

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 can not 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 can not exceed \$7,000.00. If you are seeking damages that have not been determined or agreed upon you can not 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.

[Yellowstone 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.

The clerk of the small claims court maintains a list of qualified levying officers. 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.

Small Claims Division, Yellowstone County Justice Court

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 clerk will not accept it for filing.

Numbers 1 through 11 must be completed before your complaint can be filed with the small claims court. Please read the instruction for each number. Then fill in the correct information for that number.

1. **Complaint, Order and Notice to Defendant.** Print the name, address and telephone number of the party who is suing on the lines provided. This person is called the plaintiff. This may be someone other than you. If you are suing on behalf of a corporation, partnership, company, or association the plaintiff is the corporation, partnership, company, or association. 1(a) must be completed and 1(b) completed if more than one plaintiff.
2. **Complaint, Order and Notice to Defendant.** Print the name, address and telephone number of the party who is being sued on the lines provided. This person is called the defendant. If the party is a corporation, partnership, company, or association enter the name of the corporation, partnership, company, or association. 2(a) must be completed and 2(b) completed if more than one defendant.
3. **Complaint.** Check the box which best describes your relationship to the plaintiff, i.e. “the plaintiff”, “a partner”, “an officer of the plaintiff” or “an employee of the plaintiff”.

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. If you are not the plaintiff, or an employee of the plaintiff, or do not have direct and personal knowledge of the facts of the dispute, you can not complete this form for the plaintiff. Assigned claims are not allowed in small claims court unless pursuant to 27-1-718.
4. **Complaint.** Check the box which best describes the plaintiff, i.e. “an individual”, “a partnership”, or “a sole proprietor”. If you checked a box other than “an individual”, print in the name and address of the business if it is different from the name and address in item 1.
5. **Complaint.** Check the box which best describes the defendant, i.e. “an individual”, “a partnership”, or “a sole proprietor”. If you checked a box other than “an individual”, print in the name and address of the business if it is different from the name and address in item 2.
6. **Complaint.** Check the box which applies. Check both boxes if you are seeking the return of personal property or in the alternative the value of the personal property. 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.
7. **Complaint.** Print the date the disputed claim happened. For example, the date the money was borrowed, note signed, goods purchased, or property borrowed or received.
8. **Complaint.** Explain the reason for the claim. Include what happened to cause the dispute. Attach additional sheet if needed.
11. **Complaint. Sign your name before the clerk of the small claims court.** The clerk of the small claims court will fill in the date for the hearing and give you a copy, and will explain what to do next.

What happens next?

- You must pay the court fees totaling \$30.00.
- You must have the complaint, order and notice served on the defendant. The clerk of the small claims court will provide you with a list of licensed levying officers. 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 your claim to the court.
- Read “Small Claims Court A Citizen’s Guide” prepared by the Office of the Montana Attorney General.

LICENSED PROCESS SERVERS
YELLOWSTONE COUNTY

<u>Name</u>	<u>Telephone</u>
JOHNNY D. SEIFFERT	406-860-5347-call for fee
T & T INVESTIGATIONS, LLC	406-694-5967-call for fee
GN ACCOUNTS SERVICE	406256-5389 or 406-855-1470 – call for fee
SUNDOWN SECURITY	406-256-1311 – call for fee
D&M SERVICE	406-598-1628 – call for fee
WILLIAMS INVESTIGATIONS Call for Fee	1-855-5-SERVED
CIVIL PROCESS SERVER-Friedel	406-794-8063 – call for fee
SHELLEY GROSS	406-850-1223 – call for fee
COUNTY SHERIFF OFFICE	406-256-2959 - \$75.00 Fee Per Person

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF YELLOWSTONE COUNTY, MONTANA	SMALL CLAIMS COMPLAINT	CASE NO.
Court address 217 North 27th Street P.O. Box 35032 Billings, MT 59107	Court telephone no. <input type="checkbox"/> (406) 256-2897 <input type="checkbox"/> (406) 256-2899	Judge <input type="checkbox"/> David A. Carter <input type="checkbox"/> Pedro R. Hernandez

- PLAINTIFF(S) NAME(S)**
- 1(a). _____
 Address City, State, Zip Phone No
- 1(b). _____
 Address City, State, Zip Phone No
- VS
- DEFENDANT(S) NAME(S).**
- 2(a). _____
 Address City, State, Zip Phone No
- 2 (b). _____
 Address City, State, Zip Phone No

FILED

- Comes now the plaintiff being first duly sworn, upon oath, and complains and alleges:
3. [I] [We] have knowledge or belief about all the facts stated in this complaint and [I am] [we are]:
 (check one) the plaintiff. a partner. an officer of the plaintiff. an employee of the plaintiff.
4. The plaintiff(s) [is] [are]:
 (check one) an individual a partnership a corporation a sole proprietor
5. Name of plaintiff(s)' business and complete address [if different from item 1(a) or 1(b)]
 The defendant(s) [is] [are]:
 (check one) an individual a partnership a corporation a sole proprietor
6. Name of defendant(s) business and complete address (If different from item 2(a) or 2(b))
 The defendant(s) [is] [are] indebted to plaintiff(s) in the sum of (Enter amount claimed) \$ _____
 The defendant(s) be ordered to return [my] [our] property described as follows:
7. Demands for payment of amount owed, or return of the property, have been ignored by the defendants(s)
 The date the claim arose is (Enter the date the contract or obligation was made or arose) _____
8. Reason for claim: (Describe how the contract or obligation was incurred or arose. Attach additional sheet if needed.):

9. The plaintiff(s) understands and accepts that the claim is limited to recovery of money, or specific personal property, in amount, or value, not to exceed \$7,000.00 by law and that the plaintiff(s) gives up the rights to: (a) recover more than this limit, (b) an attorney, and (c) a jury trial.
10. [I] [We] believe that the defendant(s) [is] [are] not in the military service, not mentally incompetent, and 18 years or older.

 Signature of plaintiff
 Subscribed and sworn to before me on _____ 200_____

 Signature of plaintiff

[Justice of the Peace] [Clerk Small Claims Division]

(TO BE COMPLETED BY THE CLERK)
HEARING DATE

Plaintiff and defendant must be in court on _____ at _____ [AM] [PM] and check in Room no. 603 with the clerk of court.
 Process server's name: _____

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF YELLOWSTONE COUNTY, MONTANA	ORDER OF COURT AND NOTICE TO DEFENDANT	CASE NO.
Court address 217 North 27th Street P.O. Box 35032 Billings, MT 59107	Court telephone no. <input type="checkbox"/> (406) 256-2897 <input type="checkbox"/> (406) 256-2899	Judge <input type="checkbox"/> David A. Carter <input type="checkbox"/> Pedro R. Hernandez

PLAINTIFF(S) NAME(S)

1(a). _____

 Address City, State, Zip Phone No

1(b). _____

 Address City, State, Zip Phone No

VS

DEFENDANT(S) NAME(S).

2(a). _____

 Address City, State, Zip Phone No

2 (b) _____

 Address City, State, Zip Phone No

FILED

THE STATE OF MONTANA, TO THE ABOVE-NAMED DEFENDANT (S):

You are directed to appear and answer the complaint at:

JUSTICE COURT OF RECORD, YELLOWSTONE COUNTY
 217 North 27th STREET, COURTHOUSE ROOM 603
 BILLINGS, MONTANA

ON _____ AT _____ AM/PM

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/notice to defendant. **You will be required to pay court fees totaling \$20.00 upon your appearance.**

You are hereby further notified that within 10 days of service upon you of this complaint and order you may remove this action from small claims court to justice's court, and that your failure to remove constitutes a waiver of your rights to trial by jury and to representation by counsel.

For more information review the attached Attorney General's pamphlet: "Small Claims Court – A Citizen's Guide"

TO THE SHERIFF, CONSTABLE OR SERVER OF PROCESS OF SAID COUNTY GREETINGS:

2(a) Make legal service and return on the defendant _____
 at _____

Defendant(s) Phone _____

2(b) Make legal service and return on the defendant _____
 at _____

Defendant(s) Phone _____

Dated: _____

 Justice of the Peace
 By _____
 Clerk, Small Claims Division

PROCESS SERVER:

Name: _____
 Address: _____
 Phone: _____

Attached: Attorney General's pamphlet: "Small Claims Court – A Citizen's Guide" 7/1/11

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.