

## **How to Get a Money Judgment Or Return of Personal Property In the Small Claims Court**

### **Small Claims Complaint Order and Notice to Defendant**

Use these forms if you want to bring a lawsuit against someone who owes you money or who has possession of personal property you want returned. Review the Citizens Guide to Small Claims Court prepared by the Office of the Attorney General. If you need help the clerk of the small claims court will assist you, but cannot give legal advice.

The maximum you can collect through a judgment in small claims court is \$7,000.00. The value of the property you seek to recover in small claims court cannot exceed \$7,000.00. If you are seeking damages that have not been determined or agreed upon you cannot file in small claims court, but must file in the civil division of the justice court.

You must pay the court clerk a fee for filing this form. The fees in small claims court total \$30.00.

After you complete the forms, file them with the clerk of the small claims court. The “Small Claims Complaint” must be signed in the presence of the clerk of the small claims court or the judge.

The clerk of the small claims court will give you a hearing date when issuing the “Order of Court and Notice to Defendant”.

You must have a copy of the “Small Claims Complaint” and the “Order of Court and Notice to Defendant” served on the defendant.

The defendant must be served in the county in which the small claims court is located, Carbon County. Service of the defendant outside the county of the small claims court is not valid.

The defendant must be served not less than 5 days before the hearing date set by the clerk of the small claims court. If service cannot be made on the defendant within this time, you can ask the clerk of court to reset the hearing date.

You cannot serve the defendant yourself. You can serve the defendant by having a levying officer or the sheriff give the forms to the defendant. You can serve the defendant by having a person over the age of 18 give the forms to the defendant. Proof of service must be signed by the person making the service and filed with the clerk of the small claims court. The original “Order of Court and Notice to Defendant” must be returned to the clerk of the small claims court before the hearing date.

You will be required to pay all fees of the levying officer or the sheriff. The fees for service varies, you should contact the levying officer or the sheriff for the fees they charge.

You must attend the hearing. Failure to attend the hearing will result in dismissal of your complaint. Be sure to bring along any witnesses, books, papers, or other evidence which will help prove to the court that you are entitled to a money judgment or possession to the property.

# INSTRUCTIONS FOR COMPLETING SMALL CLAIMS COMPLAINT AND ORDER OF COURT AND NOTICE TO DEFENDANT

Please print neatly. If your complaint is not legible or incomplete the Small Claims Court will not accept it for filing.

1. **Plaintiff:** The party who is suing is the plaintiff. Print the name, address and telephone number of the on the lines provided.
2. **Defendant:** The party who is being suing is the defendant. Print the name, address and telephone number on the lines provided.
3. **Complaint:** Only a plaintiff who has had the transaction with the defendant can file and prosecute a claim in Small Claims Court. A power of attorney from the plaintiff is not sufficient to file a complaint.
  - a. Enter the amount of money owed or the value of the personal property. The amount cannot be more than \$7,000.00. Describe the property you want returned.
  - b. Print the date the disputed claim happened. For example, the date the money was borrowed, note signed, goods purchased, or property borrowed or received.
  - c. Explain the reason for the claim. Include what happened to cause the dispute. Attach additional sheet if needed.
4. **Sign your name in front of the clerk.** The clerk will fill in the Case Number and Date for the hearing and give you a copy, and will explain what to do next.
5. **Filing Fee:** You must pay the court a filing fee of **\$30.00** when you file your Small Claim.

## What happens next?

- You must have the complaint, order and notice served on the defendant.
  - The defendant must be served not less than 5 days before the date set for the hearing. If it cannot be served before the hearing date, you can ask the clerk to set a new date for the hearing. The original of the Order and Notice to the Defendant must be filed with the court before the hearing date.
- You must attend the hearing.
  - The hearing date, time, and location are stated in the Order and Notice to the Defendant.
  - Be sure to bring along any witnesses, books, papers, or other evidence which will help you prove you claim to the court.

**Read “Small Claims: Court A Citizen’s Guide” prepared by the Office of the  
Montana Attorney General**





## RULE 23

### SMALL CLAIMS DIVISION

The small claims procedures provided in Title 25, Chapter 35 apply to all actions in the small claims division. In addition, the following local rules applying to the small claims division:

- (1) Application of justice court rules. The Montana Justice and City Court Rules of Civil Procedure and the Montana Uniform Rules for the Justice and City Courts are not applicable to the small claims division. *Allen v. Hubbard* 2002 MT 95, P11, 309 Mont. 375. P11, 46 P.3d 639, P11
- (2) Computation of Time. The time in which to act upon a small claims procedure is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded. See Section 1-1-306, MCA
- (3) Performance of an action. An action required by the small claims procedure to be performed within a particular time, which day falls upon a holiday or a Saturday, such act may be performed upon the next judicial day.
- (4) Appearance of Plaintiff. The small claims plaintiff shall appear on the appearance date set by the small claims court.
  - a. Failure of the plaintiff to appear, and the defendant has not been served as provided for under Section 25-35-603, MCA, shall be deemed a waiver of the plaintiff's right for a new appearance date and the action shall be dismissed **without prejudice**.
  - b. Upon appearance and application of Plaintiff a new appearance date may be set if the defendant is not served as provided for under Section 25-35-603, MCA.
  - c. Upon failure of the plaintiff to appear and the defendant served as provided for under Section 25-35-603, MCA, the action shall be dismissed **with prejudice**.
  - d. Upon failure to serve defendant within one year after commencement of the action, the small claims complaint shall be dismissed **without prejudice**.
- (5) The clerk of the justice court shall give a copy of this rule to the plaintiff upon commencement of the small claims action. A copy of this rule shall be served upon the defendant together with the small claims complaint and notice.

# **GUIDELINES FOR COURTROOM CONDUCT**

1. Be on time for your trial.
2. Dress neatly.
3. No food or drinks are allowed in the courtroom.
4. It is not advisable to bring your children.
5. Check in at the Justice Court Office prior to the hearing.
6. Review your paperwork before the trial. You may use written notes during the trial to refresh your memory. You may not read your notes aloud to the judge. Stick to the facts. Do not ramble when offering evidence to support your side of the story.
7. When the judge calls your case, stand up to let the judge know you are in the courtroom. The judge will tell you to come forward.
8. The judge may ask the parties to make opening statements. This should be a brief statement that tells the judge what the Plaintiff's complaint is seeking and what the Defendant's defense is.
9. After opening statements, the Plaintiff can call their witnesses. After each witness has testified, the Defendant may ask questions of each witness (cross-examination). The Plaintiff may then ask the witnesses follow-up questions. After the Plaintiff has called all their witnesses the Defendant can call their witnesses and the Plaintiff may ask questions (cross-examination) followed by follow up questions by the Defendant. The Plaintiff and Defendant can call themselves or each other as a witness.
10. When the judge asks you questions, be direct with your answers. If you don't know an answer, admit that you do not know the answer. Do not be afraid to admit that you do not know something.
11. Testimony or evidence based on reports or statements of others rather than the personal knowledge of a witness is called hearsay. The judge will generally not allow hearsay to be admissible as testimony or evidence.
12. When introducing an exhibit, you must first show it to the judge and the other party and ask that it be introduced. If the other party objects to the introduction of the exhibit the judge will require you to lay a foundation (who prepared the exhibit and when it was prepared) before it can be introduced. An exhibit to prove a fact prepared by a person not a witness at the trial who can be cross-examined may be considered hearsay and not allowed.
13. Take your time when answering questions. Give the question as much thought as you need to understand it and give your answer. You may be asked to explain your answer.
14. Be respectful and courteous with the court. Always address the judge as "Your Honor". Do not interrupt. If something needs to be clarified, wait until it is your turn to speak or ask to speak again.
15. Be sincere. Do not be sarcastic or argue with the court or the other party. Stay calm.
16. If you are stating dates, times and places, etc. be exact. If you cannot be exact, make it understood that you are only estimating.
17. Speak clearly and distinctly, using words, phrases and terminology that you understand. Keep your hands away from your mouth and speak loudly enough so the judge can easily hear you.
18. Remain polite to the judge after the ruling. The judge will prepare a written ruling before it becomes effective.
19. Avoid laughing or talking about the case in the hallway or restrooms of the courthouse in such a way that the other party and counsel and witnesses for the other party may see you or hear you.