

Civil Procedure in Justice Court

A suit may be filed against a party or parties for an amount up to \$12,000.00. If you are asking for damages in excess of \$12,000.00, you must file the case in District Court.

A Complaint is the governing document for your suit. It is important that you be specific about amounts, ongoing costs, eviction, rent, damages, etc. *on the Complaint*.

A mandatory filing fee of \$50.00 must be filed with your case.

You may have the Sheriff, private Process Server, or any person over the age of 18 who is not a party to the action serve the papers as long as proper service and proper return of service is filed with the Court. Any fee for service is considered court costs. Proof of service and the original Summons must be returned to the Court before you may proceed.

The defendant has twenty (20) calendar days from the date he/she is actually served to file a written answer with the Court together with a \$30.00 filing fee. A defendant in an Action for Possession/Unlawful Detainer has ten (10) working days from the date she/he is actually served to file a written answer to the Court. The defendant must mail a copy of the Answer to the Plaintiff or Plaintiff's attorney at the time the Answer is filed. It does not need to be registered mail.

If the defendant is filing an Answer and Counterclaim, a copy of the Answer and Counterclaim must be mailed to the Plaintiff or Plaintiff's Attorney upon filing. The plaintiff has twenty (20) calendar days from the date they are actually served to file a written reply to a Counterclaim.

When an Answer is filed, the Judge will review the file and determine if the matter will be either set for Mediation or Trial. Both parties will receive notice and must come prepared to defend their cases.

If the defendant fails to file an Answer or the plaintiff fails to answer a counterclaim within the twenty (20) or (10) days (for Action for Possession) of service, you may file a Motion for Default with Order and Default will be entered. You may make written application for Judgment. You must prove the amount owed to you by filing an affidavit (sworn to) together with verification of assignment, damages (receipts, contracts, etc.).

If case is an Action for Possession, you must:

- 1) File an Affidavit of Non-compliance (sworn to) stating that the defendant is still on the property; and
- 2) File a Motion for Default/Order.

Once the Order is signed, you may request a Writ of Execution. The judge will sign an Order and a Writ of Execution that may be taken to the Sheriff's Department for service. After the Defendants are evicted, you may proceed to Judgment.

After receiving your Judgment, you may execute on the debtor's wages, bank account(s), or any personal property not exempt by statute. If Judgment is in your favor, costs of filing and service are automatically awarded to you as part of the Judgment.

The clerks will assist you with forms and filing of papers. They may explain the procedure but the clerks are not allowed to give legal advice to anyone.

IN THE JUSTICE COURT, DEPARTMENT ONE, OF THE STATE OF MONTANA IN AND FOR THE
COUNTY OF BEAVERHEAD, BEFORE CANDY L. HOERNING, JUSTICE OF THE PEACE

2 S. PACIFIC ST. #16, DILLON, MT 59725 406-683-3755

Plaintiff,
-VS-

Defendant.

Case No. CV _____ - _____

PRAECIPE
INSTRUCTIONS FOR SERVICE

TO: _____
SHERIFF'S DEPARTMENT OR PROCESS SERVER.

DATE: _____, 20____

FROM: Name: _____
Address: _____

Phone: _____

INSTRUCTIONS FOR SERVICE:

Signature

Note: Your papers cannot be served if the Praecipe is not signed.

Proof of Service
(for Sheriff's use only)

I hereby certify that:

I personally served the Summons and the Complaint for Possession on the Defendant by delivering a copy of said Summons and Complaint to Defendant _____ personally on the ____ day of _____, 20____, at _____ o'clock ____M. at this address _____ in the County of _____, State of _____.

OR

After due effort, I was unable to locate or serve the Defendant _____ in the County of _____, State of _____.

DATED this ____ day of _____, 20____.

Sheriff

By: _____
Deputy Sheriff

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2 S. PACIFIC ST. #16, DILLON, MT 59725 406-683-3755

* * * * *

Plaintiff,
-vs-

Defendant.

Case No. CV _____ - _____

CIVIL COMPLAINT

COMES NOW THE Plaintiff and alleges as a Complaint against the Defendant the following:

WHEREFORE, Plaintiff prays for a Judgment against the Defendant in the amount of
\$ _____. (The court has a \$12,000.00 limit)

DATED this _____ Day of _____, 20_____.

X _____
Plaintiff's Signature

Defendant's Name

Plaintiff's Address

Defendant's Address

Plaintiff's City/State/Zip

Defendant's City/State/Zip

Plaintiff's Phone Number

Defendant's Phone Number

IN THE JUSTICE COURT, DEPARTMENT ONE, OF THE STATE OF MONTANA IN AND FOR THE
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2 S. PACIFIC ST. #16, DILLON, MT 59725 406-683-3755

_____))
_____))
_____))
Plaintiff,)
-vs-)
_____))
_____))
Defendant.)

Case No. CV _____

MOTION
FOR DEFAULT

MOTION

Comes now the Plaintiff(s) in the above-entitled cause and moves the Court for Entry of Default.

DATED this _____ day of _____, 20____.

Plaintiff

ORDER

IT IS HEREBY ORDERED, the Motion for Entry of Default is GRANTED.

DEFAULT is hereby ENTERED.

DATED this _____ day of _____, 20____.

JUSTICE OF THE PEACE

CC:

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

_____,)
_____,)
Plaintiff(s))
vs)
_____,)
_____,)
Defendant(s))

**JUDGMENT
AFTER DEFAULT**

Case No. _____

* * * * *

The Defendant(s) _____, having been duly served a copy of the Complaint and Summons, and more than twenty (20) days having passed since the service thereof, and the Defendant(s) having FAILED TO APPEAR OR OTHERWISE DEFEND,

The default of Defendant(s) has been entered the ____ day of _____, 20__;
and,

The Plaintiff having shown by proper proof, basis for judgment, now;

IT IS HEREBY ORDERED AND JUDGMENT IS MADE and entered that the Plaintiff recover from Defendant the following:

Principal Sum	\$ _____
Credits	_____
Interest	_____
Filing Fees	_____
Service Fees	_____
Other Costs	_____

For a Total Judgment to the Plaintiff of \$ _____, said sum to bear interest at 10% per annum until paid.

Made and entered this ____ day of _____, 20__.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

_____,)
_____,)
Plaintiff(s))
vs)
_____,)
_____,)
Defendant(s))

WRIT OF EXECUTION

Case No. _____

* * * * *

THE STATE OF MONTANA, TO THE SHERIFF, A CONSTABLE, OR A LEVYING
OFFICER OF _____ COUNTY:

WHEREAS, on the ____ day of _____, 20____, _____
recovered a judgment in the said Court against _____ as follows:

Original or Balance due on Judgment in the amount of	\$ _____
Together with accrued interest at _____ % per annum	\$ _____
Costs and Disbursements accrued	\$ _____
Less Credits	\$ _____
Total sum due and owing at date of this execution	\$ _____

Together with all costs of execution (and/or) for personal property described as follows:
(attach description if necessary)

NOW, you, the Sheriff, Constable, or Levying Officer, are hereby required to make this sum due on the judgment or damages, with interest, costs, and accruing costs, to satisfy the judgment out of the PERSONAL PROPERTY of the debtor NOT EXEMPT FROM EXECUTION on the day on which the judgment was docketed in the county, or at any time hereafter, and return this writ not less than 10 days nor more than 120 days after the date of issuance subscribed thereon, with a record of your actions, endorsed thereon.

Given under my hand this ____ day of _____, 20____.

Judge

by: Clerk

