

FILING A SMALL CLAIMS SUIT

VENUE:

Generally , suit should be filed in the county and precinct where one or more of the defendants reside. However, there are many exceptions to this Rule. For further information see “**VENUE IN JUSTICE COURT SUITS**”.

REQUISITES:

DIRECT A LETTER, CERTIFIED MAIL - RETURN RECEIPT REQUESTED, to the defendant, giving notice of the suit. State the amount of money to be sued for and if the money is not received within ten (10) days from the date of the receipt of the letter, suit may be filed.

JURISDICTION:

Jurisdiction (what the Court may render JUDGEMENT for) in Small Claims Court is for civil matters in which the amount of controversy is not more than \$5,000.00. A judgement in Small Claims Court SHALL be for MONEY ONLY, (not for the return of personal property, etc.)

AN ACTION IN SMALL CLAIMS COURT MAY NOT BE BROUGHT BY:

1. An assignee of the claim or other person seeking to bring an action on an assigned claim:
2. A person primarily engaged in the business of lending money at interest; or
3. A collection agency or agent.

FILING SUIT:

The responsibility of filling out your petition rests with you, the plaintiff. Court Clerks will assist you if you have PROCEDURAL questions. The filing fee is twenty seven (27.00) dollars. In addition, there is a fee for serving the defendant which is eighty (80.00) dollars , per defendant to be served in SHACKELFORD COUNTY , for a total of one hundred and seven (107.00) dollars. If you are filing on a defendant that resides outside of SHACKELFORD COUNTY contact this court for service fees.

CITATION:

A citation is sent to the Constable for service on the defendant in SHACKELFORD COUNTY. Out of county service is sent to the Sheriff or Constable , depending on the information you provide the Court.

ANSWER:

The defendant in your suit is commanded to answer to the Court, in writing, on the Monday following the expiration of ten (10) days for the date the citation was served upon him.

REPRESENTATION:

As an individual, you may represent yourself in a Small Claims Suit. If as plaintiff, you are in the business of loaning money, either primarily (banks, credit union, savings and loans) or secondarily (credit cards or interest charge accounts) , you are not allowed to file in Small Claims Court; however, an attorney representing any of the above may file suit on behalf of the

above in Justice Court. Actions in Small Claims court may not be brought by an assignee of the claim or other persons seeking to bring action on an assigned claim or a collection agency.

DEFAULT JUDGMENTS:

If the defendant in your suit fails to file a written answer with the Court , only you as plaintiff will be notified by the court for and appearance on the Default Docket. You will be asked to briefly state the facts of your case and present any written documents you may have to support your case.

TRIAL BY JUDGE OR JURY:

If the defendant in your suit files a written answer, the court date should be approximately **six to eight weeks after service.** (See additional information below for alternate service that could delay serving the citation). Notice will be mailed to the Plaintiff and the Defendant stating the date and time to appear in Court. Bring all information to support your claim. If you have any witnesses, you should bring them. If you have a witness to your suit who will not come voluntarily, you may request the Court to subpoena those individuals prior to trial. The fee in Shackelford County for filing and service of a subpoena is seventy-two (72.00) dollars per subpoena. Allow at least one week for service. **ALL MOTIONS FOR CONTINUANCE (Resetting your Court Date) MUST BE IN WRITING AND RECEIVED NO LATER THAN 5 WORKING DAYS (weekend and holidays excluded) PRIOR TO YOUR COURT DATE.**

AFTER JUDGMENT

THIS COURT DOES NOT COLLECT THE JUDGMENT FOR YOU NOR CAN WE FORCE THE DEFENDANT TO PAY.

If you receive a judgment, and the defendant does not make a motion for a new trial within five (5) days or appeal the case within ten (10) days after the court date, the following remedies are available:

ABSTRACT OF JUDGMENT :

You may obtain an Abstract of Judgment on the 11th day after judgment . The fee is \$5.00 for the JP Court to prepare. You should then record the Abstract in the County where the defendant resides.

WRIT OF EXECUTION:

If you are granted a judgment against the defendant AND if the defendant does not appeal within ten (10) days after the court date, you may obtain and file a Writ of Execution any time after the 30th day from the date of judgment . A Writ of Execution allows a Sheriff or Constable in the State of Texas to try and seize certain non exempt property from the defendant . If property is seized, an auction is held and the proceeds for the sale satisfy the judgment . The cost for filing a Writ of Execution is two-hundred (\$200.00) (this includes the service fee -in Shackelford County) .

You may have other remedies available, but they are more complicated and are not covered here. Please consult an attorney for any other remedies you may have to collect your judgment.

SHOULD THE DEFENDANT PAY ANY PORTION OF THE AMOUNT OWED AFTER YOU HAVE RECEIVED A JUDGMENT , IT IS NECESSARY FOR YOU TO NOTIFY THE COURT OF THE CREDIT OR NOTIFY THE COURT THAT THE JUDGMENT HAS BEEN SATISFIED IN FULL IF THE DEFENDANT PAYS THE ENTIRE JUDGMENT AMOUNT. IF YOUR ADDRESS CHANGES WITHIN THE TEN (10) YEAR PERIOD FOLLOWING THE JUDGMENT , YOU SHOULD NOTIFY THE COURT OF YOUR NEW ADDRESS .

ADDITIONAL INFORMATION:

The defendant in a Small Claims Suit must be served personally by the Constable or Sheriff of the County . Sometimes, service is avoided by the defendant; therefore, an alternate method of service is necessary. This method is referred to as “alternate service”. The Constable or Sheriff may request this alternate service which allows him to serve anyone over the age of sixteen (16) at the defendant’s usual place of abode, business, or in a method the Judge believes will be reasonably effective to give the defendant notice of the suit. We will request that you come in and sign the request for alternate service. If your request is approved, the Judge will sign an order, and the citation will be returned to the Constable or Sheriff for service as mentioned above.

SUIT ON A CORPORATION:

It is important that you understand that for any potential judgement you may receive to be valid, it is necessary for you to sue the defendant in the proper legal capacity. They are as follows:

If the party you want to sue is a corporation, you must find the name of an officer of the corporation before you begin the suit. The Secretary of State (1-512-463-5555) or the State Comptroller’s office (1-800-2522-2555) will give you the information. Ask for the name and address of the REGISTERED AGENT, PRESIDENT OR VICE-PRESIDENT of the corporation. When you file your suit , you will be filing against the corporation and serving the citation on one of the above mentioned officers of the corporation. It is necessary to know the individual’s name who is able to accept service on behalf of the corporation. EXAMPLE- GREENHOUSE INC., SERVE JOHN DOE. It is also possible for an incorporated entity to have an assumed name, i.e. ; GREENHOUSE, INC. DBA GREENHOUSE SUPPLIES. Follow other instructions for the remainder of the suit.

SUIT ON A COMPANY:

If a party you want to sue is an individual doing business under an assumed name (sole proprietor of the business) or a partnership, you must check with the County Clerk’s office in the county of the business to determine who the owner or owners are. Direct your letter (notice of suit) to the owner(s) of the business-EXAMPLE : JOHN SMITH DBA GREENHOUSE SUPPLIES.

INDIVIDUAL:

Where an individual is personally responsible to you for damages he may have caused you.

IF YOU HAVE ADDITIONAL PROCEDURAL QUESTIONS, PLEASE CONTACT THIS COURT AT (325) 762-2232 EXT.1

LEGAL QUESTIONS WILL NOT BE ANSWERED BY THIS OFFICE.

ALL CORRESPONDENCE SHOULD BE ADDRESSED TO :

JUDGE JAMES BREEDEN
PO BOX 2211
225 S. MAIN
ALBANY, TX. 76430

EXAMPLE

EXAMPLE

EXAMPLE

PLAINTIFF'S ORIGINAL
PETITION

SMALL CLAIMS COURT
JUSTICE OF THE PEACE
PRECINCT #1
SHACKELFORD COUNTY , TX.

CAUSE# _____

PLAINTIFF

PLAINTIFF'S LEGAL NAME - _____ CAPACITY IN WHICH YOU ARE SUING
ADDRESS _____

PHONE: HOME AND /OR WORK _____

EXAMPLE

DEFENDANT(S)

DEFENDANT'S CORRECT LEGAL NAME _____

ADDRESS FOR SERVICE, CITY , STATE, _____
& ZIP CODE _____

PHONE: _____ PHONE: _____

STATE THE NATURE OF THE CLAIM IN CONCISE FORM, INCLUDING ALL DATES, COPIES OF ALL STATEMENTS, SUPPORTING DOCUMENTS, ETC., AND THAT THERE ARE NO COUNTER CLAIMS EXISTING IN FAVOR OF THE DEFENDANT(S) AND AGAINST THE PLAINTIFF.

PLAINTIFF'S NAME EXACTLY AS ABOVE, herein called PLAINTIFF, on oath deposes and says that DEFENDANT'S NAME _____, Defendant(s) is/ are _____ justly indebted to PLAINTIFF IN THE SUM OF \$ NOT TO EXCEED \$5,000.00.

DESCRIBE THE NATURE OF THE SUIT: PAST DUE ACCOUNT, DAMAGE TO PROPERTY, LOAN, ETC.

LIST DATES, AMOUNTS, INVOICE NUMBERS; ETC.

EXAMPLE
PLAINTIFF'S SIGNATURE

YOUR SIGNATURE

SUBSCRIBED AND SWORN TO BEFORE ME THIS
_____ DAY OF _____, 20____ .

EXAMPLE

CLERK OF COURT / NOTARY PUBLIC

THESE PETITIONS MAY NOT
BE MAILED TO OUR OFFICE

EXAMPLE

EXAMPLE

EXAMPLE

PLAINTIFF'S ORIGINAL
PETITION

SMALL CLAIMS COURT
JUSTICE OF THE PEACE
PRECINCT #1
SHACKELFORD COUNTY, TEXAS

CAUSE # _____

PLAINTIFF

PHONE: _____

DEFENDANT(S)

PHONE _____

PHONE: _____

STATE THE NATURE OF THE CLAIM IN CONCISE FORM, INCLUDING ALL DATES, COPIES OF ALL STATEMENTS, SUPPORTING DOCUMENTS, ETC., AND THAT THERE ARE NO COUNTER CLAIMS EXISTING IN FAVOR OF THE DEFENDANT(S) AND AGAINST THE PLAINTIFF.

_____, herein called PLAINTIFF, on oath deposes and says that _____, Defendant(s) _____ justly indebted to PLAINTIFF in the sum of \$_____.

Plaintiff's Signature

**SUBSCRIBED AND SWORN TO BEFORE ME
THIS _____ DAY OF _____, 20____.**

CLERK OF COURT / NOTARY PUBLIC

THESE PETITIONS MAY NOT BE
MAILED TO OUR OFFICE