

# INSTRUCTION FOR FILING A SMALL CLAIMS SUIT

## **Type of Case:**

Recovery of money damages, civil penalties, personal property, or other relief allowed by law.

## **Filing Fee:**

\$139.00 --- (\$54.00 Filing Fee plus \$85.00 Service Fee)

## **If the defendant upon whom you are filing resides OUTSIDE of Henderson County:**

- 1) Call the County Courthouse in the County where the defendant is to be served.
- 2) Ask for the name of the Constable or Sheriff in the precinct where the defendant is to be served; call that office and find out the SERVICE FEE for serving a JUSTICE COURT CITATION.
- 3) Get the address of the Constable or Sheriff who will be serving the citation.
- 4) Get a money order, payable to the Constable or Sheriff who will be serving the citation and bring it with you when you file your suit.
- 5) The cost for filing the suit in this Court is \$54.00 (EXAMPLE: If you are filing the suit on one defendant that is to be served in Hill County, you would bring a money order payable to the Hill County Constable (& Pct. #), the Constables address, and the \$54.00 filing fee.)

## **Type of Pleadings:**

Petition must be sworn, all other pleadings may be informal, except motion to change venue.

## **General Information:**

- 1) The amount of money which may be sued for may not exceed the limit of the Court which is \$20,000.00.
- 2) In all civil suits, the defendant has the right to be sued in the county and precinct of residence. There are some exceptions to this rule. 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 some other county and precinct).
- 3) Before filing the suit, you should notify the defendant by certified mail that he has ten days in which to contact you concerning the claim. If the defendant fails to contact you or satisfy the claim then you would file on the eleventh day after the defendant signs the certified slip.
- 4) It is your burden as a plaintiff and is important 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. These are as follows:
  - a. Personally:** Where an individual is responsible to you for damage he may have caused as an individual.
  - b. Proprietor or Partnership:** A business that is not incorporated, but does have on file with the County Clerk, an assumed name, (e.g. John Smith d/b/a Greenhouse Supplies).
  - c. Corporation:** The business that has allegedly caused you damage is incorporated and therefore it is necessary to know the individual's name who is able to accept service on behalf of the corporation. (The registered agent for service would be listed with the Secretary of State whose phone number is 1-512-463-5555.)
- 5) This Court will give you a receipt showing your case number and the Judge's business card so that you may call in periodically to determine the progress of your case. Any change of address or telephone number must be supplied to the Court and to the Defendant.
- 6) Once you have filed the petition stating the facts and circumstances of your suit, a citation, along with a copy of your petition, will be served to the defendant notifying them of the fact that a suit has been

filed against them in this Court. The Sheriff or Constable will serve these papers and the Court must wait until they have been returned before further action may be taken.

7) The citation will order the defendant to appear in this Court to file an answer to the suit by the end of the 14<sup>th</sup> day from the receipt of the citation. This will not be the trial date.

If the defendant answers the suit, this Court will notify both parties by mail as to the trial date, We discourage motions for continuance, however, any requests for a continuance must be in proper form and timely filed (at least 2 working days prior to trial date: to-wit, written request supported by an affidavit). If the defendant fails to answer the suit, you may request a default hearing to obtain a default judgment at any time after the answer date. If you are not contacted within 4 weeks, you will need to call us to determine the status of you case.

8) If you have witnesses who will not come to court voluntarily, you may come in (at least 2 weeks prior to trial) to request a subpoena be prepared to secure their presence. Notarized statements from individuals are of very little value and may not always be admissible as evidence. Personal appearance and testimony are much more beneficial.

9) With respect to the trial itself, all legal rules of evidence and procedure apply in Justice Court suits. With that statement, I suggest that if one party has an attorney, the other party will be well advised to secure one. However, the legislative intent relative to the creation of this Court was not only to be one in law, but also to be one in equity. Therefore, I will assure both the Plaintiff and the Defendant in Justice Court, the facts will be solicited and a decision rendered in regard to the evidence that is presented in this Court at the trial.

10) Should you receive judgment, this Court does not collect the judgment for you, nor can we force the defendant to pay the judgment. However, you may request an Abstract of Judgment, Writ of Execution, or Writ of Garnishment to help you in collection of this judgment.

a.) An Abstract of Judgment puts a lien on any real property the defendant may own in a particular county where the abstract is recorded. The Abstract is only good in the county or counties where recorded. This can be obtained 21 days after the date the judgment is signed.

b.) A Writ of Execution may be obtained thirty days after the Judgment is signed. This document authorizes the Sheriff or Constable to seize any non-exempt assets belonging to the defendant that are subject to this Writ. Those assets are then auctioned at a public sale and the proceeds are applied to the judgment.

c.) A Writ of Garnishment is also available thirty days after the final judgment has been signed. This proceeding is a separate suit wherein 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 bank account. You are warning the said bank to freeze the monetary assets of his account and appear to make answer in the Garnishment suit. An Attorney should be consulted.

11) If you have any other procedural questions, please ask and our Court clerks will try to answer them. Legal questions can not be answered by the Court. An attorney is required. For further information you may consult Part V of the Texas Rules of Civil Procedure, available in our office or online.

12) Please understand that as a plaintiff, you have the burden of proof to show by the weight of the evidence that the defendant you are suing is the proximate cause of your damages in the capacity which defendant is sued. All damages and evidence necessary to meet your burden should be available at the time of filing and not later than the date of trial.

#### **TRIAL BY JURY:**

You may request a trial by jury. Upon payment of a jury fee in the amount of \$22.00, and filed no later than 14 days from the trial setting, the case will be set on the Jury Docket.

**THESE INSTRUCTIONS ARE A BROAD INTERPRETATION OF THE LAWS THAT APPLY TO THE COURT. ANY LEGAL QUESTIONS OR LEGAL INTERPRETATION SHOULD BE BASED UPON YOUR OWN RESEARCH OF THE MATTER OR THE ADVICE OF YOUR ATTORNEY.**

**Military Status Affidavit**

To determine if a person is in military service, you may access the Defense Department's website at

<https://scra-w.dmdc.osd.mil/scra/#/home>

Docket No. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

VS.

\_\_\_\_\_  
DEFENDANT

§  
§  
§  
§  
§  
§

IN THE JUSTICE COURT

PRECINCT 2

HENDERSON COUNTY, TEXAS

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_

who, under penalty of perjury, stated that the following facts are true: I am the Plaintiff / The attorney of record for the Plaintiff in this proceeding.

\_\_\_\_\_, Defendant, is not in military service.

\_\_\_\_\_, Defendant, is in military service.

I know this because

\_\_\_\_\_  
\_\_\_\_\_

I am unable to determine whether or not the Defendant is in military service.

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Attorney of Record for Plaintiff

SWORN TO AND SUBSCRIBED BEFORE ME on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas or COURT CLERK

**NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA**



Cause Number: \_\_\_\_\_  
(The Clerk's office will fill in the Cause Number when you file this form)

Plaintiff: \_\_\_\_\_  
(Print first and last name of the person filing the lawsuit.)

And

Defendant: \_\_\_\_\_  
(Print first and last name of the person being sued.)

In the (check one):  
 District Court  
 County Court / County Court at Law  
 Justice Court

Court Number \_\_\_\_\_  
 \_\_\_\_\_ Texas  
 \_\_\_\_\_ County

**Statement of Inability to Afford Payment of Court Costs or an Appeal Bond**

**1. Your Information**

My full legal name is: \_\_\_\_\_ My date of birth is: \_\_\_\_/\_\_\_\_/\_\_\_\_  
First Middle Last Month/Day/Year

My address is: (Home) \_\_\_\_\_  
(Mailing) \_\_\_\_\_

My phone number: \_\_\_\_\_ My email: \_\_\_\_\_

About my dependents: "The people who depend on me financially are listed below."

Name	Age	Relationship to Me
1 _____	_____	_____
2 _____	_____	_____
3 _____	_____	_____
4 _____	_____	_____
5 _____	_____	_____
6 _____	_____	_____

**2. Are you represented by Legal Aid?**

I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as Exhibit: Legal Aid Certificate.

-or-

I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. I have attached documentation from legal aid stating this.

or-

I am not represented by legal aid. I did not apply for representation by legal aid.

**3. Do you receive public benefits?**

I do not receive needs-based public benefits. - or -

I receive these public benefits/government entitlements that are based on indigency:

(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check.)

- Food stamps/SNAP       TANF     Medicaid     CHIP     SSI     WIC     AABD
- Public Housing or Section 8 Housing     Low-Income Energy Assistance     Emergency Assistance
- Telephone Lifeline       Community Care via DADS       LIS in Medicare ("Extra Help")
- Needs-based VA Pension     Child Care Assistance under Child Care and Development Block Grant
- County Assistance, County Health Care, or General Assistance (GA)
- Other: \_\_\_\_\_

**4. What is your monthly income and income sources?**

"I get this monthly income:

\$ \_\_\_\_\_ in monthly wages. I work as a \_\_\_\_\_ for \_\_\_\_\_  
Your job title Your employer

\$ \_\_\_\_\_ in monthly unemployment. I have been unemployed since (date) \_\_\_\_\_

\$ \_\_\_\_\_ in public benefits per month.

\$ \_\_\_\_\_ from other people in my household each month: *(List only if other members contribute to your household income.)*

\$ \_\_\_\_\_ from  Retirement/Pension  Tips, bonuses  Disability  Worker's Comp  
 Social Security  Military Housing  Dividends, interest, royalties  
 Child/spousal support  
 My spouse's income or income from another member of my household *(if available)*

\$ \_\_\_\_\_ from other jobs/sources of income. *(Describe)* \_\_\_\_\_

\$ \_\_\_\_\_ is my total monthly income.

**5. What is the value of your property?**

"My property includes:	Value*
Cash	\$ _____
Bank accounts, other financial assets	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>Vehicles (cars, boats) (make and year)</b>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>Other property (like jewelry, stocks, land, another house, etc.)</b>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>Total value of property</b>	<b>→ \$ _____</b>

**6. What are your monthly expenses?**

"My monthly expenses are:	Amount
Rent/house payments/maintenance	\$ _____
Food and household supplies	\$ _____
Utilities and telephone	\$ _____
Clothing and laundry	\$ _____
Medical and dental expenses	\$ _____
Insurance (life, health, auto, etc.)	\$ _____
School and child care	\$ _____
Transportation, auto repair, gas	\$ _____
Child / spousal support	\$ _____
Wages withheld by court order	\$ _____
Debt payments paid to: <i>(List)</i>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>Total Monthly Expenses</b>	<b>→ \$ _____</b>

\*The value is the amount the item would sell for less the amount you still owe on it, if anything.

**7. Are there debts or other facts explaining your financial situation?**

"My debts include: *(List debt and amount owed)* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*(If you want the court to consider other facts, such as unusual medical expenses, family emergencies, etc., attach another page to this form labeled "Exhibit: Additional Supporting Facts.") Check here if you attach another page.*


**8. Declaration**

I declare under penalty of perjury that the foregoing is true and correct. I further swear:

- I cannot afford to pay court costs.
- I cannot furnish an appeal bond or pay a cash deposit to appeal a justice court decision.

My name is \_\_\_\_\_ My date of birth is : \_\_\_\_ / \_\_\_\_ / \_\_\_\_.

My address is \_\_\_\_\_  
Street City State Zip Code Country

 signed on \_\_\_\_ / \_\_\_\_ / \_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_  
Signature Month/Day/Year county name State

I, Judge \_\_\_\_\_, do hereby  grant /  deny Applicant's request on \_\_\_\_\_.