

## SMALL CLAIMS COURT INFORMATION HANDOUT

JUSTICE OF THE PEACE

PRECINCT #2

BEXAR COUNTY, TEXAS

335-4800

**FILING DAYS & TIMES:**

MONDAY THRU FRIDAY from 8:00am - 5:00pm

**METHODS OF PAYMENT:**

CASH, MONEY ORDERS OR CASHIERS CHECKS ONLY! NO PERSONAL CHECKS! EXACT CHANGE REQUIRED! ALL FEES ARE NONREFUNDABLE. MAKE MONEY ORDERS/CASHIERS CHECKS PAYABLE TO J.P. COURT #2

**FILING FEES:**

\$31.00 - COURT DOCKETING FEE & \$60.00 - SERVICE FEE FOR EACH DEFENDANT SERVED BY CONSTABLE'S OFFICE

**COURT SETTINGS:**

MONDAYS, TUESDAYS AND THURSDAYS AT 1:30PM

**GENERAL:** Small Claims Courts are courts in which our citizens can settle small money disputes in a speedy, informal setting. The State Legislature established less formal procedures for these courts to ensure that Small Claims Courts can be used without the help of an attorney although the use of an attorney by either party in a suit is optional. This document is to help you understand the basic procedures in these courts, but is not intended to present complete coverage of them. **You are encouraged to seek competent legal advice from an attorney at any stage of the process, particularly in reference to collections on a judgment.**

**OUR COURT STAFF CANNOT GIVE YOU LEGAL ADVICE:** This document is designed to provide that degree of **procedural** guidance which a court clerk is able to provide. If you need **legal advice**, you are **urged** to consult an attorney. **The San Antonio Bar Association can refer one (210/227-1853).** Another alternative is the **Dispute Resolution Center (210/335-2128)** which is a free service of Bexar County. Their main purpose is to try to solve disputes between parties by mutual agreement without going to court. They are not a legal counseling service. To obtain a brochure on the **Deceptive Trade Practices** and the **Consumer Protection Act**, contact the local branch of the **Attorney General's office at (210) 224-1007.**

**LIMITED JURISDICTION:** A Small Claims Court is a judicial forum which hears and decides cases involving claims for **MONEY ONLY** in the amount of **\$10,000.00 or less**. It is important to remember that a **Small Claims Court can only award a judgment for money**. The court cannot require someone to return, replace or repair property; to do something or to refrain from doing something. Remember, in the Small Claims Court, the petitioner must not ask for anything except money. (Note: At the Judge's discretion, attorney fees may be awarded to the prevailing party.)

**VENUE:** A **Small Claims Court normally must be filed in the court of the precinct where the Defendant lives**. Under some circumstances, you may have a choice of courts in which to bring a claim. For example, if the Defendant lives in one precinct but contracted to perform services in another precinct, either the precinct where the defendant lives or the precinct where the work was performed can be selected as the place to bring suit.

**WHEN TO FILE SUIT:** For the court to be able to act on a suit, the suit must be filed within time limits set by the Legislature. A court has no power to hear a suit that is filed, after these set time periods. Many suits must be brought within 2 years after the dispute arose, others must be brought within 4 years. To be safe, you should file suit as soon as you are convinced you cannot recover the money on your own, and before 2 years have gone by.

**WHO MAY SUE:** Any person over the age of 18 years can sue in the Small Claims Court. The person filing the suit is the Plaintiff. A minor can use the Court by having a parent, relative, or next friend over the age of 18 go with him to file a claim and later go with him to the trial. An association, partnership or corporation may also file a claim in the Small Claims Court. **However, a partnership, association, corporation or person engaged in the business of lending money at interest or functioning as a collection agency may not file a claim in this Court.**

**WHOM MAY YOU SUE:** Any natural person, association, partnership, or corporation may be sued. Depending on the circumstances, a minor may be sued by suing either the minor or both the minor and the parent or guardian. The person being sued is generally called the Defendant.

- A. If you are suing a sole proprietorship (for example, John Doe owns ABC Auto parts and does business under the assumed name of ABC Auto Parts), sue John Doe individually and doing business as (dba) ABC Auto Parts. If you do not know the name of the owner of a sole proprietorship, the name can be obtained by going in person to the Assumed Names section of the County Courthouse. The telephone number to the Assumed Names section is (210) 335-2223.
- B. If you are suing a corporation (for example, ABC Auto Parts is in reality ABC Auto Parts, INC., a Texas Corporation) you must sue the corporation and serve either its registered agent or an officer of the corporation (i.e. the president or vice-president). The name and address of a corporations registered agent can be obtained by calling the office of the Secretary of State for the State of Texas in Austin, Texas at (512) 463-5701. The address on the Statement of Claim for the defendant must be the address of the person being served.

**SUBPOENAS:** A witness, along with any documents in his/her possession, can be ordered to appear at the trial of a case by the issuance of a subpoena. A \$60.00 fee per witness is required along with a \$10.00 bill (per witness) which is served on the witness as a witness fee. You must provide in writing the full name and address of the witness and, where applicable, a detailed description of the documents desired.

**COUNTERCLAIMS:** A Defendant may file a counterclaim against the Plaintiff by paying a filing fee as outlined above. The procedures involved will essentially remain the same except that the original plaintiff will not be subject to a default judgment should they not answer by the answer date. The claim and counter claim will be tried at the same time. If the Counterclaimant should win their case in court, the original Plaintiff will be subject to the judgment of the counterclaim, including any attorney fees awarded.

## SMALL CLAIMS PROCEDURES

1. The Plaintiff legibly completes a Statement of Claim form, and submits an original and one Xeroxed copy per defendant of the claim and any supporting documents to the Court along with the appropriate fees. The Plaintiff should also keep a copy of the claim for their records. Complete, full names and current home address for the Plaintiff and Defendant are required. (List and identify any work addresses for the defendant if possible.) A daytime telephone number for the Plaintiff is requested whenever possible. The claim must plainly state the amount of money the claim is for, the basis of the claim, and the date the claim arose.
2. The court clerk notarizes the Statement of Claim, assigns it a case number, and prepares the Plaintiff's receipt. The clerk directs the Plaintiff to contact the court after some interval to check the status of their case. **Plaintiffs should always have their case number ready when calling the Court.** NOTE: All Plaintiffs must either appear at the court in person with appropriated identification to have their claims notarized or they must have the claim notarized by a certified notary prior to it being filed with the court.
3. The clerk prepares a citation which, together with a copy of the Statement of Claim, is served on the Defendant by the Constable's Office. The citation notifies the Defendant that the law requires an answer or response to be delivered in person or in writing to the court no later than the Monday following ten (10) days from the date the citation was served.
4. Upon verification that the defendant has been served, the Court sets a tentative date and time for the case to be heard. Notices of the official trial date and time, however, are not mailed out until after either the Defendant has answered or the answer date has passed.
5. If the Defendant does not file a response by their answer date they become subject to a Default Judgment given without the defendant being heard in his own defense. The Plaintiff may win by simply making an appearance before the Court on any one of its Small Claims Court settings and asking for a Default Judgment. If, however, the Defendant fails to file an answer by the answer date but files an answer before a Default Judgment is requested, the answer is considered to be timely filed and the case will be heard on its scheduled date.
6. If the Defendant answers in time, the court will notify both parties by mail of their court date and time. NOTE: KEEP IN MIND THAT AS A PLAINTIFF, YOU HAVE THE BURDEN OF PROOF, TO SHOW BY THE WEIGHT OF THE EVIDENCE THAT THE DEFENDANT YOU ARE SUING IS THE PROXIMATE CAUSE OF DAMAGES IN THE CAPACITY WHICH THE DEFENDANT WAS SUED. ALL DAMAGES AND EVIDENCE NECESSARY TO MEET YOUR BURDEN (I.E., RECEIPTS, INVOICES, CANCELLED CHECKS, WITNESSES, ETC.) SHOULD BE PRESENT AT TIME OF TRIAL. **"EXPERT" WITNESSES SHOULD BE OBTAINED IN MATTERS OF A TECHNICAL NATURE.**
7. **RESETS:** Either party may normally request only one each. A request for reset must be in the form of a notarized statement and should be received by the Court no later than one week prior to the trial date. The party requesting the reset must show good cause why the reset should be granted. The Judge may approve or disapprove the request.
8. **DISMISSALS:** Should the Plaintiff desire dismissal of a case before the trial date, the Plaintiff can either personally appear at the court, show I.D., and sign a Motion to Dismiss, or forward to the Court a notarized statement which details the case number, the names of the parties involved, the fact that a dismissal is requested, and the reason why.
9. **TRIAL:** The Judge will conduct a trial of the case on the scheduled date. First the Plaintiff and then the Defendant will be allowed to present their side of the case. After all facts have been presented, the Judge will prepare and sign a judgment for the party that won. If the Defendant, after receiving proper notice of the trial, does not appear in court at the appointed time, the Judge will grant a Default Judgment providing the Plaintiff appears and proves the amount of money due to him. A default notice will then be mailed to the Defendant. NOTE: Persons desiring a copy of their judgment should notify the bailiff before leaving court.
10. **APPEALS:** The party that lost may appeal the decision within 10 calendar days of the signing of the judgment by filing an Appeal Bond with the court and paying a \$10.00 Transcript Fee. Any party desiring to appeal should consult an attorney. If an appeal is filed, the case is forwarded to the county court for rehearing. If no appeal is filed, the judgment becomes final.
11. **IT IS DIFFICULT TO COLLECT ON JUDGMENTS.** This court does not collect the judgment for you. The Judge has no power to collect on a judgment other than by the issuance of writs. Because Plaintiffs frequently find it difficult to collect their money once they have a judgment, Plaintiffs should first review the procedures for collection listed below and determine if they can collect on a judgment BEFORE they file suit. Collection procedures can be complex and difficult and you are encouraged to consult with an attorney about how to collect on a judgment.
12. **ABSTRACT OF JUDGMENT:** if no appeal is filed within 10 days, the winning party can obtain from the court an ABSTRACT OF JUDGMENT for a cost of \$5.00. The Abstract will need to be filed with the County Clerk at the County Courthouse who charges a filing fee. An ABSTRACT OF JUDGMENT places a lien against any non-exempt, real property of the losing party for a period of ten years and is renewable. When requesting an Abstract of Judgment, you should, whenever possible, provide the court with the losing party's date of birth, Texas Drivers License number, current address and amount, if any, that had already been collected on the Judgment.
13. **WRIT OF EXECUTION:** Thirty days after the judgment is signed, the party that won can request a WRIT OF EXECUTION at a cost of \$255.00 (**per party that the Writ is to be served upon**) to enforce the judgment. The Constable serves the Writ and makes an oral demand for payment. If not received, he will then look for non-exempt personal property to levy on, that is, to confiscate and sell at an auction to pay off the judgment. THERE IS NO GUARANTEE THAT PAYMENT WILL BE MADE BY A WRIT OF EXECUTION.