

Commencing an Action: Hawaii

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A Q&A guide to commencing an action in Hawaii. This Q&A addresses the requirements for drafting and filing initiating papers, serving process and amending the complaint. Answers to questions can be compared across a number of jurisdictions (see Commencing an Action: State Q&A Tool).

Overview of Commencing an Action

1. What are the applicable rules for commencing an action?

Hawaii Rules of Civil Procedure

The Hawaii Rules of Civil Procedure is the main body of law governing Hawaii civil procedure. The key provisions related to commencing a civil action are:

- Haw. R. Civ. P. 3 (commencement of action).
- Haw. R. Civ. P. 3.1 (civil information sheet, additional claims, and transfers from district court).
- Haw. R. Civ. P. 4 (process).
- Haw. R. Civ. P. 5 (service and filing of pleadings and other papers).
- Haw. R. Civ. P. 7 (pleadings allowed and form of motions).
- Haw. R. Civ. P. 8 (general rules of pleading).
- Haw. R. Civ. P. 9 (pleading special matters).
- Haw. R. Civ. P. 10 (form of pleadings).
- Haw. R. Civ. P. 11 (signing of pleadings, motions, and other papers; representations to the court; and sanctions).

Trial Courts

Hawaii has two general jurisdiction trial level courts, depending on the type of claim and amount in dispute: district court and circuit court. Each of these courts

have more specific rules related to commencing an action:

- Rules of the Circuit Courts of the State of Hawaii (HI R CIR CT Rule 1 to HI R CIR CT Rule 34).
- District Court Rules of Civil Procedure (HI R DIST CT RCP Rule 1 to HI R DIST CT RCP Rule 85).

Specialty State Courts

Hawaii has specialty courts and subdivisions within the circuit and district courts, each with its own rules of practice:

- Hawaii Family Court Rules (HI R FAM CT Rule 1 to 157).
- Rules of the Land Court (HI R LAND CT Rule 1 to HI R LAND CT Rule 106).
- Rules of the Tax Appeal Court of the State of Hawaii (HI R TAX A CT Rule 1 to HI R TAX A CT Rule 41).
- Hawaii Probate Rules (HI R PROB Rule 1 to 154).
- Rules of the Small Claims Division of the District Courts (HI R DIST CT SM CL Rule 1 to HI R DIST CT SM CL Rule 14).

Other Sources

Other sources of applicable procedural law include:

- The Hawaii Revised Statutes (HRS §§ 601-1 to 676-6, regarding courts and judicial proceedings).
- The Hawaii Rules of Professional Conduct (HI R S CT EX A RPC Rule 1.0 to 8.5).
- The Guidelines of Professional Courtesy and Civility for Hawaii Lawyers (HI R S CT EX A-1 GDS PROF COURTESY AND CIVILITY § 1 to HI R S CT EX A-1 GDS PROF COURTESY AND CIVILITY § 14).



2. Generally, in which trial level court must an action be commenced? Please address:

- Monetary thresholds for trial level courts.
- Territorial limits for trial level courts.

If an action satisfies the jurisdictional requirements, a party may commence an action in the following courts:

- Circuit court (see Circuit Court).
- District court (see District Court).
- Family court (see Family Court).
- Land court (see Land Court).
- Tax appeal court (see Tax Appeal Court).

Circuit Court

Hawaii's circuit courts have general jurisdiction in civil and criminal cases (HRS § 603-21.5(a)). They have exclusive jurisdiction in all jury trial, probate, guardianship, and criminal felony cases, as well as civil cases where the contested amount exceeds \$40,000.

Circuit courts share concurrent jurisdiction with district courts in civil non-jury cases in which the amounts in controversy are between \$10,000 and \$40,000 (HRS § 604-5(a)). Circuit courts also share concurrent jurisdiction with the family court over several issues (HRS §§ 603-21.5(b)). Other cases heard by the circuit courts include mechanics' liens and misdemeanor violations transferred from the district courts for jury trials.

Monetary Thresholds

Circuit courts have monetary jurisdiction where either:

- The contested amount exceeds \$40,000.
- A party requests a jury trial, which the rules allow in cases where the amount exceeds \$5,000.

(HRS § 604-5.)

Territorial Limits

Generally, a party brings an action in the circuit where the claim for relief arose or where the defendant is domiciled (HRS § 603-36). There are four active circuits, divided by counties:

- First circuit (the island of Oahu and all other islands belonging to Hawaii not included in the other circuits).
- Second circuit (the islands of Maui, Moloka'i, Lana'i, Kaho'olawe, and Molokini).

- Third circuit (the island of Hawai'i).
- Fifth circuit (the islands of Kaua'i and Ni'ihau).

(HRS § 603-1.)

District Court

Hawaii's district courts generally have jurisdiction in all civil actions where the amount in controversy is under \$40,000. District courts also have jurisdiction over summary possession and ejectment, regardless of the amount in controversy. (HRS § 604-5.)

Monetary Thresholds

The regular claims division of the district court has jurisdiction over:

- All civil actions in which the debt, damages or value of property claimed does not exceed \$40,000.
- All summary possession and ejectment cases regardless of the amount sought.

The regular claims division of the district court has exclusive jurisdiction over:

- Suits where the amount in controversy is up to \$10,000.
- Suits for specific performance when the fair market value of the specific performance is up to \$20,000.
- Suits triable of right by jury where the amount in controversy is up to \$5,000.
- Injunctive relief in residential landlord-tenant cases.

(HRS § 604-5.)

Territorial Limits

There are district courts in the four active circuits, with courthouses located in rural areas across the state.

A plaintiff brings a civil action in the district court of the judicial circuit in which either:

- The defendant resides.
- A majority of the defendants reside.
- The claim for relief arose.

(HRS § 604-7(d).)

Family Court

Hawaii's family court is a division of the circuit court but the Hawaii Family Court Rules, rather than the Rules of Civil Procedure, apply to proceedings in family court (HRS § 571-3; HI R FAM CT Rule 1).

Monetary Thresholds

Hawaii's family courts do not have monetary thresholds. They have jurisdiction over cases concerning:

- Minors under the age of 18.
- Domestic relations.
- Domestic violence.
- Civil commitment.
- Guardianship of adults.
- Adult abuse.

(HRS §§ 571-11 and 571-14.)

Territorial Limits

There are family courts in the four active circuits across the state (HRS § 571-3).

Land Court

Proceedings in Hawaii's land courts are in rem against the land. Procedures in land court generally conform to the practice of the circuit courts (HRS § 501-1).

Monetary Thresholds

The land courts do not have monetary thresholds. They have exclusive jurisdiction over all applications for the registration of title to land and easements or rights in land held and possessed in fee simple within Hawaii (HRS § 501-1).

Territorial Limits

The administrative judge of the Circuit Court of the First Circuit, subject to the direction of the chief justice, assigns all land court matters to the appropriate judges of the First Circuit Court (HRS § 501-2).

Tax Appeal Court

Monetary Thresholds

The tax appeal courts do not have monetary thresholds. They have jurisdiction over appeals:

- Directly from assessments.
- After obtaining a decision from a state board of review or equivalent administrative body as required by county ordinance.

(HRS §§ 232-11, 232-16, and 232-17.)

Territorial Limits

Tax appeal courts have jurisdiction throughout Hawaii for matters within its jurisdiction (HRS § 232-11).

3. What documents must be prepared to commence an action? Are there official forms for the initiating papers?

Documents

In both the Hawaii circuit and district courts, a party commences an action by filing a complaint with the court (Haw. R. Civ. P. 3; Haw. R. Dist. Ct. 3; HI R DIST CT RCP Rule 3).

In the circuit court, a party must file with the complaint a civil information sheet that substantially complies with Form 2-A of the Hawaii Rules of Civil Procedure (Haw. R. Civ. P. 3.1(b)).

Official Forms

The court furnishes forms that have been approved by the Hawaii Supreme Court, and counsel may use those forms in all appropriate instances in both circuit and district courts (HI R CIR CT Rule 3(f); Haw. R. Dist. Ct. 3(f)). If a party does not use these approved forms, the complaint must conform to the specifications described in HI R CIR CT Rule 3(c) and Haw. R. Dist. Ct. 3(c).

In addition, the forms contained in the Appendix of Forms to the Hawaii Rules of Civil Procedure are sufficient under the rules (Haw. R. Civ. P. 84).

Counsel should also check the websites of other specific state courts, which may have either mandatory or sample forms of the initiating papers. For example, HI R DIST CT SM CL Rule 2 provides that a party commences a small claims action by filing a "statement of claim" with the clerk.

4. Is an action commenced by serving or filing the initiating papers? If an action is commenced by service, by when must the complaint or other pleading be filed?

In Hawaii, a party commences an action by filing the complaint with the court (Haw. R. Civ. P. 3; Haw. R. Dist. Ct. 3; HI R DIST CT RCP Rule 3).

5. How are the initiating papers filed?

Please address:

- Whether the papers are filed electronically or by hard copy.
- Any fees for filing the initiating papers, and in what form those fees must be paid.

Filing Initiating Papers

In Hawaii, the party initiating a case in either the circuit or district court must file an original hard copy of the complaint and civil information sheet with the court (Haw. R. Civ. P. 3.1; Haw. R. Dist. Ct. 2(d)(1)). Filing with the court means filing with either:

- The clerk of the court.
- The judge, by judicial permission only. The then judge notes the filing date and transmits the filing to the office of the clerk.

(Haw. R. Civ. P. 5(e); HI R DIST CT RCP Rule 5(d), (e).)

The clerk may not refuse to accept any paper presented for filing solely because it is not presented in the proper form required by the Hawaii Rules of Civil Procedure (Haw. R. Civ. P. 5(e); HI R DIST CT RCP Rule 5(e)).

The respective clerks of the circuit courts are *ex officio* (by virtue of their position) clerks of all the courts of record and may accept documents for filing and issue summons returnable in all courts (HI R CIR CT Rule 2.1). *Ex officio* filing costs \$10 extra for each filing (HI R CIR CT Rule 2.2; Haw. R. Dist. Ct. 2.2(6)).

Electronic filing is available for certain actions in the circuit and district courts ([Hawai'i State Judiciary: Efiling](#)).

Filing Fees

The court clerk collects all costs and fees (HI R CIR CT Rule 2.2; Haw. R. Dist. Ct. 2.2).

The fee to initiate an action in Hawaii is:

- \$315 in circuit court, which includes:
 - a \$200 filing fee (HRS § 607-5(b));
 - a \$65 indigent legal services surcharge (HRS § 607-5.7(a)(2)); and
 - a \$50 administrative fee (HRS § 607-5(c)(32)).
- \$155 in district court, which includes:
 - a \$100 filing fee (HRS § 607-4(b));

- a \$35 indigent legal services surcharge (HRS § 607-5.7(b)(2)); and
- a \$20 administrative fee (HRS § 607-4(b)(10)).

A demand for jury trial costs an additional \$200 in both circuit and district courts (HRS §§ 607-4(b)(3) and 607-5(c)(21)).

The Hawaii courts website has a summary of all [circuit court](#) and [district court](#) filing fees and costs.

The fees must be paid as costs of court by the person either:

- Instituting the action or proceeding.
- Offering the paper for filing.
- Causing the document to be issued or the services to be performed in the court.

(HRS §§ 607-4(a) and 607-5(a).)

Initiating Papers

6. What are the contents that must be included in the summons?

Circuit Court

In Hawaii, a circuit court summons must be addressed to the defendant and must include:

- The name of the court, the name of the parties, and the date the summons was issued.
- The name and address of the plaintiff's attorney, if any, or the plaintiff's address;
- The deadline under the Hawaii Rules of Civil Procedure by which the defendant must appear and defend the action.
- Notice that failure to appear results in a default judgment against the defendant.
- A prohibition against personal delivery of the summons between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless permitted by the court.

(Haw. R. Civ. P. 4(b); HI R DIST CT RCP Rule 4(b)).

The summons must be signed by the clerk and bear the court's seal (Haw. R. Civ. P. 4(b); HI R DIST CT RCP Rule 4(b)).

A form of summons for the circuit court is available in the Appendix of Forms in the Hawaii Rules of Civil Procedure.

A form of summons for the district court is available in the Appendix of Forms in the Hawaii District Court Rules of Civil Procedure.

7. What are the contents that must be included in the complaint?

In Hawaii, a complaint filed in the circuit court or district court must contain:

- A caption that includes:
 - the name of the court;
 - the names of the parties;
 - the title of the action;
 - the file number;
 - a court division designation.(Haw. R. Civ. P. 10(a); HI R DIST CT RCP Rule 10(a).)
- A demand for the relief sought, including any demand for relief in the alternative (Haw. R. Civ. P. 8(a); HI R DIST CT RCP Rule 8(a)).
- Short and plain statements of describing the grounds for relief (Haw. R. Civ. P. 10(b); HI R DIST CT RCP Rule 10(b)).
- A specific statement of any special damages (Haw. R. Civ. P. 9(g); HI R DIST CT RCP Rule 9(g)).
- Numbered paragraphs (Haw. R. Civ. P. 10(b); HI R DIST CT RCP Rule 10(b)).
- Any required exhibits (Haw. R. Civ. P. 10(c); HI R DIST CT RCP Rule 10(c)).
- The signature, address, and telephone number of at least one attorney of record or the plaintiff if pro se (Haw. R. Civ. P. 11(a); HI R DIST CT RCP Rule 11).
- If the plaintiff is pro se and an attorney provides the plaintiff limited representation by drafting the complaint, a statement that the document was prepared with the assistance of an attorney (Haw. R. Civ. P. 11.1(c); HI R DIST CT RCP Rule 11.1(c)).

In the district court, the caption must also state the nature of the suit (HI R DIST CT RCP Rule 10(a)).

8. Must the plaintiff verify or swear to the complaint?

In the Hawaiian circuit court and district court, a plaintiff does not need to verify a complaint or accompany it with

an affidavit unless a rule or statute specifically requires it (Haw. R. Civ. P. 11(a); HI R DIST CT RCP Rule 11).

9. What is the applicable pleading standard? Please address any:

- Key distinctions from Federal Rule of Civil Procedure 8.
- Different pleading requirements for particular claims (for example, fraud).

State Pleading Standard

Under Hawaii law, a complaint must provide a defendant with “fair notice” and contain a short and plain statement of the facts supporting each element of a cause of action. Pleadings must be construed liberally. (*In re Genesys Data Techs., Inc.*, 18 P.3d 895, 903 (Haw. 2001).)

Key Federal Distinctions

Although the Haw. R. Civ. P. 8 is substantially similar to the Federal Rules of Civil Procedure Rule 8, Haw. R. Civ. P. 8 may permit more liberal construction of pleadings than under the pleading standard set forth by the United States Supreme Court in *Bell Atl. Corp. v. Twombly* (550 U.S. 544 (2007); see *Davis v. Four Seasons Hotel Ltd.*, 228 P.3d 303 (Haw. 2010)).

Pleading Requirements for Particular Claims

Fraud, Mistake, Condition of the Mind

In a pleading of fraud or mistake in the circuit court, a plaintiff must state the circumstances constituting the cause of action with particularity. However, a plaintiff may generally plead malice, intent, knowledge, and other mental conditions. (Haw. R. Civ. P. 9(b).)

Conditions Precedent

A plaintiff in the circuit court may allege generally the occurrence or performance of conditions precedent. However, a plaintiff must allege specifically and with particularity a denial of performance or occurrence. (Haw. R. Civ. P. 9(c).)

Official Document or Act

In pleading an official document or official act, a plaintiff in the circuit court may state that the document was

issued or the act was done in compliance with the law (Haw. R. Civ. P. 9(d)).

Judgment or Decision of a Domestic or Foreign Court

A judgment may be averred in the circuit court without showing jurisdiction to render it if the judgment is from:

- A domestic or foreign court.
- A judicial or quasi-judicial tribunal.
- A board or officer.

(Haw. R. Civ. P. 9(e).)

Time and Place

Statements of time and place are material to test the sufficiency of pleadings in the circuit court (Haw. R. Civ. P. 9(f)).

Special Damages

A plaintiff must specifically state items of special damage in a pleading in both the circuit and district courts (Haw. R. Civ. P. 9(g); HI R DIST CT RCP Rule 9(g)).

10. Please address the circumstances, if any, where a complaint is not part of the initiating papers, including what papers are filed instead of a complaint.

In Hawaii, an informal probate proceeding is initiated by a petition (HI R PROB Rule 3(a)).

A claim in small claims court is commenced by filing a statement of claim with the clerk of the court (HI R DIST CT SM CL Rule 2).

A claim with the land court is commenced by filing an application (HI R LAND CT Rule 3).

A claim with the tax appeal court is commenced by filing a notice of appeal (HI R TAX A CT Rule 2).

11. Please discuss any prerequisites for filing certain claims (for example, filing a complaint against a government entity).

Exhaustion of Administrative Remedies

In Hawaii, generally, claimants must exhaust administrative remedies before seeking judicial review where the law has created an administrative body to

resolve the issue to be presented to the court. However, this requirement is not absolute, particularly where effective administrative remedies do not exist or would otherwise be futile to pursue. (*Kellberg v. Yuen*, 319 P.3d 432, 450 (Haw. 2014).)

The doctrine of exhaustion of remedies temporarily divests a court of jurisdiction (*Williams v. Aona*, 210 P.3d 501, 509 (Haw. 2009)).

Medical Malpractice

Claims for medical torts must be submitted to a medical claims inquiry and conciliation panel before filing a lawsuit in any court in Hawaii (HRS § 671-12(a)).

Tort Claims Against Design Professionals

A plaintiff must submit a claim for torts against a design professional to a design claims conciliation panel before filing a lawsuit in any court in Hawaii (HRS § 672B-5(a)).

Service of Process

12. When must the defendant be served with process? Can the time to serve the defendant be lengthened?

Serving the Defendant with Process

In Hawaii circuit court, the plaintiff must serve the defendant with process within six months after filing the complaint. If service is not made within the six-month period, the court may dismiss the action without prejudice. (HI R CIR CT Rule 28.) In district court, the plaintiff must serve the defendant with process within 12 months after filing the complaint (Haw. R. Dist. Ct. 28).

Additional Time for Service

The court may extend the time for service on its own motion or at the request of a party. The motion for extension must be made either:

- Before the period for serving the defendant has expired.
- After the period for service has expired upon a showing that the failure to act was the result of excusable neglect.

(Haw. R. Civ. P. 6(b); HI R DIST CT RCP Rule 6(b).)

13. What documents must be served?

In both the Hawaii circuit court and district court, the summons and complaint must be served on the defendant (Haw. R. Civ. P. 4(d); HI R DIST CT RCP Rule 4(d)).

14. Who may serve process? Is a license or other certification required?

In Hawaii, the persons who may serve process are:

- The sheriff or the sheriff's deputy.
- Any person specially appointed by the court.
- Any person who is:
 - not a party to the action; and
 - at least 18 years old.
- The chief of police in the county where service is to be made, or the chief's duly authorized subordinate.

(HRS § 634-21; Haw. R. Civ. P. 4(c); HI R DIST CT RCP Rule 4(c).)

15. What are the methods for service within the state?

Service on Individuals

In Hawaii, service on individuals, other than minors or incompetent persons, may be by:

- Personal delivery of a copy of the summons and complaint.
- Leaving copies of the summons and complaint at the individual's dwelling house or usual place of abode with a person of suitable age and discretion living at the home.
- Delivering a copy of the summons and complaint to an agent authorized by appointment or law.

(Haw. R. Civ. P. 4(d)(1); HI R DIST CT RCP Rule 4(d)(1).)

Service by Mail

The plaintiff may ask the court to allow service by registered or certified mail with request for a return receipt and marked deliver to addressee only. The plaintiff must mail:

- A certified copy of the order.
- The summons and complaint.

(HRS § 634-24.)

The service must be evidenced by:

- An affidavit showing that the required papers were sent by registered or certified mail.
- The receipt signed by the defendant and filed with the affidavit.

(HRS § 634-24.)

Service by Publication

A plaintiff seeking to serve by publication must show why service cannot be made by registered mail. This must be supported by an affidavit setting out facts based on the personal knowledge concerning the methods, means, and attempts made to locate and personally serve the defendant as well as any other pertinent facts. (HRS § 634-23(2).)

The published notice must substantially comply with Form 1-A of the Hawaii Rules of Civil Procedure's Appendix of Forms, without a caption, and must:

- Refer to the complaint or petition.
- State briefly the object of the action or proceeding with a brief description of the property involved.
- Call upon the persons to whom it is addressed to plead on or before a return day stated in the notice.

(HRS § 634-26; Haw. R. Civ. P. 4(e); HI R DIST CT RCP Rule 4(e).)

Service by publication must be made in at least one Hawaii newspaper that has a general circulation in the circuit where the action or proceeding has been instituted. The publication must be in the manner and time ordered by the court but not less than once in each of four successive weeks. The last publication must be at least 21 days before the return date unless a different time is prescribed by the court. (HRS § 634-23(3).)

If the action or proceeding concerns real property, the court must order additional notice by posting a copy of the summons upon the property (HRS § 634-23(3)).

Notable Circumstances

Service on Corporations and Partnerships

A plaintiff must serve a domestic or foreign corporation or a partnership or other unincorporated association that is subject to suit under a common name by delivering a copy of the summons and complaint to an officer, a

managing or general agent, or any other agent authorized by appointment or by law to receive service of process. The plaintiff must also mail a copy of the summons and complaint to the defendant the agent is authorized by statute to receive service and the authorizing statute requires the mailing. (Haw. R. Civ. P. 4(d)(3); HI R DIST CT RCP Rule 4(d)(3).)

Service on Minors

A plaintiff must serve a copy of the summons and complaint on either:

- The guardian, or if there is no guardian or service cannot be made upon the guardian, as provided by order of the court.
- The minor, if the minor is 16 years or over.

(Haw. R. Civ. P. 4(d)(2); HI R DIST CT RCP Rule 4(d)(2).)

Service on an Incompetent Person

A plaintiff must serve a copy of the summons and complaint on the incompetent person and also one of the following:

- The incompetent person's guardian.
- If the incompetent person is living in an institution, the director or chief executive officer of the institution.
- If service cannot be made upon either of them, as provided by order of the court.

(Haw. R. Civ. P. 4(d)(2); HI R DIST CT RCP Rule 4(d)(2).)

Service on the State of Hawaii

A plaintiff may serve process on the state of Hawaii by delivering a copy of the summons and complaint to either:

- Hawaii's attorney general
- Hawaii's assistant attorney general.
- Any deputy attorney general appointed by the attorney general.

(Haw. R. Civ. P. 4(d)(4); HI R DIST CT RCP Rule 4(d)(4).)

A plaintiff may serve process on an officer or agency of the state of Hawaii by serving state of Hawaii and delivering a copy of the summons and complaint to the officer or agency (Haw. R. Civ. P. 4(d)(5); HI R DIST CT RCP Rule 4(d)(4)).

Service on a County

A plaintiff may serve process on a county by delivering a copy of the summons and complaint as provided by statute or county charter or to one of the following:

- The corporation's counsel.
- Any deputy corporation counsel.
- The county attorney.
- The county attorney's deputies.

(Haw. R. Civ. P. 4(d)(6); HI R DIST CT RCP Rule 4(d)(6).)

A plaintiff may serve process on an officer or agency of a county by delivering a copy of the summons and complaint to the officer or agency. If the agency is a corporation, the copies must be delivered as required by Haw. R. Civ. P. 4(d)(3). (Haw. R. Civ. P. 4(d)(7); HI R DIST CT RCP Rule 4(d)(7); see Service on Corporations and Partnerships.)

16. What are the methods for service outside the state?

Whenever Hawaii law authorizes service outside the state, a party may serve:

- By personal service in the same manner prescribed for service within Hawaii, if the party is a Hawaii resident (HRS § 634-25).
- By registered mail (see Question 15: Service by Mail).
- By publication (see Question 15: Service by Publication).
- As prescribed by statute or court order (Haw. R. Civ. P. 4(e); HI R DIST CT RCP Rule 4(e)).

17. Are there any days on which service of process is restricted (for example, Sundays or holidays)?

Hawaii law does not restrict the days on which process may be served.

18. What are the consequences for ineffective service of process?

In Hawaii, if a party fails to effectively serve process, the defendant may move to dismiss the complaint for insufficiency of process or service of process (Haw. R. Civ. P. 12(b) and 41(b)(1); HI R DIST CT RCP Rule 12(b) and HI R DIST CT RCP Rule 41(b)). The court may also *sua sponte* dismiss an action or any claim with written notice to the parties for failure to comply with the rules (Haw. R. Civ. P. 41(b)(2); HI R CIR CT Rule 28; Haw. R. Dist. Ct. 28).

19. How are any defects in serving process cured?

Before the time limit for service, the plaintiff can cure the defect by serving the defendant again. After the time limit has passed, the defendant can apply to the court for appropriate relief. After the court dismisses an action for want of service, a plaintiff can apply within ten days from that order of dismissal to have the court reinstate the action or claim by showing good cause for inadequate process. (HI R CIR CT Rule 5(b) and HI R CIR CT Rule 28; Haw. R. Dist. Ct. 5(b) and Haw. R. Dist. Ct. 28.)

20. Must proof of service of process be filed? Please address:

- Any required form of proof of service of process (for example, affidavit, affirmation, or declaration).
- Any information required in the proof of service.
- When the proof of service must be filed.

In Hawaii, a party must file proof of service (Haw. R. Civ. P. 4(g); HI R CIR CT Rule 2(d)(1); Haw. R. Dist. Ct. 2(d)(1)).

Required Form

Unless otherwise provided by the law or the Hawaii Court Rules, proof of service may be:

- By written acknowledgment of service.
- In the form of an affidavit of the person who made the service.
- Any other proof satisfactory to the court.

(HRS § 634-25; HI R CIR CT Rule 5(b); Haw. R. Dist. Ct. 5(b).)

The district court allows the electronic provision of proof of service for cases filed through the Judiciary Electronic Filing and Service System (JEFS). JEFS is Hawaii's e-filing system. (Haw. R. Dist. Ct. 5(b); HI R ELEC FILING Rule 1 and HI R ELEC FILING Rule 6.)

Required Information

A process server should sign a proof of service and state:

- The name of the person served.
- The time and place of service.

(HRS § 634-22.)

If the process server fails to make service, the server must state the reason for failure and sign this record (HRS § 634-22).

When Proof Must Be Filed

A party must file proof of service with the clerk of court within the time during which the person served must respond to the summons. When service is made by a person specially appointed by the court, that person must also file an affidavit of service. (Haw. R. Civ. P. 4(g); HI R DIST CT RCP Rule 4(g); Haw. R. Dist. Ct. 5.)

In circuit and district court, the serving officer must also return the original summons to the clerk of court (HI R CIR CT Rule 2(d)(1); Haw. R. Dist. Ct. 2(d)(1)).

Amending the Complaint

21. Can the complaint be amended after it has been filed, but before it has been served?

In Hawaii, a plaintiff may amend the complaint once as a matter of course after filing the complaint but before serving it (Haw. R. Civ. P. 15(a)(1); HI R DIST CT RCP Rule 15(a)).

22. Can the complaint be amended after it has been filed and served? If so:

- When can this be done as of right?
- When must the plaintiff seek a court order to amend the complaint?

In Hawaii, a plaintiff may amend the complaint after filing and serving it (Haw. R. Civ. P. 15; HI R DIST CT RCP Rule 15).

Amendment as of Right

A party may amend a complaint once as a matter of course at any time before the defendant serves a responsive pleading (or alternatively, in the case of the district court, makes its oral response) (Haw. R. Civ. P. 15(a)(1); HI R DIST CT RCP Rule 15(a)).

Court Order for Amending the Complaint

If outside of the 20-day period of a responsive pleading, a party may amend the pleading only by leave of court or written consent of the adverse party. Leave to amend should be freely given when justice requires. (Haw. R. Civ. P. 15(a)(2); HI R DIST CT RCP Rule 15(a).)

Commencing an Action: Hawaii

A motion to amend a pleading in the circuit court must be accompanied by the proposed amended pleading in Ramseyer formatting (additions underscored and deletions bracketed and stricken). The entire amended pleading should not incorporate any part of the prior pleading by reference, except with permission from the court. (Haw. R. Civ. P. 15(a)(2).)

If the circuit court grants the motion to amend, the amended pleading must be filed with Ramseyer formatting removed and served on the opposing party (Haw. R. Civ. P. 15(a)(2)).

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