

**JUSTICE COURT CIVIL SUITS-SMALL CLAIMS/DEBT CLAIM CASES
EVICITION CASES**

Justice Courts 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 SUITS 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 FOLLOWING 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.

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 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 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 the 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 costs 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 costs 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.

COURT PERSONNEL ARE PROHIBITED FROM TELLING YOU WHICH PRECINCT YOUR ADDRESS IS LOCATED IN. YOU MAY CONSULT THE COUNTY MAP IN THE COURT'S LOBBY OR CONTACT THE RUSK COUNTY ELECTIONS OFFICE AT 204 N MAIN, EXECUTIVE SUITE, HENDERSON TO DETERMINE WHICH PRECINCT THE PROPERTY IS LOCATED. COURT PERSONNEL ARE PROHIBITED IN GIVING "LEGAL ADVICE". ALTHOUGH AN ATTORNEY IS NOT REQUIRED, YOU MAY WISH TO CONSULT AN ATTORNEY.

Prior to filing suit the landlord **must serve a proper vacate notice, in compliance with Section 24.005, Texas Property Code**, to each person signing the lease. (MUST have three (3) originals – one to be served to the Defendant, one for the landlords file and one for the courts file.)

Chapter 24, Texas Property Code requires that **AN EVICTION SUIT MUST BE FILED IN THE COUNTY AND PRECINCT WHERE THE PROPERTY IS LOCATED. IF AN EVICTION SUIT IS NOT FILED IN THE APPROPRIATE PRECINCT, THE CASE WILL BE DISMISSED. A refund of court costs and filing fees will NOT be given.**

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?

ORIGINAL PETITION

ONE Copy of Demand Letter and signed return receipt, if available

ONE Military Affidavit

ONE Military Status Report

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.

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 judgment. You may request an Abstract of Judgment, Writ of Execution, Writ of Garnishment, and Turnover Order. It is highly recommended that you consult with an attorney for any of these processes as in some instances an 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.

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.

A **Writ of Garnishment** is also available 30 days after the final judgment has been 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.**

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 through 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.

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.

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

RULE 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.

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 court. This fee includes the entitlement for travel 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.

Fee Schedule for Justice Court Suits:

	Court Fees	Service Fees	Total
Filing fee-Defendant in Rusk	\$41	\$ 80	\$ 121
2 Defendants (same case)	\$41	\$160	\$ 201
Defendant out-of-County	\$41	(call for amount)	
Jury Fee	\$22		

(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).

	Court Fees	Service Fees	Total
Abstract of Judgment	\$5		\$5
Writ of Possession	\$5	\$130	\$135
Writ of Execution	\$5	\$155	\$160
Subpoena	\$10	\$80	\$90
Writ of Garnishment	\$5	\$130	\$135
Turnover Order	\$5	\$155	\$161