CLERK'S

MANUAL

REVISED 2004 BY
MEMBERS OF MJC&MCCA

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JOB DESCRIPTION

The job description for a clerk in a court of limited jurisdiction will vary from court to court, depending on the caseload, number of clerks, and other factors. However, there are many similarities due to the procedures that are mandated by law, by the Supreme Court and by the similarity of the court functions. Basically, a court clerk serves as a receptionist, secretary, office manager, and clerk all at the same time.

The clerk should have a specific set of instructions from your judge for each particular job. This is especially important in a multi-clerk office. There may be overlapping duties, but that is better than leaving critical gaps in procedure. In a single clerk office, the clerk is responsible for all the duties associated with the position.

The next few pages are meant to offer specific guidelines to make the clerk's job easier and to further the continuity of record keeping and case filing in courts of limited jurisdiction throughout the State. The guidelines are directed to a manual system and to a computer system.

The Supreme Court Administrator's office, through an order from the Supreme Court of the State of Montana, has implemented a computer system to use in the Courts of Limited Jurisdiction, known as "Full Court". The Supreme Court is currently in the process of installing and training court personnel throughout the State of Montana in its use.

DUTIES AND SKILLS, CLERKS OF COURT OF LIMITED JURISDICTION

The clerk of a court of limited jurisdiction is to maintain the records of the court and perform the duties prescribed by the judge and by law. The duties include but are not limited to:

- keeping all books, papers and records filed by the court
- keeping an index to the court docket as provided by law
- keeping a record of all monies collected on fees, fines, bonds and restitution
- issuing receipts for all monies, fees, fines, bonds and restitution collected
- keeping records of payments made on orders of the court
- issuing processes and notices allowed by law to be issued
- attending hearings of the court and hearings in chambers when required by the judge
- issuing and maintaining a record of qualified jurors
- keeping a record of the attendance of jurors and witnesses
- preparing documents, orders and correspondence for the court as may be required by law or by the judge

The Judge establishes the procedures and duties of the clerk of court. State law may require that certain procedures be followed. The clerk of court should be punctual, efficient, honest and accurate in the performance of these duties. The clerk should bring any problems with procedures to the attention of the judge and seek the judge's approval before making any changes.

The clerk should deal with the public in a respectful and responsive manner. The clerk should not give any legal advice to the public. Documents filed with the clerk should not be prepared for the parties by the clerk. The clerk's ability to interact positively with the public is important in the court's function. The clerk's conduct and appearance before the public is important to maintaining respect from the judicial system.

A clerk should possess certain skills and basic knowledge of the court's function and the duties of a clerk. The skills and knowledge should include:

- a working knowledge of personal computers and word processing
- a working knowledge of bookkeeping and accounting
- a working knowledge of the principles of file and records maintenance
- a working knowledge of laws and rules that affect court file and records maintenance
- a working knowledge of the documents and forms filed with the court
- a working knowledge of the deadlines for filing court documents
- attending workshops for clerks of court

It is incumbent upon the judge to provide the clerk with the proper education and training necessary to perform all duties, including but not limited to the "Full Court" computer system authorized by the Supreme Court and attendance at the Annual Fall Training Conference.

REFERENCE: BENCHBOOK – DUTIES AND SKILLS, CLERKS OF COURT

ADMINISTRATIVE

The duties of a clerk include many administrative functions that are not listed in the statutes or generally written down anywhere. These functions are the daily operation of the office, calendar responsibilities, greeting the public, interagency communications, supervision of other clerks as necessary and other duties assigned. The judge has the ultimate responsibility to communicate the nature and atmosphere of the office and the court to the public. As a clerk, you have a responsibility to meet the requirements of your judge and the mandates listed in the statutes to comply with your job description. Keeping informed of legislative changes is necessary in order to assist the public and judge in daily court operations.

The Clerk is on the "*front line"* to the public. Your demeanor or abilities to satisfactorily perform your job has a direct influence on the public's attitude toward the court system.

CRIMINAL

JURISDICTION

Jurisdiction for Justice, City and Municipal courts are listed in the Deskbook and Benchbook. Both of these reference materials are based on statutes from the Montana Code Annotated. Civil jurisdiction is listed under Section 3-10-301, MCA for Justice Court and Section 3-11-102 and 3-11-103 MCA for City Courts. Criminal Jurisdiction is listed in Section 3-10-303 MCA for Justice Courts and 3-11-102 MCA for City Courts.

REFERENCE: DESKBOOK – MUNICIPAL, JUSTICE CITY

CRIMINAL COMPLAINTS

The *"complaint*" is a document that officially charges the defendant with a criminal offense. The charging document may be in the form of a written complaint from the city or county prosecutor or in the form of a Notice to Appear from an arresting agency (MHP, Sheriff's Department, Dept. Fish, Wildlife & Parks, City Police, etc.). The offense charged may be a misdemeanor or a felony. A Court of Limited Jurisdiction will handle **only a misdemeanor** case through to the final disposition.

In felony cases, Justice and City Courts are *"examining"* courts, and only do the initial process, such as setting bail, appointing attorneys, and schedule Preliminary Hearings. The final dispositions for felony cases are handled in the District Courts.

PROSECUTOR FILED COMPLAINT

This type of complaint is filed at the court by the City/County Attorney, rather than by a law enforcement officer.

First, determine the appropriate docket book to which the case will be assigned. If you are a multiple judge county, determine which judge will be given the case. Go to the corresponding alphabetical index page of the chosen docket and write the defendant's name, offense and assigned docket number. The case is now *"indexed*". The clerk is required to keep an index according to the statutes listed in the following reference.

REFERENCE: 03-10-503 MONTANA CODE ANNOTATED

Second, place the assigned docket number on all copies of the complaint and summons or warrant.

Third, have the judge sign all of the original documents. The copies may be stamped by an original signed-by-stamp. (Refer to Supplemental section, letter directed to the Courts of Ltd. Jurisdiction dated November 6, 1997)

Next, assign an appearance date to the summons. Be sure to allow enough time for the appropriate law enforcement agency to serve the summons. (Check with the Sheriff's Office or City Police to see how much *"lead time*" they generally need to serve the summons before the court date). The clerk must write the date and time of the assigned appearance date in the docket. ******It is sometimes helpful to write the date of appearance or the warrant amount on the face of the original complaint for easy reference. Be consistent, and write this information in the same place every time a new case is filed.
****This will not take the place of the docketing requirement****

Next, the original summons/warrant, a copy of the summons/warrant and a copy of the complaint will go to the appropriate law enforcement agency for service. The law enforcement agency will serve all the copies to the defendant and return the original summons/warrant to the court with the date, time and place of service, and other pertinent information recorded. This return of service information **must be docketed.** Always confirm that the summons has been served, or a summons may be mailed, pursuant to 46-6-211 MCA, before any subsequent orders (i.e. Orders to show cause or Contempt Warrants) are issued.

When a warrant is to be issued instead of a summons, write the issue date of the warrant and the amount of the warrant in the docket. The clerk may also note the information on the original complaint. Once again, it is important to be consistent when you note any information in any place other than in a docket.
****This will not take the place of the docketing requirement****

Finally, keep the original complaint in the court with the docket page and/or case file. The court **must retain** the original complaint and keep the summons or warrant when it is returned after service.

All pertinent information must be on the docket page, i.e. docket number, defendant's name, summons date, warrant issued date, warrant amount, return of service, etc. Keep the original complaint with this docket page until the case is completely finished.

RETURN OF SUMMONS/WARRANT

Update the docket page; all returned information must be placed on the docket page, i.e. date, time and place of service/arrest. Always keep any returned document with the original complaint and the docket page until the case is ready to be archived.

NTA (NOTICE TO APPEAR)

The citation is a charging document that is issued by an officer of a law enforcement division – for example, Montana Highway Patrol, City Police, County Sheriff's Department, Department of Fish, Wildlife & Parks, Department of Transportation, or Department of Livestock. (Depending on the jurisdiction of the court you work for, you may or may not see citations from all of these departments.)

EXAMPLE: NTA LOCATED IN ATTACHMENT SECTION

REFERENCE: MONTANA CODE ANNOTATED 46-6-310; 46-11-110 AND 46-44-111

Before indexing, if your court handles citations for more than one agency, **first,** separate all of the citations from each respective department or agency.

Second, separate the citations with bond from the citations without bond. When handling tickets for more than one court or judge, the citations should also be separated by court or judge. A mistake is less likely to be made when dealing with one agency/court at a time.

Third, assign a docket number to each citation as you do for a criminal case and alphabetically index each citation using the defendant's last name and docket number. The "docket number" is generally **not** the pre-stamped number on each citation, i.e. 510U123456.

REFERENCE: MONTANA CODE ANNOTATED 46-11-401 FORM OF CHARGE

NTA'S WITH BOND

All citations, with bonds attached at the time of filing, must be held as a pending case until the date of appearance is passed. After the date of appearance is passed the bond may be forfeited and the citation completed for disposition and sent to Helena, to Driver Improvement Bureau. There are exceptions to the rule. Citations that may have mandatory sentences such as DUI, driving while revoked/suspended, no insurance, etc. must be set for a court appearance, according to your court's procedures, and not handled as general forfeiture cases, pursuant to 46-11-401 MCA.

Write one receipt for each citation for the amount of bond that is attached to the citation. Even though an officer may bring in several tickets, the Uniform Accounting Manual requires one (1) receipt to be issued per case.

REFERENCE: UNIFORM ACCOUNTING SYSTEM MANUAL/JUSTICE COURTS

NTA'S WITH BOND (MANDATORY SENTENCES)

NTA'S WITHOUT BOND

DUI, driving while revoked/suspended and reckless driving are examples of citations that require appearances before the judge. When a bond is attached to the citation, a receipt should be written and a notation should be made on the back of the citation that a bond is being held. Other information that should be recorded is the receipt number of the bond, the date the bond was accepted, and the amount of the bond and the name and current mailing address of the person who posted the bond. (Remember, if a bond is not posted by the defendant named in the case, then the bond money cannot be returned to the defendant. The bond must be returned to the person who posted the bond, even if it is a spouse, parent, or other close relative.) Then schedule a specific appointment for appearance or use the date/time listed by the officer at the time the ticket was issued for the Defendant to appear before the judge.

These citations should be filed in an accessible location so that the ticket may be easily found when any action is taken on the case, such as, the appearance and payment by the defendant, arraignment, trials, etc.

SETTING APPEARANCE DATES FOR NTA'S

It is not necessary for everyone to see the judge. How the clerk delivers the information on processing a citation may encourage more court appearances than necessary. Anyone who requested to enter a plea of not guilty should be given a court date to make an appearance before a judge for entry of plea. However, the defendant can be informed that the bond amount they can post is generally the very same amount that the judge will normally impose in court, (unless it is a second or subsequent offense). Never refuse anyone the right to go to court. However, the clerk will usually be able to handle a majority of the routine citations. Everyone initially thinks they need to see a judge, but this is not possible in the busier courts nor is it always necessary.
CHECK WITH THE JUDGE FOR CLARIFICATION.

COURT APPEARANCES

Initial Appearance on Misdemeanors

The time that the defendants appears before the court for the first time to hear his/her rights and enter a plea of guilty or not guilty is known as an **initial appearance and/or arraignment.**

Not Guilty Plea
If the Defendant chooses to enter a not guilty plea, the defendant will decide as to whether he/she wants to represent him/herself (*appear pro se*) or wishes to be represented by counsel. Counsel may be retained (the attorney chosen and paid for by the Defendant) or appointed by the Court. If court appointed counsel is requested, fill out a court appointed attorney application (if applicable). An "*Omnibus Hearing*" will be set at this time, unless waived by the Defendant. The judge will ask the defendant to decide on a jury or a bench trial. Waiver of Jury must be signed pursuant to 46-16-110. A trial date may be set at this time, or set at a later time with the notices mailed to all parties.

When the clerk receives the case after a court appearance, verify that the court appointed attorney has been notified of the appointment to the case. Also, be sure that the notices of trial are sent to the defendant, or the defense attorney, and the City/County prosecutor. It is important that all parties are aware of the trial date and aware of any other orders that are issued from the court. Nothing in the case should be a surprise to any of the parties. The docket will need to be updated (on the back of the original NTA) with all pertinent information, in each case.

Guilty Plea
If the defendant chooses to enter a guilty plea, the judge will listen to the defendant's story, sentence the defendant, set the fine amount plus a surcharge, and determine the jail time (if any), and may order other penalties such as community service work.

When the judge returns the case to the clerk to be filed, the clerk should check to be sure that the time-pay cards (when required) are filled out completely and signed and dated by the defendant. The clerk should also check to determine that the sentence is recorded on the back of the citation and on the docket page. It is important that the court records be kept as up-to-date as possible. The clerk should always be aware of the specific duties that are required of him/her handling a case from indexing to dispositions. The clerk may be required to *"track*" or follow up on each case to verify the defendant has complied with all portions of the sentence imposed. The more complete the docket information the easier it is to audit each case.

Following are <u>examples</u> of stamps that may be used on the back of the citation to help insure all pertinent information is recorded:

GENERAL FILING STAMP:

Guilty_____Voluntary & w/knowledge_____
Not Guilty_____Bond $_____Posted _____
How/By_____
Bail conditions:_____
Atty: Waived _____Appt._____Hired_____
Atty:_____
Trial:Date_____Jury_____Bench_____
Verdict_____Change of Plea_____
Guilty Finding/Court_____Def. Notified of Contempt____
Penalties & 61-5-214, MCA_____
Sentenced: Fine $_____S/C_____
Jail _____Susp for _____Other_____

DUI FILING STAMP:

Guilty_____Voluntary & w/knowledge _____
Not Guilty_____Bond $_____Posted_____
How/By_____
Bail conditions:_____
Atty: Waived_____Appt._____Hired_____
Atty:_____
Trial: Date_____Jury_____Bench_____
Verdict_____Change of Plea_____
Guilty Finding/Court_____Def. Notified of Contempt
Penalties & 61-5-214, M.C.A._____
Sentenced: Fined $_____S/C_____
Jail _____Susp for_____Other_____
1. Pay fine as agreed. 2. Attend/complete ACT 3.Attend/complete Alcohol treatment 4. No use of alcohol/drugs, no bars, taverns 5. No Convictions for drug/alcohol related offense 6._____

Initial Appearance for Felonies

A defendant appearing for a felony charge will not be allowed to enter a plea of guilty or not guilty. A court of limited jurisdiction is only allowed to give an initial appearance which includes the reading of rights, the appointing of an attorney (if necessary), the setting of bail, and the scheduling of a preliminary hearing. The felony is then transferred to the District Court and the District Judge will take jurisdiction of the case and handle the case to its conclusion.

After the defendant appears, be sure to docket all the information, i.e. bail amount, if posted or not. Discuss the procedure to transfer the case to District Court with your City/County Attorney's Office. Photocopy the file, and transfer the originals to the District Court and keep the copies for your file. When transferring felony cases to District Court, always make sure the bond (*surety or cash*) is transferred along with the paperwork. It is a good idea to obtain a receipt from the Clerk of District Court to keep in the court file. After felony cases are transferred to District Court, the case should be closed in the lower court. This is not a dismissal of the case, only a closure of the case in a justice or city court.

REFERENCE: BENCHBOOK AND DESKBOOK

DISPOSITIONS

The "disposition" of a case is the final adjudication of the case. The disposition may be anything from an order to dismiss to a complex sentence handed down by the Judge. Each disposition must be recorded on the docket. If a bond is posted before the appearance date, always wait until the appearance date has past before filing a final disposition and forfeiting the bond. The clerk should complete a citation disposition immediately on a plea of guilty. Check with the judge on the procedure to mail in the dispositions immediately after the sentence, or after total collection of fines and compliance with all parts of the sentence.

NTA DISPOSITIONS

A NTA has a copy attached to each original called the disposition copy. This copy is to be filled out and may be signed by the clerk (a judge's stamp may be used). The disposition copies must be sent to the agency that issued the citation. The following are agencies that handle the disposition copies for their citations.

Montana Highway Patrol citations

Mail all Montana Highway Patrol citation dispositions to the following address: Mail all dispositions pertaining to traffic violations (Sheriff's Dept. tickets or Police Dept. tickets) to the following address:

MOTOR VEHICLE DIVISION
DRIVER RECORDS & CONTROL
P. O. BOX 201430
HELENA, MT. 59620-1430

Department of Fish, Wildlife & Parks citations:

The gold and yellow copies should be filled out and returned to the issuing Officer. The Officer will return them to the respective department.

County Law Enforcement citations:

If the charge(s) is a TRAFFIC VIOLATION, the disposition copies must be sent to the Records and Driver Control Bureau in Helena. *(It is important to send in the dispositions to Helena, so that all traffic violation convictions will be filed on the defendant's traffic record.)* If the charge(s) is other than a traffic violation, the dispositions must be returned to the issuing enforcement agency.

City Law Enforcement citations:

If the charge(s) is a traffic violation, the disposition must be sent to the Records and Driver Control Bureau in Helena. If the charge(s) is NOT a traffic violation, return the disposition to the issuing agency.

Prosecutor Complaint Dispositions:

The criminal complaints issued by the city/county prosecutor will also have a final disposition. This disposition **MUST** be recorded on a docket page. If this complaint is a Traffic Violation, send a Traffic Disposition report to the Records and Driver Control Bureau for placement of the charge and disposition on the offender's driving record. If it is criminal in nature and the Defendant was arrested and fingerprinted, you will receive a

MANS form, which you enter the disposition on and the State of Montana will use to record these criminal offenses.

In addition, make a copy of the **DOCKET** showing the final disposition and return a copy of that to the city/county prosecutor for their files, as well as send a copy to the local Law Enforcement Agency, if they desire to keep track of these dispositions.

Criminal History dispositions (MANS Number)

Whenever a person charged with a crime is fingerprinted under section 44-5-202 MCA (a)(1), State of Montana final disposition report and (2) FBI final disposition report shall be initiated by the Law Enforcement agency that fingerprinted the person charged and will assign a MANS NUMBER. The Court will receive these and fill in the dispositions when the case is completed.

When the Court receives a MANS form, it is a good idea to double check that the charge has been entered correctly by the arresting agency. If the charge(s) is resolved in a formal court, the court shall list the final disposition of all charges against the accused and send the State and FBI dispositions to the state repository **within 15 days.** It is of the utmost importance when completing the MANS form, that the Clerk verify the Defendant's final disposition is correctly entered. Often, through plea agreements and negotiations, the charge the Defendant is sentenced on is **not** the charge originally filed against him/her. Enter the section code for the charge the Defendant was sentenced under. Additionally, the State requires only that part of sentencing regarding any dollar amount of fine and/or any jail time imposed.

If the charge(s) is resolved outside the formal court, the agency, which initiated the final disposition report, shall provide the final disposition of all charges against the accused and send the disposition reports to the state repository **within 30 calendar days.**

REFERENCE: SECTION 44-5-213, MONTANA CODE ANNOTATED

SEE ATTACHMENTS

DISPOSITIONS FOR CRIMINAL OR CITATIONS FOR DUI'S

If the criminal complaint or citation is a DUI, a "Traffic Disposition Report" must be sent to the Records and Driver Control Bureau **within 5 working days**. An ACT Referral form must be completed and sent to the ACT Agency. Directions for distribution of the forms are on the bottom of the ACT referral forms.
***Suggestion: make copies of all the forms that are mailed out of your office. Make a record on the copies where and when the paperwork was mailed. ***

SEE ATTACHMENTS

FOLLOW UP PROCEDURES

Show Cause Process

An Order to Show Cause is issued when the judge wants to question or see the defendant in person. These hearings are commonly used in noncompliance issues when a portion, or the entire sentence that has been handed down, has not been completed by the defendant.

First, pull the case and then complete an Order to Show Cause form citing the reason for noncompliance.

Second, set up an appearance date. Be sure to allow for sufficient time for the Order to be served by law enforcement or for the postal service to deliver the Order. Ask the judge which method is preferred for service.

Then, make two copies of this Order. One copy will remain attached to the case, and the other copy will go with the original to the law enforcement agency that will serve the defendant. The original will be returned to the court with the date, time and place of service. If the Order is mailed, only one copy for the case filed is needed. Mail the original to the defendant and note the date of mailing in the docket.

Make a notation on the back of the **NTA** or on the docket page of a criminal complaint to show that an Order to Show cause was issued. Be sure to include the date of issuance, the date of appearance, and the time of appearance. This information can also be recorded in the calendaring system for the court, so you will know when the defendant is to appear.

Next, when the law enforcement agency returns the Order to Show Cause or when the defendant confirms that he/she has received the Order to Show Cause, make a notation of the confirmation date or the date of service on the back of the NTA or on the docket page.

The final step will be the actual appearance of the defendant in the court to answer to the judge. After the conclusion of the hearing, all information regarding the court's decision must be recorded on the docket page or on the back of the NTA. **EVERY ACTION TAKEN ON EACH CASE IS INFORMATION NECESSARY TO THE DOCKETING REQUIREMENT.**

EXAMPLES: SEE ATTACHMENTS

Warrant Process

In cases where the judge has ordered that a warrant is to be issued for either a complaint or a NTA, follow the same procedure as for an Order to Show Cause using a Warrant form. Pull the case and complete the warrant. There are different types of warrants, so be sure to clarify with the judge which warrant he/she wants issued. A notation should be made on the back of the citation or on the docket page regarding the type of warrant that was issued, the date of the warrant, and the warrant amount.

Next, add the defendant's name to the warrant list. The court should keep a list of all outstanding warrants and the amounts of each warrant. As the issuing court, you are responsible to all law enforcement agencies for the accuracy of the warrants or warrant lists generated.

Once the warrant is printed, the judge must sign the original warrant. The copy may be stamped with a signature stamp. The signature stamp may only be used with the judge's authorization. In any case, the judge must initial on both the original and the copy of the warrant authorizing the day/night arrest.

Two copies of the warrant should be made. File one copy with the case file, one copy must go with the original to the law enforcement agency that will serve the warrant. An officer will serve and arrest the defendant. After service, the original warrant will be returned to the court with the date, time and place of arrest. The defendant will then post bail or be held in jail awaiting a court appearance.

CRIMINAL APPEALS

There are several steps that must be completed in order to appeal a case to a higher court. In addition, there are time frames that must be dealt with. In a criminal case, the defendant has 10 days from the date of judgment, to file a written notice of appeal. The court must transfer the case to District Court **within 30 calendar days.**

First, copies of the entire case must be made and placed into chronological order of filing or occurrence. This includes the citation or docket page.

Second, the clerk must record or list all of the papers that are being transferred to the District Court on the "*Transfer Receipt*". Be specific in naming each of the documents. (Filing dates should be used to distinguish similar documents from each other, such as trial notices.) An EXAMPLE of the "*Transfer Receipt*" is in the Attachments section.

Third, make a copy of the completed "*Transfer Receipt".*

Finally, transfer all the original documents except for the original citation or docket page to the District Court. Keep copies of all documents and the original NTA or complaint in the justice or city court's office as the case file.

Never transfer the original docket page as these are the court's records and should remain with the court. Make a copy of the original citation for your records and transfer a copy of the docket page. All other papers to be transferred must be original.

The original "*Transfer Receipt*" will be returned from the District Court, with their filing stamp, to be filed with your copy of the court case.

CIVIL

LIMITS OF JURISDICTION

Jurisdiction for civil cases cannot exceed $7,000.00 for actions arising on contracts for the recovery of money, damages, injury to person or property, and the possession of property. Section 3-10-301 MCA for Justice Courts and 3-11-103 MCA for City Courts. These sections of law should be read along with Rule 4 of the Montana Justice and City Court rules of Civil Procedure. All of these references spell out the monetary limitations of jurisdiction, and the jurisdiction over persons.

Jurisdiction for small claims actions in Justice Court are found in Section 25-35-502 MCA. You should be familiar with these statutes and rules. That information will assist the clerk in knowing the types of cases allowed to be filed in courts of Limited Jurisdiction.

REFERENCE: SEE ATTACHMENTS

FILINGS

Initial Filing of a Civil Case

On request, the clerk should give the plaintiff a civil packet with a copy of the civil instructions. The clerk should ask the plaintiff to read the instructions carefully and fill out all of the forms. Advise the Plaintiff of the $35.00 filing fee requirement. The fee must be paid before the court will open a new civil file and issue the summons to be served. However, if a person wants to file a case and has no money to do so, an "*In Forma Pauperis Affidavit"* may be filed. This affidavit must be sworn to in front of a clerk who is a notary and approved by the Judge.

REFERENCE: RULES OF CIVIL PROCEDURE – SEE ATTACHMENTS

A civil packet includes one praecipe, an original complaint for the court file, one complaint for each defendant, an original summons for the court file, and one summons for each defendant.

The ***"praecipe***" is the form that contains the actual physical address of the defendant(s). This **must be a physical address** in order for the process server/Sheriff to locate the defendant(s) to personally serve them with the papers. The praecipe should include

information about the defendant's work place, phone number, or any other information that will be helpful for the process server/Sheriff to track the defendant down.

The "***complaint"*** is a brief and concise statement of the case. This form will also contain the request for the principal amount of the claim and additional costs, i.e. interest (including court costs). Make sure there is a mailing address for both the plaintiff and the defendant(s) before you accept the case for filing.

The "**summons**" is the form that will be signed by the Judge and will inform the defendant(s) of the time limitations to file an answer or counterclaim and the penalties that may occur for failure to answer timely. The copies may be stamped by a signature stamp or initialed and signed by the clerk.

When the plaintiff returns to "file" the case the following steps are necessary:

- Review the paperwork to make sure all the proper forms have been returned and are filled out properly
- Assign the case to a judge

Enter the next docket number to be assigned and the judge's name to all of the forms. The clerk must date and can sign the original summons with his/her own signature and then stamp the original summons with the judge's signature stamp. The defendant's copy should also be stamped with the judge's signature stamp.

The Court should have a simple index system for each judge to insure the case numbers are not duplicated. If the numbers do become duplicated the clerk can use an alternate system such as "A" after the case number of the second case filed, i.e. 2CV31-100 and 2CV31-100A. The numbering system should be renewed at the beginning of each year to keep the records straight especially if your system uses the current year as part of the numbering system.

REFERENCE: DESKBOOK

Write a receipt for the $35.00 filing fee (includes the $10.00 surcharge). If the case is filed by mail the clerk can mail back the receipt to the plaintiff and/or keep it in the file to return at a later date.

Stamp the original complaint with a dated file stamp and record the receipt number on the stamp. An example of the stamp follows. This filing information must be recorded in the civil docket, even if a date stamp is used.

EXAMPLE: DATE FILE STAMP

FILED

OCT 04 1993

JUSTICE COURT

BY_____Clerk

Set up a file by placing all the paperwork in a manila folder and record the case number on the folder.

The clerk should record information about filings and mailings on the docket. For easy reference, a stamp (such as the following example) can be used on the back of the original complaint. This is a duplicate effort but is very helpful to instantly record and review the events, if you can't always update the docket immediately. This stamp is not meant to take the place of the docket requirements.

EXAMPLE: GENERAL FILING STAMP

C FILED_____
A FILED_____
P/T NOTICE SENT_____
TRIAL NOTICE SENT_____
SUMMONS RETURNED_____
JUDGMENT MAILED P___D___

Return all of the paperwork and the receipt for filing to the plaintiff and inform the plaintiff of the options available for service.

Tell the plaintiff that they must return the original summons to the court to show proof of service after the defendant is served or the case will not proceed to judgment or execution. Before issuing the judgment, this court must know that proper service was obtained.

Return of Civil Summons

Following are the steps to be taken when the summons is returned:

- Stamp the original summons returned with the date stamp and enter the date returned to the court in the docket.
- The date, time, place of service and costs should be noted on the docket page. If a general filing stamp is used, some of this information can be recorded there also.
- The date of service is important. The 20 days to file an Answer begins on the day after service. The 20 days are calendar days, unless the 20th day is a Saturday, Sunday, or legal holiday, then the following business day will be counted as the 20th day.
- Possession of Property has only 10 working days to file an Answer. These are weekdays only which excludes the weekends and holidays.

Filing of Answer/Counterclaim

When an answer/counterclaim is filed by the Defendant(s) with the court, the following steps are necessary:

Review the forms and make sure an address and phone number for the defendant(s), or the defense attorney, is included.

Write a receipt for the $20.00 fee (includes $10.00 surcharge) to file an Answer, for each defendant, and give the receipt to the defendant(s) or the defense attorney. There is no additional fee for filing a counterclaim or an answer to a counterclaim, if one is filed.

REFERENCE: DESKBOOK

The clerk should stamp the answer and/or counterclaim with the date file stamp and record the receipt number on the stamp.

Record the answer and/or counterclaim filing date on the civil docket page and on the back of the original complaint, if you use the general filing stamp.

The defendant(s) should be informed that a copy of the answer and/or counterclaim must be mailed to the plaintiff or plaintiff's attorney, immediately.

When an answer is filed with the court, a Pre-Trial hearing can be scheduled. Both parties must be sent notice of Pre-Trial hearing date and time. Be sure to allow enough time for postal delivery.

The pre-trial hearing is a conference held between the parties, prior to trial, to try to reach a settlement. This hearing usually takes 15 to 30 minutes. If no resolution is reached at the pre-trial, a trial will need to be scheduled. The pre-trial check list form is a tool used by the judge and clerk to keep track of pre-trial events. The pre-trial is <u>not required</u> and either party may waive this step and proceed directly to trial. (No witnesses are called to testify at a pre-trial or settlement conference.)

REFERENCE: DESKBOOK AND BENCHBOOK AND SEE ATTACHMENTS

If the case is not settled at the pre-trial hearing or a pre-trial is not held, schedule a trial date. The "*notice of trial date*" must be mailed to both parties or to their attorneys. Record the day the notices are mailed and to whom they are mailed on the docket. Be sure to allow enough time for trial preparation by the parties.

It is the responsibility of the individual parties to subpoena witnesses for the trial. The clerk can provide the subpoena forms. When the subpoenas are returned to the court, present the forms to the judge for signature. Then return the subpoena forms to the plaintiff/defendant and inform them of service options.

After a trial, the pertinent events must be recorded in the docket. These trial events now become a part of the docket. The judge's hand-written notes can be kept in the physical file; however, they are not included in the papers transferred with the appeal. The summaries of events, to be listed, are similar to the ones shown in attachment for a Jury trial.

JUDGMENTS

After a trial has been held and the judge has granted a judgment, complete the steps below to enter the judgment.

- ✓ Fill in all the blanks on the judgment form. This includes judge's name, case number, principle, credits, interest, filing fees, service fees and other costs. The judgment should always be dated and signed by the judge (or clerk when applicable)
- ✓ Both parties must be mailed a copy of the judgment. The Court will retain the original judgment in the file. Enter the day the judgments were mailed out to the parties on the back of the original complaint (if you are using this method) and on the docket page.
- ✓ All civil judgments need to be entered on the docket page and into the judgment docket book.
- ✓ If there is a judgment docket, enter the page number reference from the judgment docket book on the civil docket. Not all courts use a separate judgment docket. If one is used, verify that the same information is recorded in both places.

Default Judgment

If the defendant fails to file an answer, appear, or otherwise defend against the summons and complaint within the 20 calendar days allowed, the plaintiff may proceed by a request for a judgment by default.

The request for a default judgment should be a written motion to the Court. It is important to verify that no answer or appearance has been filed by the defendant.

The motion should include the case number, the date, the request for the default judgment and the signature of the plaintiff requesting the default judgment.

Stamp the motion with the date file stamp and enter the date the motion was received. Pull the case file and present it to the judge or clerk who has been authorized to sign Default Judgments. If the motion has been granted, follow the steps listed above under **Judgment**, in order to enter the Judgment.

Other Types of Judgment

Other types of judgments include:
Offer to Compromise Before Trial
Judgment of Dismissal Without Prejudice
Judgment by Confession
Judgment on the Pleadings
Summary Judgment

The same steps should be used to enter the information on all types of judgments. The judge will determine which type of judgment is appropriate in each case.

REFERENCE: BENCHBOOK – TYPES OF JUDGMENT FORMS

REFERENCE: RULES OF CIVIL PROCEDURE IN ATTACHMENTS

CIVIL APPEAL

REFERENCE: BENCHBOOK – NOTICE OF APPEAL FORM

EXECUTION

Writ of Execution

After the court has entered a judgment, the next step may be for the prevailing party to try to collect the judgment. This is done by a request for a writ of execution by the judgment creditor, from the court. The request must include the case number, the date of the request, on whom the writ of execution is against, and the amount of judgment. Only the judgment creditor should fill out a praecipe to list the specific description of the property to be levied on and the location of the property. Some examples would be as follows: (and note that this information is not a court requirement, but helpful information for the sheriff or levying officer)

> *"Please execute against any and all checking and savings accounts at the ANY NAME BANK, listed in the name of the DEFENDANT, at the address listed as follows: The bank account number is: -if known to judgment creditor.*
>
> *(or)*
>
> *Please execute against any and all wages due the DEFENDANT at ANY NAME EMPLOYER, located at the following address: "*

The following steps will assist in the proper procedure when a request for a Writ of Execution is filed with the court.

- ✓ Verify that a judgment has been granted in the case.
- ✓ Stamp the request for Execution "*received or filed*" and record the date and amount requested, and if delivered to the Sheriff, or returned to the Plaintiff for service.
- ✓ Check the Judgment docket book or the docket page for any writs of execution that may have already been issued. If there is an outstanding writ that has not been returned to the court, the court is not allowed to issue another writ of execution. Advise the requesting party that the first writ must be returned or an affidavit of lost execution filed before the court will issue a second writ of execution.

REFERENCE: RULES OF CIVIL PROCEDURE

If the records indicate that a writ of execution is in order, the clerk must fill in the blanks on the writ of execution form. This includes the judge's name, case number, and principle amounts from the judgment, interest, costs and credits. The clerk is not responsible for figuring the interest or credits from the day of judgment; however, the clerk can assist the pro se Plaintiff in figuring the amount. (**Remember, interest is always figured from the date of judgment, not from the date of the last execution.)

Sign the original Writ and stamp it with the judge's signature stamp. The copy of the Writ of Execution should also be stamped with the judge's signature stamp. Both the original and the copy must be dated and signed and stamped.

Record the issuance of a Writ of Execution in the judgment docket book and/or on the docket page.

Give (or mail) the Writ of Execution back to the requesting party with a blank praecipe. ALSO, Senate Bill 203, authored **AN ACT REVISING THE LAWS GOVERNING EXECUTION OF JUDGMENT** -, require that a NOTICE OF SEIZURE be mailed to the Defendant, along with notification that the judgment debtor can claim an exemption and the explanation of that procedure. In addition, NOTE that the law says, *"A Writ of Execution served upon an employer of the judgment debtor must be accompanied by a document that reasonably describes the exemptions from execution provided in 25-13-614."* Therefore, you are required to become familiar with these forms and assist the pro se Plaintiff in obtaining all the paperwork necessary.

SEE ATTACHMENTS

When a Writ of Execution is returned after service, the clerk must stamp the writ *"returned*" and record the date on the docket page. The returned date and the amount collected must be recorded in the judgment docket book, and/or on the docket page. The money should be returned to the Sheriff's office or process server's office for distribution. Generally, the court will not receive any money from executions and the practice is discouraged.

REFERENCE: DESKBOOK AND BENCHBOOK

When a judgment is granted on a landlord/tenant civil action, the plaintiff may request a writ of possession along with the writ of execution. The steps to enter a writ of possession are the same as the steps for a writ of execution except the clerk never signs the original writ of possession. The Judge must sign this type of writ. The copy may be stamped with a signature stamp.

Remember that in a civil case, the parties generally move the case along, however, the court does have an obligation to monitor all cases filed. Setting pre-trial and trial dates at the appropriate times will keep the case moving along.

It is not the duty of the clerk to remind the parties that it is time to ask for a judgment or issue an execution. However, when a litigant asks about the *"next step*", you should freely answer their questions and relate the options available.

If the plaintiff does not pursue the disposition of a civil action, the court may dismiss the matter with prejudice. Rule 16C sets out the procedure.

REFERENCE: RULES OF CIVIL PROCEDURE, RULE 16C

SMALL CLAIMS

When requested, the clerk should give the plaintiff a small claims packet with a copy of the Attorney General's small claims pamphlet. The clerk should ask the plaintiff to read the instructions carefully and fill out all of the forms. Advise the plaintiff of the $20.00 filing fee (includes the $10.00 surcharge) to initiate the case. The plaintiff must pay the filing fee when the paperwork is returned to the court. A small claims packet includes one praecipe, two copies of the complaint/order/notice to defendant and two copies of the notice to defendant. Also attach the Attorney General's Small Claims Citizen's Guide.

EXAMPLES: RULES OF CIVIL PROCEDURE

EXAMPLE: SMALL CLAIMS COURT CITIZEN'S GUIDE IN ATTACHMENTS

The "***praecipe***" is the form that will contain the actual, physical address of the defendant(s). This must be a physical address in order for the process server/Sheriff to locate the defendant(s) to personally serve them with the papers. The praecipe should include information about the defendant's work place, phone number, or any other information that will make it easier for the process server/Sheriff to track her/him down.

The "***complaint***" is a brief concise statement of the case. This form will also contain the request for the principle amount of the claim and additional costs (including court costs). The "*Notice to Defendant*" is how the defendant(s) is informed of the day and time of the trial. The complaint **must be sworn** to by the plaintiff and notarized by a notary, clerk or judge.

A "counterclaim" may be filed in small claims court, if there is a claim arising from the same transaction or occurrence as the subject of the complaint. There is a $15.00 filing fee (includes the $10.00 surcharge). Remind the defendant that the Sheriff or process server at least 72 hours before the scheduled trial date must serve the counterclaim, on the plaintiff. A counterclaim or setoff cannot exceed $2500.00.

No answer or any other pleading is allowed in small claims court. (MCA 25-25-607)

REFERENCE: DESKBOOK

When the plaintiff is ready to file the case, follow these steps:

- Review the paperwork to make sure all the proper forms are present for filing and verify that they are properly filled out. **The clerk or judge must set a date for the hearing**
- Assign the case to a judge. Enter the next docket number available and the judge's name to all of the forms. Remember the indexing requirements are the same here as for the criminal and civil cases.
- Use a simple index system for each court to ensure the case numbers are not duplicated. If the numbers do become duplicated, the clerk may use an alternate system, such as one discussed in the preceding section on civil cases. The numbering system should be renewed at the beginning of each year to keep the records straight, especially if your system is using the current year as part of the numbering structure.
- Write a receipt for the $20.00 filing fee (includes $10.00 surcharge). Filing the case must be done in front of the court.
- Stamp the original complaint with a dated file stamp and record the receipt number on the stamp.

EXAMPLE: DATE FILE STAMP

FILED
OCT 04 1993
JUSTICE COURT
BY_____
Clerk

Set up a file by placing all of the paperwork in a manila folder and recording the case number on the folder.

The clerk should record all information about filings and mailings on the back of the original complaint, if a stamp is used, and on the docket page.

EXAMPLE: GENERAL FILING STAMP

C FILED _____
A FILED _____
P/T Notice Sent_____
Trial Notice Sent_____
Summons Return_____
Judgment Mailed P__D___

When a case is filed, schedule a trial for not more than 40 calendar days, nor less than 10 working days.

Enter the trial information on the "Notice to Defendant" and on the docket page for the court file, and on the "General Filing Stamp", if a stamp is used.

Return all the paperwork and the receipt to the plaintiff and inform the plaintiff of the options for service.

The Defendant must be served not less than 5 days prior to trial. Consequently, the date of trial may be changed several times until the defendant is served. Be sure to update each change in the docket and on all paperwork.

25-35-603. Hearing date. The date for the appearance of the defendant to be set forth in the order shall be determined by the justice of the peace or by the clerk and may not be more than 40 or less than 10 days from the date of the order. Service of the order and a copy of the sworn complaint shall be made upon the defendant not less than 5 days prior to the date set for his appearance by the order. If the order is not timely served, the plaintiff may have a new appearance date set by the justice of the peace or his clerk and a new order issued and delivered to the sheriff, constable, or other process server. If necessary, repeated orders may be issued at any time within 1 year after the commencement of the action.

TRIAL

The hearing/trial must be recorded. The clerk should be prepared to have these cases recorded electronically or steno graphically on the date of trial or hearing. The judge may expect the clerk to have all the necessary equipment ready for every small claims trial. The court should keep the "tape" or record, until the time for appeal has passed. Additionally, the judge may require the clerk to be present at all trials to perform duties such as swear in witnesses, receive, mark and record exhibits presented and will take procedural minutes of the trial order. As Courts of Ltd. Jurisdiction, we are not a "Court of Record". Therefore, these minutes are not to be a record of the content of the testimony, but rather verification that proper procedure was followed. Clerk's minutes become a permanent part of the case record and are kept in the file.

After the trial is held, the clerk may be required to listen to the tape in order to docket all the necessary information. Follow the same instructions for judgments and writs of execution as are followed in regular civil actions.

REFERENCE: DESKBOOK, BENCHBOOK AND ATTACHMENTS

TEMPORARY ORDER OF PROTECTION

There are two parties in a Temporary Order of Protection or TOP as it will be called throughout this section. The first party is the petitioner, or the party that files for and requests a TOP. The other party is the respondent, who the petitioner is filing against.

Filing Procedure (Packet)

A TOP packet should be given to the petitioner. This packet must be carefully read and filled out by the petitioner. Some cities/counties may have a program to help victims that

have been abused. If this program is available, the petitioner should be advised to call for assistance. Some programs will also help with the filing of the forms for the TOP. The forms in the TOP packet should include:

File Information

The "*TOP File Information*" contains information on the petitioner for the court's purposes only. This information **will never** be given to the respondent. Make this point clear to the petitioner. In some cases the petitioners filing for TOP's are in safe houses and the respondent must not find out where the petitioner is living, however, some information is necessary for the court.

Application for TOP/Order of Protection

The "*Application for Preliminary Injunction and TOP (Partner/Family Member Assault)*" must be read carefully and filled out completely by the petitioner. The clerk should check the Application when it is returned to the court and make sure all spaces are completed. If there are blank spaces, ask the petitioner if he/she meant to leave it blank or if it doesn't apply to him/her. The application form must be sworn to by the Petitioner and signed by a notary or judge. It is not always necessary or possible for the judge to sign this form.

Petitioner

The "*Petition In Support of Application for a TOP (Partner/Family Member Assault*)" must be read carefully and filled out completely by the petitioner. Once again, check through the returned Petition to see if it is complete. When there is a blank space, ask the petitioner if he/she wants it blank or if it doesn't apply to him/her. The Petition form may be sworn to by the Petitioner and signed by a notary or judge.

Order Setting Hearing

The "*Top and Order Setting Hearing*" actually sets the hearing date for a determination on continuing the TOP or issuing an Order of Protection. The judge must sign the Temporary Restraining Order or TRO form.

Initial Filing of TOP

When a TOP packet is returned to the court, verify that the forms are completed. The TOP must then be signed and notarized by the clerk.

Assign the TOP a civil docket number, following the same procedure as in any other civil case. Remember to place the docket number on the front page of each set of forms.

Next, take the TOP to the judge for review. The judge will decide if the TOP will be issued. If the TOP is issued, the judge or the clerk will assign a hearing date. The hearing date must be within twenty (20) days of the date of issue. After twenty (20) days the TOP is no longer valid and will not protect the petitioner. The petitioner must be made aware of the date of the hearing and the requirement for their presence at the hearing or the presence of an attorney. This is extremely important. If the petitioner chooses not to appear, the TOP will be dismissed.

Distribution of TOP

The clerk will need to make the appropriate number of copies once the Judge has issued the TRO. These packets will be given to the respective parties by the court or the law enforcement agency completing the service. The contents of the packets and the parties that will receive each copy are listed below:

LAW ENFORCEMENT PACKET
Original praecipe
Original and one (1) copy of the TOP and Order Setting Hearing
Copy of the Petition for the TOP and Request for Hearing
Copy of the application

RESPONDENT AND PETITIONER PACKETS (one each)
Copy Application
Copy Petition
Copy TOP

COURT PACKET
Original File Information
Copy of the Praecipe
Original Application
Original Petition for the TOP and Request for Hearing
Copy TOP (This copy will be replaced by the original TOP, when it is returned by Law Enforcement)

The original TOP, the law enforcement's copies and the respondent's copy will go to the agency that will serve the respondent. After the respondent is personally served, the law enforcement agency will return the original TOP to the court with the return of service information.

The petitioner's copy should be given directly to the petitioner before he/she leaves the court. The petitioner should be told to keep the papers with him/her at all times to show to law enforcement in case of an altercation with the respondent, or for any other situations that may arise.

The court's packet must be placed in a file and kept for further adjudication. The clerk can mark the file with the case number and TOP in red to separate this type of filing from

other civil cases. The TOP is a civil filing and should be kept with the other civil filings and indexed accordingly.

TOP Hearing

During the TOP hearing, the judge will listen to the parties and decide if an **Order of Protection** needs to be issued. This court order can extent the TOP and will protect the petitioner for a period to be determined by the Court. The Order of Protection will become invalid after a ruling from a higher court takes effect, i.e. a divorce decree. A judge must sign this order.

In some situations, the petitioner may change his/her mind about the TOP. He/she may no longer feel he/she is in danger of the respondent. In such cases, the petitioner may request an **Affidavit to Dissolve TOP and/or Order of Protection**. The order may be sworn to and signed by a notary or judge. Some courts will prefer to only have the judge sign it. The judge may then question the petitioner to be sure he/she is out of danger of the respondent. The clerk must check with the judge to be sure he/she knows how to handle these situations.

JURY TRIALS

Both civil and criminal cases allow for a Jury Trial. In a civil case, the costs are levied against the loser. In a criminal case, the defendant may be assessed the charges, **only** if there is a guilty verdict. Cost assessment is a decision made by the judge.

Jury List and Questionnaires

The Clerk and Recorder or Jury Commissioner is required to draw a new jury list each June, to be used during the following year. The Clerk will draw a jury list for each court in the county. From this list, jury questionnaires may be mailed out to the prospective jurors. Jury questionnaires are a helpful tool for the Court and both parties/attorneys during the voir dire process. The first step is to send a questionnaire to each of the names on the list.

When the questionnaires are returned, the clerk should record the information received and file the questionnaires. The clerk should develop a simple procedure to file these returns or exemptions that are filed. The jurors who filed exemptions, if approved by the judge, are jurors that are **not called** for a trial. Keep the questionnaires and the exemptions on file for the term of the jury list (1 year), July 1 to June 30 of each year.

Calling the Potential Jurors

The number of potential jurors varies from case to case. For instance, you may need to call 18 potential jurors for a speeding ticket as opposed to 25 potential jurors for a DUI. Check with the Judge to determine the number of jurors to be called for each individual case.

Some courts may have the sheriff's office dispatchers call the potential jurors and other courts may call the jurors themselves. This is a matter of court policy. Try to give the jurors at least seven days notice of trial.

After the potential jurors have been notified, the clerk must type a jury list. This form will state the heading of the case, case number and list each of the jurors individually. The clerk must list the juror's number and name. Two copies of the completed jury list should be prepared for each party of the trial.

When the lists are complete, pull all of your questionnaires. Make two copies of each questionnaire. Attach a copy of the jury list to each set of questionnaires. One set will be given to the prosecution/plaintiff(s), the other set will be given to the defense attorney/defendant(s).

REFERENCE: BENCHBOOK JURY INFORMATION

Jury Arrival

When the potential jurors arrive, the clerk should use a checklist to verify the appearance of each juror. The claim form should be filled out at this time to assure that the court has all of the following information from each juror: the spelling of the juror's name and current mailing address, the amount of round-trip mileage and (*after the voir dire*) if the juror is going to remain for the duration of the trial or has been released from jury duty.

The fee will increase for jurors selected to "*hear*" the trial. A fee will also be given for the round-trip mileage from the juror's home to court. Juror fees are $12.00 per day for appearing and an additional $13.00, **if the juror serves**, for each day of service. Mileage is also allowed for jurors, whether they serve or not.

Witnesses

The witnesses that are subpoenaed to come to the trial will be paid a fee for their time. Witness fees are $10.00 plus mileage. This fee is different from juror's fees. The rate for the round-trip mileage is the same. A claim form must be filled out for each witness.

Minutes of Evidence

The court may use the *"Minutes of Evidence"* form to record the witnesses presented for both parties and any evidence that is entered into the trial. If required, the clerk may need to docket the trial events on the docket page.

Verdict Form

This form is used for the jury to return their verdict to the courtroom. This form should be completely filled out and prepared for the jury before the trial begins. The attorneys may prepare this form in your area. Verify the procedure with the Judge.

After trial, all evidence, papers and notes should be kept in the case file. The docket must be updated to record all the events of trial. This does not mean to record all the testimony but rather the summary of events.

EXAMPLE: TRIAL NOTES

ACCOUNTING AND BOOKKEEPING

Justice Court

The manual version of the accounting system as a whole consists of the following parts:

1. Prenumbered "*spot carbon*" receipts
2. Trust account cash receipts and disbursement journal
3. Peg board and binder
4. Bank trust account
5. Time payment file card system
6. Prenumbered dockets
7. Monthly reconciliation report form summarizing the contents of the cash receipt and disbursements journal.

Cash Receipting Procedure

Proper implementation of the accounting procedure mandates the **immediate** recording of all cash received by the court. It is the clerk's responsibility to ensure the accurate recording of all monies received by the court. All cash must be receipted on the "*prenumbered spot carbon"* receipts. This insures that as the information is recorded on the receipt, the information is automatically transferred to the journal page. This receipting procedure will provide the court with an accurate and complete record of all cash received.

A receipt **must** be presented to a person who is giving cash to the court regardless of whether the money is for a fine, restitution, court costs, bail, etc. Under certain circumstances, the individual may not be present to accept that receipt. These receipts must be kept in a file established for keeping such receipts.

IMPORTANT: One (1) receipt should be written for each transaction and for each case individually.

It is important that a safe place be established in your office to keep any monies, especially if money must be held overnight. Some courts may do a daily deposit of cash, where other courts will do a weekly or monthly deposit. You should have a safe place (such as the sheriff's department safe) to keep the money. The court (and clerk) is responsible for all money paid in by the public.

Trust Account Cash Receipts and Disbursements Journal

The Journal was established to provide the court with a complete record of all cash received as well as a means of tracking cash for each individual case. These Journals provide the court, city treasurer, county treasurer, and the state treasurer with a month-by-month financial record of all cases receiving funds by the court. When cash is receipted into the court, the information on the Journal page must be filled out carefully. Each line on the Journal must be used to record only the information for one (1) case. At the end of the month, the Journal will be in duplicate. The original will remain with the court and the copy will be distributed to the city or county treasurer when the monthly reporting system is complete.

Each Journal Page, when completed, will provide a complete history of all cases where the money is received and disposed in each month. The disbursement side of the Journal will reflect all monies distributed to the County Treasurer, County General Fund, State Treasurer and all other funds disbursed. Allocations should be made in accordance with State Law, which may change every year that the Montana Legislature meets.

All automated systems must produce a final product equivalent to the manual form. Refer to the instructions from the Court Administrator's Office of the Supreme Court before you make any changes on your computer system.

Money collected on time pay accounts will be disbursed during the month that they are collected. Every month, the court should reconcile the time pay accounts, to make sure that they are accurate. This also gives the court an opportunity to take action on past due accounts. Check with your Judge as to the proper handling of late time payments.

Trust Account

Every court must establish a trust account for each judge. The judge whose name is on the account is solely responsible for any funds drawn on the account. It is sometimes recommended that two signatures be required on the checks written on the account.

Time Payment File Cards

Whenever an individual is unable to pay the entire amount due the court in one payment, a time-pay record should be established. The card must contain the individual's name, the docket number, the name of the Judge, the summons number (*long number on corner of NTA*), the type of account (*fine, restitution, costs, etc.*), the amount due on the account, and the individuals signature on the back of the card (*this insures the individual's compliance with the sentence.*)

The time-pay record should be kept in a file established for keeping the records in alphabetical order. As payments are made, the records must be updated to record each payment, receipt number issued, and the new amount.

City Court and Municipal Courts

City courts and Municipal courts also have a uniform accounting system. There system will require the use of pre-numbered spot carbons for receipting money received, as well as the time-pay card system. The computer system, which is being installed statewide by the Supreme Court, will meet all these accounting requirements. You will need to breakdown the various Surcharge amounts collected, as the City Treasurer must remit certain funds to the County Treasurer.

SEE SURCHARGES IN THE ATTACHMENTS SECTION

RETENTION AND DISPOSING OF CASES

When cases have been closed, either from dismissal or from complete satisfaction of the sentence, a system should be developed to archive the record until it can be disposed. The Montana Supreme Court has issued a regulation regarding the formula for retaining records in the courts of limited jurisdiction.

Archiving the record should not be confused with dismissing or closing a case. Archiving is the method by which the entire case file is held in trust, even if the case is finalized.

REFERENCE: COURT RECORD DISPOSITION SCHEDULES IN ATTACHMENTS

MISCELLANEOUS

LEGAL ADVICE

A clerk should **always** refrain from giving legal advice to the public. The clerk is not an attorney and is prohibited by law from giving legal advice. Another good rule to follow is to **never** become personally involved in any cases that are filed in the court. The clerk should try to assist the public in an open and friendly way without directing the public on a particular path that the clerk feels should be taken. The clerk's job is to assist whenever possible, but this duty falls short of getting involved with the litigants, making promises of final outcomes, or giving legal advice.

REFERENCE: 3-1-601 MONTANA CODE ANNOTATED. Certain officers not to practice law or administer cases.

> (1) Except as provided in 3-1-604 and except for a judge pro tempore, no justice or judge of a court of record or clerk of any court may practice law in any court in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions or patent rights, or other proceedings before any

department of the state or general government or any court of the United States during his continuance in office. (2) Neither the court administrator nor any assistant may practice law in any of the courts of this state while holding this position. (3) No justice or judge of the court of records, except a judge pro tempore, may act as administrator or executor of any estate for compensation.

PUBLIC SERVICE

Most of the public has an erroneous view of exactly what is the clerk's role. Many times the public feels that because the clerk's salary is paid from public funds that the clerk has automatically become their personal secretary. (*Or worse, their personal slave.*) The clerk does have a duty to serve the public in a professional and helpful way. This duty **does not include** taking verbal or other abuse from the public when they are angry, upset, or just frightened of the judicial system. The clerk should freely discuss obligations to the public with the judge and develop a procedure for the court to handle problems. Don't be afraid to call for help.

In most situations, if the clerk remains calm and in control, the clerk will be able to handle any problem that may occur. Do not be afraid to ask the judge or another clerk to assist if the condition seems to be out of control. Some courts post the statute for Disorderly Conduct (*45-8-101 Montana Code Annotated*) where it can be clearly seen by the public and warn abusive clients that they could be charged with a Disorderly Conduct violation.

Some days the clerk just can't win, so it seems. Don't resort to lowering your standards or professionalism. Never take out frustration on the next client. Take a deep breath and start over.

OFFICE COMMUNICATION

As in all offices, it is important that the clerks are able to communicate to each other. In some courts, the case load may require having to assign certain duties to a specific clerk. However, each clerk should have some idea of the entire function of the office. This will prevent the office from getting out of control should a clerk leave for an extended period of time such as vacation, maternity/paternity leave, etc. It may be even more important in the case of sickness or accidents or unplanned events of leave.

Encourage the judge to establish a regularly scheduled staff meeting. This meeting should be used to keep the office running smoothly and free of resentments or other problems. This is a good way to introduce new procedures, or discuss new ideas to streamline existing ones.

The court also deals daily with many other offices in and out of the courthouse. Many times the functions of different departments are dependent on each other and it is certainly more productive to keep all lines of communication open with these other departments. It would be rare to not have feelings of competition or frustration with other departments on occasion. However, the clue here is to try and be the "***trend setter***"

in good public relations. The attitude and behavior of the clerk is the most visible impression that the public and other offices will have about the court. Be sure that the impression is favorable. Ultimately, this makes your job easier.

Montana Code Annotated 2003

TITLE 1. GENERAL LAWS AND DEFINITIONS
CHAPTER 5. PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS NOTARIES PUBLIC

Part 4. Notaries Public

1-5-416. Powers and duties. (1) A notary public shall:

(a) subject to subsection (2), take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or acknowledgment, endorsed on or attached to the instrument;

(b) take depositions and affidavits, if the notary is knowledgeable of the applicable legal requirements, and administer oaths and affirmations in all matters incident to the duties of the notary public's office or to be used before any court, judge, officer, or board in this state;

(c) whenever requested and upon payment of the required fees, make and give a certified copy of any record kept or that originated in the notary public's place of employment;

(d) provide and keep an official crimper-type or ink stamp seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal", with the name of the notary public exactly as that name appears on the notary's certificate of commission issued by the secretary of state;

(e) authenticate with the notary public's official seal, and the notary's original signature as it appears on the notary's certificate of commission, all official acts. Whenever the notary public signs officially as a notary public, the notary public shall add to the signature the words "Notary Public for the State of Montana, residing at.... (stating the name of the town or city of the notary public's post office)" and shall endorse upon the instrument the date, showing the month, day, and four-digit year, of the expiration of the notary public's commission.

(f) on every document on which the notary's seal of office is used, type, stamp, or legibly print the notary's name, as shown on the notary's certificate of commission, after or below the original signature of the notary.

(2) A notary public may not:

(a) notarize the notary's own signature;

(b) notarize a document in which the notary is individually named or has an interest

from which the notary will directly benefit by a transaction involving the document; or

(c) certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document.

1-5-417. Authority of notaries who are stockholders, officers, or employees of banks or other corporations. (1) Except as provided in this section, a notary public who is a stockholder, director, officer, or employee of a bank or other corporation may:

(a) take the acknowledgment of a party to a written instrument executed to or by that bank or corporation;

(b) administer an oath to any other stockholder, director, officer, employee, or agent of that bank or corporation; or

(c) protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments that may be owned or held for collection by that bank or other corporation.

(2) A notary public who is a stockholder, director, officer, or employee of a bank or other corporation and is individually named in an instrument or signs an instrument as a representative of the bank or other corporation may not:

(a) take the acknowledgment of that instrument by or to that bank or other corporation; or

(b) protest a negotiable instrument owned or held for collection by that bank or other corporation.

(3) A notary public who violates this section is guilty of a misdemeanor and upon conviction must be punished as provided by law.

1-5-418. Maximum fees of notaries. Maximum fees of notaries public are as follows:

(1) for drawing an affidavit, deposition, or other paper for which a maximum fee is not otherwise specified, $3.50 a page;

(2) for taking an acknowledgment or proof of a deed or other instrument, including the seal and the writing of the certificate, for the first signature, $5;

(3) for each additional signature of the same person as referred to in subsection (1), $1;

(4) for administering an oath or affirmation, $5;

(5) for certifying an affidavit, with or without seal, including oath, $5; and

(6) for mileage or other charge to travel to or from or to and from the place of the notarial act, the amount provided by law for state employees when using the same mode of travel and traveling on state business.

History: En. Sec. 1, Ch. 44, L. 1907; Sec. 3165, Rev. C. 1907; re-en. Sec. 4914, R.C.M. 1921; re-en. Sec. 4914, R.C.M. 1935; R.C.M. 1947, 25-112; amd. Sec. 2, Ch. 225, L. 1981; amd. Sec. 9, Ch. 161, L. 2001.

1-5-419. Transfer of records upon termination of office. It is the duty of every notary public on his resignation or removal from office or at the expiration of his term and, in case of his death, of his legal representative to forthwith deposit all the records kept by

him in the office of the county clerk of the county in which he was resident. On failure to do so, the person so offending is liable to damages to any person injured thereby.

1-5-420. Powers and duties of clerk with whom records deposited. It is the duty of each clerk aforesaid to receive and safely keep all such records and papers of the notary in the case above named and to give attested copies of them under his seal, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

ITLE 1. GENERAL LAWS AND DEFINITIONS
CHAPTER 5. PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS NOTARIES PUBLIC

Part 6. Notarial Acts

1-5-601. Short title. This part may be cited as the "Uniform Law on Notarial Acts".

1-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated in the instrument and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified in the instrument.

(2) "In a representative capacity" means:

(a) for and on behalf of a corporation, partnership, trust, or other entity as an authorized officer, agent, partner, trustee, or other representative;

(b) as a public officer, personal representative, guardian, or other representative in the capacity recited in the instrument;

(c) as an attorney in fact for a principal; or

(d) in any other capacity as an authorized representative of another.

(3) "Notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(4) "Notarial officer" means a notary public or other officer authorized to perform notarial acts.

(5) "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

1-5-603. Notarial acts. (1) In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(2) In taking a verification upon oath or affirmation, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true

signature is on the statement verified.

(3) In witnessing or attesting a signature, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named in the instrument.

(4) In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(5) (a) In making or noting a protest of a negotiable instrument, the notarial officer shall identify the instrument and certify either:

(i) that due presentment has been made; or

(ii) the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(b) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(6) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is:

(a) personally known to the notarial officer;

(b) identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(c) identified on the basis of a current identification document or documents that show a photograph and signature of the person.

1-5-604. Notarial acts in this state. (1) A notarial act may be performed within this state by the following persons:

(a) a notary public of this state;

(b) a judge, clerk, or deputy clerk of any court of this state; or

(c) any other person authorized to perform the specific act by the law of this state.

(2) Notarial acts performed within this state under federal authority as provided in 1-5-607 have the same effect as if performed by a notarial officer of this state.

(3) Subject to the provisions of 1-5-605, notarial acts performed within Montana by notarial officers of bordering states have the same effect as if performed by a notarial officer of Montana.

(4) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

1-5-605. Reciprocity of notarial acts. (1) A Montana notarial officer may perform a notarial act in a bordering state if the state recognizes the officer's authority within the state.

(2) A notarial act performed in Montana by a notarial officer of a bordering state has the same effect under Montana law as if the act were performed by a Montana notarial officer, provided that the bordering state grants Montana's notarial officers similar authority within the bordering state.

1-5-606. Notarial acts in other jurisdictions of the United States. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

(a) a notary public of that jurisdiction;

(b) a judge, clerk, or deputy clerk of a court of that jurisdiction; or

(c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in 1-5-607 have the same effect as if performed by a notarial officer of this state.

(3) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(4) The signature and indicated title of an officer listed in subsection (1)(a) or (1)(b) conclusively establish the authority of a holder of that title to perform a notarial act.

1-5-607. Notarial acts under federal authority. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed anywhere by any of the following persons under authority granted by the law of the United States:

(a) a judge, clerk, or deputy clerk of a court;

(b) a commissioned officer on active duty in the military service of the United States;

(c) an officer of the foreign service or consular officer of the United States; or

(d) any other person authorized by federal law to perform notarial acts.

(2) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and indicated title of an officer listed in subsection (1)(a), (1)(b), or (1)(c) conclusively establish the authority of a holder of that title to perform a notarial act.

1-5-608. Foreign notarial acts. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

(a) a notary public or notary;

(b) a judge, clerk, or deputy clerk of a court of record; or

(c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(4) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(5) An official stamp or seal of an officer listed in subsection (1)(a) or (1)(b) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(6) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

1-5-609. Certificate of notarial acts. (1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed, the date on which the notarial act is performed, the type of notarial act being performed, and the title of the office of the notarial officer and must include the official seal of office. If the officer is a Montana notary public, the certificate must also indicate the place of the notarial officer's residence and the date of expiration of the commission of office, but omission of that place or date may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

(2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) and it:

(a) is in the short form set forth in 1-5-610;

(b) is in a form otherwise prescribed by the law of this state;

(c) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(3) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by 1-5-603

1-5-610. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-416 and 1-5-609(1):

(1) For an acknowledgment in an individual capacity:

State of_____

(County) of_____

This instrument was acknowledged before me on (date) by (name(s) of person(s))____

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of_____

(County) of_____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]

(3) For a verification upon oath or affirmation:

State of_____

(County) of_____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement)

_____

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]

(4) For witnessing or attesting a signature:

State of_____

(County) of_____

Signed or attested before me on (date) by (name(s) of person(s)) _____

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____
Title (and Rank)

_____
(Residing at)
[My commission expires: _____]

(5) For attestation of a copy of a document:
State of_____
(County) of_____
I certify that this is a true and correct copy of a document in the possession of_____.

Dated _____

_____
(Signature of notarial officer)

(Seal, if any)

_____
(Name - typed, stamped, or printed)

_____
Title (and Rank)

_____
(Residing at)
[My commission expires: _____]

TITLE 1. GENERAL LAWS AND DEFINITIONS
CHAPTER 6. OATHS

Part 1. General Provisions

1-6-101. Officers who may administer oaths. Every court, judge, clerk of any court, justice, notary public, and officer or person authorized to take testimony in any action or proceeding or to decide upon evidence has power to administer oaths or affirmations.

1-6-102. Form of ordinary oath. An oath or affirmation in an action or proceeding may be administered as follows: the person who swears or affirms expressing his assent when addressed in the following form, "You do solemnly swear (or affirm, as the case may be) that the evidence you shall give in this issue (or matter), pending between .... and ...., shall be the truth, the whole truth, and nothing but the truth, so help you God".

1-6-103. Variation of oath to suit witness's belief. The court shall vary the mode of swearing or affirming to accord with the witness's beliefs whenever it is satisfied that the witness has a distinct mode of swearing or affirming.

1-6-104. Affirmation or declaration in lieu of oath. Any person who desires it may, at his option, instead of taking an oath make his solemn affirmation or declaration by assenting when addressed in the following form: "You do solemnly affirm (or declare), etc.", as in 1-6-102.

TITLE 25. CIVIL PROCEDURE

CHAPTER 23. MONTANA JUSTICE AND CITY COURT RULES OF CIVIL PROCEDURE

Rule 1. Scope of rules. These rules govern the procedure in the justice or city courts of the state of Montana in all suits of a civil nature except in small claims actions and where otherwise provided by law. These rules must be construed and administered to secure the just, speedy, and inexpensive determination of every action. Parties should also consult the Montana Uniform Rules for the Justice and City Courts, and all statutory provisions relating to procedure in Montana's justice and city courts, including but not limited to Title 25, chapter 31 of the Montana Code Annotated.

Rule 2. Commencement of action. (a) 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 for the complaint are set out in Rule 7.

(b) Filing Fees.

Before a complaint will be filed and an action commenced, the plaintiff must pay the filing fee specified by statute. However, indigent parties may request a waiver of this requirement as set forth in M.C.A. 25-10-404 and, if the waiver is granted, may proceed without prepaying the filing fee.

Rule 3. Place of trial or venue. A. Proper place of trial. The proper place for the trial of an action is called "venue". There may be one or more proper place(s) for the trial of a particular action, and justice and city courts may have concurrent venue under these rules. The proper place for trial is determined by the type of case or the residence of the defendant. If application of this rule to a particular case produces more than one proper venue, the plaintiff may file the case in any one of the proper venues. If the plaintiff does not file in any proper venue, the defendant may move to dismiss the action under subsection B of this rule. **If plaintiff does file in a proper venue, either party may move to change venue under subsection c of this rule.**

(1) Residence of Defendant.

(a) Venue is always proper in the county (for justice court actions) or city (city court actions) where the Montana defendant, or any one of the Montana defendants, reside(s) at the time the complaint is filed.

(b) If no defendant resides in Montana at the time the complaint is filed, venue is proper in any county (justice court actions) or city (city court actions) in Montana.

(c) (i) A defendant which is a corporation is a Montana resident if it is incorporated in

the state of Montana at the time the complaint is filed. The Montana Secretary of State maintains records of incorporation. If the defendant corporation is incorporated in Montana, it shall be deemed to be a resident of each county (justice court actions) or city (city court actions) in which it has a place of business at the time the complaint is filed.

(ii) For a corporate defendant which is not incorporated in Montana, venue is proper in any county or city in Montana.

(d) If there is more than one defendant, a venue that is proper for any defendant is proper for all defendants, even if that venue would not be proper for one of the defendants if sued alone. If an action with two or more defendants is brought in a venue which is not proper for any of the defendants, any of the defendants may move to dismiss the action, without prejudice, for improper venue under Rule 3B.

(2) Additional Proper Venues.

In addition to the county or city of a defendant's residence as set forth in subsection (1), venue is proper as follows:

(a) Actions based on contract or other obligation. When the defendant or all of the defendants reside in a county other than that in which the right of action accrues and the action is for damages for violation of an express or implied contract or for money due on an express or implied contract, debt, note, or account, the action also may be commenced and, subject to the provisions of Rule 3C, may be tried in the county or city in which the contract or obligation must be performed. Unless the contract specifically provides otherwise, the place of performance of the contract or obligation is the county or city in which the payment was to be due or the act constituting the obligation was to be performed.

(b) Actions for damages for injury to person or property. When the action is for damages for injury to person or property, the action also may be commenced and, subject to the provisions of Rule 3C, may be tried, in the county or city where the injury was incurred.

(c) Actions for taking or recovery of personal property. When the action is for the recovery of personal property or its value or for damages for taking or detaining the personal property, the action also may be commenced and, subject to the provisions of Rule 3C, may be tried, in the county or city in which all or any part of the property is found, or in the county or city in which all or any part of the property was taken.

(d) Actions for forcible entry or unlawful detainer. An action for the recovery of the possession of real property may be commenced in the county or city in which all or any part of the real property affected by the action is situated.

B. Improper Place of Trial.

(1) Dismissal. When the county or city in which the complaint is filed is not the proper venue, and any party moves for dismissal because of the improper venue, the court must dismiss the complaint without prejudice. Any motion for dismissal for improper venue under this subsection must be made at least ten days before trial, or it is waived. A complaint dismissed because of improper venue may be refiled in another county or city upon the payment of the filing fee. **If a complaint is filed in an improper venue and** is subsequently dismissed under this subsection, the applicable **statute of limitations stops running on the date the complaint is filed, and restarts thirty (30) days after the service on the opposing party of the order of dismissal.**

(2) Consideration of Venue on Appeal. If a party moves to dismiss a complaint

because of improper venue, and the motion is denied, the case shall continue through judgment.

C. Change of Venue.

(1) When change of venue permitted. At any time more than ten days before trial, any party may move for and the court may order a change in the place of trial when it appears to the satisfaction of the judge before whom the action is then pending:

(a) by affidavit of either party, that the judge is a material witness for either party;

(b) that, based on affidavit, a jury has been demanded and one or more of the part(y)ies cannot have a fair and impartial trial because of the bias or prejudice of the prospective jurors;

(c) that the judge is disqualified from acting pursuant to **Supreme Court rule published at Title 3, chapter 1, part 8, M.C.A.; or**

(d) that the judge is sick or unable to act.

(2) Where action to be transferred. When the court orders the place of trial to be changed, the action shall be transferred for trial to a court mutually agreeable to the parties or, if they do not agree, **to the nearest appropriate court in which the judge agrees to accept the case.**

(3) Papers to be transmitted. After an order has been made transferring the action or proceeding to another court for trial and on payment by the applying party of all accrued costs, the judge ordering the transfer shall immediately transmit to the judge of the court to which the trial is transferred the pleadings and all papers in the action, together with a certified transcript from the docket of the proceedings. The court to which the case is transferred must not charge any additional filing fee.

(4) Jurisdiction of transferee court. From the time the order changing the place of trial is made, the court to which the action or proceeding is transferred has the same jurisdiction over it as though it had been originally commenced in that court.

(5) Notice of time and place of trial -- pleading. On receipt of the papers, pleadings, and transcripts, the judge of the court to which the action or proceeding is transferred shall issue a notice stating the time and place of the trial and mail the notice to the parties at least 10 days before the time fixed for trial. If the defendant has not filed an answer, the court shall order an answer to be filed within 10 days.

Rule 4. Persons -- jurisdiction -- process -- service. A. PERSON. As used in this rule, the word "person", whether or not a United States citizen or resident of this state and whether or not organized under the laws of this state, includes:

(1) an individual, whether operating in the individual's own name or under a trade name;

(2) an individual's agent or personal representative;

(3) a corporation, business trust, estate, trust, partnership, **or limited liability company**;

(4) any two or more persons having a joint or common interest; and

(5) any other legal or commercial entity.

B. JURISDICTION OF PERSONS.

(1) Subject to jurisdiction. All persons are subject to the jurisdiction of a justice or city court who reside or are found within the State of Montana.

(2) Acquisition of jurisdiction. A justice or city court may acquire jurisdiction over a

person through service of process as provided in these rules, through the voluntary appearance in an action by a person, either personally or through an attorney or any other authorized officer, agent, or employee. **Each defendant must be served separately.**

C. PROCESS.

(1) Summons -- issuance. Upon the filing of the complaint, the judge or the clerk shall issue a summons upon request of a plaintiff. Separate or additional summons must be issued, upon request, against any parties designated in the original action or against any additional parties who may be brought into the action.

(2) Summons -- form. The summons must be directed to the defendant and signed by the judge or clerk and must contain:

(a) the title of the court, the name of the county and city in which the action is commenced, and the names of the parties to the action;

(b) a direction that the defendant appear and file a written answer in the justice or city court within 20 days after service of summons and complaint, exclusive of the day of service, or such other period as may be specified by law, and serve a copy upon the plaintiff or the plaintiff's attorney;

(c) a statement that upon failure to appear and answer or assert a counterclaim, the plaintiff may take judgment against the defendant by default for the relief demanded in the complaint; and

(d) the name, address, and telephone number of the plaintiff or the plaintiff's attorney.

D. SERVICE OF PROCESS.

(1) By whom served.

(a) Service of all process must be made by a sheriff of the county where the party to be served is found, by a deputy, by a constable authorized by law, or by any other person 18 years of age or older who is not a party to the action.

(b) (i) A summons and complaint may also be served upon a defendant who is an individual, other than a minor or an incompetent person, or upon a domestic or foreign corporation or partnership or other limited liability company by mailing a copy of the summons and complaint by first-class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 18-A, M.R.Civ.P., and a return envelope, postage prepaid, addressed to the sender. If an acknowledgment of service under this subsection is not received by the sender within 20 days after the date of mailing, service of the summons and complaint must be made by one of the persons specified in Rule 4D(1)(a) in the manner prescribed by Rule 4D(2) and (3).

(ii) If the person served does not complete and return the notice and acknowledgment of receipt of summons and complaint within the 20-day period, the court shall order the person to pay the costs of the personal service unless good cause is shown.

(iii) The notice and acknowledgment of receipt of the summons and complaint must be signed and dated. Service of the summons and complaint is complete on the date the defendant signs the acknowledgment.

(2) Personal service within court's jurisdiction.

(a) The plaintiff shall furnish the person making service with all necessary copies.

(b) Service must be made:

(i) upon an individual other than a minor or an incompetent person, by delivering a copy of the summons and complaint to the defendant personally or by delivering a copy

of the summons and complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, further notice as the statute requires must be given;

(ii) upon a minor, by delivering a copy of the summons and complaint to the minor and to the minor's guardian or guardian ad litem;

(iii) upon a person who has been adjudged of unsound mind by a court of this state or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to the person's guardian, if there is one residing in this state appointed and acting under the laws of this state. If there is no guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind but has not been so adjudged by a court of this state, the party may be brought into court by service of process personally. The court may also stay any action pending against the person on learning that the person is of unsound mind.

(iv) upon a domestic corporation, partnership or other **limited liability company**, or a foreign corporation or partnership or other **limited liability company** established by the laws of any other state or country, that had a place of business within this state or was doing business in this state either permanently or temporarily at the time the claim for relief accrued:

(A) by delivering a copy of the summons and complaint to an officer, director, superintendent, managing or general agent, partner, or associate for the corporation, partnership, or association or by leaving the copy at the office or place of business of the corporation, partnership, or association within the state with the person in charge of the office;

(B) by delivering a copy of the summons and complaint to the registered agent of the corporation named on the records of the secretary of state or to any other agent or attorney-in-fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney-in-fact is one designated by statute to receive service, any further notice required by statute must also be given;

(C) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then by leaving a copy of the summons and complaint at any office of the corporation, partnership, or **limited liability co**mpany within this state with the person in charge of the office; or

(D) if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy of the summons and complaint to a trustee for the corporation and to its stockholders or members.

(v) upon a city, town, school district, or public agency or board of such a public body, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor, or head of the legislative department of the public body;

(vi) upon an estate, by delivering a copy of the summons and complaint to the personal representative of the estate;

(vii) upon a trust, by delivering a copy of the summons and complaint to any trustee thereof.

(c) (i) When a claim for relief is pending in a justice or city court of this state against any of the following persons, the party causing the summons to be issued shall exercise

reasonable diligence to ascertain the last-known address of:

(A) a corporation organized under the laws of this state or a corporation organized under the laws of any other state or country that has filed a copy of its charter in the office of the secretary of state of Montana and that is qualified to do business in Montana;

(B) a corporation organized under the laws of any other state or country that is subject to the jurisdiction of the justice or city courts of this state under the provisions of Rule 4B, even though the corporation has never qualified to do business in Montana; or

(C) a national banking corporation that, through insolvency or lapse of charter, has ceased to do business in Montana and when none of the persons designated in Rule 4D(2)(b)(iv) can with the exercise of reasonable diligence be found within Montana.

(ii) Upon the filing with the justice or city court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in Rule 4D(2)(b)(iv) can after due diligence be found within Montana, reciting the last-known address of any of those persons, or reciting that after the exercise of reasonable diligence no address for any of the persons could be found and after deposit with the justice or city court of the sum to be paid to the secretary of state as a fee for each of the defendants for whom the secretary of state is to receive service, the judge shall issue an order directing process to be served upon the secretary of state or, if absent from the office, upon the deputy secretary of state. The affidavit is sufficient evidence of the diligence of inquiry made by the affiant if it recites that diligent inquiry was made. The affidavit need not detail the facts constituting the inquiry.

(iii) The judge shall mail to the secretary of state the original summons, one copy each of the summons and the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service.

(iv) The secretary of state shall mail a copy of the summons and complaint by certified mail with a return receipt requested to the last-known address of any of the persons designated in Rule 4D(2)(b)(iv) or, if no address is known and the person is a corporation not organized in Montana, to the secretary of state of the state in which the corporation was originally incorporated, if known, and the secretary of state shall make the return as provided under Rule 4D(5).

(v) When service is made upon the secretary of state, it is considered personal service on the corporation, and the secretary of state, or the deputy when the secretary of state is absent from the office, is hereby appointed agent of the corporation for service of process.

(vi) In an action in which due diligence has been exercised to locate and serve any of the persons designated in Rule 4D(2)(b)(iv), service is considered complete upon the corporation regardless of the receipt or advice of refusal of the addressee to receive the process mailed, as required by Rule 4D(5).

(vii) When the service of process is made as provided in this subsection (2)(c) and there is no appearance thereafter made by an attorney for the corporation, service of all other notices required by law to be served in the action may be served on the secretary of state.

(3) Other service. All process in any form of action must be served in the manner specified in this rule, with the exception that whenever a statute of this state or an order of the court made pursuant to this rule or a statute provides for the service of a notice or

an order in lieu of summons upon a person, service must be made under the circumstances and in the manner prescribed by the statute or order and with the further exception that all persons are required to comply with the provisions of 33-1-603, 33-1-613, 33-1-614, 33-2-314, and 33-2-315 when the action pertains to the provisions of those sections.

(4) Service by publication -- when permitted -- effect -- manner -- proof.

(a) When permitted. A defendant, whether known or unknown, who has not been served under this rule may be served by publication only when the subject of the action is real or personal property in this state and:

(i) the defendant has or claims a lien or interest, actual or contingent, in the real or personal property; or

(ii) the relief demanded consists wholly or partially in excluding the defendant from any interest in the real or personal property.

(b) Effect of service by publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree that will adjudicate any interest of the defendant in the status, property, or thing acted upon, but the court may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of pleading and affidavit for service by publication -- order for publication.

(i) Before service of the summons by publication is authorized in any case, there must be filed with the judge or court clerk of the justice or city court in which the action is commenced:

(A) a pleading setting forth a claim in favor of the plaintiff and against the defendant as provided in Rule 4D(4)(a); and

(B) upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating:

(I) that the defendant resides out of the state, has departed from the state, cannot after due diligence be found within the state, or is concealed to avoid the service of summons; or

(II) if the defendant is a domestic or foreign corporation, that none of the persons designated in Rule 4D(2)(b)(iv) can after due diligence be found within the state; or

(III) if the defendant is an unknown claimant, that the plaintiff has made a diligent search and inquiry for all persons who claim or might claim any right or title to, estate or interest in, or lien or encumbrance upon all or any part of the property that is adverse to plaintiff's ownership or all persons who may cloud the plaintiff's title to the property, whether the claim or possible claim is present or contingent, including any right of dower, inchoate or accrued; and

(IV) that the plaintiff has specifically named as defendants in the action all persons whose names can be ascertained.

(ii) The affidavit is sufficient evidence of the diligence of any inquiry made by the affiant if the affidavit recites the fact that diligent inquiry was made. The affidavit need not detail the facts constituting the inquiry. If desired, it may be combined in one instrument with the affidavit required under Rule 4D(2)(c) after presenting to the court proof that a valid attachment or garnishment has been effected.

(iii) Upon complying with this subsection (c), the plaintiff may obtain an order for the

service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the court clerk.

(d) Number of publications. Service of the summons by publication may be made by publishing the summons three times, once each week for 3 successive weeks, in a newspaper published in the county in which the action is pending. If no newspaper is published in the county, then the service of summons by publication must be made in a newspaper published in an adjoining county and having a general circulation in the county in which the action is pending.

(e) Mailing summons and complaint. At any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, a copy of the summons for publication and a copy of the complaint must be deposited in a post office in this state, postage prepaid, and directed to the defendant at the defendant's place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation and personal service cannot with due diligence be effected within Montana on any of the persons designated in Rule 4D(2)(b)(iv), then service may be completed on the corporation by service upon the secretary of state pursuant to the provisions of Rule 4D(2)(c).

(5) Service on secretary of state.

(a) (i) Whenever service is to be made upon certain corporations as provided in Rule 4D(2)(c), the requirements of that subsection must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed or is considered by law to have been appointed as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party or the party's attorney shall:

(A) make an affidavit stating the facts showing that the secretary of state is the agent and stating the residence and last-known post-office address of the person to be served;

(B) file the affidavit with the justice or city court in which the claim for relief is pending; and

(C) provide sufficient copies of the affidavit, summons, and complaint for service upon the secretary of state.

(ii) When there has been deposited with the justice or city court in which the claim for relief is pending the sum to be paid to the secretary of state as a fee for each of the defendants for whom the secretary of state is to receive service, then the judge shall mail to the secretary of state the original summons, one copy each of the summons and the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service.

(b) Service on the secretary of state is sufficient personal service upon the person to be served, provided that notice of the service and a copy of the summons and complaint are sent by certified mail by the secretary of state or deputy to the party to be served at the party's last-known address, marked "deliver to addressee only" and "return receipt requested", and provided further that the return receipt is received by the secretary of state and purports to have been signed by the addressee or the secretary of state is advised by the post office that delivery of the certified mail was refused by the addressee, except in those cases where compliance is excused under the provisions of Rule 4D(2)(c). The date the secretary of state receives the return receipt or receives advice by the post office

that delivery of the certified mail was refused by the addressee is considered the date of service. As an alternative to sending the summons and complaint by certified mail, the secretary of state or deputy may cause a copy of the summons and complaint to be served by a qualified law enforcement officer, in accordance with the procedure set out in Rule 4D(1), (2), or (3).

(c) (i) The secretary of state or deputy shall make an original and two copies of an affidavit reciting:

(A) the fact of service upon the secretary of state by the justice or city court, including the day and hour of the service;

(B) the fact that a copy of the summons and complaint and notice has been mailed to the defendant, including the day and hour of the mailing, except in those cases where the secretary of state is relieved from doing so under the provisions of Rule 4D(2)(c), in which case the affidavit must so state; and

(C) the fact of the receipt of a return from the post office, including the date and hour of receipt, with a copy of the return to be attached to the affidavit.

(ii) The secretary of state or deputy shall then transmit the original summons and the original affidavit, along with a copy of the notice to the defendant if a notice is required, to the justice or city court in which the claim for relief is pending, where it must be filed in the claim for relief by the judge. The secretary of state shall also transmit to the attorney for the plaintiff a copy of the affidavit of the secretary of state, along with a copy of the notice to the defendant if a notice is required.

(iii) The secretary of state shall keep on file in the office a copy of the summons, a copy of the affidavit served on the secretary of state by the judge, and a copy of the affidavit executed and issued by the secretary of state.

(6) Continuance to allow defense. In any of the cases provided for in Rule 4D(2)(c), the court in which the claim for relief is pending may order a continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it considers just, the court may allow any process or proof of service to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process was issued.

(8) Proof of service.

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

(i) if served by a constable or other officer, a certificate of service; or

(ii) if served by any other person, an affidavit of service; and

(iii) the written admission of the defendant showing the date and place of service.

(b) The certificate or affidavit of service mentioned in subsection (8)(a) must state the time, date, place, and manner of service.

(9) Contents of affidavit of service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff, constable, or person designated by law, the affidavit of service 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.

(10) Procedure where only some of defendants served. If the summons is not served on all of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served and may at any time thereafter have a summons served against any defendant not served with the first process to cause that defendant to appear in court to show cause why that defendant should not be made a party to the judgment. Upon a defendant being duly served with the process, the court shall hear and determine the matter in the same manner as if the defendant had been originally brought into court, and the defendant must also be allowed the benefit of any payment or satisfaction that may have been made on the judgment before recovered.

_____
Plaintiff/Plaintiff Attorney

_____
Address

_____
Plaintiff/Plaintiff Attorney telephone number

IN THE JUSTICE/CITY COURT OF_____ COUNTY, MONTANA

BEFORE_____, JUSTICE OF THE PEACE/CITY JUDGE.

* * * * * *

_____,)
Plaintiff,) Civil Case_____
vs.) SUMMONS
_____,)
Defendant.)
_____)

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT,

GREETINGS:

You are hereby summoned to answer the Complaint in this action which is filed in the office of the above-entitled Justice of the Peace/City Judge, a copy of which is herewith served upon you. In the event that you deny any or all of the material facts stated in the complaint, you must file your written answer together with a $15.00 answer fee for each Defendant with the above-entitled Court, and serve a copy of your answer upon the Plaintiff or attorney at the address as shown on the Complaint.

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

GIVEN under my hand this _____ day of _____, 200_.

_____
JUDGE/CLERK OF COURT

Rule 5. Service and filing of pleadings and other papers, excluding summons. A. WHEN MADE. Whenever a pleading permitted by Rule 7 is filed and served, the party served shall file and serve any further written pleading within 20 days, unless otherwise provided by law, after service unless the time period is extended pursuant to Rule 6B, M.J.R.Civ.P. The party served may file a written pleading after 20 days if no default has been entered. All original pleadings and other papers must be filed with the court. A copy must be served on all other parties or their attorneys as provided below.

B. HOW MADE.

(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service must be made upon the attorney unless service upon the party personally is ordered by the judge.

(2) Service must be made by delivering a copy to the attorney, or to the party if not represented by an attorney.

(a) Delivery of a copy **to an attorney** within this rule means:

(i) handing it to the attorney;

(ii) leaving it at the attorney's office with a person in charge;

(iii) if there is no one in charge, leaving it in a conspicuous place in the attorney's office; or

(iv) **by mail directed to the attorney's last known address.**

(b) Delivery of a copy to a party within this rule means:

(i) handing it to the party; or

(ii) by leaving it at the party's place of residence with a person of suitable age and discretion who resides there; or

(iii) by mail directed to the party's last known address.

(c) Service by mail is complete upon mailing.

C. PROOF OF SERVICE. Proof of service must be made by an affidavit of the party or the party's attorney making service, by the certificate of the attorney making service, or by an acknowledgment in writing from the party or attorney served. The affidavit, certificate, or acknowledgment must be filed with the court.

Rule 6. Time. A. COMPUTATION. When the computation of any period of time prescribed or allowed by these rules is by order of a court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run may not be included. The last day of the period so computed must be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

B. EXTENSION. When by these rules, by a notice given under these rules, or by order of a court an act is required or allowed to be done at or within a specified time, the judge for cause shown may extend the period if a motion is made before the expiration of the period originally prescribed or extended by previous permission of the court or after expiration of the specified period if failure to act was the result of excusable neglect.

C. ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do an act or take a proceeding within a prescribed period after

service of a notice or other paper and the notice or other paper is served by mail, 3 days must be added to the prescribed period.

Rule 7. Pleadings allowed. In justice or city court there may be a complaint, answer, counterclaim, **and reply to a counterclaim**. No other pleadings are allowed, except that the court may order a reply to an answer. A "motion" is not a "pleading".

A. COMPLAINT. The complaint is a concise written statement of the facts constituting the plaintiff's cause of action and the type and amount of relief requested.

B. ANSWER. The answer must contain a denial of any or all of the material facts stated in the complaint that the defendant believes to be untrue and also a statement, in plain or direct manner, of any other facts constituting a defense. **Any matter not denied shall be deemed admitted. If 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.**

C. COUNTERCLAIM. (1) A defendant may file with the answer a counterclaim against the plaintiff. The defendant must file as 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) If the counterclaim, after being dismissed without prejudice as outside the subject matter jurisdiction of the justice or city court, is filed in the district court, then upon order of the district judge the pending justice or city court action must be transferred to the district court.

D. REPLY TO COUNTERCLAIM. The reply must contain a denial of any or all of the material facts stated in the counterclaim that the plaintiff believes to be untrue and also a statement, in plain or direct manner, of any other facts constituting a defense to the counterclaim. Any matter not denied shall be deemed admitted. If a reply to a counterclaim is not filed within 20 days after service of the counterclaim, the defendant may request entry of default as provided in Rule 21 of these rules.

E. CROSS CLAIMS. Cross claims are not allowed in a justice or city court, unless, in accordance with Rule 12 of these rules, justice cannot be otherwise obtained.

F. GENERAL RULES OF PLEADING.

(1) Form -- pleadings in justice or city court. All pleadings must be in writing and filed with the court. They must be in a form that enables a person of common understanding to know what is intended.

(2) Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. A statement of fact in a pleading to which no responsive pleading is required or permitted must be taken as denied or avoided.

(3) New matter. New matter in the answer or reply to counterclaim is considered denied by the opposing party.

(4) Signing of pleadings. Every pleading of a party represented by an attorney must be signed by that attorney and must state the address and telephone number of the attorney. A party who is not represented by an attorney shall sign the pleading and state the party's address and telephone number.

Rule 8. Amendment of pleadings. A. WHEN ALLOWED. Each party may amend its pleading one time, without leave of court, if the amended pleading is filed within the following times:

(1) The plaintiff's amended complaint, if any, must be filed no later than 10 days after defendant's answer to the original complaint if served upon plaintiff.

(2) The defendant's amended answer, if any, must be filed no later than 10 days after the filing of the original answer. The amended answer may add a counterclaim consistent with Rule 7C. Further amendments may be granted only upon written consent of the opposing party or upon leave of the court for good cause shown.

B. ANSWER TO AMENDED COMPLAINT. A defendant shall file and serve an answer within 20 days of the service of an amended complaint.

C. REPLY TO AMENDED COUNTERCLAIM. A plaintiff must file and serve a reply within 20 days after service of an amended counterclaim.

D. LIMIT. No other pleading to an amended pleading may be allowed, except that the court may order a reply to the amended answer.

Rule 9. Motions and other papers. A. APPLICATION. An application to the court for an order must be by motion, which, unless made during a hearing or trial, must be in writing. A motion must state with particularity the grounds for the motion and must set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing on the motion.

B. OPPOSITION. Any party opposing a motion must do so in writing within 10 days of service.

C. GENERAL RULES. The rules applicable to captions, signing, and other matters of form and the method and proof of service of pleadings apply to all motions and other papers provided for by these rules.

Rule 10. Naming of parties to action. A. PARTIES.

(1) Actions must be prosecuted or defended in the name of the person who benefits from or is responsible for the satisfaction of any judgment rendered in justice or city court. That person is considered the real party in interest.

(2) A personal representative, administrator, guardian, conservator, fiduciary, bailee, trustee of an express trust, party with whom or in whose name a contract has been made for the benefit of another, or party authorized by statute may be named as a party to an action. In such a case, the pleadings must contain information concerning the circumstances or statute that enables the person to appear in the party's name and not in the name of the person for whose benefit the action is prosecuted or defended.

B. AMENDMENT -- DISMISSAL. Upon motion of the opposing party or upon the court's own motion, the court must require an amendment of the pleadings to name the real party in interest. If the real party in interest is not named within 5 days, the action will be dismissed without prejudice.

Rule 11. Substitution of parties. A. SUBSTITUTION. If an original party to an action dies, becomes incompetent, transfers the party's interest, or is succeeded in office and the claim survives the absence of the original party, the justice or city court may order substitution of the proper party. The substitution is governed by Rule 10A.

B. FAILURE TO MAKE SUBSTITUTION. If substitution is not made within twenty (20) days after being ordered, the action must be dismissed without prejudice.

Rule 12. Joinder of claims and parties necessary for just adjudication. A. INVOLUNTARY JOINDER. A person subject to service of process must be joined if in the person's absence:

(1) complete relief cannot be accorded among those already parties;

(2) the person will not be able to protect the person's interest in the subject of the action without being named; or

(3) there is the likelihood of double, multiple, or otherwise inconsistent obligations incurred by reason of the person's claimed interest.

B. PERMISSIVE JOINDER. All persons may join in an action if they assert any right to relief, whether jointly or as individuals, arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or of fact common to all will arise in the action.

C. MISJOINDER. Misjoinder of parties not grounds for dismissal. The judge may add or dismiss parties by order either on motion of a party or on the judge's own initiative at any stage of the proceedings and on terms that are just. Claims against a party or parties may be added or severed and proceed to joint or separate trials as considered necessary by the judge in order to render a full adjudication of all claims in an orderly manner.

D. CLASS ACTIONS. Class actions may not be permitted in justice or city court proceedings.

Rule 13. Discovery. A. SCOPE AND LIMITS. There shall be no formal discovery except pursuant to court order as provided by these rules.

(1) Either party may make a motion for an order to obtain discovery through the use of requests for production, depositions and written interrogatories, regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the parties seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought is inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Any motion for formal discovery must include a statement that informal discovery was requested but was unsuccessful.

(3) (a) The frequency or extent of use of the discovery set forth in this rule must be limited by the court if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the party's resources, and the importance of the issues at stake in the litigation.

(b) The court may act upon its own initiative after reasonable notice or pursuant to Rule 9 or 14.

(4) The type and extent of discovery, as well as the appropriate timeframes, must be determined by the court. **Either party may request, or the court may order on its own, a hearing on the motion for discovery.**

(5) Deposition will be allowed only upon written motion and at the discretion of the judge and if allowed must be taken as provided in Rules 26 and 28 through 30 of the Montana Rules of Civil Procedure.

B. SANCTIONS. If a party, or an officer, director, or managing agent of a party, or party's attorney fails to comply with this rule or a discovery order issued by a justice or city court, the court may award, against the party **or attorney in violation**, reasonable expenses, including attorney fees caused by failure to comply. **Upon a showing of serious abuse of the discovery process the court may dismiss the action or grant default judgment as an appropriate sanction, in addition to or in lieu of a monetary sanction**. If the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust, the court is not required to impose sanctions. Nothing in these rules is meant to interfere with the inherent contempt powers of the court.

Rule 14. Pretrial conferences. A. OBJECTIVES. In any action, the court may, in its discretion, direct the parties' attorneys or the parties to appear before it for one or more conferences before trial for the following purposes:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be delayed because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial with more thorough preparation; and

(5) facilitating the settlement of the case. All pretrial scheduling shall be the duty of the judge.

B. SUBJECTS TO BE DISCUSSED AT PRE-TRIAL CONFERENCES. The participants at any conference under this rule may consider and take action with respect to:

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authentication of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6) the possibility of settlement;

(7) the form and substance of the pretrial order;

(8) the disposition of pending motions;

(9) the time for submission of proposed findings of fact and conclusions of law in a non-jury action, or proposed instructions to the jury and form of verdict in a jury action, and such other matters as may aid in the disposition of the action.

Each party or an attorney for each party participating in any conference before trial must have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. After any conference held pursuant to this rule, an order must be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order.

C. SANCTIONS. If a party or a party's attorney fails to obey a pretrial order, if no appearance is made on behalf of a party at the pretrial conference, if a party or a party's attorney is substantially unprepared to participate in the conference, or if a party or a party's attorney fails to participate in good faith, the judge, upon the judge's own motion, may make orders as are just and may deal with the offending party pursuant to Title 3, chapter 10, part 4. In lieu of or in addition to any other sanction, the judge may require the party or the party's attorney, or both, to pay the reasonable expenses, including attorney fees, incurred because of any noncompliance with this rule unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

Rule 15. Right to jury trial. A. RIGHT PRESERVED. The right of a trial by jury as declared by the constitutions of the United States and the State of Montana or as given by statute must be preserved to the parties inviolate.

B. DEMAND. At any time after the commencement of the action and not later than 5 days after the service of the last pleading directed to the issue, a party may demand a trial by jury, as allowed by law, of any issue of fact by filing in the court and serving upon the other parties a written demand for a jury trial. The demand may be stated in a pleading of the party.

C. HOW WAIVED. A jury may be waived:

(1) by consent of the parties entered in the docket;

(2) by the failure of any party to demand a jury trial under this rule;

(3) by the failure of either party to appear at the time fixed for the trial of an issue of fact.

Rule 16. Failure to appear or proceed. A. DEFENDANT. If a defendant, who has been properly served, fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party or parties.

B. PLAINTIFF. If a plaintiff fails to appear at the time fixed for trial, the judge shall dismiss the plaintiff's claim with prejudice and award costs to the defendant. The trial may proceed on any other pending claims of any other parties.

C. TIME. If a party fails to pursue disposition of a matter filed in a justice or city court in a timely manner, the court may, on it's own motion, dismiss the matter without prejudice. A dismissal at the court's discretion under this Rule 16C must be by written notice of the court to all parties and may not be made for at least 90 days after the last action. The notice must state that unless good cause is shown by a party or a party's

attorney within 30 days of the court's notice, the matter must be dismissed without prejudice. If good cause is shown, in writing, by a party or a party's attorney, the court may set the matter for trial and no dismissal may be entered by the court.

Rule 17. Costs. Jury fees and other costs as defined in 3-15-203, M.C.A., and Title 25, chapter 10, M.C.A., must be taxed as costs against the losing party as determined by the court, **following the procedures set forth in Title 25, chapter 10.**

Rule 18. Jury. A. NUMBER OF JURORS. A jury in a justice or city court consists of six persons, but the parties may agree to fewer than six.

B. IMPANELING. The jury in a civil action in justice or city court must be impaneled as provided in 25-7-202 through 25-7-209 and 25-7-221 through 25-7-224. Where the words "clerk" or "district court" occur in those sections, the words refer to the justice or city court in application under this rule.

C. SICKNESS OF JUROR. If a juror becomes sick and is unable to perform the juror's duty after impaneling of the jury but before verdict, the judge may order the juror discharged and proceed with the other jurors, swear in an alternate juror, continue the case, or discharge the jury and impanel a new jury.

D. PREVENTION OF JURY FROM GIVING VERDICT. When a jury is discharged or prevented from giving a verdict by reason of accident or other cause during the course of the trial, the judge may try the action with another jury again at a future time.

Rule 19. Order of trial. In a nonjury trial or in a jury trial after the jury has been impaneled, the trial must proceed in the following order, unless the court, for good cause, otherwise directs:

(1) The party on whom rests the burden of the issues may briefly state a case and the evidence by which the party expects to sustain it.

(2) The adverse party may next briefly state a defense and the evidence the party expects to offer in support of it, or the party may reserve the opening statement for the beginning of the case.

(3) The party on whom rests the burden of the issues must first produce evidence. The adverse party will then produce evidence.

(4) The parties will then be confined to rebutting evidence unless the court, for good reasons, in furtherance of justice, permits them to offer evidence in their original case.

(5) The court shall charge the jury with its duties, instructing it in all matters of law that it finds necessary for the jury's information in rendering a verdict. Proposed instructions may be offered to the court by the parties**. Instructions shall be offered if ordered at the pretrial conference.**

(6) (a) The order for final argument is plaintiff, defendant, and rebuttal by plaintiff of defendant's argument. No further argument is allowed. If several defendants having several defenses appear by different counsel, the court shall determine their relative order in the evidence and argument.

(b) In arguing the case to the jury, a party or counsel may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence in the case.

Rule 20. Notice of trial. After all parties served with process have appeared or some have appeared and the remaining have been defaulted, the judge, upon request of any party, shall fix a day for trial of the cause and shall provide notice of the trial date to the plaintiffs and defendants who have appeared.

Rule 21. Entry of judgment. A. GROUNDS. A judge shall enter judgment in the docket of the court in the following circumstances:

(1) Offer to compromise before trial. If the defendant, at any time before the trial, offers in writing to allow judgment to be taken against the defendant for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued. However, if the plaintiff does not accept the offer before the trial and fails to recover in the action a sum in excess of the offer, the plaintiff cannot recover costs. In such a case, costs must be adjudged against the plaintiff and, if the plaintiff recovers, be deducted from the plaintiff's recovery. The offer and failure to accept may not be given in evidence or affect the recovery except as to costs.

(2) Judgment of dismissal without prejudice. Judgment that the action be dismissed without prejudice to a new action may be entered with costs against the plaintiff in the following cases:

(a) when the plaintiff voluntarily dismissed the action, at or before the close of the plaintiff's evidence, when there is no counterclaim;

(b) when the plaintiff fails to amend the complaint within the time allowed by the court;

(c) for improper venue under Rule 3B of these rules.

(3) Judgment by confession. Judgment by confession must be as provided for in Title 27, chapter 9.

(4) Judgment on pleadings. After the pleadings are closed but within a time as not to delay the trial, any party may move for judgment on the pleadings. Matters outside the pleadings may not be presented to the court. **A court may grant judgment on the pleadings for either party. The court may only grant judgment on the pleadings if the pleadings themselves construed in the light most favorable to the party opposing the judgment, show that it would be impossible for the party against whom the judgment is entered to prevail at trial.**

(5) Summary judgment. Either party may move for, and the judge may grant, summary judgment on one or more of the issues raised by the pleadings. In so moving, responding to the motion, and ruling on the motion, the parties and the court shall follow the procedures specified in Rule 56 of M.R.Civ.P.

(6) Upon verdict. After a trial by jury, the judge shall enter judgment at once in conformity with the verdict.

(7) After trial by judge. When the trial is by the judge, the judge shall enter judgment within 30 days.

(8) By default. (a) (1) When a party against whom a judgment for affirmative relief is sought has failed to answer **or reply** as provided by these rules upon written motion by the plaintiff **or counterclaiming defendant**, the judge or clerk must enter the default against such party.

(2) When a default has been entered against a defendant for failure to answer and if the plaintiff's claim against the defendant is for a sum certain or for a sum that can by

computation be made certain, upon the plaintiff's written request stating the amount due, the judge or clerk must enter judgment for that amount and costs against the defaulted defendant.

(b) If in order to enable the court to enter judgment or to carry it into effect it is necessary to determine the amount of damages or to establish the truth of any allegation by evidence, the court may conduct hearings it considers necessary and proper.

(c) A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment in the complaint or counterclaim.

B. MULTIPLE DEFENDANTS. The court shall enter judgment only against those over whom it has obtained jurisdiction.

Rule 22. Relief from judgment. A. RELIEF. A judge may, on such terms as may be just and on the payment of costs, relieve a party from any judgment taken against the party by mistake, inadvertence, surprise, or excusable neglect, but the application for relief must be made within 30 days after entry of the judgment and upon an affidavit showing good cause for it. The party applying for relief shall serve the application and give notice of hearing to all other parties. The court shall set a hearing within 10 days after receipt of the application.

B. CLERICAL MISTAKES. Clerical mistakes or errors arising from oversight or omission in pleadings, judgments, orders, and other parts of the record may be corrected by the court at any time on its own initiative or on the motion of any party and after any notice the court may order.

Rule 23. Execution. 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 thereon by the judge or clerk to the sheriff, constable, or levying officer of any county in the state.

B. TIME. The party in whose favor judgment is entered may request a writ of execution for its enforcement against the personal property of the judgment debtor. At any time within 6 years from the entry of judgment or within the time extended pursuant to 25-13-102, the justice of the peace or city judge who entered the judgment or the successor in office or the clerk shall issue the writ upon request.

C. FORM AND CONTENT OF EXECUTION. Determination of the amount of the judgment outstanding and the type, kind, description, and location of the personal property of the judgment debtor is the exclusive duty of the judgment creditor. The execution must be directed to the sheriff, a constable, or a levying officer of the county and must be subscribed by the judge or clerk and bear the date of its issuance. The execution must contain the following information and may be in the following form:

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

.....)
.....) Case No. .....
Plaintiff)
vs.) EXECUTION
.....)
.....)
Defendant

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

WHEREAS, on the ..... day of ....., 19...., ... recovered a judgment in the said Justice/City Court against ..... as follows:

Original or Balance Due on Judgment in the amount of $.....

Together with accrued interest at ...% per annum on the Judgment $.....

Costs & Disbursements Accrued $.....

Credits $.....

Total sum due & 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 receipt.

Given under my hand this ..... day of ....., 19.....

.....

Justice of the Peace or Clerk .....

City Judge or Clerk.

D. RETURN OF EXECUTION. The writ of execution shall remain in effect for 120 days from the date of receipt by the sheriff or levying officer and may be served multiple times during that period at the direction of the judgment creditor. The execution must be returned to the court:

(1) not less than 10 days nor more than sixty (60) days after receipt of the recovery by the sheriff or levying officer;

(2) if the judgment creditor has requested the return of the writ.

(3) at the written direction of the officer, agent, or attorney who sent the writ, the sheriff or levying officer may return the writ to the requesting party.

E. RENEWAL. If a writ of execution is returned unsatisfied or partially satisfied, a new writ may be issued for the unsatisfied portion of the judgment, together with costs and interest. No new or additional writ may be issued until any outstanding issued writ,

together with the return thereon, is returned to the issuing justice or city court.

F. SUPPLEMENTAL PROCEEDINGS. Proceedings supplementary to execution set out in 25-13-502, 25-14-101 through 25-14-105, 25-14-107, and 25-14-108 are applicable to justice or city courts, the word "constable" being substituted for the word "sheriff" and the words "justice or city judge" being substituted for the word "judge".

Rule 24. 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.

TITLE 46. CRIMINAL PROCEDURE
CHAPTER 5. SEARCH AND SEIZURE

Part 2. Search Warrants

46-5-221. Grounds for search warrant. A judge shall issue a search warrant to a person upon application, in writing or by telephone, made under oath or affirmation, that:

(1) states facts sufficient to support probable cause to believe that an offense has been committed;

(2) states facts sufficient to support probable cause to believe that evidence, contraband, or persons connected with the offense may be found;

(3) particularly describes the place, object, or persons to be searched; and

(4) particularly describes who or what is to be seized.

46-5-222. Search warrants issued by telephone. (1) Whenever the application for a search warrant is made by telephone, the applicant shall, in addition to the requirements contained in 46-5-221, state reasons to justify immediate issuance of a search warrant.

(2) All testimony given over the telephone that is intended to support an application for a search warrant must be given on oath or affirmation and must identify the person testifying. For the purpose of this section, the judge is authorized to administer an oath or affirmation by telephone.

(3) Sworn or affirmed testimony given over the telephone must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and must be transcribed verbatim as soon as possible after the application is made. The recording must include the time and date it was recorded.

(4) If the judge approves a warrant over the telephone, the peace officer serving the warrant shall sign the search warrant in the officer's own name and in the judge's name. The peace officer signing the judge's name shall initial the judge's name indicating the signature was authorized by the judge but signed by the officer.

(5) Any search warrant issued by telephone must be signed by the issuing judge or the judge's successor as soon as possible after it has been issued.

46-5-223. To whom search warrant directed. A search warrant must be directed to a specific peace officer commanding the officer to search for and seize the evidence, contraband, or person designated in the warrant.

46-5-224. What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

(1) evidence;

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained.

46-5-225. When warrant may be served. The warrant may be served at any time of the day or night. The warrant must be served within 10 days from the time of issuance. Any warrant not served within 10 days is void and must be returned to the court or the judge issuing the warrant and identified as "not served".

46-5-226. Service of search warrant. A search warrant must in all cases be served by the peace officer specifically named and by no other person except in aid of the officer when the officer is present and acting in its service.

46-5-227. Service and return of search warrant. Service of a search warrant is made by exhibiting the original warrant or a duplicate original warrant at the place or to the person to be searched. The officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the search warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. Failure to leave a copy and receipt may not render the property seized inadmissible at trial.

46-5-228. Procedures assisting in execution of service of search warrant. (1) All necessary and reasonable force may be used to serve a search warrant or to effect an entry into any building, property, or object to serve a search warrant.

(2) The person serving the search warrant may reasonably detain and search any person on the premises being searched at the time of the search:

(a) for self-protection; or

(b) to prevent the disposal or concealment of any evidence, contraband, or persons particularly described in the warrant.

TITLE 46. CRIMINAL PROCEDURE

46-6-212. Failure to appear following summons or notice to appear. **(1) If, after the issuance of a summons or notice to appear, the judge becomes satisfied that the**

person has not appeared or will not appear as commanded, the judge may at once issue an arrest warrant.

(2) If after being summoned the corporation does not appear, a plea of not guilty must be entered in accordance with 46-12-204 and the matter must proceed to trial and judgment without further process.

46-6-310. Notice to appear. (1) Whenever a peace officer is authorized to arrest a person without a warrant, the officer may instead issue the person a notice to appear.

(2) The notice must:

(a) be in writing;

(b) state the person's name and address, if known;

(c) set forth the nature of the offense;

(d) be signed by the issuing officer; and

(e) direct the person to appear before a court at a certain time and place.

(3) Upon failure of the person to appear, a summons or arrest warrant may be issued.

46-11-401. Form of charge. (1) The charge must be in writing and in the name of the state or the appropriate county or municipality and must specify the court in which the charge is filed. The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

(2) If the charge is by information or indictment, it must include endorsed on the information or indictment the names of the witnesses for the prosecution, if known.

(3) If the charge is by complaint, it must be signed by a sworn peace officer, under oath by a person having knowledge of the facts, or by the prosecutor.

(4) If the charge is by information, it must be signed by the prosecutor. If the charge is by indictment, it must be signed by the foreman of the grand jury.

(5) The court, on motion of the defendant, may strike surplusage from an indictment or information.

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant.