

INTRODUCTION

This manual has been prepared to assist persons who want to file a claim (sue) or defend themselves in the Justice Court of Carbon County.

It outlines some basic steps involved in bringing and defending a civil action. No attempt has been made to cover all possible problems or situations that may arise. If problems arise which are not covered in the manual, **IT MAY BE NECESSARY TO CONSULT AN ATTORNEY.**

This manual is intended to answer some basic questions for the person who chooses to "go it alone." It does not answer all the questions that might come up during the lawsuit. If you decide to use this manual, **YOU SHOULD ASK QUESTIONS WHENEVER YOU ARE IN DOUBT.** The personnel in the Justice Court will assist you and answer questions about some matters **but they cannot give legal advice.**

This manual has been prepared by the Justice Court of Carbon County, Montana for use in a civil suit. **PLEASE** read these instructions very carefully before proceeding on your action and refer to them frequently throughout the process of your civil case.

IF YOUR QUESTIONS CANNOT BE SATISFACTORILY ANSWERED BY THIS PAMPHLET, IT IS ADVISABLE THAT YOU CONTACT AN ATTORNEY OF YOUR CHOICE.

HOW TO FILE A CIVIL ACTION IN JUSTICE COURT

A. **Plaintiff** (the person filing the action)

- 1) Most claims not exceeding \$12,000.00 may be filed in the Justice Court; the proper place to file the claim is in the county where the defendant lives; in some cases a person may be served outside of Carbon County (but NOT out of the state of Montana). The recovery of money must be for actual damages or money that is due because you have suffered a loss or an injury. Damages can be defined as a loss or injury.
- 2) Determine the amount actually owed.
- 3) Send a registered letter to the person and demand to be paid the amount owed to you within a specified time (ten to twenty days). If the letter is refused you may immediately file a complaint with the Court; otherwise, wait for the specified time before filing (although it not required by law this is a suggested practice).
- 4) Bring your proof of mailing the registered letter to the Court. Fill out a complaint form provided by the Court.
- 5) On the complaint state why you are suing and for what specific amount. You must have the complete name(s) and physical address of the person(s) you are suing. If you are suing a corporation, you must use its legal name; you may need to contact the Secretary of State's office to determine the proper legal name (<https://app.mt.gov/bes>, 406-444-2034 or 406-444-3655). The complaint must be signed by the plaintiff.
- 6) Fill out a summons form; only the top needs to be completed - the person suing is the plaintiff, the person getting sued is the defendant.
- 7) Fill out the Praecipe form. You will need to know the correct name(s) of the defendant(s) and their current physical address. If you know a place of employment, that information can be used on the praecipe.
- 8) There is \$35.00 filing fee to file an action in Justice Court.
- 9) There is currently a \$90.00 service fee if you want the papers served by the Carbon County Sheriff (other counties charge comparable service fees if the papers need to be served outside Carbon County).
- 10) The fees listed above in #8 and #9 must be paid in advance and are considered Court costs. Do not include these fees in the amount claimed on the complaint; if you win your case the Court will award these costs to you as part of the judgment.

- 11) Although you are not required to bring evidence to back up your claim at the time you file the complaint, you will need to get that information before you file in order to determine the exact amount owed. (For example, you will need a least two written estimates for repairs for damages done in an auto accident).
- 12) The defendant has twenty days (not including the day he/she was served) to file a written answer with the Court. A copy of the answer will be mailed to the plaintiff after filing the original with the Court. After an answer is filed, you will need to file a motion to set trial, (or in some cases a pretrial conference will be set). In the case of a landlord/tenant action for possession of property, the defendant has ten days (excluding weekends and holidays) to respond.
- 13) If the defendant fails to file an answer within the required time, the plaintiff is then entitled to a Default and Judgment; you must apply for judgment with the Court within ninety days or the action may be dismissed. You must show proof of service of the complaint and summons on the defendant and proof of your claim when applying for judgment after default.
- 14) You may or may not want to hire an attorney to represent you, depending on the amount and the type of claim; you may want to speak with an attorney before filing your claim to find out if there is a legal basis for the claim, and to get legal advice. Neither the Judge nor the Clerks of Justice Court can give you legal advice! Some attorneys charge a minimal fee for an initial visit; ask if there is a statute to support your claim. You can then get a copy of the statute, or of any case law to take to trial if necessary.
- 15) If the Court sets the case for trial you must be prepared for trial on that date with any and all witnesses, documents, contracts, photos, bills, letters, cancelled checks, estimates, or any other evidence you may need to prove your case. Your allegations in the complaint must be proved by a preponderance of the evidence (this means the evidence you present to the Court must be more convincing and have more weight than the defendant's).
- 16) Written statements from witnesses are generally not acceptable; witnesses must testify in person and have first-hand knowledge to what they testify. If you want a person to testify and they are reluctant, you may obtain a subpoena from the Court, ordering them to appear.
- 17) If you (the plaintiff) do not appear for trial, the Court will dismiss your complaint with prejudice (it cannot be filed again); if the defendant has filed a counterclaim against you (s)he may present evidence and judgment may be entered against you.

B. DEFENDANT - (The person being sued by the plaintiff)

- 1) You have been summoned to appear in the Justice Court because a complaint has been filed against you. The plaintiff (person who filed the action) has alleged that you owe him/her money or property for the reason stated on the complaint.
- 2) You may have been notified by the plaintiff before being served with the complaint; if not, you may now want to contact the plaintiff and attempt to settle your differences.
- 3) If you do not deny the allegations in the complaint, you need not appear in Court, or file an answer; however, you should contact the plaintiff to see if there is some way to work out a payment plan or some other solution. The plaintiff will be entitled to a judgment against you for the amount in the complaint, plus interest, plus any court costs that have been incurred.
- 4) If you do deny the allegation in the complaint, you are required to file a written answer, with the Court within twenty days of the day you were served (not counting the day you were served); a \$20.00 filing fee is required when the answer is filed. If the case is a landlord/tenant action and the plaintiff is asking for the possession of rental premises, the answer must be filed within ten days (not counting weekends and holidays). You are required to send a copy of the answer to the plaintiff or his attorney.
- 5) If you (the defendant) believe that the person suing you owes you money from the transaction or occurrence described in the complaint you may file a counterclaim even if you do not deny that you owe the plaintiff any or all the amount claimed, but the counterclaim may not exceed \$7000.00. There is no additional filing fee required to file a counterclaim; and a copy must be sent to the plaintiff.
- 6) You may or may not want to hire an attorney to represent you, depending on the amount and the type of claim; you may want to speak with an attorney before filing your answer and/or counterclaim to find out if there is some legal basis, and to get legal advice. Neither the Judge nor the Clerks of Justice Court can give you legal advice!
- 7) After an answer is filed, the Court will set the case for trial or for a pre-trial conference. Once the case has been set for trial you must be prepared for trial on that date, with all witnesses, documents, contracts, photos, bills, cancelled checks, estimates, or any other evidence you may need to present your case. At the trial the plaintiff is required to prove the allegations in his complaint by preponderance (majority) of the evidence. Likewise, you, as the defendant, must prove the allegations in the counterclaim you may have filed.
- 8) Written statements from witnesses are generally not acceptable; witnesses must testify in person and have first-hand knowledge to what they testify. If you want a person to testify and they are reluctant, you may obtain a subpoena from the Court, ordering them to appear.
- 9) If you do not appear for trial any counterclaim you filed will be dismissed; the plaintiff will still be required to present his case and prove his allegations against you.

C. PRETRIAL CONFERENCE

- 1) Before a trial date is set in a case, the Court may schedule a pre-trial conference. This is a conference between the plaintiff, the defendant, and the Court held prior to the trial to:
 - a) Narrow the issues to be tried
 - b) Make trial preparation easier, and most importantly
 - c) Possibly settle the matter and avoid a trial.
- 2) The pretrial hearing notice will explain the procedure and arrangements that will need to be made by the parties.
- 3) If the parties reach an agreement, a written "settlement agreement" should be signed by both parties and filed with the Court.

D. THE TRIAL

- 1) The Court will send a "Notice of Trial" to each party it is generally mailed at least three to four weeks prior to the day of trial. If you have a conflict with the Court date set you must request a continuance in writing at least two weeks in advance of the trial date. A copy of the request must be sent to the other party, as well.
- 2) At the trial, the plaintiff will present his/her case first. You will be placed under oath and asked to tell the facts of your case. Facts be should presented in the order in which they happened. The Court does not know anything about your claim, therefore you need to state everything necessary to prove your claim.
- 3) After the plaintiff and each of his/her witnesses testify, the defendant may cross-examine (question) each of them as to what they have testified.
- 4) When the plaintiff has finished presenting his case, it is the defendant's turn to present his case and call any witnesses he may have. The plaintiff may then cross-examine the defendant and any witnesses who have testified.
- 5) After the parties have presented their evidence, each side may make a closing statement/argument to "sum up" their case and make comments on the other party's evidence.
- 6) Some suggestions for conduct during trial:
 - a) Be brief - be through but not redundant.
 - b) Do not be an amateur lawyer - your case will depend on the presentation of the facts, not your knowledge of the law.
 - c) Be polite - do not interrupt the Judge, the other party, or any of the witnesses; do not shout, call names, or argue.
 - d) Do not turn down any compromise offer; compromise may be the only way to achieve satisfaction.

- 7) At the end of the trial the Court will more than likely take all the evidence and testimony under advisement and render a judgment within two to four weeks. A copy of the judgment will be sent to each party; the losing party in addition to any amount he has to pay, will be required to pay Court costs of the prevailing party.
- 8) Judgments collect interest at 10% per annum, unless otherwise allowed by law.
- 9) 3-15-203, MCA states "(1) A jury panel member in civil actions, criminal actions, and coroner inquest is entitled to a fee of \$12.00 per day for attendance before a court not of record and a mileage allowance, as provided in 2-18-503, for traveling each way between his residence and the court. A jury panel member selected for a case is entitled to an additional \$13.00 per day while serving. (2) In civil actions, the jurors' fees must be paid by the party demanding the jury and taxed as cost against the losing party.

E. APPEAL

- 1) If one of the parties is dissatisfied with the Court's judgment, he may appeal the case to the District Court, where a new trial will be held.
- 2) The appealing party is REQUIRED to: a) file a written notice of appeal with the Justice Court and serve a copy on the other party; b) pay a \$10.00 appeal filing fee; c) post an appeal bond which will be determined by the Court; d) pay the District Court filing fee of \$115.00.
- 3) There will be a trial de novo (new trial) set by the District Court.

F. AFTER JUDGMENT/EXECUTIONS

- 1) Judgments in Justice Court are good for six years, and may then be renewed for a longer period of time.
- 2) Within six years following judgment, the prevailing party may ask the Court to issue an execution against a person's wages, bank account, or personal property. However, it is your duty to initiate the collection procedures, and to find out where a person works, where he banks, or what SPECIFIC lien-free personal property he may have.
- 3) It is often frustrating to work hard to take a case to court, spending time and money only to find that you cannot collect on your judgment. You cannot garnish welfare, social security, unemployment, pension, or disability checks. You cannot seize personal property that has a lien on it. You should determine how likely it is for you to collect before filing a complaint in the first place.

- 4) When the Court issues an execution upon your request, it will be taken to the Sheriff (or mailed to the Sheriff in another county in the state of Montana) for service. You will be charged a service fee to serve the execution, which must be paid in advance. The Carbon County Sheriff charges \$50.00 for service of an execution.
- 5) You may not receive the entire amount due on the first execution; federal law mandates the amount of wages that may be garnished and there may not be enough money in a bank account to satisfy your judgment. It will then be necessary to ask the Court to issue another execution and pay the service fee again. (These service fees are added to the amount due).
- 6) If the judgment was for damages from an automobile accident, the law provides for a procedure in which the judgment debtor's driver's license may be suspended until the judgment is paid.
- 7) After an execution is returned to you unsatisfied you may ask the Court for a supplemental hearing for the examination of a judgment debtor. At this hearing the debtor is ordered to appear in Court so that he may be questioned as to his assets, income, etc.
- 8) A "Certification of Transcript of Docket" may be filed in the District Court. If the judgment debtor owns or is buying any real property, a lien will be placed on his property and he may not sell it until your judgment is paid in full
- 9) **Once a judgment has been satisfied (paid in full) it is important that you file a satisfaction of judgment so the Court's file can be closed**

G. EXEMPTION OF EXECUTION

- 1) When an execution is levied upon a judgment debtor's property, wages, or bank account he must be given a Notice of Execution Levy, Notice of Property Exempt Notices must be given to the Sheriff by the creditor to be served upon the debtor along with the execution.
- 2) These notices provide the judgment debtor with information on what property may be exempt from execution and his right to have a hearing for the Court to determine if something exempt has been seized.
- 3) The debtor MUST file a Notice of Claimed Exemptions within ten days (excluding weekends and holidays) of the date of service upon him of the creditor's notices to be eligible for a hearing.

DEFINITIONS

- AFFIDAVIT:** A written statement of facts. The person making this statement must swear to its truth before a judge or a notary public.
- APPEAL:** The action or right of a party to ask a higher court to review a lower court's decision in order to correct mistakes or injustices.
- APPEARANCE:** The defendant's acknowledgment, in writing, that he is aware of the action against him and his response to the claim being made.
- CLERK:** Officer of court who files pleadings, motions, judgments, etc., issues process, and keeps records of court proceedings.
- CONTINUANCE:** Postponement of an action or hearing scheduled before the Court.
- COUNTERCLAIM:** The defendant's claim against the plaintiff as a response to the original complaint.
- DEFAULT JUDGEMENT:** A decision by the Court in favor of the person filing the claim (plaintiff) when the defendant fails to answer the complaint or fails to appear at the trial.
- DEFENDANT:** The person or party being sued.
- DISMISSAL:** The Court's decision to terminate a case. If an action is dismissed "with prejudice," it cannot be refilled. If an action is dismissed "without prejudice," the action may be again brought before the court.
- EVIDENCE:** Proof, either written or spoken, presented by either party at trial which has an effect on the case before the court.
- EXECUTION:** The order issued to a sheriff or constable to carry out the judgment of the court; for example, to take and sell property by the person who owes a court judgment to collect the amount of money owed.
- GARNISHMENT:** An order to a person (for example, an employer or a bank) to transmit money or property to the Court to satisfy a judgment.
- JUDGMENT:** The Court's decision of the outcome of a particular case before the court.
- JUDGEMENT DEBTOR:** The person or party against whom a judgment is rendered which has not been paid.
- JUDGMENT CREDITOR:** The person to whom money is owed as a result of a court decision.

JURISDICTION: The authority giving the court power to hear and decide cases.

PLAINTIFF: The person or party who makes or files a claim.

PRAECIPE: Written request to the process server to serve the defendant with a copy of the complaint or execution. It contains instructions, directions, address, place of employment, etc., for service of the summons and complaint.

SATISFACTION OF JUDGMENT: A form filed with the court stating the judgment has been paid in full.

SETTLEMENT: An agreement reached between the two parties before the court hearing.

SUBPOENA: An order for a witness to appear in court.

SUMMONS: An order signed by the judge advising the defendant of the complaint and defendant's requirement to appear and file an answer.

TRIAL: The time and place where the judge hears the evidence presented in the suit.

VENUE: The proper location of the court in which to sue. In Justice Court, the court is in the county in which the defendant lives, or where he can be served with the complaint.

WITNESS: A person called to testify in court for one of the parties in the case. An "expert witness" is a person who is especially trained in the subject at issue.