

Civil Plaintiff Information in Gallatin County Justice Court of Record

It is recommended that all individuals considering filing a civil law suit for the possession of premises carefully read the following content which will explain the court process in more detail. Civil litigants are expected to know and be familiar with the [Montana Code Annotated \(MCA\) Title 25, Chapter 23 Montana Justice and City Court Rules of Civil Procedure \(MJCCRCP\)](#) when proceeding with a Civil Case in Gallatin County Justice Court of Record.

Some or all of the following forms may be required as part of the Complaint process. The linked forms are PDF forms that can be filled out and printed.

- [Answer to Counterclaim](#)
- [Civil Motion](#)
- [Complaint](#)
- [Judgment After Default](#)
- [Motion for Default](#)
- [Notice of Appeal](#)
- [Praeipce Instructions for Service](#)
- [Praeipce Instructions for Service - Executions](#)
- [Praeipce Instructions to Clerk](#)
- [Summons – Regular Civil \(20 day\)](#)
- [Summons – Action for Possession Unlawful Detainer \(10-day\)](#)
- [Writ of Execution](#)

Step 1 (See [Civil Complaint Process Flowchart](#))

Complaint

- Complete all entries on the Complaint. The amount claimed cannot exceed \$15,000.00.
- If the Plaintiff in the case is a company, i.e., LLC, PC, PLLC, etc., the complaint **must be** filed through an attorney (see Rules 2 & 4 of MJCCRCP*)
- Date and sign the Complaint
- Make copies:
 - Original complaint filed with the court
 - Copy mailed to defendant(s)
 - Copy for your file

[Complaint Sample Form](#)

Step 2

Summons (20-day-Regular Civil)

Summons (10-day-Action for Possession)

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

[Summons \(20-day\) Sample Form](#)

[Summons \(10-day\) Sample Form](#)

Step 3

Praeipce Instructions to Clerk of Court (optional)

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

[Praeipce Instructions to Clerk Sample Form](#)

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.
- Only the Original, Signed Form needs to be filed with the court.

[Praeipe Instructions for Service Sample Form](#)

[List of Process Servers](#)

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

Filing

- File all of the documents with the Clerk of Court, i.e. Original, Signed Complaint & copies, Original, Signed 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.
- 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 original 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 must 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 11 and 12.

Step 8a

Counterclaim

- If a Counterclaim has been filed by the Defendant do the following:
 - Complete an [Answer to the Counterclaim](#)
 - Sign the certificate of mailing on the original 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

Step 8b

Default 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 the case will automatically be scheduled for Mediation. The Clerk will set a Mediation date and send notice to both the Plaintiff(s) and Defendant(s).

Step 10

Trial

- If the case did not settle at Mediation, it will be up to the Plaintiff to submit a [Civil Motion](#) asking the Court to set the case for a Trial.
- 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.
- 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 11

Entry of Default

- If an Answer has not been filed by the Defendant within 20 days of service of the Complaint and Summons, a Default may be entered by the Clerk.
- Prepare the [Motion for 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.

Step 12

Default Judgment

- If your complaint asked for a sum certain, the Clerk will enter a Default Judgment.
- Complete the [Judgment After Default](#) form 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 13

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.
- The prevailing party must pay a \$20 Judgment Fee to the Clerk. If a Judgment by Default is entered, no Judgment Fee is required.

Step 14

Execution

- If **Judgment by Default** (Default being the Defendant did not file an Answer) or a Final Judgment (final as defined in Court by the Judge) is granted, the Plaintiff may proceed with filing a [Writ of Execution](#) to garnish the Defendant's wages, bank account or any personal property not exempt by statute.

- The **Writ of Execution** must be served on the employer or bank by a representative of the Civil Process Division of the Gallatin County Sheriff's Department or a licensed process server. Executions expire after 120 days. After an execution expires, another execution can be requested until judgment is satisfied or expires after 10 years.

Step 15

Satisfaction of Judgment

- When Judgment has been paid in full, the prevailing party must file a [Satisfaction of Judgment](#) to close the case.

Step 16

Dismissal

- The plaintiff may dismiss the Complaint with prejudice (cannot be re-filed) or without prejudice (can be re-filed) with a [Motion to Dismiss](#) form.

Step 17

Appeals

- 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 an 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.

*[See Montana Code Annotated \(MCA\) Title 25, Chapter 23-Montana Justice and City Court Rules of Civil Procedure \(MJCCRCP\)](#)