

**JUSTICE COURT
PRECINCT 2
WOOD COUNTY, TEXAS
WESLEY CRIDDLE – JUSTICE OF THE PEACE
903-569-3802 903-569-6270 FAX**

**FILING A SMALL CLAIM SUIT
(PLEASE READ CAREFULLY BEFORE COMPLETING THE PETITION)**

1. 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 \$10,000.00 excluding statutory interest and court costs but including attorney fees, if any.
2. In most civil suits, the defendant 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 (this means to change courts), a hearing on the motion shall be set unless both parties agree in writing, to the transfer.
3. It is your burden as a plaintiff to sue the defendant in their proper legal capacity, of which there are three most commonly used. (Consult with your attorney if you're unsure of the defendant's proper legal capacity.) The most common are as follows:

Personally:

Where an individual is responsible to you for damage he/she may have caused as an individual.

Proprietor or partnership:

A business that is not incorporated, but does have on file with the County Clerk an assumed name, e.g. John Smith dba Green Co.

Corporation:

If the business which has allegedly caused you damage is incorporated, 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 may 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 State 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 primarily in the business of loaning money, (banks, credit unions, savings and loans), you are not allowed by law to file in Small Claims Court. Also, an action in small claims court may not be brought by an assignee of the claim or other person or collection agency seeking to bring an action on an assigned claim.
5. When you have filed the completed petition stating the detailed facts and circumstances of your suit, a citation along with a copy of your petition will be served on the defendant notifying him that a suit has been filed against him in this court. At the time of filing your petition you will need to file a Case Information Sheet and, if the defendant is an individual, a Military Status Affidavit.

The citation will order the defendant to file a written answer to the law suit by the end of the 14th day after the defendant is served, unless the 14th day is a weekend or holiday. The trial date will be set at the earliest

available date following the defendant's answer, with at least 45 days notice to all Parties. If you are not contacted regarding your court date within about 8 weeks of filing, you will need to call our office to check the status of your case.

- **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. Documents filed in person may be signed in front of the clerk.**
- **In addition to the original petition and any attachments, you must provide the court with a copy of the petition and all attachments for each defendant to be served.**
- **Remember to send all other parties a copy of any document you file with the court after your original filing.**

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. Often, this type of suit does not warrant hiring an attorney; however, you are free to do so if you wish, as is the defendant. As the amount of the law suit increases, so may the need for having an attorney. An individual may be represented in a small claims case by someone who is not an attorney as long as they are not being compensated for the representation.

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 or Turnover Order.

An **Abstract of Judgment**, when properly filed, puts a lien on any real property the defendant may own in a county where the Abstract is recorded. An Abstract can be obtained after the judgment has been signed. The Abstract of Judgment must be filed with the County Clerk's office in whichever county or counties you believe the defendant may own property.

A **Writ of Execution** may be obtained thirty (30) days after the judgment has been signed. This document authorizes the Sheriff or Constable to seize 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 his bank to freeze the monetary assets of his bank account and to appear and make answer to the Garnishment suit. An attorney should probably be used because the court's clerical staff will not be able by law to assist you in drafting the documents that are necessary, and the bank being sued will most certainly employ an attorney.

A **Turnover Order** is available before and/or after the judgment is signed. 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 court's 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 a preponderance of the evidence that the defendant you are suing is the proximate cause of your damages. All damages and evidence necessary to meet your burden must be available on the date of the trial.

10. Pre-Trial discovery is available to either party but only by written motion, and must be approved by the Court. It needs to be completed prior to the trial.

11. Motions for Continuance must be made by sworn motion 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. Pre-Trial Orders or conferences: If your suit is contested, both you and the defendant may be required to complete a pre-trial order or attend pre-trial conference prior to the commencement of the trial. The Court will send these orders to you with specific instructions.

13. Prohibited Conduct:

- **The judge and the clerks are prohibited by law from giving any LEGAL ADVICE.**
- **Ex-Parte Communication, or discussing the case with any member of the Court, including Court Clerks, without the other side present is absolutely forbidden.**

More information regarding the new Rules for filing a suit in Justice Court may be found in Part V Texas Rules of Civil Procedure. You may access these Rules online. These rules are also available for review at the Justice Court, Pct. 2 office or through the Wood County website, Justice of the Peace, Pct. 2.