

## **Instructions and Information for Filing a Small Claims Suit**

***Please Read Carefully Before Completing the Petition***

On September 1, 2013, a new set of Civil Rules took effect for Justice of the Peace courts across Texas. A complete set of rules is available on my webpage on the Brazos County website <http://brazoscountytexas.gov/index.aspx?NID=136>. Once on the website, click the link that says "NEW RULES". Small claims cases are governed by the rules listed in Chapters 500-507. If you do not have internet access, we have a copy of these rules in my office.

The amount of debt or damages for which you may sue in Small Claims Court may not exceed the limit of the court, which is \$10,000.00, excluding statutory interests and court costs, but including attorney fees.

### **Every Civil Suit must include these documents (included in this packet):**

- Sworn Petition for a Small Claims Lawsuit
- Service Members Civil Relief Affidavit
- Certificate of Last Known Address
- Civil Process Additional Information Sheet

### **FREQUENTLY ASKED QUESTIONS:**

#### **1. How do I know whether I should file in SMALL CLAIMS?**

Most cases filed in J.P. Courts after September 1, 2013 will be in SMALL CLAIMS court. If the matter in controversy is NOT a debt collection case or a LANDLORD AND TENANT issue.

#### **2. Where do I file?**

In all cases, the defendant (person being sued) has the right to be sued in the county or precinct where they live. There are some exceptions or optional. If a lawsuit involved a paint job at a house, the suit could be filed where the house is located. If the lawsuit involved an auto accident, it could be filed in the county and precinct where the accident took place. It is your responsibility to file in the correct precinct.

There could be additional costs and circumstances if you file in the wrong precinct.

#### **3. Who do I sue?**

It is your burden as a plaintiff to sue the defendant in their proper legal capacity, of which there are typically three.

- Personally: Where an individual is responsible to you for damages he may have caused you as an individual.
- Proprietor or Partnership: A business that is not incorporated, but does have on file with the County Clerk an assumed name e.g. John Smith d.b.a. Greenhouse Supplies. You may also file against the individual and his business, John Smith and dba Greenhouse Supplies. To determine whether or not this person has filed an assumed name, you would contact the County Clerk at the Brazos County Courthouse.
- Corporation: The business which has allegedly caused you damage is incorporated and therefore it is necessary to know the individual's name who is able to accept service on behalf of the corporation. We also need the individual's address. (The authorized agent for service would be listed with the Secretary of State whose phone number is 1-512-463-5555) e.g. Greenhouse, Inc. Serve: John Smith registered agent.

You are strongly urged to discuss your case with an attorney if you are suing a proprietor, partnership, or corporation. You are responsible for suing the correct party in their correct capacity.

**4. How much will this cost me?**

Effective September 1, 2013, the court cost for filing a civil suit with service by Constable is \$116.00. You may also hire a private process or attempt to have the suit served by certified mail, return receipt requested. The certified mail option often is unsuccessful.

**5. What happens after I file?**

Once you have filed the petition stating the facts and circumstances of your suit, a citation will be served to the defendant notifying him that a suit has been filed against him in this court. The citation will order the defendant to answer this suit at the end of the 14<sup>th</sup> day from the receipt of the citation. If he fails to do so, you then become eligible for a default judgment up until the time an answer is filed.

If the defendant answers contesting your suit, a hearing will be set by Judge or jury, or your case may be referred to mediation if the judge deems it proper.

If you have witnesses who will not come to court voluntarily, you may come in at least one week prior to the trial and ask that a subpoena be prepared to secure their presence. A cost is involved.

Should you receive judgment, the Court does not collect the judgment. However, you may request an Abstract of Judgment and/or Writ of Execution to help you in collection of this judgment. An Abstract of Judgment a relatively inexpensive option you can get once you have a judgment and the time to appeal has passed. The Abstract creates a lien against the party for ten years.

A Writ of Garnishment is also available 30 days after final judgment has been entered. This Garnishment proceeding is a separate suit. You are strongly urged to contact an attorney to file a Writ of Garnishment.

**THIS COURT MAY NOT ANSWER ANY LEGAL QUESTIONS**

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

\_\_\_\_\_  
Plaintiff § IN THE JUSTICE COURT  
VS. § PRECINCT \_\_\_ PLACE \_\_\_  
\_\_\_\_\_  
Defendant(s) § BRAZOS COUNTY, TEXAS

**SWORN PETITION FOR A SMALL CLAIMS LAWSUIT**

I hereby state that I am filing a Small Claims lawsuit: *A Small Claims case is a lawsuit brought to recover money damages, civil penalties, personal property or other relief allowed by law. The claim can be for no more than \$10,000.00, excluding statutory interest and court costs including attorney fees, if any.*

I, PLAINTIFF: \_\_\_\_\_ dba under

FIRM: \_\_\_\_\_ (individually, partnership, or corporation)

Whose address is: \_\_\_\_\_ (street, city, ZIP).

Phone numbers :( home), \_\_\_\_\_ (business), \_\_\_\_\_ (cell) \_\_\_\_\_;

HEREINAFTER called Plaintiff, being duly sworn, on my oath say that:

DEFENDANT: \_\_\_\_\_

Whose address is: \_\_\_\_\_ (street, city, ZIP).

Employed by: \_\_\_\_\_ (street, city, ZIP)

Phone numbers: (home), \_\_\_\_\_ (business), \_\_\_\_\_ (cell) \_\_\_\_\_.

IS JUSTLY INDEBTED TO THE PLAINTIFF IN THE SUM OF: \_\_\_\_\_ (\$ \_\_\_\_\_.)

REASON FOR FILING THIS LAWSUIT (State the nature of the claim in concise form including all pertinent dates)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SERVICE OF CITATION:** Service is requested on Defendant(s) by personal service at home or work or by alternative service as allowed by the Texas Rules of Civil Procedure. Other addresses where Defendant(s) may be served are: \_\_\_\_\_

**ATTORNEY'S FEES:** Plaintiff  will be or  will NOT be seeking applicable attorney's fees. Attorney's name, address, phone & fax numbers are: \_\_\_\_\_

**REQUEST FOR JUDGMENT:** Plaintiff prays that Defendant(s) be served with citation and that Plaintiff have judgment against Defendant(s) for: the amount or items above, attorney's fees, court costs, and interest on the above sums at the statutory rate for judgments under Civil Statutes Article 5069-1.05.

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

Date signed: \_\_\_\_\_

**DEFENDANT(S) INFORMATION** (if known):

\_\_\_\_\_  
Plaintiff's Signature

DATE OF BIRTH: \_\_\_\_\_

\*LAST 3 NUMBERS OF DRIVER LICENSE: \_\_\_\_\_

\*LAST 3 NUMBERS OF SOCIAL SECURITY: \_\_\_\_\_

DEFENDANT'S PHONE NUMBER: \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Cause No. \_\_\_\_\_

**In the Justice Court, Precinct Two, County of Brazos, Texas**

vs.

\_\_\_\_\_  
Plaintiff(s)

\_\_\_\_\_  
Defendant(s)

**AFFIDAVIT OF MILITARY STATUS OF DEFENDANT(S)**

Before me the undersigned notary or clerk of the justice court, 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 (fine and/or up to one year in jail), stated the following:

My name is *(please print)* \_\_\_\_\_

I am *(check one)* the plaintiff or an authorized agent of the plaintiff in the case described at the top of this page.

I am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

*(check or fill in as applicable)*

1. No defendant in this case is on active duty in the U.S. military (Army, Navy, Air Force, Marines, or Coast Guard). The facts on which I base my conclusion are as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Defendant *[insert name(s)]* \_\_\_\_\_ is on active duty in the U.S. military.
3. Defendant *[insert name(s)]* \_\_\_\_\_ has been deployed by the U.S. military to a foreign country.
4. Plaintiff and the undersigned (if the undersigned is acting agent of plaintiff) are not able to determine whether any defendant is with the U.S. military-except for any defendant named in paragraph 2 above.
5. Plaintiff and the undersigned (if the undersigned is acting as an agent of plaintiff) are not able to determine whether any defendant who is in the U.S. military has been deployed to a foreign country-except for any defendant named in paragraph 3 above.
6. Defendant *[insert name(s)]* \_\_\_\_\_ has signed, while on active duty, a separate written waiver or a written lease containing a waiver of his or her rights under the U.S. Servicemembers Civil Relief Act of 2003.

\_\_\_\_\_  
Signature of affiant

SWORN TO and SUBSCRIBED before me by \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*(check one)*

Notary Public for the State of Texas or  
Clerk of the Justice Court

Cause \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

In the Justice Court

Vs

Precinct Two

\_\_\_\_\_  
Defendant

Brazos County, Texas

Certificate of Last Known Mailing Address

The undersigned, \_\_\_\_\_, does hereby certify that the last known address of Defendant, \_\_\_\_\_, is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

Sworn to and subscribed before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public



# Donald Lampo

## Brazos County Constable Pct. 2



Civil Process Additional Information

Cause #

In order to expedite service and for the safety of our Deputies, we ask that you answer the following questions to the best of your ability.

1. Have you witnessed any "abnormal" behavior?
2. Have you known, or known of, the Respondent being violent with anyone?
3. Have you been verbally or physically assaulted by the Respondent?
4. Known of an occasion where the Respondent has, or brandishes a weapon of any kind? (Please note if the weapon was a firearm, knife, or club or some other weapon.)
5. Does respondent have any dogs known to be aggressive?
6. Are you aware of any mental or emotional issues that the Respondent may have?
7. Are you aware of any police related calls regarding the Respondent?
8. Are there any other issues you think might be important for the Deputies to know?