

GENERAL INFORMATION FOR FILING SUIT IN JUSTICE COURT

General Disclaimer: The following information is a general representation of the new laws governing Justice Court. This is NOT a complete description. It is highly recommended that you consult the Texas Government Code or any other legal reference before filing a suit.

THE JUDGE CANNOT TALK TO YOU CONCERNING THE DETAILS OF YOUR SUIT. It is the responsibility of the Plaintiff to complete all requirements in filing a petition to begin the suit.

VENUE (Proper location to file a suit): In all civil suits, the defendant has the right to be sued in the county and precinct in which he/she resides. There are some exceptions to this rule. Should you file this suit in this county or precinct because of convenience, there may be a motion by the defendant to transfer venue (request that this suit be transferred to another county or precinct.) It is your responsibility to determine the correct precinct. You may call the Elections office, 432-498-4030, to determine the correct precinct of the defendant.

Justice Court now includes the former Small Claim Courts.

Application of Rules in Justice Court Cases:

Debt Claim: A debt claim is a lawsuit brought to recover a debt by an assignee or 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 fees, if any. Debt claim cases in justice court are governed by Rules 500-507 and 508 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 508 and the rest of Part V, Rule 508 applies.

Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any. Repair and remedy cases are governed by Rules 500-507 and 509 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 509 and the rest of Part V, Rule 509 applies.

Eviction: An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any. Eviction cases are governed by Rules 500-507 and 510 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 510 and the rest of Part V, Rule 510 applies.

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.

Application of Other Rules: The other Rules of Civil Procedure and the Rules of Evidence do not apply except:

(1) when the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or

(2) when otherwise specifically provided by law or these rules.

(f) **Examination of Rules.** The court must make the Rules of Civil Procedure and the Rules of Evidence available for examination, either in paper form or electronically, during the court's business hours.

JUDGE TO DEVELOP THE CASE

In order to develop the facts of the case, a judge may question a witness or party and may summon any person or party to appear as a witness when the judge considers it necessary to ensure a correct judgment and a speedy disposition.

DISCOVERY

(a) Pretrial Discovery. Pretrial discovery is limited to that which the judge considers reasonable and necessary. Any requests for pretrial discovery must be presented to the court for approval by written motion. The motion must be served on the responding party. Unless a hearing is requested, the judge may rule on the motion without a hearing. 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, including dismissal of the case or an order to pay the other party's discovery expenses.

PLEADINGS AND MOTIONS MUST BE WRITTEN, SIGNED, AND FILED

Except for oral motions made during trial or when all parties are present, every pleading, plea, motion, application to the court for an order, or other form of request must be written and signed by the party or its attorney and must be filed with the court. A document may be filed with the court by personal or commercial delivery, by mail, or electronically, if the court allows electronic filing.

Justice Court Civil Case Information Sheet: A justice court civil case information sheet, in the form promulgated by the Supreme Court of Texas, must accompany the filing of a petition and must be signed by the plaintiff or the plaintiff's attorney. The justice court civil case information sheet is for data collection for statistical and administrative purposes and does not affect any substantive right. The court may not reject a pleading because the pleading is not accompanied by a justice court civil case information sheet.

Fees and Statement of Inability to Pay: On filing the petition, the plaintiff must pay the appropriate filing fee and service fees, if any, with the court. A plaintiff who is unable to afford to pay the fees must file a sworn statement of inability to pay. Upon filing the statement, the clerk must docket the action, issue citation, and provide any other customary services.

Defendant's Answer:

Requirements: A defendant must file with the court a written answer to a lawsuit as directed by the citation and must also serve a copy of the answer on the plaintiff.

General Denial: An answer that denies all of the plaintiff's allegations without specifying the reasons is sufficient to constitute an answer or appearance and does not bar the defendant from raising any defense at trial.

(c) **Answer Docketed.** The defendant's appearance must be noted on the court's docket.

(d) **Due Date.** Unless the defendant is served by publication, the defendant's answer is due by the end of the 14th day after the day the defendant was served with the citation and petition, but if the 14th day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; and if the 14th day falls on a day during which the court is closed before 5:00 p.m., the answer is due on the court's next business day.

Counterclaim: A defendant may file a petition stating as a counterclaim any claim against a plaintiff that is within the jurisdiction of the justice court, whether or not related to the claims in the plaintiff's petition. The defendant must file a counterclaim petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. The court need not generate a citation for a counterclaim and no answer to the counterclaim need be filed. The defendant must serve a copy of the counterclaim as provided by Rule 501.4.

Cross-Claim: A plaintiff seeking relief against another plaintiff, or a defendant seeking relief against another defendant may file a cross-claim. The filing party must file a cross-claim petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. A citation must be issued and served as provided by Rule 501.2 on any party that has not yet filed a petition or an answer, as appropriate. If the party filed against has filed a petition or an answer, the filing party must serve the cross-claim as provided by Rule 501.4.

Third Party Claim: A defendant seeking to bring another party into a lawsuit who may be liable for all or part of the plaintiff's claim against the defendant may file a petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. A citation must be issued and served as provided by Rule 501.2.

IF DEFENDANT FAILS TO ANSWER:

Default Judgment. If the defendant fails to file an answer by the date stated in Rule 502.5, the judge must ensure that service was proper, and may hold a hearing for this purpose. If it is determined that service was proper, the judge must render a default judgment in the following manner:

Claim Based on Written Document. If the claim is based on a written document signed by the defendant, and a copy of the document has been filed with the court and served on the defendant, along with a sworn statement from the plaintiff that this is a true and accurate copy of the document and the relief sought is owed, and all payments, offsets or credits due to the defendant have been accounted for, the judge must render judgment for the plaintiff in the requested amount, without any necessity for a hearing. The plaintiff's attorney may also submit affidavits supporting an award of attorney fees to which the plaintiff is entitled, if any.

Other Cases. Except as provided in (1), a plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The plaintiff must appear at the hearing and provide evidence of its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages,

the judge must render judgment in favor of the defendant. With the permission of the court, a party may appear at a hearing by means of telephone or an electronic communication system.

JURY TRIAL DEMANDED

Demand. Any party is entitled to a trial by jury. A written demand for a jury must be filed no later than 14 days before the date a case is set for trial. If the demand is not timely, the right to a jury is waived unless the late filing is excused by the judge for good cause.

Jury Fee. Unless otherwise provided by law, a party demanding a jury must pay a fee of \$22.00 or must file a sworn statement of inability to pay the fee at or before the time the party files a written request for a jury.

INSTRUCTIONS FOR FILLING OUT PETITION SMALL CLAIMS SUIT

The Court will assign the Case number at the top of the page.

CAUTION: It is very important that the suit is styled correctly. Read the information sheet carefully. If you are not sure or have any doubts as to how to style the suit, then you should consult an attorney. The Court and its personnel **CANNOT** give you legal advice. Any questions concerning the information required in the petition should be directed to an attorney, not the Court.

Line 1 PLAINTIFF: Name(s) of the person(s) or business filing the suit as plaintiff.

Line 2 DEFENDANT(S): Name(s) of the person(s) or entity you are suing as defendant.

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. 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: A business that is not incorporated, but does have on file with the County Clerk an assumed name for example "Jane Smith, dba Greenhouse Supplies".

CORPORATION: The business which has allegedly caused you damage is incorporated and therefore it is necessary to know the individual's name who is legally able to accept service on behalf of the corporation. The authorized agent for service would be listed with the Texas Comptroller's Office. You may use the Internet by typing: www.ecpa.cpa.state.tx.us or phone 1-800-252-1386. Enter the company's name or Texas Sales Tax ID #. You may call the Texas Comptroller's office at (432) 550-3027 to obtain the tax ID #.

Line 3: Defendant's address. Address MUST be accurate for the purpose of "Citation Service."

If there is more than one defendant, then use these lines to record their names and addresses.

Line 4: COMPLAINT: Provide a brief explanation for the reason for the suit. You must provide enough information so that the defendant will know exactly why he/she is being sued.

Line 5: RELIEF: Amount you are suing for goes in the \$ blank and/or the description of property and its value that you want returned.

Line 6: In some suits the Plaintiff is entitled to court costs, attorney fees, property and other items that may be permitted by law. List these items on this line.

Line 7: SERVICE OF CITATION: Provide additional address, such as place of employment, where the defendant can be served the citation if unable to reach at residence.

Line 8: If you desire to be notified by email, indicate such and provide email address.

Line 9: Plaintiff's Signature and residential information: All plaintiffs must sign and swear to the information contained in the petition in front of the Judge/Clerk or a notary public. Keep the Court informed of your current address and phone number

Line 10 DEFENDANT(S) INFORMATION (if known): This information provides accurate identification of the defendant for the purpose of collecting a judgment debt.

File your petition with the appropriate Court and pay the filing and service fees. Filing fee is \$46.00. Service fee within Ector County is \$80.00 **per** defendant payable to the precinct receiving the suit.

The Court will issue a citation and the defendant(s) will be served by the Sheriff's office.

PETITION: SMALL CLAIMS CASE

CASE NO. (Court use only) _____

In the Justice Court, Precinct _____,
ECTOR County, Texas

1) PLAINTIFF _____

VS.

2) DEFENDANT(S): _____

3) Defendant(s) Address: _____

4) COMPLAINT: The basis for the claim which entitles the plaintiff to seek relief against the defendant is:

5) RELIEF: Plaintiff seeks damages in the amount of \$ _____, and/or return of personal property as described as follows (be specific): _____, which has a value of _____.

6) Additionally, plaintiff seeks the following: _____

7) SERVICE OF CITATION: Service is requested on defendant(s) by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of the Court. Other addresses where the defendant(s) may be served are:

8) If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address:

_____.

9) Plaintiff/Petitioner's Printed Name: _____

Plaintiff/Petitioner's/Attorney's Signature: _____

Plaintiff/Petitioner's/Attorney's Street Address: _____

Plaintiff/Petitioner's/Attorney's City, State, Zip _____

Plaintiff/Petitioner's/Attorney's Phone Number: _____ Phone: _____ Fax: _____

10) DEFENDANT(S) INFORMATION (if known for accurate identification and collection of post judgment debt):

DATE OF BIRTH: _____

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

DEFENDANT'S PHONE NUMBER: _____

CAUSE NO. _____

VS.

§
§
§
§
§
§

IN THE JUSTICE COURT

PRECINCT # _____

ECTOR COUNTY, TEXAS

AFFIDAVIT OF KNOWLEDGE OF MILITARY STATUS

I, the above-named Plaintiff, being duly sworn on oath, do depose and say that, to my knowledge:

_____ The above-named Defendant **is not** on active military duty

(To check this line, you must provide a brief description below of how you arrived at this conclusion. For assistance in determining status, please visit www.dmdc.osd.mil/scra/owa/home)

_____ The above-named Defendant **is** on active military duty and has waived his or her rights under the Service Members Civil Relief Act of 2003. *(Please provide a copy of the waiver to the Court)*

_____ The above-named Defendant's military status is unknown by me.

I, the above-named Plaintiff, do hereby swear under penalty of perjury (as that term is defined and set forth by Title 18 of the United States Code), that the information contained in this affidavit is true and correct to the best of my knowledge.

PLAINTIFF

Subscribed and sworn to before me on this, the _____ day of _____, 20____.

Notary/Court Clerk