

SMALL CLAIMS & DEBT CLAIM SUITS INFORMATION

*****NEITHER THE COURT NOR ITS PERSONNEL CAN GIVE LEGAL ADVICE*****

Hershel Stagner, Jr. Justice of the Peace, Pct. 1 office information:

Office hours are Monday-Friday - 8 a.m. - 5 p.m.; Open during lunch every day

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Filing a Small Claims 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 nor is it 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 interest.

There are 2 civil forums over which the Justice of the Peace presides: Small Claims and Debt Claims.

Small Claim: A small claims case is lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than **\$20,000**, excluding statutory interest and court costs but including attorney fees, if any.

Debt Claim: A debt claim case in 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. The claim can be for no more than **\$20,000**, excluding statutory interest and court costs but including attorney fees, if any.

The Statue of limitations for filling a Debt Claim or Small Claim Suit can be either two (2) years or four (4) years from the date the incident occurred depending on the type of case, claim and underlying circumstances for that particular case.

TEXAS STATUES, RULES and RESOURCES

Texas statutes and rules of evidence are available on-line at www.statutes.legis.state.tx.us.

Other resources and forms available for self-represented litigants can be found at:

Texas Law Help at TexasLawHelp.org; Texas Justice Court Training Center at tjctc.org/SRL; and Rules of Practice in Justice Courts - Rules 500-510 of Texas Rules of Civil Procedure.

Lone Star Legal Aid in Beaumont - (409) 835-4971.

VENUE

Laws specifying venue, the county and precinct, where a lawsuit may be brought, are found in the 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; or the county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed.

PARTIES TO THE SUIT

Name of the plaintiff: The plaintiff is the party instituting the suit. Only the individual(s) or company(s) named at the top of the petition as "Plaintiff(s)" may collect on a judgement in favor of the plaintiff.

Name of the Defendant: It is important, in order for any judgment you might receive to be valid, that you file the suit against the Defendant in their proper legal capacity. These capacities are as follows:

- A. **Personally/Individual(s):** Where the individual is responsible as an individual for the alleged damaged or wrong.
- B. **Company/Business:** A business owner, proprietorship, or partnership that is not incorporated, but does has on file with the County Clerk an assumed name *e.g. John Doe dba Greenhouse Supplies*. To determine who the owner of an assumed name is, you should check the Assumed Name Index where the business is located. For Orange County you would contact the *County Clerk's office, 801 Division, Orange, TX 77630, phone no. 409-882-7055*.
- C. **Corporation/LLC-Limited Liability Company:** If a business organization, which has allegedly damaged you, is incorporated it is necessary to know the individual's name who is able to accept service on behalf of the corporation. He/She is known as the **REGISTERED AGENT**, and his/her identity can be obtained from the *Texas Secretary of State at 1-512-463-5555* or *State Controller at 1-800-252-1386*. You need to find out the name and address of the Registered Agent for service for that corporation or LLC. If they are not registered with the Texas Secretary of State you may need to contact the Secretary of State of the state where the corporation or limited liability company may be located. You cannot serve any random person of an incorporated entity. **If the proper person or registered agent is not served the case cannot proceed. On your petition you list the corporation as the defendant, not the person served.**
- D. **Partnership:** There are special rules governing partnerships, please consult legal counsel.

DAMAGES AND STATING YOUR CLAIM

The amount of money you are suing for is called "damages." The amount of damages 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. This is called "carving out" for purposes of jurisdiction. Example: if a Plaintiff states that the suit is for "\$20,000.00" and the evidence shows that the damages are actually greater than \$20,00.00 the court loses jurisdiction of the case and the lawsuit must be dismissed for lack of jurisdiction and must be refiled in a court of competent jurisdiction. Additionally, a plaintiff cannot tell the court that the damages are greater than \$20,000.00, but the plaintiff is willing to "settle for less."

You need to state the nature of your claim in the Petition. Failure to give enough information for the defendant to be "on notice" as to what the lawsuit is about may prolong your case.

PETITION AND CITATION

When you have completed the petition stating the facts and circumstances of your suit, a citation will be issued for **EACH defendant listed in the petition** notifying him/her that a suit has been filed against him/her in this court. You will need to file the following:

- 1. Original Petition, a copy for each defendant and a copy that will be returned to you while the date of the filing.
- 2. Filing fee in the amount of **\$46.00**.
- 3. **In County Service - \$75.00 service fee for each defendant** being served in Orange County. If the service is in Orange County and the \$75.00 fee was paid the clerk will forward to the proper constable for service. Or you can contact your own civil process server. In that case you do not need to pay the \$75.00 for each defendant, but you will need to get the petition and citation for each defendant from the court and forward to the process server of your choosing, along with their civil service fee.

Out of County Service - If the defendant is located in another county the clerk will return the Petition(s) with a citation attached back to the filing party and it is the responsibility of the filing party to obtain service. You can contact the Sheriff or Constable in the county where the service needs to occur and ask for the name and address where to send the document to and the amount of the service fee for civil service.

If your service was out of county or you decided to use your own civil process server and you want to claim the service fee as part of your claim as court cost, you will need to bring a copy of the receipt with you to court to present as evidence.

AFTER SUIT IS FILED

The court will give you a receipt showing your case number so that you may call periodically to determine the progress of your case. **IT IS THE UTMOST IMPORTANCE TO USE YOUR CASE NUMBER WHEN CALLING OR TRANSACTING BUSINESS WITH THE COURT.** The court should be notified immediately, in writing, of any change of address or phone number. Please provide the court with a daytime phone number for you so that communication will be easier.

The citation will inform the defendant to answer to the suit on or before the 14th day after the day party was served. Unless they were served by publication. It is the plaintiff responsibility to contact the court to find out if defendant(s) was/were served. If the defendant fails to answer, a DEFAULT judgment may be issued against the party. The plaintiff will **need to request in writing** a DEFAULT HEARING to “prove up” and present evidence regarding damages in the case. **A military affidavit, along with supporting evidence will also need to be filed prior to or at the Default Hearing.** See <https://scra.dmdc.osd.mil/scra/#/single-record> to obtain supporting evidence of the military affidavit.

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. See T.R.C.P 500.4

Pre-Trial and Trial Settings: If the defendant answered the suit, the Court, at its discretion, will set the case for a pre-trial hearing and will notify the parties of the hearing and the trial date by mail. Parties are entitled to 45 day notice of the trial date. Both the Plaintiff and the Defendant have a right to be represented by an attorney; this does not mean an attorney will be appointed to you

Continuance: If you cannot keep the scheduled court date, Plaintiff or Defendant may request a continuance. Any request for continuance must be timely filed, in writing, with supporting documentation, if any.

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

Examples: Interrogatories - written questions requiring sworn answers;
Request for Admissions - written statements requiring admission or denial;
Request for Production - written request to produce evidentiary items for examination by the opposing party prior to trial.

Pre-trial discovery is limited to that which the judge considers reasonable and necessary. Any request for pre-trial 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 pre-trial discovery request must not be served on the responding party until the judge has reviewed the requesting pre-trial discovery and signed an order approving the request. Failure to comply with a discovery order can result in sanction, including dismissal of the case or an order to pay the other party's discovery expenses.

Evidence: The court will proceed with the evidence **provided at trial**. Trial is the time to present your case and your evidence. A case will not be delayed for failure to provide evidence to support your case on the day of trial. Any evidence that is on a digital device must be printed out. This includes texts, photos, email or any other digital file other than a video. You will to produce a total of 3 sets of each evidence you plan to present as part of your case; original for you and 2 copies, one for the opposing party and one for the court. Any witness that you may need to testify will need to be present at the trial.

Subpoena: If you have witnesses who will not come to court voluntarily, you may come within a reasonable time prior to the trial and request a subpoena be prepared to secure their presence. Because a subpoena must be served on the witness, it is your burden to make sure the proper fees and related cost are paid, and there is adequate time for that person to be served. See T.R.C.P. 500.8

Changes in Address or Phone Number: If a party's contact information changes after the suit has been filed each party or party's attorney, must provide the clerk of the court with written notice of the party's name, current address or business address and phone number. This notice must also be provided to the opposing party, excluding the phone number, at the time notice is given to the court. Failure to do so could possibly lead to your cases being dismissed, due to correspondence, hearing notices or trial notices being sent to the wrong address. In some circumstances this may just be an email.

Jury Request: If you desire to have a trial by jury you must pay a jury fee of \$22.00 at least (14) working days prior to trial. Request for jury trial ordinarily require the trial date to be reset.

MOTION FOR NEW TRIAL AND APPEAL

A Motion for New Trial or Motion to Set Aside the Judgment must be filed in writing no later than fourteen (14) days after the date the judgment is signed. They party filing the motion 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 delivery; by certified or registered mail; by fax or email if receiving party has consented, in writing. See T.R.C.P 501.4 and 505.3

After the judgment is signed, or a Motion to Reinstate, Motion to Set Aside, or Motion for New Trial, if any, has been denied either party has twenty-one (21) days to appeal the case to the County Court a Law where there will be *Trial De Novo*, meaning as if the Justice Court trial had never occurred. A plaintiff has to file a \$500.00 bond. A defendant has to file a bond in the amount of twice the amount of the judgment. If the case has a counter claim then the party(s) that has a finding of monetary damages against them will have to pay twice the amount of the judgment against them. For more information on Appeals and Bonds see T.R.C.P. 506

COLLECTION OF JUDGMENT

The Court does not collect the judgment for you, nor can the court force the defendant to pay the judgment without YOU pursuing the matter. If you receive judgment which becomes final against the defendant, you may request the following to help you collect the judgment in addition to other remedies maybe available in addition to the ones listed below:

- a. **Abstract of Judgment** -A document that puts a lien on any **real** property the defendant may own in a particular county where the abstract is recorded. After obtaining the Abstract of Judgment YOU must file them with the county clerk in the county you choose; usually in the county where the defendant owns real property. An Abstract of Judgment can be obtain from the clerk as soon as the judgment is signed by the Judge.
*** Filing fee is **\$5.00** per abstract ***
- b. **Writ of Execution** - A writ of execution may be obtained 30 days after the judgment is signed. This document orders the Sheriff or Constable to seize any assets belonging to the judgment creditor (Defendant) that are not exempt from execution and to see those assets at public auction and apply the proceeds to payment of the judgment.
*** Filing and Service fee- **\$130.00 in Orange County** ***
- c. **Writ of Garnishment** - A writ of garnishment may be obtained 30 days after the judgment is signed. The garnishment proceeding is a separate suit in which you are the plaintiff and the defendant is a bank at which the judgment creditor has an account with money in it. You should be very careful and know what you are doing because if the judgment debtor does not have sufficient assets in his/her account, you might be required to pay the bank's attorney fees. You should consider hiring an attorney to help you with the garnishment proceedings.
*** Filing and Service fee is **\$171.00 in Orange County** ***

If you have any other **procedural** questions, please ask the clerks.

***** THE CLERKS CANNOT PROVIDE LEGAL ADVICE. *****

THE JUDGE MAY NOT DISCUSS YOUR CASE WITH YOU UNLESS ALL PARTIES ARE PRESENT.

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
v.	§	PRECINCT NO. ONE
_____	§	
DEFENDANT	§	ORANGE COUNTY, TEXAS

PETITION: SMALL CLAIMS CASE

Defendant(s) address: _____

COMPLAINT: The basis for the claim which entitles Plaintiff to seek relief against Defendant is: _____

RELIEF: Plaintiff seeks: damages in the amount of \$_____, return of personal property as described as follows (be specific): _____, which has a value of \$_____. Additionally, Plaintiff seeks the following:

SERVICE OF CITATION: Service is requested on Defendant(s) by: personal service at home or work, registered mail, certified mail, return receipt requested. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other addresses where Defendant(s) may be served are: _____

I hereby request a jury trial. The fee is \$22 and must be paid at least 14 days before trial.

I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows:

_____	_____
Plaintiff's Printed Name	Signature of Plaintiff
	or Plaintiff's Attorney

Defendant's Information (if known):

Date of birth: _____	_____		
Last three digits of Driver License: _____	Address of Plaintiff		
Last three digits of Soc. Sec. No.: _____	or Plaintiff's Attorney		
Phone No.: _____	City	State	Zip

Phone & Fax No. of Plaintiff or Plaintiff's Attorney

{Plaintiff}
VS.

{Defendant}

IN THE JUSTICE COURT
PRECINCT ONE
ORANGE COUNTY, TEXAS

SERVICEMEMBERS CIVIL RELIEF ACT AFFIDAVIT

STATE OF TEXAS
COUNTY OF ORANGE

BEFORE ME, undersigned authority personally appeared the below-named affiant, who upon oath deposed and stated:

My name is _____

I am over the age of eighteen (18) years and am competent to make this affidavit.

I am the [Check one] _____ Plaintiff _____ Plaintiff's Agent in the above –entitled and numbered matter.

I have [Plaintiff's/Agent's name] _____ made a personal investigation and/or personally reviewed the business records of the plaintiff.

As a result of the investigation or review, it is my belief that the above-named defendant.

[Check one]

_____ Is not in the military service on active duty, and is not a dependent of a serviceman on active duty.

_____ Is in the military service on active duty.

_____ I have been unable to determine whether or not the defendant is in the military service on active duty.

I understand that any false statements in this document are made under penalty of perjury, and that making a false statement is a violation of Federal Law and is subject to both fine and imprisonment.

Dated this ____ day of _____, 20____.

Signature of Affiant

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 20____.

Notary Public

Court Clerk

SERVICEMEMBERS 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 judgement**” unless the plaintiff first files with the court a **Servicemembers 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. If a plaintiff does not have personal knowledge of the defendant’s military status, the Department of Defense maintains a secure website where plaintiff can obtain a status record. The form can be downloaded from this website, **SCRA Web Application, or requested from the address below. There is no charge for this form.**

Website: <https://scra.dmdc.osd.mil/scra/#/single-record>