

Debt Claims Suit JP#1

INSTRUCTIONS FOR FILING A SMALL CLAIM / DEBT CLAIM CASES

TYPE OF CASE:

The amount of money which may be sued for in a Small Claims Court is limited to damages that do not exceed \$10,000.00 inclusive of interest.

FILING FEE: \$46.00 as of Sept 1, 2017

Service Fee \$85.00 as of 01/01/2017

TYPE OF PLEADINGS:

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

Link: Small Claims Form

Link: Debt Claim Forms

FILING SUIT:

1) The responsibility for completing the petition rests with the Plaintiff. PLEADINGS MUST BE FILED IN DUPLICATE. The Court Clerks will assist with procedural questions.

2) 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, **and has** on file with the County Clerk, an assumed name, (e.g. John Smith, dba/ 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.) The Plaintiff will also need the ADDRESS of the REGISTERED AGENT, PRESIDENT, or VICE PRESIDENT for service of the citation. When the suit is filed, the Plaintiff will be filing against the corporation and serving the citation on one of the above mentioned officers of the corporation. It is also possible for an incorporated entity to have an assumed name, e.g. John's Auto Shop, Inc. dba John's Garage.

3) This Court will give you a receipt showing your case number. Any change of address or telephone number must be supplied to the Court.

4) 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(s) notifying them of the fact that a suit has been filed against them in the Court. **The Constable will serve these papers and the Court must wait until they have been returned before further action may be taken.**

If the defendant upon whom you are filing resides outside of Guadalupe County:

- a. Call the County Courthouse in the County where the defendant is to be served.
- b. 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 Small Claims Citation.
- c. Get the address of the Constable or Sheriff who will be serving the Citation.
- d. 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.
- e. The cost for filing the suit in this Court is \$46.00. Call the court for instructions on serving out of county defendants

ANSWER:

The citation will instruct the defendant to appear before the Court and answer the lawsuit at 4:00pm. following the expiration of 14 days from the date of service. *This will not be the trial date.*

If the defendant answers the suit, the trial will be set after the expiration of 45 days, which is the earliest setting allowed by the Texas Rules of Civil Procedures, unless both parties agree to an earlier date.

WITNESSES:

If you have any 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.

DEFAULT JUDGMENT:

If the defendant in your suit fails to answer to the Court, only you, the plaintiff, will be notified for Court for an appearance on the Default Docket. You will be asked to briefly state the facts of your case and present any written evidence you may have to support your case.

TRIAL BY JUDGE OR JURY:

The Plaintiff has the burden of proof to show by the weight of the evidence that the defendant is at fault. It is necessary for you to bring all witnesses, bills of sale, contracts, etc., with you to court to substantiate your claim.

APPEAL:

If you receive a judgment, the defendant has 21 days to appeal the case to the County Court at Law of Guadalupe County. Should the Court rule that you recover nothing or should you receive a judgment for less than you requested, you may appeal the case to the County Court within 21 days. If an appeal is not filed within 21 days from the date the judgment is signed, and if a Motion for New Trial is not filed within 14 day from the date the judgment is signed, the judgment becomes final.

ADDITIONAL INFORMATION:

Should you receive judgment, **this Court does not collect the judgment for you, nor can we force the defendant to pay the judgment.** If you receive a judgment against the defendant, this court can issue various instruments to assist you in collecting the 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 ten 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 to seize any non-exempt assets belonging to the defendant that are subject to the 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.**

Call the Court for these fees.

TRIAL BY JURY:

You may request a trial by jury, before the case is called for trial not less than one day in advance of the date set for trial and upon payment of a \$22.00 jury fee.

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.

For additional questions please call: Civil Clerk Phone: 830-372-4223