



WHARTON COUNTY PRECINCT # 1, 2, 3, or 4

JUSTICE OF THE PEACE

To the Citizens of Precinct 1, 2, 3, or 4:

This 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 the Court Clerk can answer questions only on a general nature, about procedures of this court, concerning court cost.

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,

Justice of the Peace, Pct. 1, 2, 3, or 4

Wharton County Justice of the Peace
Judge Jeanette Krenek, Pct. 1
P.O. Box 1216 (1017 N. Alabama Road)
Wharton, Texas 77488
Phone (979) 532-3941---Fax(979) 531-0758

Wharton County Justice of the Peace
Judge Cynthia L. Kubicek, Pct. 2
P.O. Box 780 (736 Clubside Drive)
East Bernard, Texas 77435
Phone(979) 335-6210---Fax (979)335-6312

Wharton County Justice of the Peace
Judge Dennis Korenek, Pct. 3
P.O. Box 184 (340 West North)
Louise, Texas 77455
Phone (979) 648-2363 ---Fax (979) 648-2359

Wharton County Justice of the Peace
Judge Tim Drapela, Pct. 4
605 E. Calhoun St.
El Campo, Texas 77437
Phone (979) 543-4322---Fax (979) 543-1568



WHARTON COUNTY PRECINCT # 1, 2, 3, or 4
JUSTICE OF THE PEACE

FILING A SUIT

VENUE:

Generally, suit should be filed in the county and precinct where one or more of the defendants reside. However, there are many exceptions to this Rule.

REQUISITES:

DIRECT A LETTER, CERTIFIED MAIL – RETURN RECEIPT REQUESTED, to the defendant, giving notice of the suit. State the amount of money to be sued for and if the money is not received within ten (10) days from the date of the receipt of the letter, suit may be filed.

JURISDICTION:

Jurisdiction (what the Court may render JUDGMENT for) in Small Claims Court is for civil matters in which the amount of controversy is not more than \$10,000.00 including court costs. Jurisdiction in Justice Court is for lending institutions (banks, small finance companies, etc.) in which the amount of controversy is not more than \$10,000.00 plus court costs. A judgment in Small Claims court shall be for MONEY ONLY, not for the return of personal property, etc.

AN ACTION IN SMALL CLAIMS COURT MAY NOT BE BROUGHT BY:

1. an assignee of the claim or other person seeking to bring an action on an assigned claim;
2. a person primarily engaged in the business of lending money at interest; or
3. a collection agency or agent.

FILING SUIT:

The responsibility for filling out your petition rests with you, the plaintiff. Court clerks will assist you if you have PROCEDURAL questions.

The filing fee is Thirty One dollars (\$31.00) for Small Claims and
Thirty One dollars (\$31.00) for Justice Court.

In addition, there is a fee for serving the defendant which is Seventy Five dollars (\$75.00) per defendant to be served in Wharton County, for a total of One Hundred Six dollars (\$106.00) for Small Claims or Justice Court.

NoteIf you are filing on a defendant that resides outside of Wharton County contact this court for service fees and who to make the separate service fee payable to.

The petition and military affidavit must be sworn before the court clerk or a Notary Public.

CITATION:

A citation is sent to the Constable for service on the defendant in Wharton County. Out of county service is sent to the Sheriff or Constable, depending on the information you provide the Court.

ANSWER:

The defendant in your suit is commanded to answer to the Court, in writing, on the Monday following the expiration of ten (10) days from the date the citation was served upon him.

REPRESENTATION:

As an individual, you may represent yourself in a Small Claims suit. If as plaintiff, you are in the business of loaning money, either primarily (banks, credit union, savings and loans) or secondarily (credit cards or interest charge accounts), 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 Court. Action in Small Claims court may not be brought by a an assignee of the claim or other persons seeking to bring action on a assigned claim; or a collection agency.

DEFAULT JUDGMENTS:

Both parties will be notified by the Court for an appearance on the DOCKET. You will be asked to briefly state the facts of your case and present any written documents you may have to support your case. If the defendant does not show and the Plaintiff does it is an automatic default on the defendant's part.

TRIAL BY JUDGE OR JURY:

If the defendant in your suit files a written answer, the court date should be approximately six to seven weeks after service. (See additional information below for alternate service that could delay serving the citation). Notice will be mailed to you (the plaintiff) and to the defendant stating the date and time to appear in court. Bring all information you need to support your claim. If you have any witnesses, you should bring them. If you have witnesses to your suit who will not come to court voluntarily, you may ask the Court to subpoena those individuals prior to trial. The fee in Wharton County for filing a service of a subpoena is Seventy Five dollars (\$75.00) per subpoena. Allow at least a week for service of the subpoena.

ALL MOTIONS FOR CONTINUANCE (RESETTING YOUR COURT DATE) MUST BE IN WRITING AND RECEIVED NO LATER THAN FIVE (5) WORKING DAYS (WEEKENDS AND HOLIDAYS EXCLUDED) PRIOR TO YOUR COURT DATE.

AFTER JUDGMENT:

THIS COURT DOES NOT COLLECT THE JUDGMENT FOR YOU NOR CAN WE FORCE THE DEFENDANT TO PAY THE JUDGMENT. If you receive a judgment against the defendant, and if the defendant does not make a motion for a new trial within five (5) days or appeal the case within ten (10) days after the court date, your remedies to collect your money are as follows:

1. ABSTRACT OF JUDGMENT:

You may obtain an Abstract of Judgment on the eleventh (11th) day after judgment. The fee for obtaining an Abstract of Judgment is five (\$5.00). You should then take the Abstract to the County Clerk's office in the Wharton County Annex in order to file the judgment in Wharton County. The purpose of filing an Abstract of Judgment is to put a lien against any REAL PROPERTY in the defendant's name. If the defendant sells any real property within ten (10) years from the date of judgment, the amount of judgement must be paid plus interest.

2. WRIT OF EXECUTION:

If you are granted a judgment against the defendant AND if the defendant does not appeal within ten (10) days after the court date, you may obtain and file a Writ of Execution any time after the 30th day from the date of judgment. A Writ of Execution allows a Sheriff or Constable in the State of Texas to try and seize certain non-exempt property from the defendant. If property is seized, an auction is held and the proceeds for the sale satisfy the judgment. The cost for filing a Writ of Execution is \$150.00 for service in Wharton County.

You may have other remedies available, but they are more complicated and are not covered here. Please consult an attorney for any other remedies you may have to collect your judgment.

SHOULD THE DEFENDANT PAY ANY PORTION OF THE AMOUNT OWED AFTER YOU HAVE RECEIVED A JUDGMENT, IT IS NECESSARY FOR YOU TO NOTIFY THE COURT OF THE CREDIT OR NOTIFY THE COURT THAT THE JUDGMENT HAS BEEN SATISFIED IN FULL IF THE DEFENDANT PAYS THE ENTIRE JUDGMENT AMOUNT. IF YOUR ADDRESS CHANGES WITHIN THE TEN (10) YEAR PERIOD FOLLOWING THE JUDGMENT, YOU SHOULD NOTIFY THE COURT OF YOUR NEW ADDRESS.

ADDITIONAL INFORMATION:

The defendant in a Small Claims Suit must be served personally by the Constable or Sheriff of the County. Sometimes, the defendant avoids service; therefore, an alternate method of service is necessary. This method is referred to as "alternate service". The Constable or Sheriff may request this alternate service which allows him to serve anyone over the age of sixteen (16) at the defendant's usual place of abode, business, or in a method the Judge believes will be reasonable effective to give the defendant notice of the suit. We will request that you come in and sign the request for alternate service. If your request is approved, the Judge will sign an order, and the citation will be returned to the Constable or Sheriff for service as mentioned above.

SUIT ON A CORPORATION:

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 the proper legal capacity. They are as follows:

If the party you want to sue is a corporation, you must find the name of an officer of the corporation before you begin the suit. The Secretary of State (1-512-463-5555) or the StateComptroller's office (1-800-252-5555) will give you the information. Ask for the name and address of the REGISTERED AGENT, PRESIDENT OR VICE-PRESIDENT of the corporation. When you file your suit, you will be filing against the corporation and serving the citation on one of the above mentioned officers of the corporation.

It is necessary to know the individual's name that is able to accept service on behalf of the corporation. EXAMPLE – GREENHOUSE, INC. SERVE JOHN DOE. It is also possible for an incorporated entity to have an assumed name, i.e.: GREENHOUSE, INC. d.b.a. GREENHOUSE SUPPLIES. Follow other instruction for the remainder of the suit.

SUIT ON A COMPANY:

If the party you want to sue is an individual doing business under an assumed name (sole proprietor of the business) or a partnership, you must check with the County Clerk's office in the county of the business to determine who the owner(s) are. Direct your letter (notice of suit) to the owner(s) of the business – EXAMPLE: JOHN SMITH d.b.a. GREENHOUSE SUPPLIES.

INDIVIDUAL:

Where an individual is personally responsible to you for damages he may have caused you.

**IF YOU HAVE ADDITIONAL PROCEDURAL QUESTIONS, PLEASE CONTACT THE COURT.
THIS OFFICE WILL NOT ANSWER ANY LEGAL QUESTIONS.**

ALL CORRESPONDENCE SHOULD BE ADDRESSED TO: Wharton County Justice of The Peace

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CAUSE # _____

TO THE HONORABLE JUDGE OF THE COURT, JUSTICE OF THE PEACE

PLAINTIFF:

Name

Address

City

Phone:

Vs

DEFENDANT(S)

Name

Address

City

Phone: _____

Phone: _____

CAUSE OF ACTION:

TOTAL AMOUNT SUED FOR: _____

PLAINTIFF'S SIGNATURE/ ATTORNEY FOR PLAINTIFF

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 20____

CLERK OF COURT/NOTARY PUBLIC

CIVIL PROCESS INFORMATION FORM

Name of Defendant: _____

Address, City, State, Zip: _____

Telephone: _____ (Home) _____ (Cell)

Drivers License # _____ **SSN #** _____

Appx. Height _____ **Appx. Weight** _____ **Race** _____ **Sex** _____ **Hair Color** _____

Other Identifying Marks/Features: _____

Directions to Residence: _____

Residence Description (Type of residence, color, one or two story):

Vehicle Information:

(1) Make: _____ Model: _____ Color: _____ Year: _____

(2) Make: _____ Model: _____ Color: _____ Year: _____

Employer Information:

Employer: _____

Address, City, State, Zip: _____

Telephone: _____

Plaintiff Name, Address, Telephone Number: _____

This affidavit is required in all civil filings in this Court. You may take this affidavit to any legally qualified notary public or bring it to my office and we will have you swear to the affidavit before the Judge Or Clerk. Failure to submit this affidavit will invalidate your claim.

CASE NO. _____

AFFIDAVIT PLAINTIFF BEING DULY SWORN ON HIS OATH DEPOSES AND SAYS UNDER PENALTY OF PERJURY THAT DEFENDANT(S)

- () IS NOT IN THE MILITARY**
- () IS NOT ON ACTIVE DUTY IN THE MILITARY AND/OR**
- () IS NOT IN A FOREIGN COUNTRY ON MILITARY SERVICE.**
- () IS ON ACTIVE MILITARY DUTY AND/OR IS SUBJECT TO
THE SERVICEMEMBERS CIVIL RELIEF ACT OF 2003**
- () MILITARY STATUS IS UNKNOWN AT THIS TIME**

PLAINTIFF _____

**SUBSCRIBED AND SWORN TO BEFORE ME THIS
_____ DAY OF _____, 20_____.**

**NOTARY PUBLIC IN AND FOR STATE OF TEXAS/
CLERK OF THE SMALL CLAIMS / JUSTICE COURT (STRIKE ONE)**
Penalty for making or using false affidavit – A person who makes or uses
an affidavit knowing to be false, shall be fined as provided in title 18
United States Code, or imprisoned for not more than one year, or both.

CASE NO. _____

PLAINTIFF

VS.

DEFENDANT

PLAINTIFF'S MOTION TO DISMISS

COMES NOW THE PLAINTIFF in the above styled and numbered cause and files this MOTION TO DISMISS the above styled case WITHOUT PREJUDICE, in accordance with RULE 162 of the Texas Rules of Civil Procedure, and cites the following reason(s):

FILED THIS THE _____ DAY OF _____, 20_____.

PLAINTIFF

ORDER OF DISMISSAL

Be it therefore ORDERED, ADJUDGED AND DECREED that the PLAINTIFF'S MOTION BE GRANTED. The above styled cause is DISMISSED WITH/WITHOUT PREJUDICE.

SIGNED AND ENTERED THIS _____ DAY OF _____, 20_____.

PRESIDING JUDGE/CLERK OF COURT