



Island County District Court  
800 SE 8<sup>th</sup> Avenue  
Oak Harbor, WA 98277

## DEFENDANT'S SMALL CLAIMS BROCHURE

### Disclaimer

**This brochure is intended to be a general statement of small claims procedure and not legal advice. For more detailed information, please consult applicable provisions of the Revised Code of Washington (RCW) Chapters 3.66, 4.16, 4.28, 12.40, and the Civil Rules for Courts of Limited Jurisdiction, Rule 5 (CRLJ 5). RCWs and court rules can be found at libraries and the following websites: [www.leg.wa.gov](http://www.leg.wa.gov) (for RCWs) and [www.courts.wa.gov](http://www.courts.wa.gov) (for court rules and sample forms). Court contact information can also be found at [www.courts.wa.gov](http://www.courts.wa.gov).**

### Who May Bring a Small Claims Action?

Any individual, business, partnership or corporation (with a few exceptions) may bring a small claims action only to recover money; a “natural person,” meaning a human being, may file a claim up to \$10,000; the limit is \$5,000 in all other cases. In general, the claim must be filed in the district court of the county in which the defendant(s) reside. Exceptions and specific rules can be found at RCW 3.66.040. The State of Washington may not be sued in a small claims action. Attorneys and paralegals are excluded from appearing or participating with the plaintiff or defendant in a small claims action unless the judge grants permission.

If you were served with a Notice of Small Claim and Mediation Hearing, the following step-by-step procedural explanation may help you better understand what to expect as your case proceeds through Island County District Court. Utilize the Defendant's Checklist to track your progress. This packet contains information about the process and is not legal advice.

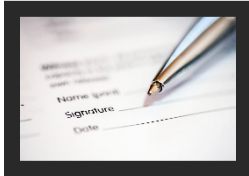


#### Step 1: Understand the Court you Are Summoned To:

You have been summoned to Island County District Court. The physical address of Island County District Court is: 800 SE 8<sup>th</sup> Avenue, Oak Harbor, WA 98277.

However, for the mediation hearing you may be able to attend by video conferencing (information provided on the Notice of Claim and Mediation Hearing). If you have any questions, please do not hesitate to contact a

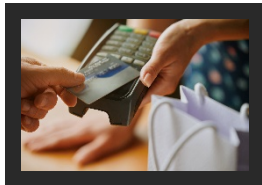
court clerk at (360) 675-5988 or by emailing at District\_Court@islandcountywa.gov.



### Step 2: Closely Review the Documents Served:

The Notice of Small Claim and Mediation Hearing was filed by the plaintiff. It should contain a concise description of the nature of the plaintiff's claim against you and details about the mediation hearing. Mediation is mandatory. Clear your schedule to appear for this hearing.

Note: you may appear remotely (video) rather than in person at the courthouse for the mediation hearing.



### Step 3: (OPTIONAL) Filing A Counterclaim

You may file a counterclaim and pay the filing fee. A small claim 'counterclaim' is when the defendant to a civil lawsuit files a small claim against the plaintiff.

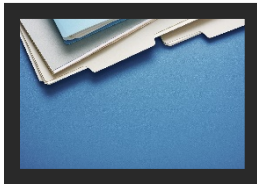
If you file a counterclaim, you will have the 'burden of proof' to establish your claim. Counterclaims should be filed as soon as possible to allow time to serve the plaintiff. Service is required to be completed ten (10) days before the mediation. File your Notice of Counterclaim in person at Island County District Court. DO NOTE File your evidence (exhibits) with the court prior to your trial date. Use the same case number as on the 'Notice of Small Claim and Mediation Hearing'. You will be required to pay a \$50.00 filing fee. Your counterclaim will be mediated at the same time as the plaintiff's claim. A notice of 'counterclaim' can be obtained from the Island County District Court Small Claims webpage or in person at the Island County District Court. \*\* IF YOU DO NOT FILE A COUNTERCLAIM, SKIP TO STEP 6 \*\*

### **Notifying the Defendant**

Once the Notice of Counterclaim is filed with the clerk, it must be "served" or presented to the plaintiff by someone other than the person who filed the claim, either by personal service or through the mail. The Notice can be served in any of the ways listed in RCW 4.28.080, including

giving a copy of the Notice of Counterclaim to the plaintiff or leaving it at the plaintiff's usual residence with a person who is of suitable age, discretion and that resides therein.

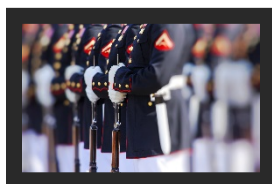
The Notice can be served only by (1) a person over the age of 18 who is competent to be a witness and is not a party to the action, or (2) the sheriff or a deputy of the county in which the court is located. Instead of personal service, the Notice can be sent to the plaintiff by registered or certified mail. If the Notice is mailed, a return receipt with the signature of the party being served must be filed with the court. The plaintiff must be served the Notice at least ten calendar days before the scheduled hearing.



#### Step 4: Have Each Plaintiff Served and Obtain Proof

Service of the Notice of Counterclaim on each plaintiff is required promptly after filing the counterclaim and at least 10 days prior to mediation. Service allows the court to make decisions that affect the other party. If the defendant is a business or other entity, you must prove that service was accomplished to one of the individuals identified in RCW 4.28.080.

You are not allowed to serve the Defendant – someone else must do this for you and provide proof that the defendant was in fact served. Service may be done by: (1) A registered process server; (2) A person over age 18 not connected to the case as a party or witness; or (3) Certified mail with a return receipt(s) - must be signed by each defendant. If you choose (1) or (2) above, provide the Proof of Service to the server. If you choose (3) above, go to the post office and select certified mail with “return receipt” addressed to each defendant. You will not be granted a judgment without proof of service (mail with plaintiff(s) signature).



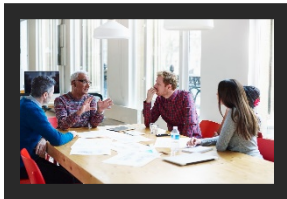
#### Step 5: File Proof of Service

File the Proof of Service or certified mail return receipt signed by each plaintiff at least five (5) days prior to your mediation hearing. If you have been unable to timely complete service prior to mediation, you must still appear for the mediation hearing to request more time to service. The judge will decide how to proceed.

**Your first Court Appearance is an Opportunity to Mediate your Case**

If you have not reached an agreement prior to your court date, you will have an opportunity to mediate your case. All small claims cases in Island County go through a mediation process. As in many complex civil litigation cases, District Court has professional mediators who will appear at your first court date to work with the parties to see if a binding agreement can be reached. This is a valuable alternative to trial. It allows both parties to agree and control the outcome of case. As evidenced by the significantly high number of cases that resolve through mediation, the process is excellent at bringing adverse parties together to reach a mutually acceptable agreement. 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 at the end of the calendar and the matter will be assigned a trial date and discovery date.



#### Step 6: Appear for Mediation Hearing:

You may appear at your mediation hearing either in person at: 800 SE 8<sup>th</sup> Avenue, Oak Harbor, WA 98277 or by video appearance. For video appearance please login into the correct courtroom by 8:45 am on the assigned date. You can login by going to the Island County District Court Webpage. Select Appearing by Video. Review the Courtroom Etiquette, then scroll down to the bottom of the page and select the appropriate courtroom (<https://www.islandcountywa.gov/980/Appearing-By-Video>).

The judge will explain the mediation process. If you and the plaintiff(s) are present, you must participate in mediation. Most cases are successfully resolved through mediation with the assistance of a trained and experienced dispute resolution specialist. If you reach a settlement agreement at mediation, the case is over and both sides will be bound by the agreement. If you fail to resolve your case at mediation, the court will schedule a trial before a judge and set a reciprocal discovery date. Remote appearances are not allowed for trial.

### **Preparing for the Trial**

Whether you are the plaintiff or the defendant, you can help yourself by being well prepared. To prepare for the trial, collect all papers, photographs, receipts, estimates, canceled checks or other documents that concern the 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 you to organize your thoughts and make a clear presentation of your story to the judge.

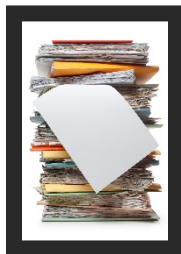
It is also a good idea to sit through a small claims court session before the date of your hearing. This will give you first-hand information about the way small claim cases are heard.

### **What Happens at the Trial?**

When you arrive at the court, report to the courtroom in which your case has been assigned. Do not be late. When your case is called, 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 hearing in small claims court is informal. The judge will ask the plaintiff to give his or her side first, and then will ask the defendant for his or her explanation. Be brief and stick to the facts. The judge may interrupt you with questions, which you should answer honestly and to the best of your knowledge.

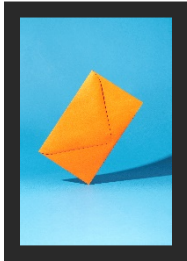
Be polite, not just to the judge, but also to your opponent. Do not interrupt. Whatever happens, keep your temper. Good manners and even tempers help the fair, efficient conduct of the trial and make a good impression on the judge.



#### Step 7: Gather Evidence and Make 2 Copies

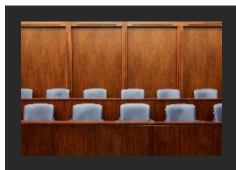
As the defendant, you have no burden of proof; the burden is on the plaintiff to prove the claim. However, if you filed a counterclaim, you have the burden of proving by a preponderance of the evidence (more likely than not) that the plaintiff is liable to you for a specific amount of damages. In addition to providing testimony at trial, you may want to gather evidence to support your claim such as documents, receipts, records, photographs and witness statements. To provide sworn statements, use the Declaration of Party or Witness. Organize your evidence and attach all of your exhibits to the Evidence Cover Sheet. Make 2 copies (for the judge and defendant). NOTE: Audio and video evidence must be saved on a USB thumb drive and provided to the defendant and the court. All other evidence must be printed on single-sided 8.5" x 11" paper. Text or social media evidence may be provided by taking a "screen-shot" on an electronic device and printing the images. All evidence should be itemized and attached to

the Evidence Cover Sheet. Thumb drives are for audio and video files ONLY – do not use for evidence that can be printed.



Step 8: Send Evidence: to plaintiff on or before the scheduled discovery date & drop off or mail a copy of the same discovery to District Court.

Itemize and describe each piece of evidence you intend to use at trial on the Evidence Cover Sheet and attach a copy of all exhibits. Send a copy to the defendant on or before the scheduled discovery date. Mail or drop off a second copy of your discovery to Island County District Court (800 SE 8<sup>th</sup> Avenue, Oak Harbor, WA 98277) on or before the scheduled discovery date. The evidence does not need to be served by someone else as was required in step 4; use the mailing address or email address provided by the plaintiff on the Notice of Claim and Mediation. If you fail to comply with this step, the judge may exclude your evidence. The same rule applies to the plaintiff.



Step 9: Appear at the Courthouse for Trial

Trials are not conducted remotely – you must appear at the courthouse. Bring your copy of your exhibits and proof that you provided discovery to the other party. At the trial, both sides may testify and answer questions from the judge. The judge will review the admitted evidence and decide if anyone else may testify. If you intend to use audio or video evidence from a thumb drive, please bring a device to play that evidence in open court. Be prepared. You have limited time (perhaps no more than 15 - 30 minutes) to present your case efficiently, concisely, and persuasively. At the conclusion of the trial, the judge will issue a written order and provide a copy to both parties. Alternatively, the judge will take the case under ‘advisement’. Under advisement, the judge will re review the evidence, testimony, and law. A decision will generally be made within 30 to 45 days.

### **What If a Party Doesn’t Appear at the Hearing?**

If a party fails to appear for trial, the other party will be granted judgment for the amount of the claim/counterclaim proven in court, plus costs—provided the party can show proof of service and military status. If the plaintiff fails to appear and there is no counterclaim, the claim is dismissed; however, generally the court will permit the plaintiff to start over, if good cause for the nonappearance is shown.

### **What Happens After the Judge Makes a Decision?**

After the judge hears both sides, the court will issue a judgment or dismiss the case. If the plaintiff wins, the judge will order the defendant to pay a certain amount for the claim, as well as any costs in bringing the case, and any interest on the amount owed. If the defendant prevails/wins on their counterclaim, the judge will order the plaintiff to pay a certain amount for the claim, as well as the costs the plaintiff spent to bring the case and any interest on the amount owed. Once the judgment is issued, the clerk will enter it into the civil docket of the court and will provide a certified copy upon request of the judgment to the prevailing party for no additional cost.

Even if you have a judgment, it does not necessarily mean that you will be paid. The Small Claims Court does not collect the judgment for you. If the debtor does not pay right away, the court may order a payment plan. If the losing party fails to pay, the judge may increase the amount of the judgment to cover the cost of enforcing the judgment. If no appeal is taken and the judgment is not paid within 30 days, or in the time set in a mediation agreement or payment plan, the prevailing party may seek to enforce the judgment through the collections process, which could include garnishing the defendant's wages or bank accounts; or seeking to obtain personal property of the debtor. Remember, the court clerks cannot give legal advice so you may need the assistance of an attorney or collection agency, whose fees may be paid by the debtor.

### **What Happens If You Lose?**

Either party may appeal a judgment when the judge has decided against them. However, no appeal is permitted if the amount originally claimed was less than \$250. Also, if a party who brought a claim or counterclaim wants to appeal a judgment, the amount originally claimed must have exceeded \$1,000. If a party loses a default judgment, an appeal may be taken under the district court rules for setting aside default judgments.

A party who appeals a judgment is required to follow the procedures set out in chapter 12.36 RCW. The party who wants to appeal must take the following steps within 30 days of the entry of judgment:

1. File a written Notice of Appeal with the district court.
2. Serve a copy of that Notice on the other parties.
3. Deposit at the district court the \$230 superior court filing fee either in cash, money order or cashier's check payable to the Clerk of the Superior Court, and pay a \$40 appeal preparation processing fee to the district court.
4. Post a cash or surety bond in a sum equal to twice the amount of the judgment and costs or twice the amount in controversy, whichever is greater, at 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 in the district court until after the appeal is heard. Within 14 days of filing the Notice of Appeal, the district court clerk will transmit the court record to the superior court clerk. All further proceedings will be in the superior court.



### **Do You Need an Interpreter?**

If you need an interpreter for you to fully and equally participate, please contact the court immediately at (360) 675-5988. The court will need time to secure the presence of an interpreter. An interpreter will be provided at no expense to you.

### **Do You Need a Disability Accommodation?**

If you need an accommodation for a disability in order to fully and equally participate, please contact the court immediately at (360) 675-5988.



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