Small Claims Glossary

Plaintiff: The person alleging he or she is *owed* money or property is the plaintiff.

Defendant: The person or party who allegedly *owes* money or property is the defendant.

Counterclaim: If a defendant disagrees with the original claim and instead believes he/she is owed money or property, he/she may file a counterclaim.

Subpoena: A subpoena is a legal document, issued by the court, that compels a witness to appear in court.

Liquidated Claim: A claim for an amount previously agreed on by operation of law or by the terms of the parties' agreement.

Small Claims Court

A Citizen's Guide

"Montana's Small Claims Court is an effective way for our citizens to inexpensively and quickly resolve disputes. The procedures are informal and there's no need to hire a lawyer. If you're interested in knowing more about how the process works, this brochure is a good place to start for both plaintiffs and defendants."

Small Claims Court Checklist

Plaintiff

___ Send a letter to the defendant demanding payment by a specific time. A certified letter is recommended. When you file the claim and go to trial, bring the proof of mailing the letter.

___ Request a complaint form from the clerk or justice of the peace, complete the form and sign it in front of the clerk or the justice.

___ Provide the name and complete street address of the defendant. If suing a corporation, make sure the correct legal name is on the complaint.

___ Make sure the sum of money or property being sued for is a specific amount of $7000 or less.

___ File the complaint in the county where the defendant lives or in a county where the defendant may be served.

___ Pay the filing fee. If you cannot afford the fee, complete an affidavit asking the court to waive the fees.

___ Have the court issue any required subpoenas for witnesses you need at trial.

___ If the defendant wasn't served at least five days before the hearing, ask the court to reset the hearing date.

___ Bring all required evidence/documents/witnesses to court on the scheduled date and be prepared to present your case.

___ If the case is settled prior to trial, file a signed, written agreement with the court.

___ If you wish to appeal the small claims court's decision, file your appeal within 10 days after the judge's order is signed and pay the required fee.

Defendant

___ After the complaint is filed, the court will order a hearing within 10 to 40 days of the date of the order. If you are unable to be there or cannot be prepared by that date, ask the court to reschedule the hearing.

___ You can settle with the plaintiff out of court If so, a signed copy of your written settlement agreement must be filed with the court.

___ Consider using a mediator or third person to help settle the dispute.

___ If you prefer a jury trial or want an attorney to represent you, file a motion within 10 days from the date the complaint is served to remove the case to justice court.

___ If filing a counterclaim the amount in question cannot exceed $6500.

___ Serve your counterclaim on the plaintiff at least 72 hours before the hearing date.

___ Pay the clerk a fee for each defendant when you appear for trial, or when you file a counterclaim, or when you remove the case to justice court.

___ If you cannot afford the fees, complete an affidavit asking the court to waive the fees.

___ Before the hearing, have the court issue any necessary subpoenas for witnesses you need.

___ Bring all supporting evidence, documents, and witnesses to court on the hearing date, and be prepared to present your case.

___ If you wish to appeal the small claims court's decision, file your appeal within 10 days after the judge's order is signed and pay the required fee.

Small claims court is a quick, inexpensive, informal way to resolve disputes over small amounts of personal property or money. Juries and lawyers are not necessary. Small claims cases are handled in justice courts; however, small claims court rules and procedures are informal and thus not necessarily the same as in justice court.

There are some basic rules to know, however, and some guidelines to follow. This brochure provides some guidance through the process, along with a glossary and a step-by-step checklist.

Maximum Claim

- The amount in question in a small claims case cannot be more than $7,000.
- A claim must be a fixed amount, like a balance on a bill or another easily determined amount previously agreed upon by the parties. If unsure of the form of your claim, check with the small claims court **before** filing a suit in order to avoid forfeiture of fees.
- Claims may be filed in the county where the defendant lives or where he or she may be served.

Fees

- A □fee is required to file a complaint or counterclaim. Once a complaint is filed, the Court will issue an order to appear at trial and, for a fee, a process server will deliver the order to the defendant. It is possible to recover some of these fees as part of the resolution of a case.

Venues

Claims can be filed in the county where the claim arose or in the county where the defendant resides.

Timelines



- A hearing must be set within 40 days of the date the claim is filed.
- A defendant must be given at least five days notice before a hearing.
- The parties may ask the Court for more time. Typically such a request must be made before the hearing date.
- Weekends and holidays count against timelines stating a specific number of days to take an action.

Counterclaims

If a defendant believes the plaintiff owes him money, he may file a counterclaim.

- The counterclaim must involve the same dispute as the original complaint.
- It must be served on the plaintiff at least 72 hours before the scheduled date of the trial.
- The amount of the counterclaim cannot be more than $6,500.

Settlement Options

Sometimes it is possible to settle disputes before trial and avoid small claims court altogether. If the case is settled, the agreement should be put in writing and signed by both parties. The parties should give a copy of the agreement to the clerk of small claims court and ask that the complaint be dismissed.

Subpoenas

A party may ask the Court to issue subpoenas for witnesses. To be effective, subpoenas must be issued well before the hearing date.

Juries

Juries are not used in small claims court. If a party prefers a jury trial, the case must be removed to Justice Court. The request must be made within 10 days after the complaint is served on the defendant. The clerk of court can explain the process.

Attorneys

Attorneys are not necessary for small claims proceedings. A party may not be represented by an attorney unless all parties are represented by attorneys.

In Court

- Once under oath, the parties involved present the facts truthfully, in the order in which they occurred. The plaintiff tells his or her side of the story, then it's the defendant's turn.
- Both sides may present evidence and call witnesses. Each side may also question the other person and his or her witnesses and may ask questions about evidence.

Judgment and Resolution



The judgment is the written decision of the judge. The winning side is entitled to collect the disputed amount, plus court costs. **Collection of payment is the responsibility of the parties involved.** If the losing party fails to pay, there are some other options.

Appeal

If either side is dissatisfied with the court's judgment, the case may be appealed to district court. The appeal must be in writing and must be made within 10 days of the original judgment.

The appeal addresses questions of law only, to confirm that the law was correctly applied to the case. The district court judge will not retry the case or accept new evidence, testimony, etc.

Limits on Cases

- A party may not file more than 10 claims in a calendar year, except claims involving shoplifting.

Relevant Statutes

- Mont. Code Ann. §§ 25-35-501 to -807

SMALL CLAIMS COURT CHECKLIST

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____ Provide the name and complete street address of the defendant. If suing a corporation, make sure the correct legal name is on the complaint.

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____ Bring all required evidence, documents, and witnesses to court on the scheduled date and be prepared to present your case.

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____ If you wish to appeal the small claims court's decision, file your appeal within 10 days after the judge's order is signed and pay the required fee.

DEFENDANT

____ After the complaint is filed, the court will order a hearing within 10 to 40 days of the date of the order. If you are unable to be there or cannot be prepared by that date, ask the court to reschedule the hearing.

____ You can settle with the plaintiff out of court. If so, a signed copy of your written settlement agreement must be filed with the court.

____ Consider using a mediator or third person to help settle the dispute..

____ If you prefer a jury trial or want an attorney to represent you, file a motion within 10 days from the date the complaint is served to remove the case to justice court.

____ If filing a counterclaim, the amount in question cannot exceed $6,500.

____ Serve your counterclaim on the plaintiff at least 72 hours before the hearing date.

____ Pay the clerk a fee for each defendant when you appear for trial, or when you file a counterclaim, or when you remove the case to justice court.

____ If you cannot afford the fees, complete an affidavit asking the court to waive the fees.

____ Before the hearing, have the court issue any necessary subpoenas for witnesses you need.

____ Bring all supporting evidence, documents, and witnesses to court on the hearing date, and be prepared to present your case.

____ If you wish to appeal the small claims court's decision, file your appeal within 10 days after the judge's order is signed and pay the required fee..

DAWSON COUNTY JUSTICE COURT
207 WEST BELL STREET
GLENDIVE, MT 59330
PHONE (406) 377-5425
FAX (406) 377-1869

FILING A SMALL CLAIMS CASE

1. The Defendant must reside in Dawson County.

2. The amount requested may not exceed $7,000.00.

3. The filing fee is $30.00 for filing the case. That amount is payable to Justice Court.

4. The Sheriff's service fee is $75.00, plus mileage, if applicable. The Sheriff's Department will determine if an additional amount will be added for mileage, depending on the distance from the city limits. Mapquest is used to determine the mileage from the Sheriff's Office at 440 Colorado Blvd to the Defendant's address outside city limits.

5. The $75.00 fee to the Sheriff's Department will be separate from the filing fee. If paying by check, you will need two checks, one payable to Justice Court, and the other payable to the Dawson County Sheriff's Department.

6. Include the fee amounts ($105.00, or more, if applicable for mileage) in the dollar amount requested on the Small Claims form. Where it is indicated "for" on the form, add the words, "including filing fee and Sheriff's service fee".

7. The address of the Defendant is required for service by the Sheriff's Department.

8. In addition to the small claims form, you must fill out the Praecipe form, which is an instruction for service by the Sheriff's Department.

9. If it is requested that two individuals be served, the fee for service will be $75.00 for <u>each</u> Defendant. For example: if it is indicated, "John Doe <u>or</u> Mary Smith", one or the other will be served, and the service fee remains at $75.00. If it is indicated, "John Doe <u>and</u> Mary Smith", both individuals must be served, and the total fee for service is $150.00.

If you should have any questions regarding the filing of a Small Claims case, feel free to stop by the Court, or call (406) 377-5425, between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday.

DAWSON COUNTY JUSTICE COURT

COMPLAINT AND ORDER

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE COURT OF DAWSON COUNTY, STATE OF MONTANA

BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

_____, *

_____, * Complaint Case No._____

Plaintiff(s), *

* Calendared _____

VS *

_____, *

_____, *

Defendant(s). *

COMPLAINT

STATE OF MONTANA, COUNTY OF DAWSON

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

$_____ for _____

_____

_____

which sum is now due, owing and unpaid despite demands for the payment of the sum, together with Plaintiff's costs expended in this action.

SUBSCRIBED AND SWORN TO BEFORE ME

Dated this _____ day of _____, 20_____

_____
Plaintiff

_____
Justice of the Peace

_____
Plaintiff

By_____
Clerk, Dawson County, Montana Justice Court

_____
Plaintiff's Address

ORDER OF THE COURT/NOTICE TO DEFENDANT

THE STATE OF MONTANA, to the above-named Defendant(s): You are hereby directed to appear and answer the within and foregoing Complaint, in the above-entitled court at:

THE DAWSON COUNTY JUSTICE COURT, COURTHOUSE, GLENDIVE, MONTANA.

on _____, at _____M. reset for _____, at _____M.

reset for _____, at _____M. reset for _____, at _____M.

and to have with you all books, papers and witnesses needed by you to establish your defense to the claim. You are further notified that in case **YOU DO NOT APPEAR, JUDGMENT WILL BE TAKEN AGAINST YOU BY DEFAULT** for the relief demanded in the Complaint and for costs of this action, including costs of service of the Complaint and Order of the Court/Notice to Defendant. You are further notified that **WITHIN TEN (10) DAYS OF SERVICE UPON YOU OF THIS COMPLAINT AND ORDER, YOU MAY REMOVE THIS ACTION FROM THE SMALL CLAIMS COURT TO JUSTICE CIVIL COURT AND THAT YOUR FAILURE TO REMOVE CONSTITUTES A WAIVER OF YOUR RIGHTS TO TRIAL BY JURY AND TO REPRESENTATION BY COUNSEL.**

_____
JUSTICE OF THE PEACE

By_____
Clerk of Small Claims Division

Dated this _____ day of _____, 20 _____.

Praecipe

INSTRUCTIONS FOR SERVICE

_____

File No:_____

_____

Plaintiff

VS

_____

_____

Defendant

To: Dawson County Sheriff's Office Date: _____

Please serve_____ the following documents (list
(name of person to be served)

all documents) _____

_____

_____

at (location(s) of person to be served)_____

_____

Return documents to:

Name: _____

Address: _____

_____

Phone: _____

_____

Signature

Note: Paper will not be served if the Praecipe is not signed.