

# CIVIL DEFENDANT PACKET FORMS

## The following forms should be included in your packet:

- Answer
- Counterclaim
- Guidelines for Courtroom Conduct
- Notice of Appeal

## Complete the following steps in order.

### Step 1.

#### Answer

- Complete all entries on the Answer.
- Date and sign the Answer.
- Make copies, one for yourself and one for and each plaintiff.

### Step 2.

#### Counterclaim

- A defendant may file a Counterclaim against the plaintiff if the Counterclaim arises out of the same transaction as alleged in the complaint. Failure to file a counterclaim arising out of the same transaction may be deemed a waiver.
- If your counterclaim arises out of a different transaction you may file a separate action in the civil division or the small claims division of the Justice Court. The Clerk of Justice Court will provide you with the forms.
- The Counterclaim cannot exceed \$12,000.00.
- Complete all entries on the Counterclaim.
- Date and sign the Counterclaim
- Make copies, one for yourself and one for each plaintiff.

### Step 3.

#### Filing

- File the Answer and the Counterclaim with the Clerk of Justice Court.
  - Give the Clerk the following
    - Appearance fee (\$30.00)
    - Original Answer and all copies
  - Send a copy of the Answer and Counterclaim to each plaintiff.
  - Sign the certificate of mailing on the original Answer and Counterclaim
- If an Answer has not been filed by the defendant within 20 days of service (10 days of service for landlord tenant actions) of the Complaint and Summons the plaintiff may ask the clerk to enter a default against the defendant.
- If an Answer to the Counterclaim has not been filed by the plaintiff within 20 days of service (10 days of service for landlord tenant actions) of the Complaint and summons the defendant may ask the clerk to enter a default against the plaintiff.
- A default judgment cannot be for more than what was asked for in the Complaint or Counterclaim.
- If the amount asked is for a sum that cannot be made certain the court may conduct a hearing to determine the amount of damages or determine the truth of the Complaint or Counterclaim allegations.

## **Step 4.**

### Trial

- Upon the filing of an answer by the defendant the clerk will set the date and time for trial. If a Counterclaim has been filed the clerk will set the date and time for trial upon the filing of the answer to the Counterclaim.
- Read the Guidelines for Courtroom Conduct.
- At trial, you will need to introduce any written agreements or documents. You will need to mark each document to be introduced with an exhibit letter on the bottom of the first page of each exhibit. The first document would be marked as “Exhibit 1”, the second as “Exhibit 2”, the third as “Exhibit C”, etc. You need to make copies of each exhibit to be given to each plaintiff.

## **Step 5.**

### Entry of Default Counterclaim

- If an Answer to the Counterclaim has not been filed by the Plaintiff within 20 days of service of the Counterclaim (10 days of service for landlord tenant actions) you may request that a default be entered against the Plaintiff by the clerk.
- The clerk will not enter the default automatically. You must file a motion to enter a default.

## **Step 6.**

### Entry of Judgment

- At the conclusion of trial, the judge may enter judgment at once or within 30 days. The judgment will be reduced to writing.
- A judgment by default is entered by the judge or clerk. A judgment by default cannot exceed the amount asked for in the Complaint or Counterclaim.
- The prevailing party must pay a judgment Fee (\$20.00) to the Clerk of Justice Court. If a judgment by default is entered no judgment fee is required.
- Prepare a Notice of Entry of Judgment and certificate of mailing, attach a copy of the judgment to the notice and file the original with the clerk. Send a copy of the notice and judgment to each party in the action.
- Upon entry of the judgment the prevailing party may request the clerk to issue a writ of execution. Prepare a writ of execution and take it to the clerk to be issued. The clerk will not issue the writ if the judgment fee is not paid.
- If you are not the prevailing party go to step 7.

## **Step 7.**

### Appeal

- Appeals from Carbon County Justice Court to the Twenty Second District Court must be tried anew. See Title 25, Chapter 33, Montana Code Annotated.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant Pro Se

Telephone: \_\_\_\_\_

IN THE JUSTICE COURT,  
CARBON COUNTY, MONTANA  
BEFORE JUDGE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff(s),  
vs.  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant(s)

)  
) Case No: \_\_\_\_\_  
)  
)  
)  
) ANSWER  
)  
)  
)

Comes now the Defendant(s) for an answer to the complaint states:

1. The complaint fails to state a claim against Defendant(s) upon which relief can be granted.
2. Admit the allegations contained in paragraphs \_\_\_\_\_.
3. Deny the allegations contained in paragraphs \_\_\_\_\_.
4. Alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs \_\_\_\_\_.
5. Deny everything not admitted.

Wherefore Defendant(s) demand(s):

1. The complaint be dismissed.
2. Costs and attorney fees.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CERTIFICATE OF MAILING

The undersigned affiant does hereby certify that a copy of the attached COUNTERCLAIM was on this date served by mail postage paid upon all the below named parties or their attorneys at their addresses shown.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant Pro se

Telephone: \_\_\_\_\_

IN THE JUSTICE COURT,  
CARBON COUNTY, MONTANA  
BEFORE JUDGE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff(s),  
vs.  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant(s)

)  
) Case No.: \_\_\_\_\_  
)  
)  
)  
) COUNTERCLAIM  
)  
)  
)  
)  
)

Comes now the Defendant(s) for a counterclaim against Plaintiff(s) states:

- 6. The counterclaim arises out of the same transaction or occurrence as the complaint and does not exceed \$12,000.00.

That the Plaintiff(s) [owe Defendant(s) the sum] [caused Defendant(s) damages] of \_\_\_\_\_  
*. (Cross out the bracket that does not apply)*

- 7. Reason for the counterclaim: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Wherefore Defendant(s) demand(s):

- 3. Plaintiff(s) file an answer to the counterclaim within 20 days of the service and upon failure default be entered against Plaintiff(s).
- 4. Judgment for the counterclaim.
- 5. Costs and attorney fees.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CERTIFICATE OF MAILING

The undersigned affiant does hereby certify that a copy of the attached COUNTERCLAIM was on this date served by mail postage paid upon all the below named parties or their attorneys at their addresses shown.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated \_\_\_\_\_  
\_\_\_\_\_

## **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.

