

Instructions — Small Claims Action

\$30 filing fee

www.dojmt.gov/consumer/guide-to-small-claims-court

or google: montana small claims court

Briefly, the following steps are listed for your information to start or defend a small claims action:

1. A demand letter must be sent to the defendant demand payment by a specific time. Certified letter is recommended.
2. The amount demanded in the complaint cannot exceed \$7,000 excluding costs, and the Defendant must be able to be served within the county issuing the complaint.
3. A written complaint must be prepared and SWORN TO before the Court. A complaint is a brief, concise statement of the facts making up your complaint. You must include the dollar amount requested, and/or the return of specific property, and the date of the transaction. You must prepare a praecipe for the Sheriff's office, constable, or process server. For each person you are suing, you will need 2 copies of the complaint, 2 copies of the Notice to Defendant, and 1 praecipe. The forms are self explanatory and easy to fill out. All papers necessary are available at the Small Claims Division of Justice Court. A copy of the pamphlet prepared by the Attorney General **must be given to the Plaintiff and a copy attached to the Notice to Defendant.**
4. After the papers are properly filled out, take them back to the clerk at justice court to be SWORN TO, and for filing. The filing fee is \$30 for the Justice Court. There are additional costs for service of the papers by the Sheriff's office or process server. The costs may vary from area to area and will include mileage costs. A deposit is generally required before service is done. If there are additional mileage costs, you will be billed for the excess. Any deposit money not spent will be refunded to you. If you obtain a judgment in court, you may be entitled to a full reimbursement of the fees you paid to pursue this case in court.
5. The Defendant or opposing party will be notified of the lawsuit and date of trial by service of the papers by the Sheriff or process server. After the papers are served, the Notice to Defendant will be returned to the Court with an accounting of the fees spent. If the Notice to Defendant is returned to the Plaintiff, the Notice must be returned to the Court immediately.
6. If the "Notice to Defendant" is not served at least 5 days prior to the date of trial, a new trial date will be set by the Court and given to the Sheriff or process server for re-service. This "reset" procedure will be done as many times as is necessary to serve the Defendant and allow 5 days after service before the trial date.
7. If the parties reach an agreement or solution prior to trial, both parties are required to notify the Court.
8. If a counterclaim is filed, it must be filed with the Court and served on the Plaintiff at least 72 hours prior to the date of the trial. Service of the counterclaim, on the Plaintiff, is made by the Sheriff or process server in the same manner as the service of the Notice to Defendant.
9. The Defendant may file a counterclaim against the Plaintiff if the amount claimed arises from the same transaction or occurrence as the Plaintiff's complaint AND does not exceed \$6,500. If the Defendant does not appear, a default judgment may be issued after the Plaintiff presents all evidence necessary to prove the allegations of the complaint. On the date for trial, if the Defendant appears and contests the complaint or files a counterclaim, a \$20 fee will be assessed the Defendant.

10. The trial is an informal proceeding and will be recorded electronically.
11. No attorney is allowed, unless all parties have an attorney.
12. The Defendant may file a Notice of Removal in a small claims action and have the entire case transferred to the regular civil Justice Court. If the Defendant DOES NOT FILE A NOTICE OF REMOVAL WITHIN 10 DAYS AFTER RECEIVING SERVICE OF THE NOTICE TO DEFENDANT, THE DEFENDANT WAIVES THE RIGHT TO A JURY TRIAL AND THE REPRESENTATION BY AN ATTORNEY.
13. At the trial, the Court will give a brief review of the procedure that will be followed during the proceedings. The parties will be required to prove to the Court the facts of the complaint and/or counterclaim. At the trial, each party will be expected to bring all of their witnesses, written documents (i.e., leases, contracts, bills of sale), or other evidence needed for judgment.
14. After the trial is held, the Court will issue a judgment based on the facts presented in the case. When the trial is concluded, the Judge will make the findings and enter judgment. Either party will have 10 days to file a written notice of appeal with the Court and complete the procedures necessary. An appeal to the District Court is limited to questions of law only. You will be required to pay a filing fee to the Clerk of the District Court and post an appeal bond, if set by the Justice of the Peace.
 - a. All evidence may be held for thirty (30) days after the judgment is issued. After that time, you may pick up your evidence from the court file. The Court will not mail the evidence back to you. If an appeal is filed, the evidence is transferred to the District Court
15. If you obtain a judgment in Justice Court either by default or after a trial is held, you may proceed to the actual collection of the judgment. Payment of the judgment is due immediately. However, we recommend that you wait ten (10) days after judgment before you begin the collection process.
16. If the parties wish to negotiate a payment plan for the payment of the judgment, you may do so. The court would encourage any payments to be handled directly between the parties involved.
17. If the winning party does not receive payments in a timely fashion or if no payment arrangement is made, you may ask the Court to issue an execution. An execution is an order to the Sheriff/constable/levying officer to assist your collection process. You may execute against a savings or checking account, personal property (not a necessity of life), wages, vehicles, campers, or any other assets the judgment debtor may have.
 - a. You will be required to fill out a praecipe specifically identifying "what" you want to execute against. This includes bank name and address, title and identification numbers, color, make, model and number, and any other information that will specifically identify the property or item to be seized. You must advise the Sheriff/constable/levying officer where the property you wish to have seized is located and any and all other pertinent information.
 - b. You must research the item you want to have seized to be sure that the item is free from lien. If there is a lien on an item, you will be responsible to the lien holder for the amount due.
 - c. There is an additional fee required for service of the execution. The fee is approximately \$15 plus mileage, per execution. These costs will be added to the judgment as accruing costs. Any monies collected, such as wages or money retrieved from a checking or savings account, will be distributed to you, after the serving officer collects his costs. If personal property is seized, the property will be sold at Sheriff's sale and the proceeds, less the Sheriff's costs, will be given to you.

- d. When you file an execution, be aware that you may not get the entire amount due the first time. It may be necessary to file more than one execution. The Debtor is allowed to withhold a certain percentage from execution to support his/her family or for the necessities of life. An execution may be served numerous times while it is valid. Only one execution may be issued at one time. A return of execution, with or without anything being received, must be filed with the Court before another execution may be issued.
18. You may also request the Court for a “Show Cause Hearing” and examination of the judgment debtor. The debtor will be subpoenaed into Court and ordered to show cause why no effort has been made to satisfy the judgment. This hearing will only be set after you have attempted to execute against the debtor for the judgment due.
 - a. At the hearing, you will be allowed to ask the debtor questions about his income, monies available, personal property value, spouse’s income, and any other questions regarding the debtor’s financial history to satisfy the amount of the judgment.
 19. You may also file a “Certification of Transcript of Docket” with the Clerk of the District Court that will place a lien on any real property (land or home) that the debtor may have. The property will not be sold without satisfaction of the judgment prior to sale.
 20. Your judgment is good for ten (10) years, so although you have been unable to collect on the judgment recently if the debtor should get a job within the time limit, you may execute any time within the ten (10) years. The judgment will also be recorded against the debtor’s credit record with the Credit Bureau.
 21. You must notify the Court as soon as the judgment is satisfied. You will be responsible if the judgment is satisfied and not cleared from the debtor’s record in Court.

NEITHER THE JUDGE NOR THE CLERK ARE ALLOWED TO GIVE YOU LEGAL ADVICE. IT IS PROHIBITED BY LAW !! WE MAY ONLY ASSIST YOU BY GIVING YOU THE NECESSARY FORMS, THE INSTRUCTIONS, AND ADVISING YOU OF THE OPTIONS AVAILABLE TO YOU TO PURSUE OR DEFEND A SMALL CLAIMS ACTION.

An attorney is not necessary to pursue a small claims action or defend against one. HOWEVER, if you feel you need an attorney, you have a legal right to obtain one. You should review Paragraphs 11 and 12 of this instruction sheet on the process regarding an attorney. If you do not understand these forms or the instructions, please contact an attorney.

Small Claims Court

A Citizen's Guide

Montana's Small Claims Court is an effective way for our citizens to inexpensively and quickly resolve disputes. The procedures are informal and there's no need to hire a lawyer. If you're interested in knowing more about how the process works, this brochure is a good place to start for both plaintiffs and defendants.



Prepared by the
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Small Claims Glossary

Plaintiff: The person alleging he or she is *owed* money or property is the plaintiff.

Defendant: The person or party who allegedly *owes* money or property is the defendant.

Counterclaim: If a defendant disagrees with the original claim and instead believes he/she is owed money or property, he/she may file a counterclaim.

Subpoena: A subpoena is a legal document, issued by the court, that compels a witness to appear in court.

Liquidated Claim: A claim for an amount previously agreed on by operation of law or by the terms of the parties' agreement.

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Settlement Options

Sometimes it is possible to settle disputes before trial and avoid small claims court altogether. If the case is settled, the agreement should be put in writing and signed by both parties. The parties should give a copy of the agreement to the clerk of small claims court and ask that the complaint be dismissed.

Subpoenas

A party may ask the Court to issue subpoenas for witnesses. To be effective, subpoenas must be issued well before the hearing date.

Juries

Juries are not used in small claims court. If a party prefers a jury trial, the case must be removed to Justice Court. The request must be made within 10 days after the complaint is served on the defendant. The clerk of court can explain the process.

Attorneys

Attorneys are not necessary for small claims proceedings. A party may not be represented by an attorney unless all parties are represented by attorneys.

In Court

- Once under oath, the parties involved present the facts truthfully, in the order in which they occurred. The plaintiff tells his or her side of the story, then it's the defendant's turn.

- Both sides may present evidence and call witnesses. Each side may also question the other person and his or her witnesses and may ask questions about evidence.

Judgment and Resolution

The judgment is the written decision of the judge. The winning side is entitled to collect the disputed amount, plus court costs.



Collection of payment is the responsibility of the parties involved. If the losing party fails to pay, there are some other options.

Appeal

If either side is dissatisfied with the court's judgment, the case may be appealed to district court. The appeal must be in writing and must be made within 10 days of the original judgment.

The appeal addresses questions of law only, to confirm that the law was correctly applied to the case. The district court judge will not retry the case or accept new evidence, testimony, etc.

Limits on Cases

- A party may not file more than 10 claims in a calendar year, except claims involving shoplifting.

Relevant Statutes

- Mont. Code Ann. §§ 25-35-501 to -807

Small claims court is a quick, inexpensive, informal way to resolve disputes over small amounts of personal property or money. Juries and lawyers are not necessary. Small claims cases are handled in justice courts; however, small claims court rules and procedures are informal and thus not necessarily the same as in justice court.

There are some basic rules to know, however, and some guidelines to follow. This brochure provides some guidance through the process, along with a glossary and a step-by-step checklist.

Maximum Claim

- The amount in question in a small claims case cannot be more than \$7,000.
- A claim must be a fixed amount, like a balance on a bill or another easily determined amount previously agreed upon by the parties. If unsure of the form of your claim, check with the small claims court before filing a suit in order to avoid forfeiture of fees.
- Claims may be filed in the county where the defendant lives or where he or she may be served.

Fees

- A fee is required to file a complaint or counterclaim. Once a complaint is filed, the Court will issue an order to appear at trial

and, for a fee, a process server will deliver the order to the defendant. It is possible to recover some of these fees as part of the resolution of a case.

Venues

Claims can be filed in the county where the claim arose or in the county where the defendant resides.

Timelines

- A hearing must be set within 40 days of the date the claim is filed.
- A defendant must be given at least five days notice before a hearing.
- The parties may ask the Court for more time. Typically such a request must be made before the hearing date.
- Weekends and holidays count against timelines stating a specific number of days to take an action.



Counterclaims

If a defendant believes the plaintiff owes him money, he may file a counterclaim.

- The counterclaim must involve the same dispute as the original complaint.
- It must be served on the plaintiff at least 72 hours before the scheduled date of the trial.
- The amount of the counterclaim cannot be more than \$6,500.

SMALL CLAIMS COURT CHECKLIST

PLAINTIFF

- ___ Send a letter to the defendant demanding payment by a specific time. A certified letter is recommended. When you file the claim and go to trial, bring the proof of mailing the letter.
- ___ Request a complaint form from the clerk or justice of the peace, complete the form and sign it in front of the clerk or the justice.
- ___ Provide the name and complete street address of the defendant. If suing a corporation, make sure the correct legal name is on the complaint.
- ___ Make sure the sum of money or property being sued for is a specific amount of \$7,000 or less.
- ___ File the complaint in the county where the defendant lives or in a county where the defendant may be served.
- ___ Pay the filing fee. If you cannot afford the fee, complete an affidavit asking the court to waive the fee.
- ___ Have the court issue any required subpoenas for witnesses you need at trial.
- ___ If the defendant wasn't served at least five days before the hearing, ask the court to reset the hearing date.
- ___ Bring all required evidence, documents, and witnesses to court on the scheduled date and be prepared to present your case.
- ___ If the case is settled prior to trial, file a signed, written agreement with the court.
- ___ If you wish to appeal the small claims court's decision, file your appeal within 10 days after the judge's order is signed and pay the required fee.

DEFENDANT

- ___ After the complaint is filed, the court will order a hearing within 10 to 40 days of the date of the order. If you are unable to be there or cannot be prepared by that date, ask the court to reschedule the hearing.
- ___ You can settle with the plaintiff out of court. If so, a signed copy of your written settlement agreement must be filed with the court.
- ___ Consider using a mediator or third person to help settle the dispute..
- ___ If you prefer a jury trial or want an attorney to represent you, file a motion within 10 days from the date the complaint is served to remove the case to justice court.
- ___ If filing a counterclaim, the amount in question cannot exceed \$6,500.
- ___ Serve your counterclaim on the plaintiff at least 72 hours before the hearing date.
- ___ Pay the clerk a fee for each defendant when you appear for trial, or when you file a counterclaim, or when you remove the case to justice court.
- ___ If you cannot afford the fees, complete an affidavit asking the court to waive the fees.
- ___ Before the hearing, have the court issue any necessary subpoenas for witnesses you need.
- ___ Bring all supporting evidence, documents, and witnesses to court on the hearing date, and be prepared to present your case.
- ___ If you wish to appeal the small claims court's decision, file your appeal within 10 days after the judge's order is signed and pay the required fee..

IN THE JUSTICE COURT OF RECORD
CITY OF LIVINGSTON, PARK COUNTY, STATE OF MONTANA
BEFORE CLAY HERBST, JUSTICE OF THE PEACE

_____)	
_____)	
_____)	
Plaintiff(s))	Case Number SM-_____
)	
-vs-)	<u>SMALL CLAIMS COMPLAINT</u>
_____)	
_____)	
Defendant(s))	

Comes now the Plaintiff, being first duly sworn, upon oath, and complains and alleges that Defendant is indebted to Plaintiff in the sum of \$_____ for _____

which sum is now due, owing, and unpaid despite demands for the payment of the sum, together with Plaintiff's costs expended in this action.

Dated this ____ day of _____, 20__.

_____	_____
Plaintiff's Signature	_____

	Address / Phone Number / Email

Subscribed and sworn to before me this ____ day of _____, 20__.

Clay Herbst, Justice of the Peace

By: _____
Clerk, Small Claims Division

IN THE JUSTICE COURT OF RECORD
CITY OF LIVINGSTON, PARK COUNTY, STATE OF MONTANA
BEFORE CLAY HERBST, JUSTICE OF THE PEACE

_____)	
_____)	
Plaintiff(s))	PRAECIPE
vs)	Case No. _____
_____)	
_____)	
Defendant(s))	

Please serve the Small Claims Complaint, Order of Court, and Notice to Defendant on the Defendant at: _____

and make your return to Park County Justice Court, Small Claims Division,
414 East Callender Street, Livingston, Montana 59047.

***** PLEASE NOTE THAT THE ORDER OF COURT / NOTICE TO DEFENDANT MUST BE SERVED AT LEAST FIVE (5) DAYS PRIOR TO TRIAL, OR A NEW TRIAL DATE MUST BE SET BY THE COURT.**

Dated this ____ day of _____, 20__.

Plaintiff

IN THE JUSTICE COURT OF RECORD
CITY OF LIVINGSTON, PARK COUNTY, STATE OF MONTANA
BEFORE CLAY HERBST, JUSTICE OF THE PEACE

_____)	
_____)	ORDER
Plaintiff(s))	and
)	NOTICE TO DEFENDANT
vs)	
_____)	Case No. _____
_____)	
Defendant(s))	

You are hereby directed to appear and answer the attached complaint at the above named Justice's Court on:

_____ at ___ : ___ . M. Reset for:
 _____ at ___ : ___ . M. Reset for:
 _____ at ___ : ___ . M. Reset for:

and to have with you, all books, papers, and witnesses needed by you to establish your defense to the claim. You are further notified that in case you DO NOT APPEAR, JUDGMENT WILL BE TAKEN AGAINST YOU BY DEFAULT for the relief demanded in the complaint and for costs of this action, including costs of service of the complaint and Order of the Court and Notice to Defendant.

YOU ARE HEREBY FURTHER NOTIFIED THAT, WITHIN TEN (10) DAYS OF SERVICE UPON YOU OF THIS COMPLAINT AND ORDER, YOU MAY REMOVE THIS ACTION FROM THE SMALL CLAIMS COURT TO JUSTICE CIVIL COURT, AND THAT YOUR FAILURE TO REMOVE CONSTITUTES A WAIVER OF YOUR RIGHT TO TRIAL BY JURY AND REPRESENTATION BY COUNSEL.

Dated this ___ day of _____, 20__.

_____	By: _____
Clay Herbst, Justice of the Peace	Clerk, Small Claims Division

STATE OF MONTANA)
 COUNTY OF _____)

I HEREBY CERTIFY THAT I received the within Order of Court and Notice to Defendant on the ___ day of _____, 20__, and personally served the same on the ___ day of _____, 20__, upon _____ in the County of _____, a copy of said Order of Court and Notice to Defendant, and a copy of the Complaint referred to in the Order of Court and Notice to Defendant.

Dated this ___ day of _____, 20__.

Service \$ _____
 Copy \$ _____
 Mileage \$ _____
 TOTAL \$ _____

 Sheriff

By: _____
 Deputy Sheriff