

## 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 the justice court will provide you with the forms.
- The Counterclaim can not 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 the 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 \$10.00 judgment fee to the clerk. 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 a court of record are limited only to questions of law and not for a new trial. [§3-10-115, MCA]

- Appeals of civil judgments to the district court on questions of law are limited to those that exceed \$1,000.00. [Rule 1(b)(1), MCRA]
- There is no appeal from a judgment by default. [Rule 4(f), MCRA]
- Prepare a Notice of Appeal and certificate of mailing. File the original with the clerk within 30 days of the rendition of the judgment. Send a copy to each party in the action.
- File with the clerk within 10 days of filing the Notice of Appeal the undertaking required under Rules 5 and 6, MCRA. If the undertaking is not filed within 10 days the appeal shall be dismissed.