

FILING A SMALL CLAIM SUIT

(PLEASE READ CAREFULLY BEFORE COMPLETING THE PETITION)

1. The amount of money, which may be sued for in a Small Claims Court, is limited to damages that do not exceed \$10,000.00, inclusive of interest.

2. In all civil suits, the defendant generally has the right to be sued in the county and precinct in which they reside. There are exceptions to this rule. However, should there be a motion by a defendant to transfer venue, please be Advised; that after the motion is made, a hearing shall be set 45 days after the motion is filed, unless both parties agree, in writing, to shorten that time.

3. It is your burden as a plaintiff and it is important that you understand that for any potential judgment you may receive to be valid, it is necessary for you to sue the defendant in their proper legal capacity, of which there are typically three. (Consult with your attorney if you're unsure of the defendant's proper legal capacity (name). They are as follows:

- *Personally:* Where an individual is responsible to you for damage he/she may have caused you as an individual.
- *Proprietor or partnership:* A business that is not incorporated, but does have on file with the County Clerk as assumed name, e.g. John Smith dba Green Co.
- *Corporation:* The business which 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. To obtain this information you must call the Secretary of State whose phone number is 1-800-252-1386, ask for the Corporate Charter Division. Also, for updated information, you may call the Secretary of State, The Comptroller's Office, whose number is 512-463-5555. It is also possible for an incorporated entity to have an assumed name e.g. Greenhouse, Inc. dba Greenhouse Supplies.
- Also, as a plaintiff, you must sue in the legal capacity in which you were damaged.

4. If, as plaintiff, you are in the business of loaning money primarily, (banks, credit unions, savings and loans), you are now permitted to file in Small Claims Court; however, an attorney representing any of the above, may file suits on behalf of the above in Justice Court or an individual may file. Also, an action in small claims court may not be brought by an assignee of the claim or other person seeking to bring an action on an assigned claim; or a collection agency.

5. When you have completed the petition stating the detailed facts and circumstances of your suit, a citation along with a copy of your petition will be served to the defendant notifying him that a suit has been filed against him in

this court. The citation will order the defendant to appear in this court to file a written answer to the law suit on the Monday following the expiration of ten days from his receipt of the citation, at 10:00 a.m. The trial date will be set at the earliest available date following the expiration of 45 days, which is the earliest setting allowed by the Texas Rules of Civil Procedure (TRCP 245). If the person you are suing fails to answer within the time allowed you may contact the court to schedule a default hearing.

IT IS IMPERATIVE THAT YOU PROVIDE US WITH YOUR DAY TIME PHONE NUMBER. PLEASE NOTIFY THE COURT IMMEDIATELY OF ANY CHANGE IN YOUR PHONE NUMBER OR ADDRESS. PLEASE DO NOT MAIL YOUR PETITION TO OUR OFFICE, UNLESS IT HAS BEEN NOTARIZED. YOU MUST PROVIDE THE COURT WITH TWO COPIES OF ALL ATTACHMENTS TO YOUR PETITION.

6. If you have witnesses to your law suit who will not come to court voluntarily, you may ask this court to subpoena those individuals prior to trial. Allow at least a week for service of the subpoena. Our jurisdiction is limited to a 150 mile radius for subpoenaed documents or individuals. Notarized statements from individuals are of very little value. Personal appearance and testimony are much more beneficial. Any expert witnesses whose testimony you are going to need, should be in court.

7. You may represent yourself (pro-se) or you may choose to hire an attorney to represent you. As the amount and complexity of the law suit increases, so may the need for having an attorney.

8. This court does not collect the money judgment for you, nor can we force an indigent defendant to pay the judgment. If you receive a judgment against the defendant, this court can issue various instruments to assist you in collecting the judgment. You may request an Abstract of Judgment, Writ of Execution, Writ of Garnishment and Turnover Order.

- An **Abstract of Judgment** puts a lien on any real property the defendant may own in a particular county where the Abstract is recorded. This can be obtained ten (10) days after the judgment has been signed. The Abstract of Judgment must be filed with the County Clerk's office.
- The **Writ of Execution** may be obtained thirty (30) days after the judgment has been signed. This document authorizes the Sheriff or Constable to seize any assets belonging to the defendant that are subject to this writ. Those assets are then auctioned at a public sale and those proceeds are applied to the judgment.
- A **Writ of Garnishment** is also available thirty (30) days after the final judgment has been signed. The Garnishment 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 bank account and to appear and make answer to the Garnishment suit.

- A **Turnover Order** is available before and /or after the judgment is signed and its purpose is to provide a court-ordered means of reaching property which cannot easily be reached through ordinary legal process and which is not exempt from attachment, execution, etc. An attorney should be used because the courts clerical staff will not be able by law to assist you in drafting the documents that are necessary.

9. Please understand that as a plaintiff, you have the burden of proof to show by the preponderance of the evidence that the defendant you are suing is the proximate cause of your damages in the legal capacity in which defendant is sued. All damages and evidence necessary to meet your burden should all be available at the time of filing and no later than the date of the trial.

10. **Pre-Trial discovery is limited and must be approved by the Court.** It needs to be completed prior to the trial date and in strict compliance with the Texas Rules of Civil Procedure. All approved discovery will be conducted under the **Level 3 Discovery Control Plan.**

11. Motions for Continuance must be made in writing at least 3 working days in advance of the trial date with a copy forwarded to the opposing party. It must show good cause and you should not presume the motion for continuance will be granted merely because it is filed. The court will advise you of its ruling.

12. **PROHIBITED CONDUCT:**

a. **THE JUDGE** and **CLERKS ARE PROHIBITED BY LAW** from **GIVING** any **LEGAL ADVICE.**

b. **(Ex-Parte Communication)**, Or discussing the case with any member of the Court, including Court Clerks, without the other side present is absolutely forbidden.

13. **Pre-TRIAL Conference:** If your suit is contested, both you and the defendant may be required to attend a pre-trial conference. You and the Defendant are required to complete a pre-trial order prior to the commencement of the trial. The Court will send these orders to you with specific instructions for completion. Failure to follow the instructions regarding pre-trial orders may result in **sanctions** and or **dismissal** of your case.

FEE SCHEDULE FOR SMALL CLAIMS:

	J. P. FEES	SERVICE FEES	BCLS FEE	TOTAL
FILING FEE - DEFENDANT IN WICHITA COUNTY	\$25.00	\$75.00	\$2.00	\$106.00
IF DEFENDANT RESIDES OUT OF COUNTY	\$25.00	<u>MUST CALL THAT COUNTY FOR FEE</u>		
JURY	\$5.00			\$5.00
ABSTRACT OF JUDGMENT	\$5.00			\$5.00
WRIT OF EXECUTION	\$5.00	\$150.00		\$155.00
SUBPOENA	\$10.00	\$85.00		*\$95.00
WRIT OF GARNISHMENT	\$5.00	\$150.00		\$155.00

* INCLUDES A \$10.00 CASH PAYMENT TO BE SENT TO THE PERSON YOU SUBPOENA

**ALL FEES ARE DUE AT THE TIME OF FILING. YOU MAY PAY WITH CASH, CASHIER CHECK, OR
MONEY ORDERS.**

NO PERSONAL CHECKS CAN BE ACCEPTED

MICHAEL R. LITTLE
JUSTICE OF THE PEACE
PRECINCT 1 PLACE 2
WICHITA COUNTY, TEXAS
Voice: 940-766-8143
Fax: 940-766-8283