



Judge Jody Henry
Justice of the Peace
Precinct 1 | Cooke County

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SMALL CLAIMS CASES

A small claims suit is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law.

The information in this document is intended to give a brief overview of the procedures in a small claims suit. It is not, however, exhaustive and many issues and procedures are not covered herein. You should consult the [Texas Rules of Civil Procedure](#) for a more comprehensive overview of the procedure. Part V (Rules 500-510) apply to Justice Courts specifically. All references to a *TRCP* in this document refer to these rules. You may also need to refer to various [Texas Statutes](#) regarding your case.

Nothing contained in this document is intended or offered as legal advice. Please also note that court clerks are not licensed attorneys and cannot give legal advice. This document should be able to answer your basic procedural questions. For further questions or more information, you should consult a licensed attorney.

BEFORE FILING SUIT

Before filing a small claims suit, a plaintiff should choose the court with the proper jurisdiction, proper venue, and know the proper party or parties to be sued.

Jurisdiction

The jurisdictional limit for justice courts is \$10,000. This means that any claim or remedy sought can be **for no more than \$10,000**, excluding statutory interest and court costs but including attorney fees, if any. The amount claimed cannot be reduced for the purpose of bringing the suit in the justice court. (TRCP 500.3)

Venue

A small claims suit should be filed in the county and precinct where the defendant resides; the county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred; the county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or the county and precinct where the property is located, in a suit to recover personal property. (TRCP 502.4)

Parties

The plaintiff must ensure that the suit is filed against the correct parties and in their correct legal capacity (individual, partnership, corporation, etc.).

FILING THE SUIT

To file a small claims suit, several documents (called pleadings) must be prepared and provided to the court clerk. Forms for many of these documents are available from the court and or found on our [website](#). However, please note you are not required to use these forms and may prepare your own documents. ***You are responsible for making sure you file the correct documents and all forms are filled out correctly.***

Pleadings

A *Petition* is the original document filed with the court to initiate a lawsuit and to notify the defendant of the nature of the suit. There are several requirements for the contents of a petition in a small claim suit which can be found in the Texas Rules of Civil Procedure. (TRCP 502.2)

Along with the petition, the plaintiff must file a *Justice Court Civil Case Information Sheet*. (TRCP 502.2(b))

The plaintiff should also file a *Servicemembers Civil Relief Act Affidavit* regarding the defendant's military status. While this affidavit is not required for a new suit to be accepted by the clerk, it is required before a party may be granted a default judgment. Therefore, it is a good idea to file the affidavit with the initial pleadings.

Filing Fees

In order to initiate a law suit, the plaintiff is required to pay filing fee in the amount of \$46.00 or file a Statement of Inability to Afford Payment of Court Costs. Payment must be by cash, credit card, or money order/cashier's check. Personal checks are not accepted.

A service fee of \$75.00 per defendant will be charged at the time of filing if the plaintiff wishes to have the constable serve the petition. (See *Service of Citation* below for more information.)

DURING THE SUIT

Service of Citation

Each defendant named in the law suit must be personally served with the citation and petition in accordance with TRCP 501.2.

The plaintiff may choose to have a constable or sheriff of the applicable county serve the citation and petition, or the plaintiff may choose to use a private process server. Once service is complete, process server should fill out the *Return of Service* and file it with the court.

The court clerk will prepare the citation and provide it either to the Cooke County constable or to the plaintiff to be given to the chosen process server. It is ultimately the plaintiff's responsibility to ensure that all citations are properly served and that the return of service is filed with the court. Questions about this procedure should be directed to the constable or process server.

Please note: Other than the citation and petition, copies of all papers filed with the court must be provided to all other parties or their attorneys in accordance with TRCP 501.4.

Answer

Once the defendant is served, he or she must file an *Answer* with the court in accordance with TRCP 502.5. (See Rule for time periods). The defendant must also send a copy of the Answer to the Plaintiff.

Trial Setting

Once the defendant files an answer, the court will set the case on the trial docket and mail notice of the setting to all of the parties. The plaintiff is required to appear at this trial setting and must prove the case by the *preponderance of the evidence*.

Judgment

If the court finds that the plaintiff has proved the case by the preponderance of the evidence, the court will grant a judgment in favor of the plaintiff. If the court finds that the plaintiff failed to meet this burden, the court will grant a judgment in favor of the defendant.

Default Judgment

If the defendant is properly served, but fails to file an answer as required by TRCP 502.5, the plaintiff may seek a default judgment. To do so, the plaintiff must send the court a request for the case to be set for a default hearing. At this hearing, the plaintiff must appear and prove the amount of the requested damages to the court. If the damages are proven, the court will grant a default judgment in favor of the plaintiff.

Before the court may issue a default judgment, however, the plaintiff must have filed the *Servicemembers Civil Relief Act Affidavit*. The affidavit must be signed under oath. A false statement in this affidavit is a violation of federal law. If the plaintiff states that the defendant is not in the military, he or she must also show necessary facts to support this affidavit. The best way to do so is to attach a printout from the [Department of Defense](#) website. If

the court is unable to determine whether the defendant is in military service, the court could require the plaintiff to post a bond to protect the defendant if the defendant is in fact in the military.

If a claim is based on a written document, the plaintiff may seek a default judgment in accordance with TRCP 503.1(a)(1).

AFTER THE TRIAL

Appeal

Once the court has issued a judgment on the case, either party has 21 days to appeal that judgment to the Cooke County Court at Law. To appeal, a party must file a *notice of appeal* and either post an appeal bond by filing a *Plaintiff's Appeal Bond* or *Defendant's Appeal Bond*, make a cash deposit, or file a Statement of Inability to Afford Payment of Court Costs.

Once the notice of appeal and the bond is received and approved by the judge, the clerk will transmit the case to the county clerk. The appealing party will be responsible for paying the costs on appeal to the county clerk.

Post-Trial Motions

Any *Motion to Set Aside*, *Motion to Reinstate*, or *Motion for New Trial* must be filed with the court no later than 14 days after the applicable order or judgment is signed. See TRCP 505.3 for more information.

Collection on Judgments

The court cannot assist in the collection of judgments. However, a prevailing party may file a request for the court to issue an *Abstract of Judgment*, a *Writ of Execution* or *Writ of Garnishment*. It is recommend that you consult an attorney regarding post judgment remedies available to you.

OTHER ISSUES

Address Changes

Each party must include their current mailing address, or the address of their attorney, in their original filing (either the petition or answer). This will be the parties *address of record* and is the address where all notices and information regarding the lawsuit will be sent. Each party must notify the court clerk and all other parties or their attorney of a change of address during the course of the suit to ensure that all court communication is received.

Motion for Continuance

A *Motion for Continuance* is a request to postpone a court date. All such motions must be made in writing, filed with the court, and provided to the other party and must state why the postponement is necessary.

If the request is agreed to by all parties, each party should sign the motion stating they are in agreement. If all parties have agreed, the court will likely grant the motion without a hearing and the trial date will be reset for a reasonable amount of time.

If not all parties have agreed to the postponement of the trial date, the court will set the motion for a hearing to determine if it should be granted or denied. If time does not permit a hearing on the motion to be set prior to the trial setting, the motion will likely be denied absent exceptional circumstances.