

Small Claims Cases

Filing Small Claims Cases

To begin an action in the Small Claims Court, the plaintiff, or claimant, must make a statement of the claim. This may be done by the plaintiff, by the attorney for the plaintiff, or by an authorized agent for the plaintiff. You start the lawsuit by filing 4 forms:

- . **Original Small Claims Petition**
The original petition is what starts the lawsuit. Most Justice of the Peace Courts have an original petition that you can use available in their office.
- . **Affidavit of Military Status on Defendants**
The purpose of this form is to protect the rights of members of our military while they are off protecting us. This form is filed along with the original petition.
- . **Certificate of Last Known Address**
This form is filed along with the original petition.
- . **Justice Court Civil Case Information Sheet**
This form is filed along with the original petition.

Filing Fee

The Justice of the Peace must collect total fees of **\$136.00**, which includes service of citation for one defendant in the county, for the filing of a claim in the Small Claims Court. The filing fee is set out in Section 118.121 of the Texas Local Government Code. Other fees in Small Claims Court are the same as those for cases in Justice Courts. Section 28.004, Texas Government Code. Additional fees for basic civil legal services to indigents (Section 51.941, Texas Government Code) and for an alternative dispute resolution system (Section 152.005, Texas Civil Practice and Remedies Code) are also applicable.

Issuance of Citation

In order for the Small Claims Court to acquire jurisdiction over the person being sued the defendant must be notified of the filing of the lawsuit. When the claim has been filed and the filing fee paid, the Justice of the Peace or the clerk will issue a notice of the filing called a "citation." The citation is directed to the defendant and informs the defendant of the date of the filing of the petition, the case number assigned to the claim, the names of the parties, and the nature of the plaintiff's demand. The citation also warns that should the defendant fail to appear at the trial of the claim a judgment by default may be rendered in favor of the plaintiff for the amount of money the plaintiff is claiming.

Service of Citation

The Citation is served by an officer of the state authorized to serve other citations and may be served in any manner authorized for service of citation in a Justice Court. See Section 28.013, Texas Government Code. Citations may be served by personal delivery to the defendant, or by registered or certified mail directed to the defendant, with return receipt requested. If attempts to serve the defendant at the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found are unsuccessful, the plaintiff can ask the Justice of the Peace to allow service in another manner. The request for an alternative method of service must be supported by an affidavit that states where the defendant can usually be found, that attempts to serve the defendant were unsuccessful, and that the manner of service suggested will be effective to give the defendant notice of the lawsuit. The Justice of the Peace can then authorize service of process by leaving a copy of the citation with anyone over 16 years of age at a specified location, or in any other manner that is reasonably effective to give the defendant notice of the lawsuit. See Rule 536, Texas Rules of Civil Procedure

Service Fees in Frio County

The Commissioners Court of Frio County sets the fee to be charged for services of the Frio County Sheriff and Constables. See Section 118.131, Texas Local Government Code. A fee of **\$90** is charged for service of process in a Small Claims case in Frio County. See Frio County Civil Process Service Fees.

Service Outside of Frio County For citations to be served in a county other than Frio County, you must contact the constable or sheriff of that County for the amount of the service fee and location for forwarding the citation.

The Defendant

No judgment may be rendered against a defendant unless the defendant has been properly served with process. Defendants may be natural persons, individuals, or persons doing business in the form of sole proprietorships, or partnerships, or corporations. Any individual doing business under an assumed name, or any business operating in the form of a partnership or corporation, may sue or be sued in the business name, but service of process must be properly accomplished.

Service of process directed to individuals is effected by delivery directly to the person. Service of process on business entities is more difficult and must be accomplished by service on an agent or person authorized to accept service. For example, if a defendant is a partnership, the citation may be directed to one member of the partnership, and service effected on that one member authorizes a judgment against the partnership and the partner actually served. See Section 17.022, Texas Civil Practice and

Remedies Code. If several partners are jointly indebted under a contract and the citation has been served on at least one but not all of the partners, judgment may be rendered only against the partnership and against the partners who were actually served. No personal judgment or execution may be had against any partner who was not served. See Section 31.003, Texas Civil Practice and Remedies Code.

If the defendant is a limited partnership, each general partner and the registered agent of a limited partnership may be served with citation in order to effect service of process. See Section 1.08 of the Texas Limited Partnership Act, Art. 6132a-1, Texas Civil Statutes.

If the defendant is a corporation, citation may be served by serving the corporation's president or any vice-president, or the corporation's registered agent. If the corporation's registered agent cannot be found at the corporation's registered office, then service of process may be made on the Secretary of State. See Art. 2.11, Texas Business Corporation Act.

If the defendant is a limited liability company, the manager, if any, and the registered agent shall be agents upon whom citation may be served. See Art. 2.08 of the Texas Limited Liability Company Act, Art. 1528n, Texas Civil Statutes.

If the defendant is a financial institution, the registered agent of the financial institution, or in the absence of a registered agent, the president or branch manager at any office of the financial institution located in this state may be served. See Section 17.028 of the Texas Civil Practice and Remedies Code.

If the defendant is a credit union organized under the laws of this state, another state, or federal law, the registered agent of the credit union or the president or vice president in the absence of such an agent may be served. See Section 17.028 of the Texas Civil Practice and Remedies Code.

To determine the exact legal nature of a business entity, the plaintiff may look at the Assumed Name Records maintained by the Frio County Clerk, or contact the Corporation Division of the Office of the Secretary of State at 512-463-5555, or the Office of the State Comptroller at 1-800-252-1386.

Venue

"Venue" is the proper Justice of the Peace Precinct in which the Small Claims Court may exercise its jurisdiction. As a general rule, a suit in Small Claims Court must be brought in the county and in the Justice of the Peace Precinct in which the defendant resides. If, however, the defendant has contracted to perform an obligation in a certain county, an action may be brought in the county where the obligation was to be performed.

If there is more than one Justice of the Peace within a precinct, the plaintiff may bring suit in any of the Small Claims Courts within the precinct. See Section 28.011, Texas Government Code and Section 15.099, Texas Civil Practice and Remedies Code.

Motion to Transfer Venue (no more than 21 days after the defendant answers , the suit)

A defendant may file a motion in the Small Claims Court asking that the case be transferred to a different precinct. This request must be made in writing at the earliest opportunity and must state why the precinct in which the lawsuit is filed is not the proper precinct, and also state to what precinct the action should be transferred. If the Justice of the Peace orders that the case be transferred, the original papers will be sent to the Small Claims Court in the proper precinct, and the parties and witnesses will be required to appear before the Small Claims Court to which the case was transferred. See Section 28.014, Texas Government Code.

The Rules concerning the motion to transfer are found in the Texas Rules of Civil Procedure, See Rule 527, Texas Rules of Civil Procedure.

Failure to Appear

If a defendant who has been served properly with citation does not file an answer or does not appear in the Small Claims Court and the plaintiff does appear, the Justice of the Peace will enter a default judgment for the plaintiff in the amount that the plaintiff proves is owed by the defendant.

If the plaintiff does not appear, the Justice of the Peace will enter an order dismissing the case. This order does not prevent the plaintiff from filing the lawsuit at a later time, if appropriate.

Either the plaintiff or the defendant who failed to appear may request that the court set aside the decision made in their absence. This request must be made in writing no later than the tenth (10th) day after the default judgment or order dismissing the case was signed, and must give a good reason for the party's failure to appear. See Section 28.031, Texas Government Code.

Certificate of Last Known Address

The plaintiff requesting a default judgment must file a Certificate of Last Known Address certifying to the Court the last known mailing address of the party against whom the default judgment is taken, so that the Court can notify the defendant of the entry of the judgment. See Rule 239a, Texas Rules of Civil Procedure.

Military Status Affidavit

The Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq, passed December 19, 2003, requires the plaintiff in any civil proceeding in which the defendant does not make an appearance to file with the court a Military Status Affidavit stating whether

or not the defendant is in military service and showing necessary facts to support the affidavit; or if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

The Department of Defense maintains a website for issues pertaining to the Service member's Civil Relief Act at <https://www.dmdc.osd.mil/appj/scra/scraHome.do>.

A person who makes or uses a military status affidavit, or statement, declaration, verification, or certificate, knowing it to be false, shall be fined as provided in Title 18, United States Code, or imprisoned for not more than one year, or both.

Discovery

Reasonable discovery in Small Claims Court is limited to that considered appropriate and permitted by the judge. See Section 28.033, Texas Government Code.

Jury Trial

Either the plaintiff or the defendant may demand a jury trial. The request must be made in writing not later than 14 days before the date on which the hearing is scheduled. At the same time that the request is made, the party must pay the jury fee to the justice of the peace. See Section 28.035, Texas Government Code. The amount of the jury fee is \$22.00. See Section 28.004, Texas Government Code, and Rule 544, Texas Rules of Civil Procedure, Rule 502.4.

Continuance

If either the plaintiff or the defendant is unable to attend the hearing on the date and at the time it is scheduled, a Request for Continuance to the court may be made to continue the hearing to a different date. The Justice of the Peace may postpone the hearing only for a good reason.

The Hearing

The goal of the Small Claims Court is to dispense speedy justice between the parties.

On the date and at the time scheduled for the hearing, the plaintiff must appear ready to present proof of the amount he or she is claiming is owed by the defendant. The defendant must appear ready to present proof of any defenses he or she may have to the plaintiff's claim.

Each party may offer written records, photographs, other tangible evidence, or the testimony of witnesses who have personal knowledge of the transaction made the basis of the lawsuit. A more than the amount of the bond that is subject to execution concise presentation, without repetitive testimony is the best way to present the case. The Justice of the Peace may allow each party to make a short argument on why that party should prevail.

The hearing is informal and the Justice of the Peace may ask questions to develop the facts of the case. See Section 28.033 and Section 28.034, Texas Government Code.

Judgment

At the conclusion of the hearing, the Justice of the Peace must make the judgment as the justice of the case demands. Under the law, if the judgment is in favor of the plaintiff and against the defendant, the defendant must pay the judgment immediately. See Section 28.051, Texas Government Code.

Right to Appeal

If either the plaintiff or the defendant is dissatisfied with the decision of the Justice of the Peace, and the amount in controversy is more than \$250.00, the dissatisfied party may appeal the final judgment to Frio County Civil Courts at Law.

If the appeal is by the defendant, within twenty one (21) days from the date of the judgment, the defendant must file an Appeal Bond, with two or more sureties, in double the amount of the judgment or post a bond 2X the judgment. May post cash in lieu of bond. The bond is in favor of the adverse party and must promise that the defendant will prosecute the appeal to conclusion and pay any judgment that may be rendered by the County Civil Court at Law.

If the appeal is by the plaintiff because the Justice of the Peace denied the plaintiff's claim, the plaintiff, within twenty one (21) days from the date of the judgment, must file a \$500 Appeal Bond. The bond is in favor of the adverse party and must promise that the plaintiff will prosecute the appeal to conclusion. See Rule 571, Texas Rules of Civil Procedure.

"Sureties" are persons who guarantee that their principal will perform the promise made, or pay the amount of the bond. To be a good and sufficient surety, the surety should be worth at least the amount of the bond after deducting the value of the surety's property that is exempt from execution or forced sale, and the amount of all outstanding debts owed by the surety. The surety should have property worth.

If the party wanting to appeal is unable to pay the costs of appeal or give any security for those costs, he or she is entitled to appeal by filing a Statement of Inability to Afford Court Costs (stating such inability with the Justice of the Peace within seven (7) days from the date of the judgment). Notice must be given to the other party of the filing of the statement, and the facts of the party's inability to pay costs can be contested. See Section 28.052, Texas Government Code and Rule 572, Texas Rules of Civil Procedure.

The Statement of Inability to Afford Court Costs must satisfy the requirements of Rule 145 of the Texas Rules of Civil Procedure. Rule 145 requires that the affidavit contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income (interest, dividends, etc.), spouse's income if available

to the party, property owned (other than homestead) cash or checking account, dependents, debts, and monthly expenses. The statement must also state that the party is unable to pay the court costs, and that the statements made are true and correct.

The appeal must be filed within the times specified and follow the procedures specified by the applicable rules of procedure. The rules applicable to appeal from Justice Courts can be found in Part V, Section 6, Texas Rules of Civil Procedures.

When the appeal has been perfected and the transcript sent to the County Civil Court at Law, the party appealing will be notified to pay the costs on appeal to the County Civil Court at Law. Those costs must be paid within twenty (20) days after being notified to do so by the County Clerk, or the County Clerk will return all of the papers to the Justice of the Peace. The party in whose favor the judgment was rendered may then proceed to collect the judgment. See Rule 143a, Texas Rules of Civil Procedure.

Hearing on Appeal

Once the appeal to County Civil Court at Law has been perfected, the Small Claims Court judgment becomes a nullity, and the County Civil Court at Law must try the case "de novo," or over again. This means that the parties must present their respective claims, evidence, and testimony to the judge of the County Civil Court at Law. No further pleadings in the County Civil Court at Law are required. The judgment of the County Civil Court at Law may be appealed to the Court of Appeals. See Section 28.053, Texas Government Code. Texas Landlord and Tenants information is available on line.

***** THIS COURT WILL NOT ANSWER ANY LEGAL QUESTIONS NOR IS THE OFFICE PERSONNEL AUTHORIZED TO ASSIST YOU WITH FILLING OUT THE FORMS. FORMS ARE PROVIDED TO YOU AS COURTESY OF THIS OFFICE.*******

PETITION: SMALL CLAIMS CASE

CASE NO. (court use only) _____

In the Justice Court, Precinct _____, _____ County, Texas

PLAINTIFF _____

VS.

DEFENDANT(S): _____

Defendant(s) contact info: _____

COMPLAINT: The basis for the claim which entitles the plaintiff to seek relief against the defendant is:

RELIEF: Plaintiff seeks damages in the amount of \$ _____, and/or return of personal property as described as follows (be specific):

_____ which has a value of \$ _____. Additionally, plaintiff seeks the following:

SERVICE OF CITATION: Service is requested on defendant(s) by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are: _____

If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address: _____.

Petitioner's Printed Name

Signature of Plaintiff or Attorney

Address of Plaintiff's Attorney if any, or Plaintiff if none

DEFENDANT(S) INFORMATION (if known):

DATE OF BIRTH: _____

City State Zip

Phone & Fax No. of Plaintiff's Attorney, if any, or Plaintiff if none

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

DEFENDANT'S PHONE NUMBER: _____

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER (FOR CLERK USE ONLY): _____

STYLED _____
(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones;
In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

CONTACT INFORMATION FOR PERSON COMPLETING CASE ***		NAMES OF PARTIES IN CASE:
INFORMATION SHEET: ***		
NAME:	TELEPHONE:	PLAINTIFF(S):
_____	_____	_____
ADDRESS:	FAX:	
_____	_____	
CITY/STATE/ZIP	STATE BAR NO.	DEFENDANTS(S)
_____	_____	_____
EMAIL:		

SIGNATURE		[ATTACH ADDITIONAL PAGE AS NECESSARY TO LIST ALL PARTIES]

INDICATE CASE TYPE, OR IDENTIFY THE MOST IMPORTANT ISSUE IN THE CASE(SELECT ONLY): _____

___ **DEBT CLAIM:** A debt claim is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including Attorney fees if any. ***

___ **EVICTION:** An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any. ***

___ **REPAIR AND REMEDY:** A repair and remedy case lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees if any. ***

___ **SMALL CLAIMS:** A small claims case is 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, excluding statutory interest and court costs but including attorney fees, if any. **(OCCUPATIONAL LICENSE, ORDER OF RETRIEVAL, and TRUANCY CASES to be reported in Small Claims).** ***

Certificate of Last Known Address

The undersigned certifies that the last known mailing address of the Defendant against whom judgment is taken in this proceeding:

Defendant's Name: _____

Defendant's Address: _____

Plaintiff

Attorney of Record for Plaintiff

Address

City State Zip

Telephone number

This document is required to be filed when a judgment is taken by default so that the Court may notify the defendant of the entry of the default judgment.

The Service Members Civil Relief Act, 50 U.S.C. App 507 *Et Seq*, Passed December 19, 2003, requires the plaintiff in any civil proceeding in which the defendant does not make an appearance to file with the court an affidavit (A) stating whether or not the defendant is in the military service and showing necessary facts to support the affidavit; or (B) if the plaintiff is unable to determine whether or not the defendant is in the military service, stating that the plaintiff is unable to determine whether or not the defendant is in the military service.

PENALTY FOR MAKING OR USING A FALSE AFFIDAVIT: A person who makes or uses a military status affidavit, or statement, declaration, verification, or certificate, knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

Costs for an attorney ad litem may be assessed against the plaintiff as costs of court unless otherwise ordered by the court.

Case No. _____

In the Justice Court, Precinct____, Frio County, Texas

Plaintiff VS _____
Defendant

AFFIDAVIT OF MILITARY STATUS OF DEFENDANT(S)

Before me, the undersigned authority, on this day personally appeared:

who, under penalty of perjury (fine and/or up to one year in jail), state the following:

My name is _____,

I am the ____ plaintiff or ____ Attorney of record or authorized agent of the plaintiff. I am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

(check one)

____ Defendant is not in the military.

____ Defendant is in the military service, I know this because

____ I am unable to determine whether or not the Defendant is in military service.

Plaintiff Signature/Attorney or Agent for Plaintiff

SWORN TO and SUBSCRIBED before me on this _____day of _____, 20__.

Clerk of the Court

Notary Public in and for the State of Texas

The Servicemembers Civil Relief Act applies to a civil proceeding in the Justice Courts. Before entering a default judgment against an individual defendant, the plaintiff must file with the court an affidavit stating whether or not the defendant is in the military service, showing necessary facts to support the affidavit, or stating that the plaintiff is unable to determine whether or not the defendant is in military service, if that is the case. The requirement for an affidavit may be satisfied by a written, signed document declared to be true under penalty of perjury. If it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If the court is unable to determine if the defendant is in military service, the court may require the plaintiff to file a bond in an amount approved by the court. A person who makes or uses an affidavit under this Act knowing it to be false, may be fined or imprisoned or both. 50 U.S.C. App. 501 et seq. To obtain certificates of service or non-service under the Servicemembers' Civil Relief Act, you may access the public website: <https://www.dmdc.osd.mil/appj/scra/scraHome.do>. This website will provide the current active military status of an individual. _____

**FRIO COUNTY
FILING FEE SCHEDULE
FOR CIVIL SUITS**

Submit one original petition plus an additional copy for each defendant.

	<u>FILING FEES</u>	<u>IND. FEES</u>	<u>EFILING FEES</u>	<u>EDUCATION FEES</u>	<u>SERVICE FEES</u>	<u>TOTAL</u>
<u>Small claims:</u>						
Defendant in Frio Co.	25.00	6.00	10.00	5.00	90.00	136.00
2 Defendants	25.00	6.00	10.00	5.00	180.00	226.00
Defendant resides out of county	25.00	6.00	10.00	5.00	MUST CALL COUNTY FOR FEE**	46.00
<u>Evictions:</u>						
Forcible detainer (eviction)	25.00	6.00	10.00	5.00	90.00	136.00
<u>Repair and Remedy Case</u>	25.00	6.00	10.00	5.00	90.00	136.00
<u>Occupation Driver's License</u>	25.00	6.00	10.00	5.00		46.00
<u>Order of Retrieval</u>	25.00	6.00	10.00	5.00	90.00	136.00
Jury Fee	22.00					22.00
Abstract of judgment	5.00					5.00
Writ of Execution	5.00				90.00	95.00
Writ of Possession	5.00				90.00	95.00
Writ of Garnishment	5.00				90.00	95.00
Writ of Sequestration	5.00				90.00	95.00
Subpeona-service fee for each witness residing in Frio County Plus witness fee, a "tender"(ten dollars cash) to attach to each subpoena						75.00
Subpeona Duces Tecum-witness fee (ten dollars cash) plus Production Documents fee (one dollar in cash) to attach to each subpoena						
Certified copies (first page)						2.00
Each additional page						.25
Copying all other documents (first page)						1.00
Each additional page						.25
Transcript(required for Appeal to County Court)						10.00

****NOTE: IF THE DEFENDANT'S ADDRESS IS NOT IN FRIO COUNTY, THE PLAINTIFF WILL BE CHARGED FOR FILING AND ISSUED THE CITATION FOR PROCESS. IT WILL BE THE PLAINTIFF'S RESPONSIBILITY TO FIND OUT WHAT COUNTY THE DEFENDANT'S ADDRESS IS IN AND THE SERVICE FEE FOR THAT COUNTY****

FEES PAYABLE BY MONEY ORDERS ONLY. MADE PAYABLE TO THE PROPER COURT.