

CIVIL PLAINTIFF INFORMATION

Some or all of the following forms may be required as part of the Complaint process. These forms can be found on the Gallatin County Justice Court website.

- Affidavit of Non-Military Service
- Answer to Counterclaim
- Complaint
- Judgment by Default
- Motion to Enter Default
- Notice of Appeal
- Notice of Entry of Judgment
- Praecipe Instructions for Service
- Praecipe Instructions for Service for Executions
- Praecipe to Clerk of Court
- Praecipe to Clerk of Court for Executions
- Summons (20 day)
- Writ of Execution

Step 1

Complaint

- If the Plaintiff in the case is a company, i.e., LLC, PC, PLLC, etc., they will have to file through an attorney
- Complete all entries on the Complaint. The amount claimed cannot exceed \$12,000.00
- Date and sign the Complaint
- Make copies (one for yourself and one for each Defendant)

Step 2

Summons

- Complete all entries on the Summons
- Make copies (one for yourself and one for each Defendant)

Step 3

Praecipe to Clerk of Court

- Complete all entries on the Praecipe. This document will give instructions to the Clerk of Court, i.e., which Process Server you have chosen to make service upon the Defendant.

Step 4

Praeipe Instructions for Service

- Complete all entries on the Praeipe. This document will give instructions to the Process Server as to where the Defendant may be found for service.

Organize your documents for filing with the Court. Put the copies behind each original. Also, make sure the original Complaint has been signed and dated.

Step 5

File all of the documents with the Clerk of Court, i.e., Complaint & copies, Summons & copies, Praeipe to Clerk of Court & Praeipe Instructions for Service, and \$50.00 filing fee. The Clerk will open a file for your case, conform all the copies by entering a case number, issue the Summons and follow your instructions with regards to the process server.

Step 6

Service of Complaint and Summons

- Each Defendant must be served personally with a copy of the Complaint and Summons. You cannot serve the Complaint and Summons on the Defendant. You must hire a process server to do the service.
- Service can be done by a competent person over 18 years old who is not a party to the case. The person who serves a Defendant must complete an Affidavit of Service of the Complaint and Summons.
- The completed Affidavit of Service of the Complaint and Summons should be returned to you after service is completed.
- The original Affidavit of Service and the original Summons will then need to be filed with the Clerk of Court. If not done you will not be able to move the Court for an Entry of Default or obtain a Default Judgment.

Step 7

If an Answer has not been filed by the Defendant within 20 days of service of the Complaint and Summons you will need to follow Steps 10 and 11.

Step 8

Counterclaim

- If a Counterclaim has been filed by the Defendant do the following:
 - Complete an Answer to the Counterclaim
 - File the Answer to the Counterclaim with the Clerk of Court and within 20 days of service of the Counterclaim
 - Send a copy of the Answer to the Counterclaim to each Defendant
 - Sign the certificate of mailing on the original Answer to the Counterclaim.

- If an Answer to the Counterclaim has not been filed by the Plaintiff within 20 days of service of the Counterclaim the Defendant may ask the Clerk to enter a Default against the Plaintiff on the Counterclaim.

Step 9

Mediation

- If an Answer has been filed by the Defendant within the 20 days after service has been made then it will be up to the Plaintiff to move the case along. The Plaintiff will need to write a letter to the Court asking for the case to be set for Mediation. Once the Plaintiff has asked for the case to be set for Mediation the Clerk will set a Mediation date and set notice to both the Plaintiff and Defendant(s).
- The Plaintiff will have 90 days to move the case along after the Defendant has filed an Answer. At the 90 day deadline the Clerk will send the Plaintiff a notice that the case is pending dismissal. Then if the Plaintiff does nothing to move the case along within another 30 days the case will be dismissed.

Step 10

Trial

- If the case did not settled at Mediation it will be up to the Plaintiff to ask the Court to set the case for a Trial.
- Read the Guidelines for Courtroom Conduct.
- At Trial you will need to introduce any written agreements or documents that pertain to your case. You will need to mark each document to be introduced with an Exhibit letter or number on the bottom of the first page of each Exhibit. (Plaintiffs use numbers for their Exhibits and Defendant use letters.) The first document would be marked as "Exhibit A," the second as "Exhibit B," etc. You will need to have the original for the Court, a copy for yourself and a copy for the Defendant.

Step 11

Entry of Default

- If an Answer has not been filed by the Defendant within 20days of service of the Complaint and Summons a Default may be entered by the Clerk.
- Prepare the Motion to Enter Default and file it with the Clerk.
- If you have not already filed the Affidavit of Service and the original Summons with the Clerk you will need to as Default will not be entered without them.
- If your complaint asked for a sum certain the Clerk will enter a Default Judgment.
- Complete the Default Judgment and present it to the Clerk. You cannot enter a sum for more than what was asked for in the Complaint.
- If the amount asked for is for a sum that cannot be made certain the Court may conduct a Hearing to determine the amount of damages or determine the truth of the Complaints' allegations.

Step 12

Entry of Judgment

- At the conclusion of the Trial the Judge may enter Judgment at once or within 30 days. The Judgment will be reduced to writing.
- A Judgment by Default is entered by the Judge or Clerk. Prepare the Judgment by Default and present it to the Clerk. A Judgment by Default cannot exceed the amount asked for in the Complaint or Counterclaim.
- The prevailing party must pay a \$20 Judgment Fee to the Clerk. If a Judgment by Default is entered no Judgment Fee is required.
- Prepare a Notice of Entry of Judgment, attach a copy of the Judgment to the notice and file the original along with two copies with the Clerk. Also, bring with the filing a self-addressed, stamped envelope for yourself and one for the Defendant. Once the paperwork has been entered by the Clerk a copy will be sent to both parties.
- Upon Entry of Judgment the prevailing party may request the Clerk to issue a Writ of Execution. You will need three copies of the Writ of Execution, a Praecipe to Clerk of Court for Executions and a Praecipe Instructions for Service for Executions.
- If you are not the prevailing party go to Step 14.

Step 13

- Appeals from a Court of record are limited only to questions of law and not for a new Trial. [§3-10-115, MCA]
- Appeals of Civil Judgments to the District Court on questions of law are limited to those that exceed \$1,000.00. [Rule 1(b)(1), MCRA]
- There is not appeal from a Judgment by Default. [Rule 4(f), MCRA]
- Prepare a Notice of Appeal and certificate of mailing. File the original with the Clerk within 30 days of the rendition of the Judgment. Send a copy to each party in the action.
- File with the Clerk, within 10 days of filing the Notice of Appeal, the undertaking required under Rules 5 and 6, MCRA. If the undertaking is not filed within 10 days the Appeal shall be dismissed.

PLAINTIFF COMPLAINT PROCESS FLOWCHART

