

CIVIL SUITS

NOTICE:

The Texas Supreme Court has approved the Rules of Practice in Justice Courts which went into effect on August 31, 2013. The Small Claims Court in Texas has been abolished and all cases pending in the Small Claims Court have already been transferred to Justice Court. These cases are now governed by the new Rules of Practice in Justice Courts. Texas Rules of Civil Procedure Rules 500-510 are adopted and Rules 523-591 and 737-755 of the Texas Rules of Civil Procedure are repealed, effective August 31, 2013.

PLEASE SEE THE NEW RULES OF PRACTICE FOR JUSTICE COURT CASES. We have a copy in our office you may look at or you may go to our website at <http://www.nuecesco.com/courts/justices-of-the-peace/justice-of-the-peace-4> or you may go to www.supreme.courts.state.tx.us/MiscDocket/13/13904900.pdf to also review the new rules.

General Information:

This information is furnished to you to provide basic information relative to the law governing procedures for civil cases in the Nueces County Justice Courts. The Nueces County Clerks of the Nueces County Justice Courts and the Nueces County Justice of the Peace's are **NOT** allowed to provide:

- Any legal advice
- Advice whether to file a case
- Advice whether to take any action in a case
- Assistance filling out forms for you or advice for what to state on form
- Advice for what to say in Court
- Speculation about a Judge's decision, sentencing or when a Judge will sign documents
- You have the burden to sue the proper person, provide the proper address, pay the proper fees and submit the proper evidence
- If suing a corporation in Texas and need registered agent, you may call the Secretary of State at (512) 463-5555.

There are four types of civil suits filed in Justice Court:

The information in this packet is only talking about **Small Claims cases and Debt Claim cases.**

- ❖ **Eviction Cases:** - An eviction case is a lawsuit brought to recover possession of real property. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$20,000, excluding statutory interest and court costs but including attorney fees, if any. See our Procedures for Evictions under Evictions on our county website (website address listed above) or we have a copy in our office. A Justice Court Civil Case Information Sheet form must be filed with petition. See TRCP 510
- ❖ **Small Claims Cases:** - A small claims case is a 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. Justice Court Civil Case Information Sheet for must be filed with the petition.
- ❖ **Debt Claim Cases:** - A debt claim is 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. A Justice Court Civil Case Information sheet form must be filed with the petition.

- ❖ **Repair and Remedy Cases:** - A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$20,000, excluding statutory interest and court costs but including attorney fees, if any. A Justice Court Civil Case Information Sheet form must be filed with the petition. See TRCP 509

Filing Information:

The filing fees for civil suits are \$54.00. You must sign the enclosed petition before a Notary Public, or a clerk of the court. You must complete all portions of the petition, as the court cannot make any changes to your petition once it is served.

Service:

All parties listed on the suit must be served. Service in Nueces County is \$202.00. If you are filing in Nueces County it will be a total of \$256.00 with \$202.00 for any additional person who needs service. If the party listed on the suit resides OUTSIDE Nueces County, you will need to contact a civil service agent who provides service to that address (typically the Sheriff or Constable's Office) in whichever county it is in and obtain a name and address to which office it will be sent to. You will also need to bring any form of payment that they require be sent to them as well.

Military Status Affidavit:

The Service members Civil Relief Act, 50 U.S.C. App. 501 et seq. passed December 19, 2003, requires the Plaintiff in any civil proceeding in which the Defendant does not make an appearance to file with the Court Military Status Affidavit stating whether or not the Defendant is in the military service and showing necessary facts to support affidavit; or stating that the Plaintiff is unable to determine whether or not the Defendant is in the military service. A person who makes or uses a military status affidavit, or statement, declaration, verification, or certificate, 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.

The Department of Defense maintains a website for issued pertaining to the Servicemember's Civil Relief Act at <https://www/dmdc.osd.mil/scr/owa/home> .

Venue:

Venue is the proper county and precinct in which the Justice Court may exercise its jurisdiction. Laws relating to venue in Justice Courts are found in Chapter 15, Subchapter E of the Texas Civil Practice and Remedies code and Texas Rules of Civil Procedure Rule 502.4, which is available online and for examination during the court's business hours.

Pleadings and Motions:

Every pleading, plea, motion, application for a court order, or any other request to the Court, **must** be in writing and signed by the party or party's attorney and filed with the Court. Oral motions can be made only during trial or when all parties are present. A document may be filed with the Court by personal or commercial delivery, by mail, or electronically, if the Court allows electronic filing. See TRCP 502.1

Motion to Transfer Venue:

If a Plaintiff filed a suit in an improper venue, a Defendant may challenge the venue by filing a written motion to transfer venue. The written motion must be filed before trial, no later than 21 days after the date the Defendant's answer is filed, and must contain a specific county and precinct of proper venue to which transfer is sought. See TRCP 502.4

Discovery:

Discovery is the process through which parties obtain information from each other in order to prepare for trial. In Justice Courts, pretrial discovery is limited to that which the Judge considers reasonable and necessary. See TRCP 502.4 and see TRCP 503.4 for Pretrial Conference information.

Counterclaims/Crossclaims/Third-Party Filings:

A Defendant may file a counterclaim, cross-claim, or third-party filing. See TRCP 502.6 for more information.

Subpoenas:

A subpoena may be used by a party or the Judge to command a person or entity to attend and give testimony at a hearing or trial. A person may not be required by subpoena to appear in a county that is more than 150 miles from where the person resides or is served. See TRCP 500.8

Hearings:

The Court must send a notice of the date, time and place of this setting to all parties at their address of record no less than 45 days before the setting date. Reasonable notice of all subsequent settings must be sent to all parties at their address of record. See TRCP 503.3

Continuances and Jury Trials:

A party requesting that a trial be postponed must file a written motion stating why a postponement is necessary. The Judge, for good cause, may postpone any trial for a reasonable time. DO NOT ASSUME YOUR REQUEST FOR A CONTINUANCE HAS BEEN GRANTED. It is the responsibility of the requesting party to confirm that a continuance has been granted by the Judge. See TRCP 503.3

Any party is entitled to a jury trial. A written demand for a jury trial must be filed no later than 14 days before the date a case is set for trial. At the same time that the demand is filed, the jury fee in the amount of \$22.00 must be paid. There is no refund of a jury fee. See TRCP 504.1

Motion to Set Aside, Motion to Reinstate and Motion for New Trial:

A Party may request the Court to reinstate a case after dismissal, to set aside a default judgment, or to grant a motion for new trial by filing a written motion no later than 14 days after the judgment or dismissal was signed. The motion must be served on the opposing parties no later than the next business day. See TRCP 505.3 for more information.

Appeal:

Within 21 days from the date a judgment is signed or date the motion to reinstate a case, the motion to set aside the judgment or the motion for new trial is granted or denied or overruled by operation of law, a party may appeal by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay with the Justice Court.

If the appeal is by the Defendant, appeal bond must be an amount equal to twice the amount of the judgment. If the appeal is by the Plaintiff, the appeal bond is set at \$500.00.

Bond – the bond must be supported by a surety or sureties approved by the Judge. Cash deposit in lieu of Bond – an appellant may deposit with the clerk of the court cash in the amount required of the bond, in lieu of filing a bond. The bonds must be payable to the appellee and must be conditioned on the appellant’s prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

Sworn statement of inability to pay appeal bond – an appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a sworn statement of inability to pay. The statement must meet the requirements of TRCP 502.3(b) and may be the same one that was filed with the petition. See Texas Rules of Civil Procedure Rule 506.1 for more information on all of these appeals.

**** This instruction page was produced as a courtesy to you. If after reading this information, you still have questions, please seek legal advice from an attorney. ****

PETITION: SMALL CLAIMS CASE

CASE NO. (court use only) _____

In the Justice Court, Precinct 4, Nueces County, Texas

PLAINTIFF _____

VS.

DEFENDANT(S): _____

Defendant(s) address: _____

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 (be specific): _____, which has a value of \$_____.

Additionally, plaintiff seeks the following: _____

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 are:

If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address: _____.

Petitioner's Printed Name

Signature of Plaintiff or Attorney

DEFENDANT(S) INFORMATION (if known):
DATE OF BIRTH: _____

Address of Plaintiff's Attorney, if any, or Plaintiff if none

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

City State Zip

*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

DEFENDANT'S PHONE NUMBER: _____

Phone & Fax No. of Plaintiff's Attorney, if any, or Plaintiff if none

Sworn to and subscribed before me this _____ day of _____, 20_____.

CLERK OF THE JUSTICE COURT OR NOTARY

Plaintiff
vs

Defendant

In the Justice Court
Precinct Four
Nueces County, Texas

Docket No. _____-JP4

AFFIDAVIT OF MILITARY STATUS OF DEFENDANT(S)

Before me the undersigned notary or clerk of the justice court, on this day personally appeared the undersigned affiant whose identity is known to me. After I administered an oath to such affiant, he or she upon oath and under penalty of perjury (fine and/or up to one year in jail), stated the following:

My name is *[please print]* _____

I am *[check one]* the plaintiff or an authorized agent of the plaintiff in the case described at the top right of this page. I am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

[check or fill in as applicable]

1. No defendant in this case is on active duty in the U.S. military (Army, Navy, Air Force, Marines, Coast Guard or National Guard). The facts on which I base my conclusion are as follows: _____

2. Defendant *[insert name(s)]* _____ is on active duty in the U.S. military.

3. The defendant named in paragraph 2 above has or has not been deployed by the U.S. military to a foreign country or been given orders for permanent duty station.

4. Plaintiff and the undersigned (if the undersigned is acting agent of plaintiff) are not able to determine whether any defendant is with the U.S. military.

5. Plaintiff and the undersigned (if the undersigned is acting as an agent of plaintiff) are not able to determine whether any defendant who is in the U.S. military has been deployed to a foreign country or been given orders for change of permanent duty station.

6. Defendant *[insert name(s)]* _____ has signed, while on active duty, a separate written waiver or a written lease containing a waiver of his or her rights under the U.S. Servicemembers Civil Relief Act of 2003.

Signature of Affiant

Sworn and subscribed before me on this the _____ day of _____, 20_____.

Notary Public/ Clerk of the Justice Court