

## **SMALL CLAIMS CASE INSTRUCTIONS**

**The complete Rules for Small Claims are significantly different from those used in the past in Texas Justice Courts.** Read carefully before you file, and if you are unsure, you should talk to an attorney. Neither the Judge nor the clerks of the court can provide legal advice.

The other types of civil cases (Debt Collection, Eviction cases, and Repair and Remedy cases) are discussed in detail in separate sections. If you are NOT filing an Eviction, a Debt Claim case, or a Repair and Remedy case then you would file the case in Small Claims Court.

**In SMALL CLAIMS COURT**, you may hire an attorney, but it is not required. You can file for property or damages up to \$10,000, INCLUDING attorney fees, but EXCLUDING court costs and interest. If your claim is for more than \$10,000, and you arbitrarily reduce it to “shoehorn it” into Small Claims court, your case may end up being dismissed.

It is imperative that you file your case in the right Justice of the Peace precinct, or you could end up paying additional filing fees. The General Rule of Venue says:

- 1) A case should be filed in the precinct where all or a substantial part of the events or omissions giving rise to the claim took place; and
- 2) In the county and precinct where the defendant resided when the cause of action arose.

**To prevail in Justice Court**, the plaintiff, the person filing the lawsuit, must prove their case **“Beyond a Preponderance of the Evidence”**. Stated another way, the person who proves their case by “the greater weight and degree of credible evidence” will prevail. The Judge may ask you, the other party, or any witness questions to help develop and understand your case.

The Rules of Civil Procedure and Rules of Evidence do not apply unless:

- 1) The Judge determines a particular rule must be followed to ensure fairness, or
- 2) When otherwise specifically provided for in these rules.

### **QUESTIONS:**

#### **1. WHERE DO I FILE?**

In all cases, the defendant (person being sued) has the right to be sued in the county or precinct where they live. There are some exceptions or options. If a lawsuit involved a paint job at a house, the suit could be filed where the house is located. If the lawsuit involved an auto accident, it could be filed in the county and precinct where the accident took place. It is your responsibility to file in the correct precinct. There could be additional costs and circumstances if you file in the wrong precinct.

## 2. WHO DO I SUE?

It is the burden as a plaintiff to sue the defendant in their proper legal capacity, of which there are typically three. Please consider the following:

**Personally:** Where an individual is responsible to you for damages he may have caused you as an individual.

**Proprietor or partnership:** A business that is not incorporated, but has a business name or you may also file against the individual and the business.

**Corporation:** The business which 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 authorized registered agent for service would be listed with the Secretary of State whose phone number is 1-512-463-5555).

**You are urged to discuss your case with an attorney if you are suing a proprietor, partnership, or corporation. You are responsible for suing the correct party in their correct capacity.**

## 3. HOW MUCH WILL THIS COST?

Effective September 1, 2013, the court cost for filing a civil suit with service by Constable are listed in the fees and court costs schedule posted by the Court. You may also hire a private process or attempt to have the suit served by certified mail, return receipt requested. The certified mail option often is unsuccessful.

## 4. WHAT HAPPENS WHEN I FILE THE PETITION:

Once you have filed the Petition, a citation will be served to the defendant notifying him that a suit has been filed against him in this court. The citation will order the defendant to answer this suit on or before the 14<sup>th</sup> day after service to the Defendant with notice they have been sued. If the Defendant fails to file a written answer to the Court, you then become eligible for a default judgment up until the time an answer is filed.

If the defendant answers contesting the suit, a hearing will be set by either Judge or by Jury if demanded, or the case may be referred to mediation if the judge deems it proper.

Should you receive judgment, the court does not collect the judgment. However, you may request an Abstract of Judgment and/or Writ of Execution to help you in collection of this judgment.

Plaintiffs and Defendants may represent themselves in any case before the Justice Court and in any Small Claims case. All parties are urged to discuss their case with licensed legal counsel for any legal advice or questions prior to filing any civil action with the Court.

The Rules of Judicial Ethics explicitly states that Justices and the Clerks of the Court must be impartial and are prohibited by the rules to offer legal advice or to express any opinions of law. The Justices and Clerks of the Court cannot tell any party how to present their case, hear any part of a case, or discuss the merits of any case unless all parties are present.

The Judge and Clerks of the Court are accessible at any time during normal business hours and can answer any questions of general nature, regarding procedures of the Court and questions concerning Court Cost and Service fee.

CASE NO. \_\_\_\_\_

\_\_\_\_\_

§

IN JUSTICE COURT

PLAINTIFF,

§

PRECINCT \_\_\_\_

VS.

§

ELLIS COUNTY, TEXAS

DEFENDANT,

**PETITION: SMALL CLAIMS CASE**

**COMPLAINT:** The basis for the claim which entitles the plaintiff to seek relief against the defendant is:

---

**RELIEF:** Plaintiff seeks damages in the amount of \$ \_\_\_\_\_, and/or return of personal property as described as follows (please be specific):

Property as described above has a value of \$ \_\_\_\_\_.

**Additionally, Plaintiff seeks the following against the defendant:**

---

**SERVICE OF CITATION:** Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served at the following address:

**PLAINTIFF'S INFORMATION:**

NAME: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: (\_\_\_\_) \_\_\_\_\_

FAX NUMBER (\_\_\_\_) \_\_\_\_\_

**DEFENDANT'S INFORMATION:**

NAME: \_\_\_\_\_

ADDRESS FOR SERVICE: \_\_\_\_\_

TELEPHONE NUMBER (\_\_\_\_) \_\_\_\_\_

FAX NUMBER (\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE OF PLAINTIFF AND/OR ATTORNEY**

**SWORN TO AND SUBSCRIBED** before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
**Notary Public in and for the State of Texas/or  
Clerk of the Justice Court**

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
VS.  
\_\_\_\_\_

JUSTICE OF THE PEACE  
COURT PRECINCT \_\_\_\_  
ELLIS COUNTY, TEXAS

**MILITARY STATUS AFFIDAVIT**

Plaintiff, or Plaintiffs representative, being duly sworn on oath deposes and says that, to the best of my knowledge, Defendant(s) To check military status please go to <https://scra.dmdc.osd.mil/>

is not in the military

is not on active duty in the military

is not in a foreign country on military service

is on active duty and/or is subject to the Service Members Civil Relief Act of 2003

has waived his rights under the Service Members Civil Relief Act of 2003

military status is unknown at this time

\_\_\_\_\_  
Plaintiff/Representative

SIGNED AND SWORN TO before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Court/Notary Public  
(Strike One)

**PENALTY FOR MAKING OR USING A FALSE AFFIDAVIT**

**A person who makes or uses an affidavit 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**