

# Self-Help Legal Information Packet: When a Small Claims Case Has Been Filed Against You



Self-Help Legal Information Packets are provided for the benefit of justice courts and individuals seeking access to justice through the court system. They do not constitute legal advice, and the court is not responsible for the accuracy of the information contained in the packet.

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## What is a Small Claims Case?

When a person or company feels like someone else owes them money or has personal property that belongs to them, they can come to justice court and file a lawsuit called a **small claims case**. The person or company who files the case is called the **plaintiff** and the person or company they file the case against is called the **defendant**.

## I Got Served with a Citation, Now What?

The court, not the plaintiff, issued the **citation**, which tells you that you are being sued. The **petition** was created by the plaintiff, and it will provide details of why the plaintiff is suing you, and how much money (or personal property) they are suing for.

If the petition isn't clear regarding what the plaintiff thinks you did wrong or what they want, you can file a **motion** with the court asking for them to clarify. A motion is a request for the court to do something. This is done by putting your request in writing and sending it to the court and to the plaintiff.

Once you have been served with the citation, you have 14 days to file an **answer**, which is your response to your lawsuit. You must give your answer to the court and also send it to the plaintiff. After you answer, the court will set your case either for trial, or for a **pre-trial hearing**. At a pre-trial hearing, you can discuss any issues such as the need for an interpreter, or for the court to **subpoena** a witness (order them to come to trial to testify).

**IMPORTANT** – If you do not file an answer, legally you are admitting the plaintiff's claim, and the court may issue a default judgment against you.

This means you will owe the plaintiff money, without having had your day in court. Be sure to file an answer before the deadline!

## How Do I File an Answer?

Your answer doesn't have to be anything fancy. It simply needs to be in writing, and you must send it to the court and to the plaintiff. You don't have to get specific as to the reasons you think you don't owe the plaintiff money. You can say something like "I deny the claim and want to see proof at trial." Or even just "I don't owe the plaintiff anything."

You can also file an answer saying that you owe the plaintiff some of the money they are asking for, but not all of it, or even an answer agreeing that you owe the plaintiff the money. If you agree you owe the plaintiff all of what they are asking for, they may get a judgment against you for that amount without having a trial.

## How Do I Send Paperwork to the Plaintiff?

Any paperwork such as motions, requests for a hearing, appeals, etc., must be sent to the plaintiff as well as to the court. You can send those papers to the plaintiff by:

- 1) delivering it to them in person,
- 2) mailing it to them using certified or registered mail,
- 3) using a delivery service such as FedEx or UPS,
- 4) faxing it to them, or
- 5) sending it by email if the plaintiff provided their email address for document delivery and agreed to email service in writing.

On the copy you give to the court, you must write down how and when the paperwork was delivered to the plaintiff.

The plaintiff's contact information will be available in the petition they filed, which was attached to the citation that you received.

**IMPORTANT** - Make sure to keep your address updated with the court and the other party so that you will receive any paperwork or notices sent to you.

## Do I Need a Lawyer?

While you are allowed to have a lawyer in a small claims case, the rules and procedures are designed to be simple and straightforward, allowing people to seek justice without needing to hire a lawyer.

If you do not have a lawyer, the judge may allow you to be assisted in court by a family member or other person who is not being paid to assist you. This person can help you understand the proceedings and advise you, though **that person cannot speak for you in court.**

The court is required to make the Rules of Civil Procedure available to you at no cost. Rules 500-507 are the rules that specifically apply to small claims cases.

The court is **not** allowed to give you advice on whether you will win a case or not, what to say in court, or what steps you should take to win your case or avoid paying a judgment.

Questions the court **can** answer for you are questions like "What do I need to do to have a jury trial?" or "How many days do I have to file an appeal?"

Questions the court **cannot** answer for you are questions like “Should I just pay this instead of going to court?” or “Is it a good idea to get a jury for this case?” or “Am I going to win?”

If, after reviewing these materials and the rules for small claims cases, you still are not sure what to do, it may be best to consult an attorney.

## What if I Want to Move the Case?

Small claims cases are filed in a justice court and the case will be heard in front of the justice of the peace. The plaintiff can technically file the small claims case in any justice court in Texas, but if they file in the wrong **venue** (location), you can file a **motion to transfer venue**. This is a request to have the case moved to the right location.

So, what is the right venue? Generally, a case can be filed:

- 1) In the precinct and county where the defendant lives,
- 2) In the precinct and county where the contract was going to be performed, if it is a contract case (for example, if the contract was to paint a house, the precinct and county where the house is located);
- 3) In the precinct and county where the damage to property or injury to the plaintiff occurred; or
- 4) In the precinct and county where the personal property the plaintiff is suing for is located.

To file a motion to transfer venue, you need to make a **sworn statement** in writing (this means that a notary or the clerk watches you sign it and signs to show that they saw you sign) that explains why the case is in the wrong venue. Also, you must list the proper county and precinct that you want the case transferred to.

**IMPORTANT** – You must file the motion to transfer venue no later than 21 days after you file your answer, or it will be too late.

After you file your motion, the judge will schedule a hearing to decide whether or not to move the case. Be sure to show up in court for that hearing.

## What is Discovery?

Discovery is the exchange of information between people or companies involved in a lawsuit before the case goes to trial. Either side may serve discovery requests on the other side. In small claims cases, discovery **must** be approved by the judge **before** the other party has to provide any information or answer any questions.

If you have discovery questions that you want the plaintiff to answer, submit them to the court with a request for discovery. Requesting the court to do something is called a **motion**, so you would be making a “motion for discovery.”

The judge will only approve “reasonable and necessary” discovery, so if you have discovery requests, make sure they actually relate to the case. For example, asking for copies of emails that the plaintiff sent to a body shop regarding damage to a motor vehicle in a crash that they are suing you for is likely reasonable, and asking for a copy of all emails from the plaintiff over the last three years is likely not.

If you receive a discovery request that has been approved by the judge, you must respond with the requested information or you can file an objection with the court. If you object, the court will hold a hearing to decide if you have to provide the information. **Do not** just ignore a

discovery request, you could face penalties from the judge that could even result in you losing your case!

For information about discovery that may happen after the judgment in the case, please see the section on “What if I Lose My Small Claims Case?”

## What if I Think the Plaintiff Owes Me Money?

Often in disputes that end up in small claims court, both parties think the other side owes them money. For example, John hires Mary to paint his house. The agreement is that he will pay her \$2,000 up front and \$2,000 when she is done. She paints the house and wants her \$2,000. But John thinks she has done awful work, and not only doesn't want to pay, he wants his original \$2,000 back as well.

If you feel the plaintiff owes you money, you can file what is called a **counterclaim**. In the counterclaim, you will be the plaintiff and the person who filed the original suit against you will be the defendant. Both the original claim and the counterclaim will be heard at the same time in court. For more information on being a plaintiff, please see the information packet on Filing a Small Claims Case.

## What if the Plaintiff and I Make an Agreement?

If the case goes to trial, usually there will be a “winner” and a “loser,” resulting in someone being happy and someone being unhappy. To reduce that risk, parties will often come to a **settlement**, or an agreement on how to resolve the case. If you come to a settlement agreement, the court can enter a judgment reflecting how much money is awarded. If you fail to follow the terms of your settlement agreement, the plaintiff could

use the tools mentioned in this packet to enforce the judgment, or they could possibly file a new lawsuit for breach of contract.

## Can I Have a Jury Trial?

Yes. Either side in a small claims case may request a jury trial. You must make a request in writing to the court at least 14 days before the date set for trial and pay a jury fee of \$22.

If no one requests a jury, the trial will be heard by only the judge, which is called a bench trial.

## What if I Need More Time for Trial?

The court will send you a trial notice at least 45 days before the trial date. If you need more time or you have a conflict with that date, you can file a motion (request) for **postponement**, also called a **continuance**. You should explain in writing why you need the postponement.

**Do not** just decide not to show up on your trial date! That may result in a default judgment being issued against you.

## What Happens at the Trial?

**Be sure to bring all of your witnesses and documents with you on your trial date!** If the trial is a jury trial, the first step will be jury selection, which is formally called **voir dire**.

Then, the plaintiff will be able to give an opening statement if they wish, where they explain to the judge and jury what they feel the case is about. You can respond with your own opening statement, or you can wait to

give one until after the plaintiff has given all of their information, or you can decide not to give one.

Next, the plaintiff will call any witnesses they have and ask them questions so that they can **testify**, or tell their story, to the judge or jury. You get to ask questions of any witnesses they may call, which is called **cross-examination**. You may ask the witnesses questions that relate to the facts of the case but remain calm, polite, and respectful of the court process, even if you disagree with what the witness says.

Once the plaintiff has presented all of their witnesses and evidence, they will **rest**, which means they are done. It is now your turn, and you can call any witnesses you have. You can also testify yourself and show any evidence you may have (such as documents, contracts, cancelled checks, receipts, etc.).

Finally, each side can make a final statement, called a **closing argument**, where you explain why you think you should win the case.

After that, the decision will be made by the jury if there is one, or by the judge if there is no jury. The decision will be announced in open court, and a written **judgment** will be made available.

## What Happens if I Lose My Small Claims Case?

If the judgment is in favor of the plaintiff, you can file a **motion for new trial** within 14 days of the judgment. That means that you want a “do over” in the same justice court. You would need to show that justice wasn’t done in the original case. If you file a motion for new trial, you must send it to the plaintiff within one day of filing it with the court.

Another option is to file an **appeal**, which is a request for the county court to hear your case. You can file an appeal within 21 days of the judgment,

or if you filed a motion for new trial that was denied, you can appeal within 21 days of the denial of that motion. To appeal, you will have to file either:

- 1) An **appeal bond** (promise from another person, called a **surety**, to pay the bond amount to the plaintiff if you don't pursue the appeal) in double the amount of the judgment;
- 2) A cash deposit of double the amount of the judgment, which may be awarded to the plaintiff if you don't pursue the appeal; or
- 3) A Statement of Inability to Afford Payment of Court Costs if you cannot afford an appeal bond or cash deposit.

If you appeal with an appeal bond or a cash deposit, you must send notice of the appeal to the plaintiff within seven days of filing it with the court.

Once your appeal is filed with the county court, you will be required to pay the filing fee for the county court, or you may file a Statement of Inability to Afford Payment of Court Costs.

## **What If I Don't File for a New Trial or Appeal?**

If you do not file for a new trial or an appeal, you owe the amount of the judgment to the plaintiff. If you fail to pay the judgment, the plaintiff can enforce the judgment against you. Below is a brief description of some of the tools that the plaintiff can use against you to enforce a judgment.

**Post-Judgment Discovery:** The plaintiff can send questions that you must answer describing what assets you may have that could be used to satisfy a judgment. You will get at least 30 days to respond to these discovery requests, either by providing the requested information or by making an objection with the court.

If you object, the court will hold a hearing to decide if you have to provide the information.

**IMPORTANT** - If you do not respond accurately and completely to the requests, the judge can punish you, possibly including holding you in contempt and imposing a fine or even jail time.

**Abstract of Judgment**: If you own real property (land), the plaintiff can get an abstract of judgment from the court that issued the judgment and file it with the county clerk in the county or counties where you own the property. This puts a **lien** on the property in the plaintiff's name, which means if you sell the property, they could take the proceeds to satisfy the judgment.

**Writ of Execution**: This is an order for the constable to go out and seize your personal property and sell it to satisfy the judgment. **IMPORTANT** - many items of personal property are **exempt**, meaning it is not legal for the constable to seize them and sell them. The plaintiff generally must wait at least 30 days after judgment before getting a writ of execution.

**Writ of Garnishment**: If a third party, such as a bank, has assets that belong to you, the plaintiff can get a writ of garnishment to order that those assets be given to the plaintiff to satisfy the judgment.

## **What Happens if I Win My Small Claims Case?**

If the judgment is in your favor, that doesn't necessarily mean the issue is over for good. The plaintiff might file a motion for new trial or an appeal. You will receive written notice of any of these actions.

## Resources

Texas Lawyer Referral Service - (800) 252-9690

To check military status - <https://scra.dmdc.osd.mil/>

Texas Justice Court Training Center information for self-represented litigants - [www.tjctc.org/SRL](http://www.tjctc.org/SRL)

Office of Court Administration Self-Represented Litigant Site: [www.txcourts.gov/programs-services/self-help/self-represented-litigants/](http://www.txcourts.gov/programs-services/self-help/self-represented-litigants/)

State Bar of Texas Information, including Legal Information and Low or No-Cost Legal Assistance: [www.texasbar.com](http://www.texasbar.com), and then click on "For The Public."

Forms and Information, including for other types of cases - [www.texaslawhelp.org](http://www.texaslawhelp.org)

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

v.

\_\_\_\_\_  
DEFENDANT

§ IN THE JUSTICE COURT  
§  
§  
§ PRECINCT NO. \_\_\_\_\_  
§  
§  
§ \_\_\_\_\_ COUNTY, TEXAS

**PETITION: SMALL CLAIMS CASE**

**Defendant(s) address:** \_\_\_\_\_  
\_\_\_\_\_

**COMPLAINT:** The basis for the claim which entitles Plaintiff to seek relief against Defendant is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RELIEF:** Plaintiff seeks:  damages in the amount of \$\_\_\_\_\_,  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,  registered mail,  certified mail, return receipt requested. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other addresses where Defendant(s) may be served are: \_\_\_\_\_  
\_\_\_\_\_

I hereby request a jury trial. The fee is \$45 and must be paid at least 14 days before trial.

I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows: \_\_\_\_\_

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Plaintiff's Printed Name

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Signature of Plaintiff  
or Plaintiff's Attorney

**Defendant's Information** (if known):

Date of birth: \_\_\_\_\_

Last three digits of Driver License: \_\_\_\_\_

Last three digits of Soc. Sec. No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

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Address of Plaintiff  
or Plaintiff's Attorney

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City

State

Zip

---

Phone & Fax No. of Plaintiff  
or Plaintiff's Attorney

# Justice Court Civil Case Information Sheet

(Revised 10/2020)

**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 pleading or documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at that:

<b>1. Contact information for person completing case information sheet:</b>	<b>2. Names of parties' in case:</b>																				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">Name: _____</td> <td style="width: 50%; border: none;">Telephone: _____</td> </tr> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> <tr> <td style="border: none;">Address: _____</td> <td style="border: none;">Fax: _____</td> </tr> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> <tr> <td style="border: none;">City/State/Zip: _____</td> <td style="border: none;">State Bar No: _____</td> </tr> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> </table>	Name: _____	Telephone: _____	_____	_____	Address: _____	Fax: _____	_____	_____	City/State/Zip: _____	State Bar No: _____	_____	_____	<table style="width: 100%; border: none;"> <tr> <td style="border: none;">Plaintiff(s):</td> </tr> <tr> <td style="border: none;">_____</td> </tr> <tr> <td style="border: none;">Defendant(s):</td> </tr> <tr> <td style="border: none;">_____</td> </tr> <tr> <td style="border: none;">_____</td> </tr> </table>	Plaintiff(s):	_____	_____	_____	_____	Defendant(s):	_____	_____
Name: _____	Telephone: _____																				
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<b>3. Indicate case type, or identify the most important issue in the case (select only 1):</b>																					
<input type="checkbox"/> <b>Debt Claim:</b> A debt claim case 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 \$20,000.00, excluding statutory interest and court costs but including attorney fees, if any.	<input type="checkbox"/> <b>Eviction:</b> An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$20,000.00, excluding statutory interest and court costs but including attorney fees, if any.																				
<input type="checkbox"/> <b>Repair and Remedy:</b> A repair and remedy case is a "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 \$20,000.00, excluding statutory interest and court costs but including attorney fees, if any.	<input type="checkbox"/> <b>Small Claims:</b> A small claims case is a lawsuit brought for the recover of money damage, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$20,000.00, excluding statutory interest and court costs but including attorney fees, if any. <b>(OCCUPATIONAL LICENSE, ORDER OF RETRIEVAL, and TRUANCY CASES to be reported in Small Claims).</b>																				

<https://scra.dmdc.osd.mil>  
create an account  
single record request

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

§ IN THE JUSTICE COURT

VS

§ PRECINCT THREE

\_\_\_\_\_  
Defendant

§ FRIO COUNTY, TEXAS

**AFFIDAVIT OF MILITARY STATUS OF DEFENDANT**

Before me, the undersigned clerk of the justice court or notary public, on this day personally appeared the undersigned affiant whose identity is known to me. After I administered an oath to such affiant, he or she upon oath and under penalty of perjury stated the following:

My name is *[please print]* \_\_\_\_\_; I am *[check one]* \_\_\_\_\_ the plaintiff or \_\_\_\_\_ and authorized agent or \_\_\_\_\_ attorney for the plaintiff in the above styled and numbered cause. I am over the age of 18 and am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

**check below as applicable:**

- The defendant is not in the military
- The defendant is not on active duty in the military and/or
- The defendant is not in a foreign country on military service
- The defendant is on active military duty and/or is subject to the Service members Civil Relief Act of 2003.
- The defendant has waived his/her rights under the Service members Civil Relief Act of 2003.
- The defendant's military status is unknown at this time.

\_\_\_\_\_  
Signature of Plaintiff / Agent / Attorney

Subscribed and sworn to before me by \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Court Clerk      Notary Public

**PENALTY FOR MAKING OR USING FALSE AFFIDAVIT: A person who makes or uses an affidavit 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.**

Instructions: 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 to be false, may be fined or imprisoned or both. 50 USC 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://scra.dmdc.osd.mil/>. This website will provide the current active military status of an individual.

### 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 Member 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 fact 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 attorney ad litem may be assessed against the plaintiff as cost of the court unless otherwise ordered by the court.

FRIO COUNTY  
 FILING FEE SCHEDULE (Revised 01/2021)  
 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	100.00	146.00
2 Defendants	25.00	6.00	10.00	5.00	200.00	246.00
Defendant resides out of county	25.00	6.00	10.00	5.00	MUST CALL COUNTY FOR FEE**	46.00
<u>Evi ctions:</u>						
Forci ble detain er (evi ction)	25.00	6.00	10.00	5.00	100.00	146.00
<u>Repair and Remedy Case</u>	25.00	6.00	10.00	5.00	100.00	146.00
<u>Occupati on Dri ver' s Li cense</u>	25.00	6.00	10.00	5.00		46.00
<u>Order of Retrie val</u>	25.00	6.00	10.00	5.00	100.00	146.00
Jury Fee	22.00					22.00
Abstract of judgment	5.00					5.00
Wri t of Executi on	5.00				150.00	155.00
Wri t of Possessi on	5.00				150.00	155.00
Wri t of Garni shment	5.00				150.00	155.00
Wri t of Sequestrati on	5.00				150.00	155.00
Subpeona–service fee for each witness residing in Frio County Plus Witness fee, a "tender"(ten dollars cash) to attach to each subpoena						100.00
Subpeona Duces Tecum-witness fee (ten dollars cash) plus Production Documents fee (one dollar in cash) to attach to each subpoena						
Certi fied copies (fi rst page)						2.00
Each addi ti onal page						.25
Copyi ng all other documents (fi rst page)						1.00
Each addi ti onal 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