

## **JUSTICE COURT CIVIL ACTION INSTRUCTIONS – DEFENDANT**

The following information and forms are for your information to defend a civil action. You are the Defendant and all references to “Defendant” in these instructions are directed to you. The forms are self-explanatory and easy to fill out. All papers necessary for a simple proceeding are available at Justice Court.

Neither the Judge nor the Clerk of the Justice Court is allowed by law to give legal advice to either party. We may only assist you by making the necessary forms and instructions available and advising you of the procedures available to pursue or defend a civil action. For further information, you should also consult and be familiar with the **Justice and City Court Civil Rules**, which can be found in Title 25, chapter 23 of the Montana Code Annotated and the **Montana Uniform Rules for the Justice and City Courts**, which can be found in Title 25, chapter 24 of the Montana Code Annotated, and all statutory provisions relating to procedure in Montana’s Justice Courts. The Montana Code Annotated may be accessed online at:  
[http://data.opi.state.mt.us/bills/mca\\_toc/index.htm](http://data.opi.state.mt.us/bills/mca_toc/index.htm)

### **ATTORNEYS AND SELF REPRESENTATION**

An attorney is not required to pursue a claim or defend yourself in a Justice Court civil action. However, ***please note*** that you can only file or defend a claim on your own behalf, not on behalf of another person, corporation or entity, unless you are an attorney. You may not file a claim or appear as a party in any matter before the Court as an agent, personal representative, corporation, business trust, estate, trust, partnership, limited liability company, or any entity or association comprised of two or more persons having a joint or common interest.

If you feel you need an attorney, you have the right to obtain an attorney at any time during the proceedings. If you need help or instruction beyond these instructions and forms and the rules referenced above, you will need to consult with an attorney.

### **JURISDICTION**

The amount demanded in the complaint cannot exceed **\$12,000**, excluding costs. Further limits on the jurisdiction of Justice Court can be found at §§ 3-10-301 through 3-10-304 MCA.

### **COMPLAINT**

As you have been notified by the summons, a Complaint has been filed against you by the Plaintiff. A complaint is a brief, concise statement of the facts constituting the Plaintiff’s claim against the Defendant. This is a statement by the Plaintiff to the Court and Defendant of **who** owes **what** to the Plaintiff and **why**.

### **ANSWER**

The Defendant **MUST** file a written **Answer** (*form provided*) with the Court **within 20 days** after service. If there is more than one Defendant, each Defendant must file an

answer. **If no Answer** is received by the Court within 20 days after service, the Plaintiff may ask the Court for a **Judgment by Default**.

The Complaint contains allegations against the Defendant. There are three ways to answer each of the allegations made in the Complaint. If true, the allegations may be admitted. If not true, the allegations may be denied. If Defendant lacks sufficient information to admit or deny a specific allegation, Defendant may state that as an answer. Any matter not denied shall be deemed admitted. If all allegations made in the complaint admitted as true or not denied, the Court may enter judgment based upon the complaint and answer without a trial. Any facts constituting a defense must be stated in the answer. The Defendant **MUST** send a copy of the answer or counterclaim (if any) to the Plaintiff.

### **COUNTERCLAIM**

If Defendant has a **Counterclaim** (*form provided*) arising from the same transaction as the complaint, Defendant must file it at the same time as the answer, or it is deemed to be waived. The Counterclaim must be a concise statement of the facts and legal basis constituting Defendant's claim against the Plaintiff and the type and amount of relief requested. **If no Reply** is received by the Court within 20 days after service, the Defendant may ask the Court for a **Judgment by Default** on the Counterclaim. The Judgment **must be requested** by the Defendant IN WRITING, (*form provided*) it does not automatically happen. Default judgment is LIMITED TO EXACTLY WHAT IS ASKED FOR IN THE COUNTERCLAIM. Defendant cannot get default judgment for anything that does not appear on the face of the counterclaim.

### **FILING FEE AND SERVICE**

Defendant **MUST** mail a copy of the Answer to the Plaintiff at the address stated on the Complaint. Defendant must pay a **\$30 filing fee** to the Court with the answer at the time of filing.

No papers will be filed without payment of the required fees or without appropriate copies. If appropriate copies are not provided at the time of filing, you will be required to pay \$.50 per page for the Clerk to make the appropriate copies.

### **CONTINUANCES**

A continuance or resetting of a trial or hearing may be granted only upon a showing of good cause. The **Motion for Continuance** (*form provided*) must be made in writing and served upon (or mailed to) the opposing party or counsel. No continuance will be granted if not timely made. A continuance will not be granted if a party appears at the time set for a hearing or trial unprepared.

### **TRIAL**

At trial, each party is responsible to prove to the Court the facts of their side of the case. Each party will be expected to bring all of their witnesses, written documents (i.e. lease, contract, bill of sale, receipts, etc.), or other evidence needed to support their

position. If you do not bring evidence to trial, it will not be considered by the Court. The Court does not accept written statements from witnesses – all witnesses must appear at trial to give testimony.

The Plaintiff presents their case first. Plaintiff may testify and may also call witnesses. The Defendant may also ask questions of Plaintiff and each witness. Plaintiff must introduce sufficient evidence and testimony to prove their case by a preponderance of the evidence.

The Defendant then presents their case. Defendant may testify and may also call witnesses. The Plaintiff may also ask questions of Defendant and each witness. If there is a counterclaim, Defendant must present evidence and testimony to prove the counterclaim by a preponderance of the evidence.

The Plaintiff then may provide any rebuttal evidence or testimony. If there was a counterclaim, Plaintiff may present evidence and testimony to defend the counterclaim. If you intend to introduce papers or documents to the Court at trial, you must bring a copy for the opposing party. If you wish to retain your original document, you must also bring a copy for the Court.

## **JUDGMENT**

After the trial is held, the Court will issue a written judgment based on the facts as presented in the case. The Judge may pronounce judgment orally at the end of trial to be followed by a written judgment, or may take the matter under advisement and issue written judgment within 30 days. Each party will receive a copy of the written judgment.

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. The Court will NOT mail the evidence back to you. Evidence not picked up in a timely manner will be disposed of by the Court.

## **COLLECTION OF THE JUDGMENT**

If Plaintiff wins a Judgment, either by default or by trial, Plaintiff may proceed to the actual collection of the Judgment. If the Defendant wins a Judgment, Defendant has the same rights and remedies for collection as the Plaintiff. A separate packet is available from the Court regarding collections.

Payment of the Judgment is due immediately and payment should be made directly to the Plaintiff. If the parties wish to negotiate a payment plan for the payment of the Judgment, they may do so. The Court will not handle payments or collection. The Judgment is good for 10 years. The parties are advised that if payment is not made voluntarily, there will be costs associated with collection of the judgment. The Plaintiff must pay the costs initially, but the costs will be added to the judgment, so the Defendant will ultimately pay the costs when the judgment is fully collected. Collection of a judgment can be difficult, time consuming, and costly for both sides. Some costs and difficulties can be avoided if both parties communicate and are reasonable with

each other regarding collection.

**Plaintiff (or prevailing party) MUST notify the Court as soon as the Judgment is satisfied (paid in full).** Plaintiff will be responsible if the Judgment is satisfied and NOT cleared from the Debtor's record in Court and may be held liable for damages.

### **APPEAL**

Either party may appeal the judgment to the District Court and will have **30 days to file a written notice of appeal** with the Justice Court and complete the procedures necessary. The burden of perfecting the appeal is on the appealing party. You will be required to pay a fee to the Clerk of the District Court and post an appeal bond set by the Justice of the Peace.

### **OTHER MOTIONS**

All motions to the Court must be in writing. A general **Motion** *(form provided)* form has been provided for any motion you need to file with the Court that has not been specifically provided for in this packet.

### **QUESTIONS**

For general questions, you may reach the Justice Court Civil Clerk by calling **(406) 932-5150**.

## Answer form instructions

The numbers below are instructions for the corresponding numbered blanks on the Answer form.

- (1) Print your name as Defendant.
- (2) Print your mailing address and phone number.
- (3) Print the name of the Plaintiff or Plaintiffs.
- (4) Print your name as Defendant. (Each Defendant must file their own Answer)
- (5) Fill in the case number that has been assigned by the Court.
- (6) Print your name.
- (7) What statements in the Complaint are true? Restate them in this portion of the Answer and indicate that they are admitted. What statements are not true? Repeat those statements in this portion and indicate that they are denied. Are there any statements which you do not know about? If there are, state that you do not know whether these statements are true or not.
- (8) Fill in the date you are signing your Answer.
- (9) Sign the Answer.
- (10) Put the Plaintiff's name and address as it appears on the Complaint and **mail a copy of your Answer to the Plaintiff.**
- (11) Sign the Certificate of Service.

File the original Answer with the Court. (include \$20 filing fee)

(1) \_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_  
Phone: \_\_\_\_\_

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

\_\_\_\_\_  
)  
(3) \_\_\_\_\_, )  
Plaintiff(s), ) Cause No. (5) CV- \_\_\_\_\_  
)  
vs. ) **ANSWER**  
)  
(4) \_\_\_\_\_, )  
Defendant(s). )

4.11.2014

COMES NOW, Defendant(s), (6) \_\_\_\_\_  
named in the Complaint and answers as follows: (7) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED this (8) \_\_\_\_\_ day of (8) \_\_\_\_\_, 20\_\_\_\_.

(9) \_\_\_\_\_  
Defendant

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 by placing the same in the U.S. mail, postage prepaid, addressed as follows:

(10) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_

(11) \_\_\_\_\_  
Defendant

## Counterclaim form instructions

- (1) Print your name as Defendant.
- (2) Print your mailing address and phone number.
- (3) Print the name of the Plaintiff or Plaintiffs.
- (4) Print your name as Defendant.
- (5) Fill in the case number that has been assigned by the Court.
- (6) State the facts and legal basis that constitute your claim against the Plaintiff.
- (7) State the relief requested and/or the amount of money you are seeking. Please do not include costs of Court or service in the amount stated.
- (8) Fill in the date you are signing your Counterclaim.
- (9) Sign the Counterclaim.
- (10) Put the Plaintiff's name and address as it appears on the Complaint and **mail a copy of your Counterclaim to the Plaintiff.**
- (11) Sign the Certificate of Service.

File the original Counterclaim with the Court.

(1) \_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_  
Phone: \_\_\_\_\_

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

\_\_\_\_\_  
)  
(3) \_\_\_\_\_, )  
Plaintiff(s), ) Cause No. (5) CV- \_\_\_\_\_  
vs. )  
)  
(4) \_\_\_\_\_, ) **COUNTERCLAIM**  
Defendant(s). )

4.11.2014

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

(6) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREFORE, Defendant(s) requests Judgment against Plaintiff as follows (include dollar amount owed), plus costs of suit:

(7) \_\_\_\_\_  
\_\_\_\_\_

DATED this (8) \_\_\_\_\_ day of (8) \_\_\_\_\_, 20\_\_.

(9) \_\_\_\_\_  
Defendant

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 by placing the same in the U.S. mail, postage prepaid, addressed as follows:

(10) \_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_

(11) \_\_\_\_\_  
Defendant

**Notice: Plaintiff has twenty (20) days in which to Reply to this Counterclaim.**



## Motion for Default form instructions

The numbers below are instructions for the corresponding numbered blanks on the Motion for Default form.

- (1) Print your name as Defendant.
- (2) Print your mailing address and phone number.
- (3) Print the name of the Plaintiff or Plaintiffs.
- (4) Print your name as Defendant.
- (5) Fill in the case number that has been assigned by the Court.
- (6) Print your name.
- (7) Fill in the amount Defendant owes. This amount should be the same as the amount stated in the Complaint. If any payment has been made, you must deduct the amount already paid. Do not include court costs in the amount, the court will add those.
- (8) Fill in the date you are signing the motion.
- (9) Sign the motion. You must sign the motion **before a Notary Public**. The Notary Public will fill out the appropriate portion of the form.
- (10) Put the Plaintiff's name and address and **mail a copy of your Motion for Default to the Plaintiff**.
- (11) Sign the Certificate of Service.

File the original Motion for Default with the Court.

(1) \_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_  
Phone: \_\_\_\_\_

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

\_\_\_\_\_  
(3) \_\_\_\_\_, )  
Plaintiff(s), ) Cause No. (5) CV- \_\_\_\_\_  
vs. )  
(4) \_\_\_\_\_, ) **MOTION FOR DEFAULT AND**  
Defendant(s). ) **AFFIDAVIT OF SUM DUE**

4.11.2014

COMES NOW, the Defendant and requests that the Court enter default and render judgment against Plaintiff(s) for their failure to appear or otherwise answer the Defendant's counterclaim within the time allowed to do so.

STATE OF MONTANA )  
: ss.  
County of Sweet Grass )

(6) \_\_\_\_\_, being first duly sworn, says that as of the date of entry of default, there was the sum of (7) \$ \_\_\_\_\_, owing by the Plaintiff(s) to the Defendant as set forth in the Counterclaim, together with costs of suit incurred.

DATED this (8) \_\_\_\_\_ day of (8) \_\_\_\_\_, 20\_\_.

(9) \_\_\_\_\_  
Defendant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Notary Seal)

\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My commission expires \_\_\_\_\_.

CERTIFICATE OF SERVICE

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

(10) \_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_

(11) \_\_\_\_\_  
Defendant

## Motion to Continue form instructions

The numbers below are instructions for the corresponding numbered blanks on the Motion to Continue form.

- (1) Print your name as Defendant.
- (2) Print your mailing address and phone number.
- (3) Print the name of the Plaintiff or Plaintiffs.
- (4) Print your name as Defendant.
- (5) Fill in the case number that has been assigned by the Court.
- (6) Check the appropriate box to indicate whether it is a trial or other hearing you want continued.
- (7) Fill in the date presently set for the trial or hearing.
- (8) Explain why you need the date changed. You must be specific. Remember that you must have good cause to request the continuance.
- (9) You should contact the Plaintiff and advise them that you are requesting a continuance and why. Check the appropriate box to indicate whether you were able to contact the Plaintiff or not.
- (10) Check the appropriate box to indicate whether the Plaintiff objects to the motion to continue or not.
- (11) Fill in the date you are signing your motion.
- (12) Sign the motion.
- (13) Put the Plaintiff's name and address and **mail a copy of your Motion to Continue to the Plaintiff.**
- (14) Sign the Certificate of Service.

File the original Motion to Continue with the Court.

(1) \_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_  
Phone: \_\_\_\_\_

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

\_\_\_\_\_  
(3) \_\_\_\_\_, )  
Plaintiff(s), ) Cause No. (5) CV- \_\_\_\_\_  
vs. ) **MOTION TO CONTINUE**  
(4) \_\_\_\_\_, )  
Defendant(s). )

4.11.2014

COMES NOW, Defendant and requests that the Court continue (6) ( ) trial ( ) hearing set on (7) \_\_\_\_\_, 20\_\_\_\_, for the reason that (8) \_\_\_\_\_

The Plaintiff (9) ( ) has ( ) has not been contacted regarding this motion and the Plaintiff (10) ( ) objects ( ) does not object to the continuance.

DATED this (11) \_\_\_\_\_ day of (11) \_\_\_\_\_, 20\_\_\_\_.

(12) \_\_\_\_\_  
Defendant

CERTIFICATE OF SERVICE

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

(13) \_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_

(14) \_\_\_\_\_  
Defendant

## Motion form instructions

The numbers below are instructions for the corresponding numbered blanks on the Motion to Continue form.

- (1) Print your name as Defendant.
- (2) Print your mailing address and phone number.
- (3) Print the name of the Plaintiff or Plaintiffs.
- (4) Print your name as Defendant.
- (5) Fill in the case number that has been assigned by the Court.
- (6) State what action you are requesting the Court to take.
- (7) State the reason for your request. You must be specific. Remember that you must have good cause for any request you make.
- (8) Fill in the date you are signing your motion.
- (9) Sign the motion.
- (10) Put the Plaintiff's name and address and **mail a copy of your Motion to the Plaintiff.**
- (11) Sign the Certificate of Service.

File the original Motion with the Court.

(1) \_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_  
Phone: \_\_\_\_\_

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

\_\_\_\_\_  
(3) \_\_\_\_\_, )  
Plaintiff(s), ) Cause No. (5) CV- \_\_\_\_\_  
vs. )  
(4) \_\_\_\_\_, )  
Defendant(s). )  
**MOTION**

4.11.2014

COMES NOW, the Defendant and requests that the Court (6) \_\_\_\_\_

for the reason that (7) \_\_\_\_\_

DATED this (8) \_\_\_\_\_ day of (8) \_\_\_\_\_, 20\_\_.

(9) \_\_\_\_\_  
Defendant

CERTIFICATE OF SERVICE

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

(10) \_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_

(11) \_\_\_\_\_  
Defendant