

FILING A CIVIL SUIT IN JUSTICE COURT OR SMALL CLAIMS

“But Your Clerk Said...”

The Code of Judicial Conduct prohibits a Judge or Court Staff from “practicing law” (giving legal advice.) The Code further prohibits the Justice of the Peace from engaging in communication concerning the merits of a pending judicial proceeding, or the merits of an impending claim or dispute. Court Clerks in every Court have specific instruction not to attempt to advise parties to Court Cases. (Sometimes this results in frustration from the public)

“I Just Want To Talk To The Judge...”

The Code further prohibits the Justice of the Peace from engaging in communication concerning the merits of a pending judicial proceeding, or the merits of an impending claim or dispute. This means a judge can only discuss matters when all parties to a lawsuit are present during the discussions. Most people understand this when they consider how they would feel about a judge discussing their case with the other side without their knowledge or consent.

This information is given to you to help you understand the procedure for filing Justice Court or Small Claims cases in this court. It is not intended to give you legal advice nor is the court’s staff allowed to give you legal advice. The best advice is to always consult with an attorney of your choice before proceeding with legal proceedings. ***This court is only responsible for filing the paper work you decide to file.***

BEFORE FILING YOU MUST:

Direct a letter, certified mail, return receipt requested, to the defendant, giving notice of the suit. (Demand notice) This letter must state the amount of money to be sued for, and if the money is not received with the time allowed (example: 10 days) from the receipt of the letter, suit may be filed.

You, as plaintiff, your attorney or your authorized agent may appear in person to file your claim, or you may file a sworn statement of the claim by mail.

VENUE:

In all Justice Court suits, the defendant(s) has the right to be sued in the county and precinct in which they reside. The only exception is if the word is done in the precinct where it is filed. If the suit is filed in another precinct other than where the defendant resides, he/she has a right to file a Motion to Transfer Venue and you will be liable for an additional filing fee to transfer.

JURISDICTION:

*Jurisdiction (what the court may render judgment for) in Small Claims Court is for **MONEY ONLY** not to exceed \$5,000.00. Court cost may be added to that amount (\$5,000.00 + Court Costs). *Jurisdiction in Justice Court is for money damages, foreclosures of mortgages and enforce liens on personal property where the amount in controversy does not exceed \$5,000.00 plus court cost.

REPRESENTATION:

In Small Claims Court, a party may represent himself regardless if he/she is a part of a proprietorship or corporation. In Justice Court, a corporation must be represented by an attorney. Please be aware that the Texas Rule of Evidence and Texas Rules of Civil Procedure are in effect in Justice Court but not in Small Claim Court.

PARTIES TO THE SUIT:

PLAINTIFF: This is the Party that is filing the suit. Only the individuals or companies named at the top of the Petition as Plaintiff’s may collect a Judgment in favor of the Plaintiff. At trial, the Plaintiff must prove with a preponderance of credible evidence that they have a claim against the Defendant. It is important to understand that for any potential judgment you may receive to be valid, it is necessary for you to sue the defendant in his/her proper legal capacity. They are as follows:

1. **Individual:** Where an individual is responsible to you for damages he/she may have caused you as an individual.
2. **Sole Proprietor of Partnership:** A business that is not incorporated, but has filed an assumed name with the county clerk in the county of his business. To determine whether or not this person has filed an assumed name, you would contact the County Clerk’s office in the county where the company is located. San Jacinto County Clerk’s number is (936) 653-2324
3. **Corporation:** A business that is incorporated. To sue a corporation, you must find the name of the REGISTERED AGENT, PRESIDENT OR VICE-PRESIDENT of the corporation before you begin your suit. The Secretary of State (512) 463-5555, or the State Comptroller’s Office (800) 252-5555, will give you the information. You will also need the address of the REGISTERED AGENT, or PRESIDENT OR VICE-PRESIDENT. When you file your suit, you 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. Carr's Auto Shop, Inc. d/b/a Carr's Garage. It is your responsibility to insure the proper name is used.

DEFENDANT: This is the party that is being sued.

SERVICE OF CITATION:

After you have filed your Petition, the court will issue and forward the Citation(s) to the Constable's office or process server you have indicated for service on the Defendant. Although the Citation will leave the court promptly, it can take several weeks or more for the Citation to be personally served.

ANSWER:

The Defendant, after being served, must file a written answer to the suit on or before the Monday following the expiration of ten (10) days from the date of service. If he/she fails to do so, a default judgment may be issued if requested by the Plaintiff.

WITNESS:

If there are witnesses, who will not come to Court voluntarily, you may come to Court and as for a Subpoena to be prepared and served to secure their presence in court. This should be done in a timely manner prior to trial to allow for service. Successful service of subpoenas is your responsibility.

TRIAL:

If the defendant in your suit files an answer, the court date should be approximately 45 days after service. You will receive written notice of your court date. It is your responsibility to notify the court of any address changes. Be sure to bring all documents and witnesses that you may need to present your case at trial.

TRIAL BY JUDGE: Your trial will automatically be set in front of the judge unless a jury trial is requested.

JURY TRIAL: If a jury trial is requested, you must pay a jury fee of \$5.00 at least 3 working days before trial. Request for jury trial will ordinarily require the trial date to be reset.

MOTIONS FOR CONTINUANCE:

All motions for continuance (resetting the court date) must be in writing and received by the court no later than 3 (three) working days prior to your Court Date.

AFTER JUDGMENT:

APPEAL:

If you receive a judgment, the defendant has ten (10) days to appeal the case to the County Court in San Jacinto County. Should the Court rule that you recover nothing or should you receive a judgment for less than you requested, you may appeal the case to the County Court in San Jacinto County within ten (10) days. If an appeal is not filed within ten (10) days from the date the judgment is signed, and if a Motion to Set Aside a Default Judgment is not filed within ten (10) days from the date of judgment is signed, the judgment becomes final.

COLLECTING: There are various remedies available to you in attempting to collect the Judgment due to you. The court does not assist you in collecting the judgment. Your remedies to collect your money are as follows:

1. **ABSTRACT OF JUDGMENT-** You may obtain an Abstract of Judgment any time after the 10th day from the date of Judgment from the Court for \$5.00 per Abstract. The purpose for filing an Abstract of Judgment is to put a lien against any real property in the defendant's name. If the defendant sells any real property within ten (10) years from the date of judgment, the amount of judgment must be paid plus interest. The Abstract may be filed in the office of the County Clerk in any County where you think the Judgment Debtor may own property.
2. **WRIT OF EXECUTION-** You may obtain a Writ of Execution any time after the 30th day from the date the judgment is signed. A Writ allows a Sheriff or Constable to try and seize certain non-exempt property from the Defendant. If property is seized, an auction will be held and the proceeds from the sale satisfy the Judgment. The cost for the Writ is \$105.00
3. **WRIT OF GARNISHMENT-** A Writ of Garnishment is available 30 days after the date of judgment.

This is a new lawsuit and is a complicated procedure for which it is recommended you seek an attorney's advice. The cost for this Writ is \$105.00.