

**Terri L. Mayer
Justice of the Peace,
Precinct One**

**Polk County Courthouse
101 West Mill Street, Suite 152
Livingston, TX 77351
Telephone: 936-327-6841
Fax: (936) 327-6884**

FILING A SUIT IN SMALL CLAIMS COURT

VENUE:

The suit should be filed in the precinct where the defendant resides. If the suit is based on a contract or a wrongful act, the defendant may also be sued in the county and precinct where the contract was entered into or to be performed, or where the wrongful act occurred.

SEND A LETTER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the defendant giving notice of the suit. **State the amount of money you are suing for and that if the money is not received within ten days from the date of receipt of the letter, a suit may be filed against them.**

JURISDICTION:

Jurisdiction (what the court may render judgment for) in small claims court is for the recovery of **MONEY ONLY**, where the amount in controversy does not exceed **\$20,000.00 plus court cost**.

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 or secondarily engaged in the business of lending money at interest; or
- 3.) A collection agency or agent.

FILING THE SUIT:

The responsibility for completing your petition (affidavit) rests with you. The court clerk will assist you if you have any procedural questions.

COSTS:

The filing fee is **\$54.00**. In addition, there is a fee for serving the citation to the defendant(s) which is **\$100.00** per defendant if served in Polk County. The fee for serving by restricted certified mail is **\$12.80**. This must be made payable by cash, cashier's check or money order to: Terri L. Mayer, JUSTICE OF THE PEACE.

If the defendant you are filing suit on resides **OUTSIDE** of Polk County:

- 1.) Ask the court clerk if she has the fees for the county in question; **OR**
- 2.) Call the county courthouse where the defendant is to be served and find out who serves civil citation for small claims in that county; **THEN**
- 3.) Ask for the name of the sheriff or constable in the precinct where the defendant is to be served and call that office to find out the service fee for serving a small claims citation. Be sure and find the address of the sheriff or constable who will be serving the citation.

CITATION:

A citation is sent to the sheriff or constable for service on the defendant(s) in Polk County. Out of county service is sent to the proper sheriff or constable depending on the information you provide.

The defendant in a small claims suit must be personally served the citation by the sheriff or constable, or by certified mail, before your suit can continue. Sometimes this service is avoided by the defendant and an alternate method of service is necessary. We will require 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 is sent back to the sheriff or constable for alternate service.

The defendant in your suit is commanded to answer to the court in person or in writing on the next Monday following the expiration of ten days from the date the citation was served to them.

SUIT ON A CORPORATION:

If the party you want to sue is a corporation, you must find the name of an officer of the corporation **BEFORE** you begin your suit. The Secretary of State (512) 463-5555 or the State Comptroller's Office (1-800-252-5555) 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 the suit against the corporation and serving the citation on one of the above mentioned officers of the corporation. All other instructions for filing a small claims suit remain the same.

SUIT ON A COMPANY:

If the party you want to sue is an individual doing business under an assumed name (sole owner 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. This information for Polk County may be obtained at the County Clerk's office in Livingston. Direct your letter (notice of suit) to the owner(s) of the company.

REPRESENTATION:

TEXAS RULES OF CIVIL PROCEDURE CHAPTER 500

REPRESENTATION OF AN INDIVIDUAL:

AN INDIVIDUAL MAY REPRESENT HIMSELF OR HERSELF OR BE REPRESENTED BY AN ATTORNEY.

REPRESENTATION OF A CORPORATION OR OTHER ENTITY:

MAY BE REPRESENTED BY AN EMPLOYEE, OWNER, OFFICER, OR PARTNER OF THE ENTITY WHO IS NOT AN ATTORNEY OR MAY BE REPRESENTED BY AN ATTORNEY.

PLEASE NOTE

THE JUSTICE OF THE PEACE OR COURT CLERK CAN ONLY ASSIST YOU WITH PROCEDURAL INFORMATION. THEY CAN NOT GIVE YOU LEGAL ADVICE AND THEY CAN NOT HEAR YOUR EVIDENCE BEFORE YOUR COURT TRIAL.

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TRIAL BY JUDGE OR JURY:

After the defendant in your suit has been served the citation and the answer time has expired, a notice will be mailed to you (the plaintiff) and to the defendant stating the time and date to appear in court. Bring all information you need to support your claim. If you have any witnesses, you should also bring them. The trial of the case may be heard by the Judge of the court sitting alone or, upon the request of either party, by a six person jury. You may request a trial by jury upon payment of a five dollar jury fee and a written request for a jury trial. In a jury trial, the jury decides the facts of the case and will deliver the verdict. When the Judge hears the case alone, the Judge will make the determination in the case and announce the decision.

ALL MOTIONS FOR CONTINUANCE (resetting your court appearance date) MUST BE IN WRITING AND RECEIVED NO LATER THAN FIVE WORKING DAYS (weekends and holidays excluded) PRIOR TO YOUR COURT DATE.

AFTER JUDGEMENT:

If plaintiff receives a take nothing judgment and does not agree, plaintiff may appeal the judgment within 21 days after judgment date by posting a \$500.00 appeal bond, \$54.00 appeal filing fee, and \$10.00 transcript fee.

If a plaintiff receives a judgment against the defendant and the defendant does not make a motion for a new trial within 14 days of judgment date or appeal the judgment within 21 days after the judgment date, your post-judgment remedies to collect your money are as follows:

ABSTRACT OF JUDGEMENT:

You may obtain an abstract of judgment on the eleventh day after judgment is rendered. The fee for obtaining an abstract is five dollars. The abstract will be mailed to you. To file the abstract in Polk County, take the abstract to the county clerk's office in Livingston. In addition, the abstract may be filed in any other county in Texas. The purpose of filing the abstract is to put a lien against any REAL PROPERTY in the defendant's name. If the defendant sells any real property within ten years from the date of judgment, the amount of the judgment must be satisfied, plus interest.

WRIT OF EXECUTION:

If you receive a judgment against the defendant AND the defendant does not appeal within 21 days after the judgment is rendered, you may obtain and file a writ of execution anytime after thirty days from the date of judgment. A writ of execution allows a sheriff or constable to try and seize non-exempt personal property from the defendant. If property is seized, an auction is held

and the proceeds from the sale satisfy the judgment. The cost for filing a writ of execution is fifty-five dollars (\$5.00 filing fee and \$75.00 service fee in Polk County). Follow the instructions under COSTS for finding the service fee for writ of execution to be served OUT of Polk County.

You may have other remedies available (such as a writ of garnishment) but they are more complicated and are not covered here. Please consult an attorney for any other remedies you may have to collect a judgment.

The information contained in this handout is intended to provide all parties with a brief overview of the general procedures for a small claims suit. For more detailed information or legal advice on how to proceed in your suit, please contact a licensed attorney.

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

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): NAME AND ADDRESS</p> <p>_____</p> <p>_____</p> <p>Defendant(s): NAME AND ADDRESS</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): | |
|--|---|
| <p><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, excluding statutory interest and court costs but including attorney fees, if any.</p> | <p><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, excluding statutory interest and court costs but including attorney fees, if any.</p> |
| <p><input type="checkbox"/> Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than 20,000, excluding statutory interest and court costs but including attorney fees, if any.</p> | <p><input type="checkbox"/> Small Claims: 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.</p> |

CAUSE NO. _____

PLAINTIFF

v.

DEFENDANT

§ IN THE JUSTICE COURT
§
§
§ PRECINCT NO. ONE
§
§
§ POLK COUNTY, TEXAS

PETITION: SMALL CLAIMS CASE

Defendant(s) address: _____

COMPLAINT: The basis for the claim which entitles Plaintiff to seek relief against Defendant is: _____

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:

SERVICE OF CITATION: Service is requested on Defendant(s) by: personal service at home or work, registered mail, 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: _____

I hereby request a jury trial. The fee is \$22 and must be paid at least 14 days before trial.

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

Plaintiff's Printed Name

Signature of Plaintiff
or Plaintiff's Attorney

Defendant's Information (if known):

Date of birth: _____

Last three digits of Driver License: _____

Last three digits of Soc. Sec. No.: _____

Phone No.: _____

Address of Plaintiff
or Plaintiff's Attorney

City

State

Zip

Phone & Fax No. of Plaintiff
or Plaintiff's Attorney

WHO DO YOU WANT TO SERVE YOUR CIVIL CITATION?

Certified Mail

Janie Kessler

Polk County Sheriff's Department

Polk County Constable, PCT 1

Signature _____

CONSTABLE SERVICE INFORMATION SHEET

IN ORDER FOR THE CONSTABLE'S OFFICE FOR PCT.1, POLK COUNTY TO SERVE THIS CITATION IN A TIMELY MANNER THE BELOW INFORMATION MUST BE COMPLETED AND RETURNED WITH THE PACKET.

ADDRESS DIRECTIONS

HOUSE AND YARD DESCRIPTION:

VEHICLE DESCRIPTION:

SHOULD THE CONSTABLE HAVE QUESTIONS, PLEASE LIST YOUR NAME AND NUMBER BELOW:

NAME: _____

PHONE NUMBER: _____

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA



Cause Number: _____
(The Clerk's office will fill in the Cause Number when you file this form)

Plaintiff: _____
(Print first and last name of the person filing the lawsuit.)

In the (check one):
 District Court
 County Court / County Court at Law
 Justice Court

And

Defendant: _____
(Print first and last name of the person being sued.)

County _____ Texas

Statement of Inability to Afford Payment of Court Costs or an Appeal Bond

1. Your Information

My full legal name is: _____ My date of birth is: ____/____/____
First Middle Last Month/Day/Year

My address is: (Home) _____
 (Mailing) _____

My phone number: _____ My email: _____

About my dependents: "The people who depend on me financially are listed below.

| Name | Age | Relationship to Me |
|---------|-------|--------------------|
| 1 _____ | _____ | _____ |
| 2 _____ | _____ | _____ |
| 3 _____ | _____ | _____ |
| 4 _____ | _____ | _____ |
| 5 _____ | _____ | _____ |
| 6 _____ | _____ | _____ |

2. Are you represented by Legal Aid?

I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as 'Exhibit: Legal Aid Certificate.

-or-

I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. I have attached documentation from legal aid stating this.

or-

I am not represented by legal aid. I did not apply for representation by legal aid.

3. Do you receive public benefits?

I do not receive needs-based public benefits. - or -

I receive these public benefits/government entitlements that are based on indigency:
(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check.)

- Food stamps/SNAP TANF Medicaid CHIP SSI WIC AABD
- Public Housing or Section 8 Housing Low-Income Energy Assistance Emergency Assistance
- Telephone Lifeline Community Care via DADS LIS in Medicare ("Extra Help")
- Needs-based VA Pension Child Care Assistance under Child Care and Development Block Grant
- County Assistance, County Health Care, or General Assistance (GA)
- Other: _____

4. What is your monthly income and income sources?

"I get this monthly income:

\$ _____ in monthly wages. I work as a _____ for _____
Your job title Your employer

\$ _____ in monthly unemployment. I have been unemployed since (date) _____

\$ _____ in public benefits per month.

\$ _____ from other people in my household each month: *(List only if other members contribute to your household income.)*

- \$ _____ from Retirement/Pension Tips, bonuses Disability Worker's Comp
 Social Security Military Housing Dividends, interest, royalties
 Child/spousal support
 My spouse's income or income from another member of my household *(if available)*

\$ _____ from other jobs/sources of income. *(Describe)* _____

\$ _____ is my *total* monthly income.

5. What is the value of your property?

"My property includes: Value*

Cash \$ _____

Bank accounts, other financial assets \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

Vehicles (cars, boats) *(make and year)* \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

Other property (like jewelry, stocks, land, another house, etc.) \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

Total value of property → \$ _____

6. What are your monthly expenses?

"My monthly expenses are: Amount

Rent/house payments/maintenance \$ _____

Food and household supplies \$ _____

Utilities and telephone \$ _____

Clothing and laundry \$ _____

Medical and dental expenses \$ _____

Insurance (life, health, auto, etc.) \$ _____

School and child care \$ _____

Transportation, auto repair, gas \$ _____

Child / spousal support \$ _____

Wages withheld by court order \$ _____

_____ \$ _____

Debt payments paid to: *(List)* \$ _____

_____ \$ _____

_____ \$ _____

Total Monthly Expenses → \$ _____

*The value is the amount the item would sell for less the amount you still owe on it, if anything.

7. Are there debts or other facts explaining your financial situation?

"My debts include: *(List debt and amount owed)* _____

(If you want the court to consider other facts, such as unusual medical expenses, family emergencies, etc., attach another page to this form labeled "Exhibit: Additional Supporting Facts.") Check here if you attach another page.

8. Declaration

I declare under penalty of perjury that the foregoing is true and correct. I further swear:

I cannot afford to pay court costs.

I cannot furnish an appeal bond or pay a cash deposit to appeal a justice court decision.

My name is _____ My date of birth is : ____ / ____ / ____

My address is _____
Street City State Zip Code Country

Signature _____ signed on ____ / ____ / ____ in _____ County, _____
Month/Day/Year county name State