SMALL CLAIMS CASE PROCEDURES

Small Claims Cases are lawsuits 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. The purpose of this information is to help you understand the basic procedures in these courts, but is not intended to present complete coverage of them.

LEGAL INFORMATION VS LEGAL ADVICE

The Judge or Court Personnel cannot give Legal Advice. Below is information the Court can and cannot provide.

We Can	We Cannot
Explain and answer questions about how the court works.	Tell you whether or not you should bring your case to court.
Provide the number of the local lawyer referral service, legal services program, Texas State Bar lawyer referral service, and other services where legal information is available	Tell you what words to use in your court papers. However, we will check your papers for completeness. For example, we check for signatures, notarization, correct county name, correct case number and presence of attachments.
Give general information about court rules, procedure, and practices.	Recommend what to say in court.
Provide court schedules and information on how to get a case scheduled.	Give an opinion about what will happen if you bring your case to court.
Give you information from your case file.	Talk to the Judge for you or let you talk to the Judge in private.
Give you samples of court forms that are available.	Change an order signed by a judge.
Usually answer questions about court deadlines	Tell you what deadlines apply in your case.

PREPARATION FOR FILING A SMALL CLAIMS SUIT

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

DEFENDANT: One who is being sued.

SMALL CLAIMS: 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. No attorney is needed for filing.

COURT COST: Filing fee is $41.00 – Service fee is $60.00. If Defendant(s) is to be served in another County, please notify clerk at time of filing.

JURISDICTION: Civil suits concerning amounts in controversy that do not exceed $10,000.00.

VENUE: A suit shall be brought in the county and precinct in which one or more defendants reside. Under some circumstances, the Plaintiff may have a choice of courts in which to bring a claim. For example, if the Defendant lives in one precinct but does business or contracted to perform services in another precinct, either precinct can be selected as the place to bring suit.

1. It is the Plaintiff's duty to provide the correct legal name and address of the person or business your claim is against. Correct names and addresses are vital to the Plaintiff's case because the Court cannot grant judgment against a Defendant who is improperly named in the petition. There are typically three proper names, they are as follows:

PERSONALLY: Where an individual is responsible to you for damages he may have caused you as an individual.

PROPRIETOR OR PARTNERSHIP: A business that is not incorporated, but does have on file with the County Clerks and assumed name e.g. *John Smith D B A Greenhouse Supplies*. To determine whether or not this person has filed an assumed name you would contact the County Clerk's Office at the Gregg County Courthouse.

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 on 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 or on the internet at open.cpa.state.tx.us)** 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 Sheriff's office. No post office box or rural route will be accepted without complete and clear directions.

3. The Plaintiff can sue for Court cost. The only way a Plaintiff can sue for attorney fees is if there is an attorney of record representing the Plaintiff.

4. A Statement of Claim (provided by the Court) will be needed. This statement must be signed by the Plaintiff.

5. Once the Defendant is served, the Defendant has an Answer date that is calculated as follows: From the date of service, count FOURTEEN (14) days. On the Defendant's answer date, three things can happen:

A. The Defendant can deny that they owe the Plaintiff. The case will be set for trial and both parties will be notified of a Court date by regular mail.

B. If a continuance is request – **503.3(b) Texas Rules of Civil Procedure** – Must be in writing. The Judge, for good cause, may postpone any trial for a reasonable time.

C. The Defendant can agree to the suit and will sign an Agreed Judgment against them. The clerk will instruct the Defendant to contact the Plaintiff and work out payment.

D. If the Defendant does not make an answer, then a Default hearing will be held. The clerk of the Court will notify the Plaintiff as to the date of the hearing by regular mail.

6. At any time, after the suit is filed with the Court, if the Defendant comes in and pays off debt to Plaintiff, **PLEASE** notify the clerk so a dismissal can be prepared.

TRIAL

Proceedings in a Small Claims Case are less formal than in other civil courts. The Plaintiff's side of the case will be presented first. The Plaintiff should offer any documents which support the plaintiff's claim and present any witnesses at this time. The Judge may ask some questions to clarify some of the points necessary to reach a fair decision. The Defendant is then entitled to ask questions of the Plaintiff and any witnesses.

After the Plaintiff's case is presented, the Defendant will have an opportunity to present the Defendant's side of the case. It may be the Defendant's position that the Plaintiff is wrong in the way the Plaintiff says the events occurred. The Defendant may say that the Plaintiff's account of the events is correct, but that the Plaintiff is demanding too much money. The Judge can ask the Defendant and any witnesses' questions, and the Plaintiff can ask them questions also.

On the day of the court hearing, be prepared for trial. Bring all evidence and witnesses that you will need to prove your case. Only facts relevant to your case will be heard.

IF THE DEFENDANT PREVAILS

The Plaintiff will recover no money and must pay the court costs. (costs were pre-paid to the court when suit was filed)

IF THE PLAINTIFF PREVAILS
Default Judgment, Agreed Judgment, or Judgment

The Defendant will be ordered to pay the Plaintiff the amount of money awarded by the Court, plus court costs. If the Defendant does not pay the money awarded by the Court, then the Plaintiff can request:

- Abstract of Judgment - The fee is $5.00. The Abstract of Judgment will need to be filed with the County Clerk.

- Thirty (30) days after the issuance of a judgment. The Plaintiff can request a Writ of Execution. The fee is $130.00, if the Defendant resides in Gregg County. This Writ enables the Constable or Sheriff to go out and levy on property of the Defendant's that is not exempt by the laws of the State of Texas.

APPEAL

- Either party has the right to appeal to the County Court. To appeal, a party must file an appeal bond within twenty-one (21) days from the date of the judgment. The bond amount for Plaintiff is $500.00 and is required to prefect the appeal. The bond amount for Defendant is equal to twice the amount of the judgment and is required to prefect the appeal. An appeal bond may be posted either in cash, or by having two (2) sureties sign a written oath where they pledge to be responsible by listing their non-exempt personal property which may be seized and sold to satisfy of the bond amount. A pauper's affidavit may be filed in lieu of cash or surety. The pauper's affidavit must meet the requirements of Rule 502.3(b) Texas Rules of Civil Procedure. The cost to file an appeal with the Justice of the Peace is $26.00
- Within seven (7) days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties either in person, by mail or courier, by fax, or by email if provided by the receiving party.

If a party appeals to the County Court, the Clerk of the County Court will notify the other party of the new trial.

The new trial will be held before another Judge or Jury, as if the case had never been tried in the Justice Court.

HONORABLE TALYNA CARLSON
JUSTICE OF THE PEACE, PCT #3

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