

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Doherty, on January 14, 1993, at 10:07 a.m.

#### **ROLL CALL**

##### **Members Present:**

Sen. Bill Yellowtail, Chair (D)  
Sen. Steve Doherty, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Chet Blaylock (D)  
Sen. Bob Brown (R)  
Sen. Bruce Crippen (R)  
Sen. Eve Franklin (D)  
Sen. Lorents Grosfield (R)  
Sen. Mike Halligan (D)  
Sen. John Harp (R)  
Sen. David Rye (R)  
Sen. Tom Towe (D)

**Members Excused:** NONE

**Members Absent:** NONE

**Staff Present:** Valencia Lane, Legislative Council  
Rebecca Court, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing: SB 9  
Executive Action: NONE

#### **HEARING ON SB 9**

##### **Opening Statement by Sponsor:**

Senator Towe, District 46, stated that SB 9 is a result of an inquiry from a constituent. (Exhibit #1.) Senator Towe told the Committee of a pamphlet Yellowstone County hands out to persons filing a complaint. (Exhibit #2.) The pamphlet is helpful in telling the person how to file a complaint, but for those who don't understand it it is not. SB 9 addresses the problem of helping people who can not afford lawyers and those cases when it is not beneficial to do so. Senator Towe told the Committee about the proposed changes in SB 9. The first change is the

"where as" clause. The second change would be striking the language that reads "as part of the jurisdiction of the small claims court you must be able to serve the defendant within the county." If someone comes into your county and damages something and then leaves the county you can't sue them in Small Claims Court because you can not find them in that county. The third change would be striking the number \$2500 and inserting \$3000. The fourth change is a cleanup matter which relates to service. Cleaning up the language would require service on the defendant in the same manner provided in civil actions held in Justice Courts. The fifth change addresses the question of attorney fees. Under the current law, if a plaintiff wins in Small Claims Court and the defendant appeals to District Court and wins, the plaintiff may be required to pay the defendants attorneys fees in addition to cost. The language proposed in SB 9 would read "if a defendant appeals in District Court but does not prevail, the Court may grant the plaintiff reasonable attorneys fees in addition to cost." An amendment has been proposed in the case where a big corporation is a plaintiff. The amendment would read, "the Court may award attorney fees to any party if the Court finds that because of the economic disparity between the parties justice so requires." The sixth change applies to Justice Courts and Small Claims Courts under the District Court's jurisdiction, as well as Small Claims Court in Justice Court jurisdictions. This change would certify individuals who are qualified to represent people in Justice Courts and Small Claims Court. Certification would allow those individuals to charge a fee for giving advice and helping with a Small Claims Court case. This would limit the ability to only giving advice outside the Court. SB 9 allows people with small claims to come into court and get justice where they can not otherwise because the amount in controversy does not warrant getting an attorney to help them. In another proposed amendment the County Commissioners would have to recertify the court assistants every year.

**Proponents' Testimony:**

NONE

**Opponents' Testimony:**

John Alke, Montana Defense Trial Lawyers, offered amendments to SB 9. (Exhibit #3.)

Ron Ashabraner, State Farms Insurance Company, read from prepared testimony by Greg Van Horssen. (Exhibit #4.)

Craig Hoppe, Montana Magistrates Association, stated that Section 3, Section 8, and Section 9 needed to be looked at for further changes in the language. Section 3 should incorporate the Montana Supreme Court's ruling or limit it to only attorneys. Regarding Section 8, the defendant should also be entitled to attorney fees if he prevails. In Section 9 the word "legal assistants" should be changed to "paralegals."

**Questions From Committee Members and Responses:**

Senator Halligan questioned Senator Towe concerning jurisdiction. Senator Towe responded according to a judges opinion, if the convenience of the parties is to try a case in a certain town, that is what would happen if we changed the law. The present law says jurisdictionally, if you can not find the defendant you can not file a lawsuit.

Senator Blaylock asked John Alke about awarding attorney fees. Mr. Alke responded, according to SB 9, if a defendant appeals and loses, they would have to pay their attorney fees, the plaintiffs attorneys fees, and the cost of the judgement. However if the plaintiff appeals and loses they will not have to pay. Mr. Alke further stated this would not be fair to the defendant.

Senator Blaylock asked Senator Towe how he would respond to the same question. Senator Towe proposed an amendment that would read, "either party may receive attorney fees if the Court finds because of the economic disparity between the parties, justice so requires." This amendment would be a message to the Court not to reward fees automatically to the winner, but allow both parties to receive attorney fees because of the economic disparity of the parties.

Senator Crippen asked Senator Towe about requiring attorneys to have a base fee for clients involved in Small Claims Court. Senator Towe responded it would not be worthwhile for an attorney to take a small claims court case, therefore it would not accomplish anything.

Senator Crippen also asked about having paralegals representing both parties and not allowing an appeal. Senator Towe felt those were good ideas. However, sometimes an appeal is critical because it might be a key to an important matter, or may be a precedent setting matter.

Senator Rye questioned Senator Towe whether attorneys worked pro bono. Senator Towe responded that most attorneys do, but they cannot all the time. Senator Towe told the Committee allowing non-attorneys to advise clients in the procedures of the Small Claims Court would be a good way to handle these cases.


Senator Grosfield asked Senator Towe to respond to the Supreme Court ruling Sparks v. Johnson. Senator Towe replied that the Supreme Court says they have the right to determine what constitutes the practice of law, but in the area of Justice Courts they will follow what the legislature is doing.

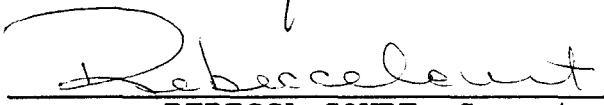
**Closing by Sponsor:**

Senator Towe closed by telling the Committee he will look at SB 9 and prepare amendments that have been proposed.

ADJOURNMENT

Adjournment: 10:59 a.m.

  
\_\_\_\_\_  
BILL YELLOWTAIL, Chair

  
\_\_\_\_\_  
REBECCA COURT, Secretary

BY/rc

# ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 1-14-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

RECEIVED

DEC -2 1991

TOWE, BALL,  
LUTHE & MACKAY

# A PROPOSAL FOR A CHANGE IN MONTANA SMALL CLAIMS COURT STATUTES

by:

SENATE JUDICIARY

EXHIBIT NO.

1-14-93  
SB 9

Paul D. Friend  
17 Washington Avenue  
Laurel, MT 59044

628-6236

698-4975

## DEFINING THE PROBLEM

Citizens of the state of Montana who find themselves aggrieved at some action by a business, frequently come to a significant disadvantage. If their loss to a business is less than \$5,000, and there are no special damages under which they can sue, they often find themselves unable to obtain legal counsel due to the enormous relative cost of those services.

To their further disadvantage, owing to a Montana Supreme Court ruling, although the intent of the legislature was to not permit attorneys in small claims court, if they are suing a corporation, and that corporation decides to hire a law firm to represent them, their case is automatically bumped up into Justice Court. The effect of this is to dissuade many aggrieved citizens, who have legitimate complaints, from further pursuing their claim.

If they should decide to pursue the case and hire a lawyer, they find that, under current Montana practice, since the law is mute on recovery of attorney's fees, they are usually unable to recover those fees absent a specific contract allowing for recovery. Again they are dissuaded from pursuing valid claims.

Justice is denied, and poor people are damaged, while large corporations and the big law firms they hire are enriched.

## AN EXAMPLE

Quite recently, I had occasion to go into small claims court. Although I am quite skilled with words and with the law, I felt at a significant disadvantage in several areas.

They were:

- 1 - I, the aggrieved party in an action against K-Mart Corporation, had to sue in a court more than 140 miles away from my county of domicile, because the wrongful action for

which I was suing for relief, occurred in Gallatin County, and even though the offending corporation maintained executive regional offices in my county of Yellowstone, I had to sue where the wrongful action took place. I suffered great and unrecovered expenses connected with pursuing that lawsuit in a far away court.

- 2 - I sued in small claims court in Bozeman, for damages to my automobile engine due to negligence of K-Mart Corporation personnel, preparing my own complaint, praecipe, and summons.

K-Mart Corporation hired Bozeman attorney Barry G. O'Connell, a man with a reputation as a tough trial attorney, and he responded, as would any responsible attorney, denying everything and demanding a jury trial. The case was bumped up to Justice Court, and I learned that the jury trial would cost the losing party from \$500 up.

I sought legal counsel and learned that I could not recover legal fees, and that my attorney's cost to pursue my claim of \$926 plus expenses, could well exceed \$3,000! If I lost, I would be out my loss plus court costs, which including a jury trial, could be as high as \$1,000.

I had no choice but to drop the matter or pursue the case by myself, taking a chance on losing and incurring the higher expense.

- 3 - I prepared an interrogatory for the defendant to begin narrowing the issues at dispute, and sent it to Mr. O'Connell.

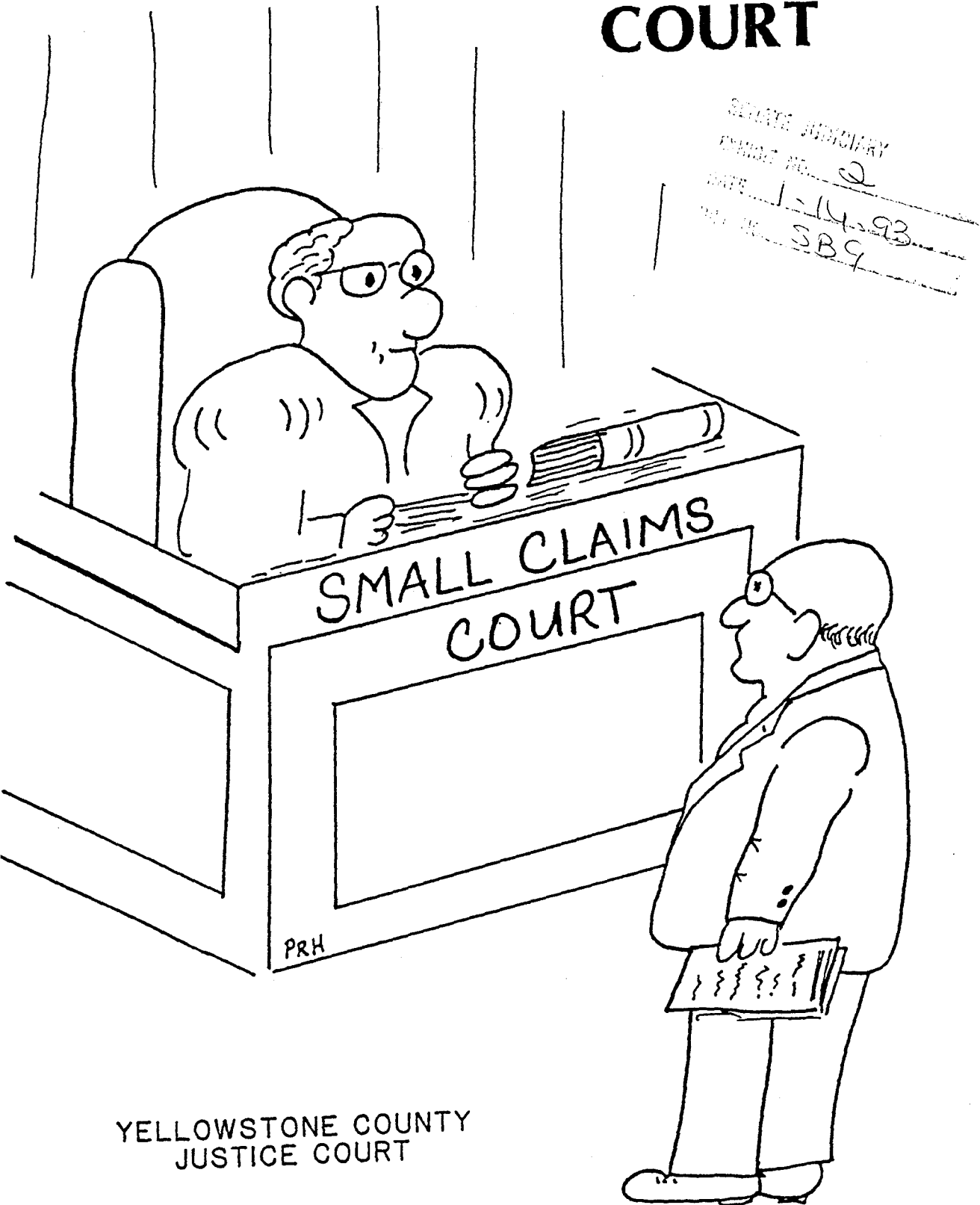
I subsequently made an offer to settle to Mr. O'Connell.

In the meantime, I prepared a motion to Judge G. L. Smith to deny the jury trial. I knew when I filed the motion it would not be successful, but it was a way of demonstrating to Mr. O'Connell, and K-Mart Corporation, that I was capable of filing motions and briefs with the court in the pursuit of my case.

- 4 - On November 26, I signed a release of claims and stipulation for dismissal in exchange for a check from K-Mart.

I am a fortunate individual. My education and experience resources allowed me to pursue this case to a favorable conclusion. Fully 99 percent of the people of this state do not have similar capabilities, and they would have fallen by the wayside and been denied justice.

# THE WHO WHAT WHEN AND HOW OF SMALL CLAIMS COURT



YELLOWSTONE COUNTY  
JUSTICE COURT



## INTRODUCTION

This manual has been prepared to assist persons who want to file a claim (sue) or defend themselves in Small Claims Court in Yellowstone County, Justice Court.

It outlines some basic steps involved in bringing and defending a Small Claims action. No attempt has been made to cover all possible problems or situations that may arise. If problems arise which are not covered in the manual, **IT MAY BE NECESSARY TO CONSULT AN ATTORNEY.**

This manual is intended to answer some basic questions for the person who chooses to "go it alone". It does not answer all the questions that might come up during the lawsuit. If you decide to use this manual, **YOU SHOULD ASK QUESTIONS WHENEVER YOU ARE IN DOUBT.** The personnel in the Justice Court will assist you and will answer questions about some matters **BUT THEY CANNOT GIVE LEGAL ADVICE.**

This manual has been prepared by the Justice Court, Yellowstone County, Montana for use in Small Claims Court. **PLEASE** read these instructions very carefully before proceeding on your action and refer to them frequently throughout the process of your Small Claims case. **IF YOUR QUESTIONS CANNOT BE SATISFACTORILY ANSWERED BY THIS PAMPHLET, IT IS ADVISABLE THAT YOU CONTACT AN ATTORNEY OF YOUR CHOICE.**

This manual has been prepared pursuant to the SMALL CLAIMS CODES in TITLE 25, CHAPTER 35, MONTANA CODES ANNOTATED.

SMALL CLAIMS DIVISION  
JUSTICE COURT  
YELLOWSTONE COUNTY  
BILLINGS, MONTANA 59101

EXHIBIT 2  
DATE 1-14-93  
SB 9

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**PREPARING FOR THE SMALL CLAIMS TRIAL:**

You must be prepared at the time of trial with any and all witnesses, documents, photos, etc. Witnesses are particularly important in many cases. For example, if your case involves the question of quality of workmanship, an experienced and impartial person in the same trade makes a good witness. The following is a check list that will help you in preparing for your case.

**CHECK LIST FOR PLAINTIFF:**

- ( ) I have sent a certified return receipt letter to the defendant explaining the complaint and stating my demand.
- ( ) The party I am suing is liable to me. (This is truly the person who owes me money or who must return my property.)
- ( ) I have made reasonable demands and efforts to collect or settle this case before going to court.
- ( ) I know the following about the defendant before I file my suit:
  - Name
  - Address
  - Phone Number
  - Where They Work
- ( ) I can prove the amount of the complaint. I have not asked for more than what is really owed me.
- ( ) I have the following items that will establish proof:
  - ( ) Written contracts (examples: notes, lease agreements, IOU's, etc.)
  - ( ) Letters relating to this case
  - ( ) Bills, invoices, monthly statements
  - ( ) Cancelled checks
  - ( ) Repair bills or written estimates of repair written by a reputable company
  - ( ) Photographs
  - ( ) Witnesses
  - ( ) Other
- ( ) I have the following witnesses who can testify directly of knowledge they have of the case. (They have not heard things from someone else, they know first-hand): Names:
- ( ) I must get a subpoena or "Order to Appear" for the following witnesses because they said they would not appear when I contacted them: Names:

**CHECK LIST FOR THE DEFENDANT:**

- ( ) I do not owe the amount in the complaint, nor do I have the Plaintiff's property.
- ( ) I have made reasonable efforts to settle this case before going to Court.
- ( ) I have the following defense:
  - ( ) I have the following items for my defense:
    - ( ) Written contracts (example: notes, lease agreement, IOU's, etc.)
    - ( ) Letters relating to this case
    - ( ) Bills, invoices or monthly statements
    - ( ) Cancelled checks
    - ( ) Repair bills or written estimates of repair written by a reputable company
    - ( ) Photographs
    - ( ) Witnesses
    - ( ) Other
  - ( ) I have the following witnesses who can testify directly of knowledge they have of the case. (They have not heard things from someone else, they know first-hand): Names:
- ( ) I must get a subpoena or "Order to Appear" for the following witnesses because they said they would not appear when I contacted them: Names:

**HOW TO FILE A COMPLAINT:**

- 1) Definitely determine how much is actually owed you.
- 2) Write a certified return receipt letter to the opposing party and demand that the amount owed you be paid within ten (10) days. Send copies of estimates, bills, etc. with the letter. If the letter is refused, return to the Court to file your case. Otherwise, wait ten days from the date the letter is signed for, for the party to comply with your requests. If he/she doesn't comply in ten days from the date of signature, return to the court and file your case.
- 3) GO TO ROOM 601A - YELLOWSTONE COUNTY COURTHOUSE:  
Bring the following with you when you file your complaint:
  - a) \$10.00 filing fee.
  - b) A copy of your letter and the green return receipt card.
  - c) Page 16 of this booklet filled out.
- 4) All Small Claims Complaints will be served by either the Civil Division of the Yellowstone County Sheriff's Department or a private process server. The following is a

partial list of private process servers, along with the Sheriff's Office: (See the Yellow Pages in the telephone book for process servers.)

Civil Division - Sheriff's Office  
256-2959 - Room 204, County Courthouse

GN Accounts - Jim Nixon  
855-1470 or 256-5389

NIXCO Process - Richard Nixon  
855-0709 or 245-9153

Don Pertuit  
245-4727

Sundown Security - Jan Struckman or Elwin Kirkwood  
256-1311

Tri-State Investigations - Charles Locke  
248-1300 or 800-879-4146

- 5) The Small Claims Clerk will hand you the papers that you must give to the process server, along with instructions for the process server. The process server has been instructed, to complete and return to this Court the section entitled "Certificate of Personal Service." If the server, in error, returns this to you, you must immediately return this form to the Small Claims Division of Justice Court.

## S M A L L   C L A I M S   C O U R T

### WHAT IS SMALL CLAIMS COURT?

Since 1977, Montana has provided a forum for its citizens to settle minor legal disputes quickly, inexpensively and fairly. Each county's Justice Court may have a division known as the "Small Claims Court". The procedure in Small Claims Court is simpler than in regular court in that hearings are informal, there is no jury and it is not necessary to have an attorney.

### WHAT CASES CAN THE SMALL CLAIMS COURT HANDLE?

#### 1. Complaints (or claims):

You may file a claim to recover up to \$3,000.00 worth of personal property in the Small Claims Court in the county where the defendant is able to be served with the complaint.

The recovery of money must be for actual damages, or money that is due to a person because he has suffered a loss or injury. The money is owed by the person who caused the loss or injury and the amount of damages, as well as the liability, must be proven at the trial. Damage can be defined as a loss or injury.

A. Example of a damage suit:

John Barrier is in an accident caused by Sherry Leadfoot. Barrier files a claim after determining the actual damages by obtaining two estimates for repairs.

At trial, Barrier must be able to show why Leadfoot was at fault. He must also prove the amount of the damages done in the accident in question.

B. Example of a damage suit:

George Landperson, a landlord, withheld a security deposit from Tillie Tenant. Tenant felt it was unlawfully withheld, so she filed a suit in Small Claims Court. It would be up to her to be able to prove the deposit was unlawfully withheld.

C. Example of a suit for recovery of personal property:

Joan Loaner loaned her favorite sweater to Alice Borrows, her roommate. Borrows moved a week later and took the sweater with her. Loaner wants the sweater back and has sent a certified return receipt letter to Borrows asking her for its return. Loaner sues for the return of the sweater since Borrows has not returned it.

2. Counterclaim:

If you are being sued but believe the person suing you owes you money from the transaction or occurrence described in his or her complaint, you may file a counterclaim. You may file a counterclaim even if you acknowledge that you owe the person suing you the amount of the claim or part of that amount. Your counterclaim cannot exceed the \$3,000.00 limit. You would have to file the counterclaim in the same manner as in the original suit, except that you need not send the certified return receipt letter. You must file, allowing at least 72 hours (three complete days-do not include the weekend) before the trial date that has been set, so that the papers can be served on the Plaintiff by the process server.

If you file a counterclaim, the claim must arise out of the same transaction that forms the basis for the Plaintiff's suit. The claim cannot exceed \$3,000.00. If you have filed a complaint against the Plaintiff that exceeds \$3,000.00, the court then would decide whether the Plaintiff's claim is discharged. You would then have to prosecute the balance of the claim in an appropriate District Court or the Civil

Division of Justice Court. You may get information from an attorney, the Small Claims Court Clerk, or a Clerk of District Court for these procedures.

Testimony and evidence concerning the Plaintiff's complaint and the counterclaim will be heard at the trial which was set on the Plaintiff's complaint. At that time, both parties must be prepared with all papers, witnesses, photos, documents and/or all other evidence.

If you need further information concerning procedures for filing a counterclaim, you should call the Small Claims Clerk at 256-2897.

A. Example:

You were in an accident with a driver of another vehicle. Both of you believe the accident was the other person's fault. The person who hit you files a suit against you. You feel he owes you money for your damages, however, so you may file a counterclaim.

**WHO CAN SUE OR BE SUED?**

In Small Claims Court, you can sue or be sued by an individual, a partnership, a corporation, a union, an association, or any other kind of association or entity, except the state or a state agency. However, claims cannot be assigned to others in Small Claims Court, which means you must handle your own case. It cannot be handled by credit companies for you.

If you are suing a corporation, use its legal name. If the business is quite new, you need to contact the Montana Secretary of State's office, Capitol Building, Helena, MT 59601 (444-2034).

A. Example:

It would be improper for you to sue Joe's Shoe Store if the legal name is Joe Smith, Inc.

**ATTORNEYS:**

Generally, you may not want to hire an attorney to represent you in Small Claims Court because your claim may be too small to justify the expense involved. A party may not be represented by an attorney unless all parties are represented by attorneys. However, you may wish to talk with an attorney before filing your claim to find out if there is a legal basis for it and to get legal advice. The judges and clerks in Small Claims Court cannot give you legal advice. Either party may wish to speak to an attorney before the trial date.

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Many attorneys charge very little for an initial visit. Ask the attorney if there is a statute to support or defend your claim. Write down the statute number and get a copy of the law. If your claim is based on "common law" or "case law", ask the attorney to explain the theory to you and take notes. You have just received inexpensive legal advice, and you are ready to proceed with the claim.

If you cannot afford an attorney, you may contact Montana Legal Services Association, 2442 1st Avenue North, phone 248-7113. Perhaps they will be able to give you advice, if you qualify for their services.

#### HOW TO BEGIN YOUR CLAIM IN THE SMALL CLAIMS COURT:

**PLAINTIFF** (the person who is filing the court action)

All suits in Small Claims Court are begun by the Plaintiff sending a certified return receipt letter to the person he wishes to sue, stating the problem and demanding payment within ten (10) days or more. (See Glossary for "Certified Letter") If the party refuses the letter, you may immediately continue with filing your complaint. If they accept the letter, give them ten (10) days from the date they received the letter to respond before filing. Send the certified return receipt letter even if you have contacted the party before. This assures proof of your notification to the defendant. Bring your proof of the certified return receipt letter (green card) with you to Court, both when you file and if you go to trial.

Fill out a complaint form (Page 16 in this booklet) and bring it to the Small Claims Court office, Room 601A in the Courthouse. On this form you will state, in your own words, why you are suing and for what specific amount. **You must have the complete name and address of the person you are suing.** Be certain that you have the correct person or business that you think owes you money.

A. Example:

If you want to sue a business, but give the name of the salesperson who sold you a defective product, your case will be dismissed for failure to name the correct party.

If you want to sue a business, do not name only the owner of the business, but include also the business name. Example: Joe Doe dba Joe's Shoe Company.

It will cost to file your Small Claims action. If you win your case, the other side may be ordered to repay you for this cost. Do not include this cost, however, in the amount you are



claiming the party owes you. You may call Justice Court, 256-2897, to inquire about costs.

Although you do not have to bring evidence to back up your claim at the time you file the case, you will need to get that information before you file so that you know exactly how much is owed you. For example, you will need at least (2) written estimates for repair from reputable businesses for damages done in an auto accident. The lowest of those estimates would be the amount of your claim. You will also need to bring all evidence to the trial (see section on preparing for trial) in order to **prove** the amount you are claiming is **exactly** the amount owed.

The Small Claims Clerk will hand you the papers that you must give to the process server.

**DEFENDANT** (the person who is being sued)

You have been called to appear in the Small Claims Court because a complaint has been filed against you. The person who filed the action (the Plaintiff) believes you owe him/her money for the reason stated on the complaint with which you have been served.

Before receiving this formal notice that an action has been filed, you were probably contacted by the Plaintiff. If you have not been contacted before this notice to appear, you may want to contact the Plaintiff and make an **attempt** to settle **your differences**. If your differences cannot be settled out of court, it is very important that you appear on the day indicated. **You must also be prepared for the trial.** (See section on preparing for trial)

If you feel the Plaintiff owes you money, you may want to file a counterclaim. (See section on counterclaims)

When you appear for trial, you must pay a fee. **You must bring the fee with you and check in with the Small Claims clerk before entering the courtroom.** You may call Justice Court, 256-2897, about the fee and to obtain any further information you need.

If you go to court and admit you owe the amount, you will still have to pay a fee. It would be best, therefore, to settle the matter if possible, rather than go to Court if you confess you owe the Plaintiff the amount in the complaint.

**IF YOU DO NOT APPEAR FOR TRIAL:**

**PLAINTIFF**

If you do not appear, or if you do not notify the Court that you cannot appear on the scheduled trial date, you may lose your case. You must be present to give testimony. "Judgment" (see Glossary) cannot be entered without your testimony at trial.

**DEFENDANT**

If you are being sued in the Small Claims Court and do not appear or notify the Court that you cannot appear on the scheduled trial date, a "Judgment" (see Glossary) may be entered against you by the Court. If you feel you do not have ample time to prepare for the case, you may contact the judge to request a postponement or "continuance" (see Glossary), however, this is left up to the judge to grant a continuance.

If judgment is entered against you and you do not pay, several things may happen for collection of the amount of the judgment. The court then may issue an order to your employer to take part of your wages out of your paycheck each month until the amount is satisfied. If you do not have a regular paycheck, the court can issue an order to sell enough of your personal property to satisfy the amount of the judgment. If your case involves automobile damages, your driver's license can be suspended, by an order of the court, until the judgment is paid in full. Unpaid judgments may also hurt your credit rating.

Remember, although you owe the money claimed, you may have a good reason why you have not paid and you should come into court on the trial date to tell the judge, or judgment may be entered against you in your absence. For example, if you purchased defective merchandise, you may have a good reason why you haven't paid and you should tell the judge.

If you, as the defendant, wish to be represented by an attorney or wish to have a jury trial, you may go to the court and fill out the necessary papers to have the case removed to Justice Civil Court. This must be done as soon as possible, but no later than ten (10) days after you have been served with the papers containing the complaint. You must then notify the court of the name of your attorney. If you fail to have the case removed to Justice Court, you will be waiving your rights to have an attorney and to have a jury trial. If you remove the case to Justice Court but do not win, the Court may grant the Plaintiff reasonable attorney's fees, if any.

**IF YOU REACH AN AGREEMENT BEFORE TRIAL:**

If you reach an agreement to settle the case without a trial, you should be certain to call the court and inform the clerk. This will not only save the court a good deal of time and money, but will avoid having an open case on the court records. It is always best to get any agreements reached outside of the court in writing. Both parties should sign the settlement agreement and a copy should be given to the court clerk for the court record.

**INSTALLMENT PAYMENTS FOR THE AMOUNT OWED:**

The defendant may request installment payments before or after trial. The offer to pay installments should be reasonable to both parties.

The plaintiff may want to accept the offer for installment payments, because it may be one way to insure collection of the money. If the plaintiff does not accept the offer, even though the defendant acknowledges the debt, the request then may be made by the defendant on the date of trial. If he/she does not deny the debt, he/she does not have to pay the court fee to contest the case nor the confession fee. The judge will most likely just consider the request for installment payments.

Payments for any judgment made over a period of time, as allowed by the court, will be paid through the court so that the court may keep a record of all payments and disburse the appropriate amount to the plaintiff until the judgment is satisfied.

**APPEALS:**

If you are dissatisfied with the judgment of the Small Claims Court, you may appeal the case to the District Court. You must determine what questions of law the court overlooked or misinterpreted. The appeal will be limited to points of law and must be in writing and filed at the Small Claims Court.

The appeal must be made within ten (10) days after the judgment was entered. You must also pay all fees within the ten (10) days. This fee must be paid in cash only.

There will not be a "trial de novo" upon appeal, which means that a new trial will not take place. The District Court judge will listen only to the tape recording that is made of the trial and view all the evidence. He will then enter a judgment based on the testimony and evidence given at the trial. No new evidence, witnesses, or testimony will be accepted by the District Court Judge.

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You may have an attorney represent you for the appeal. The party who wins the appeal may be awarded reasonable attorney's fees in addition to court costs.

#### **WHAT WILL HAPPEN AND HOW TO PROCEED AT THE TRIAL:**

At the time of trial, the judge will place you under oath and ask you to tell the facts of your case. Facts should be presented in the order in which they happened. You may want to write down what you want to say, the order in which the events happened, and the order in which you want to say it to insure that you do not leave anything out. First the plaintiff will tell his side of the case, present evidence, and call all his witnesses. It will then be the defendant's turn to tell his side of the case. Each party will have the opportunity to cross examine the other party and its witnesses and ask questions about any evidence. After testimony, each side will have closing statements to make concerning things the other party said in testimony.

#### **SOME SUGGESTIONS FOR CONDUCT DURING THE TRIAL:**

- 1) **BE BRIEF:** Do not be long-winded but do give the Court all of the information it needs. No one likes to have his time wasted.
- 2) **DO NOT BE AN AMATEUR LAWYER:** If you are not a lawyer, do not try to be one. Your case will hinge on your presentation of the facts, not your knowledge of the law.
- 3) **BE POLITE AT ALL TIMES:** Do not interrupt the judge, the other party, or any of the witnesses. There should be no shouting or name calling in the courtroom.
- 4) **DO NOT QUICKLY TURN DOWN ANY COMPROMISE SUGGESTED BY THE JUDGE:** Compromise may be the only way to achieve any satisfaction at all through your case. Think about any settlement the judge may suggest.

#### **IF YOU ARE NOT SATISFIED WITH THE COURT'S DECISION:**

If either party is unhappy with the Court's decision, the case may be appealed to the District Court. An appeal may be made if the Justice Court overlooked a point of law or legal question. The appeal must be made within ten (10) days of the date the judge made the decision. There is a fee for filing an appeal - \$5.00 fee for Justice Court, plus \$80.00 for the District Court filing fee - total of \$85.00. THIS FEE MUST BE PAID IN CASH, CASHIER'S CHECK OR MONEY ORDER. NO PERSONAL

CHECKS CAN BE ACCEPTED.

When a case is appealed, the case file, the tape recording that was made at the time of trial and all evidence will be taken to District Court by the Small Claims Clerk within thirty (30) days of filing of the Notice of Appeal.

No appeal may be taken from a default judgment, but the court may be willing to reopen a case in which a default judgment was entered if the defendant is able to show cause, that is, give a good reason, such as never being properly served the complaint and order.

The Small Claims Clerk can give you all information necessary to make your appeal and will advise you of the fees. (See Appeals)

COLLECTING ON YOUR JUDGMENT

PLAINTIFF

At times it is wise to consider, a payment plan, assuming that you win, if there is a reasonable chance you can collect on your judgment. You may want to consider other alternatives, assuming that you win, if there is a reasonable chance you can collect on your judgment. You may want to consider other alternatives (for example, collecting from your own insurance company in an auto accident where the other person has no insurance) if the person you are suing has no job and is indigent. However, you may also consider that the judgment is good for six (6) years and you may attempt to collect on it within that period.

Often it is difficult or impossible to collect from people. They do not have an income that can be garnished (collected on). You cannot garnish a welfare, social security, unemployment, pension, or disability check. The person may also have no property that could be attached according to the law. You should determine how likely it is for you to collect.

Remember, it is your duty, not the Court's, to collect on a judgment. A party cannot be put in jail for failure to pay, nor does the Court call or write a party, in most cases, to help collect.

YOU MUST DO THE INVESTIGATING. YOU MUST INITIATE PROPER LEGAL PROCEDURES TO COLLECT.

It is often frustrating to work hard to take a case to court, gather evidence, contact witnesses who must take time out from work, and spend your own time and money, only to find

that you cannot collect on your judgment.

Before you file your papers, ask yourself these questions:

1. Does the person you wish to sue voluntarily pay debts, or are you dealing with a person who will make it as difficult as possible to collect if you win?
2. Does he/she have a job?
3. If not employed, does the person have some other means of support or assets that convince you that you can collect?
4. Can you identify some non-exempt assets that you could attach, if necessary, such as bank accounts or property (other than where the person lives), vehicles, etc.?
5. If a business is involved, is it solvent and does it have a good reputation for payment of debts?

Payment cannot be enforced until the ten (10) day appeal period has elapsed. At the end of the ten days, you may go back to the Small Claims Clerk to begin one of the steps on a list of alternatives (see "What Next After Judgment" in this booklet).

#### WHAT NEXT AFTER JUDGMENT?

1. Parties have ten (10) days from date of judgment to file an appeal to District Court.
2. Your evidence is kept for ten (10) days from date of judgment. If there is no appeal filed, you may come back and pick it up. The Court cannot mail your evidence to you.
3. The entire amount of judgment is due ten (10) days after judgment, if a payment plan has not been reached by the Plaintiff and the Defendant.
4. If the prevailing party does not receive payment at the proper time, try to find out where the judgment debtor works or banks. You may then come in and file an execution on his/her wages or commissions, or checking and/or savings accounts. Please include any information you have on the praecipe, such as debtor's address, social security number, middle initial, account number, or spouse's name, as banks will not honor an execution unless they are certain that judgment debtor is the bank's depositor.
5. When you file an execution, be aware that you may not get the entire amount due the first time. It may be necessary to file more than once. By law, the debtor is allowed \$114.00 after taxes per week, so the Court may not attach his wages if he makes below the limit. The execution is good only for that pay period.
6. If your judgment was for automobile damages and the debtor

- makes no effort to satisfy the judgment, contact the Court and request the clerk to notify the Montana Highway Patrol to suspend his/her driver's license. You must wait sixty (60) days after judgment date to suspend.
7. You may also request the Court for a "Show Cause Hearing" and "Examination of Judgment Debtor". The debtor is subpoenaed to Court and ordered to show cause as to why he has made no effort to satisfy the judgment. Because the Court has such a heavy caseload, the Court asks that you really try to collect your judgment through execution on wages or accounts first. If an examination of judgment debtor is held, the judgment debtor must testify as to incoming income, balance of checking and savings accounts, worth of personal goods, etc. **THE PARTY REQUESTING THE SHOW CAUSE HEARING SHOULD BE PREPARED TO ASK THESE QUESTIONS.**
  8. You may also execute on the debtor's vehicle. Your first step is to write to the REGISTRAR OF MOTOR VEHICLES, in Deer Lodge, Montana, with a description of the vehicle and the license number, and request them to find out if there are any liens on the vehicle. If the car has a clear title, **AND** is solely in the name of the judgment debtor, you may file the execution.  
**NOTE: YOU ARE RESPONSIBLE FOR TOWING AND STORAGE FEES UNTIL DEBTOR PAYS THEM.**
  9. You may file an Abstract of Judgment with the Clerk of District Court. If debtor owns any real property, this will put a lien on it and they may not sell the property until this judgment is satisfied.
  10. Your judgment is good for six (6) years, so although you have been unable to collect on the judgment recently, if debtor should get a job within that time limit, you may execute. The judgment is also recorded against debtor's credit record with the Credit Bureau.
  11. It is important that you dismiss the action as soon as the judgment is fully paid, so that the Court can dismiss its records and the Credit Bureau can be notified that judgment is paid and can clear their records.

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PLEASE FILL OUT THIS FORM TO FILE A COMPLAINT OR COUNTERCLAIM  
(PLEASE PRINT)

CASE NO. \_\_\_\_\_

Plaintiff \_\_\_\_\_ Work Phone # \_\_\_\_\_

Address \_\_\_\_\_ Home Phone # \_\_\_\_\_

Defendant \_\_\_\_\_

Address \_\_\_\_\_ Home Phone # \_\_\_\_\_

Employment \_\_\_\_\_ Occupation \_\_\_\_\_

Amount of Suit \_\_\_\_\_

Reason \_\_\_\_\_

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

Court Date\* \_\_\_\_\_ Time \_\_\_\_\_

\*Please check with the Court Clerk at 256-2897 to be certain that  
service has been made upon the Defendant before appearing in Court.

Signed \_\_\_\_\_  
Plaintiff





### SMALL CLAIMS DEFINITIONS

- AFFIDAVIT:** A written statement of facts. The person making this statement must swear to its truth before a Judge or a Notary Public.
- APPEAL:** The action or right of a party to ask a higher court to review a lower court's decision in order to correct mistakes or injustices.
- APPEARANCE AND ANSWER:** The defendant's acknowledgement, in writing, that he is aware of the action against him and his response to the claim being made.
- ATTACHMENT:** The seizure of property or wages for payment of a judgment ordered by the Court (see Garnishment).
- CLERK:** An officer or person who has charge of the Court's records; usually the Clerk of Justice Court, Civil Clerk, or Small Claims Clerk.
- CONTINUANCE:** Postponement of an action or hearing scheduled before the Court.
- COUNTERCLAIM:** The Defendant's claim against the Plaintiff as a response to the original complaint.
- COURT COSTS:** The fee charged by the Court to process records and cover other expenses incurred by the Court.
- DEFAULT JUDGMENT:** A decision by the Court in favor of the person filing the claim (Plaintiff) when the Defendant fails to appear at the trial in Small Claims Court.
- DEFENDANT:** The person or party being sued.
- DISMISSAL:** The Court's decision to terminate a case prior to entering judgment (for example, if the Plaintiff does not appear). If an action is dismissed "with prejudice", it cannot be refiled. If an action is dismissed "without prejudice", the action may be again brought before the Court.
- EVIDENCE:** Proof, either written or spoken, presented by either party at trial which has an effect on the case before the Court.
- EXECUTION:** The order issued to a sheriff or constable to carry out the judgment of the Court; for example, to take and sell property by the person who owes a court judgment to collect the amount of money owed.
- GARNISHMENT:** An order to a person (for example, an employer or a bank) to transmit money or property (for example, wages or money) owed in a judgment to the Court to satisfy a judgment. The money is turned over to the person who won the suit.
- HEARING:** A Court proceeding in which the judge decides a particular issue in a case or the outcome of the case.
- JUDGE OR MAGISTRATE:** The Judicial Officer who hears and renders a decision in Small Claims Court.
- JUDGMENT:** The Court's decision of the outcome of a particular case before the Court.
- JUDGMENT DEBTOR:** The person or party against whom a judgment is

EXHIBIT

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rendered which has not been paid.

JUDGMENT CREDITOR: The person to whom money is owed as a result of a Court decision.

JURISDICTION: The authority giving the Court power to hear and decide cases. A Small Claims Court may have "jurisdiction" if the parties to a case are each requesting less than \$3,000.00 in money or property from the other.

PLAINTIFF: The person or party who makes or files a claim.

CERTIFIED RETURN RECEIPT LETTER: A letter, written by the Plaintiff, which advises the defendant that legal action will be taken if the monies due are not paid within ten (10) days of receipt of the letter. The letter is then taken to the post office and sent by CERTIFIED RETURN RECEIPT mail.

SETTLEMENT: An agreement reached between the two parties before the Court hearing.

SUBPOENA: The legal term for an Order for a witness to appear in court.

SUIT: An action or case filed with the Court.

TRIAL: The time and place where the judge hears the evidence presented in the suit.

VACATE: Making a judgment or court order ineffective.

VENUE: The proper location of the Court in which to sue. In Small Claims, the Court is in the county in which the defendant lives, or where he can be served with the Complaint.

WITNESS: A person called to testify in Court for one of the parties in the case. An "expert witness" is a person who is especially trained in the subject at issue.

WRIT: A written court order issued by the Court and directed to the sheriff or other officer authorized by law to execute the order stated in the writ.

## AMENDMENTS TO SB 9

1. Page 2, line 5, through  
Page 2, line 9.

**STRIKE:** In its entirety.

2. Page 6, line 13.

**STRIKE:** Section 8 in its entirety.

HOUSE REVENUE COMMITTEE  
1-14-93  
SB9

SENATE JUDICIARY COMMITTEE  
1-14-93  
SB 9

TESTIMONY OPPOSING SENATE BILL 9 HEARD BY THE  
SENATE JUDICIARY COMMITTEE 10:00 A.M.  
JANUARY 14, 1993, ROOM 325

My name is Greg Van Horssen. I represent the State Farm Insurance Companies of Bloomington, Illinois. In Montana, State Farm issues auto, fire, life, and health policies. State Farm provides insurance coverage to Montana's citizens via over 285,000 policies currently in force. State Farm Insurance Company opposes Senate Bill 9 because it views the bill as advancing a public policy which dictates against a defendant exercising its rights to appeal from a justice court decision and also advances the policy that would deter defendants from exercising their constitutional right to representation.

In particular, Section 8 of Senate Bill 9 amends Section 25-35-806 which currently provides that the prevailing party on appeal may be awarded attorney fees. That section, as amended by Section 8 of Senate Bill number 9 will provide that only plaintiffs can be awarded attorney fees if they are successful on appeal. This amendment, of course, would serve as a deterrent to a defendant who feels that there has been a wrongful decision in the court below. State Farm believes that public policy is better reflected in the unamended provisions of Section 25-35-806 by making attorney fees available to either the plaintiff or the defendant if they prevail upon appeal.

The statutes governing a citizen's rights to appeal from Montana's courts of limited jurisdiction should not favor plaintiffs by threatening a defendant with attorney fees if a defendant is unsuccessful upon appeal. Nor should the statutes governing procedure in Montana's courts of limited jurisdiction create any disincentive for a defendant to seek legal counsel by removing an action from small claims court to the justice court. For these reasons, State Farm opposes Senate Bill 9 and respectfully requests that this committee issue a do not pass recommendation on Senate Bill 9.

DATE 1-14-93

SENATE COMMITTEE ON ~~Revenue~~ Judiciary

BILLS BEING HEARD TODAY: S.B. 9

Name	Representing	Bill No.	Check One	
			Support	Oppose
Ron Ashabren	State Farm Ins Co	SB 9		X
CRAG L. HOPPE	MT. MAJESTIES ASSOC	SB 9		X
John Alke	Mont. Defense Trial Lawyers	SB 9		X
Jaqueline Lemark	Mt. Ins. Assoc.; Aluxis	SB 9		X
Sharon Morris	MACO			

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY