

TO THE CITIZENS OF PRECINCT 4:

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

However, the Rules of Judicial Ethics prohibit this office:

- 1.) From giving legal advice
- 2.) Telling either party how to represent their case
- 3.) Expressing opinions of the law

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

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.

PLEASE DO NOT ASK US TO VIOLATE THESE RULES

Thank you,
Judge Rolando “Manguera” Muniz

FILING OF SMALL CLAIMS OR CIVIL SUIT

PRE-REQUISITE: Before you file your lawsuit!

You must 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 10 days from the date of the receipt of the letter, that suit will be filed against them. It is not necessary to have the letter notarized. Be sure to keep a copy of the letter; you will need it when you come to court.

VENUE:

Suit should be filed in the precinct of the county where the defendant resides. If the suit is based on a contract or tort, the defendant may also be sued in the county where the contract was entered into or to be performed, or where the tort occurred. If you decided to file your suit in this Court and the defendant files a Motion to Transfer Venue (a request that the suit be transferred to some other county or precinct other than the one you filed in), you will be liable for an additional filing fee if the suit is transferred.

JURISDICTION:

Jurisdiction (what the Court may render a JUDGMENT for) in Small Claims Court is for civil matters in which the amount of controversy is not more than \$10,000.00. 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 agency or agent

The above must file suit in Justice Civil Court instead of Small Claims.

FILING SUIT:

The responsibility for filling out your petition rests with you, the plaintiff. A petition is attached, if you need more, you may make copies. You must provide a physical address on the defendant; the Court cannot help you find addresses or locate the defendant. 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 their proper legal capacity. They are as follows:

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

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. (This information for Cameron County may be obtained at the County Clerk's office at the Courthouse in Brownsville.) Direct your letter (notice of suit) to the owner/s of the business. Example: John Smith dba Greenhouse Supplies.

SUIT ON A CORPORATION: If the party you want to sue is a corporation, you must find the name of an officer of the corporation before you begin your suit. The Secretary of State or the State Comptroller's office will give you the information. These numbers are in the telephone directory. 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 Smith. It is also possible for an incorporated entity to have an assumed name, i.e.; Greenhouse, inc. dba Greenhouse.

COSTS:

The filing fee in Small Claims is \$29.00. In addition, there is a fee for serving the defendant. The service fee in Cameron County is \$60.00. The clerk will include the service fee as part of the filing fee. If the service is in another county you must make your check payable to the Constable's office of that county. These fees must be paid at the time of filing.

The filing fee in Justice Court is \$29.00, plus the service fee. The service fee in Cameron County is \$60.00.

CITATION:

Complete the petition (attached) stating the facts and circumstances of your suit. The petition must be signed before a notary. (Court Clerks are not notaries.) When you file your petition, provide the court with 2 copies; original for the Court, 1 copy to the defendant and 1 copy for you. Also please provide copies of all documents. The Court will then issue a citation along with a copy of your sworn petition to be served on the defendant notifying him that a suit has been filed against him in this Court.

ANSWER:

The citation will advise the defendant to file a written answer with the Court on the Monday following the expiration of 10 days from the date the citation was served on the defendant. (See Default Judgments if the defendant does not file a written answer.)

REPRESENTATION:

As an individual, you must represent yourself in a Small Claims Suit. Small Claims Court was designed for individuals to be able to file suits without the assistance of an attorney, however,

you may be represented by an attorney if you choose, but if the defendant retains an attorney, it would be wise for you to get an attorney also.

PREPARING YOUR CASE FOR TRIAL:

The plaintiff has the burden of proof to show by the weight of the evidence that the defendant is at fault. If you have witnesses to your suit who will not come to court voluntarily, you may order a subpoena in writing at least one week (not including weekends and holidays) prior to your trial date and pay the required fee for service, which is \$60.00 per subpoena. The Court will need a work address or residence address in order to serve the subpoena on the witness.

TRIAL BY JUDGE OR JURY:

If the defendant in your suit files an answer, the court date will be in approximately 45 days. A notice for trial will be mailed to you and to the defendant stating the time and date to appear in Court. All requests for a jury trial must be done in writing along with payment of the \$5.00 fee not less than 10 days (not including weekends and holidays) before your court date. The defendant also has the right to request a jury trial. It is necessary for you to bring all witnesses, and any other documentation to support your suit with you to court at this time.

ALL MOTIONS FOR CONTINUANCE (RESETTING YOUR COURT DATE) MUST BE IN WRITING AND RECEIVED NO LATER THAN 3 WORKING DAYS (WEEKENDS AND HOLIDAYS EXCLUDED) PRIOR TO YOUR COURT DATE.

DEFAULT JUDGMENTS:

If the defendant in your suit fails to file a written answer with the Court, only you as plaintiff will be notified by the Court by regular mail for an appearance on the default 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.

AFTER JUDGMENT:

If you receive a judgment against the defendant, and if the defendant does not make a Motion for a New Trial within 5 days (in writing) or appeal the case within 10 days (in writing) after the judgment is signed, the judgment becomes final. Should the court rule that you recover nothing or should you receive a judgment for less than you requested, you may also appeal (in writing) within 10 days. All appeals are sent to the next higher court, which would be one of the County Courts at Law in Brownsville, Texas and must be accompanied by an Appeal Bond for double the amount of the judgment. A bond can be surety or cash.

THIS COURT DOES NOT COLLECT THE JUDGMENT FOR YOU NOR CAN WE FORCE THE DEFENDANT TO PAY THE JUDGMENT

Your remedies to collect your money are as follows:

ABSTRACT OF JUDGMENT: A complete history in short, abbreviated form of the case as found in the record, which was filed with the County Clerk creates a judgment lien on real estate owned by the defendant. You may obtain an Abstract of Judgment on the 11th day after judgment. The fee for obtaining an Abstract of Judgment from this court is \$10.00. The Court will prepare the Abstract for you and will contact you when you can pick it up. You should then take the Abstract to the County Clerk's office in Brownsville to have it filed in Cameron County. You would have to contact them for the filing fee amount. The purpose of filing an Abstract is to put a lien against any real property in the defendant's name. If the defendant sells any real property within 10 years from the date of the judgment, the judgment plus interest must be paid.

WRIT OF EXECUTION: A writ to put in force the judgment of a court authorizing an officer to levy on and sell certain items of judgment to satisfy judgment.

You may obtain a Writ of Execution anytime after the 30th day from the date of the 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. We recommend that you visit the Sheriff's or Constable's office first in order to determine what non-exempt property can be seized. If property is seized, an auction is held and the proceeds for the sale satisfy the judgment. The cost of filing a Writ of Execution in Cameron County is \$210.00 (\$10.00 for filing and \$200.00 for service.)

You may have other remedies available to you, but they are more complicated and are not covered here. Please consult an attorney for any other legal remedies that 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 JUDGEMENT AMOUNT. IF YOUR ADDRESS CHANGES WITHIN THE 10-YR PERIOD FOLLOWING THE JUDGMENT, YOU SHOULD NOTIFY THE COURT OF YOUR NEW ADDRESS.

ADDITIONAL INFORMATION:

The defendant in a civil suit must be served personally. Sometimes, service is avoided by the defendant, which only delays the process of service; therefore you must provide as much current information on the defendant as possible, such as employment information.

LEGAL QUESTIONS WILL NOT BE ANSWERED BY THIS OFFICE. IF YOU HAVE A LEGAL QUESTION, CONTACT AN ATTORNEY. THE JUDGE NOR OFFICE STAFF WILL DISCUSS THE FACTS OF THE CASE WITH EITHER PARTY BEFORE THE TRIAL DATE.