

FILING A CIVIL SUIT IN JUSTICE COURT

The amount of the debt or damages or personal property for which you may sue in Justice court may not exceed the limit of the court which is \$5,000.00.

In civil suits, the defendant(s) generally has the right to be sued in the county and precinct in which he resides. Should you be filing this suit in this county and precinct because it is convenient to you, there may be a motion by the Defendant to transfer venue (request that this suit be transferred to some other county or precinct however, there are exceptions to this rule).

It is your burden as a Plaintiff and it 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.

They are as follows:

- a. Personally: Where an individual is responsible to you for damage he may have caused you as an individual.
- b. Proprietor: A business that is not incorporated, but does not have on file with the County Clerk an assumed name e.g. John Smith d/b/a Greenhouse Supplies. The County Clerk of Dallas County can be reach at (214) 653-7131 and are located on the 2nd floor of the Records Building, Dallas, Texas.
- c. 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 agent for service would be listed with the Secretary of State whose phone number is 1-512-463-5555).

It is also possible for an incorporated entity to have an assumed name e.g. Greenhouse, Inc., d/b/a Greenhouse Supplies.

- d. Partnership: there are special rules governing partnerships, please consult legal counsel.

Th Court will give you a receipt showing your case number and the Courts phone number so that you may call in periodically to determine the progress of your case. Any change of address or phone number must be supplied to the Court and to the Defendant. Give the Court a daytime phone number for yourself so that communication will be easier.

Once you have filed the petition stating the facts and circumstances of your suit, a citation will be served to the Defendant notifying him of the fact that a suit has been filed against him in this court.

The Citation will order the Defendant to answer to this suit on or before the Monday following the expiration of ten days from receipt of this citation. If he fails to do so, you then become eligible for a default against the Defendant.

If the Defendant answers the suit, this court will notify both parties by mail as to the trial date. The trial date will be anywhere from a few weeks to several months from the date the defendant answered the suit (depending on the court's schedule). Justice courts discourage motions for continuance. However, any request for a continuance must be in proper form and timely filed and in writing with supporting affidavits and sworn to.

If you have witnesses who will not come to court voluntarily, you may come in anytime prior to the trial and ask that a subpoena be prepared to secure their presence. Because a subpoena must be served on the witness, it is your burden to make sure there is adequate time for that person to be served and that the proper fees and tender are made.

With respect to the trial itself, all legal rules of evidence and procedure apply in Justice Court suits. With that statement, I suggest that if one party has an attorney, the other party will be well advised to secure one. Individuals and proprietorships cannot be represented by non attorney agents.

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 the Judgment.

- a. An Abstract of Judgment is filed with the County Clerk's office and its purpose is to let the public know that you have a judgment against a certain party. The abstract is only good in the county or counties where it is recorded. This can be obtained after ten days from the Judgment date and is good for ten years once you file it with the County Clerk.
- b. The Writ of Execution may be obtained thirty days after the Judgment is signed. This document authorizes the Sheriff or Constable to seize any unexempt assets belonging to the defendant that are subject to this 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 from the final judgment. This Garnishment proceeding is a separate suit wherein you are the Plaintiff and the Defendant's bank become 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 to appear and make answer to the Garnishment suit. An Attorney *is* strongly suggested due to the complexity of this procedure.
- d. A Turnover Order is available after the judgment is signed and its purpose is to provide a court ordered means of reaching property which cannot easily be reached through ordinary legal process and which is not exempt from attachment, execution, etc.

An Attorney should be used because the courts clerical staff will not be able by law to assist you in drafting the documents that are necessary.

FILING A SMALL CLAIMS SUIT IN JUSTICE COURT

The amount of money which may be sued for in a Small Claims suit is limited to damages that do not exceed \$5,000.00

In small claims suits, the defendant has the right to be sued in the county and precinct in which he resides. (There are exceptions to this rule, please consult the statute or your attorney for legal advice.

It is your burden as a plaintiff and it 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.

They are as follows:

- a. Personally: Where an individual is responsible to you for damage he may have caused you as an individual.
- b. Proprietor: A business that is not incorporated, but does have on file with the County Clerk an assumed name e.g. John Smith d/b/a Greenhouse Supplies. The County Clerk of Dallas County can be reached at (214 653-7131 and are located on the 2nd floor of the Records Building, Dallas, TX.
- c. Corporation: The Business which has allegedly caused you damage is in 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 agent for service would be listed with the Secretary of State whose phone number is: 1-512-463-5555.

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If, as Plaintiff, you are primarily in the business of loaning money (banks, credit unions, savings and loans), you are not allowed to file in Small Claims Court; however an attorney representing any of the above may file suits on behalf of the above in Justice Court - Civil.

Also, an action in Small Claims Court may not be brought by an assignee of the claim or other person seeking to bring an action on an assigned claim, or a collection agency.

When you have completed 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 notifying him that a suit has been filed against him in this court.

The citation will order the defendant to appear in this court to answer to the suit on Monday following the expiration often days from his receipt of the citation at 10:00 a.m. If you are not contacted within about 6 weeks, you will need to call us to check the status of the case.

If you have witnesses who will not come to court voluntarily, you may come in anytime prior to the trial and ask that a subpoena be prepared to secure their presence. Because a subpoena must be served on the witness, it is your burden to make sure there is adequate time for that person to be served.

Notarized statements from individuals are of very little value. Personal appearance and testimony is much more beneficial.

This type of suit, in my opinion, does not require hiring an attorney: however, you are free to do so if you wish.

The court does not collect the judgment for you, nor can the court force the defendant to pay the judgment. If you receive a judgment for your claim against the defendant you may request an Abstract of Judgment and/or a Writ of Execution to help you in your collection of 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 it is recorded. This can be obtained after ten days from the judgment date.
- b. The Writ of Execution may be obtained thirty days after the judgment is signed. This document authorizes the sheriff or constable to seize any unexempt assets belonging to the defendant that are subject to this 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 Garnishment 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 to appear and make answer to the Garnishment suit.
- d. A Turnover Order is available after the judgment is signed and its purpose is to provide a court ordered means of reaching property which cannot easily be reached through ordinary legal process and which is not exempt from attachment, execution, etc.

For most of these procedures, an attorney should be used because the courts clerical staff will not be able by law to assist you in drafting the documents that are necessary.