

Judge Sissy Hernandez
Justice of The Peace, Precinct Two
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Small Claims & Justice Court Suits

*The following information is not offered as legal advice, but is procedural information only.
This information is not exhaustive. The court and its staff cannot give legal advice.
You should seek legal counsel only from a licensed attorney.*

Filing a Small Claims or Justice Court Suit: Please read this packet completely before filing your suit. Legal advice can only be obtained from an attorney. **Our Court Clerks are trained in procedure only, and cannot give any legal advice.** This is for the clerk's protection as well as your own. The following procedural instructions are the only information you will receive from this office. You may need to consult an attorney to protect your interests. There are two civil forums over which the Justice of the Peace presides: Small Claims Court and Justice Court. Some types of case may be filed in either forum, while others are restricted to a certain forum. There are other similarities and differences that you should consider prior to filing suit.

THE TEXAS STATUTES

The Texas Statutes are available on-line at: <http://www.capitol.state.tx.us/statutes/statutes.html>.
(See Other Links on web page)

VENUE

A suit should be filed in the County and Precinct where one or more Defendants reside. (CPRC 15.082). However, there are exceptions to this rule. For further information, see "[Venue in Justice Court Suits.](#)"

JURISDICTION

A **Justice Court Suit** is a civil suit for money damages, possession of real property, and enforcement of liens on personal property. The amount of controversy must total \$10,000 or less, interest excluded.

A **Small Claims Court Suit** is a civil suit for money damages only (you may not recover personal property). The amount in controversy must total \$10,000 or less, interest included. For more information please read "[Comparison of Justice Court and Small Claims Court](#)".

DAMAGES

The amount of money you are suing for is called "damage". The amount of damage sought must be supported by evidence. **A plaintiff may not diminish the amount of the underlying claim in order to maintain a suit in the Justice Court or Small Claims Court! For example,** if a Plaintiff states that the suit is for "\$10,000" and the evidence shows that the damages are actually greater than \$10,000, the court loses jurisdiction of the case, and the lawsuit must be dismissed and refilled in a court of competent jurisdiction. Additionally, a Plaintiff cannot tell the court that the damages are greater than \$10,000, but the Plaintiff is willing to "settle for less".

PARTIES TO THE SUIT

NAME OF THE PLAINTIFF: This is the party that is instituting the suit. Only the individual(s) or company (ies) named at the top of the Petition as Plaintiff(s) may collect a Judgment in favor of the Plaintiff. *You must sue the Defendant(s) in their proper legal capacity.*

As an Individual: You must sue the Defendant individually in the following two situations:

- (1) The Defendant is personally responsible to you for damages he/she may have caused you, and
- (2) The Defendant as an individual operating a proprietorship or partnership is responsible to you for damages he/she may have caused.

As a Proprietorship or Partnership: A proprietorship or partnership is a business that is not incorporated, but has filed an "Assumed Name" with the County Clerk. For example, "John Smith, d/b/a Smith Plumbing Company." To determine whether a company or an individual has an assumed name you must contact the County Clerk's office in the County where the company is located.

As a Corporation: If the business that has injured you is incorporated, you must contact the **State Comptroller's Office at (800) 252-1386, or the Secretary of State at (512) 463-5555.**

Ask for the name and address for service of the Registered Agent for service of the corporation (the President or Vice-President will also work). This is the person who has been authorized to receive information regarding lawsuits filed against this corporation. For example: when completing your complaint, the name of the Defendant should read "**ABC Corporation, by serving John Smith, Registered Agent.**"

CITATION

A Constable or Sheriff, in the County where the Defendant is located, must serve each Defendant personally, usually. Fees for service vary by County: El Paso County charges \$55.00 per Defendant, plus Court cost. If the Defendant is to be served in a County other than El Paso, you will need to call that County Courthouse in which the Defendant will be served. Ask who serves Civil Citations for Justice Court suits in that County (usually a Constable or Sheriff) and call the appropriate office. Find out the name, address, and service fees for civil citations.

It is your responsibility to insure service of your citations. If you obtain a better address for the defendant, call the Court or (Constable) and provide the new information as soon as possible.

NOTE: Except for citations and papers served by personal process, you must mail a copy of all papers filed with the court to all other parties to the lawsuit.

COSTS OF COURT

Filing fees + Service fees \$55.00 per defendant (see "Citation" above)

Small Claims Filing Fees are \$12.00 **Starting January 1st, 2008 \$25.00**

Justice Court Filing Fees are \$17.00 **Starting January 1st, 2008 \$25.00**

(Cash or money orders only)

STATING YOUR CLAIM

State the nature of your claim fully, listing specific facts and circumstances about your claim. You must itemize how you obtained the total amount of your claim if it involves more than one item.

AFTER SUIT IS FILED SERVICE OF CITATION

After you have filed your petition the Court will issue and forward the Citation(s) to the Constable or Sheriff's office you have indicated for service on the Defendant(s). Although the Citation will leave the Court promptly, it can take several weeks or more for the Citation to be personally served. It is your responsibility to ensure service of your Citation.

Check periodically by telephone either with this office or the Constable or Sheriff's office directly.

ANSWER

Once the Citation has been served the **Defendant must file a written answer** to the suit on or before the Monday next following the expiration of ten days, beginning with the date of service. Take Note * **Sworn accounts must have a sworn answer** * and answer all **Discovery** (see below) If he/she fails to do so, you (Plaintiff) will be notified by the Court to appear for a "Default Hearing." You will be asked to briefly state the facts of your case and present any documentation to substantiate those damages. You **MUST** prepare a written itemization of your damages.

ADDRESSES AND ADDRESS CHANGES

Each party or the party's attorney must provide the Clerk of the Court with written notice of the party's name and current residence or business address. Failure to provide this information may result in a fine of not more than \$50.00. The notice must be provided at the time the party files its initial pleadings with the court or not later than 7 days after the Clerk of the Court requests the information. If the party's address changes during the course of a civil action, the party, or the party's attorney must provide the clerk of the court with written notice of the party's new address. Information provided to the Clerk of a Court under this section is confidential and may not be disclosed to the public without the express authorization of the Court.

SERVICEMEMBERS' CIVIL RELIEF ACT (SCRA)

If the defendant does not file an answer to the lawsuit, or does not appear in court, the plaintiff will NOT be able to receive a "default judgment" unless the plaintiff first files with the Court a **Service members' Civil Relief Act Affidavit** stating, under oath, that the **defendant is not in the military** service on active duty status. A **false statement in this affidavit is a violation of Federal Law!** If a plaintiff does not have personal knowledge of the defendant's military status, the Department of Defense maintains a secure website where the Plaintiff can obtain a status record. (see Other Links on web page)

This website requires registration of name and address, fax and telephone numbers, email address and mother's maiden name, in order to use the website. The form can be downloaded from the court's website, or requested from the address below:

Department of Defense
Manpower Data Center (DMDC)
Military Verification Service
1600 Wilson Boulevard, Suite 400
Arlington, VA 22209-2593
Telephone 703-696-5790
FAX: 703-696-4156

Email Helpdesk: sscra.helpdesk@osd.pentagon.mil

REPRESENTATION

In Small Claims Court/Justice Court, a party may represent himself regardless of whether he is an individual, proprietorship, or corporation. The Texas Rules of Evidence and Texas Rules of Civil Procedure are in effect in Justice Court suits, but not in Small Claim Court suits.

TRIAL PREPARATION TRIAL

If the Defendant files a written answer in a Justice Court case, El Paso County Local Rules require that 45 days pass before the case can be set for trial. You will receive written notice of your Court date. If you change your address or phone number please notify the Court immediately. **Please arrive on time** for your scheduled trial or hearing.

Parties who are not represented by attorneys should prepare carefully for trial. Please refer to the Small Claims Hearings Trial Preparation Tool enclosed. Failure to prepare may result in loss of the case due to failure of proof.

DISCOVERY

Discovery is a broad term used to describe many different ways of obtaining information and evidence prior to trial, to be used at trial. While discovery is common in Justice Court cases, the permission of the judge must be sought for limited discovery in Small Claims cases. Examples of discovery include:

- Interrogatories (written questions requiring sworn answers);
- Requests for Admissions (written statements requiring sworn admission or denial);
- Requests for Production (written requests to produce evidentiary items for examination by the opposing party prior to trial) less common at the Justice Court level, oral depositions of witnesses are taken before a court reporter. Most discovery documents come with directions attached. Read them carefully! **Failure to respond to discovery in a timely manner may result in the loss of the case.**

NO WRITTEN RECORD

The Justice of the Peace forums are not "courts of record." There is no court reporter recording witness testimony. Recording devices are not permitted without the judge's prior consent.

PROPER DRESS IS REQUIRED

All requirements pertain to both adult and juvenile males and females unless otherwise noted. Failure to comply may result in the resetting of the case to a later date, or in the extreme, contempt of court:

- ✓ Shoes are required.
- ✓ No sleeveless shirts
- ✓ No shorts (women are permitted to wear dress shorts with hosiery)
- ✓ No exposed midriffs
- ✓ No clothing displaying offensive words or pictures (the Court retains the exclusive right to define "offensive" on an individual basis.
- ✓ No hats (exception: **religion**)
- ✓ Cleanliness. (If necessary, washrooms are available in the building)
- ✓ Officers of the court are held to the higher standards generally recognized in Texas Courts.

INFANTS AND SMALL CHILDREN should be left with a sitter or at home in the care of a competent adult. There are no childcare facilities in the courthouse. Loud or crying children should be taken out of the courtroom.

SUBPOENAS

Witnesses: If there are witnesses who will not come to Court voluntarily, you may request that a Subpoena be prepared and served to secure their presence in Court. This should be done at least two weeks before trial in order to allow for service of the Subpoena. The Court does not guarantee that service will be obtained. Successful service of witness subpoenas is your responsibility. There is not a charge for the Court to issue a Subpoena, but there is a service fee (See "**Citation**" above.), and a \$10.00 bill must be attached to the top of the Subpoena.

Evidentiary Subpoenas: If the Defendant or any other witness has documentation that you do not have, and that is necessary to prove your case, you may have the person who has control of the evidence subpoenaed to bring the documentation to Court. The items you want must be listed clearly and attached to the Subpoena. All of the other information mentioned above is also applicable to evidentiary subpoenas.

JURY REQUEST

If you desire a trial by jury you must pay a jury fee of \$5.00 at least two working days (48 hours) prior to trial. Requests for a jury trial ordinarily require the trial date to be reset. Jury trials often last several hours longer.

MOTIONS FOR CONTINUANCE

All Motions for Continuance, or requests to reset the Court date, **must be in writing** and received by the Court **no later than three working days prior to your Court date**. Weekends and Holidays are excluded. The Plaintiff and the Defendant are each entitled to request one reset "only for good cause," and all other reset requests must be made by agreement of both parties. (Gov't. Code 28.033)

WHAT HAPPENS AFTER TRIAL? APPEAL INFORMATION

Either party has ten (10) days in which to appeal the Judge's decision. **An appeal bond must be filed with the Court on or before 4:30pm on the 10th day after the date of Judgment.** Appeals filed after this date will be denied.

- Contact the Court and find out the amount of the appeal bond required for your appeal.
- Prepare a Surety Bond for the entire amount of the Appeal Bond required by the Court.
- Pay a \$10.00 Transcript fee

The Court will then prepare a Transcript of the pleadings on file in your case and send it to the County Court Clerk. All Court contact from this point on will be with the El Paso County Court. There will be filing fees required from the County Court, and they will contact the party who is appealing regarding payment of those fees.

MOTION FOR NEW TRIAL

Motions for New Trial must be filed in writing within five (5) days from the date of the Judgment

COLLECTION OF JUDGMENTS

If you receive a Judgment against the Defendant and the Defendant does not file a Motion for New Trial within five days, does not file an Appeal within ten days, or does not pay the Judgment within ten days you may seek other remedies to collect your Judgment. The Justice Court cannot assist you in collection of your Judgment. Below are listed some remedies that are available to you, and that may assist you in the collection of the Judgment.

- **ABSTRACT OF JUDGMENT:** You may obtain an Abstract of Judgment any time after the 11th day from the date of Judgment. The cost of an original Abstract is \$5.00, and you may obtain them from the Court. The Abstract may then be filed in the office of the County Clerk in any County where you may think the Judgment Debtor may own real property. The Court can also provide a short list of the surrounding County Clerk's offices where you could file the Abstract.
- **WRIT OF EXECUTION:** You may obtain a Writ of Execution any time after the 30th day from the date of Judgment. A Writ of Execution allows a Sheriff or Constable to try and seize certain non-exempt property from the Defendant. If property is seized, an auction will be held and the proceedings from the sale will satisfy your Judgment. The cost of a Writ of Execution varies from County to County, and you may also want to contact the Constable or Sheriff in that County to discuss what items are considered non-exempt and may be subject to execution.
- **WRIT OF GARNISHMENT:** A Writ of Garnishment is available 30 days after the date of Judgment. This is a new lawsuit and is a complicated procedure. We recommend that you consult an attorney.
- **TURNOVER WRIT:** This process requires a Court hearing. We recommend that you consult an attorney.

HOW TO PAY JUDGMENTS WHEN THE JUDGMENT HOLDER CANNOT BE FOUND

If one party to whom a judgment is owed cannot be located, it is possible to pay the judgment into the registry of the court on a showing of good faith attempts by the judgment debtor to locate the prevailing party. Once the court is satisfied that the party cannot be located, the payment can be accepted and the court can issue a release. The money is then held until claimed by the party to whom it is owed, or the money is forfeited to the State of Texas.

MEDIATION

The court and its staff cannot negotiate settlement for you. Some disputes—like those between relatives and neighbors—are best handled by an agreement reached through mediation as an alternative to litigation. Other cases that lend themselves to mediation are suits where the relationship between the parties is likely to outlive the judgment— or where performance is desired, such as completion of a construction job. Even if mediation is unsuccessful, it serves as an opportunity for the parties to determine what the issues are before appearing in court. Some mediators work for profit, and others operate as non-profit agencies. Some mediators are licensed attorneys and some are not. Mediation is private, faster and often less expensive than the court system, deals with both feelings and issues, helps restore peace and improve or restore relationships. Mediators can be located through the local Bar Association or the telephone book under “Mediators”. **Occasionally the judge of the Justice Court will order parties to mediation as part of the court processes.**

STATE OF TEXAS, COUNTY OF EL PASO

NO. _____

)(JUSTICE OF THE PEACE COURT

)(

VS.

)(PRECINCT TWO

)(

)(EL PASO COUNTY, TEXAS

SERVICEMEMBERS CIVIL RELIEF ACT AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared the below-named affiant, who upon oath deposed and stated:

1. I am over the age of eighteen (18) years and am competent to make this affidavit. I am the
 - Plaintiff
 - Plaintiff's agent in the above-entitled and numbered matter.
2. I have
 - made a personal investigation
 - personally reviewed the business records of the Plaintiff
 - defendant waived his/her rights to the service members civil relief act (bring prove)
3. As a result of the investigation or review, it is my belief that the above-named defendant
 - is not in the military service on active duty, and is not a dependent of a service member on active duty
 - is in the military service on active duty
 - I have been unable to determine whether or not the defendant is in the military service on active duty
4. **I understand that any false statements in this document are made under penalty of perjury, and that making a false statement is a violation of Federal Law and is subject to both fine and imprisonment.**

DATED this ____ day of _____, 200____.

Affiant

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 200____.

Notary Public Court Clerk

VENUE IN JUSTICE COURT SUITS

Does not apply to Small Claims Suits All references in parentheses are to Texas Civil Practice and Remedies Code **General Rule (15.082)** County and Precinct where one or more of the defendants reside

Suit for Rent (15.091) Precinct in which all or part of the property is located

Suit on a Contract (15.092)

- (a) Suit on a written contract that promises performance may be brought in the precinct where the labor was to be performed
- (b) Suit on an oral or written contract for labor actually performed may be brought in the precinct where the labor was actually performed
- (c) Suit on a contract for goods, services or loans for personal, family or household use may be brought where the contract was signed or where the defendant resides.

Suit against a corporation or association (15.094)

Precinct (a) where all or part of the cause of action arose;

(b) where the corporation has an agency or representative or

(c) where the principal office is located.

Insurance Companies (15.096)

Precinct in which all or part of the insured property is located in the case of a property claim. Precinct in which the injured person resided when the injury occurred.

Suit on a Tort (15.093) Tort suit for damages may be brought in the county and precinct in which the injury was inflicted.

VENUE IN SMALL CLAIMS COURT SUITS

Does not apply to Justice Court Suits

All references are to Texas Government Code 28.011 General Rule County and Precinct where the defendant resides

Suit for Contract On an obligation, which the defendant has contracted to perform in a certain county may be brought in that county

COMPARISON OF SMALL CLAIMS AND JUSTICE COURT CIVIL SUITS

TOPIC	JUSTICE COURT	SMALL CLAIMS COURT
Jurisdiction Amount	\$10,000 exclusive of interest (G.C. 27.031); inclusive of attorney fees; exclusive of court costs	\$10,000 (interest included) (G.C. 28.093); inclusive of attorney fees; exclusive of court costs (G.C. 28.00)
Type of Case	Allowed	Allowed
	a) Civil matter within jurisdictional limit (b) Forcible Entry & Detainer (evictions) (c) Foreclosure of mortgage and enforcement of lien on personal property	Action for recovery of money only.
	Prohibited	Prohibited
	a) Suit by state to recover penalty, forfeiture or escheat (b) Person primarily engaged in business of loaning money with interest (c) Slander and defamation suits (d) Suit for trial of title to land (e) Foreclosure of lien on land	(a) By assignee of claim (b) Divorce (c) Collection agency or agents
Filing Fee	\$17.00 plus cost of service, \$25.00 on Jan 1 st , 2008	\$12.00 plus costs of service, \$25.00 on Jan 1 st , 2008
Venue	CPRC 15.082 to 15.100 Generally in county and precinct where one or more defendants reside	G.C. 28.011 Generally in county and precinct where defendants reside or where defendant has contracted to perform
Pleadings	May be oral or written for petition and answer; all other pleadings must be formal (TRC 525)	Petition must be sworn (GC 28.012); all other pleadings may be informal (GC 28.033) except motion to change venue (GC 28.014)
Writ of Attachment	YES	NO
Writ of Execution	YES	YES
Writ of Garnishment	YES	NO
Writ of Sequestration	YES	NO
Attorneys	May appear for a corporation May appear for individual	May appear for corporation; not required (GC 28.031); May appear for individual
Duty of Judge	Uphold and enforce the constitution and laws of the State of Texas	(1) To develop facts of the case;
Continuance	After motion and hearing (TRC 251-254)	Only for good cause shown (GC 28.032)
Discovery	YES	Limited, with prior court approval (GC 28.033)
Jury Trial	YES	YES
Trial and Hearings	Formal; must follow Rules of Evidence and informal Rules of Civil Procedure	Informal
Rules of Evidence	Apply	Do not apply
Appeal	Yes	Yes, if in excess of \$250.00

GC = Government Code TRC = Texas Rules of Court CPRC = Civil Practice and Remedies Code

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Basic Information Necessary for Civil Hearings Pro Se Plaintiff

Organize your documents and practice what you want to say before coming to court. You will have a maximum of 10 minutes to present your basic case. (The judge will allow you to respond to the Defendant's evidence, if any, and the judge may ask questions, if necessary)

1. Identify yourself

- By name
- By status (President of the Company; Bookkeeper; Business Owner)

2. State the nature of your claim in one sentence.

Unpaid bill for services, property damage, balance of a loan, etc.

3. State the pertinent dates, for example:

- The date a loan was made, the dates payments were due and the date of default
- The date a contract or lease was made, the dates for performance, the date the contract was breached
- The date of an auto accident or when other property damage occurred

4. State the details of any agreements, for example:

- There was an oral agreement, made between Jim and me that I would lend Jim \$500 to be paid back at \$100 a week, beginning June 1, 2001 and ending July 7, 2001.
- The defendant owned the garage where I took my car to have a new water pump installed. They gave me a written estimate of \$300 for parts and labor and said it would be finished in 2 days.

• We signed a written contract for the defendant to remodel my bathroom by tearing out the existing tile, purchasing and installing new tile, and cleaning up the construction debris. The total price was \$1,000, and I paid a deposit of \$500 before the job started. I paid for the materials at the hardware store. The job was supposed to start on June 4 and finish by June 27.

5. State the details of liability (fault), for example:

- The defendant failed to pay the last two payments of \$100
- The defendant installed a pump and I paid him \$300. The pump failed the next day and the garage refused to replace it.
- The defendant never showed up to work on the bathroom and kept my deposit.
- My car was stopped at the light and the defendant rear-ended my car.

6. State the details of how you calculated your damages, for example:

- The two payments the defendant failed to make total \$200
- I had to purchase another pump for \$150, and paid a different garage \$200 to install it. I think the defendant should have to return the \$300 I paid for the first faulty pump.
- Since no work was done, and my check was cashed, I am asking for my \$500 deposit back.
- The defendant had no auto liability insurance and I had to pay \$1,000 to Jim's Garage to replace the bumper and paint the fender.

7. Produce the documents that support your claim, for example:

- Contracts, estimates, work orders or promissory notes
- Photographs of damaged property (before and after, if available) (NOTE: Videotapes are rarely of a quality good enough to be helpful to the court and are extremely time-consuming. The judge will decide if you will be able to show a video. If you must show a videotape, please have it rewound to the proper starting point)
- Bills for repair or replacement and repair estimates
- Cancelled checks or bank records
- Title documents
- Accident reports

8. Witness testimony, only if necessary

Witness testimony is helpful if there is a dispute about the terms of an oral agreement or the condition of property when no photos are available

**THIS IS NOT A SCRIPT!
IT IS A TOOL TO ASSIST A NON-LAWYER IN MAKING
AN ORDERLY PRESENTATION**

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Basic Information Necessary for Civil Hearings Pro Se Defendant

Organize your documents and practice what you want to say before coming to court. You will have a maximum of 10 minutes to present our basic response to the Plaintiff's claim. The judge may ask question, (if necessary)

1. Identify yourself

By name

By status (President of the Company; Bookkeeper; Business Owner)

2. State your understanding of the details of any agreements, for example:

Jim and I never agreed to a loan that had to be repaid. It was a gift.

When the Mr. Smith brought his car in; he didn't know what was wrong with it. We told him it would take at least a week to figure it out because we were backed up. We told him that it MIGHT be the water pump, and if it was, we could get the part and have the job done in 2 days, and it would cost about \$300.

We didn't sign a contract, I just gave them a proposal for the bathroom remodel.

3. State any reasons why the Plaintiffs have not been damaged, or why the amount they're seeking is too much money, for example:

I don't owe anything – it was a gift.

We installed a brand new pump that was under warranty. I offered to install another one according to the warranty, but Mr. Smith said he didn't want me to touch his car anymore. I shouldn't have to pay for the other garage, and if we'd been able to fix it under the warranty, he wouldn't have had to pay, either.

I never received a deposit - they gave me \$500 to pick up the tile, and I bought it and delivered it to their house. I don't do tile work and I was going to have to find a tile man to work with me. Never found a tile man and they told me to forget about it, that they'd get someone else to install it, so I never went back.

The light was green. The Plaintiff stopped his car suddenly in the middle of a moving lane of traffic, and then he and his buddies jumped out of the car, laughing, whooping and hollering. I had no time to stop and I couldn't change lanes because there was traffic in the other lanes. The Plaintiff got a ticket for obstructing traffic.

4. Produce the documents that support your rebuttal, for example:

Contracts, estimates, work orders or promissory notes, gift cards

Photographs of damaged property (before and after, if available) (NOTE: Videotapes are rarely of a quality good enough to be helpful to the court and are extremely time-consuming. The judge will decide if you will be able to show a video. If you must show a video tape, please have it rewound to the proper starting point)

Bills for repair or replacement and repair estimates

Cancelled checks or bank records

Title documents

Accident reports

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