

JUSTICE COURT

INSTRUCTIONS AND INFORMATION FOR FILING JUSTICE COURT SUITS

(Except Eviction Suits and Debt Claims of Certain Financial Institutions and Debt Collectors, as these types of suits are governed by separate sets of rules)

General Information

A lawsuit in Justice Court may be filed for any amount, up to and including \$20,000.00, including attorney fees, but not including court costs. The lawsuit must involve disputes over money, services and/or personal property issues. The Justice Court can only award you money or personal property. It cannot, for example, order XYZ Car Repair to fix your car properly, nor can it order foreclosure on any real property.

If you are suing under specific statutes, such as the Deceptive Trade Practices Act (DTPA) or the Texas Property Code (for security deposit return), you may be able to recover two or three times your actual damages. Therefore, your actual damages will have to be less than \$10,000.00 or \$6,666.00 respectively. Call this office if you have questions in regards to the amount of your damages.

As of 2018, the cost of filing a suit is approximately \$124.00. Check with the Clerk of the Justice Court for the costs to file suit and service of the lawsuit, either by Constable or Private Process Server.

Before You File

Most Justice Courts require a written demand to the opposing party before you can file suit (called "conditions precedent"). Some Courts require the green card from the Certified Mail demand letter you mailed return receipt requested. Check with the Court's clerk to see if this is needed. If you do not do this, the Court may abate (or delay) your case and require that a written demand be made before the case can proceed. You may want to contact the Firm about this, as many times a letter can be written on your behalf.

DTPA cases have certain pre-suit demand requirements, so before a suit under the DTPA is considered, please contact this office for more information.

Statute of Limitations

This is the time limit set by law that says how long you have to file the suit. For wrongs involving personal injury, the DTPA, and certain actions based on Fraud, you have two (2) years from the date of occurrence to start your lawsuit. If the wrong involves an agreement (called a "Breach of Contract") you usually have four (4) years in which to start your lawsuit. Lawsuits involving certain forms of debt have a six (6) year statute. If you have not already discussed the statute of limitations with this office, contact us, since time limits can be complex.

Venue

A lawsuit must be filed in the proper Justice Court. The options on where to file are as follows:

1. Where the Defendant resides;
2. Where the incident that gave rise to the lawsuit occurred;
3. In Breach of Contract cases, there may be a Venue provision in the Contract;
4. Where the contract or agreement was performed; or
5. Where the property in dispute is located.
6. If there is more than one Justice Court in the same city, or in the same Precinct (Place 1, etc.), you should consult the Court Clerk of that Precinct, or call this office for more advice.

Parties

You are the PLAINTIFF... the person you are suing is the DEFENDANT. YOU MUST HAVE THESE DETAILS ON THE DAY YOU FILE YOUR SUIT:

1. The correct name, address and telephone number (if known) of the Defendant;
2. The exact amount of money for which you are suing, and a description and claimed value of any personal property you are seeking;
3. The details of the incident and the date it occurred; and
4. The amount of the filing fee.

As Plaintiff, it is important that you understand that, for any potential judgment you may receive to be valid, it is necessary for you to sue the Defendant in their proper legal capacity, of which there are typically three. They are:

1. Personally: Where an individual is responsible for the damages they may have caused you as an individual, you should use his/her full name – John A. Doe, not Johnny Doe.
2. Sole Proprietorship: A business that is not incorporated, but does have on file with the County Clerk an assumed name, e.g., John Doe d/b/a Handyman Services. To determine whether or not this person has filed an assumed name, you will need to contact the County Clerk of your county.
3. Corporation or LLC: If the business which has allegedly caused you damage is a Corporation or an LLC, it is necessary to know the name and address of the Registered Agent of that Corporation or LLC, a person or business who accepts service on behalf of the Corporation or LLC, e.g., Handyman, Inc. or Joe's Auto Repair LLC. The Registered Agent for service is listed with State Comptroller, whose phone number is (800) 252-1386. For written inquiries, send requests for information to COMPTROLLER OF PUBLIC ACCOUNTS, CAPITAL STATION, AUSTIN, TEXAS 78774. There may be a fee required for written inquiries. You may also receive additional information from: TEXAS SECRETARY OF STATE, CORPORATION DIVISION, P.O. BOX 13697, AUSTIN, TEXAS 78711, (512) 463-5555. It is also possible for an incorporated entity to have an assumed name, e.g., Handyman, Inc. d/b/a Handyman Services.

Filing Suit

Once you have made demand, determined that you are within the appropriate Statute of Limitations and determined the proper Venue and Parties, then it is time to file the suit.

When you file your lawsuit, a Citation will be issued by the Court Clerk. It orders the Defendant to appear by filing a written response on or before the end of the 14th calendar day from receipt of the Citation (unless the 14th day falls on a weekend or Holiday, then the time will be extended to the next Business day). When your Petition has been completed (forms are often available at your local Justice Court), stating the facts and circumstances of your suit, a Citation, along with a copy of the Petition, will be served by Constable (or a Private Process Server, if you choose to use one) to the Defendant notifying him that a suit has been filed in this Justice Court. Tell the Clerk where the Defendant may be found and the approximate times they are likely to be

found at that location. Some Justice Courts may serve notice by mailing a copy of the petition by certified mail, return receipt requested. Check with the Clerk to determine which method of service should be utilized, especially if the Defendant is out of state.

Contact the Clerk in one (1) week to determine if the Defendant was served with the Citation and Petition. A judgment cannot be taken against a Defendant unless he/she has been served. If the Constable or Private Process Server cannot find the Defendant after making several attempts, they will notify the Court, and you may want to ask the Court for permission to have the Defendant served by Alternate Service, which is usually done by taping the Citation and Petition to the front door of the residence. If the Defendant has not been served after ninety (90) days, ask the Clerk if a new Citation needs to be issued.

Answer

If the Defendant chooses to ignore the Citation and not file an Answer or appear in court, then you may appear before the Court and ask for a Default Judgment. If you did not provide the documents to prove your case with the Petition, the Court may still require proof of your claims before a Judgment can be entered.

If the Defendant answers the suit and enters a general denial, you will need to contact the Court in order to set the suit for Trial. At that time, ask the Clerk if you need to notify the Defendant. If so, mail the Notice of Trial by certified mail return receipt requested.

Trial

Either party to the suit may request a trial by jury, instead of by the Judge (called a "Bench Trial") by filing a written demand with the Court at least 14 days before the trial date. The party that makes this request must post a jury fee with the Court Clerk. The case will be set for jury trial at the first available date. Be prepared and do your research; picking a Jury is difficult, and it can negatively impact your case if not done correctly.

Regardless of whether the case is tried by a judge or jury, YOU MUST PROPERLY PREPARE YOUR CASE FOR TRIAL – THE BURDEN OF PROOF IS UPON YOU, THE PLAINTIFF. The Judge or jury cannot try your lawsuit for you. To remain impartial, the Judge will not discuss the case with either party until the Trial.

Prepare your Evidence/Exhibits in a neat and orderly manner. Label each one (Exhibit A, etc.) and bring three copies of these, one for the Court, one for you and one for the Defendant. Be prepared to present each Exhibit to the Judge in order, ask the Judge to accept them and explain what each is for. Arranging them chronologically is usually the best way to prepare them.

Determine if there are any witnesses who can come to court with you. A witness who has "first hand" knowledge is usually the most reliable witness. Avoid those who only have secondhand information or "hearsay" evidence. If a witness will not appear voluntarily, then you have the right to subpoena them. You must contact the clerk to determine the additional charges and time frame in which a subpoena can be obtained. Some courts require at least five (5) working days' notice before trial to issue the subpoena.

ALWAYS ASSUME THAT THE DEFENDANT WILL CONTEST YOUR CLAIM, and they may file a Counterclaim. When this happens, the DEFENDANT then becomes the CROSS-PLAINTIFF, and the CROSS-PLAINTIFF may sue you for attorney's fees and for court costs, in addition to the alleged claim.

At the trial, the Judge or jury will hear the facts and evidence from both sides. When both sides have rested their case, the Judge or jury will enter a judgment; that the Plaintiff recovers from the Defendant in all, part, or none of the Plaintiff's claims; as well as ruling on any Counter-Claims.

Appeal

If either party decides that the decision of the Judge or jury was unfair, they may appeal the case to the County Court at Law, called a Trial De Novo. The case will start from the beginning; the decision of the Justice Court Judge has no bearing on this new case.

In order to appeal, you must file an Appeal Bond within 21 days from the date Judgment was entered. The cost of the Appeal Bond is \$500 for an appealing Plaintiff, and up to twice the amount of the Judgment for an appealing Defendant. You must give notice of the appeal by certified mail, return receipt requested, within seven (7) days from filing the appeal bond to all parties to the suit who have not filed an appeal bond. If you do not have the money necessary to post an Appeal Bond, you must file a Sworn Statement of Inability to Pay within 21 days after the judgment is signed. Within seven (7) days of filing the statement, notice must be

given by certified mail to the other parties to the suit, and then they have seven (7) days to contest the Statement of Inability to Pay and request a hearing.

Post-Judgment

Once the 21 day appeal period has passed, neither party has appealed, and you have not collected the Judgment, you can file an Abstract of Judgment. Check with the clerk regarding the cost or fee for the Abstract of Judgment. The Abstract of Judgment, once filed in the Property records of the County(ies) where the Defendant owns property, acts as a lien on the Defendant's non-exempt property in that county(ies). An example of Exempt property would be the Defendant's homestead, plus those things set out in Texas Property Code Section 42. You must file the Abstract of Judgment in the County Clerk's office for its purpose to be of any use to you. For an Abstract of Judgment to be effective, it must be filed in each county where the Defendant owns non-exempt property (which may include real property, if non-homestead).

A Writ of Execution may be issued thirty (30) days from the date of judgment. It authorizes a Constable to seize and sell any of the Defendant's non-exempt property in that County, for the purpose of paying the Judgment against the Defendant. The fee for the execution varies, and it is often prepared for you in the Judge's office. Check with the Clerk for instructions on executions.

You must also understand that the Court cannot act as a collection agency for you. There is no law which enables the Court to force the person to pay you the amount they owe. You are responsible for executing each action.

Finally, Judgments that have been Abstracted and filed in the Property records are valid for ten (10) years, and can be renewed prior to that time running out. Please contact us if you have questions about this process.