

Small Claim Additional Information

JUSTICE COURT CIVIL CASE FOR MONEY OR PROPERTY The Limit of the Court is \$20,000

TRCP 500-507 PART V

- Court Cost and Service Fees
 - Filing Fee: \$54.00
 - Service Fee \$95.00 per defendant

If you wish to introduce any written evidence, you must provide printed and/or digital copies (i.e. USB or CD) copies of each document to the court and the opposing party at the time of the hearing.

PLEASE NOTE WHEN CONTACTING THIS COURT:

“A JUDGE SHALL NOT INITIATE, PERMIT, OR CONSIDER EX PARTE COMMUNICATION MADE TO THE JUDGE OUTSIDE THE PRESENCE OF ALL PARTIES.... CONCERNING THE MERITS OF A PENDING OR IMPENDING JUDICIAL PROCEEDING”

“A JUDGE SHALL REQUIRE COMPLIANCE WITH THE SUBSECTION BY COURT PERSONNEL SUBJECT TO HIS OR HER DIRECTION AND CONTROL”

Code of judicial conduct, canon 3, B(8)

PLEASE PRINT. DO NOT WRITE IN CURSIVE.

JUSTICE COURT CIVIL CASE INFORMATION SHEET

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.

| 1. Contact information for person completing case information sheet | 2. Names of parties in case: |
|---|---|
| <p>Name: _____ Telephone: _____</p> <p>Address: _____ Fax: _____</p> <p>City/State/Zip: _____ State Bar No: _____</p> <p>Email: _____</p> <p>Signature: _____</p> | <p>Plaintiff(s):</p> <p>_____</p> <p>_____</p> <p>Defendant(s):</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>[Attach additional page as necessary to list all parties]</p> |

3. Indicate case type, or identify the most important issue in the case (select only 1):

| | |
|---|---|
| <input type="checkbox"/> Debt Claim: 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 in damages, excluding statutory interest and court costs but including attorney fees, if any. | <input type="checkbox"/> 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 \$20,000, including cost and attorney fees, if any. |
| <input type="checkbox"/> Repair and Remedy: A repair and remedy case is a lawsuit brought to seek judicial remedy for the alleged failure of a landlord to remedy or repair a condition as required by Chapter 92 of the Texas Property Code. The relief sought can be for no more than \$20,000, excluding statutory interest and court costs but including attorney fees, if any. | <input type="checkbox"/> Small Claims: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, or personal property. The claim can be for no more than \$20,000 excluding statutory interest and court costs but including attorney fees, if any. |

PLEASE PRINT. DO NOT WRITE IN CURSIVE.

CAUSE NO. _____

PLAINTIFF § IN THE JUSTICE COURT
§

v. §
§ PRECINCT 3
§

DEFENDANT § GRAYSON COUNTY, TEXAS
§

PETITION: SMALL CLAIMS CASE

I. DEFENDANT(S) ADDRESS: *(include DOB, and DL number, if known)*

II. COMPLAINT: Plaintiff files this suit against Defendant based upon the following facts:

_____.

III. 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:

IV. SERVICE OF CITATION: Service is requested on Defendant(s) by:

Personal service at home or work,
 Registered mail, or
 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: _____

PLEASE PRINT. DO NOT WRITE IN CURSIVE.

V. **ONGOING INTEREST:** Plaintiff does or does not seek ongoing interest. If so:
The effective interest rate claimed is _____%; this interest rate is based upon
 contract statute and began accruing on _____; the dollar amount of
interest claimed as of _____ is \$_____.

VI. **JURY REQUEST**

- I request a jury trial. (*The fee is \$22 and must be paid at least 14 days before trial unless you file a Statement of Inability to Afford Payment of Court Costs in compliance with Rule 502.3.*)
- I do not request a jury at this time.

VII. **SERVICE BY EMAIL** (*Normally, documents in this case are sent by mail. If it is easier for you, you can choose to get some of the documents sent by email. If you choose to get documents by email, you must have an email account where you can receive, open, and view large attachments, and it is important that you check this email account every day. Even if you receive some documents by email, you will still receive some documents about the case by mail or personal service, so you must not ignore any documents from the court or other parties received by mail or personal service.*)

- Yes, I would like to receive documents related to this case by email at this email address: _____.
- No, I do not want to receive any documents by email.

Respectfully submitted,

Signature of Plaintiff

Signature of Attorney, if any

Printed Name: _____

Printed Name: _____

Address: _____

Address: _____

Email: _____

Telephone: _____

Telephone: _____

Fax: _____

CAUSE NO. _____

| | | |
|-----------|---|-----------------------|
| _____ | § | IN THE JUSTICE COURT |
| PLAINTIFF | § | |
| | § | |
| v. | § | PRECINCT 3 |
| | § | |
| _____ | § | |
| DEFENDANT | § | GRAYSON COUNTY, TEXAS |

SERVICEMEMBER’S CIVIL RELIEF ACT AFFIDAVIT

Instructions: The Servicemember’s 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 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. To obtain certificates of service or non-service under the Servicemember’s Civil Relief Act, you may access the public website: <https://www.dmdc.osd.mil/appli/scra/scraHome.do>. This website will provide the current active military status of an individual.

Plaintiff being duly sworn under oath swears that Defendant is: *(check one)*

- not on active duty in the military
- on active military duty and/or is subject to the Servicemember’s Civil Relief Act of 2003
- has waived in writing his/her rights under the Servicemember’s Civil Relief Act of 2003
- military status is unknown at this time

PLAINTIFF

SWORN TO AND SUBSCRIBED before me on _____, 20____.

CLERK OF THE JUSTICE COURT OR NOTARY

**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.*

Resources and Referral Information

Texas Law Help

www.texaslawhelp.org

The Texas Law Help website is a resource for people who do not have an attorney. Topics offered on the website include:

- Civil Rights
- Landlord Tenant
- Family Law
- Consumer Cases
- Mediation
- Forms & Instructions
- Wills and Estates
- Domestic Violence
- Juvenile Cases
- Spanish Resources
- Seniors
- Veteran Issues

Alternative Dispute Resolution <http://www.texasadr.org/>

Going to court litigation may not always be the best way to resolve a problem. Alternative dispute resolution (ADR) is one way to work out an agreement. Mediation and arbitration, for example, both involve neutral, third parties who may facilitate a resolution. ADR can be used for many types of cases, including co-parenting, divorce, probate, contract disputes, other civil cases and appeals.

State Bar of Texas

www.texasbar.com

The State Bar of Texas Client-Attorney Assistance Program helps resolve problems between clients and attorneys. Also, a person with a complaint against an attorney may file a formal complaint (“grievance”) against the attorney with the State Bar. On the State Bar’s website, select *Client Assistance & Grievance* for more information. The State Bar’s Texas Lawyers Care department publishes a [referral directory of legal services and other resources](#) for low-income Texans.

Texas Law Libraries

Law libraries have print and online resources including statutes, regulations, court rules, and court decisions, as well as legal encyclopedias, form books, and books about specific areas of law. Most law books are written for legal professionals, but some books are written for non - lawyers. Law library staff cannot give legal advice, but they can show people how to use their resources.

Texas State Law Library www.sll.state.tx.us
205 West 14th Street Austin,
Texas 78701-1614
(512) 463-1722

Texas Statutes and Legislative Process www.statutes.legis.state.tx.us (Statutes)

www.capitol.state.tx.us (Texas Legislature)

The first website contains state statutes. The second website contains information about bills in the Texas Legislature and the legislative process.

Texas Court System

www.txcourt.gov

The Texas Judicial Branch website contains information about the Texas court system.

Texas Forms

Legal form books provide sample language that can be used to prepare documents to file with the court. Some forms are fill-in-the-blank, while others only provide language that must be tailored to the situation. Forms are not available for every situation.

- Some courts have forms available online or in the clerk's office or county law library. Check on your court's or county's website.
- Some court forms are available at <http://texaslawhelp.org/resource/texas-forms> (click on *a list of forms and topics*.)
- Texas continuing legal education materials often include forms. Search the catalogs of university law libraries for the relevant topic, such as contracts, and include "Texas" in the search.

Legal Assistance Organizations and Other Non-Profit Organizations

www.texaslawhelp.org www.lsc.gov

Contact information for Texas agencies and organizations such as Legal Aid of NorthWest Texas, Texas RioGrande Legal Aid, Lone Star Legal Aid, Advocacy, Inc., Texas Legal Services Center's Legal Hotline for Texans, and the Texas Advocacy Project's Family Law Hotline and Family Violence Hotline, and immigration law resources. On the Texas Law Help website, select the *Find Legal Assistance* tab. This tab also contains information about other organizations that assist with various legal problems, including consumer protection, landlord-tenant, OSHA complaints, complaints about nursing homes, and assistance with utility companies. On the Legal Services Corporation website, select Texas on the map of the United States. Most legal aid programs have income guidelines that determine the people or families they can serve. Persons must apply for assistance. Because of resource limitations, not everyone who qualifies will receive assistance.

Finding an Attorney

The State Bar of Texas Lawyer Referral Information Service is a free service provided by the Texas State Bar to help people find an attorney. Access the State Bar of Texas Lawyer Referral Information Service on the Texas Bar website at www.texasbar.com to Find *a Lawyer*. *Get a referral* on the right side of the page. Most lawyer referral programs refer people to attorneys who charge a nominal fee for the initial consultation; further fees will be negotiated by the attorney and client if they agree to continue.

Other resources include the yellow pages or friends who may have recommendations. Do not provide lawyer referrals. Another resource is www.martindale.com, an online version of the print lawyer directory Martindale-Hubbell. This site can be searched by location and subject specialty, and provides information about a lawyer's education and experience, as well as the ratings other lawyers give them.

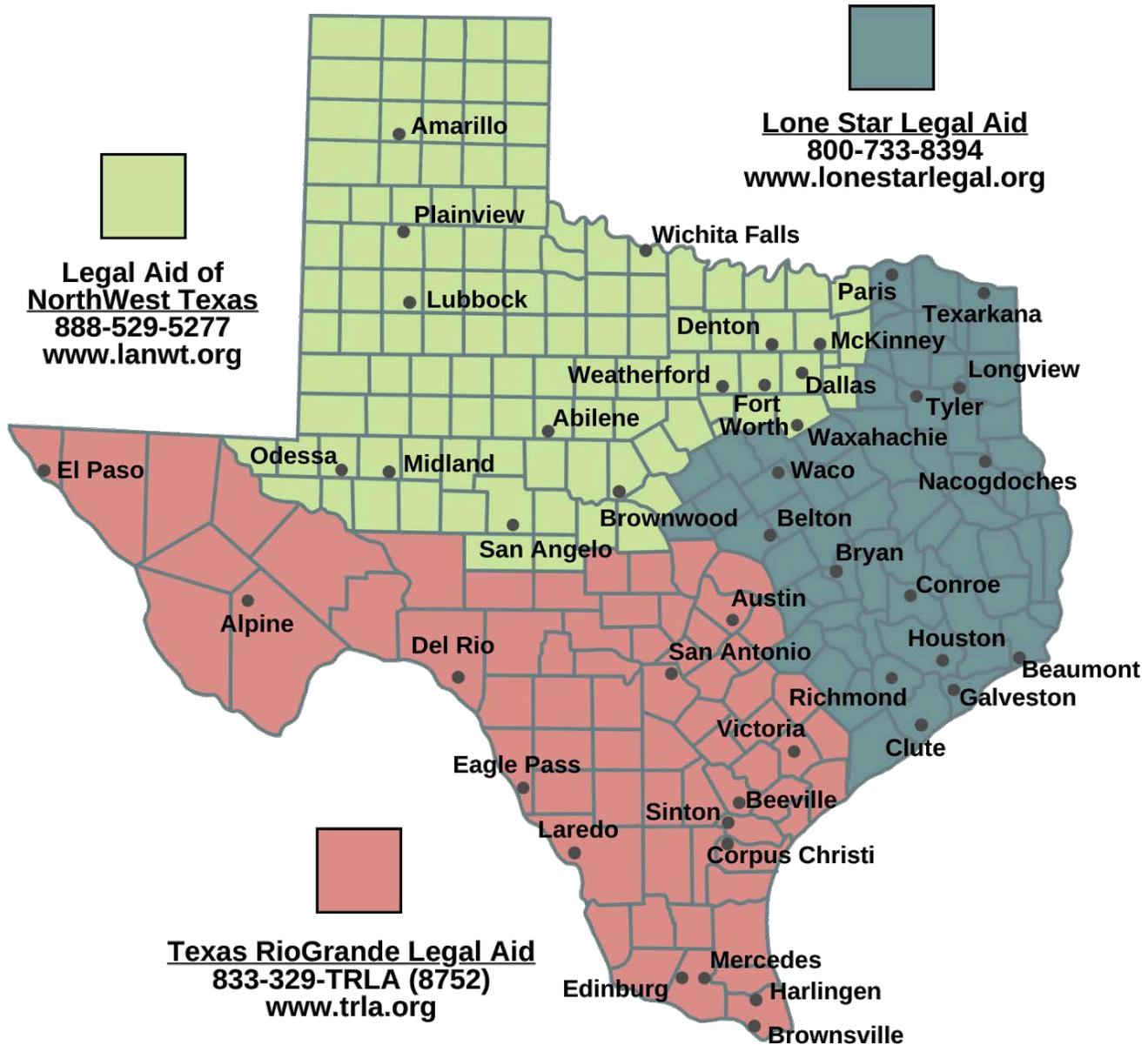
Limited Legal Help

Many people cannot afford to hire an attorney. Limited legal help, also known as "limited scope legal representation," is an alternative way to get legal help. Under this kind of arrangement, an attorney and client agree that the attorney will provide specific services for a predetermined fee. For example, the attorney and client could agree that the attorney do one or more (but not all) of the following:

- will only advise the client about the strength of the case;
- help draft a document;
- review a document the client has drafted;
- coach the client for a negotiation;
- help with the discovery process;
- coach the client for a hearing;
- appear in court on behalf of the client for one hearing only; or
- any combination of these kinds of services.

Hiring an attorney to handle part of a case can be an affordable alternative to hiring one to take care of the entire case (also called “full representation”), and may be preferable to representing yourself in court -- a process that takes time and patience and can be confusing. People who act as their own attorney are expected to know and follow the same rules that attorneys follow.

Not all cases are suited for limited legal help. Attorneys who are interested in providing limited scope representation may be found using the resources described above in the **Finding an Attorney** section. Feel free to ask attorneys if they are willing to provide limited scope representation.



Recursos de asistencia legal

¿No tiene recursos para contratar a un abogado?

Los tribunales no ofrecen servicios legales directos al público, o representan a persona alguna en asuntos legales, ni mantienen un directorio de los abogados que ofrecen servicios legales gratuitos conocidos en inglés como pro bono y tampoco participan en la búsqueda de abogados que ofrecen servicios gratuitos. Tenga presente que los fondos para financiar servicios legales gratuitos o a bajo costo son extremadamente limitados y por ello, estos programas se ven obligados a rechazar casos de muchas personas con necesidades jurídicas importantes. Lo único que el Colegio de Abogados de Texas sí puede ofrecerle es [información](#) para comunicarse con las oficinas que ofrecen servicios legales civiles a bajo costo en su área. Para obtener una lista de los servicios legales que hay en cada condado, diríjase al [Directorio de asistencia legal para texanos de bajos recursos](#) (PDF en inglés).

Si usted no cubre los requisitos para recibir asistencia legal gratuita o a bajo costo, comuníquese al [Servicio de referencia para asesoría legal](#) al teléfono gratuito [\(800\) 252-9690](#). A través del Servicio de referencia para asesoría legal, usted puede obtener una consulta de asesoramiento inicial de treinta minutos con un abogado, pagando \$20 dólares. Al finalizar esta consulta, el abogado y usted podrán conversar sobre la posibilidad de contratarlo como su representante legal y podrán definir el costo de esta representación. Es importante que usted entienda que este Servicio de referencia para asesoría legal no es un servicio legal gratuito pro bono o un programa de honorarios reducidos.

Otros recursos de asistencia legal

- [TexasLawHelp.org](#) - Un sitio para texanos de bajos recursos que ofrece información gratuita y formularios legales, órdenes de protección y otros formularios de autoayuda en asuntos de derecho familiar.
- [TexasCourtHelp.gov](#) - Un sitio con información general y vídeos sobre cómo abrirse paso dentro del sistema judicial.
- [State Bar of Texas Referral Directory](#) - Directorio de asistencia legal para texanos de bajos recursos (PDF en inglés)
- [Texas Lawyers for Texas Veterans](#) - Un proyecto del Colegio de Abogados de Texas para asistir con asuntos legales a los veteranos de las fuerzas militares estadounidenses de bajos recursos.
- [Legal Aid of Northwest Texas](#) - Ofrece servicios en las áreas de Dallas-Fort Worth y el noroeste de Texas.
- [Lone Star Legal Aid](#) - Ofrece servicios en el área de Houston y el este de Texas.
- [Texas RioGrande Legal Aid](#) - Ofrece servicios en las áreas de Austin / San Antonio, El Paso y el sur de Texas.

Self-Help Legal Information Packet: Filing a Small Claims Case



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**.

What Can I File a Small Claims Case For?

You can file a small claims case if you have a claim that is within the justice court's **jurisdiction**, meaning the type of cases that court can hear. The four most common reasons that plaintiffs file small claims cases are:

- 1) The defendant made a promise and then didn't honor the promise, which caused the plaintiff to lose money (breach of contract);
- 2) The defendant owes money to the plaintiff and will not pay;
- 3) The defendant did something that caused damage to the plaintiff's property or caused injury to the plaintiff; or
- 4) The defendant is in possession of personal property that belongs to the plaintiff.

What Can I Not File a Small Claims Case For?

You cannot file a small claims case if:

- 1) The amount of money you are trying to recover is more than \$20,000,

- 2) You are trying to recover a piece of personal property that is worth more than \$20,000 (a hearing may be necessary after you file a case for the judge to determine if the property is worth more than \$20,000),
- 3) You are trying to recover or obtain title to **real property** (land), or
- 4) You are suing for defamation, libel, or slander (things the defendant has said or published about you that you believe to be false and harmful).

You also **cannot** get an order from a justice court to make a party do something or stop doing something. For example, you could **not** get an order from the justice court to make the defendant perform services that you paid for but didn't receive, stop posting things about you on Facebook, or cut down a tree that is hanging over your property.

Who Do I File a Small Claims Case Against?

You must file the case against the person or company that is responsible for your **damages** (lost money) or that has your personal property. If you are suing a business that is not a corporation, you should check with the county clerk to see who the owners or partners of the business are. If the business is a corporation, you will need the name of the registered agent, president, or vice-president of the corporation.

To determine the legal nature of a business, you may:

- 1) Go to the Assumed Names Records maintained by the County Clerk
- 2) Contact the Corporation Division of the Office of the Secretary of State at 512-463-5555, or go to their web page

at <http://www.sos.state.tx.us/help.shtml>, to find information and assistance, or

- 3) Contact the Office of the State Comptroller at 1-800-252-1386.

When Can I File a Small Claims Case?

You can only file your claim for a certain amount of time after the incident occurs. This is called the **statute of limitations**. In a breach of contract case, the time period is four years, unless the contract gives a different time period. In most other cases, the time period is two years.

If you file a case where the statute of limitations has run out, you will lose the case. If you are unsure if the statute of limitations has run out in your case, you may wish to consult an attorney.

Where Do I File a Small Claims Case?

Small claims cases are filed in a justice court and the case will be heard in front of the justice of the peace. You can technically file the small claims case in any justice court in Texas. However, if you file in the wrong **venue** (location), the defendant can have the case moved to the right location. If that happens, you may have to pay the filing fees again, so it is a good idea to file the case in the right venue to start with.

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,
- 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.

How Do I File a Small Claims Case?

The first step in filing a case (unless you are suing a doctor for medical malpractice, in which case you should consult with an attorney) is to file a **petition**, which is a form that says who you are suing, why you are suing them, how much you are suing them for, and provides contact information. The court will likely have petition forms for you to use.

When you file the petition, you will have to pay a filing fee of \$54. Also, the petition and **citation** (the notice from the court to the defendant that they have been sued) must be **served on** (delivered to) the defendant. This can be done in person or by certified mail or registered mail, and if it is done by mail there must be a return receipt requested, with restricted delivery.

IMPORTANT - You are not allowed to serve the paperwork yourself! You can either hire a private process server to serve the paperwork, or pay for the constable, sheriff, or clerk of the court to serve the paperwork. The fee for this service varies from county to county, see the court for details.

If you win your case, you will be awarded the fees that you had to pay, in addition to any other money you are entitled to recover.

What if I Can't Afford to File a Case?

Courts **must not** deny you access to justice simply because you cannot afford filing fees or service fees. If you are unable to pay those fees, fill out a **Statement of Inability to Afford Payment of Court Costs** form - the court **must** provide this form to you.

You must swear to the information that you provide on this form and can face legal consequences if you do not fill it out to the best of your ability. Fill out the form completely and truthfully!

Do I Need a Lawyer to File a Case?

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, whether you should file a case, who you should file a case against, or what steps you should take to win your case or collect your 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 “Can I sue someone for this?” or “Who should I sue?” 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 Happens After I File a Small Claims Case?

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.

The court will generate the **citation**, which tells the defendant that they are being sued. The citation then must be served on the defendant. You can either pay the service fee for the constable or sheriff to serve the citation (or submit a Statement of Inability showing you cannot afford the fee) or hire a private process server to serve it on the defendant.

Once the defendant is served with the citation, they have 14 days to file an **answer**, which is their response to your lawsuit. They are required to send you a copy of their answer. If the defendant does 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).

What if the Defendant Doesn't Answer?

If the defendant doesn't file an answer within the 14 day period, you can ask the court for a **default judgment hearing**, where you can prove to the court that you are entitled to money or personal property and be awarded a judgment.

To get a default judgment, you will also need to provide the last known address of the defendant to the court in writing, as well as an **affidavit** (document signed in front of the clerk or a notary, that you swear to be true) stating either:

- 1) the defendant is on active duty in the U.S. military,
- 2) the defendant is not on active duty in the U.S. military, or
- 3) that you do not know if the defendant is on active duty in the U.S. military.

This affidavit must also state in writing how you know whether the defendant is on active duty in the U.S. military or why you are unable to determine the defendant's military status.

You can verify military service at <https://scra.dmdc.osd.mil/>.

What is Discovery?

Discovery is the exchange of information between people or companies involved in a lawsuit before the case goes to trial. For information about discovery after a judgment, please see the section on "What if I Win My Small Claims Case?" 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 defendant 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 defendant sent to a subcontractor about the deck work they did for you is likely reasonable, and asking for a copy of all emails from the defendant 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, possibly including dismissal of your case!

How Do I Send Paperwork to the Defendant?

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

What if We Reach 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. However, the court cannot put specific orders in the judgment, such as payment plans or deadlines. If you wish to have those in your settlement agreement, you would need to create a written contract, signed by both parties. If the defendant does not honor that written agreement, you could 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 will probably result in your case being dismissed.

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**.

Next, you will be able to give an opening statement if you wish, where you explain to the judge and jury what the case is about.

After that, you will call any witnesses you have, and ask them questions so they can **testify**, or tell their story, to the judge or jury. The defendant will also be able to ask your witnesses questions. You can also testify yourself and show any evidence you may have (such as documents, contracts, cancelled checks, receipts, etc.).

Next, the defendant can present any evidence and call any witnesses that they may have. You get to ask questions of any witnesses they call, which is called **cross-examination**. You may ask the witnesses questions that relate to the facts of the case, but must remain calm, polite, and respectful of the court process, even if you disagree with what the witness says.

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

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 defendant, 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 pay a filing fee of \$54 or file a Statement of Inability to Afford Payment of Court Costs. You must also send a copy of the motion to the defendant 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 that denial.

If you properly file an appeal, the county court will hear the case over from scratch (de novo) and the judgment of the justice court will go away. There will be a new judgment from the county court based on the evidence presented there.

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 defendant if you don’t pursue the appeal) in the amount of \$500;
- 2) A cash deposit of \$500, which may be awarded to the defendant 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 pay a filing fee of \$54 or file a Statement of Inability to Afford

Payment of Court Costs. You must also send a notice of the appeal to the defendant within seven days.

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

What Happens if I Win My Small Claims Case?

If the judgment is in your favor, you will almost surely not walk out of court with a check in the full amount of the judgment. The defendant might file a motion for new trial or an appeal. If they don't, it is your responsibility, not the court's, to pursue enforcement of the civil judgment. Below is a brief description of some of the tools that you can use to enforce a judgment.

WARNING: Not all of these tools may be useful in any given situation. If you are unsure which of these to use, you may wish to consult with an attorney.

Post-Judgment Discovery: You can send questions to the defendant that they must answer describing what assets they may have that could be used to satisfy a judgment. The defendant gets at least 30 days to respond to these discovery requests. It is not required to get the judge's approval for post-judgment discovery.

Abstract of Judgment: If the defendant owns real property (land), you 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 the defendant owns the property. This puts a **lien** on the property in your name, which means if they

sell the property, you could receive some of the proceeds to satisfy the judgment.

Writ of Execution: This is an order for the constable to go out and seize the defendant's 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.

To get a writ of execution, you file an application with the court that issued the judgment, at least 30 days after judgment.

Writ of Garnishment: This is used when another person or company has money or property that belongs to the defendant, and they are ordered to give it to you to satisfy the judgment. Almost always this is used to take money from a bank account held by the defendant.

To get a writ of garnishment, you file an application including an affidavit (sworn statement) explaining why you are entitled to the garnishment with the court that issued the judgment.

IMPORTANT - if the person or company has no money or property belonging to the defendant, you may be responsible for paying attorney fees related to their response. Be very sure that a writ of garnishment is the best option before getting one.

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

Office of Court Administration Self-Represented Litigant Site:
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, and then click on “For The Public.”

Forms and Information, including for other types of cases -
www.texaslawhelp.org