

Small Claims & Debt Claim Suits

NEITHER THE COURT NOR ITS PERSONNEL CAN GIVE LEGAL ADVICE.

Filing a Small Claim or Debt Claim Suit: Please read this packet completely before filing your suit. The information contained in this packet is not offered as legal advice, it is not exhaustive. There may be other remedies and procedures not contained in this packet. Our Court Clerks are trained in procedure only and cannot give any legal advice. This is for the Clerk's protection as well as your own. The following procedural instructions are the only information you will receive from this office. You may need to consult an attorney to protect your interests.

There are two civil forums over which the Justice of the Peace presides: Small Claims and Debt Claims.

THE TEXAS STATUTES

The Texas Statutes are available on-line at: **www.statutes.legis.state.tx.us** or you may visit the Hays County Law Library located at 712 South Stagecoach Trail, San Marcos, Texas 78666, during the hours of Monday, Tuesday, Wednesday, Friday 8:00 AM to 12:00 PM or Thursday 1:00 PM to 4:30 PM.

VENUE

Laws specifying the venue – the county and precinct where a lawsuit may be brought – are found in Texas Rules of Civil Procedure 502.4. Generally, a defendant in a small claims or debt claim case is entitled to be sued in one of the following venues: county and precinct where the defendant resides; county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred; county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed.

JURISDICTION

Small Claims: A small claim case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law.

Debt Claims: 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.

DAMAGES

The amount of money you are suing for is called "damages". The amount of damage sought must be supported by evidence. A plaintiff may not diminish the amount of the underlying claim in order to maintain a suit in the Justice Court! For example, if a Plaintiff states that the suit is for "\$20,000" and the evidence shows that the damages are actually greater than \$20,000, the Court loses jurisdiction of the case, and the lawsuit must be dismissed and refiled in a Court of competent jurisdiction. Additionally, a Plaintiff cannot tell the court that the damages are greater than \$20,000, but the Plaintiff is willing to "settle for less".

PARTIES TO THE SUIT

NAME OF THE PLAINTIFF: This is the party that is instituting the suit. Only the individual(s) or company(s) named at the top of the Petition as Plaintiff(s) may collect a Judgment in favor of the Plaintiff. *You must sue the Defendant(s) in their proper legal capacity.*

As an Individual: You must sue the Defendant individually in the following two situations: (1) the Defendant is personally responsible to you for damages he/she may have caused you, and (2) the Defendant as an individual operating a proprietorship or partnership is responsible to you for damages he/she may have caused.

As a Proprietorship or Partnership: A proprietorship or partnership is a business that is not incorporated, but has filed an "Assumed Name" with the County Clerk. For example, "John Smith, d/b/a Smith Plumbing Company." To determine whether a company or an individual has an assumed name you must contact the County Clerk's office in the County where the company is located.

As a Corporation: If the business that has injured you is incorporated, you must contact the State Comptroller's Office at (800) 252-1386, or the Secretary of State at (512) 463-5555. Ask for the name and address for service of the Registered Agent for service of the corporation (the President or Vice-President will also work). For example: when completing your complaint, the name of the Defendant should read "ABC Corporation, by serving John Smith, Registered Agent."

CITATION

Each Defendant must be served personally, usually by a Constable or Sheriff, in the County where the Defendant is located. Fees for service vary by County: Hays County charges \$75.00 per Defendant and payment can be included with payment of the filing fee to the Court.

If the Defendant is to be served in a County other than Hays, you need to call the Sheriff's Office or Constable for the County in which the Defendant will be served. Ask who serves civil citations for Justice Court in that County. Find out the name, address, service fees for civil citations, and what form of payment is acceptable. Payment must be separate from the filing fee to the Court.

It is your responsibility to ensure service of your citations. If you obtain a better address for the Defendant, call the agency and provide the new information as soon as possible.

NOTE: Except for citations and papers served by personal process, you must mail a copy of all papers filed with the Court to all other parties to the lawsuit.

COST OF COURT

Filing fees + Service fees (see "Citation" above)

Small Claims Filing Fees are \$54.00 Debt Claim Filing Fees are \$54.00

If paying by cashier's check/money order please make them payable to: Hays County

STATING YOUR CLAIM

State the nature of your claim briefly; summarize in as few words as possible the reason for your claim.

AFTER SUIT IS FILED (SERVICE OF CITATION)

After you have filed your petition, the Court will issue and forward the Citation(s) to the Constable or Sheriff's office you have indicated for service on the Defendant(s). It is your responsibility to ensure service of your Citation. Check periodically by telephone with the Constable or Sheriff's office directly.

ANSWER

Once the Citation has been served on the Defendant, the Defendant's answer is due by the end of the 14th day, unless the Defendant is served by publication in which case the defendant's answer is due by the end of the 42nd day. If a Defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge. The Judge must not enter a default judgment and case must be set for trial. [TX R.C.P. 508.3(d)]

If the Defendant fails to do so, Plaintiff must request a hearing, orally or in writing.

ADDRESSES AND ADDRESS CHANGES

Each party or the party's attorney must provide the Clerk of the Court with written notice of the party's name and current residence or business address.

The notice must be provided at the time the party files its initial pleadings with the Court or not later than 7 days after the Clerk of the Court requests the information.

If the party's address changes during the course of a civil action, the party, or the party's attorney must provide the Clerk of the Court with written notice of the party's new address.

SERVICE MEMBER'S CIVIL RELIEF ACT (SCRA)

If the Defendant does not file an answer to the lawsuit, or does not appear in Court, the Plaintiff will NOT be able to receive a "default judgment" unless the Plaintiff first files with the Court a Service members' Civil Relief Act Affidavit stating, under oath, that the Defendant is not in the military service on active duty status. A false statement in this affidavit is a violation of Federal Law.

REPRESENTATION

An individual may represent himself or herself; or be represented by an attorney. A corporation or other entity may be represented by an employee, owner, officer or partner of the entity who is not an attorney; or be represented by an attorney. The Court, for good cause, may allow an individual representing him or herself to be assisted in Court by a family member or other individual who is NOT being compensated. [TX R.C.P. 500.4]

TRIAL PREPARATION

If the Defendant files a written answer your case will be set for trial depending on the availability of the Court. You will receive written notice of your court date. If you change your address or phone number please notify the Court immediately. Please arrive on time for your scheduled trial or hearing.

Parties who are not represented by attorneys should prepare carefully for trial.

DISCOVERY

Discovery is a broad term used to describe many different ways of obtaining information and evidence prior to trial, to be used at trial.

Examples of discovery include:

- Interrogatories (written questions requiring sworn answers);
- Requests for Admissions (written statements requiring sworn admission or denial);
- Requests for Production (written requests to produce evidentiary items for examination by the opposing party prior to trial)

Pretrial discovery is limited to that which the Judge considers reasonable and necessary. Any requests for pretrial discovery must be presented to the court for approval by written motion. The motion must be served on the responding party. Unless a hearing is requested, the judge may rule on the motion without a hearing. The discovery request must not be served on the responding party unless the judge issues a signed order approving the request. Failure to comply with a discovery order can result in sanctions, including dismissal of the case or an order to pay the other party's discovery expenses.

NO WRITTEN RECORD

The Justice of the Peace forum is not a "court of record". There is no court reporter recording witness testimony. Recording devices are not permitted without the Judge's prior consent.

SUBPOENAS

Witnesses: If there are witnesses who will not come to Court voluntarily, you may request that a Subpoena be prepared and served to secure their presence in Court. This should be done at least two weeks before trial in order to allow for service of the Subpoena. The Court does not guarantee that service will be obtained. Successful service of a witness subpoena is your responsibility. There is not a charge for the Court to issue a Subpoena, but there is a service fee (See "Citation" above), and a \$10.00 bill must be attached to the top of the Subpoena.

Evidentiary Subpoenas: If the Defendant or any other witness has documentation, that you do not have, and that is necessary to prove your case, you may have the person who has control of the evidence subpoenaed to bring the documentation to Court. The items you want must be listed clearly and attached to the Subpoena. All of the other information mentioned above is also applicable to evidentiary subpoenas.

JURY REQUEST

If you desire a trial by jury you must pay a jury fee of \$22.00 at least fourteen (14) working days prior to trial. Requests for a jury trial ordinarily require the trial date to be reset. Jury trials often last several hours longer.

MOTIONS FOR POSTPONEMENT

All motions for postponement of the Court date **must be in writing** and received by the Court prior to your court date. Weekends and Holidays are excluded. The Plaintiff and the Defendant are each entitled to request one reset "only for good cause", and all other postponement requests must be made by agreement of both parties. [TX R.C.P. 503.3(b)]

WHAT HAPPENS AFTER TRIAL?

APPEAL INFORMATION

Either party has 21 days after the date the judgment is signed or the motion to reinstate, motion to set aside, or motion for new trial is denied to file an appeal in a Justice Court. An appeal bond and "Notice of Appeal" must be filed with the Court on or before 4:30 p.m. on the last day the appeal can be filed. Appeals filed after this date will be denied.

- Prepare a Notice of Appeal, file it with the Court and mail a copy to the opposing party by certified mail, return receipt requested.
- Prepare a Surety Bond for the entire amount of the Appeal Bond required by the Court. Contact the Court and find out the amount of the appeal bond required for your appeal.

The Court will then prepare a Transcript of the pleadings on file in your case and send it to the County Clerk's Office. All Court contact from this point will be with them at (512) 393-7338. There will be filing fees required from them, and they will contact the party who is appealing regarding the payment of those fees.

MOTION FOR NEW TRIAL

Motions for New Trial and Motions to set aside Judgment must be filed in writing no later than fourteen (14) days after the date the judgment is signed. The party must serve all other parties with a copy of the motion no later than the next business day using one of the following methods: In person, by courier-receipted delivered; by certified or registered mail; by fax or email (if receiving party has consented in writing, [TX R.C.P. 501.4]).

COLLECTION OF JUDGMENTS

If you receive a Judgment against the Defendant and the Defendant does not file a Motion for New Trial or does not file an Appeal within the time allotted, or does not pay the Judgment within ten days you may seek other remedies to collect your Judgment. The Justice Court cannot assist you in collection of your Judgment. Below are listed some remedies that are available to you, and that may assist you in the collection of the Judgment.

- **ABSTRACT OF JUDGMENT:** You may obtain an Abstract from the Justice Court that issued the Judgment. The cost of an original Abstract is \$5.00; the Abstract may then be filed in the office of the County Clerk in any County where you may think the Judgment Debtor may own real property.
- **WRIT OF EXECUTION:** You may obtain a Writ of Execution any time after the 30th day from the date of Judgment. A Writ of Execution allows a Sheriff or Constable to try and seize certain non-exempt property from the Defendant. If property is seized, an auction will be held and the proceedings from the sale will satisfy your Judgment. The cost of a Writ of Execution varies from County to County, and you may also want to contact the Constable or Sheriff in that County to discuss what items are considered non-exempt and may be subject to execution.
- **WRIT OF GARNISHMENT:** A Writ of Garnishment is available 30 days after the date of Judgment. This is a new lawsuit and is a complicated procedure. We recommend that you consult an attorney.

MEDIATION

The Court and its staff cannot negotiate settlement for you. Some disputes--like those between relatives and neighbors--are best handled by an agreement reached through mediation as an alternative to litigation. Other cases that lend themselves to mediation are suits where the relationship between the parties is likely to outlive the judgment—or where performance is desired, such as completion of a construction job. Even if mediation is unsuccessful, it serves as an opportunity for the parties to determine what the issues are before appearing in Court.

Mediation is private, faster and often less expensive than the court system, deals with both feelings and issues, helps restore peace and improve and restore relationships.

Mediators can be located through the local Bar Association or the telephone book under "Mediators". Occasionally the Judge of the Justice Court will order parties to mediation as part of the Court process.