

COUNTY CIVIL ACTIONS

**There is no guarantee that the information contained herein is in any way totally accurate or legal.
It is meant only as a guide to make collections more understandable.**

INTRODUCTION:

Collect of accounts and debts in Montana lower courts is a three-step procedure. In this basic introduction, an attempt has been made to outline the procedures involved in these three steps so that you might be able to understand them. It should be understood that this will not be an absolutely foolproof method of bill collection, but it is one of the most basic methods allowed by the State of Montana.

While this method is limited to the State of Montana, it may be used in any county within the state. The method is limited to collecting amounts of less than \$12,000.00, and while all of the costs of collection may be added to the original debt, at no time may the amount exceed \$12,000.00.

There is no need for an attorney during the initial stages of the procedure, however you may wish to consult or retain an attorney in order to check on the legal aspects of the situation or to insure against the possibility of a countersuit.

In preparation for a civil suit against any individual or business for collection of an unpaid debt, all other attempts of collecting the debt must have been exhausted. These attempts would include regular billing statements sent on a monthly basis, personal contacts by phone or in person, and the warning that collection procedures will begin unless the individual makes some arrangement for payment. Anything you do beyond this as a matter of courtesy is optional, because under ordinary circumstances, you will have already given an overdue account all the courtesy it deserves by the time it has reached the collection stage.

The three steps in collections are; (A) the SUMMONS and COMPLAINT; (B) the JUDGMENT; and (C) the EXECUTION OF JUDGMENT. You are the PLAINTIFF in this type of action, and you are responsible for making certain that all monies to be collected are legitimate debts. You must also be certain that the DEFENDANT (the person that owes the money) has not lodged a complaint with you for defective or incomplete merchandise and/or service. It is also your responsibility to find out where the Defendant lives and works so that the Sheriff will be able to properly serve papers on him.

When you decide to become your own collection agent, the responsibility for the entire action falls on your shoulders and while this method is not entirely foolproof, it will work in most situations. The one most important aspect of the program is that once begun, you must follow through on all steps, and if the debt is paid, the Court must be notified so that it may be removed from the Court docket. **AGAIN IT MUST BE EMPHASIZED THAT YOU MUST FOLLOW THROUGH ON ALL STEPS TO MAKE IT WORK FOR YOU!**

Page 4 is a form that the Justice of the Peace will return to you provided that you enclose a stamped, self-address envelope for his use.

Page 5 is the Praecept or Order for the Justice of the Peace. This form is necessary to have your action filed in this Court.

Page 6 is the Praecept or Order to the Sheriff. This form is necessary to have the Sheriff serve your papers on the Defendant.

Page 7 is the Summons to be served on the Defendant. This form should be made in triplicate when sent to the Justice of the Peace. In other words, the original and two copies must be included.

Page 8 is the Complaint. On this form you must include all charges that you wish to collect. This form and two copies must be included. As in all legal actions, you should, for your own records, make a copy of all papers and forms. This is for your information so that you will be better to FOLLOW THROUGH IN this action.

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Be certain to include a check for \$50.00 made payable to Justice Court for the filing fee. In addition to this, you should include a check to the Sheriff for a minimum of \$50.00 for his service and mileage, if applicable. It will be your responsibility to contact the Sheriff to see if there will be an additional charge for mileage.

REMEMBER: You must have a complete and correct name and address of the person/persons or business that you are suing. Be certain that you have the correct person or business that you think owes you money.

NOTES:

PREPARING FOR THE CIVIL TRIAL

You must be prepared at the time of trial with any and all witnesses, documents, photos, etc. Witnesses are particularly important in many cases. For example, if your case involves the question of the quality of workmanship, an experienced and impartial person in the same trade makes a good witness. The following is a checklist that will help you in preparing for your case.

-1-

CHECKLIST FOR PLAINTIFF:

- I have sent a registered letter to the Defendant explaining the complaint and stating my demand.
- The party that I am suing is liable to me. (This is truly the person who owes me money or who must return my property.)
- I have made reasonable demands and efforts to collect or settle this case before going to court.
- I know the following about the Defendant before I file my suit: name, address, phone number and where he/she works.
- I can prove the amount on the complaint. I have not asked for more than what is really owed to me.
- I have the following items that will establish proof:
 - Written contracts (examples: notes, lease agreements, IOUs, etc.)
 - Letters relating to this case.
 - Bills or statements.
 - Cancelled checks.
 - Repairs bills or written estimates of repair by a reputable company.
 - Photographs.
 - Witnesses.
 - Other.
- I have the following witnesses who can testify directly of knowledge they have of the case. (They have not heard things from someone else; they know first-hand):
- I must get a subpoena or "Order to Appear" for the following witnesses because they said they would not appear when I contacted them:
NAMES:

Step #1:

THE SUMMONS AND COMPLAINT

The following pages are representative of the forms which will be used in a civil action. Some of the blanks that you will need to fill in have been numbered with an explanation of the information which is needed in each

The Matter of:

Your Name or Business Name

vs.

Defendant's Name

was filed in this Court on the _____ day of _____, as Civil

Case Number _____.

DAWSON COUNTY JUSTICE COURT

Please Complete and Return to: _____

Your Name or Business Name and Address

This form should be included with your other forms; along with a stamped, self-addressed envelope that the Court can return to you so that you will be notified of the filing date.

IN THE JUSTICE COURT OF DAWSON, STATE OF MONTANA
COUNTY CIVIL DIVISION
BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

<hr/> <hr/> <p style="text-align: center;">Plaintiff(s),</p> <p>v.</p> <hr/> <hr/> <p style="text-align: center;">Defendant(s).</p>	<p><u>PRAECIPE</u></p>
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TO: THE JUSTICE OF THE PEACE OF DAWSON COUNTY:

Please issue the Summons and Complaint enclosed (acknowledge date of filing and file number on your receipt.) Enclosed is my check for payment of the filing fee.

Your signature

IN THE JUSTICE COURT OF DAWSON COUNTY, STATE OF MONTANA
COUNTY CIVIL DIVISION
BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

_____ _____ _____ Plaintiff, v. _____ _____ Defendant.	Case No. _____
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PRAECIPE

TO: THE SHERIFF OF _____ COUNTY, MONTANA

Please serve the enclosed copy(s) of the Complaint and Order on the Defendant(s) at:

Defendant's Address for Service

After service please return the original Summons and your statement of service to:

Your address

Thank You.

DATED this _____ day of _____.

Your Signature

Additional Instructions for Service:

After receipt of the returned Complaint and Order and the statement from the Sheriff, you must file the Complaint and Order and the statement of service to the Court. Please make copies for your own records.

IN THE JUSTICE COURT OF DAWSON, STATE OF MONTANA

COUNTY CIVIL DIVISION

BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

<p>_____</p> <p>_____</p> <p style="text-align: center;">Plaintiff(s),</p> <p>v.</p> <p>_____</p> <p>_____</p> <p style="text-align: center;">Defendant(s).</p>	<p>Case No. _____</p> <p style="text-align: center;"><u>SUMMONS</u></p>
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THE STATE OF MONTANA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby summoned to answer the Complaint in this action which is filed with the above-named Justice of the Peace, a copy of which is herewith served upon you. In the event that you deny any or all of the material facts stated in the Complaint, you must file your written answer together with a \$30.00 answer fee for each Defendant with the above-entitled Court, and serve a copy of your answer upon the Plaintiff at the address shown on the Complaint.

The answer must contain a denial of any or all the material facts stated in the Complaint that the Defendant believes to be untrue, also a statement, in plain or direct manner, of any other facts constituting a defense. Any matter not denied shall be deemed admitted.

If you fail to answer or assert a counterclaim within twenty (20) days after service of the Complaint and Summons, the Plaintiff may request entry of default judgment against you for the relief demanded in the Complaint.

WITNESS my hand this _____ day of _____.

JUSTICE OF THE PEACE

IN THE JUSTICE COURT OF DAWSON, STATE OF MONTANA

COUNTY CIVIL DIVISION

BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

Case No. _____

Plaintiff(s),

v.

COMPLAINT

Defendant(s).

COMES NOW, the Plaintiff(s) and for his/her /their claim for relief against the Defendant(s), allege(s) as follows:
(HERE YOU WILL INCLUDE THE TOTAL AMOUNT OF DEBT; AND A STATEMENT OF THE REASON FOR THE DEBT. IF NECESSARY, YOU MAY ATTACH A SHEET IN ORDER TO COMPLETE THIS SECTION.)

WHEREFORE, Plaintiff(s) request(s) judgment as follows: (INCLUDE HERE THE FOLLOWING INFORMATION):

- A. _____ Amount of principal debt
- B. _____ Amount of interest & % charged
- C. _____ Additional costs (postage, phone calls, etc.)
- D. _____ Filing fees: (Currently the fee is \$50.00)
- E. _____ Sheriff's service (varies by county)
- F. _____ Total of the above amounts

DATED this _____ day of _____, 20_____.

(your signature): _____

(your mailing address): _____

(your phone number): _____

Step #2:

THE JUDGMENT

The Judgment is filed with the Justice of the Peace only. It is not necessary that you send a copy to the Defendant. In addition to this, it is not necessary to send anything to the sheriff in this step.

When a Judgment is filed against the Defendant, it opens the door to you for the collection of an overdue debt. The Judgment is filed only after a period of twenty (20) days has gone by since the date of service on the Defendant of the Summons and Complaint. At this point, it is recommended that the twenty (20) days be business days. This period of time is necessary under the law for the Defendant to answer the complaint, make you aware of any deficiencies in the product or service, give you his reasons for not paying the bill, or make arrangements to pay his debt.

During this time, if the Defendant makes arrangements to pay his debt, you are obligated to him to accept the payment he offers. This does not mean, however, that you cannot request a Judgment. It does mean that you must deduct the amount of his payment from the total due on the Execution.

If the Defendant offers to pay only the amount of the original bill, it will be up to you if you wish to accept it as the final amount to be collected. Any agreement that you make with the Defendant at this time is your full responsibility.

If the Defendant files an answer, a hearing will be held and the Court will issue a Judgment following the hearing. If the Defendant does not file an answer within twenty (20) days, you can file a motion for a Default Judgment.

The following pages (numbered 10 – 12) are representative of the forms used in filing for a Default Judgment against the Defendant.

You need not pay any further fee to the Justice of the Peace for this portion of the action, however you should include the form shown on page 4, along with a stamped, self-addressed envelope so that you will be notified of the date of filing of the Judgment. You will need this date when you file for the Execution of Judgment in the next step.

IN THE JUSTICE COURT OF DAWSON, STATE OF MONTANA
COUNTY CIVIL DIVISION
BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

<p>_____</p> <p>_____</p> <p>_____</p> <p style="text-align: center;">Plaintiff(s),</p> <p>v.</p> <p>_____</p> <p>_____</p> <p style="text-align: center;">Defendant(s).</p>	<p><u>PRAECIPE</u></p>
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TO: THE JUSTICE OF THE PEACE OF DAWSON COUNTY:

Please issue the Judgment enclosed (acknowledge date of filing and file number on your receipt.)

Your signature

IN THE JUSTICE COURT OF DAWSON, STATE OF MONTANA
COUNTY CIVIL DIVISION
BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

Case No. _____

Plaintiff(s),

v.

Defendant(s).

**MOTION FOR ENTRY OF
JUDGMENT BY DEFAULT**

The Plaintiff, _____, moves the Court for entry of default judgment against the Defendant pursuant to Rule 21 A(8) (a) (2). Montana Justice & City Court Civil Procedural Rules, on that Defendant has failed to appear and default has been entered, and the claim against this Defendant for a sum certain. A proposed judgment is provided.

Dated this _____ day of _____, 20_____.

Your signature

IN THE JUSTICE COURT OF DAWSON, STATE OF MONTANA
COUNTY CIVIL DIVISION
BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

Case No. _____

Plaintiff(s),

JUDGMENT AFTER DEFAULT

v.

Defendant(s).

The Defendant(s), _____, having been duly served a copy of the Complaint and Summons, and more than twenty (20) days having passed since the service thereof, and Defendant(s) having FAILED TO APPEAR OR OTHERWISE DEFEND,

The default of Defendant(s) has been entered the _____ day of _____, 20____; and the Plaintiff having shown by proper proof thereof basis for Judgment, now therefore;

IT IS HEREBY ORDERED AND ADJUDGED that the Plaintiff recover from the Defendant the following:

Principal Sum \$ _____

Interest at _____%

From _____ to this date. \$ _____

Filing Fee \$ _____

Service Fee \$ _____

Other Costs \$ _____

For a total Judgment to the Plaintiff of \$ _____, said sum to bear interest at 10% until paid.

Made and entered this _____ day of _____, 20____.

Justice of the Peace

(To be filed if no answer is given by the Defendant(s) within twenty (20) days and they do not appear in Court.)

Step #3:

THE EXECUTION OF JUDGMENT

The Execution of Judgment is filed with the Justice of Peace so that he might deliver it to the Sheriff for his service and any wages might be garnished. The following pages are representative of the forms used in an Execution of Judgment.

Page 16 is the Praecipe for the Justice of the Peace. You should fill this page out exactly as all other Praecipies have been filled out up to this point.

Page 17 is the Praecipe to the Sheriff. You will notice that this form is different from the other Praecipies that you have filled out previously. Lines 1 – 3 are new, but the instructions are fairly simple. This is the space where you must have accurate information about the Defendant's employer, checking account or location of his business if he is self-employed. This information must include accurate addresses, names and proper identification of checking accounts when applicable.

Page 18 is the form for the Execution of Judgment. This form must be filled out according to the instructions each time a collection of money is to be made from the Defendant. In the body of the Writ of Execution you will need to include the date of the Judgment and the Plaintiff's name recovered a Judgment against the Defendant's name. You must be certain to deduct any payments made to you by the Defendant. You should be aware at this time also, that if you should refuse any amounts offered to you by the Defendant, he may be credited with that amount. If you refuse payment from the Defendant, you may have lost that amount you can collect from him.

Following the Writ of Execution form, a Notice of Execution form and a Request For Hearing on Claimed Exemptions form are included.

As has been mentioned before, you must FOLLOW THROUGH in all steps to be successful in an action of this type. This step above all, is the follow-through step. It will require the most attention of any of the steps in this action.

MCA Contents / TITLE 25 / CHAPTER 23 / Part 1 / Rule 23 Execution

Montana Code Annotated 2017

TITLE 25. CIVIL PROCEDURE

CHAPTER 23. MONTANA JUSTICE AND CITY COURT RULES OF CIVIL PROCEDURE

Part 1. Rules

Execution

Rule 23. Execution.

A. HOW ENFORCED.

(1) By justice or city court. A judgment may be enforced within the boundaries of the state by a writ of execution issued by the justice or city court or the clerk thereof.

(2) Issuance of execution by judge or clerk of justice or city court. From the time of docketing in the clerk's office, execution may be issued thereon by the judge or clerk to the sheriff, constable, or levying officer of any county in the state.

B. TIME. The party in whose favor judgment is entered may request a writ of execution for its enforcement against the personal property of the judgment debtor. At any time within 10 years from the entry of judgment, the justice of the peace or city judge who entered the judgment or the successor in office or the clerk shall issue the writ upon request.

C. FORM AND CONTENT OF EXECUTION. Determination of the amount of the judgment outstanding and the type, kind, description, and location of the personal property of the judgment debtor is the exclusive duty of the judgment creditor. The execution must be directed to the sheriff, a constable, or a levying officer of the county and must be subscribed by the judge or clerk and bear the date of its issuance. The execution must contain the following information and may be in the following form:

IN JUSTICE/CITY COURT,, COUNTY, MONTANA

BEFORE JUSTICE OF THE PEACE

..... CITY JUDGE

.....)

.....) Case No.

Plaintiff)

vs.) EXECUTION

.....)

.....)

Defendant

THE STATE OF MONTANA TO THE SHERIFF, A CONSTABLE, OR A LEVYING OFFICER OF COUNTY:

WHEREAS, on the day of, 20....., recovered a judgment in the said Justice/City Court against as follows:

Original or Balance Due on Judgment in the amount of	\$.....
Together with accrued interest at ...% per annum on the Judgment	\$.....
Costs & Disbursements Accrued	\$.....
Credits	\$.....
Total sum due & owing at date of this execution	\$.....

Together with all costs of execution (and) (or) for personal property described as follows:

.....
.....

(Attach description if necessary)

NOW, you, the sheriff, constable, or levying officer, are hereby required to make this sum due on the judgment or damages, with interest, costs, and accruing costs, to satisfy the judgment out of the PERSONAL PROPERTY of the debtor NOT EXEMPT FROM EXECUTION on the day on which the judgment was docketed in the county, or at any time hereafter, and return this writ not less than 10 days nor more than 120 days after the date of receipt.

Given under my hand this day of, 20.....

.....
Justice of the Peace or Clerk

.....
City Judge or Clerk.

D. RETURN OF EXECUTION. The writ of execution shall remain in effect for 120 days from the date of receipt by the sheriff or levying officer and may be served multiple times during that period at the direction of the judgment creditor. The execution must be returned to the court:

- (1) not less than 10 days nor more than one-hundred twenty (120) days after receipt of the recovery by the sheriff or levying officer;
- (2) if the judgment creditor has requested the return of the writ.
- (3) at the written direction of the officer, agent, or attorney who sent the writ, the sheriff or levying officer may return the writ to the requesting party.

E. RENEWAL. If a writ of execution is returned unsatisfied or partially satisfied, a new writ may be issued for the unsatisfied portion of the judgment, together with costs and interest. No new or additional writ may be issued until any outstanding issued writ, together with the return thereon, is returned to the issuing justice or city court.

F. SUPPLEMENTAL PROCEEDINGS. Proceedings supplementary to execution set out in 25-13-502, 25-14-101 through 25-14-105, 25-14-107, and 25-14-108 are applicable to justice or city courts, the word "constable" being substituted for the word "sheriff" and the words "justice or city judge" being substituted for the word "judge".

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; Rule 23(2) disapproved, Sec. 3, Ch. 285, L. 1991; amd. Sup. Ct. Ord. July 24, 1991, eff. Oct. 1, 1991; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997; amd. Sup. Ct. Ord. June 25, 1998, eff. June 25, 1998; amd. Sup. Ct. Ord. Oct. 16, 2001, eff. Oct. 16, 2001; amd. Sup. Ct. Ord. Feb. 26, 2002, eff. Feb. 26, 2002.

IN THE JUSTICE COURT OF DAWSON, STATE OF MONTANA
COUNTY CIVIL DIVISION
BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

<hr/> <hr/> <p style="text-align: center;">Plaintiff(s),</p> <p>v.</p> <hr/> <hr/> <p style="text-align: center;">Defendant(s).</p>	<p><u>PRAECIPE</u></p>
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TO: THE JUSTICE OF THE PEACE OF DAWSON COUNTY:

Please issue the Execution against any wages due or to become due the Defendant.
(Acknowledge date of filing and file number on your receipt.)

Your signature

IN THE JUSTICE COURT OF DAWSON COUNTY, STATE OF MONTANA
COUNTY CIVIL DIVISION
BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

<p>_____</p> <p>_____</p> <p>Plaintiff,</p> <p>v.</p> <p>_____</p> <p>_____</p> <p>Defendant.</p>	<p>Case No. _____</p>
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PRAECIPE

TO: THE SHERIFF OF _____ COUNTY, MONTANA

Please levy execution against any *wages due or to become due the Defendant,

(1) _____, from (2) _____, located at

(3) _____ (4) _____, Montana.

Please obtain a written answer to service at the time of service. Thank You.

DATED this _____ day of _____, _____.

(Your signature)

(Your address)

Additional Instructions for Service:

- (1) Defendant's name.
- (2) Defendant's employer, bank or business.
- (3) Address at which #2 is located.
- (4) City in which #2 is located.

* This may refer to monies on deposit in banks, savings & loan, checking accounts, etc. It may also be modified to describe.

*****YOU MUST INCLUDE THE HOME ADDRESS FOR THE PLAINTIFF AND THE DEFENDANT IN THE HEADING ON THE TOP LEFT-HAND SIDE OF PRAECIPE.*****

IN THE JUSTICE COURT OF DAWSON COUNTY, STATE OF MONTANA
 COUNTY CIVIL DIVISION
 BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

_____ _____ <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> _____ _____ <p style="text-align: center;">Defendant.</p>	Case No. _____ <p style="text-align: center;"><u>WRIT OF EXECUTION</u></p>
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THE STATE OF MONTANA, TO THE SHERIFF OR ANY CONSTABLE OF _____ COUNTY:

WHEREAS, on the _____ day of _____, 20____, _____, recovered a Judgment in the said Justice Court against _____, as follows:

JUDGMENT:	\$	_____
COSTS AFTER JUDGMENT:	\$	_____
INTEREST:	\$	_____
LESS PAYMENTS RECEIVED:	\$	_____
TOTAL SUM DUE & OWING AT DATE OF THE EXECUTION:	\$	_____

Together will all costs of execution and/or personal property described as follows:
 (attach description if necessary)

NOW, you the said Sheriff, Constable or Levying Officer, are hereby required to make said sum due on the said Judgment or damages, with interest aforesaid and costs and accruing costs, to satisfy the said Judgment out of the PERSONAL PROPERTY of the said debtor NOT EXEMPT FROM EXECUTION on the day whereon said Judgment was docketed in the said County, or at any time hereafter, and make return of the writ within _____ days after your receipt hereof with what you have done, endorsed thereon.

Given under my hand the _____ day of _____, 20_____.

 JUSTICE OF THE PEACE

IN THE JUSTICE COURT OF DAWSON, STATE OF MONTANA
COUNTY CIVIL DIVISION
BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

Case No. _____

Plaintiff(s),

v.

Defendant(s).

NOTICE OF EXECUTION

TO: _____
JUDGMENT DEBTOR NAME AND LAST KNOWN ADDRESS

On the _____ day of _____, 20_____, a Judgment was duly and regularly entered against you in favor of _____. On the _____ day of _____, 20_____, a Writ of Execution was issued by the above-entitled Court authorizing the execution upon wages, monies or property held in your name or in which you have some right or interest. Said Execution was duly and regularly served by: _____ on the _____ day of _____, 20_____, and the following described monies, property or assets were obtained: _____

_____ and such monies, properties or assets are now in the possession or custody of the above-named sheriff or process server.

Pursuant to the provisions of Title 25, Chapter 13, Part 6, Montana Code Annotated, certain wages, monies or property are exempt from execution. Pursuant to Section 25-13-608, MCA, a resident of the State of Montana who is a judgment debtor is entitled to exemption from execution as follows:

- (a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;
- (b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);
- (c) veteran's benefits, except as provided in subsection (2);
- (d) disability or illness benefits, except as provided in subsection (2);
- (e) except as provided in subsection (2), individual retirement accounts, as defined in 26 USC 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on

those contributions, and Roth individual retirement accounts, as defined in 26 USC 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;

- (f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;
- (g) maintenance and child support;
- (h) a burial plot for the judgment debtor and debtor's family;
- (i) benefits or payments paid or payable from a retirement system or plan within Title 19, chapters 3, 5 through 9 and 13, as provided by 19-2-1004;
- (j) benefits or payments paid or payable from a retirement system or plan within Title 19, chapter 20, as provided by 19-20-706; and
- (k) the judgment debtor's interest in any unmatured life insurance contracts owned by the judgment debtor.

(2) Veterans and social security legislation benefits based upon remuneration for employment, disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied for:

- (a) child support; or
- (b) maintenance to be paid to a spouse or former spouse if the spouse or former spouse.

In addition to the above, pursuant to Section 25-13-609, MCA, a judgment debtor is entitled to exemption from execution of the following:

- (1) the judgment debtor's interest, not to exceed \$4,500 in aggregate value, to the extent of a value not exceeding \$600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops and musical instruments.
- (2) the judgment debtor's interest, not to exceed \$2,500 in value, in one motor vehicle; and
- (3) the Judgment debtor's interest, not to exceed \$3,000 in aggregate value, in any implements, professional books and tools, of the trade of the judgment debtor or a dependent of the judgment debtor.

In addition to the above, pursuant to Section 25-13-610, MCA:

- (1) If money or other property exempt under 25-13-608 and 25-13-609 above has been sold or has been lost, damaged or destroyed and the judgment debtor has been indemnified for the property, the debtor is entitled for 6 months to an exemption of proceeds that are traceable, such as in a bank or savings account.
- (2) Earnings exempt under 25-13-614 remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable.
- (3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in last-out, or any other reasonable basis for tracing selected by the judgment debtor.

Pursuant to Section 25-13-614, MCA, certain earnings of a judgment debtor are exempt from execution. Exempt earnings are as follows:

- (1) Earnings of a judgment debtor that are not subject to garnishment, as provided in this section, are exempt.
- (2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:
 - (a) the amount by which the debtor's disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or,
 - (b) 25% of the debtor's disposable earnings for that week.
- (3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.
- (4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:
 - (i) 50% of the judgment debtor's disposable earning for that week if the debtor is supporting the debtor's spouse or dependent child, other than a spouse or child for whom the order is issued; or
 - (ii) 60% of the judgment debtor's disposable earnings for that week if the debtor is not supporting a spouse or dependent child described in subsection (4)(a)(i).
 - (c) However, the amount stated in subsection (4)(a)(i) may be 55% and the amount stated in subsection (4)(a)(ii) may be 65% if the earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of the workweek.
- (5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 USC 1672.

The sheriff or process server having custody of the above-described property will retain the above property within his/her/its possession for a period of ten (10) working days from the date hereof. Should you desire to claim any of the above exemptions, you must file a claim for said exemption or exemptions in writing with the above-entitled Court within ten (10) days and mail a true and correct copy thereof to the sheriff or process server having possession of your property and to the judgment creditor, or counsel of record for the judgment creditor. Failure to file a claim of exemption within ten (10) workings days will result in the sheriff or process server releasing the monies executed upon or proceeding forward with an execution sale of any property obtained.

Dated this _____ day of _____, 20_____.

SHERIFF OR PROCESS SERVER

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the _____ day of _____, 20____, a true and correct copy of the foregoing NOTICE OF EXECUTION LEVY was mailed to the following by depositing a copy of the same in the US Mail, postage prepaid thereon, addressed as follows:

NAME OF DEBTOR

ADDRESS OF DEBTOR

Signature

IN THE JUSTICE COURT OF DAWSON, STATE OF MONTANA
COUNTY CIVIL DIVISION
BEFORE THE HONORABLE STACEY NERISON, JUSTICE OF THE PEACE

Case No. _____

Plaintiff(s),

v.

Defendant(s).

REQUEST FOR HEARING
ON EXEMPTIONS

Defendant represents and petitions the Court as follows:

1. A judgment was entered against the above-named Defendant in the above-entitled Court. Upon application to the Court, a Writ of Execution was issued. The sheriff or process server has levied the execution upon property of the Defendant.
2. The Defendant believes that the Sheriff or process server has levied against exempt property. The Defendant claims an exemption in the following property:

DESCRIBE THE PROPERTY CLAIMED EXEMPT AND TYPE OF EXEMPTION

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____

(Attach additional sheets if space is not sufficient.)

3. Defendant is entitled to a prompt hearing on claimed exemptions. Defendant requests a hearing before the Court on the claimed exemptions.

DATED this _____ day of _____, 20_____.

DEFENDANT'S SIGNATURE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REQUEST FOR HEARING ON CLAIMED EXEMPTIONS was served upon the following, by placing the same in the US Mail, postage fully paid thereon,

Plaintiff's Name and Address

Sheriff or Process Server and Address

DEFENDANT'S SIGNATURE



Garnishment Formula for Wage Levy

Federal Consumer Credit Protection Act, Title III (15 USC Sections 1671-1677), and Montana Statute (25-13-614, MCA) provides exemptions from garnishment.

Definitions:

- **Earnings:** Compensation for personal services, whether called wages, salary, commissions, or bonuses, and payments to pension or retirement program.
- **Disposable Income:** Earnings remaining after (tax) deductions required by law (Federal and State taxes, FICA, etc.)
- **Garnishment:** Any legal or equitable procedure by which the earnings of an individual are required to be withheld for payment of a debt.

Computation of Garnishment Amount

1. _____ Enter total earnings
- (-) _____ Deduct federal withholding
- (-) _____ Deduct state withholding
- (-) _____ Deduct FICA, Federal Disability and Medicare
2. (=) _____ Disposable income
3. 0.00 _____ Enter 25% (0.25) of line 2
4. (-) _____ Deduct any previously received garnishment amount, including child support and IRS levies.
5. 0.00 _____ Line 3 minus line 4
6. _____ Disposable income (from line 2)
7. (-) _____ Deduct amount from drop down option based on pay schedule
Use: (\$0.00 if no wages)
(\$217.50 if paid weekly)
(\$435.00 if paid bi-weekly)
(\$471.25 if paid semi-monthly)
(\$942.50 if paid monthly)
(\$2,827.50 if paid quarterly)
8. _____ Line 6 minus line 7

The amount to be garnished is the lesser of line 5 or line 8 for each pay period. If either line 5 or line 8 is zero or less, send no money and return the levy notice to the department with a note of explanation.

The maximum amount to be garnished is the lesser of:

- 25% of disposable income for each pay period, or
- the amount of disposable earnings for that pay period which exceed 30 times the federal minimum hourly wage (currently \$7.25 per hour). 29 USC Sec. 206(a)(1).

Mail a copy of the completed form with your remittance, if applicable, or any other necessary information to Montana Department of Revenue, PO Box 6309, Helena, MT 59624-6309.

Please retain a copy of this form for your records.

Employee Name: _____

Employee ID#: _____

THE FEDERAL LAW RESTRICTING WAGE GARNISHMENTS

Effective January 1, 1981, the Federal Law limits the amount of an employee's disposable earnings, which may be made subject to garnishment and will prohibit the discharge of an employee because of garnishment for any one indebtedness.

An employee's "Disposable Earnings" means that part of his earnings remaining after the deduction from those earnings of any amount required by law to be withheld. Examples of such deductions are:

- Federal income tax withholding deductions
- Federal Social Security tax deductions
- State and City tax withholding deductions

The term "earnings" means compensation paid or payable for personal service whether called wages, salary, commission, bonus or otherwise.

AMOUNT OF RESTRICTION ON GARNISHMENT

The maximum part of the total "disposable earnings" of an individual, which is:

- a. 25 percent of the disposable earnings for that week or
- b. The amount by which his disposable earnings for that week exceeds 30 times the Federal minimum hourly wage prescribed by Section 6 (a) (1) of the Fair Labor Standards Act in effect at the time earnings are payable (currently this is \$7.25 per hour or \$217.50 per week.)

The following examples illustrate the statutory tests for determining the amount subject to garnishment:

- a. An employee's earnings may not be garnished in any amount where his disposable earnings are \$217.50 (in a particular week), \$435.00 bi-weekly (every two weeks), \$471.25 semi-monthly (twice a month), and \$942.50 monthly (once a month).
- b. An employee's net earnings in a particular week are \$233.00 after deductions required by law. Both tests must be figured to determine which is the lesser amount for garnishment purposes.
- c. EXAMPLE: An employee's net earnings in a particular work week are \$233.00, after deductions required by law. The lesser figure would be determined as follows:

$$(1) \$233.00 \times 25\% = \$58.25 \quad (2) \$233.00 - \$217.50 = \$15.50$$

In this week, only \$15.50 may be garnished, since this is the lesser amount.

(\$217.50 would be paid to the employee.)

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SATISFACTION OF JUDGMENT

FOR AND IN CONSIDERATION of payment in full, full satisfaction of the above-entitled action is hereby acknowledged, and the Clerk of Court is hereby authorized and directed to enter satisfaction of record in said cause.

DATED this _____ day of _____, 20_____.

PLAINTIFF'S SIGNATURE

THIS IS TO BE FILED WITH THE COURT WHEN THE CASE IS COMPLETED AND THE DEBT IS PAID IN FULL.

DEFINITIONS

AFFIDAVIT:	A written statement of fact.
APPEAL:	The action or right of a party to ask a higher court to review a lower court's decision in order to correct mistakes or injustices.
APPEARANCE and ANSWER:	The Defendant's acknowledgement, in writing, that he is aware of the action against him and his response to the claim being made.
ATTACHMENT:	The seizure of property or wages for payment of a judgment order by the Court (see Garnishment).
CLERK:	An officer of the courts who delivers and serves the Court's records; usually the Clerk of Justice Court or Civil Clerk.
CONSTABLE:	An officer of the courts who delivers and serves the Court papers. He/She shall set forth a fee for his/her service.
COURT COSTS:	The fee, charged by the Court, to process records and cover other expenses incurred by the Court.
COUNTERCLAIM:	The Defendant's claim against the Plaintiff as a response to the original Complaint.
DEFAULT JUDGMENT:	A decision by the Court in favor of the person filing the claim (Plaintiff) when the Defendant fails to answer the Complaint filed against him or fails to appear at the trial in Small Claims Court.
DEFENDANT:	The person or party being sued.
DISMISSAL:	The Court's decision to terminate a case prior to entering judgment (for example, if the Plaintiff does not appear). If an action is dismissed "with prejudice" it cannot be refiled. If an action is dismissed "without prejudice" the action may be brought before the Court again.
EVIDENCE:	Proof, either written or spoken, presented by either party at trial which has an effect on the case before the Court.
EXECUTION:	The order issued to a sheriff or constable to carry out the judgment of the Court; for example, to take and sell property by the person who owes a court judgment to collect the amount of money owed.
GARNISHMENT:	An order to a person (for example, wages or money) owed in a judgment to the Court to satisfy a judgment. The money is turned over to the person who won the suit.
HEARING:	A court proceeding in which the Judge decides a particular issue in a case or the outcome of a case.
JUDGMENT:	The Court's decision of the outcome of a particular case before the Court.
JUDGMENT DEBTOR:	The person or party against whom a judgment is rendered which has not been paid.
JUDGMENT CREDITOR:	The person to whom money is owed as a result of a court decision.
JURISDICTION:	The authority giving the Court power to hear and decide cases.
PLAINTIFF:	The person or party who makes or files a claim.
SUBPOENA:	The legal term for an order for a witness to appear in Court.
VACATE:	Making a judgment or Court order ineffective.
WRIT:	A written Court order issued by the Court and directed to the Sheriff or other officer authorized by law to execute the order stated in the writ.