



CONFIDENTIALITY,
INTEGRITY AND
INDEPENDENCE

Produced by the

**Office of the Complaints
Commissioner**

to assist the general public in
pursuing legal remedy through
the Summary Court.



SMALL CLAIMS HANDBOOK

FIFTH EDITION, 2015

Volume 1



The Office of the Complaints Commissioner of the Cayman Islands

“Confidentiality, Integrity, Independence”

The Office of the Complaints Commissioner ("OCC") was established pursuant to the Complaints Commissioner Law, 2004 (now 2006 Revision) with the power and authority to investigate written complaints in a fair and independent manner, in order to ascertain whether injustice has been caused by improper, unreasonable or inadequate government administrative conduct.

Residents of the Cayman Islands can come to either of the OCC's two offices to register their complaint or they can make arrangements to have someone from the Office meet with them.

Investigations are conducted by the OCC in private. Confidentiality is maintained in the course of the OCC investigation. The Government entity involved will know the name of the complainant, as they will need to produce the relevant files and answer questions.

The OCC does not act on anonymous complaints, however these complaints are read to determine if a pattern of misconduct can be found and, if so, an Own Motion Investigation can be commenced by the OCC.

The Complaints Commissioner is appointed by the Governor, and the OCC does not answer to the governing party or any minister of the Cayman Islands Government. It has been established in this way so as to protect the independence of the office.



Anthony Smellie Q.C. Chief Justice of the Cayman Islands

The OCC Small Claims Handbook 2015 (5th edition) is an extremely useful handbook that compliments the Summary Court Rules as a quick reference book and guideline to the public who may not be aware of the process of pursuing a legal remedy through the Summary Court.

The OCC Small Claims Handbook is not a substitute for the advice of a Cayman Islands attorney, nor is it intended to be used by lay persons that purport to act on behalf of others in the manner done by an attorney. The Handbook provides reference material, useful forms, and procedural information for litigants in person that goes over and above the general assistance that Court staff is permitted to give.

I welcome the launch of the 5th edition of the Handbook, which provides lay persons with viable and satisfactory alternatives to retaining counsel where they are unable to be represented by an attorney either by themselves or through Legal Aid.



Nicola Williams

Complaints Commissioner of the Cayman Islands

Special thanks to the Honourable Chief Justice for graciously agreeing to provide a Foreword for this 5th edition of the Small Claims Handbook, and to Brett Basdeo of Maples and Calder, whose thorough, professional and detailed work on this edition has been invaluable.



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SMALL CLAIMS HANDBOOK, 5TH EDITION, 2015

SECTION 1

INTRODUCTION TO SMALL CLAIMS



1 | Introduction to Small Claims

Small claims are civil claims that are usually considered to be too small to justify the expense of engaging an attorney. In such cases, claimants are encouraged by the Court to act for themselves.ⁱ

Small claims proceedings are heard in the Summary Court. The Summary Court was establishedⁱⁱ to provide, among other things, a simpler and cheaper resolution to disputes than going to the Grand Court. While proceedings in the Summary Court are not as technical as those in the Grand Court, there are specific rules that must be followed nevertheless. These rules are contained in The Summary Court Rules 2004 ("SCR").

Volume 1 of this Small Claims Handbook is designed to introduce you to the SCR and to assist you in pursuing (or defending) your small claim. Volume 2 contains blank copies of the applicable forms that you can use for your claim. It is recommended that you read Volume 1 entirely before proceeding with your small claim.

Additionally, a series of example forms appear at the end of each Section. The examples follow the fictional dispute of John Smith, who is suing ABC Dry Cleaners Ltd. for damage to his new suit. The example forms have been included for illustration purposes only and are not meant to be copied directly.

IMPORTANT: Your claim is unique. Copying the examples without thought or care may not only be embarrassing for you, but could also affect your case!

Copies of Volumes 1 and 2 of this Small Claims Handbook are available from the Office of the Complaints Commissioner and on its website, www.occ.ky, and on the Cayman Islands Judicial and Legal Information website, www.judicial.ky.

Copies of the SCR are available online at www.judicial.ky. Official copies are also available from the Legislative Assembly in George Town between the hours of 9:00 am – 3:00 pm, Monday through Friday, for a fee of \$7.20.

Regardless of your experience with the Summary Court, remember that there is no substitute for legal advice and only Cayman Islands attorneys-at-law are qualified to give advice on civil proceedings or to prepare legal documents for a fee, gain or award. Refer any questions to an attorney if in any doubt!



SMALL CLAIMS HANDBOOK, 5TH EDITION, 2015

SECTION 2

GETTING STARTED



2 | Getting Started

2.1 Who can sue in Summary Court?

Generally speaking, any natural person, company, partnership, association, Government body or other legal entity can sue (or be sued) in the Summary Court. Companies may be represented in the Summary Court by any director or duly authorised officerⁱⁱⁱ.

However, no proceedings can be commenced in the Summary Court by or against anyone who is under the age of 18 (a *minor*)^{iv}.

2.2 What Types Of Small Claims Can Be Brought In The Summary Court?

Any *claim* for a debt or *damages* up to twenty thousand dollars (CI\$20,000.00) may be brought in the Summary Court^v, otherwise you must file your claim in the Grand Court which is much more expensive to do and beyond the scope of this Handbook.

You are not permitted to divide your *claim* into two or more claims if the total amount of your *claim* exceeds the maximum amount. However, you can choose to limit your *claim* to this maximum amount and waive (give up) the rest in order to stay within the Summary Court. Think about this carefully before doing so – once your *claim* has been heard and decided, you will not be able to recover the amount you have waived.

A *claim* can be made in respect of a *contract*, a *tort* (or both) or *trespass* to land (but not where there is a question of *title* to land). This Handbook focuses on contractual claims.

The following are examples of *claims* that can be brought in the Summary Court:

- (a) Breach of a written or oral contract.
- (b) Recovering money used as a down payment or deposit.
- (c) Recovering past due rent.
- (d) Recovering a loan to a friend.
- (e) Damage to property.
- (f) Damage to property caused by a motor vehicle accident.
- (g) Damages for personal injury.
- (h) Recovering money paid for defective goods or faulty workmanship.
- (i) Recovering payment for work performed.



The Summary Court can also order a defendant to do something, for example, to return a suit that the drycleaner has wrongfully kept, or order the drycleaner to pay you for the suit in compensation for failing to return it to you, as long as you have claimed for damages that do not exceed the maximum amount recoverable in The Summary Court^{vi}.

2.3 When can you sue?

Claims can be brought to the Summary Court as soon as a **cause of action** arises. A **cause of action** is the reason for bringing a **claim** and might be caused by an event or lack thereof, for example, a tenant refuses to pay their rent or fails to pay their rent on time.

It is important to determine when the **cause of action** arose because there are time limits to bringing certain **claims**. The Limitation Law^{vii} sets out the time limits for certain **claims** to be brought to Court, this is called the **limitation period**. If the **limitation period** for your **claim** has expired, the defendant will be able to claim a "total defence" which will defeat your **claim** entirely.

An example of the **limitation periods** common to **claims** are as follows:

- (a) Breach of a written or oral contract – within 6 years of the breach.
- (b) Recovery of a down payment, security deposit, or past due rent – within 6 years of the date on which the payment was due.
- (c) Recovery of a loan to a friend – within 6 years from the date on which the repayment was due.
- (d) Damage to property, by motor vehicle or otherwise – within 6 years of the damage.
- (e) Damages for personal injury - within 6 years of the event that caused the injury.
- (f) Recovering money paid for defective goods or faulty workmanship – 6 years from the date the goods were purchased or the work should have been performed.
- (g) Recovering money paid for work performed – within 6 years from the date on which the payment was due.

Claims against certain Government authorities and companies have statutory **limitation periods** built-in to the respective law under which they are established. Any **claim** brought outside of these statutory **limitation periods** will be defeated for being out of time.

2.4 Why are you suing?

Make sure that there are no other options available to you before you bring your **claim** in the Summary Court. Regardless of the amount claimed, Summary Court actions are serious matters that should be used as a last resort. Hastily brought **claims** can be a waste of time and money.

Instead, first try and talk to the other party to see if you can work things out. Make a serious effort to arrive at an agreement that will settle the dispute fairly. Going to Court can be an uncomfortable experience. A reasonable solution worked out to the mutual benefit of both parties will eliminate the stress and long-term hostility that can be caused by a courtroom confrontation.



2.5 Letter before action

If you're unable to speak with the other party, or think doing so would be unproductive, consider writing a **letter before action**.

Letters before action are letters which usually describe the **cause of action**, state the amount of money owed and contain a **demand** for the money owed to be repaid, or services to be performed, within a certain time limit. You may also wish to state that you will be considering a **claim** against the other party in the Summary Court if they do not pay the amount owed or provide the agreed service within the time limit you have specified.

Do not be concerned about giving the other party this basic information. **Letters before action** let the other party know that the dispute is being treated seriously and can be used to stimulate a response where the parties have stopped communicating with each other. You might even gain previously unknown information about your dispute that could affect your decision to proceed with your **claim**.

Sending your **letter before action** by email is useful as both the date and the time will be recorded – use your email's "read receipt" function and keep a copy for yourself as well. You could also consider using registered mail. Give the other party reasonable time in which to respond to your **letter before action** - 2 weeks is usually sufficient.



SMALL CLAIMS HANDBOOK, 5TH EDITION, 2015

SECTION 3

FOR THE PLAINTIFF

STARTING YOUR CLAIM



3 | For the Plaintiff – Starting Your Claim

3.1 Preparing your *Plaint*

To start, you will need to prepare and file a ***Plaint*** with the Court setting-out your ***claim***. The ***Plaint*** comes in a standard form and appears in Volume 2 of this Handbook as **Form 1**.

The ***Plaint*** contains necessary information about your claim. It is very important that the ***Plaint*** is completed correctly for both the Defendant and the Summary Court's benefit.

(a) Cause Number

The words "**CAUSE NO. SC ____ OF 20 ____**" appear at the top right-hand corner of the ***Plaint***. Leave this blank. It will be filled in by the Civil Registry of the Summary Court with your assigned ***Cause Number*** when your ***Plaint*** is filed.

Once a ***Cause Number*** has been assigned, it is a good idea to refer to it whenever you are dealing with either the Summary Court or the Defendant(s), as this will help to ensure that all of your Summary Court documents are filed correctly.

(b) The Plaintiff

As the Plaintiff, the dispute is "between" you and the Defendant. In the space provided, fill in your full legal name, that is, your first name(s), middle name(s) and last name(s). If you are suing in the name of your company, that is, if your company is the Plaintiff, fill-in the company's full registered name instead.

If you or your company are suing in the trade name of your business, use the expression "*trading as*" or "*T/A*" afterwards, followed by the name of your business as it appears on your Trade and Business License, e.g. "*John Doe Ltd. T/A Best South Sound Apartments*".

If you are a partner suing on behalf of your partnership, fill in the name of your partnership, followed by the explanation "*a firm*". For example:

"Doe & Schmoe (a firm)".

(c) The Defendant(s)

Fill in the full legal name of the Defendant in the space following. It is important that you spell the Defendant's name correctly so that they can be identified by the Summary Court. If you do not know the full legal name of the Defendant, complete the name as best you can – it can be amended later.

If your ***claim*** is against more than one Defendant or for the recovery of loss suffered as the result of an accident involving a Defendant's motor vehicle, you should also add the names of the Second Defendant or the Defendant's insurance company, if known. For example:



"(1) John Smith
(2) ABC Insurance Company Ltd."

(d) Address of the Defendant(s)

It is also important to fill in the correct address for the Defendant. If there is more than one Defendant, include each of their addresses. For example:

"To the First Defendant PO Box 1234, Grand Cayman, KY1-1111, Cayman Islands

To the Second Defendant PO Box 1235, Cayman Brac, KY2-1111, Cayman Islands"

If the Defendant is a company you must fill-in the address of its **registered office**. Don't assume the **registered office** of a company is the same as its business address. If you know the name of the company but don't know its **registered office**, you can enquire with the General Registry located on the ground floor of Government Administration Building on Elgin Avenue, George Town. The General Registry will charge a small fee to provide this service.

(e) Date of issue

The date of issue is the date on which you intend to file the **Plaint** with the Court, which may not necessarily be the same date on which you signed the **Plaint**.

A good idea might be to leave the date blank and ask the Civil Registry to complete it by hand when you file your **Plaint**.

3.2 Particulars of claim^{viii}

The **particulars of claim** appear on the second page of the **Plaint** and are the details of your claim against the Defendant. A clearly drafted **particulars of claim** is very important. It will also allow the Defendant to understand your **claim** and work out whether they want to oppose it or possibly settle with you.

Follow the instructions: set out your **claim** as clearly and concisely as possible in numbered paragraphs. You should refer to yourself as "*the Plaintiff*" and to the party you are suing as "*the Defendant*". If there is more than one Defendant, describe them in the order they appear on the first page of the **Plaint**, e.g. "*the First Defendant*" and "*the Second Defendant*", etc.

Include as much detail as you can and don't worry if you need to use several pages to describe your **claim**. Taking a *who, what, when, where, why* approach to your **particulars of claim** will help the Court to understand what your **claim** involves and the issues that need to be decided. Remember to include the date the **cause of action** occurred. For example:

- (a) If your **claim** is for goods, include a statement of the value of those goods.
- (b) If your **claim** is based on the breach of a contract or agreement, you should include:



- (i) The purpose of the contract or agreement.
 - (ii) The date the contract or agreement was entered into.
 - (iii) Who were the other parties to the contract or agreement.
 - (iv) The date the contract or agreement was breached.
 - (v) What term(s) of the contract or agreement was breached.
 - (vi) The importance of the terms(s) that was breached.
 - (vii) What **loss** (if any) you suffered because of the breach.
- (c) If you are trying to recover a certain sum of money that you spent or lost because of the actions of the Defendant, include a statement of the value of the goods or services. Make sure that you also specify the currency, i.e. CI\$, US\$, £, €, etc., otherwise the Court will assume it is in Cayman Islands dollars.

Remember – the Summary Court will only hear **claims** up to CI\$20,000. If the conversion into Cayman Islands dollars at the time of trial puts you over this amount, you will need to either **waive** the amount you've gone over or bring your **claim** in the Grand Court instead. Grand Court actions are beyond the scope of this Handbook.

3.3 Prayer for relief

The following words appear at the end of the **particulars of claim**:

"AND the Plaintiff claims:"

This is called the **prayer for relief** which is where you set out or **pray** for the specific actions you are asking the Court to take, i.e. the **relief**. The **relief** includes the sum of money you are claiming for (or **damages**), any interest on that sum and whether there are any costs in making the application that you think you should also be able to recover from the Defendant. Each **relief** is explained further below.

(a) Sum claimed

Here, fill-in in the total sum claimed for. If you cannot arrive at a specific sum, instead write "**damages**". You can also **pray** for both a specific sum and **damages** if you think you are entitled to both. If you are successful, the amount of **damages** [plus any specific sum] will be decided by the Court which can be up to a maximum of twenty thousand dollars (CI\$20,000).

(b) Interest

Whether your **claim** is for the recovery of a fixed sum or for **damages**, you can ask the Court to order the Defendant to pay interest on the sum or **damages**. To do so, you must fill-in the amount of interest asked for and the date that the interest started running, usually the date the **cause of action** occurred.



To determine the amount of interest, you need to use the correct rate of interest. If your claim is based on a contract or agreement that includes terms for a rate of interest, you can only use that rate of interest for your calculation.^{ix} You should also set out exactly what the term of the contract or agreement says in your **particulars of claim**.

The **prayer for relief** assumes that your **claim** is not based on a contract or agreement that includes a rate of interest. If that is correct you can ask the Court for simple interest calculated on the sum claimed at a rate of interest called the **prescribed rate**. The **prescribed rate** is set by the Court. The **prescribed rate** is usually revised every 2-3 years. Ask the Civil Registry to confirm the **prescribed rate** before you file your **Plaint**.

From 1 February 2013 the **prescribed rate** for both Cayman Islands dollars and United States dollars is $2\frac{3}{8}\%$ (0.02375).^x

Once you know the rate of interest, calculating simple interest is easy. Let's say you are claiming a **principal amount** of three thousand five hundred dollars (CI\$3,500), due to a **cause of action** that arose 378 days before the day you filed the **Plaint**. Using the **prescribed rate**:

Step 1:

Calculate the **per annum amount** by multiplying the **principal amount** by the **prescribed rate**

$$\$3,500 \times 0.02375 = \$83.125$$

Step 2:

Calculate the **monthly rate** by dividing the **per annum amount** by the number of months per year

$$\$83.125 \div 12 = \$6.927$$

Step 3:

Calculate the daily or **per diem rate** by dividing the **monthly rate** by the average number of days in the month

$$\$6.927 \div 30 = \$0.23 \text{ (twenty three cents)}$$

Step 4:

Calculate the interest owed up to the date the **Plaint** is filed by multiplying the **per diem rate** by the number of days since the **cause of action** arose.

$$\$0.23 \times 378 = \$87.28$$

If the **cause of action** took place before 1 February 2013, meaning that there could be more than one rate of interest that should be applied, or if you are unsure which rate of interest may apply, simply replace the **prayer** for interest with:



"(2) Interest"

(c) Costs

You may also ask for your **costs**, which can be either **fixed costs** or **costs to be assessed**.

A **prayer for fixed costs** means you will receive this amount if you win your case. It is a small sum of money of one hundred and fifty dollars (CI\$150.00) which is meant to compensate you for the time and money spent filing your **claim**. **Fixed costs** will also entitle you to ask for the Defendant to pay for the **filing fee** and, if you've used the Bailiff to **serve** documents on the Defendant, the **Bailiff's fee**.^{xi}

If you've spent a significant amount of time and effort making your **claim**, you can alternatively ask for **costs to be assessed**. This means that, at the end of the trial, a Magistrate will determine or **assess** whether the Defendant should pay for any reasonable legal fees or **disbursements** that you may have incurred while preparing your **claim**. Assessments on a **costs to be assessed** basis are entirely up to the Magistrate so there is no guarantee you will get your **costs**, even if you win your case.^{xii}

Remember, the maximum amount of the **Magistrate's** assessment will never exceed two thousand dollars^{xiii} (CI\$2,000.00), so you won't be able to recover any legal fees or **disbursements** over this amount. Although **costs** should be an important consideration for you, do not let it stop you from preparing the best case possible.

3.4 Your signature and address for service

Remember to sign the **Plaint** in the space provided after the **prayer for relief section**. You must also provide your address for **service**. This is important so that the Court (and the Defendant) know where to send any documents relating to your **claim**.

3.5 Filing the **Plaint**^{xiv}

Once you have completed your **Plaint**, you are ready to commence the proceedings against the Defendant. To do so, the **Plaint** must be filed and registered (**issued**) with the Civil Registry.

Once the **Plaint** has been **issued**, the Defendant must be notified that a **Plaint** has been **issued** against them, by **serving** them with a copy of the **Plaint** together with another **Court Form** called an **Acknowledgment of Service**. **Issuing** and **service** are dealt with in Section 4.



SAMPLE FORM NO. 1 | PLAINT

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC *36* OF *2015*

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

PLAINT

To the Defendant

PO Box 4321

Grand Cayman KY1-1888

Cayman Islands

THIS PLAINT has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after service of this **Plaint** on you, counting the day of service you must either satisfy the claim or return to the Court Office, PO Box 495, George Town, Grand Cayman KY1-1106, Cayman Islands, the accompanying Acknowledgment of Service form stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out **full particulars of your defence** in the space provided in the Acknowledgment of Service form.

If you fail to satisfy the claim or fail to return the Acknowledgment of Service form containing full particulars of your defence, the Plaintiff may apply for a **Default Judgment** without any further notice to you.

Issued this *6th* day of *January 2015*

See overleaf for particulars of the Plaintiff's claim

**PARTICULARS OF CLAIM**

(Here set out in numbered paragraphs are the grounds upon which the Plaintiff claims that the Defendant is indebted to him or is liable to pay damages to him)

1. On the 19th of December 2013 the Plaintiff took his black suit to the Defendant to be cleaned. The suit was purchased new in March 2013 from Tuxedos and Suits Galore Ltd. for \$3,500 and had only been worn once.
2. When the Plaintiff collected his suit on 24 December 2013 it had faded spots on the trouser legs and the front of the jacket. Those spots were not there when the Plaintiff dropped off the suit for cleaning with the Defendant.
3. The Defendant ruined the Plaintiff's suit and should reimburse the Plaintiff for the cost of the said suit.
4. The Defendant should also pay interest at the prescribed rate on the cost of the said suit as at the date of this Plaintiff as well as at the per diem rate until the cost of the said suit has been repaid.

AND the Plaintiff claims:

- (1) The sum of \$3,500.00
- (2) Interest in the sum of \$87.28 calculated at the prescribed rate from 24th December 2013 to date.
- (3) Interest to continue at the per diem rate of \$0.23 until this matter is settled.
- (4) Fixed costs of \$175.00, alternatively costs to be assessed.

John Smith

Plaintiff's Signature

Plaintiff's address for service

P.O. Box 1234
Grand Cayman KY1-9999
Cayman Islands

Phone number: 959 4444
Email: john.smith@coldmail.com



SECTION 4

FOR THE PLAINTIFF STARTING THE PROCEEDINGS



4 | For the Plaintiff – Starting the Proceedings

4.1 Issuing the *Plaint*^{xv}

To **issue** your ***Plaint***, you will need at least 4 copies of it – one copy for yourself, one for each Defendant, and two for the Court.^{xvi} **Issuing** is completed in two stages: payment and filing.

(a) Payment

First, take the copies of the ***Plaint*** to the Judicial Financial Centre, which is located on the ground floor of Kirk House, 61 Albert Panton Street, George Town. There you must pay the **filing fee** of twenty five dollars^{xvii} (CI\$25.00) to file the ***Plaint***.

Each copy of the ***Plaint*** will receive a stamp of the Summary Court and you will also receive an official Judicial Administration receipt for payment of the **filing fee** – as with all of your Court documents, keep this receipt in a safe place.

A **cause number** (see 3.2 above) will also be automatically assigned to your case and written at the top right hand corner of each copy of the ***Plaint***. Take note of this number as it will be useful to refer to it when writing to either the Court or to the Defendant.

(b) Filing

Second, take all of the copies of the ***Plaint*** to be filed with the Civil Registry, which is located upstairs on the third floor of Kirk House, 61 Albert Panton Street, George Town. There, the copies of the ***Plaint*** will be **sealed** with a stamp from the Clerk of the Court which will indicate the date of filing.

The Civil Registry will open a **Court File** in which two copies of the ***Plaint*** and any additionally filed documents relating to your case will be kept together for the use of the Court.

After you have filed the copies of the ***Plaint*** with the Civil Registry, each Defendant must be given a sealed copy of the ***Plaint*** - a process called **service** – which is dealt with below.

4.2 Errors

Each **Court Form** fulfils a specific purpose, which is legal in nature and ensures fairness to all parties. Take your time when completing any **Court Form**, such as the ***Plaint***, because an incorrect **Court Form** could be rejected by the Civil Registry for "irregularity". Should this happen, politely ask the Civil Registry staff member how it can be corrected.

Once you have corrected the error, return to the Judicial Financial Centre and ask that the **filing fee** you have already paid be transferred to the corrected **Court Form**. You should take the same number of copies as before, as well as the original stamped and sealed **Court Form**. Return to the Civil Registry with the corrected **Court Form** once the **filing fee** has been transferred.



4.3 Service

Once the **Plaint** has been **issued**, the next step is to commence the proceedings by notifying the Defendant - this is achieved by a formal process called **service**, whereby the **Plaint** is **served** on the Defendant. **Service** is very important as it gives the Defendant a chance to respond to your claim. Accordingly, you will not be allowed to continue with your action unless it can be demonstrated to the Court that the Defendant has been duly **served**.

4.4 Acknowledgment of Service^{xviii}

A **Plaint** will not be duly **served** on the Defendant unless it was accompanied by another **Court Form** called an **Acknowledgment of Service**.^{xix}

The **Acknowledgment of Service** comes in a standard form and appears in Volume 2 of this Small Claims Handbook as **Form 2**. Although you must prepare the **Acknowledgment of Service**, it will be completed by the Defendant. You only need to fill-in:

- (a) the **cause number** that you received from the Civil Registry (see Section 4.1(a) above);
- (b) your name as the Plaintiff (see Section 3.3); and
- (c) the name of the Defendant (Section 3.4).

Leave everything else blank.

The Defendant's response to the **Acknowledgment of Service** is very important and will be considered further later.

4.5 Serving the Defendant

The **Plaint** and **Acknowledgment of Service** must be **served** on the **Defendant** through a method called **personal service**^{xx}, which is discussed below.

If you think **serving** the **Plaint** and **Acknowledgment of Service** on the Defendant will be difficult for you, it might be easier to arrange for someone else to do so on your behalf. For a small fee, you can arrange **service** through one of the Court's Bailiffs, which is discussed below.

(a) Personal service on a person

Personal service is achieved by leaving a copy of the **Plaint** and **Acknowledgment of Service** with the person to be **served**.^{xxi} **Personal service** must be done face-to-face. You cannot **serve** documents, for example, through a closed door. This is to make sure that you have **served** the **Plaint** and **Acknowledgment of Service** on the right person. Take an additional copy of the **Plaint** so that you can ask for it to be **indorsed** by the Defendant to evidence the receipt of **service**.

If you don't know or can't recall what the Defendant looks like, start by asking them for their name. If they are the Defendant, inform them that you are serving them with "a *Summary Court Plaintiff and an Acknowledgment of Service*" and hand the documents to them.



If you feel ok to do so, ask the Defendant if they would **indorse** the copy of the **Plaint** that you brought with you by signing their name. Note the date, time and place the **Plaint** was served on them.

Sometimes a Defendant will refuse to accept **service** of the documents from you. Don't fight or argue with them. Once you are sure the person you are speaking with is the Defendant and you have told them what the documents are, it is sufficient to leave the **Plaint** and **Acknowledgment of Service** for them there, perhaps on a counter or on the floor if needs be, as long as the Defendant can then pick it up.

Once you have **served** the **Plaint** and **Acknowledgment of Service** on the Defendant, make a note to yourself about what happened as soon as you are able to do so. Write down the name or position of the person whom you spoke to, what documents were **served** on them, the date and time of **service**, the location or address of **service**, and what happened. If you asked someone else to **serve** the **Plaint** and **Acknowledgment of Service** for you, remind them to do the same.

(b) **Personal service on a company**

If your **claim** is against a company, the **Plaint** and **Acknowledgment of Service** must be **served** on the company's **registered office**. To **serve** documents on a company, go to the address of its **registered office** during business hours. Take an additional copy of the **Plaint** and **Acknowledgment of Service** so that you can ask for it to be stamped at the company's front desk to evidence the company's receipt.

Make sure you're in the right place by asking the front desk clerk or receptionist to confirm that you are at the company's **registered office**. If you have come to the correct address, tell the clerk or receptionist that you are serving the company with "*a Summary Court **Plaint** and an **Acknowledgment of Service***" and leave the documents with them. Then ask the clerk or receptionist to stamp your copy of the **Plaint** and **Acknowledgment of Service** with a received stamp somewhere on the front page and have them **indorse** receipt by writing the name of the company, the address, the date and time of **service**, followed by their signature.

If the clerk or receptionist refuses to accept **service** or refuses to **indorse** your copy of the **Plaint** and **Acknowledgment of Service**, don't fight or argue with them. As soon as you are able to, make a note about the **service** (see Section 4.4(a) above). If you asked someone else to **serve** the **Plaint** and **Acknowledgment of Service** for you, remind them to do the same.

(c) **Service by a Bailiff**

If you prefer, you can also arrange for a Bailiff to **serve** the **Plaint** and **Acknowledgment of Service** on the Defendant.^{xxii} One of the benefits of using a Bailiff is that they will complete an **Affidavit of Service** once they have **served** the documents on the Defendant.

Although arranging **service** through a Bailiff may be more convenient, they are very busy and have many other duties to attend to, so they may not be able to **serve** the documents right away. If you arrange service through a Bailiff, it is your responsibility to check with the Civil Registry often to see if the Bailiff's **Affidavit of Service** has been filed.



The Bailiff will also charge a small fee:^{xxiii}

(i)	George Town	CI\$30.00
(ii)	West Bay	CI\$50.00
(iii)	Bodden Town	CI\$60.00
(iv)	East End	CI\$75.00
(v)	North Side	CI\$75.00
(vi)	Cayman Brac & Little Cayman	CI\$125.00

If you arrange **service** with a Bailiff, keep your payment receipt with your other documents. Remember that you may ask to be repaid the costs of the **Bailiff fees**, which should be included in the **prayer for relief**^{xxiv} (see Section 3.8).

4.6 Difficulties with service

Sometimes finding the Defendant can be difficult. They may have changed jobs or addresses, or may no longer live in the Cayman Islands. For these reasons the Court provides for alternative methods of service.

(a) Service on a party's attorney

Attorneys can accept **service** on behalf of their clients. First, however, you need to know whether the Defendant has instructed an attorney to represent them and second whether the attorney has been authorised by the Defendant to accept **service**. If, for example, the Defendant's attorney responded to your **letter before action**, they will usually state that they can accept **service** for their client if they have been authorised to do so.

If an attorney or a firm of attorneys have confirmed they can accept **service** on behalf of the Defendant, then you can serve the **Plaint** and **Acknowledgment of Service** at their offices. Ask for the particular attorney by name at reception and have the attorney **indorse** on the **Plaint** their name or the name of their firm, the date, and a statement that they accept **service** on behalf of the Defendant. This **indorsement** could be handwritten or by way of a stamp used for that purpose. The **Plaint** will be deemed by the Court to have been duly served on the Defendant on the date of the **indorsement**.^{xxv}

(b) Substituted Service

You should make every effort to effect personal service on the Defendant. If **personal service** is impractical^{xxvi}, either because you cannot find the Defendant or you suspect they are avoiding you, you may apply to the Court for the **relief of substituted service** instead. Applications to the Court for relief are dealt with generally in Section 8.

Applications to the Court for **substituted service** are made by a type of **Court Form** called an **ex-parte summons**. The Court will not grant the **relief of substituted service** lightly, and may



ask you for an **affidavit**, so it is recommended that you take the following steps before making the application for **substituted service**:^{xxvii}

- (i) Call and/or email the Defendant to arrange a convenient time to serve the **Plaint** and **Acknowledgment of Service** on them over the next 3 days. Tell the Defendant that if they do not provide you with a time and date for **service** during that time, or fail to show up, that you will call and/or email again on a particular day and time to reschedule.

If calling, do so on a weekday at a reasonable hour. If emailing, include scanned copies of the documents. If you know their postal address, send the documents to them by registered mail as well. If your claim relates to the Defendant's business, then use their business number, email or business address.
- (ii) Pay attention to any messages or out of office replies. If the defendant is away or on vacation, repeat step (i) again on the day of their return.
- (iii) If you do not hear from the Defendant, or they do not show up at the arranged time and place for **service**, call and/or email them a second time on the day and at the time you said you would. Arrange for a new date and time for **service**.

If emailing, send them the documents again. If the Defendant does respond, ask them whether they received your previous message or email with the documents. The object is to show that the Defendant has been receiving your communications.
- (iv) If you do not hear from the Defendant, or they do not show up at the second arranged time and place for **service**, consider whether there is any other way for you to achieve **personal service** on the Defendant.

If your ex parte application to the Court is approved by the Magistrate and you are granted an **order** for **substituted service**, the **order** will tell you how you the **Plaint** and **Acknowledgment of Service** can be **served** on the Defendant. You should also serve a copy of the **order** for **substituted service** on the Defendant at the same time.^{xxviii}

(c) **Service out of the jurisdiction**

You are not allowed to serve the **Plaint** and **Acknowledgment of Service** on a Defendant who does not live within the Cayman Islands without the Court's **leave** (permission). The requirements can be found in SCR rule 5(2).

If you are suing a foreign Defendant, you may want to speak with an attorney for advice. On a simple matter, the attorney may help you *pro bono* (for free). If you are charged for their advice, keep a copy of the receipt as you may ask the Court to **order** that the Defendant pay for some or all of your legal fees if your **prayer for relief** includes a **prayer for costs to be assessed** (see Section 3.7(c)).



4.7 Proving Service

There are number of ways of proving that the **Plaint** and **Acknowledgment of Service** have been duly **served**:

- (a) By filing the **indorsed** copy of the **Plaint** with the Civil Registry;
If either the Defendant or their attorney agreed to **indorse** a copy of the **Plaint**, this is proof that the **Plaint** was duly **served**.
- (b) By filing an **Affidavit of Service** with the Civil Registry; or
If you filed an **Affidavit of Service** yourself, you will need to have your **Affidavit of Service** notarised by a Notary Public. With affidavits, you should refer to yourself in the first person, that is, as "I" rather than "the Plaintiff" (see sample form 8 for an example).
If a Bailiff **served** the **Plaint** for you, he or she will have completed an **Affidavit of Service** as part of their duties.
- (c) If the Defendant files their copy of the completed **Acknowledgment of Service** with the Civil Registry.

4.8 Waiting for the Defendant to respond

Timing is an important aspect of every Court procedure.

Once you have **served** the Defendant with the **Plaint** and the **Acknowledgement of Service**, the Defendant has fourteen (14 days), counting the day of **service**, to complete and file the **Acknowledgment of Service**^{xxix} with the Civil Registry. If the 14 day period ends on a Saturday, Sunday or on any day on which the Courts are closed, then the Defendant has until the next available business day.^{xxx}

If the Defendant does not file their **Acknowledgment of Service** within 14 days, you may apply for a **Default Judgment** against them. A **Default Judgment** means the Court can **order** the Defendant to pay you the money you are claiming for without a trial.

Default Judgments are discussed in Section 7.



SAMPLE FORM NO. 2 | AFFIDAVIT OF SERVICE

Plaintiff
J. Smith
Affidavit of Service
20 January 2015

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC 36 OF 2015

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

AFFIDAVIT OF SERVICE

I, John Smith of George Town, Grand Cayman hereby affirm and say:

1. On the 6th of January 2014, at 4:30pm, I attended the registered office of ABC Dry Cleaners Ltd. located at 18 Runners Road, George Town
2. On my enquiry a Mr Peter Abanks identified himself to me as the director of ABC Dry Cleaners Ltd.
3. I served copies of the Plaintiff and Acknowledgement of Service in this action on Mr. Peter Abanks.

John Smith

John Smith

Sworn before me at George Town this 20th day of January, 2015

Notary Public



SECTION 5

FOR THE DEFENDANT RESPONDING TO A PLAINT



5 | For the Defendant – Responding to a *Plaint*

5.1 Have you been served?

If you have been **served** with a ***Plaint*** that identifies you as a Defendant, do not panic and most certainly do not ignore it. You have a number of options available to you, but if you have been properly **served** you will only have 14 days^{xxxix} in which to respond.

First, was the ***Plaint*** duly **served** on you? The Plaintiff, or person **serving** you with the ***Plaint***, should have spoken to you face-to-face and handed you a copy of a ***Plaint*** that has 2 stamps from the Court on it (see Section 4.1) along with an ***Acknowledgment of Service***^{xxxix} (see Section 4.4). If you haven't been provided with an ***Acknowledgment of Service***, you haven't been duly **served** and **service** has not therefore been correctly effected – see Section 5.2 below.

Similarly, if you were **served** with a ***Plaint*** outside of the Cayman Islands, the ***Plaint*** should also include a copy of an **order** of the Summary Court granting the Plaintiff **leave** to **serve** the ***Plaint*** on you outside of the Cayman Islands. If such an order was not included with the ***Plaint*** and ***Acknowledgment of Service***, you haven't been duly **served** and **service** has not therefore been correctly effected – see Section 5.2 below.

5.2 Service has not been correctly effected

If the ***Plaint*** has not been duly **served** on you, then the 14 days (21 if you were **served** overseas) for responding to the ***Plaint*** has not yet begun and you are not required to file any response with the Court.

However, if the Plaintiff hasn't realised that the ***Plaint*** was not duly **served** on you, your failure to respond might prompt them to file for a ***Default Judgment*** against you. ***Default Judgments*** are dealt with in Section 7. However, unless you are willing to bring an application for the ***Default Judgment*** to be set aside, the better approach would be to let the Plaintiff know that you haven't been duly **served** and that they should attempt to do so again.

5.3 Acknowledgment of Service

Whether you intend to defend the **claim** or not, once the ***Plaint*** has been duly **served** on you, you should complete and file the ***Acknowledgment of Service***^{xxxix} to prevent the Plaintiff from filing for a ***Default Judgment*** against you. ***Default Judgments*** are dealt with in Section 7.

(a) Correcting any errors in the parties' names

Set out your full legal name in the space provided. If the Plaintiff has not done so correctly or misspelled your name, they will have to arrange for it to be amended.

Also set out your residential address – include the house/apartment number, the street name, district and island. Provide your full mailing address if you are overseas. If you do not have a permanent residence at the time, set out somewhere that Court documents can be sent from and delivered to, such as the residential address of a family member, a friend or a place of work.^{xxxix}



If the Plaintiff has sued you in a personal capacity when they should have sued your company, fill out the name of your company and its **registered office** or place of business instead.^{xxxv} The Plaintiff may have to apply to the Court to effect the change.

(b) **Intention to contest the action**

Now you must indicate whether you will be contesting the Plaintiff's **claim** made against you.^{xxxvi}

If you intend to contest the whole of the Plaintiff's **claim**, or if you think you have a **counterclaim** against the Plaintiff, tick "yes" next to question 2 and proceed to set out your defence under "*Particulars of Defence*" on the second page.

If you intend to contest only part of the Plaintiff's **claim**, for example, you admit that you are at fault but contest the full amount claimed, or think that any **damages** should be minimal, tick "yes" and set out what parts of the Plaintiffs **claim** are admitted and what parts are contested under the "*Particulars of Defence*" on the second page.

(c) **No defence / time needed to pay**

If you do not wish to contest the Plaintiff's **claim**, tick "no". Contact the Plaintiff to arrange for payment of the sum claimed and for any interest on that sum.

IMPORTANT: Ticking "no" does not mean you are at fault, but it does mean you agree that you are liable. The Plaintiff may take further steps against you if you delay payment.

If you do not wish to contest the Plaintiff's **claim**, but feel you need time in which to pay the sum claimed, tick "yes" next to question 3 and state how much time you need in the adjacent empty space.^{xxxvii} You should contact the Plaintiff as soon as you can to see if they will agree to a payment schedule.

Acknowledge **service** of the **Plaint** by signing and dating the **Acknowledgment of Service** in the space provided at the bottom.^{xxxviii} If you are the director of a company that has been sued, sign the name of the company.^{xxxix}

5.4 Particulars of Defence

If you've indicated that you intend to contest the action, whether in whole or in part, you must complete your **Particulars of Defence**.^{xl}

(a) **Defence**

Set out your reasons for defending the Plaintiff's **claim**, numbering each paragraph.

(b) **Counterclaim**

If you have a claim against the Plaintiff relating to the same or a related matter, you can also make a **counterclaim**.^{xli} To do so, make a heading underneath your **particulars of defence** and set out the full particulars of your **counterclaim**, just as you would a **particulars of claim**. See Section 3 for guidance.



If you need more space to complete your **Particulars of Defence** and/or **Counterclaim**, you may use a separate piece of paper, as long as it is attached to or filed at the same time as the **Acknowledgment of Service**.^{xlii} When you have completed your **Particulars of Defence** and/or **counterclaim**, sign your name in the space provided.

5.5 Filing

Think carefully before filing the **Acknowledgment of Service**. You may find that defending the **claim** may not be worth the time and effort. **Settlement** is an important consideration and is often more economical than proceeding with litigation.

Once you have completed the **Acknowledgment of Service**, you must file it with the Civil Registry within 14 days (21 days if you are overseas).

IMPORTANT: If you completed your Particulars of Defence and/or Counterclaim separately, you must file it as the same time as your Acknowledgment of Service.

The 14 day period includes the day of **service**, so if you were **served** with the **Plaint** on 7 January 2013, the last day on which you should file your **Acknowledgment of Service** would be 17 January 2013. As the 17th is a Sunday, however, you would have until the next business day (i.e. not a public holiday) to file, on Monday 18 January 2013.

Do your very best to file the **Acknowledgment of Service** on time. Failure to do so may result in the Plaintiff making an application for a **Default Judgment** against you.^{xliii} **Default Judgments** are dealt with in Section 7.

Once the **Acknowledgment of Service** has been filed the Plaintiff can apply for a trial date. If you have not already done so, you should start preparing to present your side of the story for court right away. See Section 8 for help with your trial preparation.



SAMPLE FORM NO. 3 | ACKNOWLEDGMENT OF SERVICE

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC *36* OF 20*15*

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

ACKNOWLEDGMENT OF SERVICE

State Defendant's name and address -

*ABC Dry Cleaners Ltd.
PO Box 4321
Grand Cayman KY1-8888
Cayman Islands*

State whether the Defendant intends to contest the action.

Yes

No

If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Plaintiff is acknowledged accordingly.

Peter Abanks for ABC Dry Cleaners Ltd.

Defendant's Signature

DATED this *19th* day of *January, 2015*

See Overleaf

**PARTICULARS OF DEFENCE**

(Here set out in numbered paragraphs are the grounds upon which the Defendant says that he is not liable to the Plaintiff, or is not liable for the full amount claimed)

1. On Saturday, 19th December 2013 the Plaintiff brought in a black suit to be dry cleaned.
2. However, the suit was obviously not new and already had faded spots on the trouser leg and on the front of the jacket. This was pointed out to the Plaintiff by the attending clerk and the Plaintiff signed a release form acknowledging the faded spots on the suit.
3. As the suit that was left to be cleaned by the Plaintiff was not new and did have faded spots, the Defendant denies that the Plaintiff is owed any money for the damage to his suit that was already present.

PARTICULARS OF COUNTERCLAIM

1. When shown the signed release mentioned above, the Plaintiff ran out of the Defendant's premises with his black suit.
2. The Plaintiff failed to pay the Defendant's fee of C1\$15.00 for dry cleaning his black suit.

AND the Defendant claims:

- 1) The sum of C1\$15.00
- 2) Interest
- 3) Costs

Peter Abanks for ABC Dry Cleaners Ltd.

Defendant's Signature

REMINDER: This form must be taken or sent to the Court Office, PO Box 495, Grand Cayman KY1-1106 Cayman Islands within 14 days of receipt otherwise a default Judgment may be entered against you.



SECTION 6

FOR THE PLAINTIFF

Responding to the Defence



6 | For the Plaintiff – Responding to the Defence

6.1 Responding to the Acknowledgment of Service

Once you have served the **Plaint**, you should return to the Civil Registry to see if the **Acknowledgment of Service** has been filed by the Defendant, especially if you suspect the Defendant may file a **counterclaim** against you. At the very least, you should check with the Civil Registry on the 14th day after the **Plaint** was **served**.

If the Defendant has filed the **Acknowledgment of Service** within time, consider their response carefully.

(a) Name and address of the Defendant

Check to make sure you have named the correct person in the **Plaint**. If you have misspelled the Defendant's name, or written the wrong name, you will need to arrange for the **Plaint** to be amended.

(b) The Defendant is not contesting the claim

If the Defendant has decided not to contest the **claim** and has not made a **counterclaim**, then you have won! The Defendant has admitted liability and you are free to take immediate steps to recover the sum claimed and any interest or to apply to the Court to determine your **damages**. In any event, you should contact the **Defendant** to discuss the best way of proceeding.

(i) Sum and interest paid

Once you have received your payment, you must notify the Court that you won't be proceeding with your claim by filing for the **discontinuance** of your claim. This is dealt with at Section 6.3 below.

(ii) Damages

If the Defendant agrees to pay your **damages**, you will have to reach agreement on the amount. If not, you will have to apply to the Summary Court for your **damages** to be **assessed**.

(c) The Defendant is contesting your claim

Review the Defendant's **Particulars of Defence** carefully. Are they contesting all of your **claim** or just part of it? Has their defence surprised you?

If you think they have a good defence or that your **claim** will lose, such that you wish to abandon parts of your **claim** (**withdrawal**), or if you no longer wish to continue your **claim** (**discontinuance**), you should notify the Court of your intention as soon as possible.

Withdrawal and **discontinuance** are dealt with at Section 6.3 below.



If you intend to proceed, you can now apply to the Court to have a trial date set, which is dealt with at Section 6.5 below.

(d) **The Defendant has counterclaimed**

You should treat any **counterclaim** seriously. Although the **counterclaim** is related to your action, it is considered a separate action against you.

If you go to trial and the Defendant's **counterclaim** is successful, the Court will consider what each party will receive as an award. The overall result could mean that your sum or **damages** could be reduced significantly - if the Defendant's award is greater than yours, it would mean that you would have to pay the Defendant, even though your **claim** won. In either case, you should consider whether you still wish to proceed with your **claim**. If you no longer wish to do so, you must notify the Court that you won't be proceeding with some or all of your **claim** by filing for **Withdrawal** or **Discontinuance**, which are dealt with at Section 6.3 below.

IMPORTANT: Even if you decide to withdraw your claim, the Defendant could still bring their counterclaim against you by filing their own Plaintiff afterwards.

If you intend to contest the **counterclaim**, you must file a defence to the **Counterclaim** within 14 days of the date the **Acknowledgment of Service** was filed. Failure to do so could result in the **Defendant** filing a **Default Judgment** against you.

Your defence to the **Counterclaim** should be structured in a similar fashion to your **Particulars of Claim**. Your defence must deal with every **claim** made in the **counterclaim**, whether accepted or denied, as any failure to do so will be considered an acceptance of liability. See sample form no. 4 for an example.

6.2 **The Defendant has not responded in time**

If the Defendant has not responded in time, you are entitled to file for a **Default Judgment** against them, which is dealt with in the next Section.

6.3 **Withdrawal and discontinuance**

If, for any reason, you wish to withdraw parts of your **claim (withdrawal)** or stop the action from continuing altogether (**discontinuance**) you may do so. However, depending on the stage of proceedings, you may need **leave** of the Court to do so.

(a) **Without leave**

If you wish to **discontinue** your action or **withdraw** all or part of your **claim**, you may do so without the Court's **leave** (i.e. you won't need the Court's permission) at any time within the 14 days after the **Particulars of the Defence** has been **served** on you, whether it was included with the **Acknowledgment of Service** or filed separately.

This may be accomplished by **servicing** a notice, which may be in the form of a letter, on the Defendant. The notice should include a consent to **withdrawal** or consent to **discontinuance** (see sample form 4 and 5) which can then be filed at the Civil Registry.



Similarly, the Defendant may **withdraw** their **counterclaim** within 14 days after receipt of the defence to their **counterclaim**.

(b) **With leave**

If you wish to **withdraw** all or part of your **claim** or **discontinue** your **claim** and the 14 day period has expired, then you will need to make an application to the Court for **leave** by way of a **summons**.

Applications to the Court by way of summons are dealt with in Section 8.

Subject to the wishes of the Court, if you decide to **withdraw** your claim, or **discontinue** your action because of, say, needing more information or evidence, the other party may not use this as a defence should you renew your **claim** later, provided the limitation period for your claim has not expired (see Section 2.3). However, the party who either **discontinues** the action or **withdraws** a particular **claim** against another party may be ordered to pay the other party's costs of doing so. These costs must be paid if the action is renewed later.

6.4 **Setting a trial date**

Once the Defendant has indicated that he intends to defend the **claim**, you can apply to the Court to have a trial date set. This is done by using SCR Form No. 6 (see sample form 7).

The Court will complete and **serve** notice of the trial (the lower half of the form) on each Defendant who has filed an **Acknowledgment of Service** and listed their **particulars of defence**.

Once you have received a trial date, you will need to prepare for trial which is dealt with in Section 8.



SAMPLE FORM NO. 4 | DEFENCE TO COUNTERCLAIM

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC 36 OF 2015

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

DEFENCE TO COUNTERCLAIM

1. The Plaintiff accepts that he left the Defendant's premises with his black suit.
2. The Plaintiff denies owing the Defendant any fees for cleaning his black suit.
3. The Plaintiff did not sign a release or otherwise acknowledge any faded spots on the black suit when left with the Defendant for dry cleaning.

DATED this 21st day of January, 2015

John Smith

Plaintiff's Signature



SAMPLE FORM NO. 5 | CONSENT TO WITHDRAWAL

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC 36 OF 2015

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

CONSENT TO WITHDRAWAL OF COUNTERCLAIM

We, the parties to this action, consent to the withdrawal of the Defendant's Counterclaim.

SIGNED:

John Smith

Plaintiff

DATED this *27th* day of *January, 2015*

SIGNED:

Peter Abanks for ABC Dry Cleaners Ltd.

Defendant's Signature

DATED this *27th* day of *January, 2015*



SAMPLE FORM NO. 6 | CONSENT TO DISCONTINUE

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC 36 OF 2015

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

CONSENT TO DISCONTINUANCE

We, the parties to this action, consent to the discontinuance of this cause.

SIGNED:

John Smith

Plaintiff

DATED this *27th* day of *January, 2015*

SIGNED:

Peter Abanks for ABC Dry Cleaners Ltd.

Defendant's Signature

DATED this *27th* day of *January, 2015*



SAMPLE FORM NO. 7 | APPLICATION TO FIX TRIAL DATE

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC *36* OF *2015*

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

APPLICATION

The Plaintiff hereby applies to the Chief Clerk to fix a date for the trial of the action and to serve notice of the trial date upon the parties.

DATED this *27th* day of *January, 2015*

John Smith

Plaintiff

NOTICE OF TRIAL DATE

TAKE NOTICE that the trial of this action will take place before the Magistrate at the Law Courts, George Town, Grand Cayman on the ___ day of _____, 20___ at ___ am/pm.

AND FURTHER TAKE NOTICE that if the Plaintiff fails to attend the plaint may be struck out. If the Defendant fails to attend the Magistrate may proceed with the trial and Judgment may be given in the Defendant’s absence.

AND FURTHER TAKE NOTICE that both parties are required to bring with them at least three copies of all the documents which they wish to give in evidence.

DATED this ___ day of _____, 20___

Chief Clerk



SECTION 7

FOR THE PLAINTIFF

Filing for Default Judgment



7 | For the Plaintiff – Filing for default judgment

7.1 What is a Default Judgment

Where the Defendant fails to file their **Acknowledgment of Service** within 14 days from the date on which the **Plaint** was served on them, you can make an application to the Chief Clerk or Deputy Clerk of the Courts for a **Default Judgment**.

If your application for a **Default Judgment** is successful, this means the Magistrate may enter a judgment without the need for the matter to go to trial and **order** that the Defendant pay you the money you have sued for.

7.2 How to file for default judgment

You can file for a **Default Judgment** by using SCR Form No.3 (see sample form 6 as an example). With a **Default Judgment**, there is no need to attend Court. **Default Judgments** are dealt with administratively by the Chief Clerk or Deputy Clerk.

With your SCR Form No. 3 application, you will also need to include the following:

(a) Three copies of your **Default Judgment**. You will need to draft this yourself, although there is a form that you will follow. The form you use will be determined by the type of debt:

(i) **Where the debt is known**

If your **claim** is for a certain amount of money or the amount can be calculated, e.g. from the terms of a contract, then SCR Form No.4 (see sample form 7 as an example) is to be used.

(ii) **Where the debt is to be determined**

If you are claiming for an amount which must be investigated or **assessed** by the Court, e.g. for **damages**, then SCR Form No.5 is to be used.

With both of SCR Forms 6 and 7, leave the filing date at the bottom blank. This will be filled in by the Chief Clerk or Deputy Clerk, as appropriate.

(b) **Proof of Service**

You must be able to prove to the Court that the Defendant has failed to file their **Acknowledgment of Service** within the time allotted to them. Proving **service** is dealt with at Section 4.7.

If there is more than one Defendant, you may apply for a **Default Judgment** against each of those Defendants that did not file the **Acknowledgment of Service** and proceed with the action against those Defendants who did.



Take note that the Defendant may also apply to **set aside** or **vary** the **Default Judgment**. If the Defendant is successful, this means that the **Default Judgment** may no longer be applicable and you will have to apply to set a trial date. Applications to **set aside** or **vary** a **Default Judgment** are outside the scope of this Handbook.

Once you have filed your **Default Judgment**, the **Court file** will be closed and no further documents can be filed with the Court in your action.



SAMPLE FORM NO. 8 | APPLICATION FOR DEFAULT JUDGMENT

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC 36 OF 2015

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

APPLICATION FOR DEFAULT JUDGMENT

The Plaintiff hereby applies to the Chief Clerk pursuant to SCR rule 7(1) for final Judgment / ~~interlocutory Judgment~~ with damages to be assessed (**delete as applicable**) against the Defendant in the form and for the amounts specified in the draft annexed hereto.

The Plaintiff certifies that:

1. The Plaintiff was served on the Defendant as evidenced by the ~~Acknowledgment of Service~~ / indorsement on the copy plaint / ~~affidavit of service~~ filed herewith (**delete as applicable**)
2. The Defendant has not filed an Acknowledgment of Service or has filed one which does not indicate any intention to defend or does not contain full particulars of his defence.

AND the Plaintiff hereby applies for the Court file to be closed pending the determination of this application.

DATED this 20th day of January, 2015

John Smith

Plaintiff



SAMPLE FORM NO. 9 | DEFAULT JUDGMENT – FINAL

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC 36 OF 2015

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

DEFAULT JUDGMENT

UPON the Plaintiff's application for default Judgment dated the 20th day of January, 2015.

AND UPON being satisfied that the Plaintiff was duly served.

AND no notice of intention to defend and/or no particulars of defence having been filed prior to the date of the Plaintiff's application, it is this day adjudged that the Defendant do pay to the Plaintiff the principal sum of \$3,500.00, interest thereon of \$87.28 and per diem rate of \$0.23 and fixed costs of \$175.00.

DATED this 27th day of January, 2015

FILED this ___ day of _____, 20__.

Chief Clerk



SECTION 8

Preparing for Trial



8 | Preparing for Trial

8.1 Setting a trial date

Once the Defendant has indicated that he intends to defend your **claim**, you may then apply to the Court to have a trial date set. This is done by using SCR Form No. 6 (see sample form 9). The Court will complete and **serve** notice of the trial (the lower half of the form) on each Defendant who has filed an **Acknowledgment of Service** and listed their **Particulars of Defence**.

8.2 Preparing for trial

As Plaintiff, the burden is on you to prepare your **claim** before trial and to bring any evidence, including witnesses, which will help you prove your **claim** and you must collect the necessary evidence to do so.

Evidence can include such things as books, papers, documents, receipts, cancelled cheques and photographs. Anything that is directly relevant to your **claim**. Photographs can be very helpful if you are unable to bring the actual item to court. Make sure they are clear and show the date that they were taken. If you intend to bring documents, photographs etc. as evidence, you must bring copies for the Court and for each Defendant at the trial.

Many people are nervous about speaking in public. In Court, few people (even lawyers and Magistrates) can remember everything they need to say without notes. So, before you go to Court you should make notes of the facts that are important for your case. It does not have to be and should not be complicated. Think about the simplest, clearest way to explain your **claim**. Remember, the Magistrate knows nothing about your **claim** and must make the decision solely on the basis of the evidence presented at trial. You need to decide on the best way to present your evidence. A good approach is to put your evidence in the order that you need for presentation to the Court.

8.3 Witnesses

If there are witnesses who have direct and personal knowledge of your **claim**, let them know the date and time of your trial and ask them if they are willing to appear on your behalf. Your witnesses need to ensure that if they agree to be your witness that they are available to appear whenever needed by the Court.

If they are unwilling to do so, you may make an application to the Court to **summon** that person to appear in court and to give evidence or to produce documents in the matter, by way of **subpoena**. Applications to the Court for **subpoenas** are beyond the scope of this Handbook.

8.4 Applications to Court for relief

If you need to apply to the Court for **relief**, you must do so by a **Court Form** known as a **summons**.^{xliv}

If you are applying to the Court for the **relief** of **substituted service** or for a **garnishee order** (see Section 11) then you should do so by a **Court Form** known as an **ex parte summons**.

You can find copies of a **summons** and **ex parte summons** in Appendix A of Volume 2 of this Handbook.



Complete the **summons** or **ex parte summons** just as you would any other **Court Form**. Include the names of the parties, the **cause number**, the **relief** sought and the **grounds** why you believe you are entitled to the **relief**.^{xlv}

Every **summons** or **ex parte summons** must be filed with the Civil Registry where it will be given a date and time that the parties must appear before a Magistrate to ask for the **relief** sought.^{xlvi}

Summons must be **served** on the other party once it has been filed and **sealed** by the Civil Registry. You do not have to **serve** an **ex parte summons** on the other party.^{xlvii}

Start preparing as soon as you can! Your hearing before the Magistrate could take place quicker than you think.

8.5 Settlement

If you and the Defendant are able to reach a **settlement** before trial, but after the **Plaint** has been filed, you should record your **settlement** and notify the Court. The terms of the **settlement** do not have to be exactly as what you have claimed in your **Plaint**. There are several ways of settling a claim:

(a) Payment into Court

You can direct that the Defendant pay the **settlement** money to the Court, which you can then direct to be paid to you. **Settlement** in this way is useful as you won't have to deal with the Defendant directly and there are prescribed **Court Forms** available for you to use.

(i) Notice of Payment

Using GCR Form No. 14, the Defendant is required to give you notice of payment (see sample form 10). You must let the Defendant know, in writing, that you received the notice within 3 days of receiving it. The amount of money paid will automatically be construed to include any interest claims as well, so you should check to make sure that all of the money agreed upon has been paid. If the Defendant hasn't paid all of the money agreed upon, you should let them know, in which case, they will send you a separate notice of payment of the additional amount, which you must also provide written receipt of within 3 days of their notice.

(ii) Acceptance of Payment

If you are happy that the Defendant has paid all of the **settlement** money agreed upon between you, you must give notice of acceptance of that sum, either within 21 days of the date of notice of your receipt, or, before the trial date, whichever is sooner. To do so, you would use GCR Form No. 15 (see sample form 11).

Once you accept payment of the money into the Court, your action is **stayed**, that is, it will not proceed to trial and the parties can treat the matter as concluded.



(b) **Payment out of Court**

Alternatively, you can agree to have the **settlement** money paid directly to you. Once you have accepted the **settlement** money paid by the Defendant, you are entitled to keep that sum in satisfaction of your claim.

8.6 Consent Orders

A **consent order** is an **order** which informs the Court that you and the Defendant have agreed to a certain action, usually to stop the action from progressing any further or for a **stay of the proceedings**. It is recommended that you include the agreed settlement amount in the **consent order** (see sample form 12).

IMPORTANT: Consent orders cannot be appealed without special leave of the Summary Court or the Grand Court.^{xlviii}

Failure to file the **consent order** with the Civil Registry in time could have an unwanted effect on the **consent order**, so it is important that you do so as soon as possible before trial so that the Court knows that the proceedings are being **stayed** and there is no reason to continue.

A **consent order** does not necessarily end the proceedings. However if, for example, the Defendant did not pay the agreed settlement sum within the time specified in the **consent order**, you are entitled to take **enforcement** proceedings against the Defendant. **Enforcement** proceedings are dealt with generally in Section 5 but it is strongly advised that you seek the assistance of an attorney before seeking to start such proceedings.

8.7 Appeal

Part of preparing for trial is preparing for all possibilities. If the matter is important to you and you lose, you have the right to appeal. Appeals are dealt with in Section 10.



SAMPLE FORM NO. 10 | NOTICE OF PAYMENT INTO COURT

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC 36 OF 2015

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

NOTICE OF PAYMENT INTO COURT

TAKE NOTICE that the Defendant, ABC Dry Cleaners Ltd, has paid \$3,767.57 into Court.

The said \$3,767.57 is in satisfaction of the following causes of action in respect of which the Plaintiff claims, namely Cause No. SC 36 of 2015.

DATED this 28th day of January, 2015

Peter Abanks for ABC Dry Cleaners Ltd.

Defendant's Signature

TO: The Chief Clerk

AND TO: John Smith
PO Box 1234
Grand Cayman KY1-1999
Cayman Islands

1

This Notice was filed by ABC Dry Cleaners Ltd. whose address for service is PO Box 4321, Grand Cayman KY1-1888, Cayman Islands.



SAMPLE FORM NO. 11 | NOTICE OF ACCEPTANCE OF MONEY PAID INTO COURT

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC *36* OF 20*15*

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

NOTICE OF ACCEPTANCE OF MONEY PAID INTO COURT

TAKE NOTICE that the Plaintiff accepts the sum of *\$3,767.57* paid by the Defendant, *ABC Dry Cleaners Ltd.*, in satisfaction of the cause of action in respect of which it was paid into Court and in respect of which the Plaintiff claims against that Defendant and abandons the other causes of action in respect of which he claims in this action.

DATED this *3rd* day of *February, 2015*

John Smith

Plaintiff

TO: The Chief Clerk

AND TO: *ABC Dry Cleaners Ltd.*
PO Box 14321
Grand Cayman KY1-1888
Cayman Islands

This Notice was filed by *John Smith* whose address for service is *PO Box 1234, Grand Cayman KY1-9999, Cayman Islands.*



SAMPLE FORM NO. 12 | CONSENT ORDER

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC 36 OF 2015

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

CONSENT ORDER

BY CONSENT

IT IS HEREBY ORDERED that within 14 days of this Order the Defendant shall pay to the Plaintiff the sum of \$3,592.57 in full and final settlement of all claims which the Plaintiff has or may have against the Defendant arising from or in connection with these proceedings.

AND IT IS FURTHER ORDERED that the record be withdrawn

AND IT IS FURTHER ORDERED that Defendant shall pay the Plaintiff's fixed costs of \$175.00

DATED this 3rd day of February, 2015

FILED this ___ day of _____, 20__.

Chief Clerk

Approved as to form and content:

John Smith

Plaintiff

Approved as to form and content:

Peter Abanks for ABC Dry Cleaners Ltd.

Defendant



SECTION 9

TRIAL



9 | Trial

9.1 The Courtroom

All civil trials in Summary Court take place in "open court". This means that the Court is open to the public and people are free to come and go as they please. This can be distracting. If anyone is being loud or causing interruption, the Magistrate may deal with them. Do not attempt to deal with them yourself! If any person wilfully misbehaves, interrupts or insults the Court, the Magistrate or anyone else, the Magistrate may instruct that the person be detained, fined or even imprisoned.

9.2 The Magistrate

The Magistrates oversee the Summary Court. Occasionally, a Justice of the Peace (JP) may preside, in which case there will be two JPs. Magistrates and JPs have broad powers to conduct the Courts affairs as they see fit, but in practice the Summary Court will be conducted in "*substantial conformity*" with the practice and procedure observed in the Magistrate's Court in England.^{xlix}

9.3 Attendance

Be on time. Better yet, be early.

If you are not there when your case is called, it may be dismissed, postponed to another day, or decided without you. If the Defendant has filed a **counterclaim** (see Section 2.8), the Court may proceed with the trial of the **counterclaim** without you.

If the Defendant has failed to appear, be ready! You may still be asked to present the case for your **claim**. However, if one of the parties does not appear at the trial and a judgment is handed down by the Magistrate, that party may apply to have the judgment set aside. If you are the Plaintiff you should attend all Court sessions unless specifically excused by the Magistrate.

9.4 Courtroom etiquette

You will normally be seated when the Magistrate enters the Courtroom. The Marshall will instruct everyone to stand up. It is customary that the parties bow when a Magistrate enters or leaves the Courtroom. When the Magistrate reaches the bench (the large table at the front of the courtroom where they sit), they will bow to the parties, who should then return the Magistrate's bow. Watch the Marshall and mimic his actions if in doubt.

When speaking to either a Magistrate or JP, you should address them as "Sir" or "Ma'am". For the purposes of this Handbook it is assumed you will be before a Magistrate who may also be addressed as "Your Honour".

This and other mannerisms of the Court may seem strange, but they are the result of centuries of English etiquette and protocol which are followed in the Cayman Islands as a British overseas territory. It is important to remember that the Courtroom is a serious place so you should respect the Court and observe its traditions.



9.5 Presenting your case

(a) Opening

As Plaintiff, you will present evidence first. Try and speak as clearly as possible. The Magistrate, or a clerk appointed for that purpose, will be taking notes of everything said to ensure a proper record of the proceedings is maintained. If the Magistrate asks you a question, you must answer it.

(b) Your witnesses

You may testify on your own behalf and also by having other witnesses, including the Defendant, testify. You need the best answers to support your case, so think of the questions you'd like to ask them beforehand.

Witnesses are usually made to wait outside the Courtroom until called to give their evidence, unless they are an expert witness in which case they will be allowed to express their expert views regardless of the parties' positions. If you would like a witness to remain in the Courtroom, you will need the consent of the other party before you inform the Magistrate of your wish.¹

After the completion of each of your witness' testimony, the Defendant will have an opportunity to cross-examine them by asking questions. Listen to what the witnesses say. If in their reply they have said anything that is unclear or unhelpful to your case, you can give them a chance to explain themselves better once the Defendant has finished their **cross-examination**.

Unless they are an expert witness, or the other party agrees that they can stay in the Courtroom, the Magistrate may ask your witness to leave the Courtroom.

The Magistrate also has the discretion to **summon** any person on the Island to attend Court to give testimony or evidence on behalf of either party and may examine that witness as the Magistrate sees fit. If that person is not in attendance, the Magistrate may adjourn the trial until such date as required.

(c) Evidence

You may also show the Court exhibits (physical evidence), such as photographs, receipts, contracts, repair bills and estimates, written leases, or other items to support the case for your **claim**. If you wish to present documents as evidence to the Magistrate, you must have copies of the exhibits for the Magistrate and each Defendant.

9.6 The Defence

After you have presented any witnesses or evidence, the Defendant may likewise present evidence by testifying on his or her own behalf, presenting witnesses to testify, and presenting exhibits. If the Defendant calls witnesses to testify, listen quietly and, if necessary, take notes. After the completion of each witness' testimony, you will have an opportunity to question or **cross-examine** them.



9.7 The reply

After the Defendant has presented evidence, you may present additional evidence, but only to answer the Defendant's case.

9.8 Final arguments

Final argument is the time to summarise the case for your **claim**. Include all of the important points of your arguments and any counterarguments to the Defendant's arguments.

9.9 Judgment

At the end of the trial, the Magistrate will need time to consider the arguments of both parties and will usually put off or **adjourn** the end of the trial until a later date so that they can reach their judgment or decision. In which case, the Magistrate will tell you the new date and you should return then.

In their judgment, the Magistrate will usually state the facts of the **claim** and who won. If you have won your small claims case and the Magistrate has made an enforceable judgment or **order** against the other party in your favour for a sum of money payable to you, this sum is called a **judgment debt**^{li} and until it is paid you are a **judgment creditor**.

If you have lost the case and been ordered to pay the **judgment debt** to the **judgment creditor**, you should do so as quickly as possible as you are the **judgment debtor**. If you are not satisfied with the outcome of the trial you have a right to appeal the Magistrate's judgment or decision. Appeals are dealt with in Section 10.

IMPORTANT: Judgment debts are payable immediately, so if you are not able to do so or require time to pay, you should let the Magistrate know immediately. As a **judgment debtor**, action can be taken against you and your property if you fail to pay the **judgment debt**.

Whether you win or lose, make a careful note of what the Magistrate says. Unless the Magistrate directs otherwise, the winning party will need to "draw up" the Judgment into an appropriate document, which is dealt with below.

9.10 Drawing up the Judgment

Before any further steps can be taken, the judgment or decision of the Court must first be drawn up (see GCR Form no.25) and **served** on the losing party. When doing so, certain information must be included:

- (a) Name of the Magistrate
- (b) The date of the judgment. This is the date the Magistrate pronounced the judgment in Court .
- (c) The date the judgment was filed



This is the date the judgment is filed. It will be filled in by either the Magistrate or a court official.

- (d) Whether the judgment was made in respect of a **Plaint** (or **counterclaim**).
- (e) The identity of the parties who appeared before the Court (or didn't appear).
- (f) The terms of the judgment or decision.

Within the Judgment, the Magistrate may make several **orders** which may include **interlocutory orders** meaning that the Magistrate may direct certain further things to be performed before the final **order** is completed, such as the payment of money in satisfaction of the claim, **orders for costs** meaning the payment of money in satisfaction of the legal **costs** of the parties. In addition to these **orders** the Magistrate may also **award** interest on any money payable. The Magistrate also has the ability to make a judgment or decision "by consent", that is, with the agreement of both parties. Each of these is considered further below.

(i) **Interlocutory orders**

Interlocutory orders are **orders** for any further actions which must be completed before the final **order**.

(ii) **Costs**

Costs may be awarded to you and the Magistrate is free to make their own **assessment** as to the amount, however, such award will not exceed:

CI\$500 where the Judgment is between CI\$ 0 – 2,000;

CI\$1,000 where the Judgment is between CI\$ 2,000 – 10,000; or

CI\$2,000 where the Judgment is between CI\$ 10,000 – 20,000 .

(iii) **Interest**

Interest may or may not be awarded to you, whether pleaded or not. No additional interest will be awarded for a period in which interest is already accruing.

(iv) **Stay of execution**

Where the Magistrate has granted a **stay of execution** of the judgment pending an appeal, the terms of such **stay** (see Section 10 for more on appeals).

- (g) The name and address of the party who presents the judgment for filing.

See sample form no. 11 for an example. You should file four copies of the judgment with the Civil Registry. Two copies will be kept, and two returned (one for you and one for the Defendant) after the judgment has been **sealed**.



9.11 Service of the Judgment

Once received back from the Court, the procedure for **service** of the judgment on the Defendant is the same as required for **service** of the **Plaint**. See Section 2 for more on **service** of documents.

9.12 Payment of the judgment debt

Where the **judgment debtor** is unable or refuses to pay the **judgment debt**, the **judgment creditor** can seek the Court's assistance to enforce the Magistrate's judgment or **order** against the **judgment debtor**.

Enforcement actions are dealt with in Section 11. Although several **enforcement** processes are available in the Summary Court, they can be somewhat challenging and legal advice may be required.



SAMPLE FORM NO. 13 | JUDGMENT

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC 36 OF 2015

Before the Honourable Magistrate Boddenⁱⁱⁱ

BETWEEN:

John Smith

Plaintiff

AND:

ABC Dry Cleaners Ltd.

Defendant

JUDGMENT

THIS ACTION having been tried before the Honourable Magistrate Bodden, without a jury, at the Law Courts, George Town, on 10 February 2015.

UPON hearing the Plaintiff in person.

AND UPON hearing Peter Abanks for the Defendant, in personⁱⁱⁱⁱ.

IT IS ORDERED AND ADJUDGED that:

The Defendant do pay the Plaintiff the principal sum of \$3,592.57 together with interest of \$3.00.

The Defendant do pay the Plaintiff's fixed costs of \$175.00.

DATED this 13th day of February, 2015

FILED this ___ day of _____, 20__.

Magistrate of the Summary Court

This JUDGEMENT was filed by John Smith whose address for service is PO Box 1234, Grand Cayman KY1-9999, Cayman Islands^{liv}.



SECTION 10

APPEAL



10 | Appeal

10.1 Appeals to the Grand Court

If the Magistrate has made a judgment or decision in your favour, it is final and you cannot appeal it. If you did not win and your legal rights have been directly affected, that is, you are "aggrieved" by the final judgment or decision of the Magistrate, you may appeal.

Appeals from the Summary Court are made to the Grand Court of the Cayman Islands^{lv} which has jurisdiction (control) over the appeal in accordance with the Summary Jurisdiction Law (2006 Revision). Appeals from the Summary Court are assigned to the Civil Division^{lvi} of the Grand Court which hears appeals from the Summary Court at least once in every three months, or at any other time deemed by the presiding Judge to be expedient.^{lvii}

10.2 Timing

If you intend to appeal, you must do so quickly!

Once the judgment or **order** of the Magistrate has been filed, you can only appeal within 14 days of the date on which it was filed. Don't delay – if you haven't received the filed judgment or **order** you should enquire with the Clerk of the Court at the Courts Office.

To do so, you must file a **Notice of Appeal** (see sample form 19).

10.3 Stay of execution

If you lost and are now a **judgment debtor**, you may ask for a **stay of execution** pending appeal. This means that the **judgment creditor** cannot collect all of or part of the **judgment debt** until your case is re-heard in the Grand Court.

Listen carefully! If the Magistrate grants the Defendant's request for a **stay of execution**, then the terms of such stay must be recorded when the judgment is drawn up.

10.4 Payment of Money into Court

In their judgment, the Magistrate may also **order** that money may be "lodged into Court," that means that money should be paid to the Court to be held on behalf of whomever the money is owed. This is done through the Judicial Financial Centre. See Section 5 for more on lodging money with the Court.

10.5 Filling out the Notice of Appeal

(a) Cause Number

Filing your **Notice of Appeal** will generate a new **cause number** in the Grand Court. The words "**Grand Court Cause No. ___ of 20__**" appear at the top right-hand corner of the **Notice of Appeal**. Leave this blank for the Civil Registry to complete.



The Summary Court's previous **cause number** appears in brackets directly underneath, where it says "(Cause No. SC __ of 20 __)". You can fill this in – it will be the same **cause number** as the one used in your Summary Court action.

(b) **Appellant and Respondent**

If you are appealing the Magistrate's judgment or **order**, you are the **Appellant**. It doesn't matter if you were the Plaintiff or the Defendant in the Summary Court. Fill in your full legal name, company name or partnership name in the space provided as appeared in the **Plaint**.

The other party or parties will be the **Respondent** to the appeal. Fill in their name(s) in the space provided.

(c) **Grounds of Appeal**

Fill in your name, and the filing date of the Magistrate's judgment or **order** that you are appealing, in the space provided. For example:

TAKE NOTICE that ABC Dry Cleaners Ltd. intends to appeal against the order of the Summary Court made on 11 February 2014.

You must then set out the reasons why you are appealing the judgment or decision of the Magistrate, i.e. your "**Grounds of Appeal**" below. Appeals from the Magistrate's judgment or decision are generally made if the judgment or decision was felt to be wrong in law or in excess of jurisdiction.^{lviii} In some cases an aggrieved party may appeal on the basis that the Magistrate's conduct or actions were in breach of natural justice.

(i) **Wrong in law or in excess of jurisdiction**

Wrong in law does not mean hypothetical points of law. Magistrates are legally trained and will have practiced law either in the Cayman Islands or a comparable Commonwealth country for at least 5 years.^{lix} However, that is not to say they never get things wrong. If you believe that the Magistrate did not get the law right, whether statute law or case law, then state this as a ground of appeal and include the statute or case that you believe was not followed.

You may not appeal points of fact, but you can appeal a finding of fact by the Magistrate if you do not believe that the Magistrate gave proper consideration to the evidence before the Court, or that the evidence before the Court did not support the Magistrate's finding.

Further, if you feel that the Magistrate's judgment or decision was irregular, or that no reasonable Magistrate could have come to the decision made, this is also a ground of appeal.

Do your best to set out each ground of appeal as clearly and succinctly as possible.



(ii) **In breach of natural justice**

In summary, the rules of natural justice require the Magistrate to act fairly, in good faith and without bias, and they must give each party the opportunity to adequately state their case. Objections to the conduct of Magistrates are more appropriately handled by an application for **judicial review**,^{lx} which is outside the scope of this Handbook.

10.6 Cost

A fee is payable when you file your *Notice of Appeal*, depending on the amount of the Judgment you are appealing:

- (a) CI\$150 if the Judgment appealed is CI\$ 0 – 4,999.99;
- (b) CI\$300 if the Judgment appealed is CI\$ 5,000 – 9,999.99;
- (c) CI\$450 if the Judgment appealed is more than CI\$10,000.

10.7 Factors to consider

If you are granted the right to an appeal, it will be conducted by way of a re-hearing. This means you will be starting from the beginning, as if the Court had not heard any details of your case yet. You will have to present your evidence, witnesses and plead the case for your **claim** to the Judge.

Although only certain procedures of the Grand Court Rules are applicable to appeals from the Summary Court,^{lxi} these rules can be much more challenging.

The amount of **costs** which a successful party is entitled to recover against another party on appeal from Summary Court is **assessed** by the Grand Court. If assessed by a Judge, the Judge will make an **assessment** of the amount of legal fees and disbursements which he considers that a reasonable litigant is likely to have incurred and award that amount.^{lxii}

10.8 Appeal to the Court of Appeal

There is also a right of appeal from the decision of the Grand Court to the Cayman Islands Court of Appeal. Appeals to the Court of Appeal are extraordinary, and the **grounds** of appeal can only be heard if the appeal involves a point of law alone, but not upon any question of fact.^{lxiii}

IMPORTANT: Grand Court proceedings are beyond the scope of this Handbook. It is strongly recommended that you seek the assistance of a lawyer if you are proposing to appeal to the Grand Court.



[Sample Form No. 14 - Notice of Appeal]

IN THE GRAND COURT OF THE CAYMAN ISLANDS
ON APPEAL FROM THE SUMMARY COURT

Grand Court Cause No. _____ of 20__
Cause No. SC 36 of 2015
CAUSE NO. SC 36 OF 2015

BETWEEN:

ABC Dry Cleaners Ltd.

Appellant

AND:

John Smith

Respondent

AND:

NOTICE OF APPEAL

TAKE NOTICE that I, *ABC Dry Cleaners Ltd.*, intend to appeal against the order of the Summary Court made on 13th day of February, 2015.

The grounds of my appeal are as follows-

The Magistrate did not consider the photographs we had of the Respondent wearing the same suit in November 2013 which showed the faded spots clearly.

DATED this 27th day of February, 2015

Peter Abanks for ABC Dry Cleaners Ltd.

Appellant's Signature



SECTION 11

ENFORCEMENT



11 | Enforcement

11.1 Determining assets

If the **Judgment Debtor** claims they are unable to pay the **Judgment Debt** and you are unable to verify their sincerity, you can apply to the Court for their financial affairs to be examined. This is done by way of an application to the Court (see GCR Form No 30A in Appendix C).

The application must be supported by an affidavit which:

- (a) identifies the judgment or **order** stating the amount unpaid at the time of the application;
- (b) states the date and place at which the judgment was **served** upon the Defendant;
- (c) give particulars of the documents to be produced and reasons for believing that the Defendant has such documents in their possession; and
- (d) where the **Judgment Debtor** is a company, for example, the particulars of the relationship the person to be examined has with the company, such as its director.

You must also provide a copy of the **Order for Examination** (see GCR Form 30 in Appendix C). The Chief Clerk will determine whether to approve your application "on the papers", that is, without hearing from you in person.

If the Chief Clerk grants your application, the **sealed order** will be returned to you so that it may be served personally on the Defendant or person who is to be examined. The **order** will compel the Defendant to attend Court in order to be questioned by the Magistrate on the state of their financial affairs. You may also attend and ask the **Judgment Debtor** questions to assist with your **enforcement** action.

11.2 Types of Enforcement

There are a number of ways to enforce a **Judgment** for payment of money. These include:

- (a) a *writ of fieri facias*;
- (b) a *garnishee order*;
- (c) a *charging order*; and
- (d) an *attachment of earnings order*.

11.3 Writ of Fieri Facias

A **writ of fieri facias** is authorisation for the Bailiff to seize and sell the goods of a **Judgment Debtor** in order to satisfy the **Judgment Debt**, the cost of the Court proceedings and the costs of



enforcement. Before a **writ of fieri facias** can be made, however, you must produce the following to the Court:

- (a) a "praecipe" or written request to the Court to issue the writ;
- (b) two copies of the **writ of fieri facias** (GCR form no 26)
- (c) the judgment or **order** to be enforced.

Once the requirements are satisfied, the **writ of fieri facias** will be sealed by the Chief Clerk, the **Bailiff** will then have the authority to go to the **Judgment Debtor's** residential or business premises to seize and subsequently sell the **Judgment Debtor's** property to satisfy the **judgment debt**. The Bailiff's fees and other expenses of the sale will first be deducted from the proceeds of the sale, the ordered sum (or part thereof) then paid to you, with any balance returned to the **Judgment Debtor**.

A **writ of fieri facias** is valid for 12 months from the date of issue and may be renewed in 12 month periods by application thereafter.

11.4 Attachment of Earnings Order

If you have received judgment in your favour for an amount over CI\$500.00, the simplest way to enforce the **order** of the Court may be to apply for an **attachment of earnings order**.

An **attachment of earnings order** is an **order** that the Court can make whereby the **Judgment Debtor's** employer is compelled to deduct regular payments from the **Judgment Debtor's** salary in order to satisfy the debt due to you. To do so, however, you must be able to prove that the **Judgment Debtor** has failed to make one or more payments to you in respect of the **Judgment Debt**.

The application requirements for the **issue** of an **attachment of earnings order** are as follows:

- (a) An application must be made using GCR Form No. 35 (see Appendix C).
- (b) The application must be supported by an **affidavit**:
 - (i) identifying the judgment or **order** in respect of which the **attachment of earnings order** is sought;
 - (ii) verifying the amount due under the judgment or **order**; and
 - (iii) stating whether a **writ of execution** has been **issued** to enforce the judgment.
- (c) A **Form of Reply** using GCR Form 36 (see Appendix C) as to the **Judgment Debtor's** means shall be **served** on the **Judgment Debtor**. See Section 2 for more on **service** of documents.

Evidence which would help you with this type of order includes the **Judgment Debtor's** pay stubs, sources of any other income, bank statements and information relevant to the **Judgment Debtor's** debts.

Once the **Judgment Debtor** has been **served**, they have until eight days after the date of **service** to file a **statement of means** in the form provided. If, during this eight day period, the **Judgment Debtor**



pays the **Judgment Debt**, they will no longer be under an obligation to file a **statement of means**, and accordingly, you must inform the Chief Clerk that the **Judgment Debt** has been satisfied.

Once received, the Chief Clerk will send a copy of the completed **Statement of Means** to you. The Court may also, at any time, send to any employer of the **Judgment Debtor** a notice in GCR Form 37 (see Appendix C) requesting the employer to supply the Court with a statement of the **Judgment Debtor's** earnings and anticipated earnings.

Once the Court has received the **Judgment Debtor's** reply the Magistrate may then, if they have sufficient information, make an **attachment of earnings order** in GCR Form 38 (see Appendix C) which states the rate and period of deduction of earnings. The Court can do this on its own, without your further involvement. A copy of the **order** will be sent to you, the debtor and to the **Judgment Debtor's** employer.

If the Magistrate determines that additional information is needed before he can make a decision, a date will be fixed for hearing the matter. This is done on GCR Form 40 (see Appendix C). If the **Judgment Creditor** does not appear at the hearing he may request in writing, that the Court proceed in his absence and hear the application and make an **order**.

Within 14 days of the Magistrate issuing an **attachment of earnings order**, either you or the **Judgment Debtor** may, on giving reasons, make an application for the order to be reconsidered. On receipt of the application (in whatever form) the Chief Clerk will fix a date for the hearing of the application and give notice of the hearing in GCR Form 39 (see Appendix C) to you and to the **Judgment Debtor**.

On hearing the application, the Magistrate may confirm the **order**, or set it aside and make a new **order** as they see fit.

11.5 Garnishee order

A **garnishee order** is an **order** which instructs a third party (the **Garnishee**) who owes money to a **Judgment Debtor** to pay the money to you instead. A typical example of such would be the **Judgment Debtor's** bank, where the **Judgment Debtor** has money in their bank account. You will need to know the **Judgment Debtor's** bank account number to do so.

To begin with, you must apply to the Court for a "Garnishee Order nisi". The application is made by **ex parte summons**; "ex parte" means you aren't required to notify the **Judgment Debtor** that this application is being made.

Your **ex parte summons** must be supported by an **affidavit** which identifies:

- (a) The name and address of the **Judgment Debtor**;
- (b) The judgment or **order** you wish to enforce and the amount of the **Judgment Debt** which remains outstanding;
- (c) Whether, to the best of your information or belief:
 - (i) the **Garnishee** is currently within the Cayman Islands;



- (ii) the **Garnishee** owes the **Judgment Debtor** money; and
- (iii) the source of your information or the **grounds** of your belief.

For example, you may know from a bounced cheque that the **Judgment Debtor** has an account at a local bank and might refer to that cheque as a source of information, even though the bank as a potential **Garnishee** may not owe the **Judgment Debtor** money.

If satisfied, the Court will make an **order** showing the debt and ordering the **Garnishee** to appear before the Court should it wish to give an explanation as to why they should not instead pay the debt to the **Judgment Creditor**.

The Court's order will set a hearing date to consider the matter further. The **order** must be **personally served** on:

- (d) the **Garnishee** at least 14 days before the hearing date; and
- (e) on the **Judgment Debtor** at least seven days after the **order** has been **served** on the **Garnishee** and at least seven days before the hearing date.

Personal service of a document is effected by leaving a copy of the document with the person. See Section 2 for more on **service** of documents. Once the **order** is served on the **Garnishee**, they are bound by the Court to pay their debt to you.

If the **Garnishee** disputes their **liability**, the Court may direct that the issue be tried in any manner that it sees fit. If not, the Court will make the **order** "absolute" (final) and will grant an **order** in the form of GCR Form 32 (see Appendix C of Volume 2).

11.6 Charging orders

A **charging order** is an **order** by the Court placing a **charge** on the **Judgment Debtor's** property. This means that you gain a right of payment from the proceeds of such property, should it be sold. **Charging orders** are typically used over land.

Similar to **garnishee orders**, the application for a **charging order** must be made by **ex-parte summons** to the Court and must be supported by an **affidavit** which:

- (a) identifies the judgment or **order** to be enforced;
- (b) states the amount unpaid at the date of the application;
- (c) gives the name of the **Judgment Debtor** and of any other creditor of his whom the applicant can identify;
- (d) gives full particulars of the subject matter of the intended **charge**; and
- (e) verifies that the subject of the intended **charge** is owned beneficially by the **Judgment Debtor**.

The **affidavit** may contain statements of information or belief with the source and **grounds** of such information and belief. If the subject of the **charge** is land owned by the **Judgment Debtor**, then the



land registry details for that land should be included in the particulars and an uncertified copy of the land registry extract should be **exhibited** to the affidavit.

If the Court decides to make the **order** it will be an **order** "to show cause". A copy of the **charging order**, along with a copy of the supporting **affidavit**, must then be **served** on the **Judgment Debtor**. The Court may direct that copies of the **order** and **affidavit** be served on other parties, as appropriate. The **order** and **affidavit** must be **served** at least seven days before the time for the hearing date specified on the **order**.

At the hearing, the Court may either make the **order** "absolute" or final as shown in GCR Form 34 (see Appendix C), with or without amendments, or discharge it. If it is made absolute you can then enforce the **charge**. The Bailiff is authorized to seize and sell the property by a **writ of fieri facias** described above.

However, where the property to be sold is land, then Form RL10 of the Registered Land Rules (2003 Revision) (see Appendix D) must be completed, signed by the Magistrate and filed at the Land Registry at the Lands and Survey Department in the Government Administration Building on Elgin Avenue in George Town.

Property that may be **charged** includes any interest held by the **Judgment Debtor** beneficially in:

- (f) land;
- (g) securities including Cayman Islands Government Stock, stock of any body incorporated within the Cayman Islands, or shares in any mutual fund;
- (h) any funds in Court; and
- (i) under any trust and certain other trust interests.

In deciding whether to make a **charging order** the Court will take the following factors into consideration:-

- (j) the personal circumstance of the **Judgment Debtor**; and
- (k) whether any other creditor of the **Judgment Debtor** would be likely to be unduly prejudiced by the making of the **order**.

If you obtain a **charging order** absolute on the **Judgment Debtor's** land, you should also present an **order** in the Form RL9A for the Magistrate's signature, and must register the **order** in the encumbrances section of the land register. This can be done at the Lands & Survey Department.

11.7 Further means of enforcement

The Court has many ways in which it can ensure that parties to an action comply with its directions. Failure to follow the Court's direction may find the offending party in **contempt** of Court, which can result in severe consequences as discussed below. These means of **enforcement** are therefore of a serious nature and are not granted lightly.

- (a) **Writ of Sequestration**



Writs of sequestration are used where a judgment or **order** of the Court requires a party to either do an act within a specified period of time or to refrain from doing an act. They are rarely used and even when so, they are unlikely to be used for the **enforcement of judgment debts** or the delivery of land or goods.

A **writ of sequestration** permits specifically appointed **sequestrators** to enter the **Judgment Debtor's** land and to seize the **Judgment Debtor's** personal property and to hold it until the **order** of the Court against them has been fulfilled. Any personal property may be seized, including the exempted possessions listed above in a **writ of fieri facias**, and the **sequestrators** may also collect and hold any rent payable on any real estate owned by the **Judgment Debtor**. However, in order to sell the **Judgment Debtor's** personal property, or to retain any monies collected, the **Judgment Creditor** must obtain a further **order** from the Grand Court.

In order to obtain a **writ of sequestration** an application must be made under a **Notice of Motion**. The **Notice of Motion** must include a concise statement of the nature of the claim made or the relief or remedy required. It must also be accompanied by an affidavit in support of the application and must be **personally served** on the **Judgment Debtor**. If the Court thinks it is just to do so it may dispense with **service** of the **Notice of Motion**.

The Court will not grant a **writ of sequestration** unless it is satisfied beyond a reasonable doubt that **contempt** has been committed. Once the **writ of sequestration** is issued it binds the **Judgment Debtor's** personal property. A **writ of sequestration** may be **issued** against an individual or company.

(b) **Order of Committal**

An **order of committal** is where the Court will direct that a person who is in **contempt** of Court may be seized and taken to prison. The Court may **order** so of its own accord, without your formal application. An **order for committal** may also be accompanied by a **writ of sequestration** (see above).

The Court may **commit** a **Judgment Debtor** to prison for a term not exceeding six weeks if it is satisfied that:

- (i) the **Judgment Debt** is due and has not been paid,
- (ii) the **Judgment Debtor** has the means to pay the **Judgment Debt**, whether in full or by instalments; and
- (iii) the **Judgement Debtor** is wilfully refusing or neglecting to satisfy the **Judgment Debt** in the manner in respect of which the Magistrate is satisfied the **Judgment Debtor** has the means.

This power of **committal** is exercisable concurrently.^{lxiv} In other words, if the **Judgment debtor** has not paid the **Judgment Debt** at the end of the six weeks in prison, the Magistrate can order the **Judgment Debtor** to spend up to another six weeks, and so on.

IMPORTANT: Should you find yourself in this position it is strongly recommended that you seek immediate assistance from an attorney.



11.8 Affidavits

You will notice that nearly all of the types of enforcement require the use of **affidavits**. **Affidavits** are written, sworn statements of evidence. You must indicate which of your statements in the **affidavit** are within your personal knowledge, information and belief and the source of such information or belief.

IMPORTANT: Affidavits are beyond the scope of this Handbook and it is recommended that you seek the assistance of an attorney if drafting an affidavit for enforcement purposes.

11.9 Time for enforcing your Judgment

An **order** of the Court is enforceable within 12 years of the date of service of the **order**. It cannot be **enforced** after that period.

11.10 Points to note for Judgment Debtors

If judgment or **order** has been entered against you, unless you wish to appeal, you should obey the **orders** of the Court. Failure to do so can have serious consequences, such as imprisonment.

In some cases, the Magistrate may order that the money be paid or "lodged" into Court. In such case, payment is usually made into the Court's General Account and accompanied by a **Lodgment Schedule** as prescribed in GCR form No. 102.

If you are unable to pay the money, or there are special circumstances which make it inexpedient to do so, you may ask the Court for a **stay of execution** of the Judgment, that is, for the Court to put the Judgment on hold. This may be done either at the time Judgment is delivered to you in Court, or later by way of **summons**. If you choose to make an application for a stay of execution at a later date, you must however, include a supporting **affidavit** which discloses your income, the type and value of property you hold, such as land, as well as your debts and liabilities.



SMALL CLAIMS HANDBOOK, 5TH EDITION, 2015

SECTION 12

SMALL CLAIMS CHECKLIST



12 | Small Claims Checklist

- 12.1 Contact the other party to find out if you can agree on a solution to the problem before you commence legal proceedings against them.
- 12.2 Figure out the exact amount that you are owed and who the correct Defendant(s) is and their address.
- 12.3 Complete your **Plaint** (Form 1) listing your **particulars of claim**, including:
 - (a) The amount claimed.
 - (b) Briefly state the facts that you feel describe why and how the Defendant owes you money. Include dates, times and circumstances of your claim.
- 12.4 File four copies of your **Plaint** at the Civil Registry at the Courthouse. Remember there is a filing fee of CI\$25.00. The Courts Office will only accept cash. No personal cheques are accepted.
- 12.5 Arrange for the **Plaint** to be **served** on the Defendant.
- 12.6 If the Defendant has been **served** but fails to file an **Acknowledgment of Service**, you may apply to the Court for a **Default Judgment**. You can do this by filing Form No. 3.
- 12.7 If the Defendant files the **Acknowledgment of Service** and indicates that he intends to defend the claim, you must then apply to the Court using Form No. 6, for a trial date to be set.
- 12.8 Witnesses – Requests for witnesses are made through the Magistrate or at the Civil Registry.
- 12.9 Prepare your case thoroughly. Make at least three copies of any documents that you intend to use as evidence. These might include: the contractual document(s); invoices; samples of items; photographs of defects; and quotations to show how much repairs will cost.
- 12.10 Attend the hearing and present your case.
- 12.11 Get a copy of the Judgment. Read it carefully to be sure that you understand what the Magistrate has **ordered**.



End Notes

- i Cayman Islands Judicial and Legal Information Website <<http://www.judicial.ky>>
- ii The Summary Court is established pursuant to the Summary Jurisdiction Law (2006 Revision) as a court subordinate to the Grand Court under section 104(1) of the Constitution of the Cayman Islands, 2009
- iii Rule 14(2) of the Summary Court Rules 2004. However, companies may only be represented in the Grand Court by an attorney - Grand Court Rules, 1995, Order 5, rule 6.
- iv Rule 14(2) of the Summary Court Rules 2004. A minor is defined pursuant to sections 2(1) and 4 of the Age of Majority Law (1999 Revision).
- v Schedule 1 to the Summary Jurisdiction Law (2006 Revision).
- vi See sections 14 and 15 of the Summary Jurisdiction Law (2006 Revision).
- vii Limitation Law (1996 Revision).
- viii See the requirements of GCR O.6, r. 2, 3, 4 and 5, as directed by SCR r.3
- ix Section 34(3) of the Judicature Law (2007 Revision)
- x See current Schedule to the Judgment Debts (Rates of Interest) Rules 1995. Currently effective from 1 February 2013
- xi SCR r.11(1)
- xii Section 33(1) of the Summary Jurisdiction Law (2006 Revision)
- xiii SCR r.11(3)(c)
- xiv See requirements of GCR O.5, r.1(3) to (6), except (4)(d), as directed by SCR r.3(6)
- xv See requirements of GCR O.5, r.1(3) to (6), except (4)(d), as directed by SCR r.3(6)
- xvi SCR r.3(6), incorporating GCR O.5,r.1(5) and SCR r.3(8). One for the Court File and one for the Register of Plaints and Summonses, respectively.
- xvii SCR r.10(1)
- xviii SCR r.4(4)
- xix SCR r.4(4)
- xx SCR r.4(2)
- xxi GCR O.65, r.2.
- xxii Section 3 of the Judicature Law (2013 Revision)
- xxiii See Third Schedule, Court Fees Rules, 2009
- xxiv SCR r.11(1)
- xxv SCR r.4(3).
- xxvi GCR O.65, r.4(1)
- xxvii Supreme Court Practice 1999 at 65/4/9.
- xxviii Supreme Court Practice 1999 at 65/4/10.
- xxix SCR r.6(1)
- xxx GCR O.3, r.4, incorporated by way of SCR r.14(1)
- xxxi SCR Rule 6(1)
- xxxii SCR Rule 4(4)
- xxxiii SCR Rule 6(1)
- xxxiv SCR Rule 6(3)(a)
- xxxv SCR Rule 6(3)(c)
- xxxvi SCR Rule 6(5)(a)
- xxxvii SCR Rule 6(5)(b)
- xxxviii SCR Rule 6(2)(a)
- xxxix SCR Rule 6(2)(c)
- xl SCR Rule 6(5)(c)
- xli SCR Rule 6(6)
- xlii SCR Rule 6(7)
- xliii SCR Rule 7(1)
- xliv SCR r.3(3)(e).



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- xliv SCR r.3(4).
 - xlvi SCR r.3(4).
 - xlvii SCR r.4(2).
 - xlviii Summary Jurisdiction Law (2006 Revision), section 38(i)
 - xlix Dicta of Summerfield, C.J. in *Gonzalez v Attorney General* [1984-85] CILR 136 at pages 137 to 138. See also *United States v DeLisser* [1990-91] CILR 11.
 - I Section 35(2) of the Judicature Law (2013 Revision).
 - li Section 1(3) of Schedule 2 to the Judicature Law (2013 Revision)
 - lii GCR O.42, r.1(1)(a)
 - liii GCR O.42, r.1(1)(f)
 - liv GCR O.42, r.1(1)(i)
 - lv Section 38 of the Summary Jurisdiction Law (2006 Revision)
 - lvi Section 3.1 of the Explanatory Memorandum (2009 Revision) of the Grand Court Rules 1995; GCR Order 4, rule 1.
 - lvii Section 22 of the Grand Court Law (2008 Revision)
 - lviii See generally Atkin's Court Forms (2nd edn 1997 Issue) Volume 5
 - lix Section 6(2) of the Summary Jurisdiction Law (2006 Revision)
 - lx GCR Order 53, rule 5(3)
 - lxi GCR Order 1, rule 2(4)(d) – only GCR Orders 3 (Time), 4 (Assignment, Transfer and Consolidation of Proceedings), 5 (Mode of Beginning Proceedings), 38 Part II (Writs of Subpoena), 39 (Evidence by Deposition), 62 (Costs), 67 (Change of Attorney), 45-51 (Enforcement) and 52 (Committal) shall apply.
 - lxii GCR Order 62, rule 8(3)
 - lxiii Section 29(1) of the Court of Appeal Law (2011 Revision).
 - lxiv Section 30 of the Judicature Law (2013 Revision)