

## INSTRUCTIONS – JUSTICE COURT CIVIL ACTIONS

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

1. The amount demanded in the complaint cannot exceed \$12,000 in Justice Court excluding costs.
2. A *written complaint* must be prepared and filed with the Court. A complaint is a brief, concise statement of the facts making up your complaint. You must include the dollar amount requested, and/or the return of specific property. The date of the transaction must also be stated. You will need to prepare a *summons* to be served on the opposing party, and a *praecipe* or directive for the Sheriff's office, Constable, or other person, or an acknowledgment of service if served by 1<sup>st</sup> class mail. For each person you are suing, you will need 2 copies of the complaint, 2 copies of the summons, and 1 praecipe. The forms are self explanatory and easy to fill out. All papers necessary are available at Justice Court Office for a small fee.
3. After the papers are properly filled out, take them back to the clerk at Justice Court for filing.
4. The filing fee is \$45 for each complaint. There are additional costs for service of the papers by the Sheriff's office or process server. The costs may vary from area to area and will include mileage costs. A deposit is generally required before service is done. If there are additional mileage costs, you will be billed for the excess. Any deposit money not spent will be refunded to you. If you obtain a judgment in court, you may be entitled to a full reimbursement of the fees you paid to pursue this case in court. (Husband and wife cannot represent each other and each need to sign the complaint, if jointly filed.)
5. The defendant or opposing party will be notified of the lawsuit by service of the papers by the Sheriff's office, Constable, other person, or by 1<sup>st</sup> class mail. After the papers are served, you will receive the summons back with a certificate of service or acknowledgment of receipt of service with an accounting of the fees spent, when applicable. **YOU MUST RETURN THIS SUMMONS** to the Court to continue with the lawsuit and to have your costs included in the judgment amount.
6. **IF THE DEFENDANT DENIES THE DEBT** or disagrees with the complaint, the defendant must file a written *answer* with the court within 20 days of service. The answer fee is \$30 for each defendant. The defendant must send a copy of the answer and counterclaim (if any) to the opposing party (plaintiff). If no answer is received by the Court within 20 days after service, the plaintiff may ask for a *judgment by default*. (Husband and wife cannot represent each other and each need to file separate answers).
7. If the defendant files a written answer, a pre-trial hearing may be set by the clerk or judge. An answer is a concise statement of the denial of the claim. The parties may settle the action any time prior to the pre-trial hearing. If a settlement is reached both parties must notify the Court.
8. The *pre-trial hearing* is an informal hearing held in the courtroom between the parties. This hearing is scheduled for the benefit of the parties and allows for a full and fair discussion of the issues of the lawsuit filed. Settlement is highly possible at the pre-trial hearing and will save the parties the cost and time of going to a formal trial. If the plaintiff does not appear at the scheduled pre-trial hearing, the complaint may be dismissed. If the defendant does not appear, a default judgment may be granted.

9. If a settlement is reached at the pre-trial hearing, the Judge will docket the terms of the settlement or dismissal, or issue a stipulated judgment. If no settlement is reached, the Court will set the case for a trial as soon as possible.
10. If a case continues to trial, the parties will be given a handout outlining the procedure that will be expected to be followed at the trial. Each party is responsible for proving to the Court the facts of their side of the case. **At the trial, each party will be expected to bring all of their witnesses, written documents (i.e., lease, contract, bills of sale, receipts, etc.), or other evidence needed for judgment.** Generally, deadlines to comply with discovery or exchange of information are set by the Court.
11. After the trial is held, the Court will issue a judgment based on the facts presented in the case. Each party will receive a copy of the judgment. Either party will have 30 days to file a written notice of appeal with the District Court and complete the procedures necessary. An appeal will be heard in the District Court as a brand new trial. You will be required to pay a filing fee to the Clerk of District Court and post an appeal bond, if set by the Judge.

Your evidence is held for thirty (30) days after the judgment is issued. After that time, you may pick up your evidence from the Court file. The Court will not mail the evidence back to you. If an appeal is filed, the evidence is transferred to the District Court with all other payers.

12. If you obtain a judgment, either by default or after a pre-trial hearing or a trial is held, you may proceed to the actual collection of the judgment.
13. If the parties wish to negotiate a payment plan for the payment of the judgment, you may do so. The Court would encourage any payments to be handled directly between the parties involved.
14. Payment of judgment is due immediately; however, we recommend that you wait ten (10) days after judgment before you begin the collection process.
15. If the winning party does not receive payments in a timely fashion or if no payment arrangement is made, you may ask the Court to issue an *execution*. An execution is an order to the Sheriff or levying officer to assist your collection process. You may execute against a savings or checking account, personal property (not a necessity of life), wages, vehicles, campers, or any other assets the judgment debtor may have. You will be required to fill out a *praecipe* specifically identifying “what” you want to execute against.

\*\* You will need three (3) copies of the *Writ of Execution*. One will become the original document. The original Writ must be returned to the Court when the Writ of Execution expires in 120 days in order for the Court to issue any future Writs. One copy of the Writ of Execution will go to the location that the money or property is to be seized and the other copy will be for your records.

\*\* If the Writ of Execution is filed with the Court, you must complete the *Notice of Execution Levy*. The Sheriff will complete Notice of Seizure. You must include a stamped self-addressed envelope to the Defendant (postage may be approximately \$.57) for mailing the Notice of Execution of Levy to the Defendant. The Notice must be mailed within five (5) days of seizure and the Sheriff or Process Server will mail the Notice of Execution Levy only if the Writ of Execution was successful.

\*\* An *Affidavit of Service*, completed by the Sheriff or Process Server, must be included with Notice of Execution Levy. This will be your proof as to the date and time the Writ of Execution was served on the Defendant. The original Affidavit of Service must be returned to the Court after you have made a copy for your records.

\*\* If you are executing the garnishment of wages to become due, *The Federal Law Restricting Wage Garnishments* form must be included. This form shows the employer how much money may be executed upon.

\*\* If you are executing property, money in a cash box or till, include the *Answer to Attachment or Execution*, completed by Sheriff, Process Server or Business.

\*\* Note: If you are executing a bank account, the Bank or Institution may require you to supply the account number and/or the Social Security Number and Date of Birth of the Defendant(s).

\*\* You must include, for the Defendant to return to the Court, a *Request for Hearing on Claimed Exemptions*. This should be attached to the *Notice of Execution Levy*.

#### UPON COMPLETION OF ALL THE FORMS:

\*\* You will need to return all forms to the Court. The Court will stamp the *Writ of Execution* as an Original and seal with the Court Seal. The Original Writ along with two copies, as well as Forms now must be mailed or delivered to the Sheriff or Process Server for processing. The Sheriff or Process Server does charge a fee for this service. Remember if you are executing on property, you may be required to hold secure the property until sale or execution is completed.

16. If your judgment is for automobile damages resulting from an accident and the debtor makes no effort to satisfy the judgment within sixty (60) days, you have an additional alternative. Contact the Court and request the clerk, in writing, to notify the Driver Control Bureau to suspend the debtor's driver's license and/or vehicle registration.
17. You may also request the Court for a "*Show Cause Hearing*" and examination of the judgment debtor. The debtor will be subpoenaed into Court and ordered to show cause why no effort has been made to satisfy the judgment. This hearing will only be set after you have attempted to execute at least once against the debtor for the judgment due.  
  
At the hearing, you will be allowed to ask the debtor questions about income, monies available, personal property value, spouse's income, and any other questions regarding the debtor's financial history to satisfy the amount of the judgment.
18. You may also file a "*Certificate of Transcript of Docket*" with the Clerk of the District Court that will place a lien on any real property (land or home) that the debtor may have. The property will not be sold without satisfaction of the judgment prior to sale.
19. An execution may be served by a sheriff in any county of the state.
20. Your judgment is good for ten (10) years (MCA 27-2-201(2)), so although you have been unable to collect on the judgment recently if the debtor should get a job within the time limit, you may execute any time within the ten (10) years. The judgment will also be recorded against the debtor's credit record with the Credit Bureau. After 10 years, the judgment may be extended for good cause.
21. You must notify the Court as soon as the *judgment is satisfied*. You will be responsible if the judgment is satisfied and not cleared from the debtor's record in Court.

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

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

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

**\*\* PLEASE MAKE COPIES OF ALL ATTACHED FORMS BEFORE COMPLETING, SO YOU HAVE FOR YOUR FUTURE USE. \*\***

**\*\* YOU MAY ALSO FIND INFORMATION ON [www.courts.mt.gov](http://www.courts.mt.gov) \*\***

### **HANDOUT – PROOF OF SERVICE FORM**

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

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

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

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

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

**\*\* REMEMBER TO RETURN THE ORIGINAL SUMMONS TO THE COURT WITH PROOF OF SERVICE! \*\***

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>PRAECIPE</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

TO: THE SHERIFF OF POWDER RIVER COUNTY:

Please issue the attached named document \_\_\_\_\_, upon the  
Plaintiff/Defendant \_\_\_\_\_ (name of party) at  
\_\_\_\_\_ (location) and return  
the original to me with your Return of Service.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Plaintiff / Defendant

\_\_\_\_\_  
Address

\_\_\_\_\_

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
<b>Plaintiff(s)</b>	*	<b>Cause No.</b> _____
	*	
<b>vs.</b>	*	
	*	<b>COMPLAINT</b>
	*	
<b>Defendant(s)</b>	*	

\*\*\*\*\*

COMES NOW, the Plaintiff(s) and claims for relief against Defendant(s), alleges as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

WHEREFORE, Plaintiff(s) request Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Plaintiff  
\_\_\_\_\_  
Plaintiff  
\_\_\_\_\_  
Plaintiff Address  
\_\_\_\_\_  
Plaintiff Phone #



**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>AFFIDAVIT OF SERVICE</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

\_\_\_\_\_, being first duly sworn states as follows:

1. He/She is a bona-fide resident of the State of Montana and is of legal age.
2. That he/she is not a party to nor interested in this action.
3. He/She served the Complaint and Summons in this action on the Defendant by leaving with \_\_\_\_\_ (name of person), this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_:\_\_\_\_ .M.

4. That he/she knows the person served to be the person named in the papers served and it is the person intended to be served.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
AFFIANT

STATE OF MONTANA                    )  
  :SS  
County of Powder River            )

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

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**CERTIFICATION FORM**

STATE OF MONTANA                    )  
  :SS  
County of Powder River            )

I, \_\_\_\_\_, a duly elected, qualified, and acting Justice of the Peace, in and for the County of Powder River, State of Montana, do hereby certify that the \_\_\_\_\_

\_\_\_\_\_

is a true and correct copy of the \_\_\_\_\_

\_\_\_\_\_

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JUSTICE OF THE PEACE

STATE OF MONTANA                    )  
  :SS  
County of Powder River            )

I, \_\_\_\_\_, a duly elected, qualified, and acting County Clerk and Recorder of the County of Powder River, State of Montana, do hereby certify that \_\_\_\_\_, whose name is subscribed to the above certificate was at the time of the same above and now is the elected, qualified, and acting Justice of the Peace in and for the County of Powder River, State of Montana

In witness Whereof, I have set my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
County Clerk and Recorder in and for  
the County of Powder River, State of Montana



**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**  
\*\*\*\*\*

	*	
	*	
<b>Plaintiff</b>	*	<b>Cause No.</b> _____
	*	
vs	*	<b>ANSWER</b>
	*	
	*	
	*	
<b>Defendant</b>	*	

\*\*\*\*\*

Comes now, the Defendant(s) named in the Complaint to file an Answer as follows:

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**(Defendant's answer must contain a denial of the material facts stated in the complaint, which Defendant believes to be untrue, and a plain and direct statement of facts constituting a defense. Rule 7B, Montana Justice Court Rules of Civil Procedure.)** \*IMPORTANT\* Defendant has twenty (20) days from date of service to file an Answer in a civil action. Defendant must attach the answer fee of \$20.00 or the Answer will not be filed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
\_\_\_\_\_  
Mailing Address & Phone #

**CERTIFICATE OF SERVICE**

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

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\_\_\_\_\_  
Defendant's Signature

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	
<b>Plaintiff</b>	*	<b>Cause No.</b> _____
	*	
<b>vs</b>	*	
	*	<b>COUNTERCLAIM</b>
	*	
	*	
<b>Defendant</b>	*	

\*\*\*\*\*

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

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

WHEREFORE, the Defendant(s) request(s) judgment against the Plaintiff(s) on their counterclaim as follows: \_\_\_\_\_

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Defendant's Attorney

\_\_\_\_\_  
Defendant's Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Phone

**CERTIFICATE OF SERVICE**

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

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

\_\_\_\_\_  
Signature of person mailing document

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	
	*	<b>MOTION FOR</b>
	*	<b>DEFAULT JUDGMENT</b>
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

COMES NOW, the Plaintiff(s) and respectfully moves the Court to enter DEFAULT and DEFAULT JUDGMENT in the above entitled case, as Defendant(s) has failed to appear or otherwise defend the action within the twenty (20) days allowed by law in Rule 7B, MJCRCP.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Plaintiff(s)

\_\_\_\_\_  
Plaintiff(s)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Motion for Default Judgment was served upon the Defendant(s) or Defendant's attorney(s) by placing the same in the U.S. mail, postage prepaid, addressed as follows:

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

\_\_\_\_\_  
Signature of person mailing document

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>JUDGMENT</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

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

The default of Defendant(s) has been entered the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and, The Plaintiff having shown by proper proof, basis for judgment, now;

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

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

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

Made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
CATHERINE A. LANDA  
Justice of the Peace

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>JUDGMENT AFTER DEFAULT</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

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

The default of Defendant(s) has been entered the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and, The Plaintiff having shown by proper proof, basis for judgment, now;

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

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

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

Made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
CATHERINE A. LANDA  
Justice of the Peace

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>STIPULATED JUDGMENT</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

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

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

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

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

Made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CATHERINE A. LANDA  
Justice of the Peace

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>JUDGMENT ON THE PLEADINGS</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

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

NOW THEREFORE;

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

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

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

Made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
CATHERINE A. LANDA  
Justice of the Peace

## **PROCEDURE FOR SUMMARY JUDGMENT**

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

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

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

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

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

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

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>REQUEST FOR HEARING ON</b>
	*	<b>SUMMARY JUDGMENT</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

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

A hearing is requested to be set for the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ A.M./P.M. at the Powder River County Courthouse, to determine if there is any genuine issue as to any material fact of the case and the Plaintiff(s)/Defendant(s) is entitled to Judgment as a matter of law.

Made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
CATHERINE A. LANDA  
Justice of the Peace

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>SUMMARY JUDGMENT</b>
	*	
	*	
<b>Defendant</b>	*	
	*	

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

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

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

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

Made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CATHERINE A. LANDA  
Justice of the Peace

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>WRIT OF EXECUTION</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

THE STATE OF MONTANA TO THE SHERIFF, CONSTABLE, OR A LEVYING OFFICER OF POWDER RIVER COUNTY;

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_

(Plaintiff/Defendant) recovered a judgment in the said Justice Court against \_\_\_\_\_

(Plaintiff/Defendant) as follows:

Original or Balance Due on Judgment in the amount of	\$ _____
Accrued interest at ____% per annum on Judgment	\$ _____
Costs & Disbursements accrued	\$ _____
Less payments/credits	\$ _____
Total sum due & owing at date of this execution	\$ _____

Together with all costs of execution and/or for personal property described as follows:

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

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CATHERINE A. LANDA  
Justice of the Peace

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>NOTICE OF EXECUTION LEVY</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

To: \_\_\_\_\_ (Defendant)  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICE OF JUDGMENT**

The Plaintiff, \_\_\_\_\_, obtained a Judgment against the Defendant(s),  
\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**NOTICE OF SEIZURE**

Please be advised that the following property was seized by \_\_\_\_\_  
(Sheriff/Process Server) under the authority of the Writ of Execution attached.

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

Said property is now in the possession or custody of the above-named Sheriff/Process Server.

## ***NOTICE OF PROPERTY EXEMPT FROM CREDITORS***

Under the law **SOME PROPERTY IS EXEMPT FROM SEIZURE**. Below are listed many common types of exempt property to help you decide whether the property is exempt. NOTE: The lists below do NOT contain all possible exemptions. The exemption listed below do NOT apply to property used as collateral under a note or security interest. Further information as to exemptions from execution may be obtained by examining Title 25, Chapter 13, Part 6, Montana Code Annotated.

**1. Wages and Support Payments:**

Under Federal and State Law, your wages are exempt up to the *larger* of the following two amounts:

A. 75% of *your* net wages; or

B. 30 times the Federal Minimum hourly wage for each work week. *NOTE:* If you are required to pay maintenance or support for any person, only 50% to 65% of your wages may be exempt, depending on the circumstances.

**2. Cash Assistance from the Government:**

General cash assistance from the government is entirely exempt; for example, Social Security, veteran's pensions, AFDC payments and disability payment are entirely exempt. Child support payments may be entirely exempt. The money from any of these sources may be exempt even if it is deposited into a bank account.

**3. Motor Vehicles**

A car or truck is exempt up to a value of \$2,500.00.

**4. Necessary Personal and Household Property:**

(Personal property such as clothing, household furnishings, animals, and crops are exempt to \$4,500.00 total value. (Each item must be worth less than \$600.00.)

**5. Tools of Trade:**

Tools of trade are exempt up to \$3,000.00 total value.

**6. Homestead:**

Your family home may be exempt up to \$60,000.00. However, to claim this exemption you must file a form called a Declaration of Homestead with the County Clerk and Recorder.

**NOTE REGARDING BANKRUPTCY:**

If you currently have a case in bankruptcy court, the only valid Writ is one issued by the Bankruptcy Court.

**NOTICE OF RIGHT TO A HEARING AND PROCEDURE FOR RETURN OF PROPERTY**

If you think the Sheriff or private process server has taken exempt property under a writ, tell this to the Clerk of the Justice Court at the \_\_\_\_\_ County Courthouse, in \_\_\_\_\_, Montana and file with the court a *Notice of Claimed Exemptions*. Ask the Clerk to set a hearing date.

YOUR MUST FILE THE NOTICE OF CLAIMED EXEMPTIONS WITH TEN (10) WORKING DAYS (EXCLUDING HOLIDAYS AND WEEKENDS) OF THE DATE OF SERVICE OF THE NOTICE OF EXECUTION EXEMPTIONS OR WITHIN TEN (10) DAY OF THE DATE OF ITS MAILING TO BE ELIGIBLE FOR A HEARING ON CLAIMED EXEMPTIONS.

You must also mail a true and correct copy of your Notice of Claimed Exemptions to the Sheriff or Process Server having possession of your property and to the judgment creditor or counsel of record for the judgment creditor. Failure to file a claim of exemption within ten (10) working days will result in the Sheriff or Process Server releasing the monies executed upon or proceeding forward with an execution sale of any property obtained.

At this hearing you may explain why you believe the property taken is exempt. The judgment creditor may present its evidence. The judge will then decide if the property taken should be returned to you.

This is an attempt to collect a debt. Any information obtained by the Sheriff or private process server will be used for that purpose.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
Sheriff/Process Server

**CERTIFICATE OF MAILING**

The undersigned does hereby certify on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a true and correct copy of the foregoing notice was mailed to the following by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed as follows: \_\_\_\_\_

\_\_\_\_\_  
Sheriff/Process Server

AFFIDAVIT OF SERVICE

\_\_\_\_\_, being first duly sworn, deposes and says that:  
Pursuant to Sections 25-13-301 and 25-13-614, MCA, I have delivered a Notice of Execution Levy to the  
judgment debtor by:

Personal service \_\_\_\_\_ on  
\_\_\_\_\_ (Date)

At: \_\_\_\_\_

OR

Mailing the Notice by U.S. Mail, postage prepaid on \_\_\_\_\_ (Date)

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

At: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Sheriff/Process Server

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

# THE FEDERAL LAW RESTRICTING WAGE GARNISHMENTS

Effective September 1, 1997, Federal Law limits the amount of an employee's disposable earnings which may be made subject to garnishment and will prohibit the discharge of an employee because of garnishment for any one indebtedness.

An employee's "Disposable Earning" means that part of his earning remaining after the deduction from those earnings of any amount required by law to be withheld. Examples of such deductions are:

- Federal Income tax withholding deductions
- Federal Social Security Tax (FICA) deductions
- State & City Tax withholding deductions

The term "earnings" means compensation paid or payable for personal service whether called wages, salary, commission bonus or otherwise.

## AMOUNT OF RESTRICTION ON GARNISHMENT

The maximum part of the total "disposable earnings" of an individual which is:

- (a) 25% of the disposable earning for that week or
- (b) The amount of which his/her disposable earnings for that week exceeds 30 times the Federal minimum hourly wage prescribed by §6(a)(1) of the Fair Labor Standards Act in effect at the time earning are payable (currently, this is \$7.25 an hour or \$217.50 a week).

The following examples illustrate the statutory test for determining the amount subject to garnishment.

- (a) An employee's earnings may not be garnished in any amount where these disposable earning are \$217.50 in a particular week, \$435.00 biweekly (every two weeks), \$471.25 semi-monthly (twice a month), or \$942.50 monthly (once a month).
- (b) An employee's gross earnings in a particular week are \$250.00. After deductions required by law, disposable earnings are \$225.00. Both test must be figured to determine which is the lesser amount which is the amount subject to garnishment.

**EXAMPLE:** An employee's gross earnings in a particular week are \$250.00. After deductions required by law, his disposable earning are \$225.00. The lesser amount would be determined as follows:

- (1)  $\$225.00 \times 25\% = \$56.25$
- (2)  $\$225.00 - \$217.50 = \$7.50$

In this week, only \$7.50 may be garnished, since this is the lesser amount (\$217.50 would be paid to the employee.)

## CRIMINAL PENALTIES FOR VIOLATIONS

Whoever willfully violates the discharge provisions of this law may be prosecuted criminally and fined up to \$1000.00 or imprisoned for not more than one year or both.

## DETACH AND RETURN TO THE LEVYING OFFICER WITH YOUR CHECK

1.		Total Earnings			Disposable Earnings
		Less Federal Tax			
		Less State Tax	4.		Amount Exempt
		Less Social Security			a) \$217.50 if weekly
		Other (                    )			b) \$435.00 if bi-weekly
					c) \$471.25 if semi-monthly
2.		Disposable Earnings			d) \$942.50 if monthly
3.		25% of #2	5.		Disposable Earnings
					Minus Exempt Amount (a,b,c, or d)

**LESSER AMOUNT BETWEEN #3 AND #5 IS THE AMOUNT SUBJECT TO GARNISHMENT.**

Name on Garnishment \_\_\_\_\_ Cause No. \_\_\_\_\_ Date \_\_\_\_\_

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	<b>Cause No.</b> _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>ANSWER TO ATTACHMENT OR EXECUTION</b>
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

Answer to demand for a statement served on me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, by  
the Process Server or the Sheriff of \_\_\_\_\_ County, under and by virtue of a Writ of  
Execution issued in the above entitled Cause my answer is that I am indebted to Defendant(s) in the sum of  
\$ \_\_\_\_\_, and that I have in my possession and under my control personal property belonging to the  
Defendant(s). To wit:

ACCOUNTS:

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

MONIES DUE AND/OR WAGES DUE:

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

MONIES IN CASH BOX AND/OR TILL:

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_  
Sheriff/Process Server/or Business

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
<b>Plaintiff</b>	*	
vs.	*	<b>REQUEST FOR HEARING ON CLAIMED EXEMPTIONS</b>
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

Defendant represents and petitions the Court as follows:

1. A judgment was entered against the above-named Defendant in the above-entitled Court. Upon application to the Court, a Writ of Execution was issued. The Sheriff or Levying officer has levied the execution upon the property of the Defendant.
2. The Defendant believes that the Sheriff or Levying Officer has levied against exempt property. The Defendant claims an exemption in the following property:

**DESCRIBE THE PROPERTY CLAIMED EXEMPT AND TYPE OF EXEMPTION**

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_
- (6) \_\_\_\_\_

(Attach additional sheets if space is not sufficient.)

3. Defendant is entitled to a prompt hearing on claimed exemptions. Defendant requests a hearing before the court on the claimed exemptions.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	<b>Cause No.</b> _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>CERTIFICATION OF TRANSCRIPT</b>
	*	<b>OF DOCKET</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

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

WITNESS my hand of the Justice Court of Powder River County.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
CATHERINE A. LANDA  
Justice of the Peace

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>SATISFACTION OF JUDGMENT</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	
	*	

\*\*\*\*\*

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Judgment Creditor

\_\_\_\_\_  
Judgment Creditor Attorney (if any)

\_\_\_\_\_  
Date

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	
<b>Plaintiff</b>	*	<b>Cause No.</b> _____
	*	
<b>vs</b>	*	
	*	<b>SUBPOENA</b>
	*	
	*	
<b>Defendant</b>	*	

\*\*\*\*\*

THE PLAINTIFF/DEFENDANT SENDS GREETINGS TO:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)

We command you, that all and singular business and excuses being laid aside, you appear and attend before the Justice Court of the State of Montana, in and for the County of Powder River, at a term of said court, to be held in the courtroom of the Powder River County Courthouse, Broadus, Montana, on \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ A.M./P.M., then and there to testify in the above-entitled action now pending in said Justice Court, on the part of the Plaintiff / Defendant. You will be punished for contempt of said Court for failure to comply.

WITNESS, the Honorable Catherine A. Landa, Justice of the Peace in the County of Powder River, State of Montana, and the seal of said Court, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Court Seal)

\_\_\_\_\_  
CATHERINE A. LANDA  
Justice of the Peace

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>NOTICE OF APPEAL</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

The above named Plaintiff(s) / Defendant(s) hereby appeal(s) to the Sixteenth Judicial District Court of Powder River County from the Judgment entered in the above Powder River County Justice Court entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Appellant

**CERTIFICATE OF SERVICE**

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

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

\_\_\_\_\_  
Appellant

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>PRE-TRIAL NOTICE</b>
	*	<b>OF HEARING</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

You are hereby notified a pre-trial conference is scheduled on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_:\_\_\_\_\_ A.M./P.M., in the courtroom located at the Powder River County courthouse, Broadus, Montana. **THIS IS NOT THE TRIAL.**

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

If you do nothing, then this pre-trial conference will proceed as scheduled in the courtroom with all parties to be personally present. THERE ARE ALTERNATIVES.

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

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

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
CATHERINE A. LANDA  
Justice of the Peace

## CIVIL PRE-TRIAL GUIDE

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

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

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

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

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

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

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

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

**IN THE JUSTICE COURT OF POWDER RIVER COUNTY,  
STATE OF MONTANA  
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE**

\*\*\*\*\*

	*	
	*	Cause No. _____
	*	
<b>Plaintiff</b>	*	
vs.	*	<b>ORDER SETTING TRIAL DATE</b>
	*	
	*	
	*	
<b>Defendant</b>	*	
	*	

\*\*\*\*\*

The trial in the above entitled matter is set for \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_:\_\_\_\_\_ A.M./P.M. in the Powder River County Courthouse Courtroom, located at Broadus, Montana.

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CATHERINE A. LANDA  
Justice of the Peace

## HANDOUT / PROCEDURE FOR CIVIL BENCH TRIAL

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

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