



Hardin County Justice of the Peace  
Precinct 5

P.O. Box 8594  
Lumberton, Texas 77657  
(409) 755-2862 ♦ (409) 755-7603 Fax



W. W. "Butch" Cummings  
JUSTICE OF THE PEACE

## Filing a Small Claims Suit

### Venue

Generally, suit should be filed in the county and precinct where one or more of the defendants reside. However, there are many exceptions to this rule.

### Jurisdiction

Jurisdiction, defined as what the court may render judgment for, in Small Claims Court is for civil matters in which the amount of controversy is not more than \$10,000.00. A judgment in Small Claims Court shall be for money only, not for the return of personal property, etc.

An action in Small Claims Court may not be brought by:

1. An assignee of the claim or other person seeking to bring an action on an assigned claim;
2. a person primarily engaged in the business of lending at interest; or
3. a collection agency or agent.

### Filing Suit

The responsibility for filling out your petition rests with you, the plaintiff. Court clerks will assist you if you have procedural questions. The filing fee is twenty-seven dollars (\$27.00). In addition, there is a fee for serving the defendant and that fee is seventy-five dollars (\$75.00) per defendant to be served in Hardin County. If you are filing on a defendant who resides outside of Hardin County, you must contact this court for service fees.

### Citation

A citation is sent to the Constable for service on the defendant in Hardin County. Out of county service is sent to either the Sheriff or Constable, depending on the information you provide the court. Outside the State of Texas, you will be responsible for providing us with the following information: the agency to send the citation to, their address and phone number and the amount they charge for service.

### Answer

The defendant in your suit is commanded to answer the Court, in writing on the first Monday following the expiration of ten (10) days from the date the citation was served upon him.

## **Representation**

As an individual, you may represent yourself or have an attorney represent you in a Small Claims suit. If as the plaintiff you are in the business of loaning money, either primarily (banks, credit unions, savings and loans) or secondarily (credit cards or interest charge accounts), you are not allowed to file in Small Claims Court; however, an attorney representing any of the above may file suits on behalf of the above in Justice Court. Action in Small Claims court may not be brought by an assignee of the claim or other persons seeking to bring action on an assigned claim or a collection agency.

## **Default Judgments**

If the defendant in your suit fails to appear in court on the trial date, you will be asked to briefly state the facts of your case and present any written documents you may have to support your case. This testimony will be taken under oath.

## **Trial by Judge or Jury**

If the defendant in your suit files a written answer, the court date should be approximately six to seven weeks after service. (See additional information below for alternate service that could delay serving the citation). Notice will be mailed to you, the plaintiff, and to the defendant stating the date and time to appear in Court. Bring all information you need to support your claim. If you have any witnesses, you should bring them. If you have witnesses to your suit who will not come to court voluntarily, you may ask the court to subpoena those individuals prior to trial. The fee for filing and service of the subpoena is seventy-five dollars (\$75.00) for service. Allow at least a week for service of the subpoena. All motions for continuance (resetting your court date) must be in writing and received no later than three working days (weekends and holidays excluded) prior to your court date.

## **Post Judgment Remedies**

This court does not collect the judgment for you nor can we force the defendant to pay the judgment. If you receive a judgment against the defendant and if the defendant does not make a motion for new trial within five days or appeal the case within ten days after the court date, your remedies to collect your money are as follows:

**Abstract of Judgment** – You may obtain an abstract of judgment on the eleventh day after judgment. The fee for obtaining an abstract of judgment is five dollars (\$5.00). You should then take the abstract to the County Clerk's office in the Hardin County courthouse in order to file the judgment in Hardin County. The purpose of 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 (land, building, etc.) within 10 years from the date of judgment, the amount of judgment must be paid plus interest. It is the plaintiff's responsibility to notify the court once the judgment has been satisfied, the court will direct the plaintiff with further action.

**Writ of Execution** – If you are granted a judgment against the defendant and if the defendant does not appeal within (10) days after the court date, you may obtain and file a Writ of Execution any time after the 30<sup>th</sup> day from the date of judgment. A Writ of Execution allows a Sheriff or Constable in the State of Texas to try and seize certain non-exempt property from the defendant. The cost for filing a Writ of Execution upon a defendant who resides in Hardin County is one hundred dollars (\$100.00).

You may have other remedies available but they are more complicated and are not covered here. Please consult an attorney for any other remedies you may have to collect your judgment.

Should the defendant pay any portion of the amount owed after you have received a judgment, it is necessary for you to notify the court of the credit or notify the court that the judgment has been satisfied in full if the defendant pays the entire judgment amount. If you address changes within the ten (10) year period following the judgment, you should notify the court of your new address.

### **Additional Information:**

The defendant in a Small Claims Suit may be served personally by the Constable or Sheriff of the County, or in certain cases by private process. Sometimes, the defendant avoids service; therefore, an alternate method of service is necessary. This method is referred to as "alternate service". The Constable or Sheriff may request this alternate service which allows him to serve anyone over the age of sixteen at the defendant's usual place of abode, business, or in a method the Judge believes will be reasonable effective to give the defendant notice of the suit.

### **Suit filed on A Corporation**

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 the proper legal capacity.

If the party you want to sue is a corporation, you must find the name of an officer of the corporation before you begin the suit. The Secretary of State (512)463-5555 or the State Comptroller's Office (800) 252-2555 will give you the information. Ask for the name and address of the Registered Agent, President, or Vice-President of the corporation. When you file the suit, you will be filing against the corporation and serving the citation on one of the above-mentioned officers of the corporation. It is necessary to know the individual's name that is able to accept service on behalf of the corporation. Example: Greenhouse Inc. DBA Greenhouse Supplies by serving John Doe. Follow other instructions for the remainder of the suit.

### **Suit filed on A Company**

If the party you want to sue is an individual doing business under an assumed name (sole proprietor of the business) or a partnership, you must check with the County Clerk's office in the county of the business to determine whom the owner(s) of the business. Example: John Smith DBA Greenhouse Supplies.

### **Individual**

Where an individual is personally responsible to you for damages he may have caused to you. You must provide the court with an accurate physical address. If service is attempted and the address is not correct an additional service fee will be required.

**Please note once again that if you have additional procedural questions, please contact our office. This office will not answer legal questions.**