HI 96743
Ph. (808) 443-2030

MAUI

2145 Main Street
Hoapili Hale
Wailuku, HI 96793
Ph. (808) 244-2706

KAUA‘I

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

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.

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 clerk of the court. Upon request, the clerk may assist in preparing the Statement of Claim from the information you furnish, but the clerk **CANNOT GIVE ANY LEGAL ADVICE**. The assistance of the clerk in preparing the Statement of Claim is available **only for individuals**.

If you are filing a claim on behalf of a corporation, partnership, sole proprietorship or business, you must prepare the Statement of Claim without the assistance of the court clerks.

WHAT DOES IT COST TO FILE A STATEMENT OF CLAIM?

The filing fee is \$35.00, which can be waived by a judge based upon financial hardship.

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 Third Circuit** is divided as follows:

LOCATION OF

DIVISION (Major Towns)

North & South Hilo

(Hilo, Pāpa‘ikou, Honomū,
Hakalau, Honohina,
Papa‘aloa, Laupāhoehoe,
‘Oōkala)

Puna

(Kea‘au, Kurtistown,
Mt. View, Volcano, Pahoia)

South Kohala

(Kawaihae, Puakō,
Waikōloa, Kamuela,
Waimea)

Hāmākua

(Pa‘auilo, Pā‘auhau,
Honoka‘a, Kukuiahae)

North Kohala

(Māhukona, Kapa‘au,
Hala‘ula, Hāwī)

North and South Kona

(Kailua-Kona, Hōlualoa,
Keauhou, Honalo,
Capt. Cook, Hōnaunau,
Ho‘okena, Miloli‘i,
Kealakekua)

Ka‘ū

(Wai‘ōhinu, Nā‘ālehu,
Pahala, Hawaiian Ocean
View Estates)

COURTHOUSE

Hale Kaulike

777 Kilauea Avenue
Hilo, HI 96720

Hale Kaulike

777 Kilauea Avenue
Hilo, HI 96720

Waimea Civic Center

67-5187 Kamāmalu Street
Kamuela, HI 96743

Waimea Civic Center

67-5187 Kamāmalu Street
Kamuela, HI 96743

Waimea Civic Center

67-5187 Kamāmalu Street
Kamuela, HI 96743

Kealakekua

Keakealani Building
(Old Kona Hospital)
79-1020 Haukapila Street
Kealakekua, HI 96750

Kealakekua

Keakealani Building
(Old Kona Hospital)
79-1020 Haukapila Street
Kealakekua, HI 96750

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 property is located.

In the Third Circuit, small claims documents are filed at the following locations:

<u>DIVISION</u>	<u>PLACE TO FILE</u>
<i>North and South Hilo, Puna</i>	<i>Hale Kaulike 777 Kilauea Avenue Hilo, HI 96720</i>
<i>North and South Kohala, Hāmākua</i>	<i>Waimea Civic Center 67-5187 Kamamalu Street Kamuela, HI 96743</i>
<i>North and South Kona, Ka‘ū</i>	<i>Keakealani Bldg., Rm 219 79-1020 Haukapila Street Kealahou, HI 96750</i>

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. The civil division payment window closes at **4:00 p.m.** and will not accept money for the payment of costs and/or filing fees after that time, but will receive documents and process them the next business day.

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 case involves a claim 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 in the world.
 - 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 to a commissioned civil deputy and request the services of the deputy 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.

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 deputy for service, the plaintiff must pay the deputy a fee for serving the papers plus a mileage fee which will vary according to the distance the deputy must travel. There are no costs to the plaintiff if the plaintiff personally serves the papers pursuant to the appropriate service procedure. A list of commissioned civil deputies may be obtained at the civil section of the District Court
- 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.

CAN A DEFENDANT FILE A CLAIM AGAINST THE PLAINTIFF?

YES. This is called a counterclaim. Upon request, the clerk of the court will prepare a counterclaim from information furnished by a defendant. This service is available only for individuals, and not for any businesses or companies. There is a filing fee of \$10.00 for filing a counterclaim.

Court forms are available at the District Court office 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. Upon approval by the presiding judge, the matter will be transferred to the Circuit Court for trial by Jury. A demand for jury trial fee and transfer fee must be deposited with the clerk of the 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 parties. 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.

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

Both parties will need to agree with the continuance of a case. For further information, please contact the clerk of court in your area (Hilo/Puna, Ph. 961-7515, N & S Kohala/Hamakua, Ph. 443-2030, or Kona/Ka'u, Ph. 322-8700).

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

The case may be dismissed. If the case is dismissed with prejudice, the plaintiff cannot file a new suit on the same claim. If the case is dismissed without prejudice, a new suit on the claim may be filed.

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?

The Judge may order parties to go through mediation. This is a process involving the plaintiff, defendant, and a trained mediator from the Mediation Center. During mediation, the mediator attempts to resolve the dispute between the parties. The plaintiff and the defendant should be ready to mediate on the scheduled court date.

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 on the scheduled trial date.

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

If mediation is unsuccessful, then at trial, the plaintiff and defendant will be required to present the facts in their own words.

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. To compel a witness to attend under an order to appear, is known as a subpoena. The party asking for the subpoena must pay witness fees and mileage. The subpoena must be submitted to the Small Claims division for approval 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?

The judgment must be prepared in written form and filed. Usually, the clerk prepares the judgment for individuals.

However, the court may order the party who wins to prepare it. This may be done, for example, in a case in which the winning party is represented by an attorney.

After the judgment is filed, both parties are notified. If both of them have appeared for the trial, the clerk notifies them. If only the plaintiff has appeared and subsequently obtains judgment by default, the plaintiff must mail a copy of the judgment, showing the filing date, to the defendant at his/her last known address.

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 modify or set aside the judgment within 10 days after filing of the judgment. For example, the losing party may wish 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?

There are several ways to collect the judgment, which 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 the District Court office 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. Check with the court clerk.

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

If payment is received prior to a judgment being filed, you must file a "Notice of Dismissal". If payment is received after the judgment has been filed and entered, you must file a **SATISFACTION OF JUDGMENT**. The 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 it is worn for religious reasons and sunglasses are not to be worn in court unless it is for medical reasons.

IF I HAVE OTHER QUESTIONS, WHO CAN HELP ME?

For further information, ask or call any of the clerks of the District Court of the Third Circuit at Hilo 961-7515, Kona 322-8700, Kamuela 443-2030 or visit the Judiciary website at www.courts.state.hi.us.

NOTE: *The court clerk will only assist you on procedural matters.* The court clerk is NOT permitted to give legal advice. Please consult with an attorney on matters pertaining to the law.



3D-V-043 (05/14)