

HOW TO FILE A SMALL CLAIMS/DEBT CLAIM SUIT IN THE JUSTICE OF THE PEACE COURT

PLAINTIFF: A person who brings a suit before the Court.

DEFENDANT: The person who is being sued.

SMALL CLAIMS: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.

DEBT CLAIMS: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney's fees, if any. Debt Claim cases in justice court are governed by Rules 500-507 and 508 Part V of the Rules of Civil Procedure.

COURT COSTS: Current filing fees for Cherokee County are listed under FILING FEES. ***If the defendant is located in a different County, please contact that County for the correct amount of service and their required form of payment.***

VENUE: General Rule. Generally, a defendant in a small claims or debt claims case is entitled to be sued in one of the following venues:

- A. The county and precinct where the defendant resides;
- B. The county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred.
- C. The county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or
- D. The county and precinct where the property is located, in a suit to recover personal property.

PREPARATION FOR FILING A SMALL CLAIMS/DEBT CLAIMS SUIT

The responsibility for filling out your petition and civil case information sheet rests with you. Court Clerks will assist you if you have procedural questions only; they CANNOT give legal advice.

1. It is the Plaintiff's duty to provide the correct legal name and address of the person or business your claim is against. There are typically three proper names, they are as follows:
 - PERSONALLY: Where an individual is responsible to you for damages he/she may have caused you as an individual.
 - PROPRIETOR OR PARTNERSHIP: is a business that is not incorporated, but has filed an "**assumed name**" with the County Clerk. e.g. **John Smith DBA Greenhouse Supplies** To determine whether a company or individual has an assumed name, contact the County Clerk's Office in the County where the company is located.
 - CORPORATION: The business which has allegedly caused you damage is incorporated and therefore it is necessary to know the individual's name who will be able to accept service of behalf of the corporation. (The registered agent for service would be listed with the Secretary of State whose phone number is 1-800-252-1386.) e.g. **Greenhouse, Inc. by serving John Smith**

2. It is the Plaintiff's duty to provide the correct address and place of employment or a location where service of a citation may be served by the Constable or Private Process Server. **No post office box will be accepted. No rural route will be accepted without complete and clear directions.**
3. To complete the filing process, a Justice Court Civil Information Sheet, Original Small Claims or Debt Claim Petition, and a Service Members Civil Relief Act Sec 201(b) will be needed and signed by the Plaintiff. **If filing by mail, the Service Members Civil Relief Act Sec. 201(b) signature will need to be notarized.**
4. At any time, after the suit is filed with the Court, if the Defendant comes in and pays off the debt, PLEASE notify the Court so a dismissal or release can be prepared.
5. It is up to you to contact the court with any changes of address that occur during this process.

DISCOVERY:

Pretrial Discovery: Pretrial Discovery is limited to that which the judge considers reasonable and necessary. **Any request for pretrial discovery must be presented to the court for approval by written motion. The motion must be served on the responding party.** The discovery request must not be served on the responding party unless the judge issues a signed order approving the request. Failure to comply with a discovery order can result in sanctions.

REPRESENTATION: You, as an individual, may represent yourself in Justice Court or you may have an attorney represent you.

ANSWER: The Defendant in the suit is commanded to answer the Court, in writing, fourteen (14) days from the date the citation is served upon him. Once the Defendant is served, two things can happen:

- A. If the Defendant in your suit files a written answer, the court will set a trial date no sooner than 45 days out. Notice will be mailed to the Plaintiff and Defendant stating the date and time to appear. It is up to you to make sure the court is aware of any changes in address that may have occurred.
- B. If the Defendant in your suit fails to make an answer, then a Plaintiff who seeks a default judgment against a Defendant **must request a hearing, orally or in writing.** The purpose of this hearing is for you to prove up your damages in the suit.

TRIAL BY JUDGE OR JURY: Any party is entitled to a trial by jury. A written demand for a jury must be filed no later than 14 days before a case is set for trial. A party demanding a jury must pay a fee of \$22.00. If the demand is not timely, the right to a jury trial is waived.

AFTER JUDGMENT: THIS COURT DOES NOT COLLECT THE JUDGMENT FOR YOU.

If you receive a judgment and the defendant does not make a motion for a new trial within 14 days or appeal the case within 21 days after the judgment is signed, the following remedies are available:

1. **ABSTRACT OF JUDGMENT:** If Plaintiff is granted a judgment and so desires he/she may get an Abstract of Judgment from the clerk. The Abstract of Judgment will need to be filed with the County Clerk. This will be recorded on the Defendant's credit history.
2. **WRIT OF EXECUTION:** If you are granted a judgment against the Defendant AND if the Defendant does not appeal within 21 days, you may request a Writ of Execution any time after the 30th day after the judgment is signed. A Writ of Execution enables the Constable in the State of Texas to seize nonexempt property from the Defendant in order to satisfy the judgment.

*****The information above is to assist you and is provided to all parties but the Court may not give legal advice. If you have questions you will want to contact an attorney.*****