Self-Help Legal Information Packet: When a Debt Claim Case Has Been Filed Against You

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What is a Debt Claim Case?

A **debt claim case** is a special kind of lawsuit filed in a justice court to be heard by a justice of the peace to recover money that is owed. A debt claim case can be filed by:

1) A bank or other financial institution,
2) A collection agency or agent,
3) A person or company whose business is lending money at interest, or
4) A person or company who bought debt or a judgment from another person or company.

Usually, the case is filed over a loan that hasn't been repaid or outstanding credit card debt. The person or company who files the case is called the **plaintiff** and the person they file the case against is called the **defendant**.

I Got Served with a Citation, Now What?

The court, not the plaintiff, issued the **citation**, which tells you that you are being sued. The **petition** was created by the plaintiff, and it will provide details of why the plaintiff is suing you, and how much money they are suing for.

NOTE – The plaintiff in a debt claim case may be a business that you are not familiar with. Often, debts are sold to other companies for collection. So, for example, you had a Chase credit card, but then Chase sold that debt to Portfolio Recovery, Inc. Do not fail to respond just because you don't recognize the plaintiff!

The petition in a debt claim case must provide information about the loan, credit card account, or other debt that the plaintiff is suing about, including who the original creditor was. If it doesn't

have that information, or other required information, you can file a **motion** with the court asking for the plaintiff to clarify. A motion is a request for the court to do something. This is done by putting your request in writing and sending it to the court and to the plaintiff.

Once you have been served with the citation, you have 14 days to file an **answer**, which is your response to your lawsuit. You must give your answer to the court and also send it to the plaintiff. After you answer, the court will set your case either for trial, or for a **pre-trial hearing**. At a pre-trial hearing, you can discuss any issues such as the need for an interpreter, or for the court to **subpoena** a witness (order them to come to trial to testify).

IMPORTANT – If you do not file an answer, legally you are admitting the plaintiff's claim, and the court may issue a default judgment against you, without any further notice given to you. This means you will owe the plaintiff money, without having had your day in court. Be sure to file an answer before the deadline!

How Do I File an Answer?

Your answer doesn't have to be anything fancy. It simply needs to be in writing, and you must send it to the court and to the plaintiff. You don't have to get specific as to the reasons you think you don't owe the plaintiff money. You can say something like "I deny the claim and want to see proof at trial." Or even just "I don't owe the plaintiff anything."

You can also file an answer saying that you owe the plaintiff some of the money they are asking for, but not all of it, or even an answer agreeing that you owe the plaintiff the money. If you agree you owe the plaintiff all of what they are asking for, they

may get a judgment against you for that amount without having a trial.

How Do I Send Paperwork to the Plaintiff?

Any paperwork such as motions, requests for a hearing, appeals, etc., must be sent to the plaintiff as well as to the court. You can send those papers to the plaintiff by:

1) delivering it to them in person,
2) mailing it to them using certified or registered mail,
3) using a delivery service such as FedEx or UPS,
4) faxing it to them, or
5) sending it by email if the plaintiff provided their email address for document delivery and agreed to email service in writing.

On the copy you give to the court, you must write down how and when the paperwork was delivered to the plaintiff.

The plaintiff's contact information will be available in the petition they filed, which was attached to the citation that you received.

IMPORTANT - Make sure to keep your address updated with the court and the other party so that you will receive any paperwork or notices sent to you.

Do I Need a Lawyer?

While you are allowed to have a lawyer in a debt claim case, the rules and procedures are designed to be simple and

straightforward, allowing people to seek justice without needing to hire a lawyer.

If you do not have a lawyer, the judge may allow you to be assisted in court by a family member or other person who is not being paid to assist you. This person can help you understand the proceedings and advise you, though that person cannot speak for you in court.

The court is required to make the Rules of Civil Procedure available to you at no cost. Rule 508 is the rule that specifically applies to debt claim cases. Also, Rules 500-507 provide information on the basic process in justice court.

The court is **not** allowed to give you advice on whether you will win a case or not, what to say in court, or what steps you should take to win your case or avoid paying a judgment.

Questions the court **can** answer for you are questions like "What do I need to do to have a jury trial?" or "How many days do I have to file an appeal?"

Questions the court **cannot** answer for you are questions like "Should I just pay this instead of going to court?" or "Is it a good idea to get a jury for this case?" or "Am I going to win?"

If, after reviewing these materials and the rules for debt claim cases, you still are not sure what to do, it may be best to consult an attorney.

What if I Want to Move the Case?

Debt claim cases are filed in a justice court and the case will be heard in front of the justice of the peace. The plaintiff can technically file the debt claim case in any justice court in Texas,

but if they file in the wrong **venue** (location), you can file a **motion to transfer venue**. This is a request to have the case moved to the right location.

So, what is the right venue? Generally, a debt claim case should be filed in the precinct and county where you live.

To file a motion to transfer venue, you need to make a **sworn statement** in writing (this means that a notary or the clerk watches you sign it and signs to show that they saw you sign) that explains why the case is in the wrong venue. Also, you must list the proper county and precinct that you want the case transferred to.

IMPORTANT – You must file the motion to transfer venue no later than 21 days after you file your answer, or it will be too late.

After you file your motion, the judge will schedule a hearing to decide whether or not to move the case. Be sure to show up in court for that hearing.

What is Discovery?

Discovery is the exchange of information between people or companies involved in a lawsuit before the case goes to trial. Either side may serve discovery requests on the other side. In debt claim cases, discovery **must** be approved by the judge **before** the other party has to provide any information or answer any questions.

If you have discovery questions that you want the plaintiff to answer, submit them to the court with a request for discovery. Requesting the court to do something is called a **motion**, so you would be making a "motion for discovery."

The judge will only approve "reasonable and necessary" discovery, so if you have discovery requests, make sure they actually relate to the case. For example, asking for documents showing how the plaintiff determined the finance charges is likely fine, and asking for an itemized list of every charge ever made with the credit card being collected on is likely not.

If you receive a discovery request that has been approved by the judge, you must respond with the requested information or you can file an objection with the court. If you object, the court will hold a hearing to decide if you have to provide the information. **Do not** just ignore a discovery request, you could face penalties from the judge that could even result in you losing your case!

For information about discovery that may happen after the judgment in the case, please see the section on "What if I Lose My Debt Claim Case?"

Can I Have a Jury Trial?

Yes. Either side in a debt claim case may request a jury trial. You must make a request in writing to the court at least 14 days before the date set for trial and pay a jury fee of $22.

If no one requests a jury, the trial will be heard by only the judge, which is called a **bench trial**.

What if the Plaintiff and I Make an Agreement?

If the case goes to trial, usually there will be a "winner" and a "loser," resulting in someone being happy and someone being unhappy. To reduce that risk, parties will often come to a **settlement**, or an agreement on how to resolve the case. If you

come to a settlement agreement, the court can enter a judgment reflecting how much money is awarded. If you fail to follow the terms of your settlement agreement, the plaintiff could use the tools mentioned in this packet to enforce the judgment, or they could possibly file a new lawsuit for breach of contract.

What if I Need More Time for Trial?

The court will send you a trial notice at least 45 days before the trial date. If you need more time or you have a conflict with that date, you can file a motion (request) for **postponement**, also called a **continuance**. You should explain in writing why you need the postponement.

Do not just decide not to show up on your trial date! That may result in a default judgment being issued against you.

What Happens at the Trial?

Be sure to bring all of your witnesses and documents with you on your trial date! If the trial is a jury trial, the first step will be jury selection, which is formally called **voir dire**.

Then, the plaintiff will be able to give an opening statement if they wish, where they explain to the judge and jury what they feel the case is about. You can respond with your own opening statement, or you can wait to give one until after the plaintiff has given all of their information, or you can decide not to give one.

Next, the plaintiff will call any witnesses they have and ask them questions so that they can **testify**, or tell their story, to the judge or jury. You get to ask questions of any witnesses they may call,

which is called **cross-examination**. You may ask the witnesses questions that relate to the facts of the case but remain calm, polite, and respectful of the court process, even if you disagree with what the witness says.

Once the plaintiff has presented all of their witnesses and evidence, they will **rest**, which means they are done. It is now your turn, and you can call any witnesses you have. You can also testify yourself and show any evidence you may have (such as documents, contracts, cancelled checks, receipts, etc.).

Finally, each side can make a final statement, called a **closing argument**, where you explain why you think you should win the case.

After that, the decision will be made by the jury if there is one, or by the judge if there is no jury. The decision will be announced in court, and a written **judgment** will be made available.

What Happens if I Lose My Debt Claim Case?

If the judgment is in favor of the plaintiff, you can file a **motion for new trial** within 14 days of the judgment. That means that you want a "do over" in the same justice court. You would need to show that justice wasn't done in the original case. If you file a motion for new trial, you must send it to the plaintiff within one day of filing it with the court.

Another option is to file an **appeal**, which is a request for the county court to hear your case. You can file an appeal within 21 days of the judgment, or if you filed a motion for new trial that was denied, you can appeal within 21 days of the denial of that motion. To appeal, you will have to file either:

1) An **appeal bond** (promise from another person, called a **surety**, to pay the bond amount to the plaintiff if you don't pursue the appeal) in double the amount of the judgment;
2) A cash deposit of double the amount of the judgment, which may be awarded to the plaintiff if you don't pursue the appeal; or
3) A Statement of Inability to Afford Payment of Court Costs if you cannot afford an appeal bond or cash deposit.

If you appeal with an appeal bond or a cash deposit, you must send notice of the appeal to the plaintiff within seven days of filing it with the court.

Once your appeal is filed with the county court, you will be required to pay the filing fee for the county court, or you may file a Statement of Inability to Afford Payment of Court Costs.

What If I Don't File for a New Trial or Appeal?

If you do not file for a new trial or an appeal, you owe the amount of the judgment to the plaintiff. If you fail to pay the judgment, the plaintiff can enforce the judgment against you. Below is a brief description of some of the tools that the plaintiff can use against you to enforce a judgment.

Post-Judgment Discovery: The plaintiff can send questions that you must answer describing what assets you may have that could be used to satisfy a judgment. You will get at least 30 days to respond to these discovery requests, either by providing the requested information or by making an objection with the court. If you object, the court will hold a hearing to decide if you have to provide the information.

IMPORTANT - If you do not respond accurately and completely to the requests, the judge can punish you, possibly including holding you in contempt and imposing a fine or even jail time.

Abstract of Judgment: If you own real property (land), the plaintiff can get an abstract of judgment from the court that issued the judgment and file it with the county clerk in the county or counties where you own the property. This puts a **lien** on the property in the plaintiff's name, which means if you sell the property, they could receive some of the proceeds to satisfy the judgment.

Writ of Execution: This is an order for the constable to go out and seize your personal property and sell it to satisfy the judgment. **IMPORTANT** – many items of personal property are **exempt**, meaning it is not legal for the constable to seize them and sell them. The plaintiff generally must wait at least 30 days after judgment before getting a writ of execution.

Writ of Garnishment: If a third party, such as a bank, has assets that belong to you, the plaintiff can get a writ of garnishment to order that those assets be given to the plaintiff to satisfy the judgment.

What Happens if I Win My Debt Claim Case?

If the judgment is in your favor, that doesn't necessarily mean the issue is over for good. The plaintiff might file a motion for new trial or an appeal. You will receive written notice of any of these actions.

Resources

Texas Lawyer Referral Service - (800) 252-9690

To check military status – https://scra.dmdc.osd.mil/

Texas Justice Court Training Center information for self-represented litigants – www.tjctc.org/SRL

Office of Court Administration Self-Represented Litigant Site: www.txcourts.gov/programs-services/self-help/self-represented-litigants/

State Bar of Texas Information, including Legal Information and Low or No-Cost Legal Assistance: www.texasbar.com, and then click on "For The Public."

Forms and Information, including for other types of cases – www.texaslawhelp.org