

STEP-BY-STEP SMALL CLAIM FILING INSTRUCTIONS FOR JUSTICE OF THE PEACE, PCT. 3

8918 Tesoro Dr. #300, San Antonio, Texas 78217; Phone: 210-335-4700 (press Option #2); Fax: 210-335-4705

Filings Accepted: Monday - Friday 8:00 a.m. to 3:00 p.m. NO Personal or Company Checks.

IT IS VERY DIFFICULT TO COLLECT ON A JUDGMENT: There is no guarantee you will collect the judgment amount even if you win the case. The Judge of Small Claims Court can only award a judgment. He/she has no collection power other than issuing writs. You should first determine if a judgment would be collectable BEFORE filing a claim. Collection procedures are on Page 2, item #8 and #9.

THE CLERKS CANNOT GIVE LEGAL ADVICE: If you have any questions, seek advice of an attorney. The San Antonio Bar Association can refer one at (210) 227-1853. An alternative to filing a claim is the Bexar County Dispute Resolution Center at (210) 335-2128. The service is free. Their main purpose is to resolve disputes between two parties by agreement without going to court. They are not a legal counseling service.

LIMITED JURISDICTION: Small Claims Court is a judicial forum which hears and decides cases involving claims in the amount of \$10,000 or less. It is important to remember that a Small Claims Court awards a "money" judgment, and cannot order a person to do a certain act, or to refrain from doing a certain act. The Court cannot hear a suit involving slander or defamation of character. The Court cannot enforce a lien against land. The Court cannot enforce the terms of a divorce decree.

VENUE: Ordinarily, a small claim MUST be filed in the precinct where the "Defendant" is physically located. You can call any JP Court (listed in the Blue Pages under Justice Courts) to ask the correct precinct in which to file.

BE CAREFUL WHO YOU SUE: First determine WHO you are suing: (1) An Individual Person; (2) An Individual Owner Doing Business As ("D/B/A") a Company; or (3) A Corporation (an Incorporated Business).

(1) If you're suing an **INDIVIDUAL PERSON**, be sure to correctly spell the person's first & last name (no nick-names) & have the exact address, including an apt#, if any. If known, include the defendant's work address & the company/business name. Also list the defendant's Social Security#, Driver's License #, & Date of Birth, if known.

(2) If you are suing an **INDIVIDUAL OWNER DOING BUSINESS AS A COMPANY**, read the attached "Specific Instructions For Suing A COMPANY."

(3) If you are suing a **CORPORATION** (an Incorporated Business) read the attached "Specific Instructions For Suing A CORPORATION."

IF THE DEFENDANT IS IN THE MILITARY: Under the Service Members Civil Relief Act ("SCRA"), you cannot take a Default Judgment against an individual person who is a service member unless the following steps are taken. You must indicate in your Statement of Claim that the defendant is currently in the U.S. Armed Services. The Court must then appoint an attorney to represent the absent service member, who may request that further court action be stopped for a minimum of 90-days to a maximum period of the length of service member's military service plus 90-days. Any default judgment against a service member that is not in accordance with SCRA, must be set aside.

IF THE DEFENDANT IS NOT IN THE MILITARY: You must verify in your Statement of Claim, that the individual defendant(s) is not currently in the Military Service.

WARNING: If you are unable to verify the Defendant's military status, by law the Judge will not be able to grant you a Default Judgment if the Defendant fails to answer or fails to appear at trial. Please consider this possibility and seek legal advice from an attorney before filing a claim, because all fees are non-refundable.

RESETS: Reset court date requests must be submitted in writing to the Judge. Usually only one reset per party is granted. If the plaintiff does not appear for trial, the case may be dismissed without prejudice. If the defendant does not appear for trial, the Judge may render a Default Judgment against the defendant.

NOTICE: You must sign and file a "Release of Judgment" form when the defendant pays you the judgment amount in full. A Release of Judgment form can be obtained at this Court.

1) The plaintiff completes a "Statement of Claim" form in duplicate (or triplicate if two defendants are named in the suit), and pays \$87.00 in filing and service fees to one defendant. Add \$60.00 for service to each additional defendant named. These fees are non-refundable. No personal or company checks are accepted. DO NOT include the filing and service fees (court costs) into the dollar amount of the suit (see #5 below). The court will prepare the citation(s) for service to the defendant(s).

2) The defendant must be served with a citation before a claim can proceed. Unless otherwise requested, the Constable will attempt personal service of the citation to the defendant with an attached copy of the Statement of Claim. The citation includes notice that the defendant must file a written "Answer" no later than the Monday following ten (10) days from the date the citation was served.

WARNING: Service by Certified Mail is STRONGLY DISCOURAGED; It is often NOT successful & fees are NON-Refundable.

3) If the defendant does NOT timely file an "Answer" generally denying the debt, the plaintiff may request the Judge to grant a "Default Judgment" without ever having an actual trial.

4) Per Section 28.033, Government Code, this court has limited discovery in small claims cases to Request for Disclosure (Rule 194, TRCP). This Small Claims Court will accept NO other discovery. (No Written Questions or Interrogatories; No Oral or Written Depositions; No Request for Admissions or Productions; No Request for Documents, etc.)

5) If the defendant files an "Answer", the court will notify all parties (by postcard) of the set trial date and time.

6) On the court date, the Judge conducts a hearing (unless a party makes both a jury demand and pays a jury fee not less than one day in advance of the trial date) and decides who "won" and who "lost" and for what amount, if any. The clerks prepare a judgment for the Judge to sign. The standard judgment, if in favor of the plaintiff, will automatically include the plaintiff's prepaid filing/service fees (court costs), interest until paid, and all future court costs if any. In addition, every Friday at 3:00 p.m. in the open courtroom, the Judge announces his decision on all small claims cases heard that week.

7) Either party may APPEAL a judgment by filing an "Appeal Surety Bond" and paying the appeal filing costs "within 10 days from the date a judgment or an order overruling motion for new trial is SIGNED" (which is not always the same as the trial date). Appeal procedures are costly and difficult to do without legal assistance. It is STRONGLY suggested you seek advice of an attorney if considering an appeal. Ask the clerk for a handout on appeal procedures. If no appeal is filed in time, the judgment becomes final.

8) Thirty (30) days after the judgment is signed, if no appeal was filed and the judgment has not been paid, the plaintiff can purchase a "WRIT OF EXECUTION" to try to collect on the judgment. The cost is \$255.00 and is non-refundable, however, this amount will be added to the total judgment amount due. A Deputy Constable will serve the Writ to the defendant and make oral demand for payment. If payment is collected you will be notified to pick it up and sign a "Release of Judgment". If no payment is collected, and if there is NO "non-exempt" property to levy on, the Writ is returned to the court as "unsuccessful". There is no guarantee that a Writ of Execution will be successful. Call the Constable's Office at 210-335-4750, for further details about a Writ of Execution and what property is considered exempt or non-exempt.

9) Another way to try to collect on a judgment is an "ABSTRACT OF JUDGMENT" at a cost of \$5.00. The court will prepare the Abstract which the plaintiff files at the County Clerk's Office, at the main County Courthouse. An Abstract places a lien against any NON-exempt, real (estate) property of the defendant in the county where it is filed, for ten years. An Abstract can be renewed anytime BEFORE it expires. Ask the clerk for more specific details about renewing an Abstract.

10) There are other ways of collecting on a judgment through an attorney. The plaintiff does not have to be represented by an attorney, but be aware that very often the defendant is represented by an attorney. You are strongly encouraged to seek legal advice from a competent attorney at any time: before, during or after the conclusion of your claim.

SPECIFIC INSTRUCTIONS FOR SUING A 'CORPORATION' or 'COMPANY' IN JP COURT, PCT. 3

It is **STRONGLY** suggested you seek legal representation to file a claim against a Corporation or Company in any court. You, as Plaintiff, are solely responsible for researching and obtaining all the correct and necessary information, required by law, to sue a corporation or company. The procedure is often difficult and time consuming, and out-of-pocket costs frequently multiply. There is no guarantee that good and proper service of citation will be successful, which is required by law before a case can go to trial. All costs pre-paid for filing & service are **non-refundable**, regardless of the final case status.

NOTICE: ***THE LAW REQUIRES YOU NAME AND SUE -- AS "DEFENDANT" -- THE TRUE, FULL AND LEGAL NAME OF THE CORPORATION OR COMPANY, AS IT IS FILED ON RECORD.***

If the defendant is found to be a **CORPORATION**, the law requires that service of the citation **MUST** be made to the corporation's named "Registered Agent".

If the defendant is found to be an **INDIVIDUAL/OWNER DOING BUSINESS AS A COMPANY**, the law requires service of the citation **MUST** be made to the named Individual/Owner Doing Business As ...

It is **STRONGLY** suggested you use ALL the below sources to get correct information. Do NOT rely on information printed on business cards, letterheads or invoices, or from information told to you by any employees or representative of the company or corporation.

(1): CALL THE SECRETARY OF STATE, IN AUSTIN, AT PHONE #1-512-463-5555:

to find out IF a business is a "Corporation", and if so, **to find out** the corporation's true full legal name: i.e., Sunshine Shoe Company [may be legally recorded as] Sunshine Shoes, Incorporated.

to find out the corporation's Registered Agent's name and address: i.e., the Registered Agent for Sunshine, Inc., [is recorded as] Mr. Tom Brown, 1234 Main Street, Dallas, Texas 76201.

to find out the corporation's current status of Active or Inactive. (Note: An inactive status renders the corporation as "dead".

(2): GO TO THE BEXAR COUNTY COURTHOUSE, ASSUMED NAMES DEPARTMENT

located at 100 Dolorosa Street, San Antonio:

to find out IF a company is owned by a Corporation and/or Doing Business under an assumed name: i.e., ABC Motel [may legally be recorded as] Midwest Management, Inc. & d/b/a ABC Motel.

to find out IF a company is owned by an Individual and Doing Business under an assumed name, i.e., Joe's Cafe [may be legally recorded as] Joseph Lee Smith, Individually & d/b/a Joe's Cafe.

After all information is obtained, the Plaintiff completes a Statement of Claim form, in duplicate, and pays the filing and service fees (court costs) in the amount of \$87.00 (to sue and serve only one defendant). The claim form **MUST** state all complete and correct instructions for service of the citation. See (*) above.

Unless otherwise requested, a Constable will attempt personal service of the citation, and if successful, will return proof of service to the Court. If the defendant's address for service is not within Bexar County, the citation will be forwarded to the Constable of the applicable county who's service fee may be different (higher or lower) than Bexar County's service fee.

Service by certified mail is considered NOT successful if the certified envelope is returned by the post office marked as: 1) Unclaimed; 2) Refused; 3) No Such Address; 4) Attempted Unknown; 5) No Forwarding address; 6) Forwarding Address Expired; or 7) if it is not signed by the addressee. Service fees are NOT refundable.

(1) If service to a **CORPORATION** by certified mail, is NOT successful, the plaintiff can then submit a "Certificate of Fact" to the Court as proof of diligent attempt of service to the named Registered Agent at the address on file with the Secretary of State.

To obtain the "Certificate of Fact", the plaintiff must write The Secretary of State, Corporation Department, P.O. Box 13697, Austin, TX 78711-3697, and request a "Certificate of Fact" on the Corporation, and send a \$15.00 fee payable to the Secretary of State.

IF all information on the Certificate of Fact, matches what the plaintiff wrote on the Statement of Claim, service to the Corporation can then be made to and through the Secretary of State [per Article 2.11, Business Corporation Act] by certified mail, restricted delivery, return receipt requested. The Plaintiff must **then PAY:** **\$60.00** (payable to the Court) for service by certified mail to the Secretary of State **and PAY:** **\$55.00** (payable to the Secretary of State) for service to the Corporation.

The return receipt from the Secretary of State will constitute good and proper service to the Corporation. The case can then proceed towards trial.

(2) If service to an **INDIVIDUAL d/b/a A COMPANY**, by certified mail is NOT successful and was returned marked: "Attempted Unknown" (meaning the address is valid, but the Individual owner and/or company is no longer at that address) the plaintiff can then submit to the Court, a print-out from the Assumed Names Dept., as proof of diligent attempt of service to the Individual Owner on file with the Assumed Names Dept.

To obtain such a print-out, the plaintiff must go to the Bexar County Courthouse, Assumed Names Department, at 100 Dolorosa, San Antonio, and pay a \$2.00 fee.

IF all information on the print-out matches what the Plaintiff wrote on the Statement of Claim, the plaintiff must first (somehow) find out where the company/business moved to, and then **pay another service fee** and request substitute service, which authorizes service to any representative or employee at the named company's address.

Once service is successful, the case can then proceed towards trial.

WARNING: WHEN THE CITATION IS SERVED BY REGISTERED OR CERTIFIED MAIL, THE RETURN BY THE OFFICER OR AUTHORIZED PERSON MUST ALSO CONTAIN THE RECEIPT WITH THE ADDRESSEE'S SIGNATURE." SERVICE IS NOT COMPLETED UNTIL A SIGNED RECEIPT IS RETURNED. IF IT IS RETURNED STAMPED "UNCLAIMED" OR OTHERWISE NOT SERVED, YOU MUST HAVE A SHERIFF, CONSTABLE OR PRIVATE PROCESS SERVER ATTEMPT TO SERVE THE CITATION AT AN ADDITIONAL FEE. SUCCESSFUL SERVICE IS NEVER GUARANTEED, AND SERVICE FEES ARE NON-REFUNDABLE.

(3) After service is "successful" on a Corporation or an Individual d/b/a A Company, please refer to and follow the procedures listed on **Page 2, starting with item #3**, of this handout.

You are hereby advised to always obtain instructions from the Court where you will be filing your case.

"I HAVE READ AND UNDERSTAND ALL ABOVE & ATTACHED INFORMATION & INSTRUCTIONS"

Signed/Plaintiff: _____ Date: _____