

DEBT CLAIM CASE INSTRUCTIONS

The Rules of Civil Procedure and Rules of Evidence DO NOT APPLY to DEBT CASES unless specifically referenced in Rules 500-508. For those filing DEBT CLAIM cases, be aware that the 500-507 series of rules can be located under the SMALL CLAIMS. It is essential they be read if you are planning to file a DEBT CLAIM cases.

The makers of the new rules indicated they were written with specific intent to eliminate “legal trap doors” for pro se litigants. As an example, in a situation where a case is filed as a suit on sworn account, and an answer is filed but not verified, the plaintiff can no longer seek a Judgment under Rule 93.

Note also that imbedded omissions are no longer allowed and will be stricken, and parties who continue to file petitions with imbedded omissions after being made aware of the changes in the law may face sanctions. All discovery must be approved by the court (SEE Rule 500.9).

EFFECTIVE September 1, 2013, ALL DEBT CLAIM CASES MUST INCLUDE:

TWO copies of the above Original petition (A blank petition is below) and a Justice Court Civil Case Information Sheet (MUST BE INCLUDED AS THE COVER PAGE OF EVERY CASE FILED)

RULE 508.1. APPLICATION:

Rule 508 applies to a claim for the recovery of a debt brought by an assignee of a claim, a financial institution, a debt collector or collection agency, or a person or entity primarily engaged in the business of lending money at interest.

RULE 508.2. PETITION:

(a) *Contents.* In addition to the information required by Rule 502.2, a petition filed in a lawsuit governed by this rule must contain the following information:

(1) **Credit Accounts.** In a claim based upon a credit card, revolving credit, or open account, the petition must state:

- (A) the account or card name;
- (B) the account number (which may be masked);
- (C) the date of issue or origination of the account, if known;
- (D) the date of charge-off or breach of the account, if known;
- (E) the amount owed as of a date certain; and
- (F) whether the plaintiff seeks ongoing interest.

(2) **Personal and Business Loans.** In a claim based upon a promissory note or other promise to pay a specific amount as of a date certain, the petition must state:

- (A) the date and amount of the original loan;
- (B) whether the repayment of the debt was accelerated, if known;
- (C) the date final payment was due;
- (D) the amount due as of the final payment date;
- (E) the amount owed as of a date certain; and
- (F) whether plaintiff seeks ongoing interest.

(3) **Ongoing Interest.** If a plaintiff seeks ongoing interest, the petition must state:
(A) the effective interest rate claimed;
(B) whether the interest rate is based upon contract or statute; and
(C) the dollar amount of interest claimed as of a date certain.

(4) **Assigned Debt.** If the debt that is the subject of the claim has been assigned or transferred, the petition must state:
(A) that the debt claim has been transferred or assigned;
(B) the date of the transfer or assignment;
(C) the name of any prior holders of the debt; and
(D) the name or a description of the original creditor.

RULE 508.3. DEFAULT JUDGMENT

(a) *Generally.* If the defendant does not file an answer to a claim by the answer date or otherwise appear in the case, the judge must promptly render a default judgment upon the plaintiff's proof of the amount of damages.

(b) *Proof of the Amount of Damages.*

(1) **Evidence Must Be Served or Submitted.** Evidence of plaintiff's damages must either be attached to the petition and served on the defendant or submitted to the court after defendant's failure to answer by the answer date.

(2) **Form of Evidence.** Evidence of plaintiff's damages may be offered in a sworn statement or in live testimony. The evidence offered may include documentary evidence.

(3) **Establishment of the Amount of Damages.** The amount of damages is established by evidence:

- (A) that the account or loan was issued to the defendant and the defendant is obligated to pay it;
- (B) that the account was closed or the defendant breached the terms of the account or loan agreement;
- (C) of the amount due on the account or loan as of a date certain after all payment, credits and offsets have been applied; and
- (D) that the plaintiff owns the account or loan and, if applicable, how the plaintiff acquired the account or loan.

(4) **Documentary Evidence Offered By Sworn Statement.** Documentary evidence may be considered if it is attached to a sworn statement made by the plaintiff or its representative, a prior holder of the debt or its representative, or the original creditor or its representative, that attests to the following:

- (A) the documents were kept in the regular course of business;
- (B) it was the regular course of business for an employee or representative with knowledge of the act recorded to make the record or to transmit information to be included in such record;
- (C) the documents were created at or near the time or reasonably soon thereafter; and
- (D) the documents attached are the original or exact duplicates of the original.

(5) **Consideration of Sworn Statement.** A judge is not required to accept a sworn statement if the source of information or the method or circumstances of preparation indicate lack of trustworthiness. But a judge may not reject a sworn statement only because it is not made by the original creditor or because the documents attested to were created by a third party and subsequently incorporated into and relied upon by the business of the plaintiff.

(c) **Hearing.** The judge may enter a default judgment without a hearing if the plaintiff submits sufficient written evidence of its damages and should do so to avoid undue expense and delay. Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant.

(d) **Appearance.** If the defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not render a default judgment and must set the case for trial.

(e) **Post-Answer Default.** If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER (FOR CLERK USE ONLY): _____

STYLED _____
 (e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		2. Names of parties in case:
Name: _____ Address: _____ City/State/Zip: _____ Email: _____ Signature: _____	Telephone: _____ Fax: _____ State Bar No: _____	Plaintiff(s): _____ _____ Defendant(s): _____ _____ _____ [Attach additional page as necessary to list all parties]
3. Indicate case type, or identify the most important issue in the case (select only 1):		
<p><i>Debt Claim:</i> A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><i>Eviction:</i> An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	
<p><i>Repair and Remedy:</i> A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><i>Small Claims:</i> A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	

CASE NO. _____

PLAINTIFF,

§

IN JUSTICE COURT

VS

§

PRECINCT 1

DEFENDANT,

§

ELLIS COUNTY, TEXAS

DEBT CLAIM PLAINTIFF'S ORIGINAL PETITION UNDER RULE 508

COMPLAINT: The basis for the claim which entitles the plaintiff to seek relief against the defendant is:

RELIEF: Plaintiff seeks damages in the amount of \$_____.

SERVICE OF CITATION: Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are:

_____.

ADDITIONAL INFORMATION (CASE BASED ON CREDIT CARD, REVOLVING ACCOUNT, OR OPEN ACCOUNT):

Account/Credit Card Name: _____ Account Number (may be masked): _____
Date of Issue/Origination: _____ Date of Charge-Off/Breach: _____ Amount Owed \$_____ as of _____.

ADDITIONAL INFORMATION (CASE BASED ON PROMISSORY NOTE OR OTHER PROMISE TO PAY PERSONAL OR BUSINESS LOAN):

Date/Amount of Original Loan: _____, \$_____ Repayment Accelerated? _____
Date Final Payment Due: _____
Amount Due on Final Payment Date \$_____ Amount Due \$_____ as of _____.

ONGOING INTEREST: Plaintiff does, or does not seek ongoing interest. If so, this interest is based on the following contractual/statutory reason: _____
and should be at ____%. \$_____ of interest was due as of _____.

ASSIGNMENT OF CLAIM: Plaintiff _____ was, or _____ was not assigned or otherwise transferred this claim. If so, the original claimant/creditor was _____, subsequent holders were _____, and the date the case was assigned/transferred to plaintiff was _____.

PLAINTIFF'S INFORMATION:

NAME: _____

MAILING ADDRESS: _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

DEFENDANT'S INFORMATION: (IF KNOWN):

NAME: _____

ADDRESS FOR SERVICE: _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

DATE OF BIRTH: _____

LAST 3 NUMBERS OF DRIVER LICENSE: _____ CITY _____ STATE _____ ZIP _____

LAST 3 NUMBERS OF SOCIAL SECURITY: _____

SIGNATURE OF PLAINTIFF AND/OR ATTORNEY

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20____.

Notary Public in and for the State of Texas/or
Clerk of the Justice Court

Case No. _____

AFFIDAVIT

SEC. 201(b)

Plaintiff being duly sworn on oath deposes and says that Defendant(s)

is not in the military

not on active duty in the military and/or

not in a foreign country on military service

is on active military duty and /or is subject to the Servicemembers Civil Relief Act of 2003.

defendant has waived his rights under the Servicemembers Civil Relief Act of 2003.

military status is unknown at this time.

PLAINTIFF'S SIGNATURE: _____

Subscribed and sworn to before me on this the _____ day of _____, 20__.

Notary Public in and for the State of Texas/or
Clerk of the Justice Court

Penalty for making or using false affidavit - a person who makes or uses an affidavit known it to be false, shall be fined as provided in title 18 United States Code, or imprisoned for not more than one year, or both.