FILING A SMALL CLAIMS SUIT

LEGAL QUESTIONS WILL NOT BE ANSWERED BY THIS OFFICE.

This information is to assist you in procedure only. It is not intended for legal advice or to take the place of an attorney.

Plaintiff=person filing suit **Defendant**=person being sued

Small Claims Court is a court in which parties can settle disputes in which a money judgment is sought. The plaintiff, or his/her attorney, may appear in person to file a claim, or may file a sworn statement of the claim by mail.

VENUE:

In all civil suits, the defendant has the right to be sued in the county and precinct in which he resides. The plaintiff may file the suit in any county precinct however, the defendant may file a motion to transfer venue requesting the suit to be transferred to his or her resident county and precinct. If the change of venue is granted, the plaintiff will have to pay the filing fees again in the county and precinct in which the case is transferred.

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. 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-six ($36.00). In addition, there is a fee for serving the defendant which is eighty-five dollars ($85.00) per defendant to be served in **KERR COUNTY**, for a total of one hundred and twenty-one dollars ($121.00). If you are filing on a defendant that resides outside of Kerr County contact this court for service fees.

CITATION:

A citation is sent to the Constable for service on the defendant in Kerr 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 for the date the citation was served upon him. If the defendant does not answer, a Default Judgment can be rendered in favor of the plaintiff.

REPRESENTATION:

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 an assignee of the claim or other persons seeking to bring action on an assigned claim; or a collection agency.

DEFAULT JUDGMENTS:

If the defendant in the suit fails to answer to the court, the plaintiff still needs to prove the case to the Judge. The plaintiff will state the facts of the case and present any written evidence to support the case. After all evidence is accepted the Judge can render a default judgment in favor of the plaintiff. The clerk of the court will mail copies of the default judgment to both parties.

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 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 Kerr County for filing and service of a subpoena is eighty-five dollars ($85.00) 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 THREE (3) 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 new trial within five (5) days or appeal the case within ten (10) days after the date the judgment is signed, your remedies to collect your money are as follows:

ABSTRACT OF JUDGMENT:

You may obtain an Abstract of Judgment on the eleventh (11th) day after the judgment is signed. 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 Kerr 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 judgment must be paid plus interest.

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 date the judgment is signed, 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 costs for filing a Writ of Execution is two hundred ($200.00) in Kerr 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, service is avoided by the defendant; 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 reasonably 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 or the State Comptroller's office will give you 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 instructions 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 or owners 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 THIS COURT AT (830) 792-2233.

JUDGE KATHY MITCHELL
700 MAIN ST., BA 101
KERRVILLE, TEXAS 78028

KATHY MITCHELL
JUSTICE OF THE PEACE
PRECINCT THREE
KERR COUNTY, TEXAS 78028

Courtroom Attire:

All PERSONS present in the Courtroom shall be dressed in a manner that shows dignity and respect for the Court.

Unacceptable attire includes:

1. Shorts, cut-offs, baggy pants, flip-flop style shoes, or hats.
2. Muscle shirts, T-shirts, clothing indicating gang affiliation or other clothing with offensive, vulgar, racist, sexist, obscene, suggestive words, slogans, depictions, or pictures, including grotesque creatures. Clothing should be neat and clean if at all possible. ***ALL SHIRTS MUST BE TUCKED INSIDE PANTS!***
3. Provocative clothing designed or styled, or worn to provoke emotion or disrupt or distract.

Courtroom Conduct:

Conduct in the "Courtroom" also includes the reception/foyer area, jury room, and/or any office space assigned to the Justice Court.

PRO SE parties (non-attorneys representing themselves) should be prepared to present their cases in proper manner. It is <u>not the court's duty</u> to represent you nor instruct you on evidence, rules, or how to present and prove your case. If you are unprepared, unaware and not knowledgeable as to presenting your case, you may lose your case.

1. Weapons are prohibited in the courtroom and this building except for law enforcement personnel. ***YOU ARE SUBJECT TO SEARCH!***
2. **Be on time.**
3. Rise when the Judge enters and remain standing until the Judge or bailiff announces "Be seated", or until the Judge is seated. Rise when the Judge exits the courtroom.
4. Do not approach the Judge's bench without permission.
5. Do not bring drink or food items into the Courtroom.
6. Do not talk at the same time as the court, opposing counsel, or witnesses. Courtroom visitors should not engage in excessive, loud talk or conversation.
7. Racist, sexist, obscene, or profane language is prohibited unless it is pertinent to a case, and is elicited and quoting from facts in the case.
8. Do nothing to disturb or distract the court, counsels, witnesses, or other court personnel.
9. It is normally inappropriate to bring small infants or young children into a court proceeding. Please refrain from doing so unless the presence of the child is necessary for the proceeding.
10. Cellular phones are inappropriate in the Courtroom. Please turn them off before entering the Courtroom.
11. All property in the Courtroom and reception areas must be treated with respect.
12. **No recording devices are allowed without judicial approval.**

Failure to comply with these rules may result in sanctions imposed by the Court.

CAUSE NO._____

_____	)(	SMALL CLAIMS COURT
_____	)(	
Plaintiff	)(	
	)(	
Vs.	)(	PRECINCT THREE
	)(	
_____	)(	
_____	)(	
Defendant	)(	KERR COUNTY, TEXAS

STATEMENT OF CLAIM

PLAINTIFF:
Name: _____
Street; City; State; Zip: _____
PhoneNo._____
Hereinafter called plaintiff, on oath deposes and says that:

DEFENDANT:
Name: _____
Street; City; State; Zip: _____
PhoneNo._____
Hereinafter called defendant

That the defendant is/are justly indebted to the Plaintiff in the sum of $_____, **FOR:**
(state nature of claim)
_____
_____
_____
Plus any additional court cost and attorney fees incurred; and that there are no counterclaims existing in favor of the Defendant and against the Plaintiff _____
Except: _____

_____
Signature of Plaintiff

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

_____
COURT CLERK, PRECINCT THREE
KERRVILLE, KERR COUNTY, TEXAS