

## **Tips for a Successful Negotiation**

### **Small Claims Online Dispute Resolution (ODR) Pilot Program**

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**Be Prepared** - To help you prepare, you may want to use the ODR Worksheet before starting the ODR process. Please see Small Claims ODR: Plaintiff's Worksheet and Defendant's Worksheet attached for your reference.

**Be Focused** - The purpose of ODR is to assist you and the other party reach an agreement in a convenient way. You and the other party can negotiate and decide on the payment amount, payment dates, and other agreements to resolve the case. Stick to these subjects during ODR.

**Be Complete** - You and the other party should resolve all the claims in the case. This includes counterclaims that the defendant may have filed against the plaintiff.

The Settlement Agreement will need to address all of the following items:

- Who will pay;
- The amount to be paid;
- When payment will be made; and
- How the payment will be made.

If you and the other party reach an agreement, ODR will ask how you want to resolve your court case. You and the other party need to agree on this too. The options are:

- Ask the court to dismiss the case;
- Ask the court to continue the hearing date until all agreed payments have been made; or
- Ask the court for a judgment.

**Be Clear and Open** - Help the other party understand you and do your best to understand their side. Consider using the ODR chat to politely and clearly explain your offer and ask questions about the other party's offer. You can also share documents to support your position. See the next page for an example of an ODR negotiation.

**Be Careful** - Before sending your offer and chat messages to the other party, you may want to do the following:

- Double check your numbers and dates; and
- Read it out loud to yourself to see how your message sounds.

Be sure to read offers from the other side and ask questions if you do not understand what is being offered.

If you need legal assistance to better understand the court process and your legal rights and responsibilities, please visit the [Hawaii State Judiciary](#) website. Under Self-Help and the Access to Justice Tabs, you will find information about Self-Help Centers, Access to Justice Rooms, and other resources for legal assistance.

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## Sample ODR Negotiation

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The following sample negotiation provides you with a general idea about how ODR may work. *Your case may be different from this example.*

**Sample Case:** Plaintiff filed a small claims case against defendant for the return of a rental deposit in the amount of \$1,000.

**Defendant:** There was damage to the rental unit when you left. I'm using your deposit to pay for those damages. It's going to be around \$750. I'm attaching a copy of the repair quote. I can refund you \$250.

**Plaintiff:** Thanks for sharing the repair quote. I see some of the repair is for the broken window screens but the other repair work seems to be for normal wear and tear. I'm willing to come down to \$800.

**Defendant:** The damages are more than wear and tear but I'm willing to pay you \$500 on April 15 to settle this case.

**Plaintiff:** I can accept \$650. I also need the payment by April 1 so I can pay some bills at the start of the month.

**Defendant:** Ok, I can do \$650 on April 1. Can you also dismiss this case with the court?

**Plaintiff:** Ok, I'll dismiss the case after I receive the payment.



The total amount I am willing to accept from defendant to settle both claims is \$\_\_\_\_\_.

Example:	\$2,000	The amount I am willing to accept to settle my claim
	- 800	The amount I am offering to settle defendant's counterclaim.
	<b>\$ 1,200</b>	<b>The amount I am willing to accept from defendant to settle both claims.</b>

- I do not agree with defendant's counter claim. (You may wish to use the ODR Defendant's worksheet and other references located on the Hawaii State Judiciary website [Small Claims ODR Pilot Program](#)).

### 5. Responding to defendant's offer.

Do you understand the terms of the offer?    Ask questions using the ODR chat function if you don't.  
Do you need a different payment date?        Make a counter offer with a different payment schedule.  
Does the offer meet most of your needs?      Make a reasonable counter offer.

### 6. Closing the court case.

Remember that a court case has been started. You and the defendant will also need to agree on one of the following:

- Dismiss the case.** You and defendant may agree to dismiss the case against defendant and the counterclaim, if there is one. The court will not make a decision as to who owes money and how much. There are two types of dismissals:
  - 1)        **"Without prejudice"** – this means you keep the right to file the same claim against the defendant in the future.
  - 2)        **"With prejudice"** – this means you cannot file the same claim against the defendant in the future.
  
- Continue the court hearing date.** You and defendant may agree to ask the court to change the hearing date to allow time for all agreed payments to be made.
  
- Judgment.** You and defendant may agree to ask the court to issue a judgment. A judgment is a court order that can be enforced against the defendant to collect monies owed.

If no agreement is reached within the seven (7) days negotiation period, you will be required to come to the courthouse on the date and time assigned. At that time, the presiding Judge may order the parties to mediation with a neutral third-party mediator before the case proceeds to trial.

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The total amount I am offering to pay plaintiff to settle both claims is \$ \_\_\_\_\_

Example:	\$ 1,500	The amount I am offering to settle plaintiff's claim.
	- 750	The amount I am willing to accept to settle my counter claim.
	<b>\$ 750</b>	<b>The amount I am offering to pay plaintiff.</b>

- Plaintiff owes me more money than I owe plaintiff. You may wish to use Plaintiff's Worksheet and other references located on the Hawaii State Judiciary website ([Small Claims ODR Pilot Program](#)).

#### 4. Responding to plaintiff's offer:

Do you understand the terms of the offer? If not, ask the plaintiff questions using ODR chat.

Can you afford to pay the amount offered? If not, consider making a counteroffer.

Can you pay the amount all at once? If not, consider paying in installments.

#### 5. Closing the court case.

If you and the plaintiff reach an agreement about the claim, you and the plaintiff will also need to agree on how the court should handle the court case. You and the plaintiff will need to agree on one of the following:

- Dismiss the case.** You and plaintiff may agree to dismiss the case against you. This means the court will not make the decision as to who owes money and how much. There are two types of dismissals:
  - 1) **"Without prejudice"** – this means the plaintiff keeps the right to file the same claim against you again in the future.
  - 2) **"With prejudice"** – this means the plaintiff cannot file the same claim against you in the future.
- Continue the court hearing date.** You and plaintiff may agree to ask the court to change the hearing date until later in the future to allow time for all agreed payments to be made.
- Judgment.** You and plaintiff may agree to ask the court to issue a judgment. A judgment is a court order that can be enforced against you to collect monies owed.

If no agreement is reached within the seven (7) days negotiation period, you will be required to come to the courthouse on the date and time assigned. At that time, the presiding Judge may order the parties to mediation with a neutral third-party mediator before the case proceeds to trial.

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