

JEANNETTE BELL
JUSTICE OF THE PEACE, PCT. #1
1700 7TH ST., ROOM 201
MATAGORDA COUNTY COURTHOUSE
BAY CITY, TEXAS 77414
PHONE (979) 244-7666
FAX (979) 244-7696

To the Citizens of Precinct #1:

Small Claims Court is here for your benefit and it is our job to help you in any way possible.

However, rules of Judicial Ethics prohibit this office:

From giving legal advice,
or expressing opinions of the law.

The Judge and Court Clerks can answer questions:

Only of a general nature,
about procedures of this Court,
concerning court costs.

We must remain impartial, and we cannot hear any part of a case, or discuss the merits of any case, unless all parties are present.

PLEASE DO NOT ASK US TO VIOLATE THESE RULES.

The information contained herein is **FOR YOUR INFORMATION** and is offered as a guide, to all interested parties. As always, we recommend that you seek some form of sound legal advice.

Thank you,

Jeannette Bell
Justice of the Peace, Precinct #1
Matagorda County, Texas

INFORMATION FOR PLAINTIFF

1. It is your duty to provide correct address or location where service of the citation may be obtained by the Sheriff's Deputy or Constable.
2. When you are filing Small Claims or Justice Civil Suits, you are only making an allegation that you should recover from the Defendant.
3. You should assume at the time you file, that the Defendant will contest your allegation.
4. You should properly prepare your case for trial.
5. You should remember that hearsay evidence is inadmissible and cannot be used if objected by the Defendant. Examples of hearsay evidence are affidavits, garage estimates, police reports and what other people orally said.
6. If witnesses are required, you may subpoena them to court by asking for the subpoena and paying the required fee (\$60.00). The subpoena should be requested at least one week before the trial.
7. After you present your case at the trial as to your right to recover, the Defendant then presents his defense to your claim and explains why you should not recover.
8. After both Plaintiff and Defendant have rested their case, the Court will enter a judgment that the Plaintiff recovers from the Defendant, ALL, PART or NONE.
9. If you recover a judgment, the Defendant has ten (10) days in which to appeal the case to County Court.
10. Should the Court rule that you recover nothing, you must appeal the ruling to County Court within ten (10) days from the date the judgment is signed, or your right to recover is forever lost.
11. If the Defendant does not appeal within ten (10) days, the judgment is final.
12. If you obtain a final judgment, you may request an Abstract of Judgment (\$5.00), Writ of Execution or Garnishment (\$105.00 ea) as after-judgment remedies.
13. An Abstract of Judgment can be obtained after ten (10) days from date of judgment, then file in the County Clerk's Office where Defendant lives.
14. A Writ of Execution can be issued after thirty (30) days from date of Judgment.
15. A Writ of Garnishment Suit can be requested either at the commencement of a suit or at any time during its progress. (For this type of suit, an attorney would be required.)

**INSTRUCTIONS AND INFORMATION REGARDING FILING A SMALL CLAIMS SUIT
PLEASE READ CAREFULLY BEFORE COMPLETING THE PETITION**

1. **Prior to filing a suit direct a letter, Certified Mail, Return Receipt Requested to defendant, giving notice of suit. State the amount of money to be sued for, and if the money is not received by the date you give in the letter, suit may be filed.**
This is not a required law. This is a good tool to obtain a good and correct address of the defendant.

2. The amount of money which may be sued for in Small Claims Court is limited to damages that do not exceed \$10,000.00 (Interest included)

3. In all Civil Suits, the Defendant has the right to be sued in the County and Precinct in which he resides. There are no exceptions to this rule.

However, should there be a Motion made by a Defendant to transfer venue, please be advised that after the Motion is made, a hearing shall be set forty-five days after Motion is granted.

4. It is your burden as 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 his/her proper capacity, of which there are three. They are as follows.

- a. Personally: Where an individual is responsible to you for the damage he/she may have caused you as an individual.

- b. Proprietor or Partnership: A business that is not incorporated, but has on file with the County Clerk of your County and Assumed Name - (John Smith DBA Greenhouse Supplies)

- c. Corporation: The business which has allegedly caused you damage is incorporated and therefore it is necessary to know the individual's name who is able to accept service on behalf of the corporation. The authorized agent for service would be listed with the Secretary of State, whose phone number is 512-463-5555, e.g. Greenhouse Inc. Service John Doe (It is also possible for an incorporated entity to have an Assumed Name, E.G. Greenhouse Inc. DBA Greenhouse Supplies)

5. If, as Plaintiff, you are in the business of loaning money primarily, (Banks, Credit Unions, Savings and Loans, You are NOT allowed to file in Small Claims Court; However, an attorney representing any of the above may file suits on behalf of the above in Justice Civil Court, or an individual may file. Also, an action in Small Claims Court may NOT be brought by an assignee of the claim or other person seeking to bring an action on an assigned claim; or a collection agency.

6. When you have completed the petition stating the facts and circumstances of your suit, a Citation, along with a copy of your petition will be served to the Defendant, notifying him/her that a suit has been filed against him/her in this court.

The Citation will order the Defendant to appear in this court to answer to the suit by 10:00 a.m. on the Monday following the expiration of ten days from the receipt of the Citation.

THIS OFFICE WILL NOTIFY YOU OF YOUR COURT DATE. If you are not contacted within six weeks, you will need to call this office to determine the status of your case.

7. If you have a witness to your suit who will not come to court voluntarily, you may ask this court to subpoena those individuals prior to trial. Allow at least one week for service of the subpoena. You must pay the service fee of \$60.00.

Notarized statements from individuals are of very little value. Personal appearance and testimony is much more beneficial.

8. This type of suit does not warrant hiring an attorney; however, you are free to do so if you wish.
9. This court does not collect the judgment for you, nor can we force the Defendant to pay the judgment. If you receive a judgment for your claim against the Defendant, you may request an Abstract of Judgment and/or a Writ of Execution to help you in collection of this judgment.

Abstract of Judgment: A brief form of the judgment in Small Claims Court that when filed in the County Clerk's Office, puts a lien on any real property the Defendant may own in that particular county where the Abstract of Judgment is recorded. This can be obtained ten days after the judgment has been signed by the judge. (11th day)

Writ of Execution: An order from the Court authorizing the Sheriff's Deputy to seize any assets belonging to the Defendant that are subject to this Writ. These assets can then be auctioned at a public sale and those proceeds are applied to the judgment. This document may be obtained after thirty (30) days of the signing of the judgment by the judge.

Writ of Garnishment: Either at the commencement of a suit or at any time during its progress, the Plaintiff may obtain an Application for a Writ of garnishment. This 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/her bank account. You are warning said Bank to freeze the monetary assets of Defendant's bank account and to appear and make answer to the Garnishment /Suit. For this type of suit, an attorney would be required.

10. FEE SCHEDULE FOR SMALL CLAIMS SUITS:

Filing Fee:	\$25.00
Service Fee:	\$60.00 (1 Defendant in Matagorda Co.)
ILS Fee:	<u>\$ 6.00</u> (Indigent Legal Fee)
TOTAL:	\$91.00

11. Please understand that as a Plaintiff, you have the burden of proof to show by the weight and evidence that the defendant you are suing is the proximate cause of your damages in the capacity which the Defendant is sued. All damages and evidence necessary to meet your burden should all be available at the time of filing and not later than the date of the trial.

**IT IS IMPERATIVE THAT YOU PROVIDE US WITH YOUR DAYTIME TELEPHONE
NUMBER**

Jeannette Bell
Justice of the Peace, Precinct #1
Matagorda County, Texas
1700 7th Street, Room 201
Bay City, Texas 77414-5034
979-244-7666

NO. _____

**Your Full Legal Name or
Capacity You Are Suing Defendant** Plaintiff IN THE SMALL CLAIMS COURT

VS. PRECINCT ONE

**Defendant's Correct Legal Name
Individual, Assumed Name or Corp.** Defendant MATAGORDA COUNTY, TEXAS
If Corp: Agent for Service

AFFIDAVIT OF PLAINTIFF

STATE OF TEXAS}
COUNTY OF MATAGORDA}

(Plaintiff's Name Exactly as Above) _____, whose address is **(Complete
Address and Telephone Number** _____, on oath deposes and says that **(Defendant's Name
Exactly as Above)** _____, whose address is **(Defendant's Exact Physical Address)**

_____ hereinafter called Defendant, is justly indebted to Plaintiff in the sum of \$ **(Not Over \$10,000.00)**, for :

**State the Nature of the Claim in Concise Form Without Technicality, Including all Pertinent Dates.
Give a Full Description of the Cause of Action (fact causing debt or damage). The Defendant Must be fully
Aware of Why he is Being Sued. Be Comprehensive Enough with the Allegations so that a Third Person
Having No knowledge of Your Suit Could Read this Petition and Understand Your Claim for Damages.**

(You are also suing for all court cost) _____ and
that there are no counterclaims existing in favor of the Defendant and against the Plaintiff except _____

**(Sign Your Name Before Court Clerk,
Or Notary Public or Judge)**
Plaintiff

Subscribed and Sworn to before me this _____ day of _____, 2010.

Notary/Court Clerk/Justice of the Peace
Matagorda County,

NO. _____

Plaintiff

IN THE SMALL CLAIMS COURT

VS.

PRECINCT ONE

Defendant

MATAGORDA COUNTY, TEXAS

AFFIDAVIT OF PLAINTIFF

STATE OF TEXAS}
COUNTY OF MATAGORDA}

_____, whose post office
address is _____

_____ Phone Number# _____

_____ County, Texas, being duly sworn, on his oath deposes and says that _____

_____, whose post office address is _____

_____ Phone Number# _____

_____ County, Texas, is justly indebted to him in the sum of

_____ Dollars, for _____

Plaintiff also sues for all court cost and any attorney fees incurred.

and that there are no counter claims existing in favor of the defendant and against the
plaintiff _____, except _____.

Plaintiff

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 2010.

Notary/Court Clerk/Justice of the Peace
Matagorda County, Texas

CAUSE # _____

IN THE _____ COURT

VS.

PRECINCT ONE

MATAGORDA COUNTY, TEXAS

MOTION AND ORDER FOR SERVICE UNDER RULE "536"

NOW COMES _____,
Plaintiff in the above entitled and numbered cause and says that in this cause, it is impractical to secure personal service upon this Defendant, because of the irregularity of the schedule of said Defendant, there is no way for Deputy or Constable to determine such times in order to be able to serve Defendant personally.

Plaintiff hereby petitions the Court that service on Defendant be obtained by delivering a copy of the citation to anyone over the age of 16 years at Defendant's usual place of abode at _____ OR
Defendant's place of business at _____

OR in any other manner which will be reasonably effective to give the Defendant notice of this suit.

Signed this _____ day of _____, 2010.

Plaintiff

ORDER

MOTION GRANTED this _____ day of _____, 2010, and SUBSTITUTED SERVICE OF CITATION SO AUTHORIZED AND ORDERED.

**NOTARY/COURT CLERK/JUSTICE OF THE PEACE
PCT. 1, MATAGORDA COUNTY, TEXAS**

CAUSE NO. _____

_____, Plaintiff

In the _____ Court

vs.

Pct. 1

_____ ET AL, Defendant

Matagorda County, Texas

NON - MILITARY AFFIDAVIT

STATE OF TEXAS

COUNTY OF MATAGORDA

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned affiant, who, being by me duly sworn, on oath stated:

"I am the Plaintiff / attorney for plaintiff in the above entitled and numbered cause. I am capable to making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. _____, Defendant, is not in the military. (check military status at <https://www.dmdc.osd.mil/appj/scra/scraHome.do>)

Plaintiff

Signed and sworn to this the ___ day of _____, 2010.

Notary Public

Exp. Comm. _____

Or

Notary/Court Clerk/Justice of the Peace, Pct. 1

Matagorda County, Texas