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.

www.DOJMT.gov

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.

Prepared by the
Office of
Attorney General Austin Knudsen
Department of Justice State of
Montana

March 2021

Prepared in accordance with MCA §25-35-601.

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