

# SMALL CLAIMS PROCEDURES

**Be polite**, not just to the judge, but also to your opponent. Do not interrupt. Whatever happens, keep your temper. Good manners and even tempers help the fair and efficient conduct of the trial, and make a good impression on the judge.

After both sides have been heard by the judge, he or she will normally announce the decision right then and will sign and hand the parties a judgment. Occasionally the court will need time to decide the case. In that event, you will be notified of the court's decision by mail.

**How is the money collected after receiving a judgment?** A money judgment in your favor does not necessarily mean that the money will be paid. The Small Claims Court does not collect the judgement for you. If no appeal is taken and the judgement is not paid within 30 days, or the time set by the court in the payment plan, you may request in writing that a transcript of the judgment be entered in the civil docket of the court. At that time you may proceed with any of several methods of collection, such as garnishment of wages, bank accounts and other monies of the judgment debtor, or an execution may be issued on cars, boats, or other personal property of the judgment debtor. You may need the assistance of an attorney or collection agency at that point. **REMEMBER, THE CLERKS CANNOT GIVE YOU LEGAL ADVICE.** In the alternative, you may take the transcript of your judgment, file it in Superior Court, and record it at the County Auditor's Office. Fees will be required by the Superior Court clerk and County Auditor. When this is done, it places a lien against any real property located in the county in the name of the judgment debtor.

When the judgment has been paid in full you must send written notice to the District Court that the judgment has been satisfied.

What happens to the evidence filed with the court? Any evidence filed with the court, such as copies of agreements, cancelled checks or any other evidence, will be retained by the court for a period of 30 days following the decision of the court. If no appeal is taken, the parties will receive notice and must immediately come to the court to retrieve any evidence. If the evidence is not retrieved within 30 days of the notice, it will be destroyed. If an appeal is filed, the evidence will be retained pending resolution of the appeal.

**Is there a right to appeal?** Except as noted, any party dissatisfied with the decision of the small claims court may appeal that decision to the Superior Court. *Provided, however, the party who files a claim or counterclaim cannot appeal unless the amount claimed (the amount asked for, not the amount of the judgment) by that party exceeds \$1,000. And provided further, no party may appeal a judgment where the amount claimed was less than \$250.*

**How is an appeal filed?** If an appeal is taken to the Superior Court, the appealing party is required to follow the procedures set out in Revised Code of Washington (RCW) Chapter 12.36. The following steps must be taken within 30 days of the entry of judgment:

1. Prepare a written Notice of Appeal and file it with the District Court;
2. Serve a copy of that notice on the other parties, and file acknowledgment or affidavit of service in District Court;
3. Deposit at the District Court the Superior Court filing fee of \$230, either in cash, money order, or cashier's check payable to the Clerk of the Superior Court;
4. Pay a \$40 appeal processing fee to the District Court; and
5. Post a bond in a sum equal to twice the amount of the judgment and costs, or twice the amount of the amount in controversy, whichever is greater, at the District Court. The bond can be in cash or through a surety approved by the District Court.

When the appeal and bond are transferred to Superior Court, the appellant (person appealing the decision) may request that the Superior Court suspend enforcement of the judgment until after the appeal is heard.

Within 14 days of filing the Notice of Appeal, the District Court clerk will file the court record at the Superior Court, which will then assign a new number and notify the District Court. The District Court clerk will advise the appellant of that number, and the appellant must then contact the Superior Court Clerk for further instructions.

Once the judgment has been appealed to the Superior Court, enforcement of the judgment will be handled in Superior Court in the same manner as any other Superior Court judgment.



## ISLAND COUNTY DISTRICT COURT

800 S.E. 8<sup>th</sup> Avenue

Oak Harbor, WA 98277

WILLIAM H. HAWKINS, Judge

**How does the case get started?** First, the person filing the claim (plaintiff), will prepare a Notice of Small Claim on a form provided by the clerk. The clerk will enter a hearing date, trial date or compliance date on the form. It is the plaintiff's responsibility to accurately identify the defendant, provide a proper address and, if possible, a phone number for the defendant.

**What help can the court give?** The clerk is not allowed to give legal advice or attempt to predict how the judge might rule in a given situation. A clerk may assist with forms and general information about the process, but may not legally do more. Forms are available for such things as the Notice of claim, Affidavits, and the Notice of Appeal.

**Who can sue and be sued?** Any individual, business, partnership, or corporation (with a couple of exceptions) may sue or be sued in small claims court. In most cases, government entities cannot be sued in small claims court.

**What can be recovered?** The court can award a judgment for the recovery of money only. The limit is **\$10,000.00.** The court cannot determine ownership or possession of property. Also, you are not allowed to split a cause of action into two or more cases to avoid the jurisdictional limits. Generally, if two cases arise out of the same event or transaction, they must be joined and are subject to the \$5,000 jurisdictional limit.

**Where should the case be filed?** As a general rule, the case must be filed in the county of the defendant's residence. In the case of a traffic accident, it may also be filed in the county where the collision occurred.

**May attorneys participate in small claims court?** No. Attorneys and paralegals are prohibited from appearing or participating with the plaintiff or defendant in a small claims suit unless the judge grants permission.

**How much does it cost?** The person filing the suit (plaintiff) must pay the filing fee at the time of filing. Additional fees must be paid to have the Notice of Small Claims served on the defendant by the sheriff or a process server. As an alternative, defendant may be served by registered or certified mail. If this is done, a return receipt signed by the defendant must be filed with the court to prove the notice was received. The prevailing party may recover the filing and cost of service as a part of the judgment.

**How is notice served on the defendant?** It is the duty of the plaintiff to arrange for service upon the defendant. Service does not happen automatically. The Notice of Small Claim must be served on the defendant by any of the following:

1. The Sheriff's Office;
2. A process server;

3. Any person of legal age (18 or older) who is not connected with the case either as a witness or as a party; or
4. By mailing the copies to the defendant by registered or certified mail with a return receipt requested; *Provided*, that service by mail is only effective if the defendant signs a return receipt, and the return receipt is filed with the court.

The Notice of Small claim must be served on the defendant not less than ten (10) days before the first hearing. A "return of service" (an affidavit or declaration attesting to the date, time and manner of service), or mail return receipt bearing the defendant's signature, must be filed at or before the time of the first hearing. Plaintiff cannot personally serve the defendant with the claim.

**What about settlement out of court?** In most cases, neither party is one hundred percent right or wrong. Furthermore, even if you are right, remember your opponent will be telling a different story to the judge. There may not be sufficient evidence to convince the court of the merits of your case. In short, there is real risk any time a case goes to court.

For this reason, all parties are required to mediate their case before trial. If a settlement is reached before the hearing, you must inform the court so the hearing can be cancelled and the case dismissed. If your opponent agrees to pay at a later date, you may ask to continue the hearing. If the payment is made before the new date, you may then ask the court to cancel the hearing. However, if payment is not made by the time of the new hearing date, the case may proceed to court. If the suit is dropped, the filing fee and service costs are not returned.

**What is the first appearance?** The first time the parties appear in court will not be a trial

If both parties are present at the first appearance, the case will be sent to mediation at that time. Mediation is a process where the two parties meet with a neutral third party who is a trained mediator and an attempt to settle the case without the necessity of a trial. Attendance at mediation and a good faith effort to mediate are mandatory although settlement of the case is not required.

If the case is not resolved at mediation, a pretrial conference will be held and the matter will be assigned a trial date.

**What if the defendant is in the military?** The law protects any person on active duty in the military. You must verify to the best of your ability whether the defendant is on active duty. If you know the social security number (SSN) you may obtain verification at the Defense Manpower Data Center (DMDC) website. You should print and file the report. **The web address is: <https://scra.dmdc.osd.mil/scra/#/html> . If you do not know the SSN you should contact the DMDC by mail at:**

Department of DMDC, 4800 Mark Center Drive, Suite 04E25, Arlington, VA 22350. A self-addressed, stamped envelope is required.

**What if the defendant fails to appear?** *If* there is proof in the file that the defendant has been properly served with notice of the claim, and *if* there is proof in the file that the defendant is not on active duty with the military, and *if* the defendant fails to appear, a default judgment may be entered in favor of the plaintiff, upon presentation of sufficient facts.

**What if the plaintiff fails to appear?** If the plaintiff fails to appear, the case will be dismissed without prejudice. If a written counterclaim has been filed, properly served, and proof of service filed, a default judgment may be entered in favor of the defendant, upon presentation of sufficient facts.

**Preparing the case for trial.** It is crucial to be well prepared. To prepare for the trial, collect all papers, photographs, receipts, estimates, canceled checks, or other documents that concern this case. Do not assume the judge knows anything about your case. It may be helpful to write down ahead of time the facts of the case in the order that they occurred. This will help organize the case and make a clear presentation of the story to the judge.

It is also a good idea to sit through a small claims court session before the date of your hearing. This will give you first-hand information about how small claim cases are heard.

**What happens at the trial?** When you arrive at the court, report to the courtroom to which your case has been assigned. When your case is called in the courtroom, come forward to the counsel table and the judge will swear in all the parties and witnesses.

There is no need to be nervous—remember that a trial in small claims court is informal. The judge will ask the plaintiff to give his or her side, and then will ask the defendant for his or her explanation. Be brief and stick to the facts. Do not just read a written statement. Tell your story in your own words; resist the temptation to "talk like a lawyer". The judge may ask you questions, which you should answer straight out and to the best of your knowledge.