



Please read the following Small Claims Court Information thoroughly before completing the Claim form.

FAXED FILINGS/MOTIONS ARE NOT ACCEPTED

FILING DAYS and TIMES: Monday through Friday from 8:00am - 4:00pm

METHODS OF PAYMENT: checks, money orders, cashier's checks, cash can be accepted in exact change only! **ALL FEES ARE NONREFUNDABLE.** If paying by check or money order make them payable to JUSTICE COURT #4

FILING FEES: \$31.00 – small claims and justice suit court docketing fee & \$55.00 – service fee for each defendant served by the constable's office (within Collin County) or proper out-of-county service fee

COURT SETTINGS: generally all day Tuesdays and afternoon on Mondays and Thursday

DO YOU HAVE A CLAIM THAT QUALIFIES FOR SMALL CLAIMS COURT?

Answer the following questions to determine if your claim qualifies for small claims court.

1. Are you suing for anything other than money? For example, are you suing for an injunction?
2. Including interest, is the amount of money you are suing for in excess of \$10,000.00?
3. Are you in the business of loaning money for profit, such as a bank, credit union or savings and loan?

If you answered "**Yes**" to any of these questions, you are ineligible to file in Small Claims court.

If you answered "**No**" to all of the questions, the following information may be helpful in filing your claim in the Justice of the Peace court.

This document is to help you understand the basic procedures in these courts, but is not intended to present complete coverage of them.

OUR COURT STAFF CANNOT GIVE YOU LEGAL ADVICE: This document is designed to provide that degree of **procedural** guidance that a court clerk is able to provide. This document is the only information you will receive from this office. If you need **legal advice**, you are **urged** to consult an attorney. The Frisco Bar Association, the Plano Bar Association or the Collin County Bar Association can refer one. To obtain a brochure on the **Deceptive Trade Practices** and the **Consumer Protection Act**, contact the local branch of the **Attorney General's** office at www.oag.state.tx.us (210) 224-1007.

LIMITED JURISDICTION: A Small Claims Court is a judicial forum that hears and decides cases involving claims for **MONEY ONLY** in the amount of **\$10,000.00 or less**. It is important to remember that a **Small Claims Court can only award a judgment for money**. The court cannot require someone to return, replace or repair property; or to do something or to refrain from doing something. Remember, in the Small Claims Court, the petitioner must not ask for anything except money. (Note: At the Judge's discretion, attorney fees may be awarded to the prevailing party.)

A **Justice Court Suit** is a civil suit for money damages, possession of real property, and enforcement of liens on personal property. The amount of controversy must total \$10,000 or less, interest excluded.

VENUE: A Small Claims Court normally must be filed in the court of the precinct where the **Defendant lives**. (CPRC 15.082). Under some circumstances, you may have a choice of courts in which to bring a claim. For example, if the Defendant lives in one precinct but contracted to perform services in another precinct, either the precinct where the defendant lives or the precinct where the work was performed can be selected as the place to bring suit. If you file in the wrong precinct, there is the possibility the defendant will challenge the location of the court hearing. If the case is transferred, you are responsible for the \$10.00 transfer fee.

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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. To be safe, you should file suit as soon as you are convinced you cannot recover the money on your own, and before 2 years have gone by.

WHO MAY SUE: Any person over the age of 18 years can sue in the Small Claims Court. **The person filing the suit is the Plaintiff.** A minor can use the Court by having a parent, relative, or next friend over the age of 18 go with him to file a claim and later go with him to the trial. An association, partnership or corporation may also file a claim in the Small Claims Court. **However, a partnership, association, corporation or person engaged in the business of lending money at interest or functioning as a collection agency may not file a claim in this Court.**

WHOM MAY YOU SUE: Any natural person, association, partnership, or corporation may be sued. Depending on the circumstances, a minor may be sued by suing either the minor or both the minor and the parent or guardian. **The person being sued is generally called the Defendant.** *You must sue the Defendant(s) in their proper legal capacity.*

- ◆ **As an Individual:** You must sue the Defendant individually in the following two situations: (1) the Defendant is personally responsible to you for damages he/she may have caused you, and (2) the Defendant as an individual operating a proprietorship or partnership is responsible to you for damages he/she may have caused.
- ◆ **As a Proprietorship or Partnership:** A proprietorship or partnership is a business that is not incorporated, but has filed an "Assumed Name" with the County Clerk. For example, "John Smith, d/b/a Smith Plumbing Company." To determine whether a company or an individual has an assumed name you must contact the County Clerk's office in the County where the company is located.
- ◆ **As a Corporation:** If the business that has injured you is incorporated, you must contact the State Comptroller's Office at (800) 252-1386, or the Secretary of State at (512) 463-5555. Ask for the name and address for service of the Registered Agent for service of the corporation (the President or Vice-President will also work). This is the person who has been authorized to receive information regarding lawsuits filed against this corporation. For example: when completing your complaint, the name of the Defendant should read "ABC Corporation, by serving John Smith, Registered Agent."

SUBPOENAS: A witness, along with any documents in his/her possession, can be ordered to appear at the trial of a case by the issuance of a subpoena. A **\$55.00** fee per witness is required along with a **\$10.00** bill (per witness) that is served on the witness as a witness fee. You must provide in writing the full name and address of the witness and, where applicable, a detailed description of the documents desired.

COUNTERCLAIMS: A Defendant may file a counterclaim against the Plaintiff by paying a filing fee as outlined above. The procedures involved will essentially remain the same except that the original plaintiff will not be subject to a default judgment should they not answer by the answer date. The claim and counter claim will be tried at the same time. If the Counterclaimant should win their case in court, the original Plaintiff will be subject to the judgment of the counterclaim, including any attorney fees awarded.

SMALL CLAIMS PROCEDURES:

You should give notice to the Defendant.

In most cases, the courts recommend first sending the opposing party a letter by certified mail giving them notice that if they fail to pay damages within 30 days, legal action will be initiated.

STATE YOUR CLAIM: State the nature of your claim fully, listing specific facts and circumstances about your claim by legibly completing a Statement of Claim form, and submitting an original and one copy per defendant of the claim and any supporting documents to the Court along with the appropriate fees. **Complete, full names and current home address for the Plaintiff and Defendant are required. (List and identifying any work addresses for the defendant if possible.) A daytime telephone number for the Plaintiff is requested**

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whenever possible. **The claim must plainly state the amount of money the claim is for, the basis of the claim, and the date the claim arose.**

Fill out the Petition

The one-page small claims petition is easy to fill out. Be sure to fill it out completely before you file it with the courthouse. The following information must be in the petition.

Plaintiff: The legal name of the person or entity bringing the suit. It is important that you provide the court with your day-time phone number and/or address. You must also notify them of any changes in your phone number or address.

Defendant: The legal name of the person or entity you are suing. It is your burden as a plaintiff and it is important that you understand that for any potential judgment you may perceive to be valid, it is necessary for you to sue the defendant in his or her proper legal capacity, of which there are typically three. Should you file against the wrong entity, you will have to begin again and possibly have to pay trial expenses caused by filing against the wrong party.

Name of individual serving: This is always a person's name. If you are suing a corporation or other entity you must obtain the name of the agent for service.

Damages: This is the amount you are suing for. This must be a dollar amount. It cannot exceed \$10,000.00. This is the relief you are asking the court to grant you, so it must be in the petition.

Cause of Action: The act causing debt or damage. When filling out the petition, you must give a full description of the cause of action. The Defendant must be totally aware of why he is being sued. Be comprehensive enough with the allegations so that a third party having no knowledge of the suit could read the petition and understand your claim for damages. State the nature of the claim in a concise form without technicality, including important dates.

Signature: You must sign your name. If you file the petition in person, there is no need to notarize your signature. However, if you decide to mail in your petition, you must have your signature notarized.

Proof: You may attach copies of invoices, receipts or documents you intend to bring to the court. However, it is advisable that you keep personal copies of everything you turn over to the court.

***NOTE:** Before turning the petition in to the clerk, be certain that the petition is complete.*

You must itemize how you obtained the total amount of your claim if it involves more than one item. You may not diminish the amount of your claim in order to qualify for the jurisdiction of this Court. For example: if your evidence shows that you sustained \$18,000 in damages, you cannot tell the Court that you are "willing to take \$10,000." This would result in your claim being dismissed for lack of jurisdiction.

The court clerk notarizes the Statement of Claim, assigns it a case number, and prepares the Plaintiff's receipt. The clerk directs the Plaintiff to contact the court after some interval to check the status of their case. Plaintiffs should always have their case number ready when calling the Court. **NOTE: All Plaintiffs must either appear at the court in person with appropriated identification to have their claims notarized or they must have the claim notarized by a certified notary prior to it being filed with the court.**

AFTER SUIT IS FILED

SERVICE OF CITATION: After you have filed your petition the clerk prepares a citation that, together with a copy of the Statement of Claim, is served on the Defendant by the Constable's Office. The citation notifies the Defendant that the law requires an answer or response to be delivered in person or in writing to the court no later than the Monday following ten (10) days from the date the citation was served.

ANSWER: Once the Citation has been served the Defendant must file a written answer to the suit on or before the Monday next following the expiration of ten days, beginning with the date of service. If he/she fails to do so, you may obtain a "Default Judgment." You will be asked to briefly state the facts of your case and present any documentation to substantiate those damages. You **MUST** prepare a written itemization of your damages.

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Upon verification that the defendant has been served, the Court sets a tentative date and time for the case to be heard. Notices of the official trial date and time, however, are not mailed out until after either the Defendant has answered or the answer date has passed.

If the Defendant does not file a response by their answer date they become subject to a Default Judgment given without the defendant being heard in his own defense. The Plaintiff may win by simply making an appearance before the Court on any one of its Small Claims Court settings and asking for a Default Judgment. If, however, the Defendant fails to file an answer by the answer date but files an answer before a Default Judgment is requested, the answer is considered to be timely filed and the case will be heard on its scheduled date.

If the Defendant answers in time, the court will notify both parties by mail of their court date and time.

REPRESENTATION: In Small Claims Court, a party may represent himself regardless of whether he is an individual, proprietorship, or corporation. In Justice Court, however, a corporation must retain counsel (an attorney). Non-attorney agents in either venue cannot represent parties except for "Default Judgments." The Texas Rules of Evidence and Texas Rules of Civil Procedure are in effect in Justice Court suits, but not in Small Claim Court suits.

TRIAL PREPARATION:

NOTE: KEEP IN MIND THAT AS A PLAINTIFF, YOU HAVE THE BURDEN OF PROOF, TO SHOW BY THE WEIGHT OF THE EVIDENCE THAT THE DEFENDANT YOU ARE SUING IS THE PROXIMATE CAUSE OF DAMAGES IN THE CAPACITY WHICH THE DEFENDANT WAS SUED. ALL DAMAGES AND EVIDENCE NECESSARY TO MEET YOUR BURDEN (I.E., RECEIPTS, INVOICES, CANCELLED CHECKS, WITNESSES, ETC.) SHOULD BE PRESENT AT TIME OF TRIAL. EXPERT WITNESSES SHOULD BE OBTAINED IN MATTERS OF A TECHNICAL NATURE.

- ◆ **Witnesses:** If there are witnesses who will not come to Court voluntarily, you may request that a Subpoena be prepared and served to secure their presence in Court. This should be done at least two weeks before trial in order to allow for service of the Subpoena. The Court does not guarantee that service will be obtained. Successful service of witness subpoenas is your responsibility. There is a charge for the Court to issue a Subpoena, but there is a service fee (See "Citation" above.), and a \$10.00 bill must be attached to the top of the Subpoena.
- ◆ **Evidentiary Subpoenas:** If the Defendant or any other witness has documentation that you do not have, and that is necessary to prove your case, you may have the person who has control of the evidence subpoenaed to bring the documentation to Court. The items you want must be listed clearly and attached to the Subpoena. All of the other information mentioned above is also applicable to evidentiary subpoenas.

TRIAL:

If the Defendant files a written answer your case should be set for trial not less than 45 days after the Court received the answer. You will receive written notice of your Court date. If you change your address or phone number please notify the Court immediately.

- ◆ **MOTIONS FOR CONTINUANCE:** All Motions for Continuance, or requests to reset the Court date, **must be in writing** in the form of a notarized statement and received by the Court no later than three working days prior to your Court date. Weekends and Holidays are excluded. The Plaintiff and the Defendant are each entitled to request one reset "only for good cause," and all other reset requests must be made by agreement of both parties. (Gov't. Code 28.033)_The Judge may approve or disapprove the request.
- ◆ **Jury:** If you desire a trial by jury, it may require the trial date to be reset. Jury trials often last several hours longer than a trial heard by the Judge, so please plan your schedule accordingly.
- ◆ **DISMISSALS:** Should the Plaintiff desire dismissal of a case before the trial date, the Plaintiff can either personally appear at the court, show I.D., and sign a Motion to Dismiss, or forward to the Court a

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notarized statement which details the case number, the names of the parties involved, the fact that a dismissal is requested, and the reason why.

- ◆ Arrive on time for your scheduled trial or hearing.
- ◆ The Judge will conduct a trial of the case on the scheduled date. First the Plaintiff and then the Defendant will be allowed to present their side of the case. After all facts have been presented, the Judge will prepare and sign a judgment for the party that won. If the Defendant, after receiving proper notice of the trial, does not appear in court at the appointed time, the Judge will grant a Default Judgment providing the Plaintiff appears and proves the amount of money due to him. A default notice will then be mailed to the Defendant.

NOTE: Persons desiring a copy of their judgment should notify the bailiff before leaving court.

WHAT HAPPENS AFTER TRIAL?

APPEAL INFORMATION:

Either party has ten (10) calendar days or (five) 5 days in eviction suits in which to appeal the Judge's decision. An appeal bond and "Notice of Appeal" must be filed with the Court on or before 5:00pm on the 10th day (5th day in eviction suits) after the date of Judgment. Appeals filed after this date will be denied. **If no appeal is filed, the judgment becomes final.**

- ◆ Contact the Court and find out the amount of the appeal bond required for your appeal.
- ◆ Prepare a Notice of Appeal, file it with the Court along with an appeal-filing fee, and mail a copy to the opposing party by certified mail, return receipt requested.
- ◆ Prepare a Cash Bond (Money Order or Cashier's Check only), a Signature Bond, or a Surety Bond for the entire amount of the Appeal Bond required by the Court.
- ◆ The Court will then prepare a Transcript of the pleadings on file in your case and send it to the County Court at Law. All Court contact from this point on will be with the Grayson County Court at Law. There will be filing fees required from that Court, and they will contact the party who is appealing regarding payment of those fees.

MOTION FOR NEW TRIAL: Motions for New Trial must be filed in writing within five (5) days from the date of the Judgment.

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JUDGMENT COLLECTIONS

The Justice Court cannot assist you in collection of your Judgment. The Judge has no power to collect on a judgment other than by the issuance of writs.

IT IS DIFFICULT TO COLLECT ON JUDGMENTS. Because Plaintiffs frequently find it difficult to collect their money once they have a judgment, you should first review the procedures for collection listed below and determine if they can collect on a judgment **BEFORE** they file suit. Collection procedures can be complex and difficult and you are encouraged to consult with an attorney about how to collect on a judgment.

GENERAL INFORMATION:

No personal appearance is required to request post-judgment remedies. You may request any of the referenced remedies by mail. In your request you must give the following information:

- ◆ The full case number
- ◆ Your name and current mailing address and telephone number.
- ◆ The party your judgment is against and their employment or home address.
- ◆ State which remedy you are requesting and enclose a **MONEY ORDER** or **CASHIER'S CHECK** for the court cost payable to **Collin County Justice Court 4.**
- ◆ Send ALL written correspondence to:

Justice Court - PCT. 4
Attn: Civil Division
8585 John Wesley Drive #130
Frisco, TX 75034

If you receive a Judgment against the Defendant and the Defendant does not file a Motion for New Trial within five days, does not file an Appeal, or does not pay the Judgment you may seek other remedies to collect your Judgment. Below are listed some remedies that are available to you, and that may assist you in the collection of the Judgment.

- ◆ **ABSTRACT OF JUDGMENT:** if no appeal is filed within 10 days, the winning party can obtain from the court an ABSTRACT OF JUDGMENT for a cost of **\$5.00**. The Abstract will need to be filed with the County Clerk at the County Courthouse who charges a filing fee. An ABSTRACT OF JUDGMENT places a **lien against any non-exempt, real property** of the losing party for a period of ten years and is renewable. When requesting an Abstract of Judgment, you should, whenever possible, provide the court with the losing party's date of birth, Texas Drivers License number, current address and amount, if any, that had already been collected on the Judgment.
- ◆ **WRIT OF EXECUTION:** Thirty days after the judgment is signed, the party that won can request a WRIT OF EXECUTION at a cost of **\$5.00 plus service** (\$150.00 in Collin County) to enforce the judgment. The Constable serves the Writ and makes an oral demand for payment. If not received, he will then look for **non-exempt personal property** to levy on, that is, to confiscate and sell at an auction to pay off the judgment. **THERE IS NO GUARANTEE THAT PAYMENT WILL BE MADE BY A WRIT OF EXECUTION.**
- ◆ **WRIT OF GARNISHMENT:** A Writ of Garnishment is available 30 days after the date of Judgment. This is a new lawsuit and is a complicated procedure. **We recommend that you consult an attorney.**
- ◆ **TURNOVER WRIT:** This process requires a Court hearing. **We recommend that you consult an attorney.**