

JUSTICE COURTS CIVIL SUITS – SMALL CLAIMS

Justice Court of Rusk County, Texas

www.co.rusk.tx.us

Instructions and information regarding filing Justice Court Suits. Please read carefully before completing a petition.

PLEASE NOTE: EFFECTIVE AUGUST 31, 2013 ALL CIVIL SUITES IN JUSTICE COURTS WILL BE GOVERNED BY NEW RULES OF CIVIL PROCEDURE FOR JUSTICE COURT CASES ADOPTED BY THE SUPREME COURT OF TEXAS. IT IS HIGHLY RECOMMENDED THAT YOU REVIEW THE NEW RULES PRIOR TO FILING YOUR CASE TO DETERMINE WHICH CATEGORY OF CASE TO FILE.

TO REVIEW ALL THE TEXAS RULES OF CIVIL PROCEDURE AND RULES OF EVIDENCE, PLEASE FOLLOW THE LINK TO THE SUPREME COURT OF TEXAS. <http://www.supreme.courts.state.tx.us/rules/rules.asp>

THE JUDGE AND COURT PERSONNEL ARE PROHIBITED FROM GIVING "LEGAL ADVICE" TO ANYONE. ALTHOUGH AN ATTORNEY IS NOT REQUIRED, YOU MAY WISH TO CONSULT AN ATTORNEY FOR ANY AND ALL LEGAL ADVICE. IN ADDITION, AS A MATTER OF LAW, THE JUDGE IS PROHIBITED FROM DISCUSSING ANY MATERIAL FACT OF THE LAWSUIT WITH A LITIGANT OR DEFENDANT PRIOR TO TRIAL OR HEARING.

The New Rules for Justice Court classify 4 categories of civil cases.

In all civil suits, the defendant generally has the right to be sued in the county and precinct in which he resides. There are exceptions to this venue rule. For detailed information regarding Venue please refer to Rule 502.4 and Chapter 15, Subchapter E of the Texas Civil Practice and Remedies Code. The following link will provide you with access to ALL Texas Laws: <http://www.statutes.legis.state.tx.us/>. Click on Texas Statutes and choose the Texas laws you wish to review.

Small Claims Case:

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, 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.

Debt Claim Case:

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 no 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 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 508 and rest of Part V, Rule 508 applies.

Repair and Remedy Case:

A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court cost but including attorney fees, if any. Repair and remedy cases are governed by Rules 500-507 and 509 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 509 and the rest of Part V, Rule 509 applies.

Eviction Case:

An eviction case is a lawsuit brought to recover possession of real property under Chapter 24 of the Texas Property Code, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court cost but including attorney fees, if any. Eviction cases are governed by Rules 500-507 and 510 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 510 and the rest of Part V, Rule 510 applies.

In all civil suits, the defendant generally has the right to be sued in the county and precinct in which he resides. There are exceptions to this venue rule. For detailed information regarding Venue please refer to Rule 502.4 and Chapter 15, Subchapter E. of the Texas Civil Practice and Remedies Code. The following link will provide you with access to ALL Texas Laws:

<http://www.statutes.legis.state.tx.us/>. Click on Texas Statutes and choose the Texas Laws you wish to review.

Although not required by Law, it is requested that prior to filing this suit you must send a **Demand letter** to the party you are contemplating suing giving the party at least 10 days to notify them of the potential for civil action and give them an opportunity to satisfy the claim prior to the suit. **It is recommended that this be sent certified mail return receipt requested.**

It is your burden as a plaintiff and 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. Consult with your attorney if you are unsure of the defendant's proper legal capacity. Should you file against the wrong entity, you may have to begin again and will have to pay for trial expenses caused by filing against the wrong party. For Corporations and to determine the Agent for Service for a Corporation you should contact **Texas Secretary of State** at 1-800-252-1386.

AFTER REVIEWING THE RULES, PLEASE FULLY COMPLETE THE APPROPRIATE PETITION AND THE REQUIRED FORMS.

What must be filed? **ONE ORIGINAL PETITION,
ONE MILITARY AFFIDAVIT
ONE MILITARY STATUS REPORT (only if in military)
ONE SERVICE INFORMATION SHEET
ONE JUSTICE COURT CASE INFORMATION SHEET**

Always keep track of your case numbers so that you can refer to them when calling our office regarding your case. The case number will be on your receipt.

As Plaintiff, if you no longer wish to pursue your case you must notify the Court in writing as soon as possible and at least one day prior to the day of trial and to avoid the sheriff or constable attempting service to those where service is not necessary. You may fax your motion to dismiss to the JP office.

FEE SCHEDULE FOR JUSTICE COURT SUITS:	Court Fees	Service Fees	Total
Filing fee-Defendant in Rusk County	\$46.00	\$80.00	\$126.00
2 Defendants (same Case)	\$46.00	\$160.00	\$206.00
Defendant out-of-County	\$46.00	(call for amount)	
Jury Fee	\$25.00		

(Request for Jury must be made and fee paid no later than 14 days before the case is set for trial. If not timely made, the right to a jury trial is waived).

Please understand that as a plaintiff, **you have the burden of proof** to show by the preponderance of the evidence that the defendant you are suing is the proximate cause of your damage(s) in the legal capacity in which defendant is sued. All damages and evidence necessary to meet your burden should all be available at the time of filing and no later than the date of the trial.

This court does not collect the money judgment for you nor can we force an indigent defendant to pay the judgment. If you receive a judgment against the defendant, this court can issue various instruments to assist you in collecting the judgement. You may request an Abstract of Judgment, Writ of Possession, Writ of Execution, Writ of Garnishment, and Turnover Order. It is highly recommended that you consult with an attorney for these processes as in some instances as attorney is required.

An **Abstract of Judgment** puts a lien on any real property the defendant may own in a particular county where the Abstract is recorded. The Abstract is only valid in the county or counties where it is recorded. This can be obtained ten days after the date the judgment is signed. **ABSTRACT OF JUDGMENT – COURT COST \$5.00** for each defendant and for each county.

A **Writ of Possession** can be filed 6 days after judgment. If Plaintiff is granted possession of the property and the defendant fails to appeal to the County Court within 5 days, you may request this writ. The Writ may be requested (in writing) at **the beginning of the**

6th day following the date the Judgment was signed by the Judge. IT IS RECOMMENDED THAT YOU CONSULT WITH AN ATTORNEY FOR THESE PROCESSES. WRIT OF POSSESSION: COURT COST \$5.00, SERVICE FEE \$130.00

The **Writ of Execution** may be obtained thirty days after the judgment is signed. This document authorizes the Sheriff or Constable to seize any assets belonging to the defendant that are subject to this writ. Those assets are then auctioned at a public sale and the proceeds are applied to the judgment. **WRIT OF POSSESSION – COURT COST \$5, SERVICE FEE \$160.00.**

A **Writ of Garnishment** is also available 30 days after the judgment is signed. This Garnishment proceeding is a separate suit wherein you are the plaintiff and the defendant's bank becomes the defendant. You are actually suing the bank in which the original defendant has his bank account. You are warning the said bank to freeze the monetary assets of his account and to appear and make answer to the Garnishment suit. **AN ATTORNEY IS REQUIRED. WRIT OF GARNISHMENT: COURT COST \$5.00, SERVICE FEE \$130.00**

A **Turnover Order** is available after the judgment is signed and its purpose is to provide a court-ordered means of reaching property which cannot easily be reached thorough ordinary legal process and which is not exempt from attachment, execution, etc. **An attorney should be used** because the courts clerical staff will not be able by law to assist you in drafting the documents that are necessary. **TURNOVER: COURT COST \$5.00, SERVICE FEES \$160.00.**

A **Subpoena** may be requested if you need a witness(s) in your case. Section 22.001, Texas Civil Practice & Remedies Code states a witness is entitled to \$10 dollars for each day the witness attends courts. This fee includes the entitlement for travel and the witness and the witness is not entitled to any reimbursement for mileage traveled. The party who summons the witness shall pay that witness's fee for one day, as provided by this section, at the time the subpoena is served on the witness. The witness fee must be taxed in the bill of costs as other costs. **SUBPOENA: COURT COST \$10.00, SERVICE FEES \$80.00.**

DISCOVERY: ANY AND ALL PRE TRAIL/PRE JUDGMENT DISCOVERY MUST BE APPROVED BY THE COURT. PLEASE REFER TO SECTION 500.9 OF THE NEW RULES.

RULES 501.4 REQUIRES YOU, AS PLAINTIFF OR DEFENDANT, TO SERVE THE OTHER PARTY WITH ANYTHING FILED WITH THE COURT IN THE MANNER PRESCRIBED BY THIS RULE.

Motions for continuance must be made in writing at least 3 working days in advance of the trial setting with a copy forwarded to the opposing party as required by Rule 501.4. It must show good cause. Do not presume the motion for continuance will be granted merely because it is filed. The court will advise you of its ruling.

PETITION: SMALL CLAIM CASE

CASE NO. (Court use only) _____

PLAINTIFF: _____ § IN THE JUSTICE COURT
VS § PRECINCT 1
DEFENDANT(S): _____ § RUSK COUNTY, TEXAS
Defendant(s) address: _____.

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 \$_____.

SERVICE OF CITATION: Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Rules of Practice in Justice Courts. Other addresses where the defendants(s) may are served are:

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

NOTE: ALL INFORMATION BELOW IF SIGNATURE IS REQUIRED MUST BE SIGNED IN FRONT OF NOTARY OR COURT CLERK

Petitioners Printed Name

Signature of Plaintiff or Attorney

DEFENDANT(S) INFORMATION

Address of Plaintiff

DATE OF BIRTH: _____

City State Zip

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

*LAST 3 OF SOCIAL SECURITY: _____

Phone & Fax No. of Plaintiff

DEFENDANT'S PHONE NUMBER: _____

Sworn to and subscribed before me this _____ day of _____, 20____.

CLERK OF THE JUSTICE COURT OR NOTARY

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER (FOR CLERK USE ONLY): _____

STYLED _____
(e.g., John Smith v. American Insurance Co; In re Mary Ann Jones; In the matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rules. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:	2. Names of parties in case:										
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">Name: _____</td> <td style="width: 50%; border: none;">Telephone: _____</td> </tr> <tr> <td style="border: none;">Address: _____</td> <td style="border: none;">Fax: _____</td> </tr> <tr> <td style="border: none;">City/State/Zip: _____</td> <td style="border: none;">State Bar No: _____</td> </tr> <tr> <td colspan="2" style="border: none;">Email: _____</td> </tr> <tr> <td colspan="2" style="border: none;">Signature: _____</td> </tr> </table>	Name: _____	Telephone: _____	Address: _____	Fax: _____	City/State/Zip: _____	State Bar No: _____	Email: _____		Signature: _____		Plaintiff(s): _____ _____ Defendant(s): _____ _____ _____ [Attach additional page as necessary to list all parties]
Name: _____	Telephone: _____										
Address: _____	Fax: _____										
City/State/Zip: _____	State Bar No: _____										
Email: _____											
Signature: _____											
3. Indicate case type, or identify the most important issue in this case (select only 1)											
<input type="checkbox"/> Debt Claim: 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 no more than \$10,000, excluding statutory interest and court cost but including attorney fees, if any.	<input type="checkbox"/> Eviction: An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court cost but including attorney fees, if any.										
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In addition to the above information, the Service members' Civil Relief Act has become law. The legislation passed by Congress and signed by the President, took immediately when it was signed on December 19, 2003.

When filing any Civil Suits this form must be filled out and accompany the complaint upon filing. The fees remain the same.

CAUSE NO. _____

AFFIDAVIT

SEC. 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.

military status is unknown at this time

PLAINTIFF SIGNATURE

(Select the applicable title for the jurat's below)

Subscribed and sworn to before me on this the ____ day of _____, 20__.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
/ 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.

NOTE: MUST BE SIGNED IN FRONT OF NOTARY OR COURT CLERK

