

Bart Greenway
JUSTICE OF THE PEACE
ERATH COUNTY, PRECINCT 2

SMALL CLAIMS

- **SMALL CLAIMS CASE:** 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 **\$20,000**, excluding statutory interest and court costs but including attorney's fees, if any.

IMPORTANT NOTICE:

APPROPRIATE COURTROOM ATTIRE IS REQUIRED. All persons entering the courtroom should be dressed in clothing reasonably befitting the dignity and solemnity of the court proceedings. No shorts, tank tops, flip flops, hats, etc. Cell phones and other electronics must be turned off when in the courtroom. Food and drink is not allowed in the courtroom.

Erath County Dublin Annex, 219 South Grafton, Dublin, TX 76446

(254) 445-2766 – civil clerk

(254) 445-4155 – fax

<http://co.erath.tx.us/jpcourtdublin.html>

Bart Greenway

JUSTICE OF THE PEACE, PRECINCT 2



PLEASE READ CAREFULLY BEFORE FILING THE PETITION

FOR INFORMATION ON THE RULES OF PRACTICE IN JUSTICE COURTS, PLEASE CONSULT PART V OF THE TEXAS RULES OF CIVIL PROCEDURE, WHICH IS AVAILABLE ONLINE AND AT EACH COURT.

THE FOLLOWING INFORMATION IS FURNISHED TO YOU AS A COURTESY OF THE JUSTICE OF THE PEACE OFFICE. THE COURT CANNOT ADVISE YOU WHAT YOU SHOULD DO AND ARE BARRED BY LAW FROM GIVING YOU LEGAL ADVICE. THE COURT CAN ONLY ANSWER PROCEDURAL QUESTIONS.

Please complete the Civil Information Sheet, Petition, and Affidavit of Military Status of Defendant. PLEASE PRINT CLEARLY AND PRESS FIRMLY. You are the plaintiff and the person or entity you are suing is the defendant. The defendant has a right to be sued in the county and precinct in which they reside; there are exceptions to this rule. Should there be a motion by the defendant to transfer venue, a hearing will be set to determine if a transfer of venue will be granted; a motion to transfer venue may delay the proceedings 6-8 weeks.

- **PLEASE NOTE: YOU MUST HAVE COPIES FOR THE COURT'S FILE OF ANY DOCUMENTS YOU INTEND TO SUBMIT TO THE COURT AS EVIDENCE. YOU WILL BE CHARGED FOR ANY COPIES THE COURT MUST MAKE.**

IT IS YOUR BURDEN AS PLAINTIFF TO MAKE SURE YOU ARE SUING THE DEFENDANT IN THEIR PROPER LEGAL CAPACITY. It is very 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 their **proper legal capacity**, of which there are typically there:

1. **Personally:** Where an individual is responsible to you for damages he may have caused you as an individual.
 2. **Proprietor or partnership:** A business that is not incorporated, but does have on file with the County Clerk an assumed name, ex: John Smith dba GreenhouseSupplies.
 3. **Corporation:** The business which has allegedly cause you damage is incorporated and therefore **it is necessary to know the individual's name who is authorized to accept civil process on behalf of the corporation.** The authorized agent for service would be listed with the Secretary of State, whose phone number is 1-800-252-5555 & website is www.sos.state.tx.us Ex: Greenhouse, Inc. through its agent, John Smith. It is also possible for an incorporated entity to have an assumed name, ex: Greenhouse, Inc. dba Greenhouse Supplies.
- The **Justice Court Civil Information Sheet** must be completed, signed by the plaintiff or the plaintiff's attorney and accompany the filing of a petition. Select only **one** case type.
 - On the **petition**, under **complaint** section, make a **very short statement** concerning the nature of your claim. Under **relief** section, put the **PRINCIPAL AMOUNT** of your claim against the defendant. **DO NOT ADD COURT COSTS** to this amount. If you are asking for return of property, list the value of the property. If you wish to have the judgment include court costs, you would state "plus court costs."
 - ☐ The **Affidavit of Military Status of Defendant** form must be completed and either accompany the filing of a petition or be submitted prior to a default judgment being granted.
 - ☐ After the petition is completed, present it to my clerk. You will then be required to pay fees of \$121.00 for filing the petition and service of citation on one defendant. **If the citation is to be served out of Erath County, you will be required to pay the service fee in the form of a money order made payable to the out-of-county agency.** Please check with the clerk for more information in that case. A citation along

with a copy of your petition will be served to the defendant notifying him that a suit has been filed against him in this Court. The citation will order the defendant to file an answer with the court by the end of the 15th day after the day he was served with the citation. You will be notified by this office that one of the following will take place:

1. The defendant has entered a denial and the case is set for trial. The trial notice will be mailed approximately 45 days prior to the trial date, or
2. The defendant answered and acknowledged their indebtedness. An acknowledged judgment is prepared and sent to you and the defendant.

If the defendant does not file an answer, a prove-up hearing needs to be set for you to present your facts to the Court as to why you should be granted a default judgment. You will need to contact this office to check the status of the case and we will set you a default hearing as soon as possible.

If you should receive a judgment, please understand that this Court does not collect the judgment for you, nor can we force the defendant to pay the judgment. It is your responsibility to request any post-judgment remedies. The following are some of those remedies that are available to you:

1. **Abstract of Judgment** places a lien on any real property the defendant may own in a particular county where the abstract is recorded. There is a fee of \$5.00 for the Court to issue the abstract. You will also be required to pay a small fee to the County Clerk to record the abstract. This may be obtained 21 days after the judgment is signed.
2. **Writ of Execution** authorizes the Constable or Sheriff to seize any assets belonging to the defendant that are not exempt under Texas Property Code, Section 42.001 and 42.002. Those assets are then auctioned at a public sale and those proceeds are applied to the judgment. This may be obtained 30 days after the judgment was signed if the judgment was not paid or appealed.

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)

<p>1. Contact information for person completing case information sheet:</p> <p>Name: _____ Telephone: _____</p> <p>Address: _____ Fax: _____</p> <p>City/State/Zip: _____ State Bar No: _____</p> <p>Email: _____</p> <p>Signature: _____</p>	<p>2. Names of parties in case:</p> <p>Plaintiff(s): _____</p> <p>Defendant(s): _____</p> <p>_____</p> <p>_____</p> <p>[Attach additional page as necessary to list all parties]</p>
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3. Indicate case type, or identify the most important issue in the case (select only 1):

<p><input type="checkbox"/> Debt Claim: 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 \$20,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><input type="checkbox"/> Eviction: 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 \$20,000, excluding statutory interest and court costs but including attorney fees, if any.</p>
<p><input type="checkbox"/> Repair and Remedy: 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 \$20,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><input type="checkbox"/> Small Claims: 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 \$20,000, excluding statutory interest and court costs but including attorney fees, if any.</p>

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.

PETITION: SMALL CLAIM CASE

CASE NO. (court use only) _____

In the Justice Court,
Precinct 2, Erath County, Texas

PLAINTIFF _____

VS.

DEFENDANT(S): _____

Defendant(s) contact info: _____

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: \$ _____, and/or return of personal property as described as follows (be specific): _____, which has a value of \$ _____. Additionally, plaintiff seeks the following: _____

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:

_____.

If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address:

_____.

Petitioner's Printed Name

Signature of Plaintiff or Attorney

DEFENDANT(S) INFORMATION (if known):
DATE OF BIRTH: _____

Address of Plaintiff's Attorney, if any, or Plaintiff if none

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

City State Zip

*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

DEFENDANT'S PHONE NUMBER: _____

Ph & Fax No. of Plaintiff's Attorney, if any, or Plaintiff if none

Instructions: The Servicemembers Civil Relief Act applies to a civil proceeding in the Justice Courts. Before entering a default judgment against an individual defendant, the plaintiff must file with the court an affidavit stating whether or not the defendant is in the military service, showing necessary facts to support the affidavit, or stating that the plaintiff is unable to determine whether or not the defendant is in military service, if that is the case. The requirement for an affidavit may be satisfied by a written, signed document declared to be true under penalty of perjury. If it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If the court is unable to determine if the defendant is in military service, the court may require plaintiff to file a bond in an amount approved by the court.

A person who makes or uses an affidavit under this Act knowing it to be false, may be fined or imprisoned or both. 50 U.S.C. App. 501 et seq. To obtain certificates of service or non-service under the Servicemembers' Civil Relief Act, you may access the public website: <https://www.dmdc.osd.mil/appj/scra/scraHome.do>. This website will provide the current active military status of an individual.

Military Status Affidavit

Case No. _____ § In the Justice Court of
§
Plaintiff: _____ §
vs. _____ § Erath County, Texas
§
Defendant: _____ § Precinct 2, Place 1

BEFORE ME, on this day personally appeared, _____,
who, under penalty of perjury, stated that the following facts are true:

I am the Plaintiff attorney of record for the Plaintiff in this proceeding.

- _____, Defendant, **is not** in military service.
- _____, Defendant, **is in** military service.

I know this because _____

I am unable to determine whether or not the Defendant is in military service.

Signed on _____

Signature

Printed Name: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail Address: _____

THE STATE OF TEXAS §
COUNTY OF ERATH §

SWORN TO AND SUBSCRIBED BEFORE ME on _____

Clerk of the Court

or

Notary Public, State of Texas