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Guide to Small Claims Court



By Marcus D. Pinney

Caution

This guide is not a substitute for legal advice. It is published to give general information on how to sue in small claims court. Acting without a lawyer can have unintended consequences. For specific situations, it is always advisable to consult with an attorney.

Notice

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Introduction

For small disputes, the involvement of a lawyer is often impractical. In some situations, it might make more sense for you to represent yourself. Consider a dispute in which another party owes you \$1,000. You can pay several thousand dollars to a lawyer to collect, but you will spend more than you collect. In these situations, you should consider suing without a lawyer in Small Claims Court.



The Pinney Law Firm often suggests this process as an alternative for potential clients with small disputes. We have published this guide to offer information on how to do this. You should always, however, consider talking to an attorney before attempt to handle things on your own.

What is Small Claims Court?

In Texas, Small Claims Courts are courts where parties can settle money disputes in a speedy, informal setting. The Legislature established these courts so that ordinary people can use them without the help of an attorney.

These courts hear and decide cases involving claims for MONEY ONLY, and are limited to cases involving \$10,000 or less. If your

dispute involves more than \$10,000, you can either sue in a different court or reduce your request to \$10,000. If you are hoping to have the Court order the other party to take some action (like fix your car) or to refrain from taking some action (quit calling my phone), you will have to file in a different court.

Who can sue in Small Claims Court?

Any person over the age of 18 years can sue in Small Claims Court. For those who are not yet 18 years old, a parent, relative, or "next friend" over the age of 18 can file a claim and later attend the trial with the minor. You cannot, however, file a case on behalf of another person who has given or assigned their claim to you.

Businesses can also use the Small Claims Court unless they are primarily engaged in lending money at interest or collecting debts. Businesses are allowed to designate a person other than an attorney to represent the company in court. Those businesses that cannot sue in Small Claims Court can still be sued.

The person or company filing the suit is called the "PLAINTIFF," and the person or company sued is the "DEFENDANT."

If you are a Defendant, and you believe that the other person actually owes you money, you can "counter-sue" so long as your claim arises from the same event or transaction.

Who can be sued?

Any natural person, or business within the Court's jurisdiction can be sued. Courts only have jurisdiction over people present in the State of Texas or who make their permanent home there. For businesses, if it is a sole proprietorship, the individual must be present in the state; or, if it is a formal entity, the entity must be doing business within the State.

In some cases a person who is not present in Texas, but has property here can be sued by "attaching the property." Attaching the property is a legal procedure that acts as if you are suing the property instead of the person. The property has to be in the county where the Court sits, and you can only win up to the value of the property.

You should also take care to sue the right person or entity. If you do not correctly name the Defendant, you cannot collect a judgment against them. When you have a dispute with a person, you file suit against that person. It becomes tougher, however, when your dispute is against a company.

If you are suing a sole proprietorship, you sue the person, no matter what name the company is using. To find out who that person is, check with the "assumed name" department in the county clerk's office. For example, if you are suing "Tim's Car Place, " you will sue Tim, not the company.

To sue a partnership, you will sue each partner individually. Under the law, each of the partners is responsible for the obligations of the partnership.

To sue a corporation or other formal entity, on the other hand, you file against the entity itself. To properly sue a formal business entity you should contact the Texas Secretary of State to find out who the "agent for service" is so that you know who to serve with the papers. You can call 512-463-5555 or e-mail corpinfo@sos.state.tx.us for this information. You should ask for the proper name of the business and the name of the registered agent. This is the person that will receive the legal papers for the company.

What are my other options?

You should always try to settle small disputes without involving a lawyer or filing suit. In many cases there are alternatives to lawsuits. In a dispute with your landlord, you might try your apartment association. For disputes with businesses you might be able to get help from the Better Business Bureau. If your dispute is over employment wages, the Texas Attorney General may help. Or, you can consider contacting the local media.

In large metropolitan areas, there may be a local dispute resolution center. In the Houston area, the Dispute Resolution Center, Harris County is a nonprofit organization that mediates thousands of disputes each year for free. It is sponsored by the Houston Bar Association and funded through the Harris County Courts.

Where do I file suit?

Generally, you file suit in the county where the Defendant resides. For companies, you can also sue in the county where the services you are complaining about were performed.

The justice of the peace in each county is also the judge for the Small Claims Court. You can find it under justices of the peace in a local telephone directory. You can also search for "Justice Courts" at www.courts.state.tx.us.

If there is more than one justice of the peace in the county that you are suing in, you normally have to use the court of the precinct which covers the area where the Defendant lives. Often, if you call the justice of the peace's office with the Defendant's address, the Court can tell you which precinct to file in.

Sometimes you will have more than one court to choose from. For example, if the Defendant lives in one precinct, but does business or contracted to perform services in another precinct, either precinct can be selected.

How long can I wait to file suit?

Under the law, there are time limits for filing any kind of suit. These limits are called "statutes of limitations." In Texas, these time limits can be as short as 1 year, depending on the type of case. Most cases, however, have either a 2 year or 4 year limit.

You should consider bringing the case within six months to a year from the time that you have suffered a wrong. This gives you enough time to try informal methods of resolving the dispute. Be careful not to let your dispute go stale, if you do not file within your statute of limitations you can be forever barred from recovery.

These time limits can be tough to calculate. You should consider discussing any claim more than two years old with an attorney before filing. Invoking this time limit is an "affirmative defense." This means that it is the responsibility of the person you sue to raise the defense. If the person does not raise it, the defense is waived.

How do I file the lawsuit?

To file a claim in Small Claims Court, you must personally appear at the correct Justice of the Peace Court and request a small claim statement form.

Before making the trip, however, make sure that you have the following required information:

- Your complete name and address;
- The complete name and address of each person or business you plan to sue (if this person is named incorrectly, the court cannot grant a judgment against them);

- The amount you intend to claim in damages (this amount must be \$10,000 or less);
- A statement of the basis for your claim; it should be plainly stated and include the date the claim arose and any other relevant dates; and
- The amount that you owe the Defendant (if any).

Once you complete the small claims statement form, you will have to swear under oath that the claim statement is true. The clerk of the court will take your oath.

In addition, you will have to pay several fees. These fees may vary by jurisdiction and change periodically. Expect to pay \$50-\$75 to initiate the proceedings and another \$60-\$80 to serve the Defendant. If you want a jury to decide your case instead of the Judge, you will have to pay an additional fee. The cost of filing the case and serving the Defendant may be recovered at trial if you are successful.

Service happens when an Officer gives the Defendant a copy of your lawsuit. The Defendant must be served before you can proceed with your lawsuit. If you know where the Defendant can be found, and the approximate time of day that he or she is likely to be at that location, tell the Clerk. This will help the Officer find the Defendant more quickly.

You should also ask the Clerk for information on how that particular Judge sets the trial date. Procedures vary in different courts. Some Judges set the trial date by Court Order and require you to send notice to the Defendant. Other Courts send the notice to all parties. You should know how this works before you leave.

Also, before you leave, make sure to request the case number. You will need this number for all communications with the Court.

I have filed the suit, now what happens?

Once the suit is filed the next step is service. The dates and deadlines of the suit are calculated from the day the Defendant is served. Starting about 10 days after you file the suit, you should call the Clerk to find out whether the Defendant was served and, if so, on what date. If the Defendant is not found within 90 days, you should call and ask whether new papers must be issued.

Once served, the Defendant has an "appearance date" with the Court. This date is calculated by adding 10 days to the date of service. The Monday after these 10 days have expired is the appearance date. This is the deadline for the Defendant to appear before the Court and answer your claim. It may or may not be the **Trial Date** (discussed below). **IT IS VERY IMPORTANT TO VERIFY THIS DATE WITH THE CLERK.**

If the Defendant does not respond to the suit by 10:00 a.m. on the appearance date, you can win the case by simply showing up and

asking for a "default judgment." You will, however, still have to prove the amount of money owed to you.

If the Defendant does respond by the appearance date, the case will go to trial. The appearance date may or may not be the trial date. Again, you should confirm the specific Court's procedures with the Clerk.

How Do I prepare for my Trial Date?

Once you file your case, you should immediately begin preparing for the trial. You should already have a clear and concise statement of why the Defendant owes you money. Use this as a starting point.

You have the burden to prove all the facts of this dispute which establish the fact that the Defendant owes you money. This includes proving facts that show the Defendant acted or fail to act in a way that caused you damages. In addition, you have the burden to prove how much the damages are.

You can prove the facts of the case either with exhibits or testimony.

Common examples of exhibits include: records, receipts, cancelled checks, copies of contracts, written agreements, photographs and any other items directly related to your case. Each exhibit should document some part of your story. Make sure to bring two copies

of each paper exhibit. If you have damaged property, you can bring that also and use it as an exhibit.

The rest of your proof comes from testimony. Testimony is presented to the Court through witnesses, including yourself. If there are witnesses with direct knowledge of the facts that can help you tell your story, you should plan to bring them to Court. Avoid witnesses who only know the story because someone else told them. The best witness is a disinterested person who knows the information because he or she was there. Testimony from your friends, relatives, or someone who will benefit if you win the case will not be given as much weight as a neutral third-party, but may be important to include.

You should contact any potential witnesses and ask them to tell you what they remember of the event. Knowing what a witness will tell the Judge is important in determining whether or not you want the testimony of that witness. If you believe the witnesses will help your case, you should ask them whether they will help you by giving testimony in court.

If a witness is important to your case, but refuses to help you, you can ask the Court to order him or her to appear on your trial date. This process is done by asking the Clerk to prepare and issue a subpoena. A subpoena is a document that requires the witness to appear on your trial date. It can also require the witness to bring documents in the witness' control that can help you prove your case. There is an additional charge for the subpoena and for service of the subpoena.

You should also prepare what you will say when you get to court. You should decide what order you will present your evidence, and list the questions you plan to ask each witness. It is helpful to create a check list for your evidence so that you don't forget to present it to the Court. During the trial, you can check off each item as it is presented.

Finally, you need to decide whether you prefer the Judge to hear your case or whether you want a trial by jury. You should make this decision by deciding whether a Judge or jury would be more sympathetic to your situation and your comfort level of having the trial in front of strangers. If you request a jury, you will have to pay a jury fee. Requesting a jury has to be done in advance. If you wish to do this, you should contact the Clerk.

What happens at trial?

Once the Defendant is served with notice, a trial date is set. Double check this date with the Clerk. On the day of trial, dress appropriately and arrive a few minutes early. Make sure you are there at the time trial is scheduled to begin. If you do not show up, your case may be dismissed. Only legal excuses for not showing up are accepted. And if you are present, but not ready, the Judge may also dismiss the case.

When you arrive, take a seat in the courtroom and wait for the Judge to call your case. Judges will usually go through a "docket call," where he or she will ask if you and the Defendant if you are ready to proceed. When asked, you should respond "ready."

If the Defendant does not appear, you can win the case by default. You will still be required to present evidence of the amount of money you are owed. In this case, when called, you ask the Judge to hear your evidence and award a "default judgment." If the Defendant was served but never appeared, you can get this judgment without waiting for your trial date, or you can show up on the day of trial.

When both parties are present, the Judge will usually begin by briefly explaining the procedure used during trial. If you are confused or have questions, do not be afraid to ask them at this point. When the trial begins the Judge will make you, the Defendant, and any witnesses present, take an oath swearing to tell the truth.

You will have the chance to tell your story first. Only speak to the Court. Go through your statement and call your witnesses. If you have exhibits, use a witness to describe the item. If it is a photograph ask whether the photograph accurately depicts how the item looked at the time the photo was taken. If it is a document, ask the witness to explain what the document is and that it is authentic. You can also call the Defendant as a witness. This is your opportunity to tell the Court why the Defendant should pay you money.

Take your time so that everyone can understand what points you are making. The Judge can interrupt at any time to ask questions. Never talk over the Judge. You should, however, be able to tell

your story without being interrupted by the other side. When you are finished, the Defendant has the right to ask you and your witnesses questions. When the Defendant asks you a question, direct your response to the Court, not the Defendant.

Do not make statements to witnesses, ask questions. Do not argue with the witness. If you think they are not telling the truth, ask questions which expose this fact to the Court. Be polite and courteous to the witnesses and the Court. Obey all instructions from the Judge, and speak in a respectful tone. The court will generally not entertain objections. Forget what you have seen on TV, there is generally no reason to object or interrupt the other party.

After you and your witnesses have testified, the Defendant has the opportunity to explain why he or she should not have to pay you money. Because you bear the burden of proof, a Defendant does not have to offer any evidence. If your evidence is not enough to prove you are owed the money, the Defendant can win without saying a thing. Once a Defendant, or a witness, is finished offering testimony you have the opportunity to ask questions. Never interrupt the Defendant or a witness, you will have the chance to correct any errors when you question them.

Once all the testimony and evidence is complete, the Judge will decide who wins the case and the amount--if any--the winner should receive. Sometimes the Court will decide to think about the case. If this happens, the Court will usually tell you when a

decision can be expected. You will have to call the Clerk at the appointed time with the case number to get the result.

What if I want a jury?

If you want a jury trial, you follow the same procedure, but before you begin the evidence, both you and the Defendant have the opportunity to ask potential jury members questions to determine whether you want to exclude them from your jury.

Both you and the Defendant can disqualify up to three jurors without offering any reason ("preemptory challenges"). Others may be disqualified by the Judge if there is a legal reason they shouldn't be on the jury. For instance, a witness, or relative of the party will be disqualified without using a challenge. The Judge will have more information on this procedure if you ask.

Once the trial is over, the jury will decide who wins and the amount of money, if any, that should be received.

What happens if the Defendant wins?

If the Defendant wins, you recover no money and must pay the court costs. These court costs were pre-paid at the time of filing. The Court will enter a judgment in favor of the Defendant and the case is over. If there was a counter claim by the Defendant the Court could award damages.

What happens if I win?

If you win, the Defendant will be ordered to pay the amount of money awarded by the Court, plus court costs. The Court will enter a judgment in your favor. This judgment does not automatically get you any money. Sometimes the hardest part is collecting it. If the Defendant refuses to pay, you must take legal steps to enforce your judgment.

The first step in enforcing your judgment is to request the Clerk to issue an "abstract of judgment." You file this document with the County Deed records. This is the device that makes your judgment public record and gives it legal effect. It also gives you a "lien" on any "nonexempt" real estate the person owns in the county. In Texas, a person's home is exempt from collections. If the Defendant owns any other property, such as a vacation home or rental property, you could force its sale to satisfy your judgment.

If the Defendant does not pay you, you can ask the Clerk to issue an "execution." An execution is a document that orders the Sheriff or Constable to collect the amount of the judgment and court costs. The Officer either collects money or sells nonexempt property belonging to the Defendant to satisfy the judgment. An execution can be issued at any time after 30 days has passed from the judgment's signature. You cannot request an execution if either party is appealing the judgment.

Many people do not currently have property that you can collect from. Your abstract of judgment, however, is good for 10 years. When it is close to expiring, you can renew it by filing a new abstract. Patience will often result in a successful collection. And, once you have a judgment, it may be affordable to have a lawyer collect it for you.

Who can appeal?

Either party has the right to appeal to the County Court if the amount of the dispute exceeds \$250, exclusive of court costs. If either party appeals, the case begins again in the County Court as if the trial had never happened.

To appeal a Small Claims Court decision, either party must file their Notice of Appeal with the County Court within 10 days after the case was decided. The Clerk of the County Court will notify you or the Defendant in the case of an appeal.

If a person is appealing the award of money damages, he or she must post a bond with two or more sureties for double the amount of the judgment. The bond is in favor of the adverse party and must promise that the person will prosecute the appeal to its conclusion and pay any judgment that may be rendered.

Plaintiffs appealing a take nothing judgment must also post a bond with two or more sureties for twice the court costs in the Small Claims Court plus the estimated court costs in the County Court, less any already paid. The bond is in favor of the adverse party and

must promise that the Plaintiff will prosecute the appeal to its conclusion.

If a person doesn't have enough money to appeal, he or she can file a "pauper's affidavit" within 5 days to the Small Claims Court. Notice must be given to the other party at the time of filing, and the facts of the party's inability to pay can be contested.

The appeal to County Court is a much more formal proceeding than Small Claims Court. Often, you will want to have the assistance of an attorney.

What if this is too complicated?

If this process seems too hard, you should seriously consider whether or not to attempt it. While there is no mechanism to have an attorney appointed for you in civil disputes, you might seriously consider getting some help. At the Pinney Law Firm, we often meet with persons who get advice when representing themselves. This can be a cost-effective alternative to trying it alone.

If you are not comfortable representing yourself, your only options are to forget the debt or to hire an attorney. Often attorneys will be able to help you in ways that you couldn't have done alone, but that help comes with a cost. Some types of cases may, however, allow you to recover reasonable attorneys' fees and expenses. If you think you need a lawyer, you can always contact the Pinney Law Firm at (281) 425-1300 for a free consultation.

About the Author



Marcus Pinney is the founder of the Pinney Law Firm, which serves victims of personal injuries nationwide and the local needs of Houston area residents. Marc grew up on the Gulf Coast and attended Port Neches-Groves High School.

Before college, Marc owned several small businesses, and managed a chain of restaurants. Intent on better serving his community, he decided to pursue a career in Law.

After earning a B.A. in Business from Lamar University in Beaumont, Texas, Marc attended University of Houston Law School. In law school, he took a diverse range of legal courses, wrote for a scholarly journal, lead student organizations, and interned for Federal Bankruptcy Court Judge. As a student, Marc also worked with several law firms, gaining valuable experience in both prosecuting and defending lawsuits.

In 2004, after graduating from law school in the top 5% of his class, Marc was licensed by The Texas Supreme Court. He spent his first 6 years of practice with a very large personal injury firm in Texas, devoted exclusively to helping injured people throughout the United States. After a brief stint with another nationally-

renowned law firm, Marc decided he could better serve his clients by opening the Pinney Law Firm in Baytown, Texas.

As a plaintiff's personal injury attorney, Marc has assisted thousands of seriously-injured clients from all over the United States. He has helped these clients stand head to head with some of the largest companies in the world. He has also represented businesses and individuals in a diverse range of legal matters.

Marcus Pinney is licensed to practice law in Texas. He has routinely been temporarily admitted in other states for individual cases, and was licensed in Pennsylvania for many years. In addition to being a member of The Texas Bar, he is also a member of the American Association of Justice, The Texas Trial Lawyers Association, and the Houston Trial Lawyers Association.