

JUSTICE COURT PROCEDURES

SMALL CLAIMS

Justice of the Peace Courts are courts in which parties can settle disputes in a speedy, informal setting. Although it may be prudent to have an attorney represent you in your case, the Texas Supreme Court adopted less formal procedures for all Justice Courts as of August 31, 2013, making the Justice Courts more user-friendly to non-lawyer litigants. All of the new procedural rules for a Justice Court are in Part V, "Rules of Practice in Justice Courts", found in the Texas Rules of Civil Procedure. Those rules and the Rules of Evidence can be found on the Precinct 3 Justice Court web page under Lamb County's website, www.co.lamb.tx.us. It is important to familiarize yourself with these rules for a more favorable outcome if you intend to file a lawsuit (as *a Plaintiff*), or if you are sued (as *a Defendant*).

The purpose of this document is to help you understand the basic procedures in Justice Courts, but it is neither intended to present legal advice nor a complete understanding of the procedures. The clerks of the court are here to: file your documents in person or by mail, fax, or email attachment; receipt money; maintain case files; send notices and orders; and to sometimes answer procedural questions. The court clerks are neither permitted nor qualified to give you any legal advice. If you need or desire any legal advice regarding your case, consult with a competent attorney.

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 cannot be for more than \$10,000.00, excluding statutory interest and court costs but including attorney fees, if any. This means that you may not arbitrarily reduce your actual damages to \$10,000.00, or less, just to use a Justice Court. If your actual damages are for \$10,000.01 or more, you cannot ignore the extra one cent and use a Justice Court. If you do, when it is discovered by the judge that your actual damages exceed the jurisdictional limit of the court, your case must be dismissed and you will have lost your court fees, valuable time, or worse; a Plaintiff could end up with a case in the wrong court and out of time to file in the correct court. You must file your case in a court of competent jurisdiction.

WHO MAY SUE

A corporation or other entity, or any person over the age of 18 years can file a Small Claims Case. The party filing the suit is the "Plaintiff." A minor can use the Court if accompanied by a parent, relative, or "next friend" over the age of 18 to file a claim and later go with the minor to the trial. There can be more than one Plaintiff in a suit.

WHOM MAY BE SUED

Any natural person, corporation or entity over which the Court has jurisdiction may be sued. The person or business being sued is called the "Defendant." There can be more than one Defendant in a suit.

WHICH JUSTICE COURT TO USE

The Justices of the Peace in each county sit as judges of the Small Claims Courts. The addresses and telephone numbers of these courts are in the city telephone directory, or available at the county's website. Where a law suit may be brought is called Venue. If there is more than one Justice of the Peace Court in a county, then a Defendant generally must be sued in one of the following venues:

1. the county and precinct where the Defendant resides;

2. the county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred;
3. the county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or
4. the county and precinct where the property is located, in a suit to recover personal property.

Under some circumstances, the Plaintiff may have a choice of courts in which to bring a claim. For example, if the Defendant lives in one precinct but does business or contracted to perform services in another precinct, either precinct 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. There are other time limits listed in **Chapter 15** of the **Texas Civil Practice and Remedies Code**, also available on the Precinct 3 web page. To be safe, you should file suit as soon as you are convinced you cannot recover the money or property on your own, and before 2 years have gone by.

TYPES OF TRIALS

The trial of the case may be heard by the Judge of the Court sitting alone, or upon written request of either party, by a six-person jury. The Texas Rules allow either party to request a jury upon payment of a \$22.00 fee. A written demand for a jury must be filed no later than 14 days before the date the case is set for trial. If the demand is not timely, the right to a jury is waived unless the late filing is excused by the judge for good cause.

In a jury trial, the jury decides the facts of the case to determine who wins. When the Judge hears the case alone, the Judge makes these determinations. Having a trial by Judge alone will generally take less time and be less complicated than a jury trial.

HOW TO START THE SUIT

To initiate a lawsuit, the Plaintiff must file a Small Claims Petition (*forms available from the court or downloadable from the court's website*) with the Civil Clerk of the correct Justice of the Peace Court which includes:

1. The name of the Plaintiff or Plaintiffs;
2. The name, address, telephone number, and fax number, if any, of the Plaintiff's attorney, if applicable, or the address, telephone number, and fax number, if any, of the plaintiff;
3. The name address, and telephone number, if known, of each Defendant;
4. The amount of money, if any, the Plaintiff seeks;
5. A description and claimed value of any personal property the Plaintiff seeks;
6. A description of any other relief requested;
7. The basis for the Plaintiff's claim against the Defendant; and
8. If the Plaintiff consents to email service of the answer and any other motions or pleadings, a statement consenting to email service and email contact information.

The Plaintiff, or Plaintiff's attorney, must also fill in and sign a Justice Court Civil Case Information Sheet.

AFTER THE SUIT IS FILED

Call the Clerk in 2 or 3 weeks to see if the Defendant has been served and find out the exact date of service. **The service date is important** because it must be used to calculate the date by which the Defendant must Answer (*or respond to the claim*). The calculated date is called the **Answer Date**, and is calculated as follows: From the date of service, count 14 days. If the 14th day is a day the court is open, the Answer is due by 5:00 p.m. on the 14th day. If the 14th day is on a Saturday, Sunday, or legal holiday, the Answer is due by 5:00 p.m. on the next day that is not a Saturday, Sunday, or legal holiday. **Verify this date with the Clerk.**

If the Defendant does not respond to the suit by the answer date, the Plaintiff wins by simply appearing in court and asking for a **default judgment**. The Plaintiff must still, however, prove the amount of money due him, and if any Defendant is a natural person, present the court with an Affidavit of his/her military status; or,

If the Defendant does respond in writing by the answer date and disputes the claim, the case will be set for trial. The answer date, however, is not the date of the trial. After a response has been filed with the court, ask the clerk when the case may be set for trial.

Once a trial date has been set, ask the Clerk to issue a subpoena (*which will order a witness to appear at trial*) for any witness needed to prove the claim who will not come unless they are so ordered by the Court. The full name and address of a witness are needed for a subpoena to be issued. A fee must be paid for each subpoena requested.

THE TRIAL

If the Defendant has received proper notice of the trial but fails to appear in court at the appointed time, the Judge will grant a post answer default judgment against the Defendant. The Plaintiff must still be present for the trial and prove the amount of money due, and ask the Court to enter a default judgment against a Defendant. If the Plaintiff does not appear at the trial, then the Judge may enter an order dismissing the case.

If the case does go to trial, both the Plaintiff and Defendant must be in Court at the time of the trial, must dress appropriately, and must not be late. The Plaintiff and Defendant must bring to Court that day any evidence (*such as receipts, invoices, canceled checks, photographs, etc.*) that they wish to present to the Court, and any witnesses they intend to have testify for them during the trial.

When the case is called to trial, the Judge will ask both parties whether they are ready to proceed with the case. At this point, the parties and all witnesses will be sworn and the trial will begin.

Proceedings in Justice Courts can be less formal than in other civil courts. The judge will direct all parties and witnesses throughout the proceedings as to if and when it is their turn to speak. All parties are required to follow the court's instructions and to be polite and courteous to all other parties and to all witnesses.

The Plaintiff's side of the case will be presented first. The Plaintiff should offer any documents or other supporting evidence which support the Plaintiff's claim and present any witnesses. The Judge may ask questions to clarify some of the points necessary to reach a fair decision, or to help move the case along. The Defendant may then be entitled to ask questions of the Plaintiff and any witnesses.

After the Plaintiff's case is completely presented, the Defendant will have an opportunity to present the Defendant's side of the case. It may be the Defendant's position that the Plaintiff is wrong in the way the Plaintiff

says the events occurred. The Defendant may say that the Plaintiff's account of the events is correct, but that the Plaintiff is demanding too much money. The Judge can question the Defendant and any of the Defendant's witnesses, and the Plaintiff may also ask them questions. If either party thinks the other party or any witnesses are not telling the truth, the Plaintiff or Defendant should ask questions which would expose this fact. It is never appropriate to say, "*He (or she) is lying (or, not telling the truth)*".

After the Judge has heard the testimony of the witnesses and the relevant facts and evidence presented by both sides, and both parties have asked all the questions they want to ask that are relevant to the case, the trial will end. The Judge will announce the decision in the case if there is no jury. If it is a jury trial, the jury will deliver the verdict.

IF THE DEFENDANT WINS

If the Defendant wins, the Plaintiff will recover no money and must pay the court costs. (*Costs are pre-paid to the court when suit is filed*)

IF THE PLAINTIFF WINS

If the Plaintiff wins, the Defendant will be ordered to return personal property or to pay the Plaintiff the amount of money awarded by the Court, plus court costs and attorney fees, if any. If the Defendant does not pay the money awarded by the Court, then the Plaintiff can ask the Clerk to issue an **Execution**, which orders the Sheriff or Constable to collect the amount of the judgment and court costs. The Sheriff or Constable either collects money or seizes and sells property belonging to the Defendant to satisfy the amount of the judgment. The Plaintiff may ask the Clerk to issue an execution any time from 30 days after the judgment has been signed, upon the payment of an *issuance fee* and a *fee for service* of the execution (*fee information is available from the Clerk*). An execution cannot be issued if either party is appealing the judgment.

The final judgment is good for ten years. It will draw interest compounded annually until collected at the rate awarded in the judgment, and it may be extended for additional ten year periods. There are also many other ways to collect a judgment besides an execution, but you may need to do a little research on your own to see which one might work best for you, or ask an attorney for the correct legal advice.

APPEALS

Either party has the **right to appeal** to the County Court. To appeal, a party must file an **appeal bond** in the Justice Court within 21 days from the date of the judgment (*the judge will set the bond amount*). Information about filing an appeal is available from the Clerk of the Court.

If a party appeals to the County Court, the County Clerk of the County will notify the other party of the new trial which will be held in the County Court.

The **new trial** will be held before another Judge or jury anew, as if the original case had never been tried.