



Justice Court

CIVIL INFORMATION

INFORMATION PROVIDED FROM: TEXAS JUSTICE COURT TRAINING CENTER

- ❖ A civil case is a lawsuit between two private parties, one of whom is typically claiming that the other one owes them money or refuses to return some item of personal property.
- ❖ A small claims case is a suit to recover money damages, civil penalties, personal property, or other relief allowed by law and within the court's jurisdiction. Rule 500.3(a).

THIS OFFICE CANNOT GIVE LEGAL ADVICE.

This information is to assist you in procedure only. It is not intended for legal advice or to take the place of an attorney.

PLAINTIFF: PERSON FILING SUIT

DEFENDANT: PERSON BEING SUED

The amount of debt or damages for which you may sue in Small Claims Court may not exceed the limit of the court, which is \$20,000.00.

VENUE

In all civil suits, the defendant has the right to be sued in the county and precinct in which he resides. The plaintiff may file the suit in any county precinct however, the defendant may file a motion to transfer venue requesting the suit to be transferred to his or her resident county and precinct. If the change of venue is granted, the plaintiff will have to pay the filing fees again in the county and precinct in which the case is transferred.

JURISDICTION

Jurisdiction is the power of a court to hear and decide a case. There are two types of jurisdiction:

- Subject matter jurisdiction means the authority of the court over the type of case before it.
- Personal jurisdiction means the authority of the court over the person who has been sued.

FILING SUIT

The cost to file a Small Claims suit is \$54.00 per case filed with an additional service fee of \$100.00, per defendant, for service of citation in Walker County. ***If the defendant resides outside the county of Walker the plaintiff must obtain service information from the county in which the defendant will be served.***

The plaintiff must file an original petition, which includes name of the plaintiff and defendant; the address of both parties; the grounds for the suit and relief sought. The responsibility for completing the petition rests with the plaintiff. ***The Court Clerks will only assist with procedural questions.***

Along with the original petition the plaintiff should file a copy of any document that would help to substantiate their filing, such as contacts, invoices, or any other documents pertaining to the case.

The plaintiff should understand that for a potential judgment to be valid, it is necessary to sue the defendant in their proper legal capacity. They are as follows:

1. **Individual** - a party personally responsible for damages.
2. **Sole Proprietorship**- a business that is not incorporated but has filed an assumed name certificate with the County Clerk in the county of business that lists the owner(s).
3. **Corporation** - a business that is incorporated. To sue a corporation, the plaintiff must find the name of the *Registered Agent, President or Vice President* of the corporation before filing the suit. The Secretary of State has that information. Phone: (512) 463-5555. The plaintiff will also need the address of the *Registered Agent, President or Vice President* for service of citation. When the suit is filed, the plaintiff will be filing against the corporation and serving the citation on one of the above-mentioned officers of the corporation. It is also possible for an incorporated entity to have an assumed name, e.g. John's Auto Shop, Inc. dba John's Garage.

If, as plaintiff, you are in the business of loaning money either primarily (banks, credit unions, savings and loans), or secondarily (credit cards) you are not allowed to file in Small Claims Court. You must file your case as a DEBT CLAIM CASE.

CITATION

Once the plaintiff has filed the petition stating the facts and circumstances of the suit, a citation will be served to the defendant, either by the Constable or Sheriff, notifying him of the fact that suit has been filed against him in this court. The citation will order the defendant to answer

ANSWER

The defendant in the suit must file a written answer with the Court by the end of the 14th day after the day they were served with the papers. If the 14th day is a Saturday, Sunday, or legal holiday, the answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday.

If the defendant answers suit, the court will notify the plaintiff and defendant of the trial date. If the defendant **does not** answer, a Default Judgment can be rendered in favor of the plaintiff, if the case is supported with documentation, and copies of the judgment will be mailed to both parties.

REPRESENTATION

Small Claims Court was designed for individuals to be able to file suits without the assistance of an attorney, however, either party may be represented by an attorney. The Rules of Evidence are not in effect in Small Claims Court and the Rules of Procedure apply only in certain situations.

PREPARING CASE FOR TRIAL:

The plaintiff has the burden of proof and must meet that burden by showing through evidence that the defendant is at fault. The plaintiff should bring to trial all proof of damages and evidence necessary to substantiate the claim. It is the plaintiff's or defendant's responsibility to furnish copies of information to the Court and all parties involved.

Witnesses to the suit, who will not come to court voluntarily, may be issued a subpoena to compel them to appear. The party must submit a request for a subpoena in writing at least one week prior to the trial date and pay the required fee for service. (\$100.00 for service in Walker County per subpoena and \$10.00 cash for witness fee which will be attached to each subpoena).

DEFAULT JUDGMENT

If the defendant in the suit fails to answer to the court, the plaintiff still needs to prove the case to the Judge. The plaintiff will state the facts of the case and present any written evidence to support the case. After all evidence is accepted the Judge can render a default judgment in favor of the plaintiff. The clerk of the court will mail copies of the default judgment to both parties.

TRIAL BY JUDGE OR JURY:

If the defendant in the suit files an answer, the court will set a trial date. A notice will be mailed to both the plaintiff and defendant stating the time and date to appear in court. A jury trial must be requested in writing and a fee of \$22.00 paid at the time of request.

It is necessary for both parties to bring all witnesses and any evidence to support the case to the court at this time. Notarized statements from individuals are of very little value and not recognized in court. Personal appearance and testimony is much more beneficial.

AFTER JUDGMENT:

After judgment is rendered, the losing party has **21** days to appeal the case to County Court at Law in Walker County. If an appeal is not filed within **21** days from the date the judgment is signed, the judgment becomes final.

THE COURT DOES NOT COLLECT THE JUDGMENT!!

REMEDIES TO COLLECT JUDGMENT:

ABSTRACT OF JUDGMENT

An Abstract of Judgment places a lien on any real property the losing party may own. The winning party may obtain an Abstract of Judgment the day of judgment and anytime after within the 10 years after judgment-not any later. The fee for obtaining an Abstract of Judgment is \$5.00 (per each one) and paid to the court. The Abstract of Judgment is issued by the clerk of the court. The Abstract of Judgment is filed with the County Clerk in the county or counties in which the losing party resides or does business (You will have to pay court cost at each county you wish to file this in at their County Clerks Office). If the losing party attempts to sell any real property within 10 years from the date of judgment, the lien should prevent him/her from the sell until the judgment is satisfied.

WRIT OF EXECUTION

A Writ of Execution authorizes the Sheriff or Constable to seize non-exempt property from the losing party. If the property is seized, an auction is held and the proceeds from the sale are credited toward the plaintiff's judgment. A Writ of Execution may be obtained 30 days from the date of judgment and is issued by the clerk of the court. The fee for the Writ of Execution is \$5.00 to the court. The service fee to execute the Writ of Execution is \$100.00 payable to the constable at the time of issuance.

RELEASE OF JUDGMENT:

Should the losing party pay the amount owed it is the responsibility of the winning party to provide the losing party a Release of Judgment. The Release of Judgment should be filed with the County Clerk where the Abstract of Judgment was filed. Filing of the Release of Judgment is the responsibility of the losing party.

The statutes governing Civil Court include, but are not limited to, the Texas Government Code, Chapter 28; the Texas Rules of Court; The Rules of Civil Procedure, Texas Civil Practices and Remedies Code.

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