

# Justice of the Peace Precinct #1

## SMALL CLAIMS SUITS

### **THIS OFFICE CANNOT GIVE LEGAL ADVICE.**

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

**Plaintiff=person filing suit**

**Defendant=person being sued**

Small Claims Court is a court in which parties can settle disputes in which a **money judgment** is sought. The plaintiff, or his/her attorney, may appear in person to file a claim, or may file a sworn statement of the claim by mail.

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 \$10,000.00.

### ***VENUE***

In all civil suits, the defendant has the right to be sued in the county and precinct in which he or she 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 (an issue over which Court has authority) in Small Claims Court suits is for the recovery of money only, where the amount in controversy does not exceed \$10,000.00. This includes attorney fees and pre-judgment interest. Court costs may be added to that amount.

### ***FILING SUIT***

The cost to file a Small Claims suit is \$31.00 per case filed with an additional service fee. If the defendant resides in Walker County the service fee is \$100.00 per defendant. If the defendant resides outside the county of Walker the plaintiff must obtain service fee 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 his or her filing, such as contracts, 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 & loans), or secondarily (credit cards) you are not allowed to file in Small Claims Court. You must file in Justice Court.

### ***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 to the suit by 10:0a.m.on the Monday following the expiration of 10 days from the defendant's receipt of the citation.

### ***ANSWER***

The defendant in the suit must file a written answer with the Court by the Monday following the expiration of ten days from the date the citation was served upon the defendant. 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. 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, the plaintiff still needs to prove his or her case to the Judge. The plaintiff will state the facts of the case and present any written evidence to support the case. The Judge can render a default judgment in favor of the plaintiff once the evidence has been accepted. 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 \$5.00 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:***

Once judgment is rendered, the losing party has ten (10) days to appeal the case, if he or she chooses to do so. If an appeal is not filed within ten days from the date the judgment is signed, the judgment becomes final.

***REMEDIES TO COLECT JUDGMENT:***

**The Court does not collect the 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" ten (10) days after the date of judgment. The fee for obtaining an Abstract of Judgment is \$5.00 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. If the losing party attempts to sell any real property within ten (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 service fee to execute the Writ of Execution is \$100.00 payable 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 the "Release of Judgment" is the responsibility of the losing party.

***STATUES***

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

**Please be advised that the law prohibits a judge from communicating with you prior to trial about your pending case or a case that you may file.**