

JUDGE JAMES N. BALDWIN
JUSTICE OF THE PEACE PCT. 1
BURLESON COUNTY TX
PO Box 136 Deanville TX 77852
(979) 535-4761 Office
(979) 535-7344 Fax

SMALL CLAIMS INFORMATION

SMALL CLAIM: a Small Claim case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim cannot exceed more than **\$20,000.00**, excluding statutory interest and court costs, but including attorney fees, if any.

IMPORTANT NOTICE:

APPROPRIATE COURTROOM ATTIRE IS REQUIRED. All persons entering the courtroom shall be dressed in clothing reasonably befitting the dignity and solemnity of the court proceedings. No shorts, tank tops, flip flops, hats, etc. Cell phones and other electronics **MUST BE TURNED OFF** when in the courtroom. Food and drink is **NOT ALLOWED** in the courtroom.

PLEASE READ CAREFULLY BEFORE FILING THE PETITION

THE FOLLOWING INFORMATION IS FURNISHED TO YOU AS A COURTESY OF THE JUSTICE OF THE PEACE OFFICE. THE COURT CANNOT ADVISE YOU WHAT YOU SHOULD DO AND ARE BARRED BY LAW FROM GIVING YOU LEGAL ADVICE OR HELP YOU FILL OUT THE FORMS.

Please complete the Petition and Affidavit of Military Status on the Defendant. PLEASE PRINT CLEARLY AND PRESS FIRMLY.

You are the PLAINTIFF and the person or entity you are suing is the DEFENDANT. The Defendant has a right to be sued in the county and precinct in which they reside; there are exceptions to the rule. Should there be a motion by the Defendant to transfer venue, a hearing will be set to determine if a transfer of venue will be granted; a motion to transfer venue may delay the proceedings 6-8 weeks.

- PLEASE NOTE: YOU MUST HAVE COPIES FOR THE COURT'S FILE OF ANY DOCUMENTS YOU INTEND TO SUBMIT TO THE COURT AS EVIDENCE.

IT IS YOUR BURDEN AS PLAINTIFF TO MAKE SURE YOU ARE SUING THE DEFENDANT IN THEIR PROPER LEGAL CAPACITY. It is very 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, of which there are typically three:

1. Personally: Where an individual is responsible to you for damages they may have caused you as an individual.

2. Proprietor or Partnership: A business that is not incorporated, but does have on file with the County Clerk as assumed name, Ex: John Smith dba Greenhouse Supplies.
3. Corporation: The business which has allegedly caused you damage is incorporated and therefore it is necessary to know the individual's name who is authorized to accept civil process on behalf of the corporation. The authorized agent for service would be listed with the Secretary of State, whose phone number is 1-800-252-5555. The website is www.sos.state.tx.us. Ex: Greenhouse, Inc. through its agent, John Smith. It is also possible for an incorporated entity to have an assumed name, ex: Greenhouse, Inc, dba Greenhouse Supplies.

- On the Petition, under the complaint section, make a very short statement concerning the nature of your claim.
- Under relief section, put the PRINCIPAL AMOUNT of your claim against the Defendant. DO NOT ADD COURT COSTS to the amount. If you wish to have the judgment include court costs, you would state "plus court costs". The Additional Information, Interest and Assignment section MUST also be completed.
- The Affidavit of Military Status of Defendant form MUST be completed and either accompany the filing of the petition or be submitted PRIOR to a default judgment being granted.
- After the Petition is completed, you will be required to pay the fee of **\$129.00**, payable in cash, cashier's check, money order or credit card, for filing the petition of the citation on ONE Defendant. **Each additional Defendant is \$75.00**. A citation along with a copy of your petition will be served to the Defendant notifying them that a suit has been filed against them in the Court. The citation will order the Defendant to file an answer with the court by the end of the 14th day AFTER the day they were served with the citation. You will then be notified by this office of your Court Date which is 45 days AFTER the citation was served.
- Continuance: If you cannot keep the scheduled Court Date, the Plaintiff or Defendant may request a continuance. Any request MUST be timely filed, IN WRITING with supporting documentation with 76 working hours of the Court Date.
- Subpoena: If you have a witness who will not voluntarily come to Court, you may come within a reasonable time prior to the Court Date and request a subpoena. Because a subpoena must be served on the witness, it is your burden to make sure the fee of **\$75.00** is paid and there is adequate time for that person to be served.
- If you should receive a judgment, please understand that the court DOES NOT collect the judgment for you, nor can we force the Defendant to pay the judgment. It is your responsibility to request any post-judgment remedies.
- Remedies that are available to you:
 1. Abstract of Judgment: Places a lien on any real property the Defendant may own in a particular county where is abstract is recorded. There is a **\$5.00** fee for the court to issue the abstract. You will also be required to pay the County Clerk to record the abstract. This may be obtained 10 days after the judgment was signed.
 2. Writ of Execution: Authorizes the Constable or Sheriff to seize an assets belonging to the Defendant that are not exempt under Texas Property Code, section 42.001 and 42.002.

Those assets are then auctions at a public sale and those proceeds are applied to the judgment. This may be obtained 30 days after the judgment was signed if the judgment was not paid or appealed. **\$200.00** fee for this service.

3. Writ of Garnishment: This is a separate suit wherein you are the Plaintiff and the Defendants bank is the Defendant. You are actually suing the bank in which the original Defendant has their bank account, warning the bank to freeze the monetary assets of their bank account and to appear and make answer to the garnishment suit. EXTREME CAUTION should be used when filing a garnishment suit; if there are not sufficient funds in the account at the time the garnishment is served; the person filing the suit is liable for reasonable attorney fees for the garnishee which they may then tax as additional costs against the judgment debtor. An attorney may be required. **\$200.00** fee for this service
4. Appeal: After rendition of the judgment, and the judgment has been signed by the Judge, wither party has 10 days to appeal the case to the County Court where there will be a Trial De Novo. Meaning as if the Justice Court trial had never occurred.
(Contact the Court Clerk for instructions and filing fees)

- It is the Plaintiff's responsibility to ask for a Default Judgment if the Defendant does not answer the citation service.
- If the Defendant's address is NOT in Burleson County, it is the Plaintiff's responsibility to find the county in which the Defendant's address is in and the Service Fee for that county.

Why Can't I Talk to the Judge?

"Ex Parte" Contact with the Judge is Not Allowed

What is an "ex parte communication"?

"*Ex parte*" is a Latin phrase meaning "on one side only; by or for one party." An *ex parte* communication occurs when a party to a case, or someone involved with a party, talks or writes to or otherwise communicates directly with the judge about the issues in the case without the other parties' knowledge. Under the Texas Code of Judicial Conduct, judges may not permit or consider "*ex parte* communications" in deciding a case unless expressly allowed by law. This ban helps judges decide cases fairly since their decisions are based only on the evidence and arguments presented to the court and the applicable law. It also preserves public trust in the legal and court system.

What is a "party"?

"Party" refers to any person or organization who sues or is sued. In a civil case, the party who initiates the lawsuit is called the plaintiff (or, sometimes, the petitioner or complainant). In a criminal case, it is the State of Texas that initiates the criminal action.

Why are judges not allowed to consider ex parte communications?

Would you like it if the judge spoke to the other parties about your case without your knowledge? Probably not! What if the judge allowed the Officer to come in and chat about your ticket, and the officer asked the Judge to "give it to you good because you had an attitude"! The rule banning *ex parte* communications ensures that the court process is fair and that all parties have the same information as the judge who will be deciding the case. When all parties have the same information, a party who disagrees with the information can contest it in court.

What if I want to tell the judge something about my case?

If you want to tell the judge about your case or ask the judge to take a certain action in your case, you should file a written motion with the clerk of the court in which your case was filed explaining what relief you are seeking and why you are entitled to that relief. ("Relief" means what you are asking the court to do.)

Make sure you attach the appropriate documentation showing that a copy of the motion was served on all the other parties and explaining how (e.g., by personal delivery, or mail, postage prepaid) and when service was made. Usually, the judge will schedule a hearing. During the hearing, you will have the opportunity to explain your position to the judge in court. Judges must make their decisions based only on the relevant facts or issues of the case and the applicable laws. Therefore, please be sure that the facts or issues that you plan to tell the judge about are relevant to your case. This helps ensure that your case will proceed more quickly.

If you send a letter or other document directly to the judge without providing a copy of it to every other party on your case (or the party's attorney, if the party has an attorney), the judge or court staff will be required to notify all parties (or their attorneys) about your communication so the other parties can respond to it. This is called "disclosure" and helps to ensure that your case is handled fairly. You may also cause your case to be delayed or even dismissed. Also, the court may "strike" (delete or ignore) any evidence affected by your *ex parte* communication.

Can I ask the judge to keep information I share in a letter or document confidential?

No. Sometimes people will send a letter or document to the judge and ask the judge not to tell the other party. Although you may have information that you want the judge to know about and keep in confidence, the judge is still required to disclose any *ex parte* communications to all parties.

Can I ever communicate directly with the court?

Yes. Certain *ex parte* communications to a judge or court personnel are allowed by law. For example, if you are contesting a citation (commonly called a "ticket") for a traffic infraction, the law allows you to submit a written explanation directly to the court. Also, communications regarding case scheduling or status are allowed.

Is there anything I can do if I disagree with the judge's decision in my case?

If you believe the judge made the wrong decision in your case, you may have the right to file an "appeal," asking an "appellate court" to review the decision the judge made in your case.

CAUSE NO. _____

PLAINTIFF

§ IN THE JUSTICE COURT

§

v.

§

§ PRECINCT NO. 1

§

DEFENDANT

§

§ BURLESON COUNTY, TEXAS

PETITION: SMALL CLAIMS CASE

Defendant(s) address: _____

COMPLAINT: The basis for the claim which entitles Plaintiff to seek relief against Defendant is: _____

RELIEF: Plaintiff seeks: damages in the amount of \$_____, return of personal property as described as follows (be specific): _____ which has a value of \$_____. Additionally, Plaintiff seeks the following:

SERVICE OF CITATION: Service is requested on Defendant(s) by: personal service at home or work, registered mail, certified mail, return receipt requested. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other addresses where Defendant(s) may be served are: _____

I hereby request a jury trial. The fee is \$22 and must be paid at least 14 days before trial.

I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows: _____

Plaintiff's Printed Name

Signature of Plaintiff
or Plaintiff's Attorney

Defendant's Information (if known):

Date of birth: _____

Last three digits of Driver License: _____

Last three digits of Soc. Sec. No.: _____

Phone No.: _____

Address of Plaintiff
or Plaintiff's Attorney

City State Zip

Phone & Fax No. of Plaintiff
or Plaintiff's Attorney

Sworn and subscribed before me on this the _____ day of _____, 20____

Chief Court Clerk/Court Clerk

Case No. _____

_____	§	In the Justice Court, Pct.1
Plaintiff	§	
		Burleson County, Texas
VS.	§	
_____	§	
Defendant	§	

NON-MILITARY AFFIDAVIT

Service-members Civil Relief Act

Plaintiff being duly sworn on oath deposes* and says that Defendant(s) is (are)

(CHECK ONE)

- Not in the military
- Not on active duty in the military and/or
- Not in a foreign country on military service
- On active military duty and/or is subject to the Service-members Civil Relief Act of 2003
- Has waived his/her rights under the Service-members Civil Relief Act of 2003
- Military status is unknown at this time

PLAINTIFF

Subscribed and sworn to, before me on this the ___date of _____, 20___.

NOTARY PUBLIC/CLERK OF THE 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.**

<https://scra.dmdc.osd.mil>

Jason Muzny
Burleson County Constable, Pct. 1

Additional Civil Process Information

Cause Number:

In order to expedite service and for the safety of our Deputies, we ask that you answer the following questions to the best of your ability.

1. Have you witnessed any abnormal behavior?

2. Have you known, or known of, the Defendant being violent with anyone?

3. Have you been verbally or physically assaulted by the Defendant?

4. Known of an occasion where the Defendant has, or brandishes a weapon of any kind?
(Please note what type of weapon)

5. Does the Defendant have any dogs known to be aggressive?

6. Are you aware of any mental or emotional issues that the Defendant may have?

7. Are you aware of any police related calls regarding the Defendant?

8. Are there any other issues you think might be important for the Deputies to know?