

There are two civil forums over which the Justice of the Peace Presides: Debt Claims Court and Justice Court. Some types of cases may be filed in either forum, while others are restricted to certain forum. There are other similarities and differences that you should consider

prior to filing suit.

**VENUE:** A suit should be filed in the County and Precinct where one or more Defendants reside (CPRC 15.082) however, there are exceptions to **this rule**.

**JURISDICTION:** A Small Claim Justice Court Suit is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by laws. The claim can be for no more than \$20,000, excluding statutory interest and court costs but including attorney fees, if any. A Debt Claim suit 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 no more than \$20,000, excluding statutory interest and court costs but including attorney fee, if any.

**DAMAGES:** The amount of money you are suing for is called "damage" The amount of damage sought must be supported by evidence. A plaintiff may not diminish the amount of the underlying claim in order to maintain a suit in the Small Claim or Debt Claim Justice Court! For example, if a Plaintiff states that the suit is for \$20,000 and the evidence shows that the damages are actually greater than \$20,000, the court loses jurisdiction of the case, and the lawsuit must be dismissed and refiled in a court of competent jurisdiction. Additionally, a Plaintiff cannot tell the court that the damages are greater than \$20,000 but the Plaintiff is willing to "settle for less".

**PARTIED TO THE SUIT NAME OF THE PLAINTIFF:** This is the party that is initiating the suit. Only individual(s) or company (ies) named at the top of a Petition as Plaintiff(s) may collect the Judgement in favor of the Plaintiff. You must sue the Defendant(s) in their proper legal capacity. As an individual, you must sue the Defendant individually in the following two situations: (1) the Defendant is personally responsible to you for damages he/she may have caused you, and (2) the Defendant as an individual operating a proprietorship or partnership is responsible to you for damages he/she may have caused. As a Proprietorship or Partnership: A proprietorship is a business that is not incorporated, but has filed an "Assumed Name" with the County Clerk. To determine whether a company or any individual has an assumed name you must contact the County Clerk's office in the County where the company is located. As a Corporation: If the business that has injured you is an incorporated, you must contact the State Comptroller's Office at (800) 252-1386, or the - Secretary of State at (512) 463-555. Ask for the name and address for service of the Registered Agent for service of the corporation (or President or Vice-President). This is the person who has been authorized to receive information regarding lawsuits filed against this corporation. For example: when completing your complaint, the name of the Defendant should read "ABC Corporation, by serving John Smith, Registered Agent"

## FILING FEES

DEBT CLAIMS FILING FEE	<b>\$54.00</b>
SMALL CLAIMS FILING FEE	<b>\$54.00</b>
CONSTABLE SERVICE	<b>\$100.00</b>
SERVICE VIA CERTIFIED MAIL	<b>\$11.54</b>
SERVICE OF SUBPOENA/SUMMONS	<b>\$100.00</b>
<b>WRIT OF ABSTRACT</b>	<b>\$5.00</b>

If paying by Cashier's Check or Money Order,  
**Please make it payable to:**

JUSTICE OF THE PEACE PCT. 2

No cash or personal checks accepted

Texas Statutes are available online @  
<http://www.caoital.state.tx.us/statutes/statutes.htm>

### SERVICEMEMBER'S CIVIL RELIEF ACT (SCRA)

If a plaintiff believes the defendant is active military, but does not have personal knowledge of the defendant's military status, the department of defense maintains a secure website where the plaintiff can obtain a status record. This website requires registration of name and address, fax and telephone numbers, email address and mother's maiden name, in

# JUSTICE COURT DEBT CLAIM AND SMALL CLAIM PROCEDURES

**Blanca S. McBride**

Justice of the Peace, Pct. 2

**Shelby Mullens - Civil Clerk**

**Stephanie Rohan- Traffic Clerk**

**P.O Box 336**

**118 E. Main St**

**Yorktown, TX 78164**

**Email: dewitt-county-jp2@dwcotx.org**

The information contained in this packet is not of legal advice. The information is not exhaustive. There may be other remedies and procedures not contained in these packets. You should seek professional, licensed, legal counsel for advice. Please read this packet completely before filing your suit. Legal advice can only be obtained from an attorney. Our Court Clerk is trained in procedure only and cannot give legal advice. This is for the Clerks protection as well as your own. The following procedural instructions are the only information you will receive from this office. You may need to consult an attorney to protect your interests.

**STATING YOUR CLAIM:** You must provide the court with a formal Petition for Suit. State the nature of your claim fully, listing specific facts and circumstances about your claim. You must itemize how you obtained the total amount of your claim if it involves more than one item. You must also provide a current and correct address for service on each Defendant.

**CITATION:** Each Defendant must be served personally, usually by a Constable or Sheriff in the County where the Defendant is located. The fee for service varies by County: DeWitt County charges \$100.00 per Defendant, or you can request service via US Postal Service Certificate Mail, Return Receipt Requested for approximate \$11.54. If the Defendant is to be served in a County other than DeWitt, you will need to call the County Courthouse for the County in which the Defendant will be served. Ask who serves Civil Citations for Justice Court suits in that County, and call the appropriate office. Find out the name, address, and service fees for civil citations. It is your responsibility to insure service of your citations. If you obtain a better address for the defendant, call the process server or agency and provide the new information as soon as possible. Although the Citation will leave the Court promptly, it can take up to 5 days for the Citation to be served. **NOTE:** Except for citations and papers served by personal process, you must mail a copy of all papers filed with the court to all other parties to the lawsuit

**ANSWER:** Once the Citation has been served the Defendant must file a written answer to the suit on or before the expiration of 14 days, beginning with the date of service. If he/she fails to do so, you will be notified by the Court to appear for a "Default Hearing." You will be asked to briefly state the facts of your case and present any documentation to substantiate the damages. You **MUST** prepare a written itemized of your damages to present to the Judge.

**ADDRESSES AND ADDRESS CHANGES:** Each party, or the party's attorney must provide the Clerk of the Court with written notice of the party's name and current residence or business address. The notice must be provided at the time the party files its initial pleadings with the court or not later than 7 days after the Clerk of the Court requests the information. If the party's address changes during the course of a civil action, the party, or the party's attorney must provide the Clerk of the Court with written notice of the party's new address. The information provided to the Clerk of a Court under this section is confidential and may not be disclosed to the public without the express authorization of the Court.

**JURY REQUEST:** If you desire a trial by jury you must pay a jury fee of \$22.00 at least 14 working days prior to trial. Request for a jury trial ordinarily require the trial date to be reset. Jury trials often last several hours longer, and strict rules of procedure apply.

**TRIAL PREPARATION:** If the Defendant files a written answer in a Justice Court case, you will receive written notice of your Court date. Please arrive on time for your scheduled trial. Parties who are not represented by attorneys should prepare carefully. Failure to prepare, or to adhere to the time allotted, may result in loss of the case due to failure of proof. **DISCOVERY:** Discovery is a broad term used to describe many different ways of obtaining information and evidence prior to trial, to be sued at trial. While discovery is common in Justice Court cases, the permission of the judge must be sought for limit discovery in Debit Claim cases. Examples of discovery include: Interrogatories (written questions requiring sworn answers); Request for Admissions (written statements requiring sworn admission or denial); Requests for Production (written requests to produce evidentiary items for examination by the opposing party prior to trial). Less common at the Justice Court level, oral depositions of witnesses are taken before a court reporter. Most discovery documents come with directions attached. Read them carefully! Failure to respond to discovery in a timely manner may result in the loss of the case.

**NO WRITTEN RECORD:** The Justice of the Peace forums are not "**courts** of record." There is no court reporter recording witness testimony. Recording devices are not permitted without the Judge's consent.

**SUBPOENAS:** If there are witnesses who will not come to the Court voluntarily, you may request that a Subpoena be prepared and served to secure their presence in Court. This should be done at least 2 weeks before trial in order to allow for service of the Subpoena. The Court does not guarantee that service will be obtained. Successful service of witness subpoenas is your responsibility. There is not a charge for the Court to issue a Subpoena, but there is a service fee. Evidentiary Subpoenas: If the Defendant or any other witness has documentation that you do not have, and that is necessary to prove your case, you may have **the** person who has control of the evidence subpoenaed to bring the documentation to Court. The items you want must be listed clearly and attached to the Subpoena. All of the other information mentioned above is also applicable to evidentiary subpoenas.

**MOTIONS FOR CONTINUANCE:** All Motions for Continuance or requests to reset the Court date must be in writing and received by the Court no later than 3 working days prior to your Court date. Weekends and Holidays are included. The Plaintiff and the Defendant are each entitled to request one set "only for good cause," and all other reset requests must be made by agreement of both parties. (Gov't Code 28.033)

**WHAT HAPPENS AFTER TRIAL:** Either party has 21 days in which to appeal the Judge's decision. An appeal bond must be filed with the Court on or before 4:30 p.m. on the 21st day after the date of Judgment. Appeals filed after this date will be denied. Contact the Court and find out the amount of the appeal bond required for your appeal (usually 2x the amount of the Judgment). Prepare a Surety Bond for the entire amount of the Appeal Bond required by the Court. The Court will then prepare a transcript of the pleadings on file in your case and send it to the DeWitt County Court Clerk. All Court contact from this point on will *be* with the DeWitt County Court. There will be filing fee required from the County Court, and they will contact the **party who** is appealing regarding payment of those fees. Any Motions for New Trial must be filed in writing within 14 days from the date of Judgment.

**COLLECTION OF JUDGMENT:** If you receive a Judgment against the **Defendant and** the Defendant does not file a Motion for New Trial within 14 days, does not file an Appeal within 21 days, you may seek other remedies to collect our judgment. The Justice Court cannot assist you in collection of your Judgment, however, below are listed some remedies that are available to you that may assist you in the collection of the Judgment.

**ABSTRACT OF JUDGMENT:** You may obtain an Abstract of Judgment any time after the Judgment. The cost of an Abstract is \$5.00, and you may obtain the form from the Court. The Abstract may then be filed in the office of the County Clerk in any County where you think the Judgment Debtor may own real property.

**WRIT OF EXECUTION:** You may obtain a Writ of Execution any time after the Judgment. A Writ of Execution allows a Sheriff or constable to try and seize certain non-exempt property from the Defendant. **If property** is seized an auction will be held and the proceedings from the sale will be used to satisfy your Judgment. The cost of a Writ of Execution varies from County **to** County, and you may also want to contact the Constable or Sheriff in that County to discuss what items are considered non-exempt and may be subject to execution.

**WRIT OF GARNISHMENT:** A Writ of Garnishment is available 30 days after the 30 days of Judgment. This is a new lawsuit and is a complicated procedure. We recommend that you consult an attorney.

**TURNOVER WRIT:** This process requires a Court hearing. We recommend that you consult an attorney.

**HOW TO PAY JUDGMENTS WHEN THE JUDGMENT HOLDER CANNOT BE FOUND:** If one party to whom a judgment is owned cannot be located, it is possible to pay the judgment into the registry of the court on a showing of good faith attempts by the Judgment Debtor to locate the prevailing party. Once the court is satisfied that the party cannot be located, the payment can be accepted and a release can be issued by the Court. The money is then held until claimed by the party to whom it is owed, or the money is forfeited to the State of Texas.

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

IN THE JUSTICE COURT

v.

PRECINCT NO. 2

\_\_\_\_\_  
DEFENDANT

DeWITT COUNTY, TEXAS

**PETITION: SMALL -DEBT CLAIMS CASE**

**Defendant(s) address:** \_\_\_\_\_  
\_\_\_\_\_

**COMPLAINT:** The basis for the claim which entitles Plaintiff to seek relief against Defendant is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RELIEF:** Plaintiff seeks: damages in the amount of \$ \_\_\_\_\_ ☐ 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 Defendant(s) by: \_\_\_\_\_ personal service at home or work, ☐ registered mail, ☐ certified mail, return receipt requested. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other addresses where Defendant(s) may be served are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby request a jury trial. The fee is \$22 and must be paid at least 14 days before trial.

☐ I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows:

\_\_\_\_\_

\_\_\_\_\_  
Plaintiffs Printed Name

\_\_\_\_\_  
Signature of Plaintiff  
or Plaintiffs Attorney

**Defendant's Information** (if known):

Date of birth: \_\_\_\_\_

Last three digits of Driver License: \_\_\_\_\_

Last three digits of Soc. Sec. No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

\_\_\_\_\_  
Address of Plaintiff or  
Plaintiffs Attorney

\_\_\_\_\_

\_\_\_\_\_

City State Zip

\_\_\_\_\_  
Phone & Fax No. of Plaintiff  
or Plaintiffs Attorney

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
CLERK OF THE COURT

**AFFIDAVIT (SECTION 201, (b))**

Plaintiff being duly sworn on oath deposes and says that Defendant(s)

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

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PLAINTIFF

Subscribed and sworn to me on this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

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Notary Public and/or Court Clerk

**PENTALTY FOR MAKING OR USING FALSE AFFIDAVIT- A PERSON WHO MAKES OR USES AN AFFIDAVIT KNOWING IT TO BE FALSE, SHALL BE FINED AS PROVEDED IN TITLE 18 UNITED STATES CODE, OR IMPRISONED FOR NOT MORE THAN ONE YEAR , OR BOTH**