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## Small Claims Cases

### Frequently Asked Questions

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**Q. How much does it cost to file a Small Claims suit?**

A. The filing fee for a suit filed in the Small Claims Court is \$36.00. \$25.00, Small claims filing fee, \$6.00, Indigent Defense Fund, and \$5.00, Alternative Dispute Resolution.

If you request that the citation be served by a Jefferson County Constable, the fee is \$55.00 for service on each defendant located in Jefferson County.

**Q. What information do I need to file against a business?**

A. You will need to determine who owns the business. Is it a corporation, a partnership, or a sole proprietorship? It is your responsibility to make sure that you are suing the proper and necessary party in the correct name.

If the business is a corporation, you will need the correct name of the corporation, and the name and address of the corporation's registered agent.

If the business is a partnership, you will need the name and address of at least one of the partners.

If the business is a sole proprietorship, you will need the name and address of the owner of the business.

Business ownership may be determined from the Jefferson County Clerk's Assumed Name Records. Information about a corporation, and the corporation's Registered Agent may be obtained from the Office of the Secretary of State, Corporation Division, 800-252-5555. Information as to the corporation's standing is available from the Office of the State Comptroller, 800-252-1386.

**Q. What is the maximum amount I can sue for in Small Claims Court?**

A. The maximum claim amount is \$10,000.00.

**Q. If I am sued in Small Claims Court, what should I do?**

A. You must follow the instructions within the Citation with which you were served, and appear before the Court at 9:00 a.m. on Monday next after the expiration of 10 days after the date you were served with the citation. You should send a copy of the answer to the Plaintiff, and include your name, address, and telephone number.

**Q. How do I ask for a jury trial?**

A. You are entitled to a jury trial if you file a request with the court not later than one day before the date on which the hearing is to be held and pay the jury fee at the same time. It is helpful to ask for a jury trial well in advance of your hearing date.

**Q. What happens in court?**

**Announce Your Presence**

When you arrive in the Small Claims Court, it is a good idea to announce to the clerk that you are present. If the justice of the peace calls the "docket," that is each case scheduled to be heard at that time, you should answer "present" when your case is called.

**Pick a Jury**

If you have demanded a jury, a jury panel will be available from which you will select six jurors to decide your case. Both the plaintiff and the defendant will be able to ask the potential jurors questions to learn about the jurors, their prejudices, and their sympathies.

You may tell the justice of the peace if you think that a certain juror cannot be fair and ask that the juror be excused for cause. You may disqualify three (3) jurors using your peremptory strikes for any reason or for no reason.

**Swear to Tell the Truth**

When the trial begins, the justice of the peace or the clerk will ask each party and their witnesses to swear to tell the truth.

**Meet Your Burden of Proof**

As the plaintiff, you will have the opportunity to begin. You have the burden to prove your case by a preponderance of the evidence. You may proceed by testifying about the facts of your claim, presenting any physical or documentary evidence you have, and asking questions of your witnesses.

**Cross-examination**

The defendant will have an opportunity to cross-examine the plaintiff and each of the plaintiff's witnesses, by asking questions.

**Defendant's Side of the Story**

At the end of the plaintiff's presentation, the defendant will explain the circumstances from his or her point of view. The defendant may take the position that the plaintiff or the plaintiff's witnesses are wrong in their perception or interpretation of the transaction, or that the plaintiff is not entitled to as much money as claimed, or to any money.

**Defendant's Failure to Appear**

If the defendant does not appear for the hearing after being properly notified, the plaintiff may be entitled to a default judgment if the plaintiff is able adequately to prove his or her damages.

## **Judgment**

At the conclusion of the evidence, the justice of the peace or the jury will decide the outcome of the case. The judgment will become final after ten (10) days, if no appeal is taken.

### **Q. When should I file a lawsuit?**

A. File a lawsuit only as your last resort. Try to resolve your dispute by talking it over calmly with your adversary, or using a mediator. But, do not wait too long to present your claim. You must file your claim within any applicable statute of limitations. For example, a suit to collect money owed on a contract must be brought within four (4) years. A suit for personal injury or damage to property must be brought within two (2) years.

### **Q. For what can I sue in Small Claims Court?**

A. You can only recover money in Small Claims Court. The court is not able to award you property or require another party to do or refrain from doing any act. Know the value of your claim. If you are represented by an attorney, you may be able to recover attorney's fees, but the total amount of your claim, exclusive of court costs, may not exceed \$10,000.

### **Q. What do I need to do to prepare for a trial?**

A. Gather all of the information you need to prove your claim. Collect all records, such as copies of contracts, invoices, or other agreements. Compile a list of witnesses, with their addresses and telephone numbers. Prepare a short and concise statement of the basis for your claim. Use plain language. Be sure to include the date the claim arose and all pertinent information.

# **Small Claims Cases**

## **About the Small Claims Court**

### **Creation**

The Small Claims Court in Texas is created under Chapter 28 of the Texas Government Code. It has concurrent jurisdiction with the Justice Court in actions by any person for the recovery of money in which the amount involved, exclusive of costs, does not exceed \$10,000.00. Jurisdiction is the power of the court to entertain an action, consider the merits, and render a valid judgment.

### **Presiding Judge**

Each Justice of the Peace sits as the judge of the Small Claims Court.

### **Persons Not Allowed to Bring Claims in Small Claims Court**

In general, an assignee, a money lender, and a collection agent may not bring an action in the Small Claims Court.

An assignee of a claim or any other person seeking to bring an action on a claim which has been assigned is prohibited from seeking relief in the Small Claims Court.

A person who is primarily engaged in the business of lending money with interest may not file a claim in the Small Claims Court.

A collection agency or a collection agent is also prohibited from bringing an action in the Small Claims Court. See Section 28.003, Texas Government Code.

### **Representation**

In the Small Claims Court, a person may represent himself or herself, and may, if he or she so chooses to be represented by an attorney. See Section 28.012, Texas Government Code.

A corporation does not have to be represented by an attorney in the Small Claims Court. See Section 28.003, Texas Government Code.

## **Designation of Parties**

In legal terms, the party bringing the action is called the "Plaintiff." The one against whom the action is brought is called the "Defendant."

# Small Claims Cases

## **Filing Small Claims Cases**

### **Claim Must Be Made Under Oath**

To begin an action in the Small Claims Court, the plaintiff, or claimant, must make a statement of the claim under oath. This may be done by the plaintiff, by the attorney for the plaintiff, or by an authorized agent for the plaintiff, in one of two ways:

- (1) by appearing in person before the Justice of the Peace or the clerk and filing a statement of the claim under oath; or,
- (2) by filing a sworn Small Claims Petition with the Justice of the Peace or clerk of the court.

### **Filing Fee**

The Justice of the Peace must collect total fees of \$27.00 for the filing of a claim in the Small Claims Court. The filing fee is set out in Section 118.121 of the Texas Local Government Code. Other fees in Small Claims Court are the same as those for cases in Justice Courts. Section 28.004, Texas Government Code. Additional fees for basic civil legal services to indigents (Section 51.941, Texas Government Code) and for an alternative dispute resolution system (Section 152.005, Texas Civil Practice and Remedies Code) are also applicable.

### **Issuance of Citation**

In order for the Small Claims Court to acquire jurisdiction over the person being sued the defendant must be notified of the filing of the lawsuit. When the claim has been filed and the filing fee paid, the Justice of the Peace or the clerk will issue a notice of the filing called a "citation." The citation is directed to the defendant and informs the defendant of the date of the filing of the petition, the case number assigned to the claim, the names of the parties, and the nature of the plaintiff's demand. The citation also warns that should the defendant fail to appear at the trial of the claim a judgment by default may be rendered in favor of the plaintiff for the amount of money the plaintiff is claiming. Citations may be served in any manner authorized for service of citation in a Justice Court. See Section 28.013, Texas Government Code.

### **Service of Citation**

The citation may be served by any sheriff or constable, any person certified under order of the Supreme Court (Process Server), or by any person authorized by law or by written order of the court who is not less than 18 years of age.

Citations may be served by personal delivery to the defendant, or by registered or certified mail directed to the defendant, with return receipt requested.

If attempts to serve the defendant at the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found are unsuccessful, the plaintiff can ask the Justice of the Peace to allow service in another manner. The request for an alternative method of service must be supported by an affidavit that states where the defendant can usually be found, that attempts to serve the defendant were unsuccessful, and that the manner of service suggested will be effective to give the defendant notice of the lawsuit. The Justice of the Peace can then authorize service of process by leaving a copy of the citation with anyone over 16 years of age at a specified location, or in any other manner that is reasonably effective to give the defendant notice of the lawsuit. See Rule 536, Texas Rules of Civil Procedure.

## **Service Fees in Jefferson County**

The Commissioners Court of Jefferson County sets the fee to be charged for services of the Jefferson County Constables. See Section 118.131, Texas Local Government Code. A fee of \$50.00 is charged for service of process in a Small Claims case in Jefferson County.

## **Service Outside of Jefferson County**

For citations to be served in a county other than Jefferson County, please contact the Court for the amount of the service fee and location for forwarding the citation.

## **The Defendant**

No judgment may be rendered against a defendant unless the defendant has been properly served with process. Defendants may be natural persons, individuals, or persons doing business in the form of sole proprietorships, or partnerships, or corporations. Any individual doing business under an assumed name, or any business operating in the form of a partnership or corporation, may sue or be sued in the business name, but service of process must be properly accomplished.

Service of process directed to individuals is affected by delivery directly to the person. Service of process on business entities is more difficult and must be accomplished by service on an agent or person authorized to accept service.

For example, if a defendant is a partnership, the citation may be directed to one member of the partnership, and service affected on that one member authorizes a judgment against the partnership and the partner actually served. See Section 17.022, Texas Civil Practice and Remedies Code. If several partners are jointly indebted under a contract and the citation has been served on at least one but not all of the partners, judgment may be rendered only against the partnership and against the partners who were actually served. No personal judgment or execution may be had against any partner who was not served. See Section 31.003, Texas Civil Practice and Remedies Code.

If the defendant is a limited partnership, each general partner and the registered agent of a limited partnership may be served with citation in order to effect service of process. See Section 1.08 of the Texas Limited Partnership Act, Art. 6132a-1, Texas Civil Statutes.

If the defendant is a corporation, citation may be served by serving the corporation's president or any vice-president, or the corporation's registered agent. If the corporation's registered agent cannot be found at the corporation's registered office, then service of process may be made on the Secretary of State. See Art. 2.11, Texas Business Corporation Act.

If the defendant is a limited liability company, the manager, if any, and the registered agent shall be agents upon whom citation may be served. See Art. 2.08 of the Texas Limited Liability Company Act, Art. 1528n, Texas Civil Statutes.

To determine the exact legal nature of a business entity, the plaintiff may look at the Assumed Name Records maintained by the [Jefferson County County Clerk](#), or contact the Corporation Division of the Office of the Secretary of State at 512-463-5555, or the Office of the State Comptroller at 1-800-252-1386.

## **Venue**

"Venue" is the proper Justice of the Peace Precinct in which the Small Claims Court may exercise its jurisdiction. As a general rule, a suit in Small Claims Court must be brought in the county and in the Justice of the Peace Precinct in which the defendant resides. If, however, the defendant has contracted to perform an obligation in a certain county, an action may be brought in the county where the obligation was to be performed.

If there is more than one Justice of the Peace within a precinct, the plaintiff may bring suit in any of the Small Claims Courts within the precinct. See Section 28.011, Texas Government Code and Section 15.099, Texas Civil Practice and Remedies Code.

## **Motion to Transfer Venue**

A defendant may file a motion in the Small Claims Court asking that the case be transferred to a different precinct. This request must be made in writing at the earliest opportunity and must state why the precinct in which the lawsuit is filed is not the proper precinct, and also state to what precinct the action should be transferred. If the Justice of the Peace orders that the case be transferred, the original papers will be sent to the Small Claims Court in the proper precinct, and the parties and witnesses will be required to appear before the Small Claims Court to which the case was transferred. See Section 28.014, Texas Government Code.

The Rules concerning the motion to transfer are found in the Texas Rules of Civil Procedure, See Rule 527, Texas Rules of Civil Procedure.

## **Failure to Appear**

If a defendant who has been served properly with citation does not file an answer or does not appear in the Small Claims Court on the date and at the time specified in the citation, and the plaintiff does appear, the Justice of the Peace will enter a default judgment for the plaintiff in the amount that the plaintiff proves is owed by the defendant.

If the plaintiff does not appear, the Justice of the Peace will enter an order dismissing the case. This order does not prevent the plaintiff from filing the lawsuit at a later time, if appropriate.

Either the plaintiff or the defendant who failed to appear may request that the court set aside the decision made in their absence. This request must be made in writing no later than the tenth (10th) day after the default judgment or order dismissing the case was signed, and must give a good reason for the party's failure to appear. See Section 28.031, Texas Government Code.

## **Certificate of Last Known Address**

The plaintiff requesting a default judgment must file a [\*Certificate of Last Known Address\*](#) certifying to the Court the last known mailing address of the party against whom the default judgment is taken, so that the Court can notify the defendant of the entry of the judgment. See Rule 239a, Texas Rules of Civil Procedure.

## **Military Status Affidavit**

The Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq, passed December 19, 2003, requires the plaintiff in any civil proceeding in which the defendant does not make an appearance to file with the court a [\*Military Status Affidavit\*](#) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

A person who makes or uses a military status affidavit, or statement, declaration, verification, or certificate, knowing it to be false, shall be fined as provided in Title 18, United States Code, or imprisoned for not more than one year, or both.

## **Discovery**

Reasonable discovery in Small Claims Court is limited to that considered appropriate and permitted by the judge. See Section 28.033, Texas Government Code.

## **Jury Trial**

Either the plaintiff or the defendant may demand a jury trial. The request must be made not later than one (1) day before the date on which the hearing is scheduled. At the same time that the request is made, the party must pay the jury fee to the justice of the peace. See Section 28.035, Texas Government Code. The amount of the jury fee is \$5.00. See Section 28.004, Texas Government Code, and Rule 544, Texas Rules of Civil Procedure.

## **Continuance**

If either the plaintiff or the defendant is unable to attend the hearing on the date and at the time it is scheduled, a [\*Request for Continuance\*](#) to the court may be made to continue the hearing to a different date. The Justice of the Peace may postpone the hearing only for a good reason.

## **The Hearing**

The goal of the Small Claims Court is to dispense speedy justice between the parties.

On the date and at the time scheduled for the hearing, the plaintiff must appear ready to present proof of the amount he or she is claiming is owed by the defendant. The defendant must appear ready to present proof of any defenses he or she may have to the plaintiff's claim.

Each party may offer written records, photographs, other tangible evidence, or the testimony of witnesses who have personal knowledge of the transaction made the basis of the lawsuit. A concise presentation, without repetitive testimony is the best way to present the case. The Justice of the Peace may allow each party to make a short argument on why that party should prevail.

The hearing is informal and the Justice of the Peace may ask questions to develop the facts of the case.

See Section 28.033 and Section 28.034, Texas Government Code.

## **Judgment**

At the conclusion of the hearing, the Justice of the Peace must make the judgment as the justice of the case demands.

Under the law, if the judgment is in favor of the plaintiff and against the defendant, the defendant must pay the judgment immediately. See Section 28.051, Texas Government Code.

## **Right to Appeal**

If either the plaintiff or the defendant is dissatisfied with the decision of the Justice of the Peace, and the amount in controversy is more than \$20.00, the dissatisfied party may appeal the final judgment to Harris County Civil Courts at Law. The procedures for appeal are the same as if the party were appealing from a decision of the Justice Court.

If the appeal is by the defendant, within ten (10) days from the date of the judgment, the defendant must file an Appeal Bond, with two or more sureties, in double the amount of the judgment. The bond is in favor of the adverse party and must promise that the defendant will prosecute the appeal to conclusion and pay any judgment that may be rendered by the County Civil Court at Law.

If the appeal is by the plaintiff because the Justice of the Peace denied the plaintiff's claim, the plaintiff, within ten (10) days from the date of the judgment, must file an Appeal Bond, with two or more sureties, in double amount of the costs incurred in the Small Claims Court and the estimated costs in the county court, less any amounts that the plaintiff may have already paid. The bond is in favor of the adverse party and must promise that the plaintiff will prosecute the appeal to conclusion. See Rule 571, Texas Rules of Civil Procedure.

"Sureties" are persons who guarantee that their principal will perform the promise made, or pay the amount of the bond. To be a good and sufficient surety, the surety should be worth at least the amount of the bond after deducting the value of the surety's property that is exempt from execution or forced sale, and the amount of all outstanding debts owed by the surety. The surety should have property worth more than the amount of the bond that is subject to execution.

If the party wanting to appeal is unable to pay the costs of appeal or give any security for those costs, he or she is entitled to appeal by filing a Pauper's Affidavit (stating such inability with the Justice of the Peace within five (5) days from the date of the judgment. Notice must be given to the other party of the filing of the affidavit, and the facts of the party's inability to pay costs can be contested. See Section 28.052, Texas Government Code and Rule 572, Texas Rules of Civil Procedure.

The affidavit of inability to pay must satisfy the requirements of Rule 145 of the Texas Rules of Civil Procedure. Rule 145 requires that the affidavit contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income (interest, dividends, etc.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses. The affidavit must also state that the party is unable to pay the court costs, and that the statements made in the affidavit are true and correct. The affidavit must be sworn before a notary public.

The appeal must be accomplished within the times specified and follow the procedures specified by the applicable rules of procedure. The rules applicable to appeal from Justice Courts can be found in Part V, Section 6, Texas Rules of Civil Procedures.

When the appeal has been perfected and the transcript sent to the County Civil Court at Law, the party must submit the appeal fee payable to the County Clerk's office when filing the appeal. This fee will be forwarded to the County Civil Court at Law. If this is not included the County Clerk will return all of the papers to the Justice of the Peace. The party in whose favor the judgment was rendered may then proceed to collect the judgment. See Rule 143a, Texas Rules of Civil Procedure.

### **Hearing on Appeal**

Once the appeal to County Civil Court at Law has been perfected, the Small Claims Court judgment becomes a nullity, and the County Civil Court at Law must try the case "de novo," or over again. This means that the parties must present their respective claims, evidence, and testimony to the judge of the County Civil Court at Law. No further pleadings in the County Civil Court at Law are required.

The judgment of the County Civil Court at Law on the appeal is final. See Section 28.053, Texas Government Code.