

## SMALL CLAIMS COURT PROCEDURES

The **Rules of Judicial Ethics prohibits this office from giving legal advice or hearing your case without the presence of the defendant or plaintiff.** If you need legal counseling, we highly recommend any licensed Texas attorney. Your first meeting with the attorney is usually (but not always) free because the lawyer is trying to determine if they can be of service to you. In a civil suit any **CORPORATION MUST BE REPRESENTED BY AN ATTORNEY.** REMEMBER, IT IS YOUR JOB TO PRESENT ANY EVIDENCE (RECEIPTS, JOURNALS, RECORDS, POLICE REPORTS, WITNESSES, ETC) TO PROVE YOUR CASE. IF YOU FAIL TO PROVE YOUR CASE IT CAN BE DISMISSED. If you have any **LEGAL QUESTIONS**, contact **LEGAL AID AT (915)-585-5100.**

Small Claims Courts are courts in which parties can settle small money disputes in a speedy, informal setting. To ensure that Small Claims Courts can be used without the help of an attorney, the Legislature established less formal procedures for these courts. The purpose of this pamphlet is to help you understand the basic procedures in these courts, but is not intended to present complete coverage of them.

A Small Claims Court is a judicial forum to hear and decide civil cases involving claims for MONEY ONLY, for \$10,000 or less. The court cannot require a party to return, replace, or repair property; to do something; or, to refrain from doing something. For example, you could sue a car mechanic in Small Claims Court to get back money you paid for repairs that were not made. However, you could not sue in Small Claims Court to force the mechanic to make the repairs. There are other courts with the power to force the mechanic to make the repairs. Remember, the petition must not ask for anything except money.

### Who May Sue

Any person over the age of 18 years can sue in Small Claims Court. The party filing the suit is the "PLAINTIFF." A minor can use the Court if accompanied by a parent, relative, or "next friend" over the age of 18 to file a claim and later go with the minor to the trial. An association, partnership, or corporation may also file a claim in Small Claims Court. However, a partnership, association, corporation, or person engaged in the business of lending money at interest or functioning as a collection agency may not file a claim in this Court.

### Whom May Be Sued

Any natural person, association, partnership, or corporation over which the Court has jurisdiction may be sued. The person or business being sued is called the "DEFENDANT".

The Court only has the power to enter judgment against a Defendant if that Defendant is present in the State of Texas or makes its permanent home in the State. In the case of a business, if it is a sole proprietorship, the individual must be present in the State; or if it is a corporation, the corporation must be doing business within the State.

A person not present in the State of Texas but who has property in Texas may be sued by attaching the property. Attaching the property is a legal procedure to obtain jurisdiction over a person who is not present in the State. The property must be located within the county where the Court sits, and the judgment rendered by the Court may only be up to the value of such property.

## Which Court to Use

The Justices of the Peace in each county sit as judges of the Small Claims Courts. The addresses and telephone numbers of these courts are in the city telephone directory. If there is more than one Justice of the Peace Court in a county, then a small claim normally must be made in the court of the precinct which covers the area where the Defendant lives.

Under some circumstances, the Plaintiff may have a choice of courts in which to bring a claim. For example, if the Defendant lives in one precinct but does business or contracted to perform services in another precinct, either precinct can be selected as the place to bring suit.

## When to File Suit

For the Court to be able to act on a suit, the suit must be filed within time limits set by the Legislature. A court has no power to hear a suit that is filed after these set time periods. Many suits must be brought within 2 years after the dispute arose, others must be brought within 4 years. To be safe, you should file suit as soon as you are convinced you cannot recover the money on your own, and before 2 years have gone by.

## Types of Trials

The trial of the case may be heard by the Judge of the Court sitting alone, or upon request of either party, by a six-person jury. The Texas statute creating the Small Claims Courts allows either party to request a jury upon payment of a \$22 fee. If you choose to have a jury, you should file a request for a jury trial with the Court not later than one day before the date on which the trial is to be held.

In a jury trial, the jury decides the facts of the case to determine who wins. When the Judge hears the case alone, the Judge makes these determinations. Having a trial by Judge alone will generally take less time and be less complicated than a jury trial.

## Small Claims - How to Start the Suit

In order to begin formal action, the Plaintiff must personally go to the Civil Clerk of the correct Justice of the Peace Court and do the following:

1. Ask the Clerk for a small claim petition form, and be prepared to provide the following information to complete the form:
  1. The Plaintiff's complete name and address.
  2. The Defendant's **complete name and address**, of each person or business the Plaintiff's claim is against. ***(Correct names and addresses are vital to the Plaintiff's case because the Court cannot grant a judgment against a Defendant who is improperly named in the petition. Therefore, the Plaintiff must determine the correct legal name and address of the person or business being sued before going to the Clerk. If the business is a partnership, the partnership should be named by its correct legal name and all partners should be named individually; if the business is a corporation, the exact name of the corporation **must** be stated, including the word or abbreviation for "Incorporation" or "Company", and the corporation's named **registered** agent for service, obtainable from the Secretary of State, 1-800-252-1386);***
  3. The amount of the Plaintiff's claim;
  4. The basis of the Plaintiff's claim, stated plainly and without technicalities, including the date the claim arose; and,
  5. The amount of money the Plaintiff properly owes the Defendant, if any.
2. Swear under oath that this small claim statement is true;

3. Pay the Clerk a filing fee **and** the service of citation fee, to cover costs of serving citation on the Defendant. **The Defendant must be served a citation before the suit can commence.** (*Fee information is available from the Clerk. All of these costs may be recovered at trial if the Plaintiff wins the suit.*);
4. Call the Clerk in 2 or 3 weeks to see if the Defendant has been served and find out the exact date of service. **The service date is important** because it must be used to calculate the date by which the Defendant must respond to the claim. The calculated date is called the "**Appearance Date**", and is calculated as follows: From the date of service, count 14 days. The next Monday after the expiration of the 14-day period will be the appearance date. **Verify this date with the Clerk.**

If the Defendant does not respond to the suit by 5 p.m. on the appearance date, the Plaintiff wins by simply appearing in court and asking for a **default judgment**. The Plaintiff must still, however, prove the amount of money due him; or,

If the Defendant does respond by the appearance date, the case will be tried. The appearance date, however, is not necessarily the date of the trial. Ask the Clerk, after a response has been filed with the court, when the case may be tried.

Once a trial date has been set, ask the Clerk to issue a subpoena (*which will order a witness to appear at trial*) for any witness needed to prove the claim who will not come unless they are so ordered by the Court. The full name and address of a witness are needed for a subpoena to be issued. A fee must be paid for each subpoena requested.

### The Trial

If the Defendant has received proper notice of the trial, but does not respond to a claim or appear in court at the appointed time, the Judge will grant a default judgment against the Defendant. The Plaintiff must still be present for the trial and prove the amount of money due, and ask the Court to enter a default judgment against the Defendant. If the Plaintiff does not appear at the trial, then the Judge may enter an order dismissing the case.

If the case does go to trial, both the Plaintiff and Defendant must be in Court at the time of the trial and must not be late. The Plaintiff and Defendant must bring to Court that day any evidence (*such as receipts, invoices, canceled checks, etc.*) that they wish to present to the Court, and any witnesses they intend to have testify for them.

When the case is called to trial, the Judge will ask both parties whether they are ready to proceed with the case. At this point, the parties and witnesses will be sworn and the trial will begin.

Proceedings in Small Claims Court are less formal than in other civil courts. The Plaintiff's side of the case will be presented first. The Plaintiff should offer any documents which support the plaintiff's claim and present any witnesses at this time. The Judge may ask some questions to clarify some of the points necessary to reach a fair decision. The Defendant is then entitled to ask questions of the Plaintiff and any witnesses.

After the Plaintiff's case is presented, the Defendant will have an opportunity to present the Defendant's side of the case. It may be the Defendant's position that the Plaintiff is wrong in the way the Plaintiff says the events occurred. The Defendant may say that the Plaintiff's account of the events is correct, but that the Plaintiff is demanding too much money. The Judge can ask the Defendant and any witness questions, and the Plaintiff can also ask them questions. If either party thinks the other party or any witnesses are not telling the truth, the Plaintiff or Defendant should ask questions which would expose this fact to the Judge.

After the Judge has heard the testimony of the witnesses and the facts presented by both sides, and both parties have asked all the questions they want to ask, the trial will end. The Judge will announce the decision in the case if there is no jury. If it is a jury trial, the jury will deliver the verdict.

#### **If the Defendant Wins**

If the Defendant wins, the Plaintiff will recover no money and must pay the court costs. (*costs were pre-paid to the court when suit was filed*)

#### **If the Plaintiff Wins**

If the Plaintiff wins, the Defendant will be ordered to pay the Plaintiff the amount of money awarded by the Court, plus court costs. If the Defendant does not pay the money awarded by the Court, then the Plaintiff can ask the Clerk to issue an **execution**, which orders the Sheriff or Constable to collect the amount of the judgment and court costs. The Sheriff or Constable either collects money or sells property belonging to the Defendant to satisfy the amount of the judgment. The Plaintiff may ask the Clerk to issue an execution any time from 30 days after the judgment has been signed, upon the payment of an issuance fee and a fee for service of the execution (*fee information is available from the Clerk*). An execution cannot be issued if either party is appealing the judgment.

#### **Appeals**

Either party has the **right to appeal** to the County Court if the amount of the dispute exceeds \$250, exclusive of the court costs. To appeal, a party must file an **appeal bond** in the Small Claims Court within 21 days from the date of the judgment. Information about filing an appeal is available from the Clerk of the Small Claims Court.

If a party appeals to the County Court, the Clerk of the County Court will notify the other party of the new trial.

The **new trial** (*trial de novo*) will be held before another Judge or jury, as if the case had never been tried in the Small Claims Court.