

How to Represent Yourself

Representing yourself at a hearing can be overwhelming. This guide is to walk you through the steps that you can take to prepare to share your side of the story to the judge or hearing officer.

I. WHAT IS THE FIRST STEP?

First, **READ THE HEARING NOTICE OR COURT APPEARANCE NOTICE VERY CAREFULLY**. The notice should include the issues to be covered in your case and any important deadlines. The notice should also tell you whether you are being asked to attend a hearing OR to file a written Answer.

If you are being asked to attend a hearing, the notice will include the date, time, and place of the hearing and instructions on what to do.

An Answer is your way to tell the judge your side of the story. To file an Answer, you will respond to each allegation the other party has made. You must file your Answer with the court clerk and give a copy to the other party by the deadline given in the notice.

You **MUST** follow the court's instructions on showing up to your hearing or filing your written Answer by the given deadline. If you don't, the judge may issue a default judgment against you. A default judgment means that you lose the case and may not be able to tell the court your side of the story.

Before setting a contested hearing or trial on your case, the court may require you to attend mediation. In mediation, you and the other side meet with a neutral third party to try to settle the disagreement. If the parties cannot reach an agreement in mediation, the case can still go to trial.

II. WHAT IF I CAN'T ATTEND AT THE SCHEDULED TIME?

If you can't get to the hearing or court at the scheduled time, **reschedule your time right away**. That means calling the court or agency immediately to see if there is another date available. You have a better chance of rescheduling the hearing if you ask **before** the hearing, **NOT after**.

If you will be representing yourself at an administrative hearing, call the agency and ask them to reschedule your hearing.

If you will be representing yourself in a court proceeding, call the court clerk's office and ask them how to get a continuance in your case. A continuance means that you are asking for a later court date.

Note: In family court, you will need a written motion to ask for a continuance.



III. HOW DO I PREPARE MY CASE BEFORE MY COURT OR HEARING DATE?

A. Research the Law

To prepare for your court or hearing date, you may want to do additional research on the law that applies to your case. Start by looking up any of the Hawai'i Revised Statutes (HRS) mentioned in your notice. The statute will include the issues that you need to prove or disprove. You may also want to research past cases that are similar to yours to see examples of good arguments.

The Hawai'i State Law Library System is open to the public, and has free on-site access to legal databases. The Hawai'i Revised Statutes are also available online on the Hawai'i State Legislature's website at capitol.hawaii.gov.

B. Write your Story and Identify the Issues

After researching what you need to prove, write out the story that you want to tell the court. What are all the possible issues in your case? When identifying issues in your case, also think about the other side's arguments against you. Make a list of what your opponent would say about the case and why they think they are right. Once you have determined your opponent's arguments, make a list about why you disagree with your opponent and think you are right.

C. Stick to the Issues

Once you have identified all the issues, you should make sure that you **STICK TO THE ISSUES**. The court will give you a limited amount of time to present your side, so you will want to budget your time to make sure you can hit all the important issues. People often emphasize the wrong issues or try to change the issue by smearing their opponent or by producing information which has nothing to do with the issues of the case. These common tactics are mistakes.

The judge or hearing's officer will NOT be interested in anything but evidence which relates to the issues. If you do not stick to the issues, chances are you will not be able to tell your whole story in court. The judge will cut you off if your time has expired, even if you haven't told the whole story. Therefore, the best strategy is to know what the issues are and **STICK TO THEM**.

Here are 3 suggestions to help you **STICK TO THE ISSUES**:

1. Know what you are trying to prove and the story you are trying to tell.
2. Make only the **essential** points.
3. Don't confuse the issues with irrelevant information.

D. Collect Evidence

Once you have identified the issues, the next step is to collect evidence which will help prove your case. At the preliminary hearing when your trial is set, be sure to ask the court how you can bring in documents to use as evidence.

Good evidence wins cases. Evidence can be supporting documents and witnesses that will help you prove to the judge that you are right. You can start collecting evidence by:

- Reviewing all important documents and records that relate to the issues in your case. Read each document and decide if it will help your case.
- Interviewing people who have something to say that will help your case.
- Collecting evidence for your case while the facts are fresh in your mind. Your case will suffer if people forget the facts, witnesses move, and documents are lost. In other words: evidence grows old quickly.

Remember: DO NOT submit evidence against yourself which may weaken your case. However, be prepared that the other side may do so.

E. Select Documents to Use as Evidence

The relevant documents can be anything that will help prove your case. Turn in the documents to the court or hearing's office—turn in the **document itself** and not a summary or description of it.

Examples of documentary evidence:

- Photographs before and after
- Signed contracts
- Signed deeds
- Canceled checks
- Bank statements
- Letters/correspondence

You will likely need the original document and 2 copies. The original is for the court and the copies are for yourself and the other side. It may hurt your case if you don't produce supportive evidence like documents that you may have or can get. There may be a deadline to submit exhibits to the court and give them to the other side.

If you have recordings such as voicemails, the court usually will let you use your own device, like a cell phone or laptop, to play them in court. However, you need to prepare distributable copies, such as on burned DVDs, or else the court may need to take your device directly into evidence. Similarly, exhibits like text messages need to be screenshotted and printed out for your distribution. You should complete an exhibit list and individually label all your exhibits prior to your court date. The official forms and instructions are available at the courthouse.

F. Select Witnesses You Wish to Use at Trial

You can call witnesses who have **relevant and material information** to testify for you at your hearing. It is your responsibility to arrange for your witnesses to be present with you or available by telephone for your hearing.

The weight of evidence is not determined by the amount of testimony. In other words, you don't need many different witnesses to testify about the same facts. **Bring the witnesses with the most reliable first-hand knowledge.**

First-hand knowledge means that the witness saw something that helps prove your case or is an expert you have consulted about a particular subject.

Examples of First-Hand Knowledge:

- "I saw the whole incident and here's what happened."
- "I was there when Joe was cleaning the apartment and he left it in good condition."

The judge or hearing's officer will NOT be interested in the testimony of a person who is repeating secondhand or generalized information. Character witnesses don't help. They may say you are honest, but they usually don't know the facts of the case.

Examples of Secondhand Information: **DO NOT USE THESE WITNESSES**

- "I know Joe is a good, safe driver and would never have done anything reckless."
- "I heard from Sarah that Joe left the apartment in good condition and I believe her."

It may help your case if you talk with your witnesses before going to the hearing or court. You can't coach or force your witnesses to give false testimony. However, witnesses often unknowingly give the wrong impression, or stray from the facts of the case. Talk to your witnesses to see what they would say if they went to court for you.

After discussing your witness' knowledge of the event, you may decide you don't want that person to testify. It is better to decide before the hearing. Don't wait until the witness is in the middle of testimony when you realize the testimony will not help you.

G. Can I Make my Witness Show Up at Court? Can I Get a Document I Don't Have?

You will have **one** reasonable opportunity to present your evidence. So, **PLAN AHEAD and FOLLOW THROUGH.**

If you want to call a witness that you don't think will show up, you can subpoena that witness. A subpoena is an official court document which requires the witness to show up at court or the hearing.

If you want to get a document you don't have **and** you know who does, you can get a subpoena duces tecum. The subpoena duces tecum is an official court document which requires the person who has the document to give a copy to you, even if they don't want to. (Some exceptions may apply, such as information that is protected and cannot be revealed in court.)

You can obtain the subpoena form by calling either the court or hearings office you will appear before. The subpoena form is also available on the Hawaii State Judiciary's website at

<https://www.courts.state.hi.us/docs/form/oahu/1DC49.pdf>.

After completing and following the instructions for the form, you will have to serve the subpoena or subpoena duces tecum to the respective person(s). There are two ways you can serve them:

1. You can hire a process server to deliver your documents. A process server is someone who is authorized by the law or by a court to formally give documents to a person.
2. You can serve by registered mail—return receipt requested. Registered mail means that the mail will be delivered only to the person it is addressed to and a signed receipt will be returned to you. Keep the signed receipt and bring it to court in case the judge asks if you properly served the witness.

You will be solely responsible for correctly serving the person(s). This means that **you must properly serve the person(s) and you must pay all the expenses for service**. If the person(s) is not properly served, the court cannot make them show up to testify or bring the documents you want.

If you subpoena a witness, you will need to pay witness and mileage fees for that person to appear in court. The witness and travel fees are:

- Circuit Court (HRS § 607-12)
 - On same island: \$4 per day, plus 20 cents per mile each way
 - From another island: \$6 per day, cost of round-trip airfare or ship travel, and 20 cents per mile of ground travel each way.
- District Court (https://www.hid.uscourts.gov/dsp_FAQ.cfm?pid=3&mid=13#)
 - \$40 per day, plus 51 cents per mile each way.

If you subpoena a document, you may need to pay additional fees, as many places charge fees for providing documents and records.

Remember: Witnesses should be notified ahead of time that they are required to attend a hearing. You **must allow at least 7 days for the subpoena to be served**. If you wait until the last minute to subpoena a witness, the subpoena may be unenforceable, or the hearing might be postponed until the subpoena is served.

IV. WHAT WILL HAPPEN AT MY COURT OR HEARING?

A. Order of Trial or Hearing

1. Each side will give an **opening statement**. The opening statement should include what you will prove at trial. It is like an introduction to what is to come.
2. The person who filed first in court, or the **plaintiff**, will call and conduct a **direct examination** of his or her witnesses.
3. After each of the plaintiff's witnesses, the person who is defending against the plaintiff's claim, or the **defendant**, will have a chance to **cross-examine** each witness.
4. The witness may also be subject to "re-direct" and "re-cross."
5. After the plaintiff finishes with all of his or her witnesses and evidence, the **defendant** will be able to call and conduct a **direct examination** of his or her witnesses.
6. After each of the defendant's witnesses, the **plaintiff** will have a chance to **cross-examine** each witness.

7. Again, the witnesses may be subject to “redirect” and “re-cross.”
8. Each side may present exhibits to support their testimony. Parties must explain the story behind each exhibit, known as **laying foundation**, before the court will consider it. Laying foundation shows that the evidence is authentic, reliable, and relevant.
9. At any time, the judge or hearing’s officer can ask questions.
10. Lastly, the trial or hearing will end with **closing arguments**. Closing arguments summarize the evidence and tell the judge or hearing’s officer what you want and why you should get it.

B. What is an “Opening Statement?”

An opening statement is an introduction to the judge or hearing’s officer. In your opening statement, you should introduce your case and identify all the relevant issues in your case. It is probably a good idea to highlight the issues and tell the judge how you will prove them in your favor.

Caution: Do not spend a lot of time on the opening statement. Remember that evidence wins cases, not fancy speeches. Judges sometimes will not ask for an opening statement, so be ready for any possibility.

Remember: The plaintiff will give his or her opening statement first, followed by the defendant.

C. How do I Conduct a “Direct Examination” of my Witnesses?

If you call a witness for your side, you must conduct a direct examination of that witness. Direct examination means that you must ask your witness questions in a non-leading manner.

Non-leading questions are questions which can be answered by stating a fact, rather than answering “yes” or “no.” Your questions should call for one key fact at a time. It is also best to ask a series of questions leading up to the crucial fact of the case. When you reach that point, simply ask your witness: “What happened next?” or something like that. Your witness will be more believable if allowed to explain important events in his own words.

Examples of Permissible “Non-Leading” Questions: **USE ON DIRECT**

- “Tell me in your own words what you and Joe did to clean his apartment.” ... “What happened next?”
- “Doctor, in your expert opinion, why can’t Sally work?”

If you ask your witness questions that require a “yes” or “no” answer, you are probably asking leading questions, and the hearing’s officer or Judge may stop you. Leading questions are allowed on cross examination, but are not allowed on direct examination.

Examples of “Leading” Questions: **DO NOT USE ON DIRECT**

- “So you and Joe cleaned the kitchen, bathroom, and bedrooms, is that correct?”
- “Doctor, Sally can’t even get out of bed, let alone work every day, right?”

If a friendly witness doesn’t testify in the same words you would use, don’t ask him to change his testimony (unless he made an obvious misstatement which can be easily corrected). Asking your witness to change his or her testimony usually causes confusion, and makes him repeat the part you are unhappy with.

D. How do I Call Myself as a Witness?

You are allowed to testify on your own behalf by calling yourself as a witness. Doing so allows you to tell your side of the story to the court, and in your own words. You don't need to worry about telling your story in the form of questions and answers, like you would with a witness—just keep your testimony simple and to the point.

However, you should know that if you call yourself as a witness, your opponent can also ask you questions about anything you mention in your testimony.

E. How do I Conduct a “Cross-Examination” of my Opponent’s Witnesses?

Cross-examination is when you question the other side’s witnesses. On cross you are allowed to lead the witness. A leading question suggests the answer in the question itself. In other words, leading questions usually have a “yes” or “no” answer to them.

Examples of Permissible “Leading” Questions: **USE ON CROSS**

- “You stated that the apartment was as clean as possible, yet you still will not return Joe’s security deposit, isn’t that true?”
- “Doctor, you stated that Sally cannot get out of bed, yet isn’t it true that she comes to your office twice a week?”

Don't submit evidence against yourself or ask questions which may weaken your case. If the opposing witness gives an answer that makes a point in your favor, don't push your luck. Don't ask follow-up questions like: "In other words, Mr. Witness, are you saying that...?"

The first rule of cross-examining an unfriendly witness is: If you don't know what to ask, don't ask. Don't ask an unfriendly witness to repeat his testimony—he is unlikely to say anything that will help your case.

Remember: Don't argue with any witness over previous testimony or highlight what the witness already said against you.

F. What are “Closing Arguments?”

Your closing arguments should summarize all the evidence you presented at trial. You should tell the court what you want and why you should get it. Make sure your arguments are supported by the evidence. Your closing arguments should be strong and persuasive, but reasonable.

Remember: This is the last impression left in the judge’s or hearing officer’s mind, so be persuasive, clear, and use the evidence to back up arguments. Some judges or hearing officers will not ask for this.

V. LAST-MINUTE TIPS ON THE DAY OF YOUR TRIAL OR HEARING

- Arrive early. Collect your thoughts and have enough time to set up.
- Make sure all of your witnesses will be on time.
- Make sure you have all of your evidentiary documents in order.
- Have a checklist of the major points you wish to bring up in the trial or hearing.
- Always be courteous to the hearing’s officer, judge, witnesses, and opposing counsel.
- Don't try to dazzle anyone. Speak in simple English, and be clear and concise.
- Don't fight every point your opponent makes. Always remember the **key issues in the case**.
- Above all, remember: **facts and evidence win cases!**