

## CIVIL PLAINTIFF PACKET FORMS

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

- Complaint
- Summons (20 day)
- Præcipe
- Guidelines for Courtroom Conduct
- Affidavit of Non-Military Service
- Motion to Enter Default
- Default Judgment
- Notice of Entry of Judgment
- Writ of Execution
- Answer to Counterclaim
- Notice of Appeal

**Complete the following steps in order.**

### **Step 1.**

Complaint

- Complete all entries on the Complaint. The amount claimed can not exceed \$12,000.00.
- Date and sign the Complaint.
- Make copies, one for yourself and one for each Defendant.

### **Step 2.**

Summons

- Complete all entries on the Summons.
- Make copies, one for yourself and one for each Defendant.

### **Step 3.**

Præcipe

- Complete all entries on the Præcipe.
- Make copies, one for yourself and one for the court.

### **Step 4.**

- Organize your documents for filing with the court. Put the copies behind each original.

### **Step 5.**

- File the Complaint with the clerk of the justice court.
  - Ask the clerk to issue the Summons.
  - Give the clerk the following
    - Filing fee (\$40.00)
    - Original Complaint and all copies
    - Summons and all copies
    - Præcipe and all copies

The clerk will conform all the copies by entering the court case number and the name of the judge assigned to the case.

## **Step 6.**

### Service of Complaint and Summons

- Deliver the original Summons and Præcipe together with copies of the Summons and Complaint for each Defendant to the sheriff or process server.
- Each Defendant must be served personally with a copy of the Complaint and Summons. You cannot serve the Complaint and Summons on a Defendant
- Service can be done by a competent person over 18 years old who is not a party to the case. The person who serves a Defendant must complete an Affidavit of Service of the Complaint and Summons.
- The completed affidavit of service of the Complaint and Summons should be returned to you after service is completed.
- File the original Affidavit of Service and the original Summons with the Court. If not done you will not be able to move the court for an entry of Default or obtain a Default Judgment.

## **Step 7.**

If an Answer has not been filed by the Defendant within 20 days of service of the Complaint and Summons you will need to follow Steps 10 and 11.

## **Step 8.**

### Counterclaim

- If a Counterclaim has been filed by the Defendant do the following:
  - Complete an Answer to the Counterclaim.
  - File the Answer to the Counterclaim with the clerk of court and within 20 days of service of the Counterclaim.
  - Send a copy of the Answer to the Counterclaim to each Defendant.
  - Sign the certificate of mailing on the original Answer to the Counterclaim.
- If an Answer to the Counterclaim has not been filed by the Plaintiff within 20 days of service of the Counterclaim the Defendant may ask the clerk to enter a default against the Plaintiff on the Counterclaim.

## **Step 9.**

### Trial

- Upon the filing of an Answer by the Defendant the clerk will set the date and time for trial.
- 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 A", the second as "Exhibit B", the third as "Exhibit C", etc. You need to make copies of each exhibit to be given to each Defendant.

## **Step 10.**

### Entry of Default

- If an Answer has not been filed by the Defendant within 20 days of service of the Complaint and Summons a default may be entered by the clerk.
- Prepare the Motion to Enter Default and file it with the clerk.
- If you have not already filed them, you will need to file with the clerk the original Summons and Affidavit of Service of the Complaint and Summons. A default will not be entered without the Summons and Affidavit of Service of the Complaint and Summons having been filed with the court.
- The clerk will enter the Defendant's default

### **Step 11.**

#### Default Judgment

- If your Complaint asked for a sum certain the clerk will enter a Default Judgment.
- Complete the Default Judgment and present it to the clerk. You cannot enter a sum for more than what was asked for in the Complaint.
- 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 Complaints allegations.

### **Step 12.**

#### 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. Prepare the judgment by default and present it to the clerk. A judgment by default cannot exceed the amount asked for in the Complaint or Counterclaim.
- The prevailing party must pay a \$20.00 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 13.

### **Step 13.**

#### 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.

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

Plaintiff Pro Se

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

IN THE JUSTICE COURT OF RECORD, CIVIL DIVISION  
YELLOWSTONE COUNTY, MONTANA  
BEFORE JUDGE \_\_\_\_\_

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

Plaintiff(s),

vs.

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

Defendant(s)

}  
} Case No.: \_\_\_\_\_  
}  
} COMPLAINT  
}

Comes now the plaintiff(s) and complains of the defendant(s) as follows:

1. The plaintiff(s) resides in Yellowstone County, Montana.
2. The defendant(s) resides in Yellowstone County, Montana.
3. The amount of controversy does not exceed \$12,000.00, exclusive of costs.
4. The defendant(s) [owes plaintiff(s) the sum ] [caused plaintiff(s) damages] of .
5. The date the contract, obligation, damage or claim was made or arose is: .
6. Reason for claim: (Describe how the contract, obligation, damage or claim was incurred or arose. Attach additional sheet if needed.): \_\_\_\_\_

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

WHEREFORE, the plaintiff(s) ask judgment against the defendant(s) for

plus interest and costs.

Dated:

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Plaintiff

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

Plaintiff Pro Se

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

IN THE JUSTICE COURT OF RECORD, CIVIL DIVISION  
YELLOWSTONE COUNTY, MONTANA  
BEFORE JUDGE \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Plaintiff(s),

vs.

\_\_\_\_\_

\_\_\_\_\_

Defendant(s)

}  
} Case No.: \_\_\_\_\_  
}  
} **SUMMONS**  
}  
}  
}

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

You are hereby summoned to answer the Complaint in this action which is filed in the office of the above-entitled Justice of the Peace, a copy of which is herewith served upon you. In the event that you deny any or all of the material facts stated in the complaint, you must file your written answer together with \$30.00 for the answer fee and surcharge for each Defendant with the above-entitled Court, and serve a copy of your answer upon the Plaintiff or Plaintiff's attorney at the address as shown on the Complaint.

The answer must contain a denial of any or all of the material facts stated in the Complaint that the Defendant believes to be untrue, and also a statement, in plain or direct manner, of any other facts constituting a defense. Any matter not denied shall be deemed admitted. If you fail to answer or assert a counterclaim within twenty (20) days after service of the Complaint and Summons, the Plaintiff may request entry of default judgment against you for the relief demanded in the Complaint.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Justice of the Peace  
By \_\_\_\_\_  
Clerk, Justice Court

**COURT ADDRESS:**  
Yellowstone County Justice Court  
217 North 27th  
P.O. Box 35032  
Billings, MT 59107

**PROCESS SERVER**  
Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_

**FILE ORIGINAL WITH THE COURT AFTER SERVICE**

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

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

IN THE JUSTICE COURT OF RECORD, CIVIL DIVISION  
YELLOWSTONE COUNTY, MONTANA  
BEFORE JUDGE \_\_\_\_\_

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

Plaintiff(s),

vs.

\_\_\_\_\_

Defendant(s)

Case No.: \_\_\_\_\_

PRÆCIPE TO

\_\_\_\_\_  
Sheriff/Levying Officer

TO THE SHERIFF OF YELLOWSTONE COUNTY OR LEVYING OFFICER:

Make legal service of the attached documents upon the party/parties named below:

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

Home Address

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

Work Address

PROPERTY TO BE RETURNED OR EXECUTED UPON IS LOCATED AT AND DESCRIBED AS FOLLOWS:

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

RETURN THE ORIGINAL DOCUMENTS AND YOUR SERVICE TO THE JUSTICE COURT

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

\_\_\_\_\_

Documents attached:

- Complaint and Summons
- Temporary Order of Protection
- Order of Protection
- Writ of Restitution
- Subpoena

- Writ of Execution
- Order to Show Cause
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## GUIDELINES FOR COURTROOM CONDUCT – CIVIL DIVISION

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. Report to Room 603 for directions to the courtroom.
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. You may bring a friend for moral support. That person must remain silent.
20. 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.



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

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

IN THE JUSTICE COURT OF RECORD, CIVIL DIVISION  
YELLOWSTONE COUNTY, MONTANA  
BEFORE JUDGE \_\_\_\_\_

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

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

MOTION TO ENTER DEFAULT  
AND  
ENTRY OF DEFAULT

On \_\_\_\_\_ the defendant \_\_\_\_\_, was served a copy of the complaint and summons. The defendant did not file an answer within twenty (20) days after service of the complaint and summons.

Please enter default against the defendant for failure to appear or otherwise defend.

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

\_\_\_\_\_  
Signature of Plaintiff

ENTRY OF DEFAULT

Upon motion of the plaintiff, default is entered against the defendant \_\_\_\_\_ for failure to appear or otherwise defend.

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

\_\_\_\_\_  
Clerk, Justice Court

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

Plaintiff Pro se

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

IN THE JUSTICE COURT OF RECORD, CIVIL DIVISION  
YELLOWSTONE COUNTY, MONTANA  
BEFORE JUDGE \_\_\_\_\_

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

}  
}  
}  
}  
}

Case No.: \_\_\_\_\_

DEFAULT JUDGMENT

Defendant(s)

The default of the defendant(s) [ ] was entered for failure to answer the complaint within TWENTY (20) days after service of the summons and complaint.

The court further finds as follows:

1. That the plaintiff(s) is/are entitled to relief as demanded in the complaint; and
2. That the plaintiff(s) claim against the defendant(s) is for a sum certain or for a sum that can by computation be made certain.

IT IS ORDERED AND ADJUDGED:

1. That plaintiff(s) has/have judgment against the defendant(s) for the total sum of [ ] and
2. That plaintiff(s) recover from the defendant(s) costs of [ ] and accruing costs of this action together with interest on the judgment at the rate of ten percent (10%) per annum.

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

\_\_\_\_\_  
Justice of the Peace  
By \_\_\_\_\_  
Judge/Clerk Justice Court

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

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

IN THE JUSTICE COURT OF RECORD, CIVIL DIVISION  
YELLOWSTONE COUNTY, MONTANA  
BEFORE JUDGE \_\_\_\_\_

Case No.: \_\_\_\_\_

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

Plaintiff(s),

vs.

Defendant(s)

NOTICE OF ENTRY OF JUDGMENT

TO THE ABOVE NAMED DEFENDANT(S):

Please take notice that on \_\_\_\_\_ Judgment was entered as set forth in a true copy attached to this notice.

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

\_\_\_\_\_  
Judgment Creditor or Attorney

CERTIFICATE OF MAILING

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

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

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

Dated \_\_\_\_\_

\_\_\_\_\_

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

Plaintiff Pro se

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

IN THE JUSTICE COURT OF RECORD, CIVIL DIVISION  
YELLOWSTONE COUNTY, MONTANA  
BEFORE JUDGE \_\_\_\_\_

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

} Case No.: \_\_\_\_\_  
} WRIT OF EXECUTION

THE STATE OF MONTANA TO THE SHERIFF OF YELLOWSTONE COUNTY, MONTANA, OR  
ANY LEVYING OFFICER:

WHEREAS on \_\_\_\_\_ the court entered a judgment that the  
plaintiff(s) recover from the defendant(s) as follows:

Original or Balance Due on Judgment in the amount of	\$ _____
Accrued Interest at 10% per annum on the Judgment	\$ _____
Costs and Disbursements Accrued	\$ _____
Credits	(\$ _____)
Total sum due & owing on date of this execution	\$ _____

THEREFORE YOU ARE COMMANDED to levy on the personal property of the defendant(s) to  
satisfy the judgment and pay the costs and disbursements and accruing costs.

You are to make return of this writ to this Court not less than 10 days or more than 120 days after  
receipt of the recovery by the sheriff or levying officer following imposition of levy, as provided for  
under §25-13-402, MCA.

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

\_\_\_\_\_  
Justice of the Peace  
By \_\_\_\_\_  
Judge/Clerk Justice Court

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

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

IN THE JUSTICE COURT OF RECORD, CIVIL DIVISION  
YELLOWSTONE COUNTY, MONTANA  
BEFORE JUDGE \_\_\_\_\_

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

} Case No.: \_\_\_\_\_  
}  
}  
}  
}

NOTICE OF APPEAL

Defendant(s)

Notice is hereby given that \_\_\_\_\_  
above-named \_\_\_\_\_ appeals to the Thirteenth Judicial District Court, in the County of  
Yellowstone, State of Montana from the judgment or order entered in this action on \_\_\_\_\_ described  
as follows:

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

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

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

CERTIFICATE OF MAILING

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

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

Dated \_\_\_\_\_

\_\_\_\_\_

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

Plaintiff Pro se

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

IN THE JUSTICE COURT OF RECORD, CIVIL DIVISION  
YELLOWSTONE COUNTY, MONTANA  
BEFORE JUDGE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff(s),

vs.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant(s)

} Case No.: \_\_\_\_\_

ANSWER TO COUNTERCLAIM

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

1. The counterclaim fails to state a claim against Plaintiff(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 Plaintiff(s) demand(s):

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

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

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

CERTIFICATE OF MAILING

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

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

Dated \_\_\_\_\_

\_\_\_\_\_