

INSTRUCTIONS FOR FILING A SMALL CLAIMS SUIT

TYPE OF CASE: RECOVERY OF MONEY DAMAGES, CIVIL PENALTIES, PERSONAL PROPERTY, OR OTHER RELIEF BY LAW.

FILING FEE: **\$139.00** (\$54.00 FILING FEE PLUS \$85.00 SERVICE FEE)

IF THE DEFENDANT UP WHOM YOU ARE FILING ON RESIDES **OUTSIDE** OF HENDERSON COUNTY:

1. CALL THE COUNTY COURTHOUSE IN THE COUNTY WHERE 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 WHO WILL BE SERVING THE CITATION, AND BRING IT WITH YOU WHEN YOU FILE THE 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 WILL PAY THE \$54.00 FILING FEE TO US.)

GENERAL INFORMATION:

1. The amount of money which may be sued for may not exceed the limited of the court which is **\$20,000.00**.
2. You must have a physical address (NOT a PO 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 the rule. Should you be filing this suit in the county and precinct because it is convenient to you, there may be a motion by 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/ she 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.
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 again them in this court. **(The 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 the 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 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 the 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 Garnished 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 cannot 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 procedures.

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.

TRAIL 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 a jury Docket.

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

CAUSE NO. _____

PLAINTIFF

v.

DEFENDANT

§ IN THE JUSTICE COURT
§
§
§ PRECINCT NO. 5
§
§
§ HENDERSON COUNTY, TEXAS

PETITION: SMALL CLAIMS CASE

Defendant(s) address: _____

COMPLAINT: The basis for the claim which entitles Plaintiff to seek relief against Defendant is:

RELIEF: Plaintiff seeks: damages in the amount of \$_____, 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 Defendant(s) by: personal service at home or work, registered mail, certified mail, return receipt requested. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other addresses where Defendant(s) may be served are:

I hereby request a jury trial. The fee is \$22 and must be paid at least 14 days before trial.

I hereby consent for the answer and any other motions or pleadings to be sent to my
email address as follows:

Plaintiff's Printed Name

Signature of Plaintiff
or Plaintiff's Attorney

Defendant's Information (if known):

Date of birth: _____

Last three digits of Driver License: _____

Last three digits of Soc. Sec. No.: _____

Phone No.: _____

Address of Plaintiff
or Plaintiff's Attorney

City State Zip

Phone & Fax No. of Plaintiff
or Plaintiff's Attorney

CASE NO. _____

DEFENDANT : _____

AFFIDAVIT 50 USC Sec. 520

Plaintiff being duly sworn on oath deposed and says that defendant(s) is (are) (CHECK ONE)

- Not in the military
- Not on active duty in the military and/or
- Not in foreign county on military service
- On active military duty and/or is subject to the Service members Civil Relief Act of 2003
- Had waived his/her rights under the Service members Civil Relief Act of 2003
- Military status is unknown at this time

PLAINTIFF

(Select the applicable title under the signature for the jurat below)

Subscribe and sworn to before me on this the _____ day of _____, 20_____

SEAL

Notary Public in and for the State of Texas

Penalty for making or using 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.