DIANE DUPNIK Justice of the Peace, Pct. 1
County of Aransas
301 N. LIVE OAK, ROOM 111
ROCKPORT, TEXAS 78382
Ph: (361) 790-0130 - Fax: (361) 790-5402

INSTRUCTIONS AND INFORMATION FOR FILING A SMALL CLAIMS SUIT

1. The amount of the debt, damages or personal property for which you may sue in Small Claims is limited to damages that do not exceed the limit of $10,000.00 inclusive of interest.

2. In all civil suits, the defendant(s), generally has the right to be sued in the county and precinct in which he resides. However, should there be a motion by a defendant to transfer venue, please be advised that after the motion is made, a hearing shall be set 45 days after the motion is filed, unless both parties agree, in writing, to shorten that time.

3. It is your burden as a plaintiff and 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 there proper and legal capacity, of which there are typically three. (Consult with your attorney if you are unsure of the defendant's proper legal capacity (name)) They are as follows:

    a. PERSONALLY: Where an individual is responsible to you for damage he may have caused you as an individual.
    b. PROPRIETOR OR PARTNERSHIP: A business that is not incorporated, but does have on file with the County Clerk an assumed name e.g. John Smith d/b/a Greenhouse Supplies. To determine whether or not this person has filed an assumed name, you would contact the County Clerk in this building.
    c. CORPORATION: The business which has allegedly caused you damage is incorporated and therefore it is necessary to know the individual's name who is able to accept service on behalf of the corporation. (The authorized agent for service would be listed with the Secretary of State whose phone is 1-800-252-5555) e.g. Greenhouse, Inc. Serve: John Doe. It is also possible for an incorporated entity to have an assumed name e.g. Greenhouse, Inc. d/b/a Greenhouse Supplies.
    d. Also, as a plaintiff, you also must sue in the legal capacity in which you were damaged.

4. If as a plaintiff, you are in the business of loaning money primarily, (Banks, Credit Unions, Savings, and Loans), you are not allowed by law to file in Small Claims Court; however, an attorney representing any of the above may file suit on behalf of the above in Justice Court or an individual may file. Also, an action in Small Claims Court may be brought by an assignee of the claim or other person seeking to bring an action on an assigned claim; or a collection agency.

5. When you have completed the petition stating the detailed facts and circumstances of your suit, 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 appear in this court to file a written answer to the law suit on a Monday following the expiration of ten days from his receipt of the citation at 10:00 a.m. The trial date will be set for the first Monday following the expiration of 45 days, which is the earliest setting allowed by the Texas Rules of Civil Procedures. **If you are not contacted regarding your court date within six weeks, you will need to call our office to check the status of your case.**

- ✓ **IT IS IMPERATIVE THAT YOU PROVIDE US WITH YOUR DAY TIME PHONE NUMBER.**
- ✓ **PLEASE NOTIFY US IMMEDIATELY OF ANY CHANGES IN YOUR PHONE NUMBER OR ADDRESS.**
- ✓ **PLEASE DO NOT MAIL YOUR PETITION TO OUR OFFICE, UNLESS IT HAS BEEN NOTARIZED.**
- ✓ **YOU MUST PROVIDE THE COURT WITH TWO COPIES OF ATTACHMENT TO YOUR PETITION.**

1. If you have witnesses who will not come to court voluntarily, you may ask the court to subpoena those individuals prior to trial. Allow at least a week for service of the subpoena. Our jurisdiction is limited to a 100 mile radius for subpoenaed documents or individuals.

2. This type of suit, in my opinion, does not warrant hiring an attorney; however, you are free to do so if you wish, as is the defendant. As the amount of the law suit increases, so does the need for having an attorney.

3. This court does not collect the money judgment for you. Nor can we force an indigent defendant to pay the judgment. If you receive a judgment against the defendant, this court can issue various instruments to assist you in collecting the judgment. You may request an Abstract of Judgment, Writ of Execution, Writ of Garnishment and Turnover Order.

An ***ABSTRACT OF JUDGMENT*** puts a lien on any property that defendant may own in a particular county where the abstract is recorded. This can be obtained ten (10) days after the judgment has been signed. The Abstract of Judgment must be filed with the County Clerk's Office.

The ***WRIT OF EXECUTION*** may be obtained thirty (30) days after the judgment has been signed. This document authorizes the Sheriff or Constable to seize any assets belonging to the defendant that are subject to this Writ. Those assets are then auctioned at a public sale and those proceeds are applied to the judgment.

WRIT OF GARNISHMENT is also available thirty (30) days after the final judgment has been signed. This garnishment proceedings is a separate suit wherein you are the plaintiff and the defendants bank becomes the defendant.
You are actually suing the bank in which the original defendant has his bank account. You are warning the said bank to freeze the monetary assets of his bank account and appear to make

answer to the Garnishment suit. An attorney, in my opinion, is required.

A ***TURNOVER ORDER*** is available before and/or after the judgement is signed and its purpose is to provide a court-ordered means of reaching property which cannot be reached through ordinary legal process and which is not exempt from attachment, execution, etc. An attorney should be used because the court clerical staff will not be able by law to assist you in drafting the documents that are necessary. This post judgement collection remedy is the most effective way of collecting a judgement in most cases, in my opinion.

FEE SCHEDULE	J.P. FEES	CONSTABLE FEES	**TOTAL**
Filing Fees-			
Defendant in Aransas County	$31.00	$75.00	**$106.00**
Two (2) Defendants	$31.00	$150.00	**$181.00**
Defendant reside out of County	$31.00	You must call county for fee	
If Sent Certified to Defendant	$31.00	Certified Fee	**$15.00**
JURY	$5.00		**$5.00**
ABSTRACT OF JUDGEMENT	$5.00		**$5.00**
WRIT OF EXECUTION	$5.00	$125.00	**$130.00**
SUBPOENA		$75.00	**$75.00**
WRIT OF POSSESSION	$5.00	$125.00	**$130.00**