



INSTRUCTIONS AND INFORMATION FOR FILING SMALL CLAIMS SUIT

Small claims Case: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, or personal property. The claim can be for no more than \$10,000.00 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.

Rules 500-510 of the Rules Civil Procedure, which govern the rules of practice in justice courts, can be accessed at **banderacounty.org** by selecting any of the Justice of the Peace links and they are available for examination at any of the Justice of the Peace offices during normal business hours.

As in all suits you have a right to represent yourself or be represented by an attorney. See Rule 500.4, Rules of Civil Procedure. It is always advisable to contact an attorney for legal advice. **Neither the Court nor court staff CAN advise you.**

Types of cases prohibited in Small Claims Suits

- a. Suit by state to recover penalty, forfeiture, or escheat.
- b. Slander and defamation
- c. Foreclosure lien on land
- d. Suit for trial of title to land
- e. By assignee of claim
- f. Person primarily engaged in the business of loaning money at interest
- g. Collection agency or agent
- h. Family law cases i.e. custody, divorce, etc.
- i. Cases exceeding the jurisdictional limits of the Court
- j. Probate or guardianship
- k. Bankruptcy

It is your burden as a plaintiff to sue the defendant in their proper legal capacity.

- a. Personally: Where an individual is responsible to you for damage he/she may have caused you as an individual.
- b. Proprietor or partnership: A business that is not incorporated, but does have on file with the County Clerk an assumed name, e.g. John Smith dba/Greenhouse Supplies. To determine whether or not this

person has filed an assumed name, you would contact the Bandera County Clerk in the main courthouse.

- c. Corporation: Any incorporated business, including a limited liability company must be served through their registered agent for service of process. Registered agent information is available through the office of Secretary of State.

FILING FEES

The filing fee for Small Claims Cases is \$_____ plus cost of service. **All fees must be paid before a document can be processed.** If you are unable to pay the fees, a Statement of Inability to Pay may be filed under Rule 502.3, Rules of Civil Procedures.

Once your petition is received and the filing fee paid, the case will proceed. Rule 502.3, Rules of Civil Procedure. Each petition filed should have a ***Justice Court Civil Case Information Sheet*** attached to the Petition. This document is available at the Court Office or on line at **Banderacounty.org**. Rule 502.2 (b), Rules of Civil Procedure.

Generally the defendant has the right to be sued in the county and precinct in which he/she resides. Exceptions to this rule can be found in Rule 502.4, Rules of Civil Procedure. Should you file suit in an improper venue, there may be a motion by the defendant to transfer venue (a request that this suit be transferred to some other county and/or precinct). Rule 502.4, Rules of Civil Procedure.

Pleadings:

Except for oral motions made during trial, or when all parties are present, all pleadings must be written, signed and filed with the Court. Rule 502.1, Rules of Civil Procedure. A petition must contain the information in Rule 502.2, Rules of Civil Procedure.

An answer must contain:

1. Name of defendant
2. Name, address, telephone number, and fax number of defendant's attorney, if applicable, or name, address, telephone number, and fax number of defendant.
3. *If the defendant consents to email service, a statement consenting to email service and email contact information must conform to Rule 502.5(a), Rules of Civil Procedure.*

A general denial which denies all plaintiff's allegations without specifying the reasons is sufficient to constitute an answer or appearance and does not bar the defendant from raising any defense at trial. A sample Answer is attached to this packet.

Any party is entitled to a trial by jury upon written request and payment of the jury fee. Rule 504.1, Rules of Civil Procedure, Part V.

Rural addressing 830-796-8343 and the Tax office 830-796-3731 may provide you information concerning in what precinct the defendant resides or a particular address lies.

Once you have filed your petition with the Court stating the facts and circumstances of the case, the Court will issue a Citation, which along with a copy of your petition will be served on the defendant notifying him of the fact that a suit has been filed against him in this court. **These papers will be served on the defendant in the manner you prescribe and the court must wait until they have been returned and the defendant's time to answer has passed before further action can be taken.** Rule 501.2, Rules of Civil Procedure, Part V.

Alternative Dispute Resolution: The policy of this state is to encourage the peaceable resolution of disputes through alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. For that purpose, the judge may order any case to mediation or another appropriate and generally accepted alternative dispute resolution process. Rule 503.5, Rules of Civil Procedure, Part V.

Discovery: Discovery is controlled by Rule 500.9, Rules of Civil Procedure. All discovery must be approved by the court. The Court does not allow the request for admissions to be embedded in the petition. Also see Rule 508, Rules of Civil Procedure and the Justice Court Discovery Standing Order, attached hereto.

The defendant will be given a time in which to answer the suit. Rule 502.5, Rules of Civil Procedure, Part V. If the defendant answers the suit, a trial date or other court date will be set and the parties will be notified. If the defendant fails to answer the suit, the court will proceed under Rule 503, Rules of Civil Procedure.

Both the plaintiff and the defendant have a right to subpoena witnesses. Rule 500.8, Rules of Civil Procedure.

Although the Rules of Evidence and the other Rules of Civil Procedure do not generally apply in Justice Court, see Rule 500.3 (e) and (f), Rules of Civil Procedure.

In order to develop the facts and reach an equitable and legally correct decision, the judge may ask questions during any hearing or at trial in accordance with Rule 500.6, Part V of the Rules of Civil Procedure.

However, the judge will not present your case for you or defend a case against you. It is the responsibility of each party to present his/her case.

Should you receive a judgment, it is **not** the responsibility of the court to collect the judgment for you. Justice Court judgments are enforceable in the same manner as in county and district courts, except as otherwise provided by law. When the judgment is for personal property, the court may award a special writ for seizure and delivery of such property to the plaintiff, and may in addition to the other relief granted in such cases, enforce its judgment by attachment or fine. Rule 505.2, Rules of Civil Procedure. Any enforcement of judgment may require a fee. A complete list of filing fees is available from the court clerk upon request.

You should contact an attorney to advise you on the collection of your judgment should you prevail.

If you are unable to afford the filing fees, you may file a Statement of Inability to pay fees. See Rule 502.3, Rules of Civil Procedure.

You should contact an attorney to advise you on the collection of your judgment should you prevail.

Service fees apply for persons served in Bandera County. Service fee for other counties and/or states may vary. Some documents require additional fees to be paid to the County Clerk in the County where you file them.

THESE INSTRUCTIONS AND INFORMATION IS A BRIEF SUMMARY OF THE LAWS AND PROCEDURES THAT APPLY TO A SMALL CLAIMS SUIT IN JUSTICE COURT. THEY ARE NOT INTENDED TO BE EXHAUSTIVE AND ANY QUESTIONS OR INTERPRETATION SHOULD BE BASED UPON YOUR OWN RESEARCH AND/OR THE ADVICE OF YOUR ATTORNEY.

Attachments:

Answer Form
Standing Discovery Order
Justice Court Civil Information Sheet
Out of County Service Information Sheet



BANDERA COUNTY JUSTICE OF THE PEACE COURTS STANDING DISCOVERY POLICY

Discovery in Justice Courts is governed by Rule 500.9 of the Rules of Civil Procedure, Part V. Pretrial Discovery is limited to that which the judge considers **reasonable and necessary**. Pretrial Discovery must be approved by the Court. Discovery may include but is not limited to the following:

- Interrogatories
- Requests for Production of Documents and Things
- Requests for Admissions
- Dispositions (the number and amount of time for each disposition may be limited)

Requests for Admissions **may not** be imbedded in the petitions. A party who violates Rule 500.9, Rules of Civil Procedure or this Standing Order may not rely on alleged Deemed Admission for any purpose, including connection with a Motion for Default Judgment or Summary Disposition.

The parties may apply for a modification of this Standing Discovery Order at any time for good cause shown.

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER (FOR CLERK USE ONLY): _____

STYLED _____

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:	2. Names of parties in case:										
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">Name: _____</td> <td style="width: 50%; border: none;">Telephone: _____</td> </tr> <tr> <td style="border: none;">Address: _____</td> <td style="border: none;">Fax: _____</td> </tr> <tr> <td style="border: none;">City/State/Zip: _____</td> <td style="border: none;">State Bar No: _____</td> </tr> <tr> <td style="border: none;">Email: _____</td> <td></td> </tr> <tr> <td style="border: none;">Signature: _____</td> <td></td> </tr> </table>	Name: _____	Telephone: _____	Address: _____	Fax: _____	City/State/Zip: _____	State Bar No: _____	Email: _____		Signature: _____		Plaintiff(s): _____ _____ Defendant(s): _____ _____ _____ [Attach additional page as necessary to list all parties]
Name: _____	Telephone: _____										
Address: _____	Fax: _____										
City/State/Zip: _____	State Bar No: _____										
Email: _____											
Signature: _____											
3. Indicate case type, or identify the most important issue in the case (select only 1):											
<input type="checkbox"/> Debt Claim: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.	<input type="checkbox"/> Eviction: An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.										
<input type="checkbox"/> Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.	<input type="checkbox"/> Small Claims: 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.										



OUT OF COUNTY SERVICE INFORMATION

If the person(s)/business you are suing, resides in another County it is your responsibility to provide the court with the necessary information so the Citation may be served.

Name of person you want served: _____

Address: _____

City: _____ State: _____

Phone Number: _____

If you desire your Citation to be served in another county in Texas, you must also provide the additional following information:

Name of person to serve Citation (Sheriff Dept./Constable or other):

Address: _____

City: _____ State: _____

Phone Number: _____

Service fee the department or person serving will charge for service: _____

This information to be submitted with your petition.

IN THE JUSTICE COURT

Plaintiff(s)

PRECINCT _____

VS

BANDERA COUNTY, TEXAS

Defendant(s)

DEFENDANT'S ANSWER TO SUIT

Cause Number; _____

To the Honorable Justice of the Peace,

- I agree with the allegations contained in the above styled complaint.
- I deny generally the allegations contained in the above styled complaint.
- I submit the following answer: _____

- I request a non-jury trial before the judge
- I request a jury trial and have enclosed the \$22.00 jury fee.
- I have enclosed my attorney's contact information.

Name: _____
 Address: _____
 Telephone Number: _____
 Fax Number: _____

- I **do** consent to email service. My email is: _____
- I **do not** consent to email service.

Signed on this the _____ day of _____, 20 ____.

Defendant