

# 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, 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.**

## Jurisdiction

Jurisdiction is the authority of the court to hear and decide a case. You may not *diminish* the amount of your claim in order to qualify for the jurisdictional limits of this court. For example, if your evidence shows that you sustained \$10,100 in damages, you cannot tell the court that you are “willing to take \$10,000”. This will result in your claim being dismissed for lack of jurisdiction.

## Venue

Laws specifying the venue, the county and precinct where a lawsuit may be brought are found in Chapter 15, Subchapter E of the Texas Civil and Practice and Remedies Code, which is available online and for examination during the court’s business hours.

Generally, a defendant is entitled to be sued in the county and precinct where the defendant resides; or where the incident occurred; or where the contract/agreement was performed; or where the property is located. Rule 502.4(a)(b)(1)(2)(3)(4)

## Motion to Transfer Venue

If a plaintiff files suit in an improper venue, a defendant may challenge the venue by filing a motion to transfer venue. The motion must be filed before trial, no later than 21 days after the day the defendant’s answer is filed, and must contain a sworn statement that the venue is improper and provide a specific county and precinct of proper venue to which transfer is sought. Rule 502.4(d)

## Parties to the Suit

**Plaintiff** is the party that is instituting the suit.

**Defendant** is the party that is being sued.

It is the burden of the plaintiff to sue the defendant in his/her proper legal capacity, of which there are typically three:

**Individual:** Where an individual is responsible to you for damages.

**Proprietor or Partnership:** A business that is not incorporated, but has on file with the county clerk an assumed name (d/b/a).

**Corporation:** If the business that has injured you is incorporated, you may contact the Secretary of State at (512) 463-5555 to get the name and address of a Registered Agent who is authorized to be served with lawsuits for the corporation.

## Institution of Suit

All pleadings and motions must be written, signed and filed except for oral motions made during trial or when both parties are present. Rule 502.1

## Petition

To initiate a lawsuit, a petition must be filed with the court and contain specific information found in Rule 502.2(a)(1-8).

A justice court civil case information sheet, in the form promulgated by the Supreme Court of Texas, must accompany the filing of a petition and must be signed by the plaintiff or plaintiff’s attorney. Rule 502.2(b)

## Fees – Inability to Pay

Filing fee for a small claims case is \$41.00. On filing the petition, the plaintiff must pay the appropriate filing fee and service fees with the Court.

*A plaintiff who is unable to afford to pay the fees or is indigent must file a sworn statement of inability to pay. This form is available at the court or online. Rule 502.3(a). The defendant may contest the statement of inability to pay at any time within 7 days after the day the defendant’s answer is due. Rule 502.3(d)*

## Citation

When a petition is filed, the clerk must promptly issue a citation and deliver the citation as directed by the plaintiff. The plaintiff is responsible for obtaining service on the defendant of the citation and a copy of the petition with any documents filed with the petition. Upon request, separate or additional citations must be issued by the clerk. Rule 501.1(a)

## Service of Citation

No person who is a party to or interested in the outcome of the suit may serve citation in that suit. Citations may be served by:

A sheriff or constable; a process server certified under order of the Supreme Court; the clerk of the court, if the citation is served by registered or certified mail; or a person authorized by court order who is 18 years of age or older. Rule 501.2(a)(1)(2)(3)(4)

## Answer

A defendant must file with the court a written answer to a lawsuit as directed by the citation and must also serve a copy of the answer on the plaintiff. See Rule 502.5(a) for the required contents of the answer. The answer is due by the end of the 14<sup>th</sup> day after the day the defendant was served with the citation and petition. If the 14<sup>th</sup> day is a Saturday, Sunday, or legal holiday, the answer is due the next day that is not a Saturday, Sunday or legal holiday. Rule 502.5(d)

If the defendant fails to file an answer, the judge must ensure that service was proper and may hold a hearing for this purpose. If service was proper, the judge must render a default judgment in the following manner: Rule 503.1(a)

### Default Judgment

**Claim Based on Written Document.** If a claim is based on a written document signed by the defendant, and a copy of the document has been filed with the court and served on the defendant, along with a sworn statement from the plaintiff that this is a true and accurate copy of the document and the relief sought is owed, and all payments, offsets, or credits due to the defendant have been accounted for, the judge must render judgment for the plaintiff in the requested amount, without any necessity for a hearing. Rule 503.1(1)

**Other Cases.** A plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The plaintiff must appear at the hearing and provide evidence of its damages. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant. Rule 503.1(2)