

**FLATHEAD COUNTY JUSTICES' COURT
CIVIL CASE FILING AND TRIAL PROCEDURE**

*Carefully read this entire pamphlet before preparing your Complaint for filing, or before preparing your Answer if you have been sued. **It contains important information which may determine the outcome of your case.***

This guide is intended to assist all parties in the preparation, filing, answering and presentation of a lawsuit in court. It is not intended to provide legal advice. **THE JUDGES AND CLERKS OF COURT CANNOT GIVE EITHER SIDE LEGAL ADVICE!** The clerk can provide you with procedural information and certain forms. However, court staff cannot advise how the law may apply to your case, or tell you how to prepare forms based upon the circumstances of your case. If you have legal questions about your case you should seek the advice of an attorney or other qualified person. The following outlines the suggested procedure to be followed in preparing a case for filing, filing the Complaint, serving the Complaint, filing an Answer or a Counterclaim, preparing for trial, and presenting your case or defense at trial.

Filing A Complaint - You may file a lawsuit by preparing a written Complaint. The value of the damages or other relief you are seeking cannot exceed \$15,000.00. The person filing the lawsuit is the *plaintiff* and the person responding to the lawsuit is the *defendant*. You must include in your lawsuit anyone who may owe you the money or property you are seeking to recover. If your lawsuit involves, in any way, the legal title or ownership to real estate you must file your lawsuit in the District Court. Your Complaint must state the facts upon which your claim is based. Those facts must be stated with enough detail so that the other side is made aware of the nature and legal basis for the claim. If needed, the clerk will assist in the preparation of the Complaint based on the information you provide. **IT IS YOUR RESPONSIBILITY TO PROVIDE THE NECESSARY INFORMATION OR YOU WILL NOT BE ABLE TO PRESENT IT AT THE TRIAL.** The fee for filing a Complaint is \$50.00 and must be paid at the time of filing. Once the case is filed, you will be given the Complaint so that you can have it served on the defendant(s). You must have the Sheriff, a process server, or some other adult serve the papers and provide proof of service when they return the original Summons to the Court. Each person sued must be personally served a copy of the Complaint! You cannot leave the papers with someone else or post at their home. You must pay the cost of service. In the event you win, the amount of the filing fee and cost of service will be included in the Judgment.

Filing An Answer- Once the defendant has been served a copy of the Complaint, he or she must file a **written Answer** with the Court. The filing fee is \$30.00. The Answer must admit or deny the allegations in the Complaint and must set forth detailed facts upon which any denial is based. When the Answer is filed you must provide the clerk with a Certificate of Service indicating the Answer will be served on the plaintiff. An Answer can be personally served or mailed to the address given to the clerk by the plaintiff. A civil complaint must be answered within twenty (20) days from the day served. A civil complaint for possession must be answered within ten (10) business days.

Filing A Counterclaim- If you believe the plaintiff owes you money then you must file a Counterclaim with your Answer. Your Counterclaim must involve the same facts or circumstances as those in the plaintiff's case against you. A Counterclaim is filed by appearing at the Justice Court and submitting a written statement containing the Counterclaim. The Counterclaim must be served on the plaintiff, either by mail or in person. If a Counterclaim is filed and served the plaintiff must respond to the claim by filing with the court a **Reply to Counterclaim within twenty (20) days** after the day it was served. The Reply must also be sent to the plaintiff and a Certificate of Service must be filed at the time the Reply is filed.

Other Pleadings- The Justices' Court is a court of limited jurisdiction with its own procedural rules. No other pleadings can be filed in the Justices' Court without receiving an order from the court in advance.

Discovery: Under the American civil justice system, and in Montana, neither party is allowed to surprise or "ambush" the other side at trial. Justice can only be done if everyone knows what the relevant evidence is and that evidence is presented to the judge or jury so that the controlling law can be applied to that evidence. In the Justices' court you cannot engage in "formal" discovery without authorization from the judge. You can request from the other side copies of the evidence they are relying on as well as the names and contact information for any witnesses that are going to testify. If the other side will not provide you with the information you have requested, you file a written request with the court to be allowed to conduct formal discovery so that you receive requested information prior to the trial and can better prepare.

Mediation- Flathead County Justice Court may require that your case be submitted to mediation prior to being scheduled for trial. When the defendant files an Answer and/or Counterclaim, the file will be reviewed to determine whether mediation would be beneficial. Mediation is an informal process in which the parties meet with a mediator in an effort to resolve the dispute without the need to go through a trial. Mediation is a service provided by the court and there is no fee. However, if mediation is ordered by the judge, it is mandatory. If your case is scheduled for mediation you will receive an Order to attend mediation at the Justice Center which is located at 920 South Main Street in Kalispell. You will meet with a mediator who will facilitate discussion in order to see if the dispute can be resolved without submitting it to a judge or jury. If mediation is not successful, the case will be scheduled for trial. If the case is complicated, the judge may order a pretrial conference before the date of the trial.

The Trial: You must be prepared at the time of trial to present all of your case, or Counterclaim, and any defense to a case filed against you. This means you must have all your witnesses present and ready to testify. You must also have two complete sets of copies of any documents or exhibits you intend to show to the Judge. Prior to start of the trial, give one full set to the other party so they are familiar with them prior to trial. It is helpful to have the documents numbered. At the beginning of the trial the Plaintiff will present his or her case. You will be expected to present all of your evidence, including documents. **The Judge cannot hear or consider evidence which is not reliable and relevant to the subject of the case. You cannot rely on written statements or sworn affidavits to support your case. If you want the Judge to consider the testimony of someone other than yourself, that person must be in the courtroom to testify.** Once the plaintiff's case has been presented the defendant will have an opportunity to present evidence in support of the Answer, as well as any Counterclaim. The plaintiff will then be given an opportunity to respond to this evidence before the Judge decides the case. **Remember, it is your case and you are expected to be prepared.**

Evidence: Your case will be decided based upon the relevant evidence offered to the judge at the time of trial. The judge will not call people for you, or set another court date so that you can bring someone to court you should have brought to the trial. Only **relevant evidence** will be considered. Relevant evidence is documents or testimony that proves, or disproves, a fact that is legally important to the issues in the case. You must have all of your evidence with you at the time of the trial- this includes all of your witnesses. If you need a Subpoena to ensure the appearance of a witness, let the clerk know well in advance of the trial date. You cannot use **hearsay evidence** to prove your case or establish a defense. Hearsay evidence is generally evidence that has been generated out of the court room. For example, someone's statement made in the past and now offered in court as the truth. Unless the statement is the other party's it will not be allowed. While there are exceptions to this general rule, you should plan on having live testimony for every fact you intend to establish. Documents are statements of the person who prepared the document. If you did not prepare the document yourself you need to have the person who did in court to testify

about their document. The records of a business can be introduced into evidence by someone from the business who maintains those records.

Appeals: Either party may appeal a Justices' Court decision to the District Court by filing a written Notice of Appeal with the Justice Court Clerk. The fee is \$20.00 which must be paid at the time the Notice of Appeal is filed. A check for \$10.00, made out to the District Court, must also be filed with the appeal. The Notice of Appeal must also be served on the other party. In most cases a bond must also be filed to complete the appeal process.

Judgments: A judgment issued by the Justices' Court is valid for ten (10) years and bears simple interest at the rate of Prime + 3%, (as of January 1st each year), per year. The judgment may be enforced anywhere in the State of Montana. Judgments may also be transcribed to the District Court at which time they have the same effect as a District Court judgment. The judgment fee is \$20.00, to be paid by the prevailing party; excluding default judgments.

Collection of Judgments: The fact that you have obtained a Judgment does not guarantee that you will be paid. The Court cannot make the losing party pay the prevailing party. If the Judgment is not voluntarily paid by the losing party, it can be enforced through the collection process. This includes the garnishment of wages and the seizure of personal property for sale. All collections must be done by a levy officer licensed by the State of Montana. A list of levy officers may be obtained from the Clerk. If you know where the name of the losing person's employer, or the name of their bank, you may request a Writ of Execution which will allow the levy officer to levy on the wages or bank account.

LEGAL RESOURCES

Self Help Law Center
1-406-758-2496

- provides basic forms and procedural guidance

Montana Law Help
www.MontanaLawHelp.org

- a project of the Montana Legal Services Association providing extensive on-line access to legal information and legal forms

State Law Library of Montana
1-406-444-3660
www.courts.mt.gov/library

- extensive collection of on-line legal resources including Montana Code Annotated, Administrative Rules, Court Rules
- On-line access to decisions of the Montana Supreme Court

Montana Legal Services Association
1-800-666-6899, www.mtlsa.org

- provides legal services to qualified low income people
- coordinates volunteer lawyer program with local bar

State Bar of Montana
Lawyer Referral Service
1-406-442-7660 www.montanabar.org

- provides lawyer referral service based on case type
- provides information and on-line links to other legal resources including self-help material

Montana Fair Housing
1-800-929-2611
www.montanafairhousing.org

- provides anti-discrimination housing information to owners and renters
- provides information on Montana law and links to other resources