

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.