

INSTRUCTIONS FOR FILING A SMALL CLAIMS SUIT

TYPE OF CASE: Recovery of money damages, civil penalties, personal property, or other relief allowed by law.

FILING FEE:

\$131.00 (\$46.00 Filing Fee plus \$85.00 Service Fee)

If the defendant upon whom you are filing on resides OUTSIDE of Henderson County:

1. Call the County Courthouse in the County where the defendant is to be served.
2. Ask for the name of the Constable or Sheriff in the precinct where the defendant is to be served; call that office and find out the SERVICE FEE for serving a JUSTICE COURT CIVIL CASE CITATION.
3. Get the mailing address of the Constable or Sheriff who will be serving the citation.
4. Get a money order, payable to the Constable or Sheriff who will be serving the citation, and bring it with you when you file your suit. (**EXAMPLE:** If you are filing the suit on one defendant that is to be served in Hill County, you would bring a money order payable to Hill County Sheriff and that Sheriff's address. You would also pay the \$46.00 filing fee.)

GENERAL INFORMATION:

1. The amount of money which may be sued for may not exceed the limit of the Court which is \$10,000.00.
2. You must have a physical address (NOT a post office box) for the Defendant in order for him/her to be served.
3. In all civil suits, the defendant has the right to be sued in the county and precinct of residence. There are some exceptions to this rule. 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 and precinct).
4. It is your burden as plaintiff and is important that you understand that for any potential judgment you may receive to be valid it's necessary for you to sue the defendant in their proper legal capacity, of which there are typically three. These are as follows:
 - a. **Personally:** Where an individual is responsible to you for damage he may have caused as an individual.
 - b. **Proprietor or Partnership:** A business that is not incorporated, but does have on file with the County Clerk, an assumed name, e.g. John Smith dba Greenhouse Supplies).
 - c. **Corporation:** The business that 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 registered agent for service would be listed with the Secretary of State whose phone number is 1-800-252-1386 and whose website is www.window.state.tx.us.)
5. This Court will give you a receipt showing your case number so that you may call in periodically to check the progress of your case.
6. Once you have filed 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 them of the fact that a suit has

been filed against them in this Court. The Sheriff/Constable will serve these papers and the Court must wait until they have been returned before further action may be taken.

7. The citation will order the defendant to appear in this Court to file an answer to the suit by the end of the 14th day from the receipt of the citation. This will NOT be the trial date. If the defendant answers the suit, this Court will notify both parties by mail as to the trial date. We discourage motions for continuance, however, any requests for a continuance must be in proper form and filed in a timely manner (at least 5 working days prior to trial date).
8. If you have witnesses who will not come to court voluntarily, you may come in at least 2 weeks prior to the trial and ask that a subpoena be prepared to secure their presence. You will need to provide the court with the name and physical address of those you want subpoenaed. There is a filing and service fee for each subpoena requested.
9. Should you receive judgment, **this Court does not collect the judgment for you, nor can we force the defendant to pay the judgment.** However, you may request an *Abstract of Judgment*, *Writ of Execution*, or *Writ of Garnishment* to help you in collection of this judgment. There are fees for each of these.
 - 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 recorded. This can be obtained 21 days after the date the judgment is signed.
 - b. **A Writ of Execution** may be obtained thirty days after the judgment is signed. This document authorizes the Sheriff or Constable to seize any non-exempt 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 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 appear to make answer in the Garnishment suit. An attorney should be consulted.
10. If you have any other procedural questions, please ask and the court clerk will try to answer them. Legal questions can not be answered by the Court. An attorney must answer your legal questions. For further information you may consult Part V of the Texas Rules of Civil Procedure.
11. Please understand as a plaintiff, you have the burden of proof to show by the weight of the evidence that the defendant you are suing is the proximate cause of your damages in the capacity in which the defendant is sued. All damages and evidence necessary to meet your burden should be available at the time of filing and not later than the date of trial.

TRIAL BY JURY:

You may request a trial by jury. Upon payment of a jury fee in the amount of \$22.00, and filed no later than 14 days from the trial setting, the case would be set on the Jury Docket.

THESE INSTRUCTIONS ARE A BROAD INTERPRETATION OF THE LAWS THAT APPLY TO THE COURT. ANY LEGAL QUESTIONS OR LEGAL INTERPRETATION SHOULD BE BASED UPON YOUR OWN RESEARCH OF THE MATTER OR THE ADVICE OF YOUR ATTORNEY.