

THE TRIAL

Both the Plaintiff and Defendant must be in Court at the time of the trial and must not be late. Both must bring to Court any **evidence** (receipts, invoices, canceled checks, etc.) they wish to present, and any **witnesses** they intend to have testify for them.

The Plaintiff's side of the case will be presented first. The Plaintiff presents evidence and witnesses supporting their claim. The Judge may ask some questions for clarification to reach a fair decision. The Defendant is then entitled to ask questions of the Plaintiff and any witnesses.

After the Plaintiff's case is presented, **the Defendant will have an opportunity to present the Defendant's side of the case.** The Defendant's position may include that the Plaintiff is wrong in the way the Plaintiff says the events occurred or that the Plaintiff's account of the events is correct, but that the Plaintiff is demanding too much money. The Judge can ask the Defendant and any witness questions, and the Plaintiff can also ask them questions.

After the Judge has heard the testimony of the witnesses and the facts presented by both sides, and both parties have asked all the questions they want to ask, **the trial will end.** The Judge will announce the decision in the case if there is no jury. If it is a jury trial, the jury will deliver the verdict.

IF THE DEFENDANT WINS

If the Defendant wins, the Plaintiff will recover no money and must pay the court costs.

IF THE PLAINTIFF WINS

If the Plaintiff wins, the Defendant will be ordered to pay the Plaintiff the amount of money awarded by the Court, plus court costs. If the Defendant does not pay the money awarded by the Court, then the Plaintiff can ask the Clerk to issue an execution, which orders the Sheriff or Constable to collect the amount of the judgment and court costs. The Sheriff or Constable either collects money or sells property belonging to the Defendant to satisfy the amount of the judgment. The Plaintiff may ask the Clerk to issue an execution any time **from 30 days after the judgment has been signed**, upon the payment of an issuance fee and a fee for service of the execution (fee information is available from the Clerk). An execution cannot be issued if either party is appealing the judgment.

APPEALS

Either party has the right to appeal to the County Court if the amount of the dispute **exceeds \$250**, separate from the court costs. To appeal, a party must file an appeal bond in the Small Claims Court **within 21 days from the date of the judgment.**

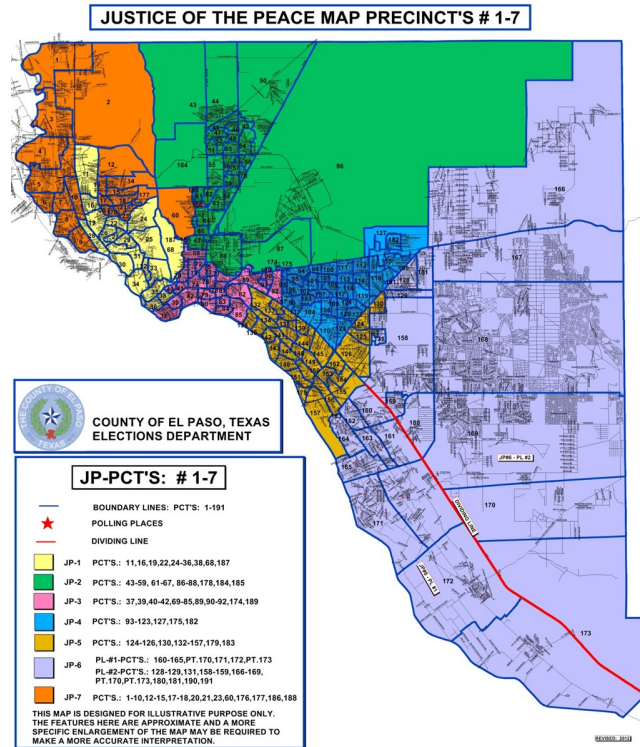
If a party appeals to the County Court, the Clerk of the County Court will notify the other party of the new trial.

The new trial (trial de novo) will be held before another Judge or jury, as if the case had never been tried in the Small Claims Court.

FINDING YOUR PRECINCT

Claims must be filed in the precinct that the business or person resides. See the map below to determine which precinct to file your claim or view the map online at :

<http://www.epcountyvotes.com/maps/justice-of-the-peace-constable-maps/>



DISCLAIMER:

The information contained in this pamphlet is meant for the sole use of active duty members, retirees, their families, and other persons eligible for Legal Assistance from the Holloman AFB, NM, 49 WG/JA Office. The information is general in nature and presented to assist eligible persons in preparing for a Legal Assistance appointment with an attorney in the legal office. It is not an all-inclusive guide to federal or New Mexico law. It is not a substitute for legal advice from an attorney regarding individual situations. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general statements of background information presented here without discussing your specific situation with an attorney prior to taking any action in court. (As of January 2017)



Holloman Legal
Assistance Program
Law Guide
Preventive Law Series
49 WG/JA
572-7217



2018

EL PASO SMALL CLAIMS GUIDE

INTRODUCTION

This guide is designed to assist you in understanding where and how to file a small claims case in the city of El Paso, TX. It will go over the requirements that must be met for you to file a claim and the general procedures of doing so. Included in this guide is the "Small Claims Court Procedures," published by the County of El Paso, which is meant to help you gain a basic comprehension of the small claims system, but is in no way a complete coverage of all aspects of the system. This publication provides step by step instructions for filing a small claims case that should be followed. This guide is meant to clarify and assist the publication. Neither this guide nor the publication should be construed as legal advice in any way. The majority of this information can be found at the Justices of the Peace website at:

www.epcounty.com/jp/jp2.htm

REQUIREMENTS

The "PLAINTIFF" (party filing the suit) must be 18 or older. A minor can use the court if accompanied by someone (usually a relative) over 18. An association, partnership, or corporation may also sue.

The "DEFENDANT" (party being sued) can be a person, association, partnership, or corporation. The defendant must be present in the State of Texas or must make Texas its permanent home. If the defendant is a business, it must be doing business within the State.

The claim must be for MONEY only, in an amount UNDER \$10,000. The small claims courts CANNOT require a party to do something or to refrain from doing something. You cannot claim that the damages are over \$10,000 but that you are willing to settle for that amount.



EL PASO SMALL CLAIMS GUIDE

FILING AND PROCESSING THE CLAIM (BASICS)

Time Limits: Although it varies by the type of case, the time limit to file is generally 2 to 4 years. To be safe, you should file suit as soon as you are convinced you cannot recover the money on your own, and before 2 years have gone by.

File paperwork in person with the clerk at the precinct's physical location. Fees (around \$100) may apply, which you will get back if you win the case. You will need the defendant's exact name and address. Most of the required paperwork can be found online at the Justice of the Peace website.

Specify an exact amount you are seeking. Support your claim with evidence.

After filing, the defendant will be notified and has **14 days** to respond to the claim. **It is your responsibility to check with the precinct on a regular basis to see if/when the defendant was notified, whether the defendant responded, and when the hearing will be set for.**

During the hearing, you will be provided the opportunity to provide evidence and testimony on your behalf. **Prepare ahead** of time so that you can present a clear and organized case.

Make sure to understand the dress code for going to court. Regardless of the dress code, going **well dressed and groomed** may help you seem more credible and will help show the court that you care about your case.

If you win the case, the defendant will be ordered to pay the amount awarded plus the court costs. After court order is signed and executed, the defendant will have **30 days** to pay the amount. **If they fail to do so**, you can ask the court to issue an "execution," which will allow for the forced collection of funds or sale of the defendant's property. Be aware that **there is a fee** associated with doing so.

The Rules of Judicial Ethics prohibits this office from giving legal advice or hearing your case without the presence of the defendant or plaintiff. If you need legal counseling, we highly recommend any licensed **Texas attorney**. Your first meeting with the attorney is usually (but not always) free because the lawyer is trying to determine if they can be of service to you. In a civil suit, any CORPORATION MUST BE REPRESENTED BY AN ATTORNEY. REMEMBER, IT IS YOUR JOB TO PRESENT ANY EVIDENCE (RECEIPTS, JOURNALS, RECORDS, POLICE REPORTS, WITNESSES, ETC) TO PROVE YOUR CASE. IF YOU FAIL TO PROVE YOUR CASE IT CAN BE DISMISSED. If you have any LEGAL QUESTIONS, contact LEGAL AID AT (915)-585-5100.

SMALL CLAIMS

How to Start the Suit

To begin, the Plaintiff must personally go to the Civil Clerk of the correct Justice of the Peace Court and do the following:

1. Ask the Clerk for a small claim petition form, and be prepared to provide the following information to complete the form:
 - a. The Plaintiff's complete name and address.
 - b. The Defendant's complete name and address, of each person or business the Plaintiff's claim is against. (Correct names and addresses are vital to the Plaintiff's case because the Court cannot grant a judgment against a Defendant who is improperly named in the petition. Therefore, the Plaintiff must determine the correct legal name and address of the person or business being sued before going to the Clerk. If the business is a partnership, the partnership should be named by its correct legal name and all partners should be named individually; if the business is a corporation, the exact name of the corporation must be stated, including the word or abbreviation for "Incorporation" or "Company", and the corporation's named registered agent for service, obtainable from the Secretary of State, (512) 463-5555);
 - c. The amount of the Plaintiff's claim;
 - d. The basis of the Plaintiff's claim, stated plainly and without technicalities, including the date the claim arose; and,
 - e. The amount of money the Plaintiff properly owes the Defendant, if any.
2. Swear under oath that this small claim statement is true;
3. Pay the Clerk a filing fee and the service of citation fee, to cover costs of serving citation on the Defendant. The Defendant must be served a citation before the suit can commence. (Fee information is available from the Clerk. All of these costs may be recovered at trial if the Plaintiff wins the suit.);
4. Call the Clerk in 2 or 3 weeks to see if the Defendant has been served and find out the exact date of service. The service date is important because it must be used to calculate the date by which the Defendant must respond to the claim. The calculated date is called the "Appearance Date", and is calculated as follows: From the date of service, count 14 days. The next Monday after the expiration of the 14-day period will be the appearance date. Verify this date with the Clerk.

DEFENDANT'S RESPONSE

If the Defendant does not respond to the suit by 5 p.m. on the appearance date, the Plaintiff wins by simply appearing in court and asking for a default judgment. The Plaintiff must still, however, prove the amount of money due him; or,

If the Defendant does respond by the appearance date, the case will be tried. The appearance date, however, is not necessarily the date of the trial. Ask the Clerk, after a response has been filed with the court, when the case may be tried.

SUBPOENAS

Once a trial date has been set, ask the Clerk to issue a subpoena (which will order a witness to appear at trial) for any witness needed to prove the claim who will not come unless they are so ordered by the Court. The full name and address of a witness are needed for a subpoena to be issued. A fee must be paid for each subpoena requested.

WHAT IS SMALL CLAIMS COURT

(Published by the County of El Paso)

Small Claims Courts are courts in which parties can settle small money disputes in a speedy, informal setting. To ensure that Small Claims Courts can be used without the help of an attorney, the Legislature established less formal procedures for these courts. The purpose of this pamphlet is to help you understand the basic procedures in these courts, but is not intended to present complete coverage of them.

A Small Claims Court is a judicial forum to hear and decide civil cases involving claims for MONEY ONLY, for \$10,000 or less. The court cannot require a party to return, replace, or repair property; to do something; or, to refrain from doing something. For example, you could sue a car mechanic in Small Claims Court to get back money you paid for repairs that were not made. However, you could not sue in Small Claims Court to force the mechanic to make the repairs. There are other courts with the power to force the mechanic to make the repairs. Remember, the petition must not ask for anything except money.

TYPES OF TRIALS

The trial of the case may be heard by the Judge of the Court sitting alone, or upon request of either party, by a six-person jury. The Texas statute creating the Small Claims Courts allows either party to request a jury upon payment of a \$22 fee. If you choose to have a jury, you should file a request for a jury trial with the Court not later than one day before the date on which the trial is to be held. In a jury trial, the jury decides the facts of the case to determine who wins. When the Judge hears the case alone, the Judge makes these determinations. Having a trial by Judge alone will generally take less time and be less complicated than a jury trial.