

SMALL CLAIMS INSTRUCTIONS

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

1. The amount demanded in the complaint cannot exceed \$7,000 excluding costs, and the Defendant must be able to be served within the county issuing the complaint.
2. A written complaint must be prepared and SWORN TO before the Court. A complaint is a brief, concise statement of the facts making up your complaint. You must include the dollar amount requested, and/or the return of specific property, and the date of the transaction. You must prepare a praecipe or directive for the Sheriff's office, constable, or process server. For each person you are suing, you will need 2 copies of the complaint, 2 copies of the Notice to Defendant, and 1 praecipe. The forms are self explanatory and easy to fill out. All papers necessary are available at the Small Claims Division of Justice Court. A copy of the pamphlet prepared by the Attorney General **must be given to the Plaintiff and a copy attached to the Notice to Defendant.**
3. After the papers are properly filled out, take them back to the clerk at Justice Court to be SWORN TO, and for filing. The filing fee is \$30 for the Justice Court. There are additional costs for service of the papers by the Sheriff's office or process server. The costs may vary from area to area and will include mileage costs. A deposit is generally required before service is done. If there are additional mileage costs, you will be billed for the excess. Any deposit money not spent will be refunded to you. If you obtain a judgment in court, you may be entitled to a full reimbursement of the fees you paid to pursue this case in court.
4. The Defendant or opposing party will be notified of the lawsuit and date of trial by service of the papers by the Sheriff or process server. After the papers are served, the Notice to Defendant will be returned to the Court with an accounting of the fees spent. If the Notice to Defendant is returned to the Plaintiff, the Notice must be returned to the Court immediately.
5. If the "Notice to Defendant" is not served at least 5 days prior to the date of trial, a new trial date will be set by the Court and given to the Sheriff or process server for re-service. This "reset" procedure will be done as many times as is necessary to serve the Defendant and allow 5 days after service before the trial date.
6. If the parties reach an agreement or solution prior to trial, both parties are required to notify the Court.
7. If a counterclaim is filed, it must be filed with the Court and served on the Plaintiff at least 72 hours prior to the date of the trial. Service of the counterclaim, on the Plaintiff, is made by the Sheriff or process server in the same manner as the service of the Notice to Defendant.
8. The Defendant may file a counterclaim against the Plaintiff if the amount claimed arises from the same transaction or occurrence as the Plaintiff's complaint AND does not exceed \$2,500. If the Defendant does not appear, a default judgment may be issued after the Plaintiff presents all evidence necessary to prove the allegations of the complaint. On the date for trial, if the Defendant appears and contests the complaint or files a counterclaim, a \$20 fee will be assessed the Defendant.
9. The trial is an informal proceeding and will be recorded either electronically or steno graphically.
10. No attorney is allowed, unless all parties have an attorney.
11. The Defendant may file a Notice of Removal in a small claims action and have the entire case transferred to the regular civil Justice Court. If the Defendant DOES NOT FILE A NOTICE OF REMOVAL WITHIN 10 DAYS AFTER RECEIVING SERVICE OF THE NOTICE TO DEFENDANT, THE DEFENDANT WAIVES THE RIGHT TO A JURY TRIAL AND THE REPRESENTATION BY AN ATTORNEY.

12. At the trial, the Court will give a brief review of the procedure that will be followed during the proceedings. The parties will be required to prove to the Court the facts of the complaint and/or counterclaim. At the trial, each party will be expected to bring all of their witnesses, written documents (i.e., leases, contracts, bills of sale), or other evidence needed for judgment.
13. After the trial is held, the Court will issue a judgment based on the facts presented in the case. When the trial is concluded, the Judge will make the findings and enter judgment. Either party will 10 days to file a written notice of appeal with the Court and complete the procedures necessary. An appeal to the District Court is limited to questions of law only. You will be required to pay a filing fee to the Clerk of the District Court and post an appeal bond, if set by the Justice of the Peace.

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

14. If you obtain a judgment in Justice Court either by default or after a trial is held, you may proceed to the actual collection of the judgment. Payment of the judgment is due immediately. However, we recommend that you wait ten (10) days after judgment before you begin the collection process.
15. If the parties wish to negotiate a payment plan for the payment of the judgment, you may do so. The court would encourage any payments to be handled directly between the parties involved.
16. If the winning party does not receive payments in a timely fashion or if no payment arrangement is made, you may ask the Court to issue an execution. An execution is an order to the Sheriff/constable/levying officer to assist your collection process. You may execute against a savings or checking account, personal property (not a necessity of life), wages, vehicles, campers, or any other assets the judgment debtor may have.

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

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

There is an additional fee required for service of the execution. The fee is approximately \$100, per execution. You should check with the Sheriff/constable/levying officer regarding the fee for service of the execution first. These costs will be added to the judgment as accruing costs. Any monies collected, such as wages or money retrieved from a checking or savings account, will be distributed to you, after the serving officer collects his costs. If personal property is seized, the property will be sold at Sheriff’s sale and the proceeds, less the Sheriff’s costs, will be given to you.

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

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

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

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

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

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

**** PLEASE MAKE COPIES OF THE FOLLOWING FORMS FOR FUTURE USE
BEFORE COMPLETING! ****

SMALL CLAIMS DIVISION OF POWDER RIVER JUSTICE COURT, STATE OF MONTANA,
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE

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Plaintiff(s)

vs.

Defendant(s)

Complaint No. SM#: _____

COUNTERCLAIM

Date _____ Money Rec'd _____ Receipt # _____

COUNTERCLAIM

STATE OF MONTANA, COUNTY OF POWDER RIVER } ss.

Comes now the Defendant, being first duly sworn, upon oath, and complains and alleges that the Plaintiff(s) is (are) indebted to the Defendant in the sum of \$ _____ for _____

which sum is now due, owing and unpaid despite demands for the payment of the said sum; that the Plaintiff(s) refused to pay the same and no part thereof has been paid, together with Defendant's costs herein expended. That the obligation sued on was contracted to be performed in the above-named Powder River County. That at the commencement of action Plaintiff resides in the above-named Powder River County.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this ____ day of _____, 20____.

Work Phone _____

Home Phone _____

Subscribed and Sworn to before me

Defendant

Justice of the Peace, Powder River County

Defendant's Address, City, State, Zip

ORDER OF THE COURT / NOTICE TO PLAINTIFF

THE STATE OF MONTANA, to the above-named Plaintiff(s): You are hereby directed to appear and answer the within and foregoing counterclaim, in the above entitled court at: POWDER RIVER COUNTY JUSTICE COURT, Broadus, Montana.

on _____, at _____ M.

reset for _____, at _____ M.

reset for _____, at _____ M.

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

and to have with you, then and there, all books, papers, and witnesses needed by you to establish your defense to said counterclaim; and you are further notified that in case you do not appear, judgment will be taken against you by default, relief demanded in the counterclaim and for costs of the action, including costs of the service of the counterclaim and order of the court/notice to plaintiff.

To the Sheriff, Constable or Service of Process of said county, greetings.

Make legal service and due return thereof on the Plaintiff at

_____, _____, Montana.

Dated this ____ day of _____, 20____.

Justice of the Peace

SMALL CLAIMS DIVISION OF THE JUSTICE COURT OF
POWDER RIVER COUNTY, STATE OF MONTANA
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE

Plaintiff

vs

Defendant.

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Cause No. _____

SUBPOENA

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____.

CATHERINE A. LANDA
Justice of the Peace

SMALL CLAIMS DIVISION OF THE JUSTICE COURT OF
POWDER RIVER COUNTY, STATE OF MONTANA
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE

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Cause No. _____

Plaintiff

vs.

PRAECIPE

Defendant

TO: THE SHERIFF OF POWDER RIVER COUNTY:

Please serve the Small Claims Complaint, Order of Court, and Notice to Defendant, upon the Plaintiff/Defendant _____ (name of party) at _____ (location) and return the original to Powder River County Justice Court, Small Claims Division, Broadus, Montana.

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

Dated this ____ day of _____, 20__.

CATHERINE A. LANDA
Justice of the Peace

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

	*	
	*	Cause No. _____
	*	
Plaintiff	*	
vs.	*	
	*	MOTION FOR
	*	DEFAULT JUDGMENT
	*	
Defendant	*	
	*	

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

SMALL CLAIMS DIVISION OF THE JUSTICE COURT OF
POWDER RIVER COUNTY, STATE OF MONTANA
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE

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Cause No. _____

Plaintiff

vs.

JUDGMENT AFTER DEFAULT

Defendant

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

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

	*	
	*	Cause No. _____
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Plaintiff	*	
vs.	*	WRIT OF EXECUTION
	*	
	*	
	*	
Defendant	*	
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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

SMALL CLAIMS DIVISION OF THE JUSTICE COURT OF
POWDER RIVER COUNTY, STATE OF MONTANA
BEFORE CATHERINE A. LANDA, JUSTICE OF THE PEACE

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Cause No. _____

Plaintiff

vs.

NOTICE OF EXECUTION
LEVY

Defendant

NOTICE TO JUDGMENT DEBTOR

YOUR PROPERTY HAS BEEN TAKEN
BUT YOU MIGHT HAVE EXEMPTIONS FROM EXECUTION

A Writ of Execution has been issued at the request of the Judgment Creditor,
_____, of _____, Montana, to attempt to
collect the Judgment dated _____ and entered against you in the above entitled Court.

Writ of Execution directs the Sheriff to take your property (such as wages, bank accounts, and other
personal property) to pay a Judgment. If there is not enough personal property, then your real property may be
sold. The process of taking your property is called a "levy".

A levy upon the earnings of a Judgment Debtor continues in effect for 120 days or until the Judgment is
satisfied, whichever occurs first.

The Sheriff has seized the following property: _____

However, the law provides that certain property and benefits cannot be used to pay a Judgment; this
property is said to be "exempt" and you are entitled to have it returned to you.

If you claim that any of the property that was taken is exempt, you are entitled to a prompt hearing
before the Court.

To have a hearing on your Claim of Exemption you must file a petition with the Clerk of Court within
10 days after this Notice to Judgment Debtor was served upon you.

IF YOU DO NOT FILE THE PETITION FOR HEARING ON CLAIMED EXEMPTIONS WITHIN 10
CALENDAR DAYS AFTER SERVICE OF THIS NOTICE OR DATE OF MAILING THEN YOUR
PROPERTY WILL BE SOLD OR DISBURSED AS PROVIDED BY LAW.

It may be helpful for you to ask the advice of an attorney.

EXAMPLES OF EXEMPTIONS

Some exemptions are listed in the Montana Code Annotated (M.C.A.) Title 25, Chapter 13, Part 6, and in the United States Code (U.S.C.). Copies of these laws may be at the County Courthouse, and the Montana State University Library. Most public librarians have copies of the M.C.A. The following are examples of exemptions:

- Your interest in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals feed, crops, and musical instruments. Any one item may not exceed \$600.00 and all property may not exceed \$4,500.00 in value.
- One motor vehicle, not to exceed \$2,500.00 in value.
- Implements, professional books, and tools, of your trade or dependent of yours.
- Your dwelling house or mobile home and appurtenances not to exceed \$250,000.00 in value.
- Certain state and federal benefits and entitlements, such as retirement benefits; disability or illness benefits; medical; surgical or hospital care benefits; maintenance and child support; burial plots; and workers compensation benefits.

The Clerk of Court, of the entitled Court, has forms and other information.

TO CLAIM AN EXEMPTION, YOU MUST FILE A PETITION WITH THE CLERK AND A HEARING WILL BE SET TO DETERMINE IF THE EXEMPTION IS GOOD.

Dated this _____ day of _____, 20_____.

SHERIFF

(1) “To claim an exemption from execution, a judgment debtor shall file a written request for a hearing with the court that issued the execution accompanied by a written statement that describes the property that the judgment debtor claims is exempt and the reasons for the claim that the property is exempt and accompanied by copies of any documentation upon which the judgment debtor is relying for the exemption claim. A copy of the request, statement, and any documentation must be mailed by the judgment debtor on the date of filing to the judgment creditor or the judgment creditor’s attorney and to the sheriff or levying officer. The request, statement, and any documentation must be filed within 10 days, excluding weekends and holidays, of the date of:

a) the judgment debtor’s receipt of notification of execution if notification was by personal service; or

(b) the date of notification was mailed to the judgment debtor pursuant to §25-13-211(2).

(2) If the judgment debtor does not file the request, statement, and any documentation claiming an exemption within the period provided for in subsection (1), the judgment debtor may not claim an exemption in the seized property.

(3) A court that receives a request for an exemption hearing, along with the statement and documentation, shall conduct the hearing within 10 days, excluding weekends and holidays, from the date of receipt of the request.

(4) The court shall forward the order determining the judgment debtor’s exempt claim to the sheriff or levying officer.

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the ____ day of _____, 20____, a true and correct copy of the foregoing NOTICE OF EXECUTION OF LEVY was mailed to the following by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed as follows:

Signature

Dated this ____ day of _____, 20____.

Plaintiff / Defendant

Address

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

Plaintiff

vs.

Defendant

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Cause No. _____

NOTICE OF APPEAL

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

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

Dated this ____ day of _____, 20 ____.

Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice of Appeal was served upon the 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