

# Small Claims Suits

## About the Small Claims Court

### **General Information about Small Claims & the type of cases allowed:**

Small Claims Courts are courts in which citizens can settle small money disputes in a speedy, informal setting. The Small Claims Court in Texas is created under Chapter 28 of the Texas Government Code. It has concurrent jurisdiction with the Justice Court in actions by any person for the recovery of money *ONLY*. The amount involved cannot exceed \$10,000 including interest. It is important to remember that a Small Claims Court can only award a judgment for money. The Court cannot require someone to return, replace or repair property. It is recommended that you notify the person you are going to sue by certified mail, return receipt requested. Remember to keep a copy of the letter. If the letter is unsuccessful and you have tried everything else within reason in resolving the dispute, then you should seriously consider filing suit.

### **Who can sue and whom to sue:**

Any person over the age of 18 years old can file a claim in Small Claims Court. A minor can use the Court by having the parent, relative or next friend over the age of 18 to go with him/her to file a claim and later attend the trial. Most people who appear in Small Claims Court do not have an attorney, although the use of an attorney by either party in a suit is optional. An association, partnership, or corporation may also file a claim in Small Claims Court. Unlike other Courts, a corporation does not have to be represented by an attorney in the Small Claims Court.

You may not realize it, but suing the right person is *very important* and not as easy as you think. The person filing a petition is totally responsible for deciding and stating who to sue and where to serve them. You should avoid suing “everyone” just to make sure you get the right one. Before you sue, you must determine the nature of the entity you are filing your claim against. Basically, there are three ways a person may do business; a sole proprietor, a partnership, or a corporation. For a sole proprietorship – you can check with the Assumed Name Records Department in the County Clerk’s office. For a partnership – you should get the names of the partners. For a corporation – you can contact the Secretary of State and find out who the “agent for service” is so that you know who to serve with the papers. The name and address of a corporation’s Registered Agent can be obtained by calling the office of the Secretary of State for the State of Texas at 512/463-5701 or 1-800-252-1386.

You will be charged a citation and service fee for each and every name you list as a Defendant in the suit, unless they are named only as a Registered Agent of another Defendant. Examples:

“John Doe and Mary Smith” – 2 citations

“John and Mary Doe” – 2 citations

“Bill Doe and his father, John Doe” – 2 citations

“Southside Café, John Doe” – 2 citations

“John Doe d/b/a Southside Cafe” – 1 citation

“Southside Café, owner John Doe” – 1 citation if you file it as a “dba”, but if you are wrong you may not get a judgment.

“ABC Corporation, John Doe” – 2 citations

“ABC Corporation, John Doe as Registered Agent” – 1 citation

### **Who is prohibited from filing a Small Claims:**

Some entities may not use Small Claims Court.

An assignee of a claim or any other person seeking to bring an action on a claim which has been assigned is prohibited from seeking relief in the Small Claims Court.

A person who is primarily engaged in the business of lending money with interest may not file a claim in the Small Claims Court.

A collection agency or a collection agent is also prohibited from bringing an action in the Small Claims Court.

### **Venue:**

A Small Claims must be brought in the county and in the Justice of the Peace precinct in which the Defendant resides. If, however, the Defendant has contracted to perform an obligation in a certain county, an action may be brought in the County where the obligation was to be performed. If you are unsure of the precinct, you can call any Justice of the Peace office with the address of the party you are filing suit against and the Court can tell you which precinct is correct.

### **How to file suit:**

Once you have exhausted all reasonable steps to settle the dispute out of court and determined who you are going to sue and where to file the suit, then you will *legibly* complete a Small Claims Original Petition. You will need the following information to fill out the petition:

- (a) Your complete name and address
- (b) The complete name and addresses of each person or business your claim is against. Correct name and addresses are important to your case because the Court cannot grant a judgment against a Defendant who is improperly named in the complaint.
- (c) The amount of money the claim is for
- (d) A statement of the basis of the claim, including the date the claim arose and any other relevant information.

The Court Clerk notarizes the Small Claims petition, assigns it a case number and prepares the Plaintiff's receipt. The clerk directs the Plaintiff to contact the Court after about 2 to 3 weeks to check the status of their case. Plaintiff's should always have their case number ready when calling the Court.

**All Plaintiffs must either appear at the Court in person to be sworn under oath or you must have the claim notarized by a certified Notary Public prior to it being filed with the Court.**

### **Service:**

The clerk prepares a citation which, together with a copy of the Original Petition, is served on the Defendant(s) by the Constable's office. The citation notifies the Defendant that the law requires an answer or response in writing to the Court no later than the Monday following ten (10) days from the date the citation was served. For citations to be served in a county other than Nueces County, we will mail the citation along with the information needed to have the Defendant served in that county. Upon verification that the Defendant has been served, the Court sets a tentative date and time for the case to be heard. Notices of the official trial date and time, however, are not mailed out until after either the Defendant has answered or the answer date has passed.

**Counterclaims:**

A Defendant may file a counterclaim against the Plaintiff by filing out a Counter Claim Original Petition and by paying filing and services fees as set out in *Schedule for Filing and Service Fees*. The procedures involved will essentially remain the same. The claim and counter claim will be tried at the same time. If the Counterclaimant should win their case in Court, the original Plaintiff will be subject to the judgment of the counterclaim, including any attorney fees awarded.

**Subpoenas:**

A witness, along with any documents in their possession, can be ordered to appear at the trial of a case by the issuance of a subpoena. See *Schedule for Filing and Service Fees*. You must provide in writing the full name and address of the witness and a detailed description of the documents desired.

**Continuances and Jury trials:**

If either the Plaintiff or the Defendant is unable to attend the hearing on the date and at the time it is scheduled, a Request for Continuance to the Court may be made to continue the hearing to a different date. The Justice of the Peace may postpone the hearing *only* for a good reason. Any requests for a continuance (reset) shall be made in writing and filed with the Court at least one week before the court date. No continuance will be granted without a showing of an urgent reason. **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.

Either party may demand a jury trial. The request must be made no later than one (1) day before the date on which the hearing is scheduled. At the same time that the request is made, the party must pay the jury fee to the Justice of the Peace.

**Hearing:**

A hearing notice will be sent to each party through regular mail. You, as a Plaintiff, have the burden of proof to show by the weight of the evidence that the Defendant you are suing is the proximate cause of damages in the capacity which the Defendant was sued. All damages and evidence necessary to meet your burden (receipts, invoices, cancelled checks, witnesses, etc.) should be present at time of trial. Reasonable discovery in Small Claims Court is limited to that considered appropriate and permitted by the Judge.

**Military Status Affidavit:**

The Servicemembers 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 a Military Status Affidavit stating whether or not the Defendant is in the military service and showing necessary facts to support the 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.

**Dismissals:**

Should the Plaintiff desire to dismiss his/her case before the trial date, the Plaintiff can either personally appear at the Court, show I.D. and sign a Motion to Dismiss or they can forward to the Court a notarized statement which details the case number, the name of the parties involved, the request of a dismissal and the reason why.

**Appeal:**

The party that lost the case may appeal the decision within 10 calendar days of the signing of the judgment by filing a Notice of Appeal and an Appeal Bond with the Court and paying a \$10.00 transcript fee.

If the appeal is by the Defendant, the appeal bond is double the amount of the judgment. The bond can be either cash bond (money order made out to District Clerk) or bond with a principal plus two sureties.

If the appeal is by the Plaintiff, the appeal bond is set by the Judge to cover double the amount of the costs incurred in the Small Claims Court and the estimated costs in the County Court, less than any amounts that the Plaintiff may have already paid.

If either party is unable to the costs of appeal, he or she is entitled to appeal by filing an Affidavit of Inability to pay with the Justice of the Peace and notice must be given to the other party of the filing of the affidavit, and the facts of the party's inability to pay costs can be contested. The Affidavit of Inability to pay requires that that the Affidavit contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income, spouse's income if available to the party, property owned, cash or checking account, dependents, debts, and monthly expenses. The affidavit must also state the party is unable to pay the court costs, and that the statements made in the affidavit are true and correct. The affidavit must be sworn before a notary public.

**Collecting of Judgment:**

**See Post Judgment Remedies**

**For more information on How to Sue in Small Claims Court, please go to [www.tyla.org](http://www.tyla.org)**