



JUDGE MIKE OGLESBY

Justice of the Peace, Pct. 5



Eviction Cases

"The information contained herein is not exhaustive and is not intended to be legal advice."

Justice Court Civil Cases

"I Just Want to Talk to the Judge....."

The Code of Judicial Conduct prohibits the Judge from engaging in communication concerning the merits of a pending case or one that may be filed in the future.

Most people understand this when they consider how they would feel about the judge discussing their case with the other party without their knowledge or consent.

"But Your Clerk Said....."

The Code also prohibits a Judge or Court Staff from giving legal advice.

"Do I need a Lawyer?"

Legal representation is not required. Legal representation may be desired to safeguard your rights and interests.

Eviction Cases

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.

Notice to Vacate

If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give at least three days' written notice to vacate the premises before the landlord files an eviction, unless the parties have contracted for a shorter or longer period of time in a written lease or agreement.

The notice to vacate shall be given in person, by mail, or by affixing the notice to the inside of the main entry door and must be unconditional. Notice by mail may be by regular mail, registered mail, or by certified mail, return receipt requested, to the premises in question.

If the dwelling has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises, the landlord may securely affix the notice on the outside of the main entry door. Texas Property Code Sec. 24.005

Filing Petition with the Court

Eviction suits must be filed in the precinct and county where the property is located. Rule 510.3(b)

If the eviction is based on a written residential lease, the plaintiff must name as defendant(s) all tenants obligated under the lease residing at the premises whom the plaintiff seeks to evict. Rule 510.3 (c)

No judgment or writ of possession may issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition. Rule 510.3 (c)

Upon filing, the court will immediately issue a citation and give to the Constable for service. Trial must be held 10-21 days from the date the petition is filed. Rule 510.4(a)(10)

Trial can't be held less than 6 days after service. Rule 510.7 (a)

At Trial

The plaintiff is responsible for proving his or her right to possession of the premises and, if a claim for unpaid rent has been made, the amount of unpaid rent. Proof may include a copy of the lease, a copy of the notice to vacate, and payment records.

The amount of pure rent due through the date of trial will need to be calculated (*no utilities or late charges are allowed in claims for unpaid rent.*) Rule 510.3 (d)

Judgment

This court must adjudicate the right to actual possession and not title. Rule 510.3 (e)

Writ of Possession

A writ of possession may issue on the 6th day after judgment provided an appeal is not properly filed. A writ may not issue more than 60 days after a judgment is signed unless good cause is shown. A writ may not be executed after the 90th day after a judgment for possession is signed. Rule 510.8 (d) (1)(2)(3)

Appeal

A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay. This must be done within 5 days after judgment is signed. The Judge will set the amount of bond or cash deposit. The bond/cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal. Rule 510.9 (a) (b)

An appellant who can't furnish a bond or pay a cash deposit in the amount required may instead file a **Sworn Statement of Inability to Pay (SSIP)**. Rule 510.9(c) (1)

The statement may be contested within 5 days after the opposing party receives notice the statement was filed. Rule 510.9 (2)

The Court must provide to the defendant a written notice at the time the SSIP is filed, stating that rent is required to be posted into the justice court registry, the method by which deposit is required, the day the deposit is required which must be within 5 days of the date the SSIP is filed and a statement that failure to pay the required amount may result in the court issuing a writ of possession without a hearing. Rule 510.9 (5) (A) (i) (ii) (iii)(iv)

Demand for Jury



Demand for Jury can be made by either party, must be made at least 3 days before trial and requires a jury fee of \$22 or by filing a sworn statement of inability to pay the jury fee. Rule 510.7(b)

No motion for new trial may be filed in an eviction case. Rule 510.8 (e)

No counterclaims are permitted in an eviction case. Rule 510.3(e)

PETITION FOR EVICTION CASE

Case No.: _____

Plaintiff(s): _____

Agent or Attorney: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

VS.

Defendant(s): _____

Home Address: _____

Home Phone: (____) _____

TO THE HONORABLE JUDGE OF THE COURT:

1. This suit is brought to regain possession of the premises located at _____, a property located within the boundaries of Justice of the Peace, Pct. 5, Denton County, Texas.
2. **Service of Citation:** Other addresses where the defendant(s) may be served in Denton County are: _____
3. The owner/landlord claims they should regain possession of the premises due to *(check one)*:
☐ **Non-payment of rent** or ☐ **Lease violations** (other than non-payment), as follows: _____
☐ **Holdover at end of term**
4. The tenant rented this property on or about: _____ and still maintains possession of the property. The lease is *(check one)*: ☐ **written** ☐ **oral**
5. The above-named defendant:
☐ is not in the military service on active duty, and is not a dependent of a service member on active duty.
☐ is in the military service on active duty.
☐ I have been unable to determine whether or not the defendant is in the military service on active duty.
6. The rent is \$ _____ per month and is due the _____ day of each month. Rent paid by government is \$ _____
7. **Notice to Vacate:** Written notice to vacate and demand for possession was given on _____ in according to Chapter 24.005 of the Texas Property Code by the following manner:
☐ **Certified Mail** ☐ **Regular Mail** ☐ **Delivery in person** ☐ **Attach to inside of main entry door** ☐ **Other:** _____

THE COURT IS ASKED TO EVICT THE TENANT AND ORDER TENANT TO:

- ☐ Pay rent owed in the amount of \$ _____.
- ☐ Pay court costs.
- ☐ Pay reasonable attorney's fees of \$ _____. Attorney's name, address, phone and fax: _____

Plaintiff reserves the right to orally amend the amount at trial to include rent due from the date of filing through the date of trial.

☐ **I consent for the answer and any other motions or pleadings to be sent to my email address:** _____

Plaintiff

Plaintiff's Agent or Attorney

Said Plaintiff (or agent or attorney), being duly sworn by me, the undersigned authority, upon oath says that the facts as stated in the above instrument are, within the knowledge of said Affiant, true and correct.

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

Clerk of the Court or Notary Public



Court Date _____ @ 10:00am

I hereby acknowledge the court date and understand if the Plaintiff fails to appear the case may be Dismissed for Want of Prosecution.

X _____ (initial)

IN THE JUSTICE COURT

PRECINCT Five

DENTON COUNTY, TEXAS

Defendant(s) information *(If known):*

Date of Birth: _____

DL (last 3 numbers) _____

Social Security (Last 3 numbers) _____

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: _____	Telephone: _____	Plaintiff(s): _____ _____
Address: _____	Fax: _____	Defendant(s): _____ _____ _____ _____
City/State/Zip: _____	State Bar No: _____	[Attach additional page as necessary to list all parties]
Email: _____		
Signature: _____		

3. Indicate case type, or identify the most important issue in the case (select only 1):	
☐ 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 \$10,000, excluding statutory interest and court costs but including attorney fees, if any.	☐ 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 \$10,000, excluding statutory interest and court costs but including attorney fees, if any.
☐ 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 \$10,000, excluding statutory interest and court costs but including attorney fees, if any.	☐ 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 \$10,000, excluding statutory interest and court costs but including attorney fees, if any.