

CIVIL SECTION

I. **Complaint — Procedure**

Rule 2, MJCC Rules of Civil Proc: A civil action is begun by filing a complaint with the justice or city court. A concise written statement of the cause of action is considered a complaint. A person as defined in Rule 4(A)(1) may file individually or through an attorney. All others, as defined in Rules (4)(A) 2, 3, 4, and 5, must file through an attorney. The individual or the attorney must sign the complaint. Other requirements are set out in Rule 7.

Note! Judges and clerks should read the rules for a complete description of procedures and duties.

Jurisdiction / Venue

Civil jurisdiction is \$5,000 exclusive of costs in a city court and \$7,000 exclusive in a justice court. Jurisdiction also includes the issuance of Temporary Restraining Orders, Temporary Orders of Protection, Forcible Entry, Unlawful Detainer, and Residential Landlord/Tenant disputes. (See 3-10-301 MCA).

Venue is the proper place for the trial of an action and is fully explained in Rule 3, MJCC Rules of Civil Proc.

Duties of the Judge

Review all cases to verify jurisdiction and venue. Assist in the distribution of forms necessary for filing actions.

II. **Summons**

Rule 4.C., MJCC Rules of Civil Proc., and Sections 25-31-402, 25-31-405, and 25-31-409 MCA, govern the issuance of summons and in part describe the format of a summons that must be directed to the defendant:

- (1) signed by the judge or clerk;
- (2) contain the title of the court, name of the city and county, and the names of the parties;
- (3) direction that the defendant appear and file a written answer within 20 days (10 days for a landlord/tenant action).
- (4) statement that failure to appear and answer or assert a counterclaim may result in a default judgment, and;
- (5) the name, address, and telephone number of the plaintiff or the plaintiff's attorney.

Signature Stamp

A judge or clerk may issue a summons. A judge's "signature stamp" may be used. However, it is recommended that the judge sign all original documents and use the "signature stamp" for copies only.

III. Answer

Rule 7.B., MJCC Rules of Civil Proc. The answer must contain a denial of any or all of the material facts stated in the complaint, in plain or direct manner, of any other facts constituting a defense. Any matter not denied shall be deemed admitted. If an answer is not filed within 20 days after service of the complaint and summons, the plaintiff may request entry of default as provided in Rule 21 of these rules.

NOTE: ANSWER MUST BE FILED WITHIN 20 DAYS OF SERVICE.

Failure to deny the allegations of a complaint may result in a summary judgment, judgment on the pleadings or a judgment by confession.

IV. Counterclaim

Rule 7.C., MJCC Rules of Civil Proc. (1) A defendant may file with the answer a counterclaim any claim arising out of the same transaction or occurrence as the complaint, which is within the jurisdiction of the justice or city court, or it is deemed to be waived. The counterclaim must be a concise written statement of the facts constituting the defendant's cause of action and the type or amount of relief requested. Any counterclaim that exceeds the jurisdiction of the justice or city court must be dismissed without prejudice. (2) (Also, see Rule 7C and 7D).

V. Interpleader Affidavit

MCA 25-31-119. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the justice's court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3)

VI. Execution

Rule 23, MJCC Rules of Civil Proc. A. HOW ENFORCED.

(1) By justice or city court. A judgment may be enforced within the boundaries of the state by a writ of execution issued by the justice or city court or the clerk thereof.

(2) Issuance of execution by judge or clerk of justice or city court. From the time of docketing in the clerk's office, execution may be issued by the judge or clerk to the sheriff, constable, or levying officer of any county in the state.

B. TIME. . .

MCA 27-2-201. Actions upon judgments. (1) Except as provided in subsections (3) through (5), the period prescribed for the commencement of an action upon a judgment or

decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 10 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) . . .

VII. Appeal

Rule 24, MJCC Rules of Civil Proc. Appeal to district court. Appeals from a justice or city court to a district court are governed by Title 25, chapter 33, except that the undertaking on appeal, when the judgment is for the payment of money, may be in the form of an appeal bond or a deposit of money in a sum equal to the amount of the judgment, including costs.

INSTRUCTIONS — CITY/JUSTICE COURT CIVIL ACTIONS

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

1. The amount demanded in the complaint cannot exceed \$5,000 in city court or \$7,000 in justice court excluding costs.
2. A written complaint must be prepared and filed with 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. The date of the transaction must also be stated. You will need to prepare a summons to be served on the opposing party, and a praecipe or directive for the Sheriff's office, Constable, or other person, or an acknowledgment of service if served by 1st class mail. For each person you are suing, you will need 2 copies of the complaint, 2 copies of the summons, and 1 praecipe. The forms are self explanatory and easy to fill out. All papers necessary are available at Justice or City Court.
3. After the papers are properly filled out, take them back to the clerk at Justice or City Court for filing.
4. The filing fee is \$15 for each complaint. 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. (Husband and wife cannot represent each other and each need to sign the complaint, if jointly filed.)
5. The defendant or opposing party will be notified of the lawsuit by service of the papers by the Sheriff's office, Constable, other person, or by 1st class mail. After the papers are served, you will receive the summons back with a certificate of service or acknowledgment of receipt of service with an accounting of the fees spent, when applicable. **YOU MUST RETURN THIS SUMMONS** to the Court to continue with the lawsuit and to have your costs included in the judgment amount.
6. IF THE DEFENDANT DENIES THE DEBT or disagrees with the complaint, the defendant must file a written answer with the court within 20 days of service. The answer fee is \$15 for each defendant. The defendant must send a copy of the answer and counterclaim (if any) to the opposing party (plaintiff). If no answer is received by the Court within 20 days after service, the plaintiff may ask for a judgment by default. (Husband and wife cannot represent each other and each need to file separate answers.)
7. If the defendant files a written answer, a per-trial hearing may be set by the clerk. An answer is a concise statement of the denial of the claim. The parties may settle the action any time prior to the pre-trial hearing. If a settlement is reached both parties must notify the Court.

8. The pre-trial hearing is an informal hearing held in the courtroom between the parties. This hearing is scheduled for the benefit of the parties and allows for a full and fair discussion of the issues of the lawsuit filed. Settlement is highly possible at the pre-trial hearing and will save the parties the cost and time of going to a formal trial. If the plaintiff does not appear at the scheduled pre-trial hearing, the complaint may be dismissed. If the defendant does not appear, a default judgment may be granted.
9. If a settlement is reached at the pre-trial hearing, the Judge will docket the terms of the settlement or dismissal, or issue a stipulated judgment. If no settlement is reached, the Court will set the case for a trial as soon as possible.
10. If a case continues to trial, the parties will be given a handout outlining the procedure that will be expected to be followed at the trial. Each party is responsible for proving to the Court the facts of their side of the case. At the trial, each party will be expected to bring all of their witnesses, written documents (i.e., lease, contract, bills of sale, receipts, etc.), or other evidence needed for judgment. Generally, deadlines to comply with discovery or exchange of information are set by the Court.
11. After the trial is held, the Court will issue a judgment based on the facts presented in the case. Each party will receive a copy of the judgment. Either party will have 30 days to file a written notice of appeal with the District Court and complete the procedures necessary. An appeal will be heard in the District Court as a brand new trial. 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 Judge.

Your evidence is 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 with all other payers.

12. If you obtain a judgment, either by default or after a pre-trial hearing or a trial is held, you may proceed to the actual collection of the judgment.
13. 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.
14. Payment of judgment is due immediately, however, we recommend that you wait ten (10) days after judgment before you begin the collection process.
15. 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 or 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 or 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 by the Sheriff's office or levying officer. The fee varies 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 Sheriff or levying collect their 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.

16. If your judgment is for automobile damages resulting from an accident and the debtor makes no effort to satisfy the judgment within sixty (60) days, you have an additional alternative. Contact the Court and request the clerk, in writing, to notify the Driver Control Bureau to suspend the debtor's driver's license and/or vehicle registration.
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 at least once against the debtor for the judgment due.

At the hearing, you will be allowed to ask the debtor questions about 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 "Certificate 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. An execution may be served by any sheriff in any county of the state.
20. Your judgment is good for ten (10) years (MCA 27-2-201(2)), 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. After 10 years, the judgment may be extended for good cause.
21. 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 OF THE COURT IS ALLOWED TO GIVE YOU LEGAL ADVICE. IT IS PROHIBITED BY LAW. WE MAY ONLY ASSIST YOU BY GIVING YOU THE NECESSARY FORMS, THE INSTRUCTION HANDOUT, AND ADVISING YOU OF THE OPTIONS AVAILABLE TO YOU TO PURSUE OR DEFEND A CIVIL ACTION.

An attorney is not necessary for you to pursue a civil action or defend against one. However, if you feel you need an attorney, you have a legal right to obtain one at any time during the proceedings.

If you do not understand the forms or the instructions, please contact an attorney to assist you.

HANDOUT — PROOF OF SERVICE FORM

Proof of the service of the summons and of the complaint and/or notice, if any, accompanying the same, must be as follows:

- (1) If served by the sheriff, deputy, constable, or other officer, by a certificate of service.
- (2) If served by mail, by the written acknowledgement of the defendant or defendant's attorney showing the time and place of service.
- (3) The certificate or affidavit of service mentioned above must state the time, date, place, and manner of service.
- (4) The affidavit of service, when served by other than a sheriff, deputy, constable, or other officer, must state:
 - (a) that the person so serving is of legal age;
 - (b) the date and place of service; and
 - (c) that the person making the service knew the person served to be the person named and intended to be served.

Each party served MUST be given a copy of the complaint and summons. Service may be made on the attorney of a party, if one is known or it is specifically ordered by the Court.

If there are any costs charged for service, the amount of the cost of service must be included in order to collect the money, IF the serving party obtains a judgment in Court.

SUMMONS AND PROOF OF SERVICE MUST BE FILED WITH THE COURT BEFORE THE COSTS CAN BE AWARDED IN A JUDGMENT !!!

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

COMPLAINT

Case No. _____

* * * * *

COME(S) NOW, the Plaintiff(s) and for his/her/their claim for relief against the Defendant(s), allege(s) as follows:

WHEREFORE, Plaintiff(s) request(s) judgment as follows:

DATED this ____ day of _____, 20__.

(Plaintiff(s) / Plaintiff(s) Attorney Signature

Defendant Address

Plaintiff / Attorney Address

Phone No.

Phone No.

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

SUMMONS

Case No. _____

* * * * *

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

YOU ARE HEREBY SUMMONED to answer the Complaint in this action, which is filed in the above entitled Court. A copy of same is served upon you. You must file your written answer with the above entitled Court and serve a copy upon the Plaintiff(s), or Plaintiff(s)' attorney within twenty (20) days after the service of this Summons, exclusive of the day of service. FAILURE TO APPEAR AND ANSWER will allow judgment to be taken against you by default, for the relief demanded in the Complaint. A \$15.00 filing fee must accompany the answer at the time of filing.

WITNESS my hand this ____ day of _____, 20__.

Judge

Plaintiff(s) Signature

Address

Phone No.

by: Clerk

Plaintiff(s) Attorney Signature

Address

Phone No.

STATE OF MONTANA)
: ss.
COUNTY OF _____,)

I HEREBY CERTIFY that I received the within Summons on the ____ day of _____, 20__, and personally served the same on the ____ day of _____, 20__, upon _____, in the County of _____. A copy of said Summons and Complaint, referred to in said Summons, was left with the Defendant(s).

DATED this ____ day of _____, 20__.

Service \$ _____
Mileage \$ _____
Total \$ _____

Sheriff / Deputy / Constable / Levying Officer

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

PRAECIPE

Case No. _____

* * * * *

TO CITY OFFICER / CONSTABLE / COUNTY SHERIFF / PROCESS SERVER:

Please serve Complaint and Summons on the Defendant(s) at:

_____.

and make your return to:

_____.

Dated this ____ day of _____, 20__.

Plaintiff(s) / Plaintiff(s) Attorney's Signature

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

AFFIDAVIT OF SERVICE

* * * * *

_____, being first duly sworn states as follows:

1. He/She is a bona-fide resident of the State of Montana and is of legal age.
2. That he/she is not a party to nor interested in this action.
3. He/She served the Complaint and Summons in this action on the Defendant by leaving with _____, this ____ day of _____, 20__, at ____:____.M.
4. That he/she knows the person served to be the person named in the papers served and it is the person intended to be served.

Date

AFFIANT

STATE OF MONTANA)
) ss:
City / County of _____)

On this ____ day of _____, 20__, before me, a Notary Public for the State of Montana, personally appeared _____, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same.

Notary Public for the State of Montana
Residing at _____.
My Commission expires _____.

CERTIFICATION FORM

STATE OF MONTANA)
) ss:
COUNTY / CITY OF _____,)

I, _____, a duly elected, qualified, and acting Justice of the Peace / City Judge, in and for the County/City of _____, State of Montana, do hereby certify that the _____

_____ is a true and correct copy of the _____

_____ filed in the attached action. And I further certify that I have compared the copy with the original on file in my office and that it is a full, true, and correct copy thereof.

Dated this ____ day of _____, 20__.

Judge

STATE OF MONTANA)
) ss:
COUNTY / CITY OF _____,)

I, _____, the duly elected, qualified, and acting County Clerk and ex Officio Recorder of the County of _____, State of Montana, do hereby certify that _____, whose name is subscribed to the above certificate was at the time of the same above and now is the elected, qualified, and acting Justice of the Peace / City Judge in and for the County of _____, City of _____, State of Montana.

In Witness Whereof, I have set my hand this ____ day of _____, 20__.

County Clerk and ex Officio Recorder in and for
the County of _____,
State of Montana

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE
* * * * *

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

**NOTICE AND
ACKNOWLEDGMENT
OF RECEIPT OF SUMMONS
AND COMPLAINT**

Case No. _____

TO: _____,
(insert name of person to be served)

The enclosed Summons and Complaint are served pursuant to Rule 4D(1)(b)(i) of the Montana Justice and City Court Rules of Civil Procedure. You may complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days after the date it was mailed to you as shown below.

If you do complete and return this form, you must sign and date the acknowledgment. If you are served on behalf of a corporation, limited liability company, a partnership, or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority. If you complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days after the date of your signature which you place on the acknowledgment below.

If you do not complete and return this form to the sender within 20 days after it was mailed to you as shown below, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a Summons and Complaint as permitted by law. IF YOU FAIL TO ANSWER THE COMPLAINT WITHIN THE 20 DAY PERIOD, JUDGMENT BY DEFAULT WILL BE TAKEN AGAINST YOU for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on the _____ day of _____, 20__.

Plaintiff Signature Date of Signature

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the Summons and of the Complaint in the above captioned matter at (insert address): _____

Signature Date of Signature

Relationship to Entity / Authority to Receive Service of Process: _____

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

ANSWER

Case No. _____

* * * * *

COME(S) NOW, _____, the Defendant(s)
named in the Complaint and answer(s) as follows:

DATED this ____ day of _____, 20__.

Defendant(s) Signature

Defendant(s) Attorney Signature

Address

Address

Phone No.

Phone No.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer was served upon the Plaintiff(s) or Plaintiff(s) attorney(s) by placing the same in the U.S. mails, postage fully paid thereon, addressed as follows:

Plaintiff(s) / Attorney's Address

Defendant's / Attorney's Signature

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

COUNTERCLAIM

Case No. _____

* * * * *

COME(S) NOW, the Defendant(s) and for his / her / their Counterclaim for relief against the Plaintiff(s) allege(s) as follows: _____

WHEREFORE, Defendant(s) request(s) judgment against Plaintiff(s) on their Counterclaim as follows: _____

DATED this ____ day of _____, 20__.

Defendant(s) Signature(s)

Address

Phone No.

Defendant(s) Attorney's Signature(s)

Address

Phone No.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Counterclaim was served upon the Plaintiff(s) or Plaintiff's(s') attorney(s) by placing the same in the U.S. mails, postage fully paid thereon, addressed as follows:

Plaintiff(s) / Attorney's Address

Defendant(s) / Attorney's Signature(s)

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

**INTERPLEADER AFFIDAVIT
AND ORDER**

Case No. _____

* * * * *

STATE OF MONTANA)
) ss:
COUNTY OF _____)

_____, being duly sworn, deposes and
says: That _____, a Defendant, resides at
_____. That a Defendant, resides at
_____.

That the Plaintiff has custody or possession of money in the amount of \$ _____, held
pursuant to the following:

That the Defendant(s) claim or may claim to be entitled to the money.

That the Plaintiff deposits into the Court, \$ _____, which represents the amount of
money in dispute.

That the Plaintiff resides at the following address:

Affiant

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

Judge

by: Clerk

ORDER

The State of Montana to the within named Defendant(s), GREETING:

You are hereby directed to appear and answer the within and foregoing claim at my office in _____, in the County of _____, State of Montana, on the ____ day of _____, 20__, at the hour of __:__ __.M; and to have with you then and there, all books papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, JUDGMENT WILL BE GIVEN AGAINST YOU AS FOLLOWS:

Determining or foreclosing your claim to the above described money, as well as the disposition thereof; and, in addition, for costs of the action.

Dated this ____ day of _____, 20__.

Judge

by: Clerk

Page 2 of 2 Pages

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
 BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

_____,)
 Applicant)
 _____,)
 Address)
 _____,)
 _____,)

**FINANCIAL DATA FOR
 INFORMA PAUPERIS
 APPLICATION**

Case No. _____

Phone Number _____
 Offense(s) charged: _____ Age: _____
 Defendant is _____ is not _____ in custody. DOB: _____

No. of Dependents _____ Date last employed: _____
 Employed by: _____

I am / my family is currently receiving on a monthly basis:

Salary	\$ _____	AFDC	\$ _____	Unemployment	\$ _____
SSI	\$ _____	Workers Comp	\$ _____	Medicaid	\$ _____
Pension	\$ _____	Food Stamps	\$ _____	Child Support	\$ _____
Retirement	\$ _____	Other Income	\$ _____	Spouse's Income	\$ _____

Assets:

Total Income:
 \$ _____

(LIST TOTAL VALUES)

Cash on hand or in bank \$ _____
 Wages/Money owed to you \$ _____
 Real Estate _____
 Real Estate value \$ _____
 Motor Vehicles _____

 Sporting Equipment _____
 (guns, boats, motorcycles, etc.) \$ _____
 Personal Property, i.e., Furniture,
 Appliances _____
 Value/personal property \$ _____
 Savings Accounts \$ _____
 Stocks/Bonds/Securities \$ _____

Monthly Debts:

(FILL IN AMOUNTS PAID OUT PER MONTH)

Rent/Mortgage payment \$ _____
 Utilities \$ _____
 Telephone \$ _____
 Groceries \$ _____
 Gas for Vehicles \$ _____
 Cable or Satellite \$ _____
 Drs., Hospitals \$ _____
 Courts \$ _____
 Attorneys \$ _____
 Credit Cards \$ _____
 Other Monthly Debts \$ _____

Total All Assets \$ _____

Total Debts per Month \$ _____

I do solemnly swear UNDER PENALTY OF PERJURY that the statements in this application are true, and that I have fully disclosed my assets. I am financially unable to employ an attorney. I understand that I may be required to pay all or a portion of the compensation and expenses incurred by my court appointed counsel if I am convicted of the pending charges and am able to do so.

SWORN TO this ____ day of _____, 20__.

 Signature of Applicant

 Judge

 Notary Public for the State of Montana
 Residing at _____
 My Commission expires _____

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

**INFORMA PAUPERIS
AFFIDAVIT AND ORDER**

Case No. _____

* * * * *

_____, being first duly sworn, on oath deposes and says:

That in the above entitled action, _____, has a good cause of action: that he / she is without funds and is unable to pay the costs of filing and service of this action or to procure security to secure the same and makes this Affidavit so that he / she may be permitted to action without prepaying the filing fees pursuant to the provisions of 25-31-113 MCA.

Date

Affiant

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

Notary Public for the State of Montana
Residing at _____, Montana
My commission expires _____

Let the applicant proceed without prepayment of costs.

Date

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

JUDGMENT

Case No. _____

* * * * *

This cause was heard in open Court on the ____ day of _____, 20____, before the Honorable Judge _____, sitting (with / without) a jury; the above named Plaintiff (was / was not) present in person and/or (with / without) counsel; the above named Defendant (was / was not) present in person and/or (with / without) counsel; and the facts having been presented to the Court and the Court having considered all and singular law applicable thereto and the evidence introduced and, being fully advised in the premises, NOW, THEREFORE:

IT IS HEREBY ORDERED and JUDGMENT IS MADE and entered in favor of _____ and against _____ as follows:

Principal Sum \$ _____
Credits _____
Filing Fees _____
Service Fees _____
Other Costs _____

For a Total Judgment to the _____ of \$ _____, said sum to bear interest at 10% per annum until paid.

Made and entered this ____ day of _____, 20____.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

**JUDGMENT
AFTER DEFAULT**

Case No. _____

* * * * *

The Defendant(s) _____, having been duly served a copy of the Complaint and Summons, and more than twenty (20) days having passed since the service thereof, and the Defendant(s) having FAILED TO APPEAR OR OTHERWISE DEFEND,

The default of Defendant(s) has been entered the ____ day of _____, 20__;
and,

The Plaintiff having shown by proper proof, basis for judgment, now;

IT IS HEREBY ORDERED AND JUDGMENT IS MADE and entered that the Plaintiff recover from Defendant the following:

Principal Sum \$ _____
Credits _____
Interest _____
Filing Fees _____
Service Fees _____
Other Costs _____

For a Total Judgment to the Plaintiff of \$ _____, said sum to bear interest at 10% per annum until paid.

Made and entered this ____ day of _____, 20__.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

**JUDGMENT
BY CONFESSION**

Case No. _____

* * * * *

_____, the Defendant(s) in the above entitled action, having filed a written statement, signed and verified on oath pursuant to Section 27-9-102 MCA, and attached hereto;

NOW, THEREFORE;

IT IS HEREBY ORDERED and JUDGMENT IS MADE and entered in favor of the Plaintiff and against the Defendant(s) as follows:

Principal Sum	\$ _____
Credits	_____
Interest	_____
Filing Fees	_____
Service Fees	_____
Other Costs	_____

For a Total Judgment to the Plaintiff of \$_____, said sum to bear interest at 10% per annum until paid.

Made and entered this ____ day of _____, 20__.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

STIPULATED JUDGMENT

Case No. _____

* * * * *

The Defendant(s) _____, having been duly served a copy of the Complaint and Summons, and the parties having reached an agreement for disposition for the above entitled case, the Plaintiff(s) (with / without counsel) and the Defendant(s) (with / without counsel) have entered a Stipulation for Judgment. A signed copy of the stipulation setting forth the terms of agreement is attached hereto.

IT IS HEREBY ORDERED AND JUDGMENT IS MADE and entered as follows:

Principal Sum \$ _____
Credits _____
Interest _____
Filing Fees _____
Service Fees _____
Other Costs _____

For a Total Judgment to the _____ of \$ _____, said sum to bear interest at 10% per annum until paid.

Made and entered this ____ day of _____, 20__.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

**JUDGMENT
ON THE PLEADINGS**

Case No. _____

* * * * *

_____, the Plaintiff(s) in the above entitled action, having filed a Motion for Judgment on the Pleadings, pursuant to Rule 21(4) of the Montana Justice and City Court Rules of Procedure and no legal or factual cause exists in the pleadings to prohibit such a finding by the Court;

NOW THEREFORE;

IT IS HEREBY ORDERED AND JUDGMENT IS MADE and entered in favor of the Plaintiff(s) and against the Defendant(s) as follows:

Principle Sum	\$ _____
Credits	_____
Interest	_____
Filing Fees	_____
Service Fees	_____
Other Costs	_____

For a Total Judgment to the Plaintiff(s) of \$ _____, said sum to bear interest at 10% per annum until paid.

Made and entered this ____ day of _____, 20__.

Judge

PROCEDURE FOR SUMMARY JUDGMENT

Either party may move, by motion, with or without affidavit, for a summary judgment in their behalf for any or all of the parts specified in the complaint or counterclaim. It must be supported by a memorandum. If no memorandum in opposition is filed, the motion is deemed well taken and may be granted.

The party requesting summary judgment must serve notice on the adverse party of the request. Such notice and request for motion must be served on the adverse party at least ten (10) days prior to the time fixed for hearing. The court must set a date for hearing, unless memorandums are filed by both parties and a hearing is not waived by both parties.

If the adverse party does not respond with a showing of genuine issue for trial or further proceedings, and if appropriate, a summary judgment shall be entered against the adverse party.

At the hearing a judgment may be issued if the pleadings, depositions (if any), answers, admissions, affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A judgment may be rendered on the issue of liability alone may be issued even if there is a genuine issue as to the amount of damages.

If judgment is not rendered upon the whole case, or for all the relief asked, the court shall ascertain what material facts still exist and order a date for trial on the remaining issues or set a hearing to determine the damages or other relief as the court finds necessary.

If during the course of the filing of the motion and hearing, the court determines that any affidavits are presented in bad faith or for the sole purpose of delay, the court shall order the party employing them to pay all reasonable expenses to the other party.

Reference: Rule 21, Montana Justice and City Court Rules of Civil Procedure;
Rule 56, Rules of Civil Procedure.

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

**REQUEST FOR HEARING
ON SUMMARY JUDGMENT**

Case No. _____

* * * * *

The Plaintiff(s) / Defendant(s) _____,
having been duly served a copy of the Complaint and Summons, or Counterclaim, and no denial
of the Complaint having been filed by the Plaintiff(s) / Defendant(s), on any cause of action not
substantiated by the Plaintiff(s) / Defendant(s), and service of the motion for Summary Judgment
having been served on the Plaintiff(s) / Defendant(s);

A hearing is requested to be set for the ____ day of _____, 20____, to
determine if there is any genuine issue as to any material fact of the case and the Plaintiff(s) /
Defendant(s) is entitled to a Judgment as a matter of law.

Dated this ____ day of _____, 20____.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

SUMMARY JUDGMENT

Case No. _____

* * * * *

After consideration of the testimony, evidence, and affidavits presented to this Court,

IT IS HEREBY ORDERED and SUMMARY JUDGMENT IS MADE and entered on behalf of the Plaintiff(s) / Defendant(s) as follows:

Principal Sum	\$ _____
Credits	_____
Interest	_____
Filing Fees	_____
Service Fees	_____
Other Costs	_____

For a Total Judgment to the _____ of \$_____, said sum to bear interest at 10% per annum until paid.

Made and entered this ____ day of _____, 20__.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

*	*	*	*	*	*	*
_____)					
_____)					
Plaintiff(s))					
)					
vs)					
_____)					
_____)					
Defendant(s))					
*	*	*	*	*	*	*

WRIT OF EXECUTION

Case No. _____

THE STATE OF MONTANA, TO THE SHERIFF, A CONSTABLE, OR A LEVYING OFFICER OF _____ COUNTY:

WHEREAS, on the ____ day of _____, 20____, _____ recovered a judgment in the said Court against _____ as follows:

Original or Balance due on Judgment in the amount of	\$ _____
Together with accrued interest at _____% per annum	\$ _____
Costs and Disbursements accrued	\$ _____
Less Credits	\$ _____
Total sum due and owing at date of this execution	\$ _____

Together with all costs of execution (and/or) for personal property described as follows:
(attach description if necessary)

NOW, you, the Sheriff, Constable, or Levying Officer, are hereby required to make this sum due on the judgment or damages, with interest, costs, and accruing costs, to satisfy the judgment out of the PERSONAL PROPERTY of the debtor NOT EXEMPT FROM EXECUTION on the day on which the judgment was docketed in the county, or at any time hereafter, and return this writ not less than 10 days nor more than 120 days after the date of issuance subscribed thereon, with a record of your actions, endorsed thereon.

Given under my hand this ____ day of _____, 20____.

Judge

by: Clerk

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

_____,)
_____,)

Plaintiff(s)

vs

_____,)
_____,)
Defendant(s)

**CERTIFICATION OF TRANSCRIPT
OF DOCKET**

Case No. _____

* * * * *

COMES NOW, Judge _____,
Justice of the Peace / City Judge / Clerk of the Justice Court / City Court, in the above entitled
County / City, and hereby certifies that the document attached is a true and correct copy of the
transcript of the original docket rendered in the above entitled action, on file in the office of the
Justice of the Peace / City Judge. I further certify that I have compared the copy with the
original on file and it is a full, true, and correct copy.

Witness my hand of the Justice / City Court of _____.

Dated this ____ day of _____, 20__.

Judge / Clerk of Justice / City Court

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

SATISFACTION OF JUDGMENT

Case No. _____

* * * * *

In the above-entitled action the Plaintiff(s) and the Defendant(s) have settled the said action by the Judgment Debtor having paid the Judgment Creditor the amount determined payable by such settlement agreement. The Judgment Creditor herewith acknowledges full and complete satisfaction of the Judgment entered in the above-entitled action.

Dated this ____ day of _____, 20__.

Judgment Creditor / Attorney Signature

Date

Judgment Creditor Signature

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

**ORDER OF
SUPPLEMENTARY HEARING**

Case No. _____

* * * * *

_____, Judgment Debtor, YOU ARE HEREBY ORDERED to appear before the above entitled Court on the ____ day of _____, 20__, at ____:____ AM/PM, to then and there list all personal property, not exempt, to satisfy the Judgment previously recorded against you.

Failure to appear and comply with this Order may constitute contempt of court pursuant to MCA 25-14-108, and a warrant of arrest may be issued against you.

Date

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

NOTICE OF APPEAL

Case No. _____

* * * * *

The above named Plaintiff(s) / Defendant(s) hereby appeal(s) to the District Court of the above named County from the Judgment entered in the above Justice / City Court entered on the ____ day of _____, 20__.

The Judge is requested to set an amount for Undertaking on Appeal. The amount set is \$_____. FURTHER,

The Judge is requested to transmit the record on appeal to the District Court as provided by law.

(IT IS THE DUTY OF THE APPELLANT TO VERIFY THE AMOUNT OF UNDERTAKING SET AND TO POST THE SAME WITH THE JUSTICE / CITY COURT BEFORE TRANSMISSION BY THE JUSTICE / CITY COURT OR FORWARD SAME TO THE DISTRICT COURT TO PERFECT THE APPEAL. MCA 25-33-201)

Dated this ____ day of _____, 20__.

Appellant

* * * * *

Certificate of Service

I hereby certify that a true and correct copy of the Notice of Appeal was served upon the Plaintiff(s) / Defendant(s) or their attorney(s) by placing the same in the U.S. mail, postage fully paid thereon, addressed as follows:

Appellant

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

Form A

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

**PRE-TRIAL NOTICE
OF HEARING**

Case No. _____

* * * * *

You are hereby notified a pre-trial conference is scheduled on the ____ day of _____, 20__, at ____ : ____ .M., in the _____ courtroom located at _____, _____, Montana.

THIS IS NOT THE TRIAL.

This conference is held prior to trial to narrow the issues to be tried, to make trial preparation easier, and to possibly settle the issues and avoid a trial.

FAILURE TO APPEAR FOR PRE-TRIAL OR NOTIFY THE ADVERSE PARTY AND THE COURT OF AN ALTERNATE CHOICE, MAY RESULT IN JUDGMENT AGAINST YOU; AND/OR SANCTIONS BEING IMPOSED; OR CONTEMPT PROCEEDINGS BEING FILED.

Dated this ____ day of _____, 20__.

Judge

By: Clerk

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE
* * * * *

Form B

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

**PRE-TRIAL NOTICE
OF HEARING**

Case No. _____

You are hereby notified a pre-trial conference is scheduled on the ____ day of _____, 20__, at ____: ____ .M., in the _____ courtroom located at _____, _____, Montana.
THIS IS NOT THE TRIAL.

This conference is held prior to trial to narrow the issues to be tried, to make trial preparation easier, and to possibly settle the issues and avoid a trial.

If you do nothing, then this pre-trial conference will proceed as scheduled. **THERE ARE ALTERNATIVES.**

You may choose of the following alternatives. Notification to the Court of your choice and to the other party **MUST BE DONE 10 DAYS PRIOR** to the pre-trial date. I choose:

1. To have the pre-trial hearing by conference telephone call. It will be my responsibility to arrange for the call and pay for the costs associated with a conference call. The time for the call is the time set for pre-trial above.
2. To ask for a trial date to be set without having a pre-trial conference.

If you choose one of the alternatives above, **YOU MUST NOTIFY THE ADVERSE PARTY IN WRITING.** You must **NOTIFY THE COURT BY RETURNING THIS FORM** to the Court indicating your choice, **10 days prior to the pre-trial**, the pre-trial will proceed as scheduled.

FAILURE TO APPEAR FOR PRE-TRIAL OR NOTIFY THE ADVERSE PARTY AND THE COURT OF AN ALTERNATE CHOICE, MAY RESULT IN JUDGMENT AGAINST YOU; AND/OR SANCTIONS BEING IMPOSED; OR CONTEMPT PROCEEDINGS BEING FILED.

Dated this ____ day of _____, 20__.

Judge

By: Clerk

CIVIL PRE-TRIAL GUIDE

The purpose of the pretrial is to assure that all parties are prepared to go on to trial, if necessary, and to discuss alternate means of settling the dispute at an early stage of the proceedings. The pretrial is a conference ordered by the court and held in the courtroom to facilitate a face to face discussion of the issues of the case. Some cases are not appropriate to go on to trial because there is no material issue of dispute or disagreement between the parties. If the parties agree that all or a portion of the debt is owed, then those specific issues are not in dispute and can be settled by agreement without going on to trial.

Pre-trial conferences include full “discovery” of evidence (bills, receipts, agreements, contracts, photos, etc.). At the pre-trial, you must be prepared to bring all documents that you anticipate will be introduced as evidence at the trial and you must provide a copy of each potential exhibit to the opposing party. In addition, you must provide a list of witnesses that you expect to testify at trial, with their names, addresses, and telephone numbers, for the opposing party. If you do not comply with discovery, you will be prohibited from entering those exhibits or witnesses at the trial.

There are no surprises in Justice/City Court. Each party to the lawsuit has the right to be fully advised of what information will be used to establish the validity of each side of the case. If this case does go on to a trial, the Judge will set deadlines for each party to comply with discovery issues. If you do not comply with discovery, you will be prohibited from entering those exhibits or witnesses at the trial.

You must be prepared to frankly discuss the issues of the case and the evidence you have. You **should not bring your witnesses** to the pre-trial. This is not the proper time for witnesses to appear. **Only the issues of the case** are to be discussed. This is no time for personality conflicts, but rather a time to discuss the facts of the case. It is recommended that you come to the pre-trial with an open mind and be ready to compromise and possibly settle.

Some cases cannot be settled at the pre-trial conference and a trial will need to be set. This is the last option that should be considered because of time and possible costs to one or both parties. If a case is set for trial, the Judge, at the pre-trial, will set a schedule of events, including dates to comply with discovery, motions, and subpoenas.

At the trial, which is a more formal setting than the pre-trial conference, the Judge will strictly apply the Rules of Civil Procedures and the Rules of Evidence to control the trial and the presentation of evidence. The rules cannot be altered to fit your situation or lack of courtroom experience. The Judge will be considerate of your lack of knowledge with the court system, but you will be expected to participate according to the rules. The Judge will base a decision on facts, the law, and the testimony of the witnesses. The Judge is not allowed to base decisions on sympathy or other feelings of emotion. The Judge will not want to hear family history, either negative or positive, nor any information that is not specifically connected to the issues of the case.

If you or your attorney fail to appear for the pre-trial conference or if you are not prepared to negotiate a settlement, sanctions may be imposed against you. This could include the dismissal of your case, having a judgment entered against you, payment of the reasonable costs incurred by the opposing party and their attorney, or being assessed court fines and penalties. The pretrial is set well in advance to facilitate your preparation. Please be prepared! The pre-trial conference will take between 15 and 30 minutes. Plan accordingly.

If you have any questions, call the Court or send your written questions to the Court well in advance of the scheduled pre-trial conference.

CIVIL PRE-TRIAL CONFERENCE CHECKLIST

Date _____ Case No. _____

PLAINTIFF ADDRESS / PHONE NO.

DEFENDANT ADDRESS / PHONE NO.

- 1. Do we have a return on the original summons? Y / N
- 2. Has a counterclaim been filed in this case? Y / N
- 3. Was Plaintiff present? Y / N
- 4. Was Plaintiff represented by an attorney? Y / N

ATTORNEY ADDRESS / PHONE NO.

- 5. Was Defendant present? Y / N
- 6. Was Defendant represented by an attorney? Y / N

ATTORNEY ADDRESS / PHONE NO.

- 7. Have any motions been filed in this case? Y / N
— List all motions filed:

-
- 8. Were both parties notified of their responsibility for discovery and disclosure of evidence Y / N

Results of Pre-trial Conference:

- 1. Was there an agree settlement? Y / N
(a) Stipulated Judgment as follows:

Principal Sum \$ _____
Credits _____
Interest _____
Filing Fees _____
Service Fees _____
Other Costs _____

For a Total Judgment to the _____ of \$ _____, said sum to bear interest at 10% until paid.

- (b) Amount of weekly / monthly payment? \$ _____
- (c) First payment due? \$ _____

If payment schedule is not met in a timely manner:

- 1. The judgment creditor (Plaintiff / Defendant) may request a Writ of Execution on the balance of the judgment. Interest will be added at the statutory rate of 10% per annum.
- 2. Judgment fee of \$10 is assessed the prevailing party.
- 3. Judgment fee paid on _____.

Trial:

- 1. No settlement was reached between the parties and the matter is scheduled for bench / jury trial on _____.
- 2. The time allotted for trial is _____ Hours / Days.
- 3. Witness subpoena discussed? Y / N

Handouts given:

- 1. Bench trial guide? Y / N
- 2. Jury trial guide? Y / N
- 3. Other _____ Y / N

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

TRIAL DATE SETTING

Case No. _____

* * * * *

The trial in the above entitled matter is set for _____, 20__ at
: ____ . M in the _____ Courtroom, located at
_____.

You are entitled to be represented by counsel and to have witnesses testify in your defense.

All motions must be served on the opposing party ten (10) days prior to the above trial date with a reply motion submitted five (5) days thereafter. All motions and reply motions must be filed with this Court.

Dated this ____ day of _____, 20__.

Justice of the Peace / City Judge

By: Clerk

HANDOUT / PROCEDURE FOR CIVIL BENCH TRIAL

1. The Judge will announce the case and may make general comments.
2. Both parties may make an opening statement. This statement is not testimony. The opening statement must be an overview of what is expected to be shown by the testimony of the case. The statement is not testimony and can be waived without any affect on your case. **NOTHING IN THE OPENING STATEMENT WILL BE CONSIDERED IN THE COURT'S DECISION.** Both the Plaintiff and the Defendant may testify as their own witness.
3. The Plaintiff will call a witness to the stand. The Judge will administer the oath.
 - (a) The Plaintiff will question the witness.
 - (b) The Defendant may question the witness about the information just covered.
 - (c) The Plaintiff may question the witness again. (Can be omitted)
 - (d) The Defendant may question the witness again, IF THE PLAINTIFF DID under (c), above.

This procedure will be followed for each witness. The Plaintiff will then rest his/her/their case. After all the Plaintiff's witnesses have testified and all evidence is submitted, the Judge may dismiss the case at this time, if the Plaintiff has not met the standards of proof and upon motion of the Defendant.
4. The Defendant may call a witness to the stand and follow the same procedure, as listed above, with the exception that the Defendant will question his witnesses first. The Plaintiff will question next, etc. The Defendant will then rest his/her/their case after all the Defense witnesses have testified and all Defense evidence is submitted.
5. The Plaintiff may call additional (rebuttal) witnesses.
6. The Judge may question any witnesses throughout the trial.
7. Physical evidence such as contracts, rental agreements, photos, and other papers need to be submitted during the presentation of your side of the case. All documents must have "foundation" before being admitted as evidence by the Court. Foundation means that there must be a witness, in court, who can testify as to the authenticity of the document, i.e., the keeper of the business records, author or co-author of a contract, person who actually took the photos. Statements and letters, even notarized, **are not allowed** as evidence. Personal sworn testimony is always the best evidence.
8. The Plaintiff will make an initial closing statement and the Defendant will follow. This statement is not testimony, nor is it a rehash of the testimony. This statement is simply a conclusion of the testimony and evidence already presented. Since the closing statement is not testimony, it may be waived without any effect on your case. **NOTHING IN THE CLOSING STATEMENTS WILL BE CONSIDERED IN THE COURT'S DECISION.**
9. The Judge will make a decision based on the preponderance of the evidence presented at trial.

FAILURE TO APPEAR FOR TRIAL may result in dismissal of your claim or a judgment being filed against you.

BENCH TRIAL SCRIPT — CIVIL

“The Justice/City Court of _____ County/City is now in session. My name is Judge _____. Is the Plaintiff ready to proceed? Defendant?”

(**** For pro se litigants — ask if it is necessary to review court procedure. If either party says yes, or seems unsure, the Judge should give each an overview of the HANDOUT / PROCEDURE FOR CIVIL BENCH TRIALS. If the parties seem comfortable with the procedure, continue with the case. ****)

“Remember that this is a civil case. The burden of proof is “a preponderance of the evidence.” This means that if the scales are tipped, one way or the other by the evidence presented, that will be the way the court rules in this case. The burden is on the Plaintiff to prove that this complaint is a just and valid debt (injury, etc.) and is owed to the Plaintiff by the Defendant. If there is a counterclaim, the Defendant has the burden to prove that the counterclaim against the Plaintiff is just and valid. The same burden or preponderance of the evidence is the threshold for proof.”

“You should also remember to “submit” any papers, bills, receipts, or other written evidence, during each of your cases.”

“Are there any pre-trial motions?” (Handle each motion separately)

“(Plaintiff) _____, do you wish to give an opening statement?”

“(Defendant) _____, do you wish to give an opening statement now or reserve it until later?”

TO Plaintiff: “Call your first witness.”

(Each witness will be placed under oath by the Judge. Each witness will testify under direct examination, cross examination by the Defense, redirect examination, and recross. After each witness goes through the examination process, tell the witness he/she may step down.

Continue with all the Plaintiff’s witnesses. If the Plaintiff is pro se and wishes to testify in his/her own behalf, let him/her tell their story under direct and redirect.)

The Plaintiff will then “rest” their case.

The Defendant may make an opening statement, if reserved earlier. If opening has already been given by the Defense, proceed with the Defense witnesses. Again, you will place the witness under oath and the order of testimony will proceed as listed above.

If the Defendant is pro se and wishes to testify in his/her own behalf, let him/her tell the story under direct and redirect.

After the Defense calls all their witnesses, they will rest their case.

The Plaintiff may then call witnesses on Rebuttal. The same rules for witnesses apply here. The Plaintiff will again rest their case.

“This concludes the testimony of the trial. Are both parties ready to give closing statements?”

If both parties are pro se (representing themselves), you may find it necessary to intervene during the examination of witnesses. IF YOU CHOOSE TO INTERVENE, be sure that you do not take sides, but assist only in retrieving pertinent information helpful for you to base a decision on.

The Plaintiff is allowed to give a closing statement first, then the Defense, and final closing may be given by the Plaintiff.

You may now give a judgment or take a brief recess to consider all the testimony and evidence presented to you. This recess is not necessary, however, it may help to leave the courtroom and gather your thoughts before you make a decision. Sometimes it is necessary to take some additional time to make a decision. REMEMBER, you are only allowed 30 days to enter a judgment. You should set a time certain for judgment, so all parties know what to expect.

You should consider entering “Findings of Fact, Conclusions of Law, and Judgment.” It is not required by statute, however, this is a good format to organize your thoughts and gives the parties a clear understanding of your judgment.

This is a good time to address any questions about the appeal process and the execution process. Both parties should be advised of any information necessary to complete their cases

“Court is adjourned.”

JURY TRIAL SCRIPT — CIVIL

It is highly recommended that you have a bailiff for all jury trials. A bailiff is very helpful in organizing jurors, swearing in witnesses, and sitting while the jury is deliberating.

Prior to the day of trial, review with your Bailiff exactly what you expect from him/her and what they can expect from you. This should include how you will seat the jurors, how to handle peremptory challenges, etc. There shouldn't be any surprises between the two of you.

Before you begin, make sure all the prospective jurors have arrived. During this time, take the attorneys/parties into chambers and hear all pre-trial motions, motions to exclude witnesses and other Motions in Limine and make your decisions at this time.

The Bailiff will announce the Court and the Judge while you are coming in. Ask everyone to be seated.

“Good Morning, Ladies and Gentlemen. The first function today is to call a roll of the jury. Please answer as your name is called.” (Bailiff will read the names and you should check them off on your list at the same time.)

“Thank you for coming today. You have been called on to take part in one of the highest duties of citizenship. The Court appreciates your participation. The trial should be completed in _____ (days / today.) Every effort will be made to see that your time is not wasted.

Six jurors, and possibly one alternate, will be chosen to decide what the judgment should be in this case, judgment for the Plaintiff or judgment for the Defendant, based on the law, the evidence presented, and my instructions. This case is a “civil” case as distinguished from a criminal case. We will not be dealing with any criminal law or crimes. The individual who began this case by filing a complaint is called the Plaintiff. Today the Plaintiff is _____. The person(s) responding and denying the complaint is the Defendant. Today the Defendant is _____.

Before we begin to hear the evidence of this case, there are some preliminary matters that must be taken care of.

You will be placed under oath and then I have certain questions to ask you to determine your qualifications to serve as jurors in this case.”

(JUDGE or BAILIFF) — ask the jury panel to stand, raise their right hands, and administer the oath:

“Do you and each of you, solemnly swear that you will make true answers to the questions that may be asked of you, as to your qualifications to serve on the panel of jurors during this term of Court, SO HELP YOU GOD?” “You may be seated.”

“In order to serve as a qualified juror today, you must be:

- 1. at least 18 years of age;**
- 2. currently registered to vote in the State of Montana, County of _____, City of _____;**
- 3. must not have ever been convicted of a felony, malfeasance in office, or other high crime AND NOT have had your civil rights restored.”**

“In addition, do you have a health problem that may interfere with your ability to serve on this case? Do you have any other reason to believe that you are not qualified to serve on this case?”

“If, in response to any of the reasons I have recited, you feel you are not qualified, you may be excused. If you have any questions, please step forward and we will discuss the matter in chambers.”

If no one needs to be excused, you should pass the jury panel for cause by stating, **“The Court passes the jury panel for cause.”**

“The attorneys for today’s trial are:

Attorney for the Plaintiff: _____

Attorney for the Defendant: _____.

The Bailiff is _____ and (he/she) will help both the Court and the Jury during the course of the trial.”

You will now ask the Bailiff to read the names of the prospective jurors (from a list similar to the “JURY LIST FORM” to seat the jury panel. Explain to the panel that as their name is called, they will be seated in turn, until all jurors are seated. It is less time consuming and confusing if ALL prospective jury members are seated and go through the “voir dire” process at the same time.

This way, if any juror is excused “for cause”, you will not have to stop the voir dire and have the attorneys “catch up” on questioning the newly seated juror.

“As the Bailiff reads your name, please have a seat as I have indicated. After you have all been seated, both parties will be asking questions of you. This is known as “voir dire” and means to speak the truth. The purpose is to obtain six (6) persons who will impartially try the issues of this case. This examination is to determine if your decision in this case would be influenced, in any way, by opinions you may have, personal experiences, or special knowledge about this case. This questioning process is not for the purpose of prying into your private affairs for personal reasons, but rather to get an impartial jury. Remember that we will only need 6 jurors to stay and hear this case. Some of you will be excused for any number of reasons or perhaps for no reason at all. This decision is based on several factors, not on you personally.”

“The trial will be conducted as follows: First the Plaintiff is allowed to give a brief opening statement. The Defendant may give an opening statement also, or reserve the statement to a later time in the trial. Following the opening statements, witnesses will testify and exhibits may be introduced. When all the evidence and testimony have been given, the parties will argue the merits of each of their cases. The opening statements and the closing arguments are not evidence. Then the case will be submitted to you for your deliberation.”

“(Plaintiff) _____ Are you ready to proceed?”

The Plaintiff will go through a series of questions, then say, “The Plaintiff passes the jury for cause.” There may be a juror that has been excused earlier, so his acceptance is for the jurors still present.

“(Defendant) _____ Are you ready to proceed?”

The Defense will go through his series of questions, and as above, will “pass the jury for cause.”

Now, the peremptory challenges are exercised by the parties. The procedure should be for the Bailiff to take the Judge’s list of jurors, hand it first to the Plaintiff, then to the Defendant, until they have exercised or waived each of their 2 challenges.

After the Defense makes their last choice, the Bailiff should show that choice to the Plaintiff and then give the list back to the Judge. The first six (6) names not challenged will be the jury chosen. You should ask the attorneys whether they feel an alternate is necessary before you read the list of chosen jurors. If the trial is a one-day trial, an alternate is usually not necessary. Then you should read the list of chosen jurors aloud.

While the peremptory challenges are being exercised, the courtroom is as “quiet as a tomb.” It is not necessary to just sit there. You should advise the jury panel that the attorneys are exercising their options, by law, to get a jury that each feel will best “listen” to their case. You should try to set the jury at ease. The whole proceeding is foreign to the jury and they would like to know what’s happening. This is a good time to explain the jury process and show the public why we are the “people’s court.” Also, this is a good time to tell the jury panel that if their name is not called, they are welcome to stay and listen to the trial and take the opportunity to see “their” court in action. Thank them for being present, whether they get chosen this time or not. This helps put you in charge, makes everyone more comfortable, more informed, and usually ready to listen more attentively and take part in the process.

When the Bailiff returns the jury list to you, with all the peremptory challenges, carefully review the names of the jurors chosen. Then read them aloud. Advise the chosen jurors that they will stay to hear the case. Excuse those not chosen and explain that they will not be called again during this jury term (July 1 through June 30), but may be called in some other year. Thank the excused jurors and advise them that they may stay and listen.

Reseat the jurors so they are in line, as chosen, and in the front row of the jury box. After they are seated, ask the parties,

“Do you stipulate that these are the chosen jurors?”

Ask the chosen jurors to stand, raise their right hand, and administer the following oath:

“Do you and each of you solemnly swear (or affirm) that you will well and truly try the case now at issue and a true verdict render according to the Law and the evidence, SO HELP YOU GOD?”

“Please be seated.”

Page 4 of 11 Pages

You should explain to the jury that you will be reading some preliminary instructions. The instructions will be sent into the deliberation room with them for review. The instructions are given now to assist the jury on how they should listen to the evidence and give them a overview of the trial procedure. Read preliminary instructions: (taken in part from criminal instructions — MCJI)

“Ladies and Gentlemen of the Jury:

It is my duty to instruct the jury on the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you.

No remark made and no instruction given is intended to express my opinion as to the facts in this case or what verdict you should return.

You should take the law in this case from these instructions alone. You should not accept anyone else’s version as to what the law is in this case. You should not decide this case contrary to these instructions, even though you might believe the law ought to be otherwise. Counsel, however, may comment and argue to the jury upon the law as given in these instructions. If, in these instructions, any rule, direction or idea is stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. You are not to single out any sentence or any individual point or instruction, and ignore the others. You are to consider all of the instructions as a whole, and are to regard each in the light of all the others. The order in which the instructions are given has no significance as to their relative importance.

The function of the jury is to decide the issues of fact resulting from the complaint filed in this Court by the Plaintiff and the Defendant’s filing of an answer (and counterclaim). You must perform this duty uninfluenced by passion or prejudice.

You are to be governed by the evidence introduced in this trial and the law as stated to you by me. The law forbids you to be governed by sentiment, conjecture, sympathy, passion, or prejudice. Both the Plaintiff and the Defendant have the right to demand, and they do demand and expect, that you will act conscientiously and dispassionately in considering and weighing the evidence and applying the law of the case.

You are the sole judges of the credibility, that is, the believability, of all the witnesses testifying in this case, and of the weight, or the importance, to be given their testimony. In judging the effect of evidence you must be fair and impartial and not arbitrary.

Page 5 of 11 Pages

While you have discretion in judging the effect of evidence, you must exercise that discretion in accordance with these instructions.

The evidence presented by one witness whom you believe is sufficient for the proof of any fact in this case.

You are not bound to decide any fact based upon the testimony of a larger number of witnesses whose testimony does not convince you against the testimony of a smaller number of witnesses (or against a presumption), or other evidence which does convince you.

In determining what the facts are in this case, it may be necessary for you to determine what weight should be given to the testimony of each witness. To do this you should carefully consider all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether a witness is worthy of belief. You may consider:

- 1. The appearance of each witness on the stand, his manner of testifying, his apparent candor or lack of candor, his apparent fairness or lack of fairness, his apparent intelligence, his knowledge and means of knowledge on the subject upon which he testifies.**
- 2. Whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice.**
- 3. The extent to which each witness is either supported or contradicted by other evidence in the case.**
- 4. The capacity of the witness to perceive and communicate.**
- 5. Proof that the witness has a bad character for truthfulness.**

If you believe that any witness has willfully testified falsely as to any material matter in the case, you must reject such of his testimony as you believe to have been false and you have the right to view the rest of his testimony with distrust and, in your discretion, disregard it, unless after examination of all the evidence, you find such testimony worthy of belief. You need not find a witness's testimony false if, while testifying, (he or she):

- 1. unintentionally commits an error in his or her testimony, or**
- 2. is unintentionally mistaken as to some matters or facts about which he or she testifies,**
or
- 3. gives evidence concerning matters not material in this case without intention of deceiving the Court or jury.**

It is important that as jurors and officers of this Court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the Court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of this trial. In fairness to the Plaintiff and the Defendant, you should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instructions, and after the parties' final arguments. You may only enter into discussion about this case with the other members of the jury after it is submitted to you for your decision. All such discussion should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, leave and report the incident to me as soon as you are able to do so. You should not tell any of your fellow jurors about anything that you feel necessary to bring to the attention of the Judge.

Third, although it is a normal human tendency to talk and visit with people, both at home and in public, you may not, during the time you serve on this jury, talk with any of the parties or their attorneys or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial you may not make any investigation of this case or inquiry outside of the courtroom on your own. You may not go to any place mentioned in the testimony without explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias, or any other source of information unless I specifically authorize you to do so.

Fifth, if during the course of the trial there is reason to believe any of these rules have been violated, I will make inquiry of individual jurors and take appropriate action.

During your deliberations, a Bailiff will be appointed to keep you together and prevent conversations between you and any other persons. The Bailiff will provide you requirements such as meals and lodging, if necessary. The Bailiff cannot answer any questions about this case or provide you with any information, books, or materials, as I have strictly forbidden him/her to do so.

I will instruct you on the laws you must apply to the evidence presented in the case in order to reach a verdict, both orally and by giving you a set of written instructions which you will take with you during your deliberations. These instructions are intended to cover all necessary laws which are pertinent to the case.

If you have a question, you must put it in writing and give it to the Bailiff. Often, I am not allowed to answer those questions. However, if there is any disagreement among you as to the testimony of any particular witness or witnesses, or if you desire to be informed on any point of law arising in the case, you may indicate in writing that part of the testimony about which you disagree or the point of law about which you wish to be instructed. It will then be considered by the Court.” (This instruction is to provide less encouragement for the jury to ask questions during deliberations which cannot be answered. If the jury does find it necessary to ask a question, the instruction and the statute provides a standardized procedure for ensuring the question and answer are preserved in writing for the record).

“The pleadings in this case today read as follows:” (Read the complaint, answer (counterclaim).

“The attorneys will now begin with their opening statements and then we will proceed to the testimony of the witnesses. After all the testimony and evidence is received, I will read final instructions. The attorneys will then be allowed to give their closing arguments before the case is given to you for deliberation.”

“(Plaintiff Attorney) _____, you may proceed.”

The Plaintiff will make an opening statement. The Defense may also wish to give an opening statement now, or may reserve it until before the first defense witness is called.

“(Defense Attorney) _____, do you wish to give your opening statement at this time?”

“(Plaintiff) _____, please call your first witness. The witness will be sworn by the Bailiff.” The Bailiff will swear in the witness

**Oath — “Do you solemnly swear that the testimony you give in
this cause will be the truth, the whole truth, and nothing
but the truth, SO HELP YOU GOD?”**

and the witness should be directed to sit in the witness chair.

Each side is allowed to question each witness twice, i.e., direct, cross examination, redirect, and recross. Don't let it go any further than that. When each witness has finished their testimony, tell them, **"You may step down."** You should also inquire of the attorneys if the witness can be excused and allowed to leave the premises.

The Plaintiff will continue to call witnesses. After the last witness has testified, the Plaintiff will say, "I rest my case." It is then time for the Defense to present their "case in chief." Occasionally, the Defense will make a Motion to Dismiss at this time for the failure of the Plaintiff to prove their case.

GRANT THE MOTION IF the Plaintiff did fail to prove the case or has failed to present enough evidence for the jury to make a decision.

DENY THE MOTION IF you feel enough evidence was presented and the case should go to the jury for deliberation. Continue the trial.

Ask the Defense Attorney to make his opening statement, unless already given.

"(Defendant) _____, call your first witness." The same procedure for witnesses and taking testimony will be used, including the oath by the Bailiff. After the Defense has presented all of their witnesses and evidence, they will rest their case. The State/City has the opportunity to call "rebuttal" witnesses since they have the burden of proof.

"(Plaintiff) _____, do you have any rebuttal witnesses?" The procedure is the same for rebuttal witnesses.

"This concludes the testimony and evidence. We will now take a recess to settle on instructions that will be read to you."

Don't forget to admonish the jury during this recess, as you should for every recess.

In chambers, the parties will submit proposed instructions to be read to the jury. Listen to their arguments and YOU MAKE the decision on which instructions to include. You should refer to the statutes. Sign each instruction that will be read to the jury. The copy to be given to the jury SHOULD NOT include the references or cites.

You should also set the amount of time each party may use for closing arguments. Put your instructions in order. You are ready to continue the trial.

"Do the attorneys stipulate that this is the chosen jury?"

"Ladies and Gentlemen of the jury, the instructions that I will read to you now are to be regarded with the instructions that I read earlier."

When you are taken to the jury room to begin your deliberations, you should first select a foreperson. He or she should see to it that jury discussion goes forward in a sensible and orderly fashion and that each juror has the opportunity to discuss the issues fully and fairly.

The attitude and conduct of jurors at the beginning of their deliberations is very important. At that time, it is usually not helpful for any juror to make a strong expression of his opinion or to say that he is going to stand for a certain verdict. Such a juror may be unwilling to change his opinions even if he later thinks it is incorrect.

The jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment. This means that you may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case together with the law which relates to this case as contained in the instructions.

In the course of deliberation, a juror has a right to re-examine his own views and change his opinion if he is convinced to do so by fair and honest discussion by any member or members of the jury, based upon the evidence the jury saw and heard in the trial and the law as given you in these instructions.

However, no juror should surrender his/her honest opinion as to the weight or effect of evidence or as to the final decision for judgment because the majority of the jury feels otherwise, or for the purpose of returning a two-thirds verdict or to prevent a mistrial.”

“Your foreperson must sign any verdict upon which you agree.”

“(Plaintiff) _____, you may proceed with closing.”

“(Defendant) _____, you may close.”

“(Plaintiff) _____, you may proceed with final closing.

You will now place your Bailiff under oath to take the jury to the deliberation room.

Oath — “Do you solemnly swear that you will take charge of this jury and keep them together in some private place, and that you will not permit any person to speak to, or communicate with them, or do so yourself unless by order of the Court. When they have agreed on a verdict, or when ordered by the Court, you will return them to the Court, SO HELP YOU GOD?”

Page 10 of 11 Pages

When the Bailiff notifies you that a verdict has been reached, call both parties to reassemble in the courtroom. When all parties are present, have the Bailiff return the jury to the courtroom.

“Court is again in session. Would the attorneys stipulate this is the chosen jury? Would the foreperson of the jury please stand? Have you reached a verdict? Please hand your signed verdict to the Bailiff, and you may be seated.”

The Bailiff will hand the verdict to you, and you should note the verdict. You or the Bailiff may read the verdict aloud. This decision should be made before the trial begins. If the Bailiff reads the verdict, he/she will hand the verdict back to you after it’s been read.

“Would either party like to have the jury polled?” If either party answers yes, then you must ask each juror what their verdict is so you can verify that two-thirds have agreed on a verdict.

“The verdict if the jury is the Judgment of this Court, and is entered in the docket as such.”

“Court is adjourned.”

JURY LIST FORM

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

_____ vs _____ Case No. _____

* * * * *

JURORS	STATE CHALLENGE	DEFENDANT CHALLENGE	EXCUSED FOR CAUSE	REMARKS
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				

Plaintiff Challenge Waived

Defendant Challenge Waived

1. _____ 2. _____ 3. _____

1. _____ 2. _____ 3. _____

JURY HANDOUT / ORDER OF TRIAL — CIVIL

The trial today will proceed as follows:

Voir dire of prospective jurors by the Plaintiff.

Voir dire of prospective jurors by the Defense.

Preliminary instructions by the Court.

Opening statement by the Plaintiff.

Opening statement by the Defense (may be reserved).

Testimony of Plaintiff witnesses.

Opening statement by the Defense (if not given before).

Testimony of Defense witnesses.

Final instructions by the Court.

Closing argument by the Plaintiff.

Final closing by the Plaintiff.

Case submitted to the jury for deliberation.

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * * * * *

_____,)

_____,)

Plaintiff(s))

vs)

_____,)

_____,)

Defendant(s))

* * * * * * * *

PLAINTIFF

MINUTES OF EVIDENCE

Case No. _____

DEFENDANT

Atty: _____ Pro Se: _____

Atty: _____ Pro Se: _____

WITNESSES: (Sworn, Testified)

WITNESSES: (Sworn, Testified)

1. _____

1. _____

2. _____

2. _____

3. _____

3. _____

4. _____

4. _____

5. _____

5. _____

EXHIBITS:

EXHIBITS:

1. _____

1. _____

2. _____

2. _____

3. _____

3. _____

4. _____

4. _____

MOTIONS:

MOTIONS:

1. _____

1. _____

2. _____

2. _____

3. _____

3. _____

4. _____

4. _____

(Use Symbols "D" for Denied and "G" for Granted after each motion.)

Additional Notes: _____

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

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

VERDICT FORM

Case No. _____

* * * * *

We, the Jury, answer the questions submitted to us in this Special Verdict as follows:

QUESTION NO. 1: Was the Defendant guilty of negligence which was the cause of the claimed damages?

ANSWER: Yes _____ No _____

If you answered the above question "No", you will not answer the remaining questions, but will simply sign the Verdict.

If you have answered Question No. 1 "Yes", then you must answer Question No. 2.

QUESTION NO. 2: What was the full amount of damage sustained by the Plaintiff?

ANSWER: \$ _____.

QUESTION NO. 3: Was the Plaintiff guilty of negligence which was the cause of the alleged damages?

ANSWER: Yes _____ No _____

If you have answered "No" to Question No. 3, then you will not answer Question No. 4, but will simply sign the Verdict.

If you have answered "Yes" to Question No. 3, then you must answer Question No. 4.

QUESTION NO. 4: Considering the negligence of the Plaintiff and the Defendant that caused the accident at one hundred percent (100%), what percentage is attributable to:

Plaintiff _____ %
Defendant _____ %
TOTAL 100%

Dated this ____ day of _____, 20__.

Foreperson

SMALL CLAIMS SECTION

I. **Purpose**

25-35-501 MCA. It is the purpose of this chapter to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial.

II. **Jurisdiction — Venue**

Jurisdiction of small claims court is for the recovery of money or specific personal property, not exceeding \$3,000, exclusive of costs, and the Defendant can be served within the county where the filing occurs.

Interpleader actions filed in small claims court cannot exceed \$3,000.

Venue is the same as for civil actions commenced in justice courts.

There is no small claims division in municipal or city court.

III. **Commencement of Action**

A small claims action is begun whenever any person appears before the judge or the clerk and executes a sworn complaint. The judge or clerk shall assist in the preparation of the complaint.

The complaint, order of court, and notice to Defendant will set forth the date for the Defendant's appearance. The Defendant must have at least five (5) days notice of the hearing, or a new appearance date must be set.

IV. **Interpleader Affidavit**

25-35-508 MCA. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims division of the justice's court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed. . . .

V. **Counterclaim — Removal to Justice Court**

The Defendant may assert a counterclaim against the Plaintiff arising out of the same occurrence or transaction that is the subject of the Plaintiff's claim. The counterclaim must be sworn to, before the court, and served on the Plaintiff not less than 72 hours before the hearing date. The counterclaim cannot exceed \$2,500, exclusive of costs.

The Defendant may request that the small claims action be transferred to the justice's civil court. There is no fee required. The notice to remove must be filed within 10 days of service on the Defendant of the complaint and order.

VI. Trial — Judgment — Appeal

The hearing and disposition of the small claims action shall be informal. Evidence and witnesses will be heard in the same manner as other civil actions in a justice's court. All small claims actions must be recorded either electronically or stenographically.

At the conclusion of the case, the justice shall make his findings and enter judgment.

Either party may appeal to the district court of the county of the small claims action by giving written notice to the court and to the adverse party within ten (10) days of judgment entry. The appeal is limited to questions of law based on the record of the proceedings in small claims court.

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF _____ COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE

* * * * * * *

_____,)
_____,)
Plaintiff(s)) **COMPLAINT**
) Case No. _____
vs)
_____,)
_____,)
Defendant(s))

* * * * * * *

Comes now the Plaintiff, being first duly sworn, upon oath, and complains and alleges that Defendant is indebted to 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's Signature

Address / Phone Number

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

Justice of the Peace

By: _____
Clerk, Small Claims Division

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF _____ COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE

* * * * * * *	
_____)
_____)
Plaintiff(s))
vs)
_____)
_____)
Defendant(s))
* * * * * * *	

**ORDER
and
NOTICE TO DEFENDANT**

Case No. _____

You are hereby directed to appear and answer the attached complaint at the above named Justice's Court on:

_____ at ____:____ ____. M. Reset for:
 _____ at ____:____ ____. M. Reset for:
 _____ at ____:____ ____. M. Reset for:
 _____ at ____:____ ____. M.

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 and Notice to Defendant.

YOU ARE HEREBY 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 CIVIL COURT, AND THAT YOUR FAILURE TO REMOVE CONSTITUTES A WAIVER OF YOUR RIGHT TO TRIAL BY JURY AND REPRESENTATION BY COUNSEL.

Dated this ____ day of _____, 20__.

_____	By: _____
Justice of the Peace	Clerk, Small Claims Division
STATE OF MONTANA)	
COUNTY OF _____)	

I HEREBY CERTIFY THAT I received the within Order of Court and Notice to Defendant on the ____ day of _____, 20__, and personally served the same on the ____ day of _____, 20__, upon _____ in the County of _____, a copy of said Order of Court and Notice to Defendant, and a copy of the Complaint referred to in the Order of Court and Notice to Defendant.

Dated this ____ day of _____, 20__.

Service \$ _____	
Copy \$ _____	Sheriff / Constable
Mileage \$ _____	By: _____
TOTAL \$ _____	Deputy Sheriff

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF _____ COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE

* * * * *

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

COUNTERCLAIM

Case No. _____

* * * * *

Comes now the Defendant, being first duly sworn, upon oath, and alleges that Defendant is entitled to a counterclaim against the Plaintiff, in the Plaintiff's pending action, in the sum of \$ _____, for _____

_____ which sum is now due, together with Defendant's costs herein expended in this action.

Dated this ____ day of _____, 20__.

Defendant

Defendant's Address

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

Justice of the Peace

Clerk, Small Claims Division

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF _____ COUNTY, STATE OF MONTANA
BEFORE _____, 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 _____ Justice Court, Small Claims Division,
_____, 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 _____ COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE

* * * * *

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

INTERPLEADER AFFIDAVIT

Case No. _____

* * * * *

STATE OF MONTANA)
)ss:
COUNTY OF _____)

_____, being duly sworn, deposes and says:

That _____, a Defendant, resides at _____.

That _____, a Defendant, resides at _____.

That the Plaintiff has custody or possession of money in the amount of \$_____, held pursuant to the following: _____

That the Defendant claims or may claim to be entitled to the money.

That the Plaintiff deposit into the Court, \$_____, which represents the amount of money in dispute.

That the Plaintiff resides at the following address:

Affiant

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

Justice of the Peace

Clerk

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
 COURT OF _____ COUNTY, STATE OF MONTANA
 BEFORE _____, JUSTICE OF THE PEACE

* * * * * * *

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

**ORDER FOR
 INTERPLEADER ANSWER**

Case No. _____

* * * * * * *

The State of Montana to the within named Defendant(s), GREETINGS:

You are hereby directed to appear and answer the interpleader claim at this Court in _____, in the County of _____, State of Montana, on the ____ day of _____, 20__, at the hour of __:__.M. and to have with you all books, papers, and witnesses needed by you to establish your claim to the money.

You are further notified that in case you do not so appear, JUDGMENT MAY BE GRANTED AGAINST YOU as follows:

Determining or foreclosing your claim to the above described money, as well as the disposition thereof and, in addition, for costs of the action.

Dated this ____ day of _____, 20__.

 Justice of the Peace

 Clerk

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 \$3,000 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 \$15 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 \$15 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.

SCRIPT — SMALL CLAIMS ACTION

****** BE SURE YOU HAVE MADE ARRANGEMENTS TO RECORD THE SMALL CLAIMS HEARING BEFORE YOU BEGIN THE TRIAL EITHER ELECTRONICALLY OR STENOGRAPHICALLY. ******

“The Small Claims Court for the County of _____ is now in session. My name is Judge _____. The matter to be heard today is the action of _____, Plaintiff vs _____, Defendant, for the recovery of _____.

The purpose of the Small Claims Division is to provide a speedy remedy for legal actions in an informal setting. This hearing will be conducted according to general trial guidelines for a court of law. Small claims actions must be recorded and you will notice the tape recorder/stenographer here today. You must speak loudly and clearly to be properly recorded. This will be the record of the trial.

If either party to this action is dissatisfied with the judgment of the Court, an appeal may be filed with the District Court of this county. This appeal would not be a new trial. It will be limited to questions of law based on what happens here today, as recorded. This hearing will be conducted as follows:

The Court will state the basis of the Plaintiff(s) claim as filed on the complaint. The Plaintiff will testify (him/her) self and use other witnesses to prove his case.

The Defendant will testify (him/her) self and call other witnesses to establish his defense.

Exhibits may be used. The Court may ask questions of all witnesses to clarify the testimony. Before the conclusion of the trial, the Court will ask, “Is there any other information that has not been brought before the Court?”

At the conclusion of the trial, the Court will give a Judgment. Does either party have any questions about this procedure? Are you both ready to begin trial?

Anyone who expects to testify, please stand and raise your right hands. “Do you, and each of you, solemnly swear to tell the truth, the whole truth, and nothing but the truth, **SO HELP YOU GOD?”**

After all the testimony is taken and both parties have rested, you are required to make findings and enter judgment. You should probably recess and review all the evidence and organize your thoughts. The judgment will be read into the record.

“After consideration of the evidence, testimony, and law applicable to this case, the Court makes the following finding and judgment, (Findings) _____

Based on the findings, Judgment is granted on behalf of the _____ in the amount of _____.”

This a good time to explain the execution process to the parties. It is important that all parties receive the information necessary to complete the case.

****** Judges — At the beginning of the tape, be sure that each witness or party identifies themselves on the record. If there is not a proper identification on the record, it is very difficult for the District Court Judge to determine who might be speaking, if the matter goes up on appeal.**