

Raymah M. Davis
Justice of the Peace, Pct. 2
Bastrop County, Texas

SMALL CLAIMS COURT SUIT

These instructions are a broad interpretation of the laws that apply to the Justice Court. Any legal questions or legal interpretations should be based upon your own research or the advice of your attorney.

Legal questions will not be answered by this office. If you have a legal question, contact an attorney.

Please do not ask to speak to the Judge about your case prior to the trial date. The Judge cannot discuss the facts of the case with either party before the trial date.

GENERAL INFORMATION FILING A SMALL CLAIMS SUIT

The amount of the debt, damages or personal property for which you may sue in Justice Court may not exceed \$10,000.00 which is the limit of the court.

In all civil suits, the defendant(s) generally has the right to be sued in the county and precinct in which he/she resides. Should you be filing this suit in this county and precinct because it is convenient to you, there may be a motion by the defendant to transfer venue (request that this suit be transferred to another county and precinct).

As the plaintiff, it is your responsibility that you understand that for any potential judgment you may receive to be valid, it is necessary for you to sue the defendant in their proper legal capacity, of which there are typically three. They are as follows:

1. Personally – An individual is responsible to you for damages he/she may have caused you as an individual.
2. Proprietor or Partnership-A business that is not incorporated, but does have on file with the County Clerk, an assumed name or d.b.a. (Doing Business As) such as John Smith d.b.a. Greenhouse Supplies.
3. Corporation-The business which has allegedly caused you damage is incorporated; therefore, it is necessary to know the individual's name who is able to accept service on behalf of the corporation. (The authorized agent for service would be listed with the Secretary of State whose phone number is 1-800-252-5555). For example, Greenhouse, Inc. Serve: John Doe. It is also possible for an incorporated entity to have an assumed name or d.b.a such as Greenhouse, Inc., d.b.a Greenhouse Supplies.

This court will give you a receipt notifying you of your case number and a telephone number for the court. Any change of address or telephone number must be supplied to the court and to the defendant.

Once you have filed the petition stating the facts and circumstances of your suit, a citation will be served to the defendant notifying him/her of the fact that a suit has been filed against him/her in this court.

The citation will order the defendant to answer to this suit on or before the Monday following the expiration of ten (10) days from receipt of the citation. If he/she fails to respond, you may then become eligible for a default judgment up until the time the answer is filed.

If the defendant answers the suit, this court will notify both parties, by mail, as to the trial date. The trial date will be five (5) to six (6) weeks after the defendant has answered the suit. We discourage motions for continuance; however, any requests for a continuance must be in proper format and timely filed. At least five (5) working days prior to trial date: to wit: written request supported by an affidavit.

If you have witnesses who will not come to court voluntarily, you may request, no later than two (2) weeks prior to the trial for a subpoena to be served to secure their presence. Service fee is \$75.00 per subpoena.

With respect to the trial itself, all legal rules of evidence and procedure apply in Justice Court suits. It is suggested that if one party has an attorney, the other party also obtain the services of an attorney. However, the legislative intent of the creation of this court was not only to be one in law, but also to be one in equity. Therefore, the court will assure both the plaintiff and the defendant, that all facts will be solicited and a decision rendered based upon the evidence which is presented to this court.

Corporations must be represented by an attorney in this court. Individuals and proprietorships cannot be represented by non-attorney agents.

Should you receive a judgment, the court does not collect the judgment; however, you may request an Abstract of Judgment and a Writ of Execution to help you in the collection of this judgment.

An Abstract of Judgment puts a lien on any real property the defendant may own in the county where the abstract is recorded. The abstract is only valid in the county or counties where it is recorded and can be obtained ten (10) days after the date the judgment is signed.

The Writ of Execution may be obtained thirty (30) days after the judgment is signed. This document authorizes the Sheriff or Constable to seize any assets belonging to the defendant which are subject to this writ. Those assets are then auctioned at a public sale and the proceeds are applied to the judgment. (Less Sheriff/Constable commission and all costs of public sale.)

A Writ of Garnishment is also available thirty (30) days after the final judgment has been signed. This garnishment proceeding is a separate suit, in which, you are the plaintiff and the defendant's bank becomes the defendant. You are actually suing the bank, in which, the original defendant has his/her bank account. You are notifying the said bank to freeze the monetary assets of his/her account and to appear and make answer to the Garnishment suit. **AN ATTORNEY IS REQUIRED FOR THIS ACTION.**

A Turnover Order is available after the judgment is signed for the purpose of providing a court ordered means of reaching property which cannot easily be reached through ordinary legal processes and which is not exempt from attachment, execution, etc. **AN ATTORNEY SHOULD BE CONSULTED** as the court's clerical staff will not be able, by law, to assist you in drafting the documents that are necessary.

If you have any other procedural questions, please contact this office.

NOTE: Legal questions will not be answered by this office. If you have a legal question, contact an attorney.

Please do not ask to speak to the Judge about your case. The Judge cannot discuss the facts of the case with either party before the trial date.

FEE SCHEDULE FOR SMALL CLAIMS SUITS

Filing Fee	\$ 51.00
Service Fee	\$ 75.00
Writ	\$255.00
Abstract	\$ 5.00

DEFENDANT INFORMATION

These instructions are a broad interpretation of the laws that apply to the Justice Court. Any legal questions or legal interpretations should be based upon your own research or the advice of an attorney. Legal questions will not be answered by this office.

The Judge will not discuss the facts of the case with either party prior to the trial date.

When you are sued and served with a citation from the Justice Court, you must file a WRITTEN answer on or before the MONDAY which follows the TENTH (10th) day from the date of service (the date you were served). You must answer in WRITING and advise the Court if you wish to contest the suit and have a trial by Judge or Jury or if you wish the Plaintiff to recover a consent judgment.

If you wish to contest the suit and desire a TRIAL BY JURY, you must request this and pay the \$5.00 jury fee. This shall be done NOT LESS THAN ONE DAY in advance of the date the case is set for trial.

You may represent yourself or you may obtain an attorney to represent you.

If you do not desire to contest the suit and you agree that the Plaintiff should recover the full amount they are seeking, you may request IN WRITING, that the Court enter a CONSENT JUDGMENT against you.

Even though the burden is on the Plaintiff to prove their allegation against you, you should prepare a proper defense. **If you are going to submit documents during the trial, please be sure to bring two copies of each document. One copy for the Plaintiff and one copy for the Court.**

Hearsay evidence may be inadmissible and cannot be used if objected to by the Plaintiff. Examples of hearsay evidence might include notarized statements or affidavits, garage estimates, police reports, and oral statements made outside of the Court.

At the trial, after the Plaintiff presents their case as to their right to recover, you are then allowed to present your defense as to why they should not recover.

If witnesses are required, you may subpoena them to the Court by asking for the subpoena and paying the required fee of \$65.00 per subpoena plus a \$10.00 witness fee for each subpoena. The subpoena should be requested no later than seven (7) days prior to the date of the trial.

When both sides, Plaintiff and Defendant, have presented their case, the Court will enter a judgment. The Plaintiff recovers from you, all, part or nothing.

If a judgment is rendered against you, you may appeal the ruling of this Court to the County Court within ten (10) days by posting a proper bond.

Should the Court rule that the Plaintiff recover nothing from you, the Plaintiff must appeal within ten (10) days or their right to recover from you is forever lost.

Should the Plaintiff recover a judgment from you and you do not appeal it, the Plaintiff may take further legal action against you to collect the amount of the judgment plus court costs.

The Plaintiff may:

ask that a Writ of Execution be issued to the Constable or the Sheriff to collect the judgment from you by levying on certain belongings that you own; or

have a Garnishment Suit filed to garnish money, equipment or assets belonging to you which are being held by a third party; or

obtain an Abstract of Judgment from the Court and file it with the County Clerk. This creates a lien against real property that you may own.

With the exception of the citation to be served upon filing of a cause of action, every notice and every pleading, plea (answer), motion or the form of request required to be served under RULE 21, may be served by delivering a copy to the party to be served or the party's duly authorized agent or attorney of record, either in person, by agent or by courier receipt under delivery or by certified or registered mail, to the party's last known address or by fax to the recipient's current fax number, or by such other manner as the Court, in its discretion, may direct.

If you have any questions pertaining to this citation, please call our office.

PETITION: SMALL CLAIMS CASE

CASE NO. (court use only) _____

In the Justice Court, Precinct _____, _____ County, Texas

PLAINTIFF _____

VS.

DEFENDANT(S): _____

Defendant(s) contact info: _____

COMPLAINT: The basis for the claim which entitles the plaintiff to seek relief against the defendant is:

RELIEF: Plaintiff seeks damages in the amount of \$_____, and/or return of personal property as described as follows (be specific): _____, which has a value of \$_____.

Additionally, plaintiff seeks the following: _____
_____.

SERVICE OF CITATION: Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are:

_____.

If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address: _____.

Petitioner's Printed Name

Signature of Plaintiff or Attorney

DEFENDANT(S) INFORMATION (if known):

Address of Plaintiff's Attorney, if any, or Plaintiff if none

DATE OF BIRTH: _____

*LAST 3 NUMBERS OF DRIVER LICENSE: _____ City

State

Zip

*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

DEFENDANT'S PHONE NUMBER: _____

Phone & Fax No. of Plaintiff's Attorney, if any, or Plaintiff if none

CAUSE NO. _____

IN THE JUSTICE COURT

PLAINTIFF

VS.

PRECINCT _____, PL _____

DEFENDANT

_____ COUNTY, TX

NON-MILITARY AFFIDAVIT

BEFORE ME, the undersigned authority, on this date personally appeared _____, known to me to be a credible person, and after being duly sworn upon his oath, did depose and say:

“I, _____, Plaintiff in the above-entitled and numbered cause and am duly authorized to make this affidavit.

Defendant, _____, was not, either at the time of the institution of this suit, or at any time since, been a member of any military or naval service in the United States of America insofar as is now or can be determined by affiant.”

Further affiant sayeth not.

Affiant (signature)
(printed name)

THE STATE OF TEXAS

COUNTY OF BASTROP

SIGNED AND SWORN TO BEFORE ME, the undersigned authority, on this day, _____, 20__ .

Notary/Judge for the State of Texas

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER (FOR CLERK USE ONLY): _____

STYLED _____
 (e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		2. Names of parties in case:
<p>Name: _____ Telephone: _____</p> <p>Address: _____ Fax: _____</p> <p>City/State/Zip: _____ State Bar No: _____</p> <p>Email: _____</p> <p>Signature: _____</p>	<p>Plaintiff(s): _____</p> <p>_____</p> <p>Defendant(s): _____</p> <p>_____</p> <p>_____</p> <p>[Attach additional page as necessary to list all parties]</p>	
3. Indicate case type, or identify the most important issue in the case (<i>select only 1</i>):		
<p><input type="checkbox"/> Debt Claim: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><input type="checkbox"/> Eviction: An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	
<p><input type="checkbox"/> Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><input type="checkbox"/> Small Claims: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	



Justice Court

404 FAWCETT
SMITHVILLE, TX

JUDGE RAYMAH DAVIS
PRECINCT 2

P.O. BOX 5
512-581-7112

General Information Sheet

In order to assist us in the timely serving of civil papers, please furnish the following information:

Plaintiff's Information

Plaintiff's Name: _____

Plaintiff's Address: _____

Plaintiff's Phone Number: Home _____ Work _____

Defendant's Information

Defendant's Name: _____

Defendant's Address: _____

Defendant's Phone Number: Home _____ Work _____

Defendant's Place of Employment: _____

Defendant's Work Hours if Known: _____

Any information that you can furnish will help greatly in serving your papers.

Please furnish explicit directions or a map if possible. Thank you.