

# SMALL CLAIMS CASES

## INSTRUCTIONS AND INFORMATION REGARDING FILING SUIT

(PLEASE READ CAREFULLY BEFORE COMPLETING THE PETITION.)

1. 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 \$10,000.00 excluding statutory interest and court costs but including attorney fees, if any.
2. In all civil suits, the Defendant has the right to be sued in the county and precinct in which he resides. You must have a physical address (not just a post office box) for the Defendant in order for him to be served in person. The last three numbers of the Defendant's driver's license and the last three numbers of the Defendant's social security number needs to be furnished if available.
3. In order for any potential judgment you may receive to be valid, it is necessary that you sue the Defendant in his/their legal capacity as listed below:

**Personally:** An individual is responsible to you for damage he may have caused you as an individual. (e.g. John Doe)

**Proprietor or partnership:** A business that is not incorporated but does have on file with the County Clerk an assumed name. (e.g. John Doe dba Greenhouse Supplies)

**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. You may obtain the name of the authorized agent for service from the Secretary of State at 1-800-252-1386. (e.g. Greenhouse, Inc. Serve: John Doe)

It is also possible for an incorporated entity to have an assumed name. (e.g. Greenhouse, Inc. dba Greenhouse Supplies. Serve: John Doe)

4. If as a Plaintiff, you are in the business of lending money and charging interest on that money, either primarily (banks, credit unions, savings & loans), or secondarily (credit cards), you must file a Debt Claim suit instead of a Small Claims suit. The same applies to suits brought by an assignee of a claim, by a person seeking to bring an action on an assigned claim, or by a collection agency.
5. When you file your suit, a Case Information Sheet and a Military Affidavit (for individual only) must be filed with the petition. Once you have filed a suit, this Court will give you a receipt showing your cause (case) number and the office phone number so that you may call in periodically to determine the progress of your case. **It is of utmost importance that you refer to your cause number when calling or transacting business with the Court.**

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 that a suit has been filed against him in this Court. The citation will order the Defendant to file a written answer with the Court no later than fourteen (14) calendar days following his receipt of the citation. If he fails to do so, you then become eligible for a default judgment up until the time an answer is filed.
7. If the Defendant answers the suit, a trial date will be set. The Plaintiff and the Defendant will be sent notice by mail of the court date. We discourage motions for continuance; however, if it becomes necessary, any requests for a continuance must be in writing and should be filed as soon as the need for continuance is known.
8. If you have witnesses to your suit who will not or cannot come to Court voluntarily, you may ask this Court to subpoena those individuals prior to trial. This request must be in writing and must include the names and addresses of all those you want to subpoena. The request should be filed as soon as possible allowing at least a week for service of subpoena.
9. This type of suit does not require hiring an attorney; however, you are free to do so if you wish.
10. **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 your collection of this judgment.

An **Abstract** puts a lien on any real property the Defendant may own in the county where the abstract is filed. Abstracts may be filed in more than one county. It is suggested that you wait until the appeal period has ended which is twenty-one (21) days after the judgment is signed.

A **Writ of Execution** may be obtained thirty (30) days after the judgment is signed. This document authorizes the Constable or Sheriff to seize any assets belonging to the Defendant **that are subject to this writ**. Those assets are then sold, and the proceeds are applied to the judgment. If your judgment is for recovery of a particular item, the Writ may specify that the item be seized and returned to you.

11. As a Plaintiff **you** have the burden of proof to show by the weight of the evidence that the Defendant is the proximate cause of your damages in the capacity which the Defendant was sued. All damages and evidence necessary to meet your burden should be available at the time of filing.
12. It is **imperative** that you provide us with your day time phone number and notify us immediately of any changes in your number or address.

If you have any other procedural questions, please ask our Civil Department, and we will try to answer them. **Any legal questions may not be answered by this Court.**