Self-Help Legal Information Packet:

When a Small Claims Case Has Been Filed Against You

Self-Help Legal Information Packets are provided for the benefit of justice courts and individuals seeking access to justice through the court system. They do not constitute legal advice, and the court is not responsible for the accuracy of the information contained in the packet.

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What is a Small Claims Case?

When a person or company feels like someone else owes them money or has personal property that belongs to them, they can come to justice court and file a lawsuit called a **small claims case**. The person or company who files the case is called the **plaintiff** and the person or company they file the case against is called the **defendant**.

I Got Served with a Citation, Now What?

The court, not the plaintiff, issued the **citation**, which tells you that you are being sued. The **petition** was created by the plaintiff, and it will provide details of why the plaintiff is suing you, and how much money (or personal property) they are suing for.

If the petition isn't clear regarding what the plaintiff thinks you did wrong or what they want, you can file a **motion** with the court asking for them to clarify. A motion is a request for the court to do something. This is done by putting your request in writing and sending it to the court and to the plaintiff.

Once you have been served with the citation, you have 14 days to file an **answer**, which is your response to the lawsuit. You must give your answer to the court and also send it to the plaintiff. After you answer, the court will set your case either for trial, or for a **pre-trial hearing**. At a pre-trial hearing, you can discuss any issues such as the need for an interpreter, or for the court to **subpoena** a witness (order them to come to trial to testify).

Important – If you do not file an answer, legally you are admitting the plaintiff's claim, and the court may issue a default judgment against you. This means you will owe the plaintiff money, without having had your day in court. ***Be sure to file an answer before the deadline!***

How Do I File an Answer?

Your answer doesn't have to be anything fancy. It simply needs to be in writing, and you must send it to the court and to the plaintiff. You don't have to be specific as to the reasons you think you don't owe the plaintiff money. You can

say something like “I deny the claim and want to see proof at trial.” Or even just “I don’t owe the plaintiff anything.”

You can also file an answer saying that you owe the plaintiff some of the money they are asking for, but not all of it, or even an answer agreeing that you owe the plaintiff the money. If you agree you owe the plaintiff all of what they are asking for, they may get a judgment against you for that amount without having a trial.

How Do I Send Paperwork to the Plaintiff?

Any paperwork such as motions, requests for a hearing, appeals, etc., must be sent to the plaintiff as well as to the court. You can send those papers to the plaintiff by:

1) delivering it to them in person,
2) mailing it to them using certified or registered mail,
3) using a delivery service such as FedEx or UPS,
4) faxing it to them, or
5) sending it by email if the plaintiff provided their email address for document delivery and agreed to email service in writing.

On the copy you give to the court, you must write down how and when the paperwork was delivered to the plaintiff.

The plaintiff’s contact information will be available in the petition they filed, which was attached to the citation that you received.

IMPORTANT - Make sure to keep your address updated with the court and the other party so that you will receive any paperwork or notices sent to you.

Do I Need a Lawyer?

While you are allowed to have a lawyer in a small claims case, the rules and procedures are designed to be simple and straightforward, allowing people to seek justice without needing to hire a lawyer.

If you do not have a lawyer, the judge may allow you to be assisted in court by a family member or other person who is not being paid to assist you. This person

can help you understand the proceedings and advise you, though that person cannot speak for you in court.

The court is required to make the Rules of Civil Procedure available to you at no cost. Rules 500-507 are the rules that specifically apply to small claims cases.

The court is **not** allowed to give you advice on whether you will win a case or not, what to say in court, or what steps you should take to win your case or avoid paying a judgment.

Questions the court **can** answer for you are questions like "What do I need to do to have a jury trial?" or "How many days do I have to file an appeal?"

Questions the court **cannot** answer for you are questions like "Should I just pay this instead of going to court?" or "Is it a good idea to get a jury for this case?" or "Am I going to win?"

If, after reviewing these materials and the rules for small claims cases, you still are not sure what to do, it may be best to consult an attorney.

What if I Want to Move the Case?

Small claims cases are filed in a justice court and the case will be heard in front of the justice of the peace. The plaintiff can technically file the small claims case in any justice court in Texas, but if they file in the wrong **venue** (location), you can file a **motion to transfer venue**. This is a request to have the case moved to the right location.

So, what is the right venue? Generally, a case can be filed:

1) In the precinct and county where the defendant lives,
2) In the precinct and county where the contract was going to be performed, if it is a contract case (for example, if the contract was to paint a house, the precinct and county where the house is located);
3) In the precinct and county where the damage to property or injury to the plaintiff occurred; or
4) In the precinct and county where the personal property the plaintiff is suing for is located.

To file a motion to transfer venue, you need to make a **sworn statement** in writing (this means that a notary or the clerk watches you sign it and signs to show that they saw you sign) that explains why the case is in the wrong venue. Also, you must list the proper county and precinct that you want the case transferred to.

Important – You must file the motion to transfer venue no later than 21 days after you file your answer, or it will be too late.

After you file your motion, the judge will schedule a hearing to decide whether or not to move the case. Be sure to show up in court for that hearing.

What is Discovery?

Discovery is the exchange of information between people or companies involved in a lawsuit before the case goes to trial. Either side may serve discovery requests on the other side. In small claims cases, discovery **must** be approved by the judge **before** the other party has to provide any information or answer any questions.

If you have discovery questions that you want the plaintiff to answer, submit them to the court with a request for discovery. Requesting the court to do something is called a **motion**, so you would be making a "motion for discovery."

The judge will only approve "reasonable and necessary" discovery, so if you have discovery requests, make sure they actually relate to the case. For example, asking for copies of emails that the plaintiff sent to a body shop regarding damage to a motor vehicle in a crash that they are suing you for is likely reasonable, and asking for a copy of all emails from the plaintiff over the last three years is likely not.

If you receive a discovery request that has been approved by the judge, you must respond with the requested information, or you can file an objection with the court. If you object, the court will hold a hearing to decide if you have to provide the information. **Do not** just ignore a discovery request, you could face penalties from the judge that could even result in you losing your case!

For information about discovery that may happen after the judgment in the case, please see the section on "**What if I Lose My Small Claims Case?**"

What if I Think the Plaintiff Owes Me Money?

Often in disputes that end up in small claims court, both parties think the other side owes them money. For example, John hires Mary to paint his house. The agreement is that he will pay her $2,000 up front and $2,000 when she is done. She paints the house and wants her $2,000. But John thinks she has done awful work, and not only doesn't want to pay, but he also wants his original $2,000 back as well.

If you feel the plaintiff owes you money, you can file what is called a **counterclaim**. In the counterclaim, you will be the plaintiff and the person who filed the original suit against you will be the defendant. Both the original claim and the counterclaim will be heard at the same time in court. For more information on being a plaintiff, please see the information packet on Filing a Small Claims Case.

What if the Plaintiff and I Make an Agreement?

If the case goes to trial, usually there will be a "winner" and a "loser," resulting in someone being happy and someone being unhappy. To reduce that risk, parties will often come to a **settlement**, or an agreement on how to resolve the case. If you come to a settlement agreement, the court can enter a judgment reflecting how much money is awarded. If you fail to follow the terms of your settlement agreement, the plaintiff could use the tools mentioned in this packet to enforce the judgment, or they could possibly file a new lawsuit for breach of contract.

Can I Have a Jury Trial?

Yes. Either side in a small claims case may request a jury trial. You must make a request in writing to the court at least 14 days before the date set for trial and pay a jury fee of $22.

If no one requests a jury, the trial will be heard by only the judge, which is called a bench trial.

What if I Need More Time for Trial?

The court will send you a trial notice at least 45 days before the trial date. If you need more time or you have a conflict with that date, you can file a motion (request) for **postponement**, also called a **continuance**. You should explain in writing why you need the postponement.

Do not just decide not to show up on your trial date! That may result in a default judgment being issued against you.

What Happens at the Trial?

Be sure to bring all of your witnesses and documents with you on your trial date! If the trial is a jury trial, the first step will be jury selection, which is formally called **voir dire**.

Then, the plaintiff will be able to give an opening statement if they wish, where they explain to the judge and jury what they feel the case is about. You can respond with your own opening statement, or you can wait to give one until after the plaintiff has given all of their information, or you can decide not to give one.

Next, the plaintiff will call any witnesses they have and ask them questions so that they can **testify**, or tell their story, to the judge or jury. You get to ask questions of any witnesses they may call, which is called **cross-examination**. You may ask the witnesses questions that relate to the facts of the case but remain calm, polite, and respectful of the court process, even if you disagree with what the witness says.

Once the plaintiff has presented all of their witnesses and evidence, they will **rest**, which means they are done. It is now your turn, and you can call any witnesses you have. You can also testify yourself and show any evidence you may have (such as documents, contracts, cancelled checks, receipts, etc.).

Finally, each side can make a final statement, called a **closing argument**, where you explain why you think you should win the case.

After that, the decision will be made by the jury if there is one, or by the judge if there is no jury. The decision will be announced in open court, and a written **judgment** will be made available.

What Happens if I Lose My Small Claims Case?

If the judgment is in favor of the plaintiff, you can file a **motion for new trial** within 14 days of the judgment. That means that you want a "do over" in the same justice court. You would need to show that justice wasn't done in the original case. If you file a motion for new trial, you must pay a filing fee of $54 or file a Statement of Inability to Afford Payment of Court Costs. You must also send a copy of the motion to the plaintiff within one day of filing it with the court.

Another option is to file an **appeal**, which is a request for the county court to hear your case. You can file an appeal within 21 days of the judgment, or if you filed a motion for new trial that was denied, you can appeal within 21 days of the denial of that motion. To appeal, you will have to file either:

1) An **appeal bond** (promise from another person, called a **surety**, to pay the bond amount to the plaintiff if you don't pursue the appeal) in double the amount of the judgment;
2) A cash deposit of double the amount of the judgment, which may be awarded to the plaintiff if you don't pursue the appeal; or
3) A Statement of Inability to Afford Payment of Court Costs if you cannot afford an appeal bond or cash deposit.

If you appeal with an appeal bond or a cash deposit, you must pay a filing fee of $54 or file a Statement of Inability to Afford Payment of Court Costs. You must also send a notice of the appeal to the plaintiff within seven days of filing it with the court.

Once your appeal is filed with the county court, you will be required to pay a separate filing fee for the county court, or you may file a Statement of Inability to Afford Payment of Court Costs.

What If I Don't File for a New Trial or Appeal?

If you do not file for a new trial or an appeal, you owe the amount of the judgment to the plaintiff. If you fail to pay the judgment, the plaintiff can enforce the judgment against you.

Below is a brief description of some of the tools that the plaintiff can use against you to enforce a monetary judgment.

Post-Judgment Discovery: The plaintiff can send questions that you must answer describing what assets you have that could be used to satisfy a judgment. You will get at least 30 days to respond to these discovery requests, either by providing the requested information or by making an objection with the court. If you object, the court will hold a hearing to decide if you must provide the information.

Abstract of Judgment: If you own real property (land), the plaintiff can get an abstract of judgment from the court that issued the judgment and file it with the county clerk in the county or counties where you own the property. This puts a **lien** on the property in the plaintiff's name, which means if you sell the property, they could get the proceeds to satisfy the judgment.

Writ of Execution: This is an order for the constable to go out and seize your personal property and sell it to satisfy the judgment. **IMPORTANT** – many items of personal property are **exempt**, meaning it is not legal for the constable to seize them and sell them. The plaintiff generally must wait at least 30 days after judgment before getting a writ of execution.

Writ of Garnishment: If a third party, such as a bank, has assets that belong to you, the plaintiff can get a writ of garnishment to order them to be given to the plaintiff to pay the judgment.

Learn more about exemptions and the judgment enforcement process at www.texaslawhelp.org/exempt-property or by scanning this QR code with your camera phone:

What Happens if I Win My Small Claims Case?

If the judgment is in your favor, that doesn't necessarily mean the issue is over for good. The plaintiff might file a motion for new trial or an appeal. You will receive written notice of any of these actions.

Resources

Legal Aid - www.txcourts.gov/programs-services/legal-aid

Texas Lawyer Referral & Information Service - (800) 252-9690

To check military status – https://scra.dmdc.osd.mil/

Texas Justice Court Training Center information for self-represented litigants – www.tjctc.org/SRL

Office of Court Administration Self-Represented Litigant Site - www.txcourts.gov/programs-services/self-help/self-represented-litigants/

State Bar of Texas Information, including Legal Information and Low or No-Cost Legal Assistance - www.texasbar.com, and then click on "For The Public."

Forms and Information, including for other types of cases – www.texaslawhelp.org

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT ___
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

DEFENDANT'S ANSWER - SMALL CLAIMS

I. GENERAL DENIAL, ADDITIONAL PLEAS, AND OTHER INFORMATION (*Under Texas law, the defendant to a lawsuit is only required to answer with a general denial. See Texas Rule of Civil Procedure 502.5 for all the answer requirements.*)

My name is _____.

I **generally deny** the claims that Plaintiff has made in their Petition and demand that all claims be proven. (*The Plaintiff is the person suing you.*)

I understand that the above general denial is all that is required of a Defendant under Texas law, but I wish to provide additional information:

I dispute the claims in the petition for the following reasons (*list*):

_____

_____

_____

_____

_____

_____

_____

I claim the following defenses (*list*):

_____

_____

_____

_____

_____

_____

Any additional information:

_____

_____

II. JURY REQUEST

☐ I request a jury trial. (*The fee is $22 and must be paid at least 14 days before trial unless you file a Statement of Inability to Afford Payment of Court Costs in compliance with Texas Rule of Civil Procedure 502.3.*)

☐ I do not request a jury at this time.

III. SERVICE BY EMAIL (*Normally, documents in this case are sent by mail. If it is easier for you, you can choose to get some of the documents sent by email. If you choose to get documents by email, you must have an email account where you can receive and look at large documents, and it is important that you check this email account every day.* ***Even if you receive some documents by email, you will still receive some documents about the case by mail or personal service, so you must not ignore any documents from the court or other parties received by mail or personal service.***)

☐ Yes, I would like to receive documents related to this case by email at this email address:

_____.

☐ No, I do not want to receive any documents by email.

IV. REMOTE PARTICIPATION

Hearing by Phone Call: (*When a hearing happens by phone call, you will be able to talk to and hear the judge, Plaintiff, or any witnesses, but you will not be able to see them. Copies of any evidence to be used must be exchanged by the parties and sent to the judge prior to the hearing.)*

☐ Yes, I am able to have any hearings in this case, except a jury trial, by phone call with the judge and Plaintiff and understand that I must have a phone to use on the date and time of the hearing.

☐ No, I am not able to have hearings by phone call.

Hearing by Video Conference: (*When a hearing happens by video conference, you can hear, see, and talk to the judge, Plaintiff, and any witnesses. You will be able to see any evidence presented during the hearing. You will need to have a computer, a smartphone, or tablet that has a camera feature. You will also need access to the internet to be able to have a video conference.)*

☐ Yes, I am able to have any hearings in this case, except a jury trial, by video conference. I understand that I am responsible for having the equipment and internet access needed to participate in a video conference on the date and time of the hearing.

☐ No, I am not able to have hearings by video conference.

NOTE: Your responses in this section do not guarantee that hearings will be held remotely, but rather they help the court know how you are able to participate.

V. RELIEF REQUESTED

Defendant reserves the right to file an Amended Defendant's Answer with the court to plead other defenses after further investigation and discovery.

Defendant requests that the court enter judgment for Defendant, award Defendant's costs, and for such other and further relief to which Defendant may prove to be justly entitled.

Respectfully submitted,

_____	_____
Signature of Defendant	Signature of Attorney, if any
Printed Name: _____	Printed Name: _____
Address: _____	Address: _____
_____	_____
Email: _____	Email: _____
Telephone: _____	Telephone: _____
Fax: _____	Fax: _____
_____	State Bar No.: _____

CERTIFICATE OF SERVICE

(This answer and any other pleadings or motions must be sent to the court and served on the other parties in the case by following Texas Rule of Civil Procedure 501.4.)

I hereby certify that a copy of this answer was served on Plaintiff on _____, 20___, pursuant to Texas Rule of Civil Procedure 501.4 by:

- ☐ Personal delivery
- ☐ Mail
- ☐ Fax
- ☐ Email (if both parties have agreed in writing and provided an email address)
- ☐ Another method approved by the court: _____

_____
Signature

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT ____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

REQUEST FOR ISSUANCE OF A SUBPOENA – CIVIL CASE

As a party to the above case, or that party's duly authorized agent, I hereby request the issuance of a Subpoena pursuant to Rule 500.8 for each of the following witnesses:

NAME AND ADDRESS OF WITNESS:_____

_____

The witness listed above is required to bring the following books, papers, documents, or tangible things as follows:

_____

_____

_____

_____

NAME AND ADDRESS OF WITNESS:_____

_____

The witness listed above is required to bring the following books, papers, documents, or tangible things as follows:

_____

_____

_____

_____

APPLICANT:

_____ _____

Name Date

_____

Address & Phone Number

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT ____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

MOTION FOR NEW TRIAL

COMES NOW ☐ Plaintiff ☐ Defendant in this case, and requests the court grant a motion for new trial pursuant to Rule 505.3(c). Applicant would show the court justice was not done in the trial of the case as follows:

_____

_____

_____.

(Additional explanation may be attached).

DATE SUBMITTED *(must be within 14 days of signed judgment)*:_____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Motion for New Trial was served on: _____, pursuant to Texas Rule of Civil Procedure 501.4 by:

- ☐ Personal delivery
- ☐ Mail
- ☐ Fax
- ☐ Email *(if both parties have agreed in writing and provided an email address)*
- ☐ Another method approved by the court: _____

_____

Applicant's Signature

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT ____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

MOTION TO SET ASIDE DEFAULT JUDGMENT

COMES NOW Defendant in the above case, and requests the court grant a motion to set aside the default judgment pursuant to Rule 505.3(b). Defendant would show the court good cause to set aside the default judgment as follows:

_____

_____

_____

(Additional explanation may be attached).

DATE SUBMITTED *(must be within 14 days of signed judgment)*:_____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Motion to Set Aside Default Judgment was served on: _____, pursuant to Texas Rule of Civil Procedure 501.4 by:

- ☐ Personal delivery
- ☐ Mail
- ☐ Fax
- ☐ Email *(if both parties have agreed in writing and provided an email address)*
- ☐ Another method approved by the court: _____

_____

Defendant's Signature