



JUDGE MIKE OGLESBY

Justice of the Peace, Pct. 5



Small Claims Cases

"The information contained herein is not exhaustive and is not intended to be legal advice."

Justice Court Civil Cases

"I Just Want to Talk to the Judge....."

The Code of Judicial Conduct prohibits the Judge from engaging in communication concerning the merits of a pending case or one that may be filed in the future.

Most people understand this when they consider how they would feel about the judge discussing their case with the other party without their knowledge or consent.

"But Your Clerk Said....."

The Code also prohibits a Judge or Court Staff from giving legal advice.

"Do I need a Lawyer?"

Legal representation is not required. Legal representation may be desired to safeguard your rights and interests.

Small Claims Cases

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 \$20,000, excluding statutory interest and court costs but including attorney fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.

Jurisdiction

Jurisdiction is the authority of the court to hear and decide a case. You may not *diminish* the amount of your claim in order to qualify for the jurisdictional limits of this court. For example, if your evidence shows that you sustained \$20,100 in damages, you cannot tell the court that you are “willing to take \$20,000”. This will result in your claim being dismissed for lack of jurisdiction.

Venue

Laws specifying the venue, the county and precinct where a lawsuit may be brought are found in Chapter 15, Subchapter E of the Texas Civil and Practice and Remedies Code, which is available online and for examination during the court’s business hours.

Generally, a defendant is entitled to be sued in the county and precinct where the defendant resides; or where the incident occurred; or where the contract/agreement was performed; or where the property is located. Rule 502.4(a)(b)(1)(2)(3)(4)

Motion to Transfer Venue

If a plaintiff files suit in an improper venue, a defendant may challenge the venue by filing a motion to transfer venue. The motion must be filed before trial, no later than 21 days after the day the defendant’s answer is filed, and must contain a sworn statement that the venue is improper and provide a specific county and precinct of proper venue to which transfer is sought. Rule 502.4(d)

Parties to the Suit

Plaintiff is the party that is instituting the suit.

Defendant is the party that is being sued.

It is the burden of the plaintiff to sue the defendant in his/her proper legal capacity, of which there are typically three:

Individual: Where an individual is responsible to you for damages.

Proprietor or Partnership: A business that is not incorporated, but has on file with the county clerk an assumed name (d/b/a).

Corporation: If the business that has injured you is incorporated, you may contact the Secretary of State at (512) 463-5555 to get the name and address of a Registered Agent who is authorized to be served with lawsuits for the corporation.

Institution of Suit

All pleadings and motions must be written, signed and filed except for oral motions made during trial or when both parties are present. Rule 502.1

Petition

To initiate a lawsuit, a petition must be filed with the court and contain specific information found in Rule 502.2(a)(1-8).

A justice court civil case information sheet, in the form promulgated by the Supreme Court of Texas, must accompany the filing of a petition and must be signed by the plaintiff or plaintiff’s attorney. Rule 502.2(b)

Fees – Inability to Pay

Filing fee for a small claims case is \$51.00. On filing the petition, the plaintiff must pay the appropriate filing fee and service fees with the Court.

A plaintiff who is unable to afford to pay the fees or is indigent must file a sworn statement of inability to pay. This form is available at the court or online. Rule 502.3(a). The defendant may contest the statement of inability to pay at any time within 7 days after the day the defendant’s answer is due. Rule 502.3(d)

Citation

When a petition is filed, the clerk must promptly issue a citation and deliver the citation as directed by the plaintiff. The plaintiff is responsible for obtaining service on the defendant of the citation and a copy of the petition with any documents filed with the petition. Upon request, separate or additional citations must be issued by the clerk. Rule 501.1(a)

Service of Citation

No person who is a party to or interested in the outcome of the suit may serve citation in that suit. Citations may be served by:

A sheriff or constable; a process server certified under order of the Supreme Court; the clerk of the court, if the citation is served by registered or certified mail; or a person authorized by court order who is 18 years of age or older. Rule 501.2(a)(1)(2)(3)(4)

Answer

A defendant must file with the court a written answer to a lawsuit as directed by the citation and must also serve a copy of the answer on the plaintiff. See Rule 502.5(a) for the required contents of the answer. The answer is due by the end of the 14th day after the day the defendant was served with the citation and petition. If the 14th day is a Saturday, Sunday, or legal holiday, the answer is due the next day that is not a Saturday, Sunday or legal holiday. Rule 502.5(d)

If the defendant fails to file an answer, the judge must ensure that service was proper and may hold a hearing for this purpose. If service was proper, the judge must render a default judgment in the following manner: Rule 503.1(a)

Default Judgment

Claim Based on Written Document. If a claim is based on a written document signed by the defendant, and a copy of the document has been filed with the court and served on the defendant, along with a sworn statement from the plaintiff that this is a true and accurate copy of the document and the relief sought is owed, and all payments, offsets, or credits due to the defendant have been accounted for, the judge must render judgment for the plaintiff in the requested amount, without any necessity for a hearing. Rule 503.1(1)

Other Cases. A plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The plaintiff must appear at the hearing and provide evidence of its damages. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant. Rule 503.1(2)

Small Claims Cases (Continued)

Pretrial Conference

The court, at any party's request or on its own, may set a case for a pretrial conference. Issues for pretrial conference include discovery, clarification of pleadings, the appointment of interpreters, etc. Rule 503.4(a)

Representation

An individual may represent himself or herself, or be represented by an attorney. A corporation or other entity may be represented by an employee, owner, officer, or partner of the entity who is not an attorney or be represented by an attorney. The court may, for good cause, allow an individual representing himself or herself to be assisted in court by a family member or other individual who is not being compensated. Rule 500.4

Trial

In order to develop the facts of the case, a judge may question a witness or party and may summon any person or party to appear as a witness when the judge considers it necessary to ensure a correct judgment and a speedy disposition. Rule 500.6

If the plaintiff fails to appear for trial, the judge may postpone or dismiss the suit. If the defendant fails to appear for trial the judge may postpone the case or may proceed to take evidence.

If the plaintiff proves its case, judgment must be awarded for the relief proven. If the plaintiff fails to prove its case, judgment must be rendered for the defendant. Rule 503.6(b)(c)

Demand for Jury



Demand for Jury can be made by either party, must be made no later than 14 days before trial and requires a jury fee of \$22 or by filing a sworn statement of inability to pay the jury fee. Rule 504.1

Appeal

A party may appeal a judgment by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay within 21 days after the judgment is signed or the motion to reinstate, motion to set aside, or motion for new trial, if any, is denied. Rule 506.1(a)

Bond: A plaintiff must file a \$500 bond. A defendant must file a bond in an amount equal to twice the amount of the judgment. The bond must be supported by a surety or sureties approved by the judge. The bond must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal. Rule 506.1(b)

Cash Deposit in Lieu of Bond: An appellant may deposit with the clerk of the court cash in the amount required of the bond.

The deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal. Rule 506.1(c)

Sworn Statement of Inability to Pay (SSIP): An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a SSIP. The court will furnish a form, or your statement must meet the requirements of Rule 502.3(b).

The statement may be contested within 7 days after the opposing party receives notice the statement was filed. Rule 506.1(d)(1)(2)

Trial De Novo – a case that is appealed must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. Rule 506.3

Discovery

Pretrial discovery must be approved by the court. Rule 500.9

Motion to Reinstate after Dismissal

A plaintiff whose case is dismissed may file a motion to reinstate the case no later than 14 days after the dismissal is signed. The plaintiff must serve the defendant with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The court may reinstate the case for good cause shown. Rule 505.3(a)

Motion to Set Aside Default

A defendant against whom a default judgment is granted may file a motion to set aside the judgment no later than 14 days after the judgment is signed. The defendant must serve the plaintiff with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The court may set aside the judgment for good cause shown. Rule 505.3(b)

Motion for New Trial

A party may file a motion for a new trial no later than 14 days after the judgment is signed. The party must serve all other parties with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The court may grant a new trial upon a showing that justice was not done in the trial of the case. Only one new trial may be granted to either party. Rule 505.3(c)

Enforcement of Judgment

Justice court judgments are enforceable in the same method as in county and district court, except as provided by law. When the judgment is for personal property, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may in addition to the other relief granted in such cases, enforce its judgment by attachment or fine. Rule 505.2

Abstract of Judgment: creates a public record and a lien or claim on any real estate property owned or later acquired by the defendant located in the county in which the abstract of judgment is recorded.

Writ of Execution: A writ to put in force the judgment of a court order. A writ allows a Sheriff or Constable to try and seize certain nonexempt property from the defendant. If property is seized, an auction is held and the proceeds from the sale offsets the judgment.

Writ of Garnishment: A Writ of Garnishment is a civil action and can be a complicated procedure that may require the assistance of an attorney.

PETITION FOR SMALL CLAIM CASE

Case No.: _____

Plaintiff(s): _____

Address: _____

City State Zip Phone/Fax

IN THE JUSTICE COURT

PRECINCT Five

DENTON COUNTY, TEXAS

VS.

Defendant(s): _____

Home Address: _____

City State Zip Phone County

Check One:

- an individual
- a proprietorship or partnership (dba)
- a corporation

A Registered Agent must be served if the Defendant is a Corporation Name: _____

Address: _____

Plaintiff's Original Petition

Relief: Plaintiff seeks damages in the amount of \$ _____ (do not include court costs)

Complaint: Plaintiff's claim is based on the following:

Property or other relief: Plaintiff seeks return of personal property described as follows: _____, which has a value of \$ _____ (do not include court costs). 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 Rules of Practice in Justice Courts. Other addresses where the defendant(s) may be served are:

Attorney (if applicable): name, address, phone and fax:

I consent for the answer and any other motions or pleadings to be sent to my email address:

| |
|--|
| Defendant(s) information (if known): |
| Date of birth: _____ |
| DL ((Last 3 numbers) _____ |
| Social Security (Last 3 numbers) _____ |

Plaintiff / Attorney Name Printed

Plaintiff / Attorney Signature Date

CAUSE NO. _____

Plaintiff
vs.

IN THE JUSTICE COURT

PRECINCT Five

Defendant

DENTON COUNTY, TEXAS

SERVICEMEMBERS CIVIL RELIEF ACT AFFIDAVIT

**STATE OF TEXAS
COUNTY OF DENTON**

BEFORE ME, the undersigned authority personally appeared the below-named affiant, who upon oath deposed and stated:

I am over the age of eighteen (18) and am competent to make this affidavit. I am the
 Plaintiff
 Plaintiff's agent
in the above-entitled and numbered matter.

I have
 made a personal investigation
 personally reviewed the business records of the Plaintiff

As a result of the investigation or review, it is my belief that the above-named defendant
 is not in the military service on active duty, and is not a dependent of a service member on active duty
 is in the military service on active duty
 I have been unable to determine whether or not the defendant is in the military service on active duty

I understand that any false statements in this document are made under penalty of perjury, and that making a false statement is a violation of Federal Law and is subject to both fine and imprisonment.

DATED this _____ day of _____, 20____.

Affiant

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____.

 Clerk of the Court
 Notary Public