

Guide to Small Claims Court

Small claims court is a quick, inexpensive and 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](#), in accordance with [Title 25, Chapter 35](#) of the Montana Code Annotated.

THE JUSTICE COURT STAFF IS PROHIBITED BY LAW TO GIVE LEGAL ADVICE Only Your Lawyer Can Give Legal Advice

- Tell You Whether Or Not You Should Bring Your Case To Court
- Give An Opinion About What Will Happen If You Bring Your Case To Court
- Discuss Or Speculate About What Decision The Judge Might Make
- Tell You Or Suggest To You What Words To Use In Court Papers
- Recommend A Specific Attorney Or Law Firm To Represent You
- Let You Talk To The Judge Outside Of Court
- Change An Order Signed By The Judge Or Reschedule Or Continue A Court Date
- Fill In Any Forms For You Unless You Have A Disability Preventing You From Doing So
- Conduct Any Legal Research On Your Behalf

Terms

- **Plaintiff** – the person alleging he or she is owed money or property
- **Defendant / Respondent** – the person or party who allegedly owes money or property
- **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 legal document issued by the court, that compels a witness to appear in court

Maximum Claim

- The amount in question in a small claims case cannot be more than \$7,000.
- It must be a fixed amount that's easily determined, like a balance on a bill. Small claims court cases do not address "damages" claimed for some sort of wrong.
- Claims may be filed in the county where the defendant lives or where he or she may be served.

Fees

- A fee of \$30.00 is required to file a complaint or a counterclaim, please bring the exact amount. Once a complaint is filed, the court issues an order to appear at trial and a process server delivers the original order to the defendant which needs to be returned to the court with proof of service. There is a fee for the service of the order. It is possible to recover some of these fees as part of the resolution of a case.

Interpleader Affidavit

- \$17.00 filing fee (complaint fee) – they deposit earnest money with the court which is deposited as a bond pending outcome. Form available.

Answer

- Pay the clerk a fee of \$20.00 per defendant (please bring the exact amount) when you appear for trial, or when you file a counterclaim, or when you remove the case to justice court.

Timelines

- A hearing must be set no less than 10 days but 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 date of the hearing.

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 / Satisfaction

- 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. If the case is settled, a satisfaction must be filed with the court by the plaintiff.

Subpoenas

- A party may ask the court to issue subpoenas for witnesses. Have the court issue any required subpoenas for witnesses you need at trial if they will not appear without one. These should be served by a process server not by a party to the action. 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. One 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, and 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. For example, you may be able to place a lien on the defendant's property, hire a professional debt collector to assist you with collection, or sell your judgment to a debt collector.

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 the Number of Cases Filed

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

Small Claims Court Checklist: How to File a Claim

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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 of \$30.00, please bring the exact amount. If you cannot afford the fee, you will need to complete an affidavit asking the court to waive the fees.
- ___ Serve the respondent(s) with the original complaint using a bonded process server which needs to be returned to the court with proof of service. Below is a list you may choose from.

Sheriff's Office Civil Bureau	447-8219	Call for price
Lee & Associates	324-7000	Call for price
Williams Investigations	442-2621	Call for price
Robert A. Pankratz	449-4121/439-2458	Call for price
Garth Fleetwood	465-0155	Call for price
Elite Process Service	461-1694	Call for price

- ___ Have the court issue any required subpoenas for witnesses you need at trial if they will not appear without one. These should be served by a process server not by a party to the action.
- ___ 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 or a written satisfaction.
- ___ 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.

Respondent / 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 from small claims to civil.
- ___ 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 of \$20.00 per 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/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.

**IN THE SMALL CLAIMS COURT OF RECORD,
CITY OF HELENA, LEWIS AND CLARK COUNTY, MONTANA
BEFORE MICHAEL G. SWINGLEY, JUSTICE OF THE PEACE
(406) 447-8201**

Plaintiff(s),
vs.

Respondent(s)

COMPLAINT
COUNTERCLAIM
CASE NO. SM-_____

STATE OF MONTANA, COUNTY OF LEWIS AND CLARK

Plaintiff(s), being first duly sworn, upon oath, states that respondent(s) is indebted to me in the sum of \$ _____, because on _____ (date) at _____ (place), the respondent(s) (description of complaint) _____

Which sum is now due, owing, and unpaid despite demands for payment thereof, together with my costs herein expended.

Plaintiff(s) _____

Respondent(s) _____

Plaintiff(s) address(es) _____

Respondent(s) address(es) _____

Phone(s) _____

Phone(s) _____

Dated this _____ day of _____, 20 ____.

SUBSCRIBED AND SWORN BEFORE ME:

Mary Root
Clerk of Justice Court

Signature (must be signed in the presence of Clerk)

By _____
Deputy Clerk

ORDER OF THE COURT / NOTICE TO RESPONDENT(S)

THE STATE OF MONTANA TO THE ABOVE-NAMED RESPONDENT(S): You are hereby directed to appear the within and foregoing complaint at: **JUSTICE COURT, ROOM 102, 228 BROADWAY, HELENA, MT 59601. PLEASE CHECK IN.** The trial has been set for _____ the _____ day of _____, 20__ at _____ .m. and you are to have with you, then and there, all evidence, papers and witnesses needed by you to establish your defense to the claim. And 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 the costs of this action, including costs of service of the complaint and order of the court / notice to the respondent(s). You are hereby further notified that, within 10 days of service upon you of this complaint and order, you may remove this action from Small Claims Court to Justice Court, and that your failure to remove shall constitute a waiver of your rights to trial by jury and to representation by counsel.

YOU ARE FURTHER NOTIFIED THAT YOU MUST PAY \$20.00 APPEARANCE FEE PER RESPONDENT TO THE CLERK OF JUSTICE COURT BEFORE THE TRIAL TIME SHOWN.

To the Sheriff, or Server of Process of said County, GREETINGS:

Make legal service and due return on the respondent(s) at:

MICHAEL G. SWINGLEY
Small Claims Court Judge

Mary Root
Clerk of Justice Court

By _____
Deputy Clerk

Dated this _____ day of _____, 20 ____.