

Instructions — Small Claims Action

Briefly, the following steps are listed for your information to start or defend a small claims action:

1. The amount demanded in the complaint cannot exceed \$7,000 excluding costs, and the Defendant must be able to be served within the county issuing the complaint.
2. A written complaint must be prepared and SWORN TO before the Court. A complaint is a brief, concise statement of the facts making up your complaint. You must include the dollar amount requested, and/or the return of specific property, and the date of the transaction. You must prepare a praecipe or directive for the Sheriff's office, constable, or process server. For each person you are suing, you will need 2 copies of the complaint, 2 copies of the Notice to Defendant, and 1 praecipe. The forms are self explanatory and easy to fill out. All papers necessary are available at the Small Claims Division of Justice Court. A copy of the pamphlet prepared by the Attorney General **must be given to the Plaintiff and a copy attached to the Notice to Defendant.**
3. After the papers are properly filled out, take them back to the clerk at justice court to be SWORN TO, and for filing. The filing fee is \$30 for the Justice Court. There are additional costs for service of the papers by the Sheriff's office or process server. The costs may vary from area to area and will include mileage costs. A deposit is generally required before service is done. If there are additional mileage costs, you will be billed for the excess. Any deposit money not spent will be refunded to you. If you obtain a judgment in court, you may be entitled to a full reimbursement of the fees you paid to pursue this case in court.
4. The Defendant or opposing party will be notified of the lawsuit and date of trial by service of the papers by the Sheriff or process server. After the papers are served, the Notice to Defendant will be returned to the Court with an accounting of the fees spent. If the Notice to Defendant is returned to the Plaintiff, the Notice must be returned to the Court immediately.
5. If the "Notice to Defendant" is not served at least 5 days prior to the date of trial, a new trial date will be set by the Court and given to the Sheriff or process server for re-service. This "reset" procedure will be done as many times as is necessary to serve the Defendant and allow 5 days after service before the trial date.
6. If the parties reach an agreement or solution prior to trial, both parties are required to notify the Court.
7. If a counterclaim is filed, it must be filed with the Court and served on the Plaintiff at least 72 hours prior to the date of the trial. Service of the counterclaim, on the Plaintiff, is made by the Sheriff or process server in the same manner as the service of the Notice to Defendant.

8. The Defendant may file a counterclaim against the Plaintiff if the amount claimed arises from the same transaction or occurrence as the Plaintiff's complaint AND does not exceed \$2,500. If the Defendant does not appear, a default judgment may be issued after the Plaintiff presents all evidence necessary to prove the allegations of the complaint. On the date for trial, if the Defendant appears and contests the complaint or files a counterclaim, a \$20 fee will be assessed the Defendant.
9. The trial is an informal proceeding and will be recorded either electronically or stenographically.
10. No attorney is allowed, unless all parties have an attorney.
11. The Defendant may file a Notice of Removal in a small claims action and have the entire case transferred to the regular civil Justice Court. If the Defendant DOES NOT FILE A NOTICE OF REMOVAL WITHIN 10 DAYS AFTER RECEIVING SERVICE OF THE NOTICE TO DEFENDANT, THE DEFENDANT WAIVES THE RIGHT TO A JURY TRIAL AND THE REPRESENTATION BY AN ATTORNEY.
12. At the trial, the Court will give a brief review of the procedure that will be followed during the proceedings. The parties will be required to prove to the Court the facts of the complaint and/or counterclaim. At the trial, each party will be expected to bring all of their witnesses, written documents (i.e., leases, contracts, bills of sale), or other evidence needed for judgment.
13. After the trial is held, the Court will issue a judgment based on the facts presented in the case. When the trial is concluded, the Judge will make the findings and enter judgment. Either party will have 10 days to file a written notice of appeal with the Court and complete the procedures necessary. An appeal to the District Court is limited to questions of law only. You will be required to pay a filing fee to the Clerk of the District Court and post an appeal bond, if set by the Justice of the Peace.

All evidence may be held for thirty (30) days after the judgment is issued. After that time, you may pick up your evidence from the court file. The Court will not mail the evidence back to you. If an appeal is filed, the evidence is transferred to the District Court
14. If you obtain a judgment in Justice Court either by default or after a trial is held, you may proceed to the actual collection of the judgment. Payment of the judgment is due immediately. However, we recommend that you wait ten (10) days after judgment before you begin the collection process.
15. If the parties wish to negotiate a payment plan for the payment of the judgment, you may do so. The court would encourage any payments to be handled directly between the parties involved.

16. If the winning party does not receive payments in a timely fashion or if no payment arrangement is made, you may ask the Court to issue an execution. An execution is an order to the Sheriff/constable/levying officer to assist your collection process. You may execute against a savings or checking account, personal property (not a necessity of life), wages, vehicles, campers, or any other assets the judgment debtor may have.

You will be required to fill out a praecipe specifically identifying "what" you want to execute against. This includes bank name and address, title and identification numbers, color, make, model and number, and any other information that will specifically identify the property or item to be seized. You must advise the Sheriff/constable/levying officer where the property you wish to have seized is located and any and all other pertinent information.

You must research the item you want to have seized to be sure that the item is free from lien. If there is a lien on an item, you will be responsible to the lien holder for the amount due.

There is an additional fee required for service of the execution. The fee is approximately \$15 plus mileage, per execution. These costs will be added to the judgment as accruing costs. Any monies collected, such as wages or money retrieved from a checking or savings account, will be distributed to you, after the serving officer collects his costs. If personal property is seized, the property will be sold at Sheriff's sale and the proceeds, less the Sheriff's costs, will be given to you.

When you file an execution, be aware that you may not get the entire amount due the first time. It may be necessary to file more than one execution. The Debtor is allowed to withhold a certain percentage from execution to support his/her family or for the necessities of life. An execution may be served numerous times while it is valid. Only one execution may be issued at one time. A return of execution, with or without anything being received, must be filed with the Court before another execution may be issued.

17. You may also request the Court for a "Show Cause Hearing" and examination of the judgment debtor. The debtor will be subpoenaed into Court and ordered to show cause why no effort has been made to satisfy the judgment. This hearing will only be set after you have attempted to execute against the debtor for the judgment due.

At the hearing, you will be allowed to ask the debtor questions about his income, monies available, personal property value, spouse's income, and any other questions regarding the debtor's financial history to satisfy the amount of the judgment.

18. You may also file a "Certification of Transcript of Docket" with the Clerk of the District Court that will place a lien on any real property (land or home) that the debtor may have. The property will not be sold without satisfaction of the judgment prior to sale.
19. Your judgment is good for ten (10) years, so although you have been unable to collect on the judgment recently if the debtor should get a job within the time limit, you may execute any time within the ten (10) years. The judgment will also be recorded against the debtor's credit record with the Credit Bureau.

20. You must notify the Court as soon as the judgment is satisfied. You will be responsible if the judgment is satisfied and not cleared from the debtor's record in Court.

NEITHER THE JUDGE NOR THE CLERK ARE ALLOWED TO GIVE YOU LEGAL ADVICE. IT IS PROHIBITED BY LAW !! WE MAY ONLY ASSIST YOU BY GIVING YOU THE NECESSARY FORMS, THE INSTRUCTIONS, AND ADVISING YOU OF THE OPTIONS AVAILABLE TO YOU TO PURSUE OR DEFEND A SMALL CLAIMS ACTION.

An attorney is not necessary to pursue a small claims action or defend against one. HOWEVER, if you feel you need an attorney, you have a legal right to obtain one. You should review Paragraphs 10 and 11 of this instruction sheet on the process regarding an attorney. If you do not understand these forms or the instructions, please contact an attorney.

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF CARBON COUNTY, STATE OF MONTANA
BEFORE HON. L. KEVIN NICHOLS, JUSTICE OF THE PEACE

* * * * *

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

PRAECIPE

Case No. _____

* * * * *

Please serve the Small Claims Complaint, Order of Court, and Notice to Defendant on the Defendant at: _____

and make your return to Carbon County Justice Court, Small Claims Division,
102 Broadway Ave N, Red Lodge, Montana.

***** PLEASE NOTE THAT THE ORDER OF COURT / NOTICE TO DEFENDANT MUST BE SERVED AT LEAST FIVE (5) DAYS PRIOR TO TRIAL, OR A NEW TRIAL DATE MUST BE SET BY THE COURT.**

Dated this ____ day of _____, 20__.

Justice of the Peace / Clerk

**IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF CARBON COUNTY, STATE OF MONTANA
BEFORE HON. L. KEVIN NICHOLS, JUSTICE OF THE PEACE**

_____))
 _____))
 Plaintiff(s)))
 Vs.))
 _____))
 _____))
 Defendant(s)))

Case No: _____

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that the defendant is indebted to the plaintiff in the sum of \$ _____ for: _____

Which sum is now due, owing, and unpaid despite demands for the payment of the sum, together with plaintiff's costs expended in this action.

Dated this _____ day of _____, 20____.

 Plaintiff signature, address and phone number.

Subscribed and sworn to before me on this _____ day of _____, 20____. Seal

 Justice of the Peace/Clerk Small Claims Division

ORDER OF THE COURT/NOTICE TO DEFENDANT

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

You are directed to appear and answer this complaint at:
Justice Court in the Carbon County Courthouse, 102 N. Broadway, Red Lodge, MT.

On _____ the _____ day of _____, 20____ at _____ am/pm

Reset For _____ the _____ day of _____, 20____ at _____ am/pm

Reset For _____ the _____ day of _____, 20____ at _____ am/pm

And to have with you all books, papers, and witnesses needed by you to establish your defense to the claim. A **fifteen (\$15.00) appearance fee is required at the time of the hearing** and 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 the costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are further notified that within ten (10) days of service upon you of this complaint and order you may remove this action from the small claims court to Justice Court and that your failure to remove constitutes a waiver of your rights to trial by jury and to representation by counsel.

**IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF CARBON COUNTY, STATE OF MONTANA
BEFORE HON. L. KEVIN NICHOLS, JUSTICE OF THE PEACE**

Case Number: _____

TO THE SHERIFF, CONSTABLE, OR SERVER OF PROCESS OF SAID COUNTY;

Make legal service and due return on the Defendant at:

Dated this _____ day of _____, 20_____.

Plaintiff's signature

RETURN

I hereby certify and return that the within _____ came into my hands for service on the _____ day of _____, 20____; that on the _____ day of _____, 20____. I served the same upon the within Defendant, _____
By giving and leaving with said defendant at _____.
Dated: _____

Sheriff, Process Server

That after due and diligent search and inquiry of divers person in sundry places, I am unable to find, within the County of Carbon, State of Montana, the said defendant for the purpose of service of process thereon, or at all, and I therefore return the said: _____ into the court undelivered.
Dated: _____

Sheriff, Process Server

**IN THE SMALL CLAIMS DIVISION OF JUSTICE COURT
OF CARBON COUNTY MONTANA BEFORE
L. KEVIN NICHOLS JUSTICE OF THE PEACE**

Plaintiff(s)

Vs.

Defendant(s)

Case No: _____

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that the defendant is indebted to the plaintiff in the sum of \$ _____ for: _____

Which sum is now due, owing, and unpaid despite demands for the payment of the sum, together with plaintiff's costs expended in this action.

Dated this _____ day of _____, 20____.

Plaintiff signature, address and phone number.

Subscribed and sworn to before me on this _____ day of _____, 20____.

Seal

Justice of the Peace/Clerk Small Claims Division

ORDER OF THE COURT/NOTICE TO DEFENDANT

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

You are directed to appear and answer this complaint at:
Carbon County Courthouse, 102 N. Broadway, Red Lodge, MT.

On _____ the _____ day of _____, 20____ at _____ am/pm

Reset
For _____ the _____ day of _____, 20____ at _____ am/pm

Reset
For _____ the _____ day of _____, 20____ at _____ am/pm

And to have with you all books, papers, and witnesses needed by you to establish your defense to the claim. A **twenty dollar (\$20.00) appearance fee is required at the time of the hearing** and 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 the costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are further notified that within ten (10) days of service upon you of this complaint and order you may remove this action from the small claims court to Justice Court and that your failure to remove constitutes a waiver of your rights to trial by jury and to representation by counsel.

IN THE SMALL CLAIMS DIVISION OF JUSTICE COURT
OF CARBON COUNTY MONTANA BEFORE
L. KEVIN NICHOLS JUSTICE OF THE PEACE

Case Number: _____

TO THE SHERIFF, CONSTABLE, OR SERVER OF PROCESS OF SAID COUNTY;

Make legal service and due return on the Defendant at:

Dated this _____ day of _____, 20____.

Plaintiff's signature

RETURN

I hereby certify and return that the within _____ came into my hands for service on the _____ day of _____, 20____; that on the _____ day of _____, 20____. I served the same upon the within Defendant,

By giving and leaving with said defendant _____
at _____.
Dated: _____

Sheriff, Process Server

That after due and diligent search and inquiry of divers person in sundry places, I am unable to find, within the County of Carbon, State of Montana, the said defendant for the purpose of service of process thereon, or at all, and I therefore return the said: _____ into the court undelivered.
Dated: _____

Sheriff, Process Server

**IN THE SMALL CLAIMS DIVISION OF JUSTICE COURT
OF CARBON COUNTY MONTANA BEFORE
L. KEVIN NICHOLS JUSTICE OF THE PEACE**

_____))
 _____))
 Plaintiff(s)))
 Vs.))
 _____))
 _____))
 Defendant(s)))

Case No: _____

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that the defendant is indebted to the plaintiff in the sum of \$ _____ for: _____

Which sum is now due, owing, and unpaid despite demands for the payment of the sum, together with plaintiff's costs expended in this action.

Dated this _____ day of _____, 20____. _____

 Plaintiff signature, address and phone number.

Subscribed and sworn to before me on this _____ day of _____, 20____.

Seal

 Justice of the Peace/Clerk Small Claims Division

ORDER OF THE COURT/NOTICE TO DEFENDANT

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

You are directed to appear and answer this complaint at:
 Carbon County Courthouse, 102 N. Broadway, Red Lodge, MT.

On _____ the _____ day of _____, 20____ at _____ am/pm

Reset

For _____ the _____ day of _____, 20____ at _____ am/pm

Reset

For _____ the _____ day of _____, 20____ at _____ am/pm

And to have with you all books, papers, and witnesses needed by you to establish your defense to the claim. A **fifteen (\$15.00) appearance fee is required at the time of the hearing** and 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 the costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are further notified that within ten (10) days of service upon you of this complaint and order you may remove this action from the small claims court to Justice Court and that your failure to remove constitutes a waiver of your rights to trial by jury and to representation by counsel.

IN THE SMALL CLAIMS DIVISION OF JUSTICE COURT
OF CARBON COUNTY MONTANA BEFORE
L. KEVIN NICHOLS JUSTICE OF THE PEACE

Case Number: _____

TO THE SHERIFF, CONSTABLE, OR SERVER OF PROCESS OF SAID COUNTY;

Make legal service and due return on the Defendant at:

Dated this _____ day of _____, 20_____.

Plaintiff's signature

RETURN

I hereby certify and return that the within _____ came into my hands for service on the _____ day of _____, 20____; that on the _____ day of _____, 20____. I served the same upon the within Defendant, _____
By giving and leaving with said defendant at _____.
Dated: _____

Sheriff, Process Server

That after due and diligent search and inquiry of divers person in sundry places, I am unable to find, within the County of Carbon, State of Montana, the said defendant for the purpose of service of process thereon, or at all, and I therefore return the said: _____ into the court undelivered.
Dated: _____

Sheriff, Process Server