

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:

\$126.00 -- (\$41.00 Filing fee plus \$85 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 \$41.00. (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 Hill County Sheriff, the Sheriff's address and the \$41.00 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 \$10,000.00.
- 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 need to 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 14th 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 5 working days prior to trial date: to-wit, written request supported by an affidavit).

If the defendant fails to answer the suit, you may present your evidence and obtain a default judgment at any time after the answer date. If you are not contacted within 2 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 2 weeks prior to the trial and ask that 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.