

FILING A DEBT CLAIM SUIT

JURISDICTION:

Small Claims Cases:

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 \$10,000.00, excluding statutory interest and court costs but including attorney fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.

Debt Claim Cases:

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 more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any. Debt claim cases in justice court are governed by Rules 500-507 and 508 Part V of the Rules of Civil Procedure.

VENUE:

General Rule. Generally, a defendant in a small claims case or a debt claim case is entitled to be sued in one of the following venues:

1. The county and precinct where the defendant resides;
2. The county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred
3. The county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or
4. The county and precinct where the property is located, in a suit to recover personal property.

FILING SUIT:

The responsibility for filling out your petition and civil case information sheet rests with you. Court clerks will assist you if you have procedural questions. The filing fee is fifty-one (\$51.00) and the service fee is eighty (\$80.00) per defendant to be served in Caldwell County, for a total of one hundred thirty-one (\$131.00). If the defendant(s) resides outside of Caldwell County, contact the court for service fees of other counties. ****Payment must be in the form of a MONEY ORDER or CASHIER'S CHECK payable to CALDWELL COUNTY TREASURER.****

Effective 9/1/17

CITATION:

The citation is sent to the Caldwell County Constable for service. Out of County service is sent to the Sheriff or Constable of the county in which the defendant(s) reside or any manner authorized for service of citation in district, county or justice court. **You as Plaintiff are responsible for providing a correct address for service.**

DISCOVERY:

Pretrial Discovery. Pretrial discovery is limited to that which the judge considers reasonable and necessary. Any request for pretrial discovery must be presented to the court for approval by written motion. The motion must be served on the responding party. The discovery request must not be served on the responding party unless the judge issues a signed order approving the request. Failure to comply with a discovery order can result in sanctions.

REPRESENTATION:

You as an individual may represent yourself in Justice Court or you may have an attorney represent you. The Rules of Evidence do not apply in Justice Court.

ANSWER:

The defendant in the suit is commanded to answer the Court, **in writing**, which is due by the end of the fourteen (14) day after the date the citation is served upon him/her.

TRIAL BY JUDGE OR JURY:

If the defendant in your suit files a written answer, the court will set a trial date no less than 45 days (however always at the judge's discretion). Notice will be mailed to the Plaintiff and Defendant stating the date and time to appear.

If the defendant in your suit fails to file a written answer, a plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The purpose of this hearing is for you to prove up your damages in the suit.

Any party is entitled to a trial by jury. A written demand for a jury must be filed no later than 14 days before the case is set for trial. A party demanding a jury must pay a fee of \$22.00. If the demand is not timely, the right to a jury trial is waived.

AFTER JUDGMENT:

THIS COURT DOES NOT COLLECT THE JUDGMENT FOR YOU.

If you receive a judgment and the defendant does not make a motion for a new trial within *14 days* or appeal the case within *21 days* after the judgment is signed, the following remedies are available:

- **ABSTRACT OF JUDGMENT:**

The fee is \$5.00 for the JP Court to prepare. You should then record the Abstract of Judgment in the County where the defendant resides.

- **WRIT OF EXECUTION**

If you are granted a judgment against the defendant AND if the defendant does not appeal within 21 days, you may request a Writ of Execution any time after the 30th day after the judgment is signed. A Writ of Execution allows a Sheriff or Constable in the State of Texas to seize nonexempt property from the defendant in order to satisfy the judgment.

The cost of filing a Writ of Execution is \$200.00 for filing and service in Caldwell County.

You may have other remedies available, but they are more complicated and are not covered here. Please consult an attorney for any other remedies you may have to collect your judgment.

If your address changes within a 10 year period following the judgment, it is your responsibility to notify the court of your new address.

IF YOU HAVE PROCEDURAL QUESTIONS, PLEASE CONTACT THE COURT

**LEGAL QUESTIONS WILL NOT BE
ANSWERED BY THIS OFFICE**

PETITION: DEBT CLAIM CASE

CASE NO. (court use only) _____

In the Justice Court, Precinct 2, Caldwell 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 \$_____.

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:

ADDITIONAL INFORMATION (CASE BASED ON CREDIT CARD, REVOLVING ACCOUNT, OR OPEN ACCOUNT):

Account/Credit Card Name: _____ Account Number (may be masked): _____
Date of Issue/Origination: _____ Date of Charge-Off/Breach: _____ Amount Owed \$_____ as of _____

ADDITIONAL INFORMATION (CASE BASED ON PROMISSORY NOTE OR OTHER PROMISE TO PAY PERSONAL OR BUSINESS LOAN):

Date/Amount of Original Loan: _____, \$_____ Repayment Accelerated? ____ Date Final Payment Due: _____
Amount Due on Final Payment Date \$_____ Amount Due \$_____ as of _____

ONGOING INTEREST: Plaintiff does, or does not seek ongoing interest. If so, this interest is based on the following contractual/statutory reason: _____ and should be at ____%. \$_____ of interest was due as of _____.

ASSIGNMENT OF CLAIM: Plaintiff was, or was not assigned or otherwise transferred this claim. If so, the original claimant/creditor was _____, subsequent holders were _____ and the date the case was assigned/transferred to plaintiff was _____.

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: _____

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

DEFENDANT'S PHONE NUMBER: _____

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

City State Zip

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

FORM 127 – SERVICEMEMBER'S CIVIL RELIEF ACT

CAUSE NO. _____

AFFIDAVIT
50 USC Sec. 520

Plaintiff being duly sworn on oath deposes* and says that defendant(s) is (are)

(CHECK ONE)

- not in the military
- not on active duty in the military and/or
- not in a foreign country on military service
- on active military duty and/or is subject to the Servicemembers Civil Relief Act of 2003
- has waived his/her rights under the Servicemembers Civil Act of 2003
- military status is unknown at this time

PLAINTIFF

(Select the applicable title under the signature for the jurat below)

Subscribed and sworn to before me no this the _____ day of _____, 20__.

NOTARY / CLERK

Notary Public in and for the State of Texas

SEAL

Clerk of the Justice Court

***Penalty for making or using false affidavit – a person who makes or uses an affidavit knowing it to be false, shall be fined as provided in Title 18, United States Code, or imprisoned for not more than one year or both.**