

INSTRUCTIONS AND INFORMATION FOR FILING SMALL CLAIMS SUIT

Small Claims Case: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, or personal property. The claim can be for no more than \$10,000.00 excluding statutory interest and court cost but including attorney fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.

Rules 500-510 of the Rules Civil Procedure, which govern the rules of practice in Justice Courts, can be accessed at:

1. 9049 - Supreme Court of Texas

www.supreme.courts.state.tx.us/MiscDocket/13/13904900.pdf

As in all suits you have a right to represent yourself or be represented by an attorney. See Rule 500.4, Rules of Civil Procedure. It is always advisable to contact an attorney for legal advice. ***Neither the Court nor court staff CAN advise you.***

TYPES OF CASES PROHIBITED IN Small Claims Suits

- a. Suit by state to recover penalty, forfeiture, or escheat.
- b. Slander and defamation
- c. Foreclosure lien on land
- d. Suit for trial of title to land
- e. By assignee of claim
- f. Person primarily engaged in the business of loaning money at *interest*
- g. Collection agency or agent
- h. Family law cases i.e. custody, divorce. etc.
- i. Cases exceeding the jurisdiction limits of the Court
- j. Probate or guardianship
- k. Bankruptcy

It is your burden as a plaintiff to sue the defendant in their proper legal capacity.

- a. Personally: Where an individual is responsible to you for damage he/she may have caused you as an individual.

b. Proprietor or Partnership: A business that is not incorporated, but does have on file with the County Clerk as assumed name, e.g. John Smith dba/Greenhouse Supplies. To determine whether or not this person has filed as assumed name, you would contact the San Saba County Clerk in the Courthouse.

c. Corporation: Any incorporated business, including a limited liability company must be served through their registered agent for service of process. Registered agent information is available through the office of Secretary of State.

FILING FEES

The filing fee for Small Claims Cases is \$_____ plus cost of service.

Once your petition is received and the filing fee paid, the case will proceed. Rule 502.3 Rules of Civil Procedure. Each petition filed should have a ***Justice Court Civil Case Information Sheet*** attached to the Petition. This document is available at the Court Office or on line at [www.co.san-saba.tx.us/justice of the peace](http://www.co.san-saba.tx.us/justice%20of%20the%20peace) Rule 502.2 (b), Rules of Civil Procedure.

Generally the defendant has the right to be sued in the county and precinct in which he/she resides. Exceptions to this rule can be found in Rule 502.4, Rules of Civil Procedure. Should you file suit in an improper venue, there may be a motion by the defendant to transfer venue (a request that this suit be transferred to some other county and /or precinct). Rule 502.4, Rules of Civil Procedure.

Pleadings:

Except for oral motions made during trial, or when all parties are present, all pleadings must be written, signed and filed with the Court. Rule 502.1, Rules of Civil Procedure. A petition must contain the information in Rule 502.2, Rules of Civil Procedure.

Requirements: A defendant must file with the court a written answer to a lawsuit as directed by the citation and must also serve a copy of the answer to the plaintiff.

An the answer must contain:

1. Name of defendant
2. Name, address, telephone number, and fax number of defendant's attorney, if applicable, or name, address, telephone number, and fax number of defendant.
3. If the defendant consents to email service, a statement consenting to email service and email contact information must conform to Rule 502.5(a), Rules of Civil Procedure.

A general denial which denies all plaintiff's allegations without specifying the reasons is sufficient to constitute an answer or appearance and does not bar defendant from raising any defense at trial. *A sample Answer is attached to this packet.*

Any party is entitled to a trial by jury upon written request and payment of the jury fee. Rule 504.1, Rules of Civil Procedure, Part V.

The Elections office at 325-372-5325 may provide you information concerning in what precinct the defendant resides or a particular address lies.

Once you have filed your petition with the Court stating the facts and circumstances of the case, the Court will issue a Citation, which along with a copy of your petition will be served on the defendant notifying him/her of the fact that a suit has been filed against him/her in this court. **These papers will be served on the defendant in the manner you prescribed and the court must wait until they have been returned and the defendant's time to answer has passed before further action can be taken.** Rule 501.2, Rules of Civil Procedure, Part V.

Alternative Dispute Resolution: The policy of this state is to encourage the peaceable resolution of disputes through alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. For that purpose, the judge may order any case to mediation or another appropriate and generally accepted alternative dispute resolution process. Rule 503.5, Rules of Civil Procedure, Part V.

Discovery: Discovery is controlled by Rule 500.9, Rules of Civil Procedure. All discovery must be approved by the court. The Court does not allow the request for admissions to be embedded in the petition. Also see Rule 508, Rules of Civil Procedure and the Justice Court Discovery Standing Order, attached hereto.

The defendant will be given a time in which to answer the suit. Rule 502.5, Rules of Civil Procedure, Part V. If the defendant answers the suit, a trial date or other court date will be set and the parties will be notified. If the defendant fails to answer the suit, the court will proceed under Rule 503, Rules of Civil Procedure.

Both the plaintiff and the defendant have a right to subpoena witnesses. Rule 500.8, Rules of Civil Procedure.

Although the Rules of Evidence and the other Rules of Civil Procedure do not generally apply in Justice Court, see Rule 500.3 (e) and (f), Rules of Civil Procedure.

In order to develop the facts and reach an equitable and legally correct decision, the judge may ask questions during any hearing or at trial in accordance with Rule 500.6, Part V of the Rules of Civil Procedure. **However, the judge will not present your case for you or defend a case against you. It's the responsibility of each party to present his/her case.**

Should you receive a judgement, it is **not** the responsibility of the court to collect the judgement for you. Justice Court judgements are enforceable in the same manner as in county and district courts, except as otherwise provided by law. When the judgment is for personal property, the court may award a special writ for seizure and delivery of such property to the plaintiff and may in addition to the other relief granted in such cases, enforce its judgment by attachment or fine. Rule 505.2, Rules of Civil Procedure. Any enforcement of judgement may require a fee. A complete list of filing fees is available from the court clerk upon request.

You should contact an attorney to advise you on the collection of your judgment should you prevail.

If you are unable to afford the filing fees, you may file a Statement of Inability to pay fees. See Rule 502.3, Rules of Civil Procedure.

Service fees apply for persons served in San Saba County. Service fee for other counties and/or states may vary. Some documents require additional fees to be paid to the County Clerk in the County where you file them,

All fees must be paid before a document can be processed.

THESE INSTRUCTIONS AND INFORMATION IS A BRIEF SUMMARY OF THE LAWS AND PROCEDURES THAT APPLY TO A SMALL CLAIMS SUIT ANY QUESTIONS OR INTERPRETATION SHOULD BE BASED UPON YOUR OWN RESEARCH AND/OR THE ADVICE OF YOUR ATTORNEY.

Attachments:

Standing Discovery Order

Justice Court Civil Information Sheet

Out of County Service Information Sheet

**SAN SABA COUNTY JUSTICE OF THE PEACE COURT
STANDING DISCOVERY ORDER**

Discovery in Justice Court is governed by Rule 500.9 of the Rules of Civil Procedure, Part V. Pretrial Discovery is limited to that which the judge considers **reasonable and necessary**. Pretrial Discovery must be approved by the Court. Discovery may include but is not limited to the following:

- Interrogatories
- Request for Production of Documents and Things
- Request for Admissions
- Dispositions (the number and amount of time for each disposition may be limited)

Request for Admissions **may not** be imbedded in the petitions. A party who violates Rule 500.9, Rules of Civil Procedure or this Standing Order may not rely on alleged Deemed Admission for any purpose, including connection with a Motion for Default Judgment or Summary Disposition.

The parties may apply for a modification of this Standing Discovery Order at any time for good cause shown.

OUT OF COUNTY SERVICE INFORMATION

If the person(s)/business you are suing resides in another County it is your responsibility to provide the court with the necessary information so the Citation may be served.

Name of person you want served: _____

Address: _____

City: _____ State: _____

Phone Number: _____

If you desire your Citation to be served in another county in Texas, you must also provide the additional following information:

Name of person to serve Citation (Sheriff Dept./Constable or other):

Address: _____

City: _____ State: _____

Phone Number: _____

Service fee the department or person serving will charge for service: _____

This information is to be submitted with your petition.

PETITION: SMALL CLAIMS CASE

CASE NO. (court use only) _____

In the Justice Court, Precinct _____, _____ County, Texas

PLAINTIFF _____

VS.

DEFENDANT(S): _____

Defendant(s) contact info: _____

COMPLAINT: The basis for the claim which entitles the plaintiff to seek relief against the defendant is:

RELIEF: Plaintiff seeks damages in the amount of \$ _____, and/or 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 defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are: _____

If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address: _____

Petitioner's Printed Name

Signature of Plaintiff or Attorney

DEFENDANT(S) INFORMATION (if known):
DATE OF BIRTH: _____

Address of Plaintiff's Attorney, if any, or Plaintiff if none

*LAST 3 NUMBERS OF DRIVER LICENSE: _____
*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

City State Zip

DEFENDANT'S PHONE NUMBER: _____

Phone & Fax No. of Plaintiff's Attorney, if any, or Plaintiff if none

COST

The filing fee is \$41.00. In addition, there is a fee for serving the defendant, which is \$80.00 per defendant to be served in San Saba County. (**\$121.00** total for one defendant to be served in San Saba County).

Please make the Money Order/Cashier's Check payable to: San Saba Justice Court.

If the defendant upon whom you are filing resides **OUTSIDE** of San Saba County:

- 1) Call the County Courthouse in the County where the defendant is to be served.
- 2) Ask for the name of the Constable or Sheriff in the precinct where the defendant is to be served; call that office and find out the **SERVICE FEE** for serving a **DEBT/SMALL CLAIMS CITATION**.
- 3) Get the address of the Constable or Sheriff who will be serving the citation.
- 4) Get a money order, payable to the Constable or Sheriff who will be serving the citation and bring it with you when you file your suit.

**THESE FEES MUST BE PAID WITH 2 SEPARATE MONEY
ORDERS OR CASHIER'S CHECKS.
ONE FOR THE FILING AND ONE FOR THE SERVICE.**

FEE SCHEDULE FOR SMALL CLAIMS AND DEBT CLAIM CASES WITH DEFENDANT
THAT LIVES IN SAN SABA COUNTY

<u>FILING FEE-</u>	\$ 46.00
<u>SERVICE FEE PER DEFENDANT</u>	\$ 85.00

DEFENDANT RESIDES OUT
OF COUNTY (YOU MUST CALL THAT COUNTY FOR SERVICE FEE).

<u>JURY FEE</u>	\$ 22.00
<u>ABSTRACT OF JUDGMENT</u>	\$ 5.00
<u>WRITS</u>	\$ 250.00
<u>SUBPOENA</u>	\$ 85.00