

Disclaimer

The following material is exclusively published as a study guide for *Registered Process Servers*. The content of this handbook should not be construed as legal advice. The statutes inserted from *Montana Code Annotated* and any case law cited in this handbook should be used for reference only. Case law and Statutes change. It is incumbent upon the *Registered Process Server and Levying Officer* to be vigilant of any and all changes that could affect their duties. Since the duties and responsibilities of a *Registered Process Server and Levying Officer* are often subject to interpretation and it is always best to seek legal advice from an attorney.

This handbook contains some of the more common statutes and rules governing the service of process. However, there are additional statutes and rules to be found throughout *Montana Code Annotated* and elsewhere. Because of the complexities and liabilities inherent when performing levies, this handbook should be considered only one resource. *Montana Code Annotated* and the *Code of Federal Regulations* are relevant sources of legal information. Additionally, information helpful to a levying officer can be found in the *Sheriffs & Constables Volume of American Jurisprudence 2d*.

Please note that the laws governing a wide array of legal issues are not addressed in this handbook. Many subjects will require individual research since today's process server will likely be called upon to perform duties not limited to the service of court documents.

Examples of non-judicial duties a process server should research would include:

Demand notices and letters - documents frequently served or posted by process servers but are termed "non-judicial" documents.

Notice of Trustee Sale - a document a process server will be requested to post and would also be deemed "non-judicial" service.

Crying a Trustee Sale - a function routinely performed by process servers that is also considered a "non-judicial" function.

Handbook & Study Guide

for

**Registered Process Servers
&
Levying Officers**

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Introduction to “Process”

Introduction to Process

Note: There are three distinct descriptions of process: Original Process, Mesne Process and Final Process. An example of original process would be a summons while mesne process could be subpoena and a writ of execution would an example of final process.

Definition of process from Montana Code --"Process" includes all writs, warrants, summonses, and orders of courts of justice or judicial officers.

Definition of Serving Process -- The short definition of serving process is defined as any means used by court to acquire or exercise its jurisdiction over a person or over a specific property.

The filing of a complaint with the court commences a civil dispute. Filing the suit alone does not give the court jurisdiction over the defendant(s) in the lawsuit. The defendant(s) must be served with the lawsuit (or must voluntarily submit to the jurisdiction of the court) for the court to have jurisdiction over him or her.

The defendant is directed to respond to the allegations in the complaint by filing a response to the lawsuit within a specified time. The manner of service determines when service is complete and when the defendant's response is due.

Montana courts have rules that require a response from a defendant in an allotted number of days depending on the type of case.

Once service is perfected, a "discovery period" begins. Discovery is the period when the parties gather evidence to prosecute or defend the action. The plaintiff may commence discovery based upon the date service is complete. The methods of discovery dictate the specific time. Discovery commences immediately for the defendant upon service. Process servers participate in the discovery process by serving subpoenas for depositions, notice to the opposing party to compel other discovery such as interrogatories or a notice to produce records, or to give notice of a motion.

Process servers also participate in the trial process by serving subpoenas on third party witnesses or by serving notice on the opposing party to compel attendance or production of witnesses and/or records at the trial. If a witness was deposed in the case and he or she cannot be served with a trial Subpoena, a declaration of diligent effort or unavailability of the witness may be filed to allow the previous deposition to be evidenced into the record.

If a judgment is rendered, a process server may participate in the collection or execution of the judgment. If the losing party fails to pay the prevailing party the losing party's assets may be taken pursuant to the issuance and service of a writ of execution. If the prevailing party does not know where the losing party's assets are located, or in what form they may be in, the court may order the losing party to appear in court for examination to disclose them.

**Requirements, Qualifications
and Provisions
for
Process Servers
&
Levyng Officers**

Requirements, Qualification and Provisions for Process Servers & Levying Officers

Note: Samples of the application forms for registering as a process server can be found at the end of this Handbook and current forms are available online at MT.gov.

Who Must Register

25-1-1101. Registered process server -- levying officer -- use of title reserved. (1)

Except as provided in subsection (2), a person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year must be registered under Title 37, chapter 60. A process server who holds a valid certificate of registration from a clerk of court in this state as of July 1, 2007, shall present the registration certificate to the board, and the board shall exchange that registration certificate for a new certificate that expires on March 31, 2009.

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.

(4) A registered process server may make service of process in any county in this state.

(5) A person may not use the title of process server unless the person is registered as a process server under Title 37, chapter 60.

What is Required

25-1-1102. Contents of registration certificate. The certificate of registration of a process server must contain the following statements:

(1) the name, age, address, and telephone number of the registrant;

(2) that the registrant has not been convicted of a felony;

(3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and

(4) that the registrant will perform his duties as a process server in compliance with the provisions of law governing the service of process in this state.

Examination to be based on Handbook

25-1-1104. Handbook for process servers. (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

(2) The board of private security, established in 2-15-1781, shall develop and administer an examination for applicants for registration as a process server based on the handbook.

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section.

25-1-1107. Proof of service -- requirements. A proof of service of process signed by a registered process server must include the process server's registration number.

25-1-1111. Bond required -- levy limited. (1) After completing the requirements in Title 37, chapter 60, for registration, a process server shall provide the board of private security with proof of a surety bond of \$10,000 for an individual or \$100,000 for a firm, conditioned upon compliance with this part, all laws governing service of process in this state, and the requirements of Title 37, chapter 60. A clerk of court holding a surety bond for a process server under this section as of June 30, 2007, shall transfer the original bond and any supporting documentation to the board on July 1, 2007.

(2) A levying officer may not levy on a judgment that exceeds the value of the bond.

37-60-301. License required -- process server registration required. (1) (a) Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard without having first obtained a license from the board.

(b) Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed contract security company, proprietary security organization, electronic security company, branch office, private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411.

Qualifications to become a Registered Process Server

37-60-303. License or registration qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

- (a) is at least 18 years of age;
- (b) is a citizen of the United States or a legal, permanent resident of the United States;
- (c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;
- (d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;
- (e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;
- (f) is of good moral character; and
- (g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:

- (a) complete the requirements of a training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and
- (b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

- (a) is at least 21 years of age;
- (b) has at least a high school education or the equivalent;
- (c) has not been dishonorably discharged from any branch of the United States military service; and
- (d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant for a license as a private security patrol officer or private investigator who will wear, carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure or registration under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board or, if doing business as a process server, must be registered by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this

part must be licensed pursuant to the requirements of this part or, if doing business as a process server, must be registered by the board.

Content of the Application to become a Registered Process Server

37-60-304. Licenses and registration -- application form and content. (1) An application for a license or for a certificate of registration as a process server must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, or a private security guard or registered as a process server;

(e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to 37-60-303(7)(a); and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application.

(4) The submittal of fingerprints is a prerequisite to the issuance of a license or certificate of registration to an applicant, other than an applicant under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

Process Server Identification Cards

37-60-309. Form of license and identification cards. The license and identification card must be in a form determined by the board.

37-60-310. Display of license and identification card. (1) A license must at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) A holder of an identification card shall carry the card while performing the cardholder's duties. A peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown.

Definitions Used Under Title 37 of M.C.A.

37-60-101. Definitions. As used in this chapter, the following definitions apply:

- (1) "Alarm response runner" means an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.
- (2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.
- (3) "Armed carrier service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.
- (4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses a firearm in the performance of the individual's duties.
- (5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard and who at any time wears or carries a firearm in the performance of the individual's duties.
- (6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.
- (7) "Board" means the board of private security provided for in 2-15-1781.
- (8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.
- (9) "Contract security company" means any person who undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.
- (10) "Department" means the department of labor and industry provided for in 2-15-1701.
- (11) (a) "Electronic security company" means a person who installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.
 - (b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.
- (12) (a) "Fire investigator" means a person other than an individual identified in subsection (12)(b) who for any consideration:
 - (i) makes or agrees to make an investigation with reference to:
 - (A) a fire to identify evidence and determine the cause of the fire; or
 - (B) accidents involving suspected negligence or arson for criminal or civil action;
 - (ii) testifies as an expert witness for investigations identified under this subsection (12); or
 - (iii) cooperates with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires.
 - (b) The term does not mean an insurance adjuster, an individual designated as the state fire marshal under 2-15-2005, or a member of:
 - (i) a fire department as described in 7-3-1345;
 - (ii) law enforcement; or
 - (iii) an entity organized under Title 7, chapter 33.

(13) "Firearms course" means the course approved by the board and conducted by a firearms instructor.

(14) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.

(15) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes against the United States or any state or territory of the United States.

(16) "Licensee" means a person licensed under this chapter.

(17) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

(18) "Person" means an individual, firm, company, association, organization, partnership, or corporation.

(19) "Private investigator" means a person other than an insurance adjuster who for any consideration makes or agrees to make any investigation with reference to:

(a) crimes against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, location, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for libels, losses, accidents, or injury to persons or property;

or
(e) gathering evidence to be used before any court, board, officer, or investigating committee.

(20) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

(21) "Process server" means a person described in 25-1-1101(1).

(22) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(23) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(24) (a) "Security alarm installer" means an individual who installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

(25) (a) "Security alarm system" means an assembly of equipment and devices or a single device or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a location.

(b) The term does not include systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a location.

(26) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

(27) "Street patrol service" means a person providing patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of the person's duties and responsibilities.

(28) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess a firearm in the performance of the individual's duties.

(29) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear, carry, or possess a firearm in the performance of those duties.

Persons Exempt from Registering as a Process Server

37-60-105. Exemptions. (1) Except as provided in subsection (2), this chapter does not apply to:

(a) any one person employed singly and exclusively by any one employer in connection with the affairs of that employer only and when there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure that at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

(c) an officer or employee of the United States, of this state, or of a political subdivision of the United States or this state while the officer or employee is engaged in the performance of official duties;

(d) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(e) an attorney at law while performing duties as an attorney at law;

(f) a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities; or

(g) a law student who is serving a legal internship;

(h) a collection agency or finance company licensed to do business under the laws of this state, or an employee of a collection agency or finance company licensed in this state while acting within the scope of employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or the debtor's property when the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent;

(i) special agents employed by railroad companies, provided that the railroad company

notifies the board that its agents are operating in the state;

(j) insurers and insurance producers and insurance brokers licensed by the state while performing duties in connection with insurance transacted by them;

(k) an insurance adjuster, as defined in 37-60-101; or

(l) an internal investigator or auditor while making an investigation incidental to the business of the agency or company by which the investigator or auditor is singularly and regularly employed.

(2) (a) Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not exempt for the purposes of acting as registered process servers.

(b) Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101.

Purpose of Title 37

37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of security companies and their employees who are required to be licensed, firearms instructors, fire investigators, private investigators, and process servers to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by security companies and their licensed employees, firearms instructors, fire investigators, private investigators, or process servers.

Rulemaking Authority of the Board

37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, licensees, holders of identification cards, and process servers, in addition to those prescribed in Title 25, chapter 1, part 11, and in this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original licenses and identification cards, and providing for refunding of any fees;

(3) (a) requiring approval of the board prior to the establishment of branch offices of any licensee; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator, private security guard, security alarm installer, and alarm response runner training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees, except process servers, to file an insurance policy with the board; and

(9) providing for the issuance of probationary identification cards for private investigators and security alarm installers who do not meet the requirements for age, employment experience, or written examination.

What Constitutes Personal Service

What constitutes a Service -- Original Process

What is Personal Service

Personal service is made when the document(s) are delivered directly to the defendant or witness. It usually is presumed that the process server delivers the document(s) in hand to the person and that service is made face-to-face. A personal service may also mean that the documents must be left in the person's presence. Some statutes designate "personal service" as a manner of service distinguishable from other alternative manners of service, such as mail or posting. The context of "personal service" in these statutes designates a form of personal service by hand rather than by mail, post, fax or otherwise.

Personal service is preferred because the process server gives direct notice of a pending action to the defendant. The service is the first step giving the court jurisdiction over the defendant. Without jurisdiction over the person being served, the court has no legal power to bind or compel the person to act or not act. Additionally, the process server could be requested (or compelled by the court) to offer evidence that a personal service was made. A face-to-face delivery provides the server an opportunity to note the defendant's description, an invaluable piece of evidence proving that personal service was made. Occasionally disputes arise as to whether a proper personal service was made and the process server may have to describe the defendant or witness, the circumstances of the situation when service took place, and the conversation that took place. Therefore, it is preferable to see the person being served so that he or she may be identified later.

The person may not invalidate service by refusing to accept the document(s). Leaving the document(s) in the presence of the defendant constitutes personal service. The courts have held that service cannot be defeated by a defendant simply walking away and not accepting the document(s). Service of process is not always a pleasant experience. Defendants are not always cooperative therefore, the recognized guiding legal authority holds that three elements must be present for a valid personal service. Service must be made (a) while the server is within normal speaking distance from the person being served; (b) the server must inform the person that he or she is being served and the general nature of the document(s); and (c) the server must leave the document(s) with the person being served or in a place where the person served has reasonable access to them. (*In re Ball* (1934) 2 Cal.App.2d 578,38 P.2d 411)

Normal Speaking Distance

The court requires that the server be within normal speaking distance for service to be effective. Normal speaking distance is a question of fact. Every situation is different. Face-to-face, across the room, and a conversation between the ground and a second or third floor window could all be construed as a "normal speaking distance." The process server must be able to speak directly to the defendant for it to be a proper personal service.

Inform the Defendant of the General Nature of the Documents

The process server must inform the person that he or she is being served. There are no specific words that need to be spoken to accomplish this requirement. The following are some examples of that would inform the person that they were being served: "I'm dropping off some legal documents giving notice of a lawsuit", "I'm serving you a Summons," "This is a legal delivery," and "I have some personal legal papers for you." The person being served must understand that he or she is being served or that the server is delivering legal documents.

The process server must describe the "general nature" of the documents. The description could simply be "legal documents" or "a lawsuit". The server should avoid counseling the defendant. If the person being served has additional questions, the server may suggest that they contact a lawyer.

If a Subpoena is being served, for instance, it is helpful to the witness if the server points out the box containing the date, time, and location of the required appearance. People who have never been served may not be readily familiar with the legal form. Pointing to the information on the document is not required but helpful to the person being served.

Explaining the general nature of the documents satisfies a legal requirement. It also may relieve some anxiety the defendant or witness may have regarding the event of being served with a legal document. Since there can be a real potential for anxiety, or even violence, explaining the general nature of the documents usually diffuses the potential for volatility. Of course, not all service situations lend themselves even to a brief description of the documents and, in some cases, telling the defendant or witness more about the suit may even heighten his or her anxiety.

Delivery of the Documents

Montana law does not require the process server to touch the person with the papers, nor is it necessary for the person being served to take or accept the documents. Merely leaving the documents with the person being served is sufficient. Customarily, handing the papers to the person constitutes service. If the person does not accept them, leaving the documents in his or her presence or general vicinity would also constitute service. If the person refuses to take the documents, they may be dropped at the defendant's feet.

Occasionally, the person served may attempt to avoid service by walking away from the process server when he or she attempts to make service. The courts have held "*... that when men are within easy speaking distance of each other and facts occur that would convince a reasonable man that person service of a legal document is being attempted, service cannot be avoided by denying service and moving away without consenting to take the document in hand.*"

When May Lawful Service Take Place?

Process servers are not limited to when a lawful service may be made. Generally service may be made 24 hours on any day of the week. Although there is no limitation, a process server should use some discretion. Late night services (after 10:00 PM) should be made only when reasonable. Process servers may make a valid service after 10:00 PM or before 7:00 AM.

It is reasonable to serve late at night or early in the morning at a business if the attempts were first made unsuccessfully during a person's normal business hours. When a person is evading service or when circumstances make it necessary, service may be made at any reasonable time.

Cases from other Jurisdictions

Cases filed in other states that are being served in Montana may have more restrictive rules, such as a restriction for serving process on a Sunday, or in some instances, on a day the defendant considers a holy day. Some states forbid service on an Election Day, holiday, or a religious holiday. Texas law does not permit substituted service without a prior court order authorizing it. Some states have more expansive service rules. Substituted service is valid at a residence when served on a "person of suitable age and discretion" or on a person 14 years or older. New York allows certain lawsuits to be posted on the front door of the defendant's residence and mailed after 3 unsuccessful attempts at personal service. Other state laws allow substituted service at a residence on an individual defendant without reasonable diligence. Florida law allows a service of a corporate defendant to be made on anyone in the office if service is made between specified hours.

Effects of Improper Service

The process server has a duty to properly serve legal documents and to execute a truthful declaration under penalty. When a service is made improperly, or the process server lies on a declaration, the court has no jurisdiction over the person served.

Although a Registered Process Server's declaration of service has rebuttal presumption status, the defendant could offer evidence to defeat that presumption. If the court invalidates the service:

- The plaintiff could be compelled to re-serve the defendant.
- The court could dismiss the lawsuit.
- The plaintiff would incur substantial losses such as the costs for service, entry of the judgment and preparing for and appearing at court to defend the service.
- A registered process server's registration could be revoked for performing a service not in accordance with the law.

Quick Reference – Common Services

General Comments

The types of business entities and documents to be served determine the proper method of service. The law relating to service of entities other than an individual specifies a "person upon whom service may be made". In several instances the District Court Rules governing Service of process vary from the Justice Court Rules for Service of process. The following guidelines for service on the appropriate person or entity are general in nature. Note the material differences between The District Court and Justice Court Rule's governing service.

Personal Service on Domestic or Foreign Corporate Defendants

To conduct business properly in Montana, a corporation must file a Statement of Officers and list an agent for service with the Montana Secretary of State. Many corporations use the words or abbreviations for "corporation or incorporated" in the title of the business name making the business form obvious. Some corporations do business without such a designation. The exact corporate name should conform to the name registered with the Secretary of State. The law recognizes the corporation as a separate legal entity and treats it as a separate person.

A proper personal service on a corporation may be made to persons holding the following positions with the corporation:

- Officer
- Director
- Manager
- Member
- Registered Agent for Service
- Superintendent
- The person "in charge" at a corporate facility.

Personal Service on a Partnership, L.L.C., or Association

For personal service upon a limited or general partnership, a limited liability company or an unincorporated association you may serve:

Note: In this instance both District Court & Justice Court rules are similar

- Registered Agent for Service, as filed with the Secretary of State
- A Partner or Associate
- An officer of an Association
- A Member of a Member Managed Association
- Superintendent or Manager
- The person "in charge" at the place of business

Personal Service on a Public Entity

A "public entity" includes the state and any office, department, division, bureau, board, commission or agency of the state, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state."

Note: In this instance both District Court & Justice Court rules are similar

Upon a city, village, town, school district, county or public agency or board of any such public bodies you should serve:

- Commissioner
- Trustee
- Board member
- Mayor
- Head of the legislative department

Upon the state, or any state board or state agency serve:

- Attorney General and any other party which may be prescribed by statute

Personal Service on a Person with an Appointed Guardian

Note: In this instance both District Court & Justice Court rules are similar

Service on a person who has been adjudged of unsound mind by a Montana court should be made to the person's guardian.

Personal Service on a Minor

Note: By District Court Rules

Service on a minor under the age of 14 years should be made to the minor's guardian if the guardian can be found in the state. If not, then service should be made to the minor's father or mother or person or agency having control of the minor or to the person with whom the minor resides.

Service upon a minor over the age of 14 years service should be made both to the minor personally and to an adult at the minor's residence.

Personal Service on a Minor

Note: By Justice Court Rules

A minor would be anyone under the age of 18 years. Service upon a minor is made by serving the minor personally and serving the minor's guardian.

**Current
Montana Code Annotate
Statutes & Rules
Governing
Service of Process**

M.C.A. Statutes Regarding Service of Original Process

25-3-101. Definitions. As used in parts 2 and 3 of this chapter, the following definitions apply:

(1) "Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board, or officer or required by law to be served independently of such proceeding.

(2) "Process" includes all writs, warrants, summonses, and orders of courts of justice or judicial officers.

25-3-105. Person serving process -- penalty for obstruction -- exception. (1) A process server registered under Title 37, chapter 60, a licensed attorney, or a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of the person's employment while serving process is a public servant for the purpose of determining the offense of obstructing a public servant as provided in 45-7-302.

(2) A person who obstructs a person serving process is guilty of obstruction of a public servant and is punishable as provided in 45-7-302.

(3) An unregistered person who serves 10 or fewer services of process in a calendar year, as provided in 25-1-1101(1), is not acting as a public servant.

25-3-201. Delivery of papers to officer. (1) (a) It is the duty of a party in any civil action pending in a district court or the party's agent or attorney to forward by mail any process, summons, or other papers required in the cause.

(b) It is the duty of the sheriff, registered process server, or other officer to whom the process, summons, or papers described in subsection (1)(a) may be directed to receive the process, summons, or papers at the place where the documents are directed.

(2) If the papers are delivered for service away from the county seat, all necessary copies must be furnished for service.

(3) If a sheriff, registered process server, or other officer refuses to receive a summons or other process at the point where it was directed or refuses to serve the summons or process, the sheriff, registered process server, or other officer is guilty of a misdemeanor and upon conviction shall be fined a sum not exceeding \$100.

25-3-202. When officer's execution of process justified and required. A sheriff, registered process server, or other ministerial officer is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

25-3-203. Prepayment of cost of service. An officer or registered process server receiving papers for service may not be required to serve papers for service unless the person on whose behalf the service is made or that person's agent or attorney first pays the cost of the service upon a demand by the officer or registered process server.

25-3-204. Officer to exhibit process. The officer or registered process server executing a service of process shall display the service of process, all attached papers, and an

identification card upon request by an interested party at any time during execution of the service of process.

25-3-205. Execution of process when sheriff a party. When the sheriff is a party to an action or proceeding, the process and orders therein which it would otherwise be the duty of the sheriff to execute must be executed by the coroner of the county or a registered process server.

25-3-301. Time and manner of return. (1) The sheriff or other person serving a summons or other process or order required by any of the provisions of law, issued for any of the courts of this state, shall make due and legal return of the service and file the return with the clerk of the court in which the action or proceeding is pending. The return must be made within 10 days after making the service if the service was made in the county in which the action or proceeding is pending and within 20 days after making the service when the service was made outside of the county in which the action or proceeding is pending. Any failure to make and file the return may be punished as a contempt of court.

(2) When process or a notice is returnable to another county or was forwarded under 25-3-201, the sheriff or a registered process server may enclose a return of process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, postage prepaid.

(3) In compliance with the provisions of subsection (1) and in lieu of returning a summons, other process, or order to the clerk of court, the sheriff or levying officer may enclose the return of the summons, process, or order in an envelope, postage prepaid, and deposit it in the post office addressed to the officer, agent, or attorney who sent it.

25-3-302. Return prima facie evidence. The return of the sheriff or registered process server upon process or notices is prima facie evidence of the proof of the process or notices having been served as stated.

25-3-402. Persons to be served. Subject to the provisions of Rule 5(b), M.R.Civ.P., whenever a plaintiff or a defendant who has appeared resides out of this state and has no attorney in the action or proceeding, service may be made on the clerk of court for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except of subpoenas, writs, and other process issued in the suit and papers to bring him into contempt, unless the court orders otherwise.

25-3-501. Service of telephonic or telegraphic copy. (1) Any summons, writ, or order in any civil action or proceeding and all other papers requiring service may be transmitted by telegraph or telephone for such service in any place; and the telegraphic or telephonic copy of such writ, order, or paper so transmitted may be served or executed by the officer or person to whom it is sent for that purpose and returned by him, if any return be requisite, in the same manner and with the same force and effect in all respects as the original thereof might be delivered to him; and the officer or person serving or executing the same has the same authority and is subject to the same liabilities as if the copy were the original.

(2) The original, when a writ or order, must also be filed in the court from which it was issued, and a certified copy thereof must be preserved in the telegraph or telephone office from which it is sent. In sending it, either the original or certified copy may be used by the

operator for that purpose. Whenever any document to be sent by telegraph or telephone bears a seal, either private or official, it is not necessary for the operator, in sending the same, to telegraph or telephone a description of the seal or any words or device thereon, but the same may be expressed in the telegraphic or telephonic copy by the letters "L.S." or by the word "seal".

25-3-604. Secretary of state's record of process served. The secretary of state shall keep a record of all such summonses and process, which shall show the day of service.

25-4-112. Papers with technical defects. An affidavit, notice, or other paper without the title of the action or proceeding in which it is made or with a defective title is as valid and effectual for any purpose as if duly entitled if it intelligibly refers to such action or proceeding.

District Court Rules -- Service of Original Process

Rule 4. Persons subject to jurisdiction -- process -- service

Rule 4A. Definition of person. As used in this rule, the word "person," whether or not a citizen or resident of this state and whether or not organized under the laws of this state, includes an individual whether operating in the individual's own name or under a trade name; an individual's agent or personal representative; a corporation; a limited liability company; a business trust; an estate; a trust; a partnership; an unincorporated association; and any two or more persons having a joint or common interest or any other legal or commercial entity.

Rule 4B. Jurisdiction of persons. (1) Subject to jurisdiction. All persons found within the state of Montana are subject to the jurisdiction of the courts of this state. In addition, any person is subject to the jurisdiction of the courts of this state as to any claim for relief arising from the doing personally, through an employee, or through an agent, of any of the following acts:

- (a) the transaction of any business within this state;
- (b) the commission of any act which results in accrual within this state of a tort action;
- (c) the ownership, use or possession of any property, or of any interest therein, situated within this state;
- (d) contracting to insure any person, property or risk located within this state at the time of contracting;
- (e) entering into a contract for services to be rendered or for materials to be furnished in this state by such person; or
- (f) acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within this state, or as personal representative of any estate within this state.

(2) Acquisition of jurisdiction. Jurisdiction may be acquired by our courts over any person through service of process as herein provided; or by the voluntary appearance in an action by

any person either personally, or through an attorney, or through any other authorized officer, agent or employee.

Rule 4C. Process. (1) Summons -- issuance. Upon or after filing the complaint, the plaintiff or, if the plaintiff is represented by an attorney, the plaintiff's attorney shall present a summons to the clerk for issuance. If the summons is in proper form, the clerk shall issue it and deliver it to the plaintiff or to the plaintiff's attorney who shall thereafter deliver it for service upon the defendant in the manner prescribed by these rules. Issuance and service of the summons shall be accomplished within the times prescribed by Rule 4E of these rules. Upon request, the clerk shall issue separate or additional summons against any parties designated in the original action, or against any additional parties who may be brought into the action, which separate or additional summons shall also be served in the manner and within the times prescribed by these rules. The party requesting issuance of the summons shall bear the burden of having it properly issued and served and filed with the clerk.

(2) Summons -- form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint. In an action brought to quiet title to real estate, there shall be added to the foregoing, the following: "This action is brought for the purpose of quieting title to land situated in ... County, Montana, and described as follows: (Here insert descriptions of land)." For exceptions to this form of summons see 4D(4) "Other service," set forth hereinafter.

Rule 4D. Service. (1) By whom served. (a) Service of all process shall be made in the county where the party to be served is found by a sheriff, deputy sheriff, constable, or any other person over the age of 18 not a party to the action.

(b) (i) A summons and complaint may also be served upon a defendant who is an individual other than a minor or an incompetent person or upon a domestic or foreign corporation or partnership or other unincorporated association by mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing the summons and complaint, service of such summons and complaint shall be made by one of the persons mentioned in Rule 4D(1)(a) in the manner prescribed by Rule 4D(2) and Rule 4D(3).

(ii) Unless good cause is shown for not doing so, the court shall order the payment of costs of the personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons.

(iii) The notice and acknowledgment of receipt of summons and complaint shall be signed and dated. Service of summons and complaint will be deemed complete on the date of signature of the defendant as shown on the acknowledgment.

(2) Personal service within the state. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to the minor personally, and by leaving a copy thereof at the minor's dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to the minor's guardian, if the minor has one within the state, and if not, then to the minor's father or mother or other person or agency having the minor's care or control, or with whom the minor resides, or if service cannot be made upon any of them, then as provided by order of the court.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to the person's guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of this state, such party may be brought into court by service of process personally upon that party. The court may also stay any action pending against a person on learning that such person is of unsound mind.

(e) Upon a domestic corporation, limited liability company, partnership or other unincorporated association, or upon a foreign corporation, limited liability company, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, manager, member of a member-managed limited liability company, superintendent or managing or general agent, or partner, or associate for such corporation, limited liability company, partnership, or association; or by leaving such copies at the office or place of business of the corporation, limited liability company, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to the registered agent of said corporation or limited liability company named on the records of the secretary of state, or to any other agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, limited liability company, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, limited liability company, partnership, or unincorporated association within this state with the person in charge of such office; or (iv) if the suit is against a corporation or limited liability company whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation or

limited liability company and its stockholders or members.

(f) When a claim for relief is pending in any court of this state against a corporation or limited liability company organized under the laws of this state, or against a corporation or limited liability company organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation or limited liability company organized under the laws of any other state or country which is subject to the jurisdiction of the courts of this state under the provisions of Rule 4B above, even though such corporation or limited liability company has never qualified to do business in Montana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) immediately above can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any such person. If, after exercising reasonable diligence, the party causing summons to be issued is unsuccessful in serving said parties, an affidavit must be filed with the clerk of court in which the claim for relief is pending reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no such address for any such person could be found. The sum of \$10 will be deposited with said clerk to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service; and where service is requested at more than one address, an additional \$10 shall be paid for each party to be served at each additional address. The clerk of court shall issue an order directing process to be served upon the secretary of state of the state of Montana or, in the secretary of state's absence from the secretary of state's office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. Whenever service is also to be made through publication as provided in 4D(5), or upon other persons as provided in 4D(6), the affidavit herein required may be combined in the same instrument with the affidavit required under 4D(5)(c) and 4D(6). The said clerk of court shall then mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e) above, if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation or limited liability company was originally incorporated, if known; and the secretary of state shall make a return as hereinafter provided under Rule 4D(6). When service is so made, it shall be deemed personal service on such corporation or limited liability company, and the said secretary of state, or a deputy when the secretary is absent from the secretary of state's office, is hereby appointed agent of such corporation or limited liability company for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e) above, service shall be deemed complete upon said corporation or limited liability company regardless of the receipt of any return receipt or advice of refusal of the addressee to receive

the process mailed, as is hereinafter required by 4D(6); provided, however, that except in those actions where any of the persons designated in D(2)(e) above have been located and served personally as hereinabove provided, then service by publication shall also be made as provided hereafter in 4D(5)(d) and 4D(5)(h); the first publication must be made within 60 days from the date the original summons is mailed to the secretary of state as herein provided, and if said first publication is not so made, the action shall be deemed dismissed as to any such party intended to be served by such publication; and service shall be complete upon the date of the last publication of summons.

When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation or limited liability company, service of all other notices required by law to be served in such action may be served upon the secretary of state.

(g) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the attorney general and to any other party which may be prescribed by statute.

(i) Upon an estate by delivering a copy of the summons and complaint to the personal representative thereof; upon a trust by delivering a copy of the summons and complaint to any trustee thereof.

(3) Personal service outside the state. Where service upon any person cannot, with due diligence, be made personally within this state, service of summons and complaint may be made by service outside this state in the manner provided for service within this state, with the same force and effect as though service had been made within this state. Where service by publication is permitted as hereinafter provided, personal service of a summons and complaint upon the defendant out of the state shall be equivalent to and shall dispense with the procedures and the publication and mailing provided for hereafter in 4(5)(c), 4(5)(d) and 4(5)(e) of this rule.

(4) Other service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions hereafter prescribed in D(5)(h), and with the provisions of 33-1-603, 33-1-613, 33-1-614, 33-2-314, 33-2-315, 70-28-207, 70-28-208, 70-28-209, and 70-28-212, Montana Code Annotated, when the action pertains to the provisions of such sections.

(5) Service by publication -- when permitted -- effect -- manner -- proof.

(a) When permitted. A defendant, whether known or unknown, who has not been served under the foregoing subsections of this rule can be served by publication in the following situations only:

(i) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein. This subsection shall apply whether any such defendant is known or unknown.

(ii) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real or personal property within this state.

(iii) When the action is for dissolution or for a declaration of invalidity of a marriage of a resident of this state or for modification of a decree of dissolution granted by a court of this state.

(iv) When the defendant has property within this state which has been attached or has a debtor within this state, who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subsections (5)(a)(i), (5)(a)(ii), and (5)(a)(iii) herein.

(b) Effect of service by publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree which will adjudicate any interest of such defendant in the status, property, or thing acted upon, but it may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of pleading and affidavit for service by publication; and order for publication. Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in (5)(a) above; and (ii) in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals defendant's person to avoid the service of summons; or, if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that the affiant has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and that the affiant has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry, and if desired, it may be combined in one instrument with the affidavit required under 4D(2)(f), or 4D(6); and (iii) in the situation defined in (5)(a)(iv) above, there must be first presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith, the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of the court.

(d) Number of publications. Service of the summons by publication may be made by publishing the same three times, once each week for 3 successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county then in a newspaper published in an adjoining county and having a general circulation therein.

(e) Mailing summons and complaint. A copy of the summons for publication and complaint, at any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, shall be deposited in some post office in this state, postage prepaid, and directed to the defendant at defendant's place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation, and personal service cannot with due diligence be effected within Montana

on any of the persons designated in D(2)(e) above, then service may be completed on said corporation by service upon the secretary of state in the manner, and following the procedure outlined in D(2)(f) above.

(f) Time when first publication or service outside state must be made. The first publication of summons, or personal service of the summons and complaint upon the defendant out of the state, must be made within 60 days after the filing of the affidavit for publication. If not so made, the action shall be deemed dismissed as to any party intended to be served by such publication.

(g) When service by publication or outside state complete. Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.

(h) Additional information to be published. In addition to the form of summons prescribed above in "C. Process, (2) Summons--form," the published summons shall state in general terms the nature of the action, and in all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon real property is involved, or affected, or brought into question, the publication shall also contain a description of the real property involved, affected or brought into question thereby, and a statement of the object of the action.

(6) (a) Service on secretary of state. Whenever service is to be made upon certain corporations as provided hereinabove in D(2)(f) and D(5)(e), the requirements of said D(2)(f) must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or the party's attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served. Such affidavit shall be filed with the clerk of court in which the claim for relief is pending, accompanied by sufficient copies of the affidavit, summons and complaint for service upon the secretary of state. The sum of \$10 will be deposited with said clerk to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive such service; and where service is requested at more than one address an additional \$10 shall be paid for each party to be served at each additional address. The clerk shall forward the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, and one copy of the summons attached to copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee, to the office of the secretary of state.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state or a deputy to the party to be served at that party's last known address, marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee, except in those cases where compliance is excused under the provisions of D(2)(f) above. The date upon which the secretary of state receives said return receipt, or receives advice by the postal authority that delivery of said registered or certified mail was refused by the addressee, shall be deemed the date of service.

As an alternative to sending the summons and complaint by registered or certified mail, as herein provided, the secretary of state, or a deputy, may cause copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) or (3) of this rule.

The secretary of state, or a deputy, shall make an original and two copies of an affidavit reciting: (1) the fact of service upon the secretary of state by the clerk of court, including the day, and hour of such service; (2) the fact of mailing a copy of the summons and complaint and notice to the defendant, including the day and hour thereof, except in those cases where the secretary of state is relieved from doing so under the provisions of D(2)(f) in which cases the affidavit shall so recite; and (3) the fact of receipt of a return from the postal department including the date, and hour thereof, and attaching to the affidavit a copy of such return. The secretary of state, or a deputy, shall then transmit the original summons, and original affidavit along with copy of the notice to the defendant where such notice was required, to the clerk of court in which the claim for relief is pending, and it shall be filed in the claim for relief by said clerk of court; and the secretary of state shall also transmit to the attorney for the plaintiff copy of the affidavit of the secretary of state along with copy of the notice to the defendant where such notice was required. The secretary of state shall keep on file in the secretary of state's office a copy of the summons, a copy of the affidavit served on the secretary of state by the clerk of court, and a copy of the affidavit executed and issued by the secretary of state.

(b) Continuance to allow defense. In any of the cases provided for in Rule 4D(2)(f) above, or provided for hereinabove in 4D(6)(a), the court in which the claim for relief is pending may order such continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(8) Proof of service. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(a) If served by the sheriff or other officer, the sheriff's or other officer's certificate thereof;

(b) If by any other person, that person's affidavit thereof;

(c) In case of publication an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited; or

(d) The written admission of the defendant showing the date and place of service.

(e) If service is made under Rule 4D(1)(b) above, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

(9) Contents of affidavit of service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

(10) Procedure where only part of defendants are served. If the summons is served on one

or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served, and may at any time thereafter have a summons against the defendant not served with the first process to cause that defendant to appear in said court to show cause why that defendant should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered.

Rule 4E. Time limit for issuance and service of process. (1) A plaintiff shall have 3 years after filing a complaint to have a summons issued and accomplish service. Unless appearance has been made by the defendant(s), the court, upon motion or on its own initiative, shall dismiss an action without prejudice if a plaintiff fails to either have the summons issued or fails to accomplish service within 3 years from the date of the filing of a complaint. The plaintiff shall file the summons with the clerk of the court within 30 days after service, however, failure to do so shall not affect the validity of service or serve as a basis for dismissal of said action.

(2) A plaintiff who names a fictitious defendant in the complaint, pursuant to 25-5-103, MCA, may amend the complaint to substitute a real defendant for the fictitious defendant within 3 years of filing the original complaint in the action. The 3 year time period set forth in subparagraph (1) of this rule for issuance and service begins to run, as to the newly identified defendant, from the date of the filing of the original complaint.

(3) The time limit imposed by subparagraphs (1) and (2) above shall apply to all lawsuits in which the original complaints were filed on or after January 1, 2000. The provisions of Rule 41(e), M.R.Civ.P., replaced by this rule, shall apply to all lawsuits in which the original complaint was filed before January 1, 2000.

Rule 6(a). Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

Justice Court Rules – Service of Original Process

25-31-111. What provisions of code applicable to justices' courts. Because justices' courts are courts of peculiar and limited jurisdiction, only those provisions of this code which are, in their nature, applicable to the organization, powers, and course of proceedings in

justices' courts or which have been made applicable by special provisions in this chapter and Titles 3 and 27 are applicable to justices' courts and the proceedings therein.

Rule 1. Scope of rules. These rules govern the procedure in the justice or city courts of the state of Montana in all suits of a civil nature except in small claims actions and where otherwise provided by law. These rules must be construed and administered to secure the just, speedy, and inexpensive determination of every action. Parties should also consult the Montana Uniform Rules for the Justice and City Courts, and all statutory provisions relating to procedure in Montana's justice and city courts, including but not limited to Title 25, chapter 31 of the Montana Code Annotated.

Rule 4. Persons -- jurisdiction -- process -- service.

A. PERSON. As used in this rule, the word "person", whether or not a United States citizen or resident of this state and whether or not organized under the laws of this state, includes:

- (1) an individual, whether operating in the individual's own name or under a trade name;
- (2) an individual's agent or personal representative;
- (3) a corporation, business trust, estate, trust, partnership, or limited liability company;
- (4) any two or more persons having a joint or common interest; and
- (5) any other legal or commercial entity.

B. JURISDICTION OF PERSONS.

(1) Subject to jurisdiction. All persons are subject to the jurisdiction of a justice or city court who reside or are found within the State of Montana.

(2) Acquisition of jurisdiction. A justice or city court may acquire jurisdiction over a person through service of process as provided in these rules, through the voluntary appearance in an action by a person, either personally or through an attorney or any other authorized officer, agent, or employee. Each defendant must be served separately.

C. PROCESS.

(1) Summons -- issuance. Upon the filing of the complaint, the judge or the clerk shall issue a summons upon request of a plaintiff. Separate or additional summons must be issued, upon request, against any parties designated in the original action or against any additional parties who may be brought into the action.

(2) Summons -- form. The summons must be directed to the defendant and signed by the judge or clerk and must contain:

(a) the title of the court, the name of the county and city in which the action is commenced, and the names of the parties to the action;

(b) a direction that the defendant appear and file a written answer in the justice or city court within 20 days after service of summons and complaint, exclusive of the day of service, or such other period as may be specified by law, and serve a copy upon the plaintiff or the

plaintiff's attorney;

(c) a statement that upon failure to appear and answer or assert a counterclaim, the plaintiff may take judgment against the defendant by default for the relief demanded in the complaint; and

(d) the name, address, and telephone number of the plaintiff or the plaintiff's attorney.

Plaintiff/Plaintiff Attorney

Address

Plaintiff/Plaintiff Attorney telephone number

IN THE JUSTICE/CITY COURT OF _____ COUNTY, MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE.

* * * * *

_____)	
Plaintiff,)	Civil Case _____
	vs .)	SUMMONS
_____)	
Defendant.)	
)	
_____)	_____

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT, GREETINGS:
 You are hereby summoned to answer the Complaint in this action which is filed in the office of the above-entitled Justice of the Peace/City Judge, 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 \$15.00 answer fee for each Defendant with the above-entitled Court, and serve a copy of your answer upon the Plaintiff or attorney at the address as shown on the Complaint.

The answer must contain a denial of any or all of the material facts stated in the Complaint that the Defendant believes to be untrue, and 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.

GIVEN under my hand this _____ day of _____, 20_.

JUDGE/CLERK OF COURT

D. SERVICE OF PROCESS.

- (1) By whom served.
 - (a) Service of all process must be made by a sheriff of the county where the party to be served is found, by a deputy, by a constable authorized by law, or by any other person 18 years of age or older who is not a party to the action.
 - (b) (i) A summons and complaint may also be served upon a defendant who is an

individual, other than a minor or an incompetent person, or upon a domestic or foreign corporation or partnership or other limited liability company by mailing a copy of the summons and complaint by first-class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 18-A, M.R.Civ.P., and a return envelope, postage prepaid, addressed to the sender. If an acknowledgment of service under this subsection is not received by the sender within 20 days after the date of mailing, service of the summons and complaint must be made by one of the persons specified in Rule 4D(1)(a) in the manner prescribed by Rule 4D(2) and (3).

(ii) If the person served does not complete and return the notice and acknowledgment of receipt of summons and complaint within the 20-day period, the court shall order the person to pay the costs of the personal service unless good cause is shown.

(iii) The notice and acknowledgment of receipt of the summons and complaint must be signed and dated. Service of the summons and complaint is complete on the date the defendant signs the acknowledgment.

(2) Personal service within court's jurisdiction.

(a) The plaintiff shall furnish the person making service with all necessary copies.

(b) Service must be made:

(i) upon an individual other than a minor or an incompetent person, by delivering a copy of the summons and complaint to the defendant personally or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, further notice as the statute requires must be given;

(ii) upon a minor, by delivering a copy of the summons and complaint to the minor and to the minor's guardian or guardian ad litem;

(iii) upon a person who has been adjudged of unsound mind by a court of this state or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to the person's guardian, if there is one residing in this state appointed and acting under the laws of this state. If there is no guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind but has not been so adjudged by a court of this state, the party may be brought into court by service of process personally. The court may also stay any action pending against the person on learning that the person is of unsound mind.

(iv) upon a domestic corporation, partnership or other limited liability company, or a foreign corporation or partnership or other limited liability company established by the laws of any other state or country, that had a place of business within this state or was doing business in this state either permanently or temporarily at the time the claim for relief accrued:

(A) by delivering a copy of the summons and complaint to an officer, director, superintendent, managing or general agent, partner, or associate for the corporation, partnership, or association or by leaving the copy at the office or place of business of the corporation, partnership, or association within the state with the person in charge of the office;

(B) by delivering a copy of the summons and complaint to the registered agent of the corporation named on the records of the secretary of state or to any other agent or attorney-in-fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney-in-fact is one designated by statute to receive service, any further notice required by statute must also be

given;

(C) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then by leaving a copy of the summons and complaint at any office of the corporation, partnership, or limited liability company within this state with the person in charge of the office; or

(D) if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy of the summons and complaint to a trustee for the corporation and to its stockholders or members.

(v) upon a city, town, school district, or public agency or board of such a public body, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor, or head of the legislative department of the public body;

(vi) upon an estate, by delivering a copy of the summons and complaint to the personal representative of the estate;

(vii) upon a trust, by delivering a copy of the summons and complaint to any trustee thereof.

(c) (i) When a claim for relief is pending in a justice or city court of this state against any of the following persons, the party causing the summons to be issued shall exercise reasonable diligence to ascertain the last-known address of:

(A) a corporation organized under the laws of this state or a corporation organized under the laws of any other state or country that has filed a copy of its charter in the office of the secretary of state of Montana and that is qualified to do business in Montana;

(B) a corporation organized under the laws of any other state or country that is subject to the jurisdiction of the justice or city courts of this state under the provisions of Rule 4B, even though the corporation has never qualified to do business in Montana; or

(C) a national banking corporation that, through insolvency or lapse of charter, has ceased to do business in Montana and when none of the persons designated in Rule 4D(2)(b)(iv) can with the exercise of reasonable diligence be found within Montana.

(ii) Upon the filing with the justice or city court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in Rule 4D(2)(b)(iv) can after due diligence be found within Montana, reciting the last-known address of any of those persons, or reciting that after the exercise of reasonable diligence no address for any of the persons could be found and after deposit with the justice or city court of the sum to be paid to the secretary of state as a fee for each of the defendants for whom the secretary of state is to receive service, the judge shall issue an order directing process to be served upon the secretary of state or, if absent from the office, upon the deputy secretary of state. The affidavit is sufficient evidence of the diligence of inquiry made by the affiant if it recites that diligent inquiry was made. The affidavit need not detail the facts constituting the inquiry.

(iii) The judge shall mail to the secretary of state the original summons, one copy each of the summons and the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service.

(iv) The secretary of state shall mail a copy of the summons and complaint by certified mail with a return receipt requested to the last-known address of any of the persons designated in Rule 4D(2)(b)(iv) or, if no address is known and the person is a corporation not organized in Montana, to the secretary of state of the state in which the corporation was originally incorporated, if known, and the secretary of state shall make the return as provided under Rule 4D(5).

(v) When service is made upon the secretary of state, it is considered personal service on the corporation, and the secretary of state, or the deputy when the secretary of state is absent from the office, is hereby appointed agent of the corporation for service of process.

(vi) In an action in which due diligence has been exercised to locate and serve any of the persons designated in Rule 4D(2)(b)(iv), service is considered complete upon the corporation regardless of the receipt or advice of refusal of the addressee to receive the process mailed, as required by Rule 4D(5).

(vii) When the service of process is made as provided in this subsection (2)(c) and there is no appearance thereafter made by an attorney for the corporation, service of all other notices required by law to be served in the action may be served on the secretary of state.

(3) Other service. All process in any form of action must be served in the manner specified in this rule, with the exception that whenever a statute of this state or an order of the court made pursuant to this rule or a statute provides for the service of a notice or an order in lieu of summons upon a person, service must be made under the circumstances and in the manner prescribed by the statute or order and with the further exception that all persons are required to comply with the provisions of 33-1-603, 33-1-613, 33-1-614, 33-2-314, and 33-2-315 when the action pertains to the provisions of those sections.

(4) Service by publication -- when permitted -- effect -- manner -- proof.

(a) When permitted. A defendant, whether known or unknown, who has not been served under this rule may be served by publication only when the subject of the action is real or personal property in this state and:

(i) the defendant has or claims a lien or interest, actual or contingent, in the real or personal property; or

(ii) the relief demanded consists wholly or partially in excluding the defendant from any interest in the real or personal property.

(b) Effect of service by publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree that will adjudicate any interest of the defendant in the status, property, or thing acted upon, but the court may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of pleading and affidavit for service by publication -- order for publication.

(i) Before service of the summons by publication is authorized in any case, there must be filed with the judge or court clerk of the justice or city court in which the action is commenced:

(A) a pleading setting forth a claim in favor of the plaintiff and against the defendant as provided in Rule 4D(4)(a); and

(B) upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating:

(I) that the defendant resides out of the state, has departed from the state, cannot after due diligence be found within the state, or is concealed to avoid the service of summons; or

(II) if the defendant is a domestic or foreign corporation, that none of the persons designated in Rule 4D(2)(b)(iv) can after due diligence be found within the state; or

(III) if the defendant is an unknown claimant, that the plaintiff has made a diligent search and inquiry for all persons who claim or might claim any right or title to, estate or interest in, or lien or encumbrance upon all or any part of the property that is adverse to plaintiff's ownership or all persons who may cloud the plaintiff's title to the property, whether the claim or possible claim is present or contingent, including any right of dower, inchoate or accrued;

and

(IV) that the plaintiff has specifically named as defendants in the action all persons whose names can be ascertained.

(ii) The affidavit is sufficient evidence of the diligence of any inquiry made by the affiant if the affidavit recites the fact that diligent inquiry was made. The affidavit need not detail the facts constituting the inquiry. If desired, it may be combined in one instrument with the affidavit required under Rule 4D(2)(c) after presenting to the court proof that a valid attachment or garnishment has been effected.

(iii) Upon complying with this subsection (c), the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the court clerk.

(d) Number of publications. Service of the summons by publication may be made by publishing the summons three times, once each week for 3 successive weeks, in a newspaper published in the county in which the action is pending. If no newspaper is published in the county, then the service of summons by publication must be made in a newspaper published in an adjoining county and having a general circulation in the county in which the action is pending.

(e) Mailing summons and complaint. At any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, a copy of the summons for publication and a copy of the complaint must be deposited in a post office in this state, postage prepaid, and directed to the defendant at the defendant's place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation and personal service cannot with due diligence be effected within Montana on any of the persons designated in Rule 4D(2)(b)(iv), then service may be completed on the corporation by service upon the secretary of state pursuant to the provisions of Rule 4D(2)(c).

(5) Service on secretary of state.

(a) (i) Whenever service is to be made upon certain corporations as provided in Rule 4D(2)(c), the requirements of that subsection must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed or is considered by law to have been appointed as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party or the party's attorney shall:

(A) make an affidavit stating the facts showing that the secretary of state is the agent and stating the residence and last-known post-office address of the person to be served;

(B) file the affidavit with the justice or city court in which the claim for relief is pending; and

(C) provide sufficient copies of the affidavit, summons, and complaint for service upon the secretary of state.

(ii) When there has been deposited with the justice or city court in which the claim for relief is pending the sum to be paid to the secretary of state as a fee for each of the defendants for whom the secretary of state is to receive service, then the judge shall mail to the secretary of state the original summons, one copy each of the summons and the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service.

(b) Service on the secretary of state is sufficient personal service upon the person to be served, provided that notice of the service and a copy of the summons and complaint are sent

by certified mail by the secretary of state or deputy to the party to be served at the party's last-known address, marked "deliver to addressee only" and "return receipt requested", and provided further that the return receipt is received by the secretary of state and purports to have been signed by the addressee or the secretary of state is advised by the post office that delivery of the certified mail was refused by the addressee, except in those cases where compliance is excused under the provisions of Rule 4D(2)(c). The date the secretary of state receives the return receipt or receives advice by the post office that delivery of the certified mail was refused by the addressee is considered the date of service. As an alternative to sending the summons and complaint by certified mail, the secretary of state or deputy may cause a copy of the summons and complaint to be served by a qualified law enforcement officer, in accordance with the procedure set out in Rule 4D(1), (2), or (3).

(c) (i) The secretary of state or deputy shall make an original and two copies of an affidavit reciting:

(A) the fact of service upon the secretary of state by the justice or city court, including the day and hour of the service;

(B) the fact that a copy of the summons and complaint and notice has been mailed to the defendant, including the day and hour of the mailing, except in those cases where the secretary of state is relieved from doing so under the provisions of Rule 4D(2)(c), in which case the affidavit must so state; and

(C) the fact of the receipt of a return from the post office, including the date and hour of receipt, with a copy of the return to be attached to the affidavit.

(ii) The secretary of state or deputy shall then transmit the original summons and the original affidavit, along with a copy of the notice to the defendant if a notice is required, to the justice or city court in which the claim for relief is pending, where it must be filed in the claim for relief by the judge. The secretary of state shall also transmit to the attorney for the plaintiff a copy of the affidavit of the secretary of state, along with a copy of the notice to the defendant if a notice is required.

(iii) The secretary of state shall keep on file in the office a copy of the summons, a copy of the affidavit served on the secretary of state by the judge, and a copy of the affidavit executed and issued by the secretary of state.

(6) Continuance to allow defense. In any of the cases provided for in Rule 4D(2)(c), the court in which the claim for relief is pending may order a continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it considers just, the court may allow any process or proof of service to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process was issued.

(8) Proof of service.

(a) Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(i) if served by a constable or other officer, a certificate of service; or

(ii) if served by any other person, an affidavit of service; and

(iii) the written admission of the defendant showing the date and place of service.

(b) The certificate or affidavit of service mentioned in subsection (8)(a) must state the time, date, place, and manner of service.

(9) Contents of affidavit of service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff, constable, or person designated

by law, the affidavit of service must state:

- (a) that the person so serving is of legal age;
- (b) the date and place of service; and
- (c) that the person making the service knew the person served to be the person named and intended to be served.

(10) Procedure where only some of defendants served. If the summons is not served on all of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served and may at any time thereafter have a summons served against any defendant not served with the first process to cause that defendant to appear in court to show cause why that defendant should not be made a party to the judgment. Upon a defendant being duly served with the process, the court shall hear and determine the matter in the same manner as if the defendant had been originally brought into court, and the defendant must also be allowed the benefit of any payment or satisfaction that may have been made on the judgment before recovered.

Rule 6. Time.

A. COMPUTATION. When the computation of any period of time prescribed or allowed by these rules is by order of a court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run may not be included. The last day of the period so computed must be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

B. EXTENSION. When by these rules, by a notice given under these rules, or by order of a court an act is required or allowed to be done at or within a specified time, the judge for cause shown may extend the period if a motion is made before the expiration of the period originally prescribed or extended by previous permission of the court or after expiration of the specified period if failure to act was the result of excusable neglect.

C. ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do an act or take a proceeding within a prescribed period after service of a notice or other paper and the notice or other paper is served by mail, 3 days must be added to the prescribed period

**Current Statutes & Rules
for
Writs of Execution
and
Post Judgment Execution**

M.C.A. Post Judgment Statutes

Domestic Judgment – District Court – Justice Court

25-13-101. Time limit for issuing execution. (1) The party in whose favor the judgment is given may, at any time within the time period prescribed in 27-2-201(1) and (2), have a writ of execution issued for its enforcement.

(2) When the judgment is for the payment of child support, the party in whose favor the judgment is given may, at any time within 10 years after the termination of the support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, have a writ of execution issued for its enforcement.

25-13-103. Execution after death of a party. Notwithstanding the death of a party after the judgment, execution thereon may be issued or it may be enforced as follows:

(1) In case of the death of the judgment creditor, it may be enforced upon the application of his executor or administrator or successor in interest.

(2) In case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property or the enforcement of a lien thereon, execution may be issued with the same effect as if he were still living.

25-13-201. Judgments for money or the possession of property. When the judgment is for money or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor after the return of an execution against his property unsatisfied in whole or in part.

25-13-202. Judgments requiring the sale of property. When the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment or the material parts thereof and directing the proper officer to execute the judgment by making the sale and applying the proceeds in conformity therewith.

25-13-203. Judgments requiring the performance of specific acts. (1) When the judgment requires the performance of any other act than those designated in 25-13-201 and 25-13-202, a certified copy of the judgment may be served upon the party against whom the same is rendered or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

(2) Where a judgment directs a party to make a deposit or delivery or to convey real property, if the direction is disobeyed, the court, besides punishing the disobedience as a contempt, may by order require the sheriff or levying officer, who may be a registered process server, to take and deposit or deliver the money or other personal property or to convey the real property in conformity with the direction of the court.

25-13-204. Enforcement of order to pay money. Whenever an order for the payment of a sum of money is made by a court or judge pursuant to the provisions of this code, it may be enforced by execution in the same manner as if it were a judgment.

25-13-211. Notification of seizure. (1) After the sheriff or levying officer has executed upon the property of a judgment debtor, a notice of seizure must be served by the sheriff or levying officer upon the judgment debtor within 5 days of seizure. The notification must:

- (a) inform the judgment debtor that certain described property or money of the judgment debtor's was seized to satisfy a judgment against the debtor;
- (b) state the case name, the date of judgment, and the name of the judgment creditor;
- (c) advise the judgment debtor that the judgment debtor may be entitled to claim an exemption from execution on the property as described in part 6 of this chapter or other provisions of state or federal law; and
- (d) state the procedure by which the judgment debtor may claim an exemption and file a request for an exemption hearing.

(2) The notification may be made by personal service or by United States mail, postage prepaid, to the judgment debtor's last-known address. If service is by mail, service is completed on the date the sheriff or levying officer places the notification in the mail.

Note: The Notice of Seizure form shown ON THE FOLLOWING complies with the requirements put forth in M.C.A. 25-13-211. All of the pertinent information regarding the underlying judgment is listed. An accurate description of the property seized is included. Also included is notification of where to locate potential exemptions to which the judgment debtor may be entitled. It also achieves lists the statutory method of claiming an exemption and requesting a hearing.

Since the certificate of mailing is incorporated within the notice of seizure in the form shown below this particular form provides a practical and legally sufficient method for a levying officer to comply with M.C.A. 25-13-211.

25-13-212. Claiming exemption -- process -- time for hearing. (1) To claim an exemption from execution, a judgment debtor shall file a written request for a hearing with the court that issued the execution accompanied by a written statement that describes the property that the judgment debtor claims is exempt and the reasons for the claim that the property is exempt and accompanied by copies of any documentation upon which the judgment debtor is relying for the exemption claim. A copy of the request, statement, and any documentation must be mailed by the judgment debtor on the date of filing to the judgment creditor or the judgment creditor's attorney and to the sheriff or levying officer. The request, statement, and any documentation must be filed within 10 days, excluding weekends and holidays, of the date of:

(a) the judgment debtor's receipt of notification of execution if notification was by personal service; or

(b) the date notification was mailed to the judgment debtor pursuant to 25-13-211(2).

(2) If the judgment debtor does not file the request, statement, and any documentation claiming an exemption within the period provided for in subsection (1), the judgment debtor may not claim an exemption in the seized property.

(3) A court that receives a request for an exemption hearing, along with the statement and any documentation, shall conduct the hearing within 10 days, excluding weekends and holidays, from the date of receipt of the request.

(4) The court shall forward the order determining the judgment debtor's exemption claim to the sheriff or levying officer.

Warrant of Execution

Note: When personal property is to be levied upon and that personal property is located where "a reasonable expectation of privacy" exists, a levying officer cannot enter that location without a "Warrant of Execution".

25-13-213. Warrant of execution -- requirements -- penalties. (1) If there is reason to believe that there is personal property subject to execution that is located in the judgment debtor's residence, the judgment creditor or the judgment creditor's attorney may file an application for a warrant of execution with the court.

(2) The application must be supported by an affidavit from the judgment creditor or the judgment creditor's attorney:

(a) stating that a writ of execution has been issued and returned unsatisfied in whole or in part;

(b) stating that the affiant has reason to believe that there is property subject to execution in the possession of the judgment debtor in the judgment debtor's residence;

(c) stating that there is no other property of the judgment debtor available for levy and execution; and

(d) describing the property sought and the place and the purpose of the execution.

(3) If the judge determines that reasonable cause exists, the judge may issue a warrant of execution authorizing the sheriff or levying officer to enter the residence and levy upon property subject to execution.

(4) A sheriff or levying officer may condition service of a writ of execution and levy on property located in an area other than the judgment debtor's residence upon the judgment creditor's securing a warrant of execution in accordance with subsection (1) when the sheriff or levying officer believes the area is subject to a reasonable expectation of privacy.

Foreign Judgment – Applies to District Court Only

Note: Once filed with the clerk of district court, the execution statutes for a Foreign Judgment are the same as the statutes for a domestic judgment with the notable exception that proceeds must be held by the levying officer for at least 30 days after the notice of filing was mailed to the judgment debtor.

25-9-503. Filing and status of foreign judgments. A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

25-9-502. Definition. In this part, "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

25-9-504. Notice of filing. (1) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall file with the clerk of the court an affidavit setting forth the name and last-known post-office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable, and the extent to which it has been satisfied.

(2) Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on his behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to his attorney of record, if any, each at his last-known address, by certified mail, return receipt requested. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed.

(3) The proceeds of an execution may not be distributed to the judgment creditor earlier than 30 days after the date of mailing the notice of filing.

Post Judgment Execution

Statutes & Rules

Post Judgment Execution -- District Court – Justice Court

Note: The following statutes govern post judgment execution in both district court and justice court. When the writ of execution is used for a commercial garnishment the priority of the district court writ and the justice court writ is equal. Once served, the factor governing the priority of two writs against the same debtor would be the date and time the levying officer served the writs

25-13-301. Form and contents of writ. (1) The writ of execution must:

(a) be issued in the name of the state of Montana, sealed with the seal of the court, and subscribed by the clerk;

(b) be directed to the sheriff or levying officer;

(c) intelligibly refer to the judgment, stating the court and the county where it was entered and, if it is for money, the amount of money and the amount actually due on the judgment; and

(d) require the sheriff or levying officer to act substantially as provided in this part.

(2) In executions, the amount of the execution must be computed and stated as near as may be possible in dollars and cents, rejecting fractions of a cent.

(3) A writ of execution served upon an employer of the judgment debtor must be accompanied by a document that reasonably describes the exemptions from execution provided in 25-13-614.

(4) A notice of levy must contain information sufficient to identify the judgment debtor. If the information is not sufficient to identify the judgment debtor, the writ of execution must be returned to the sheriff or levying officer. If the writ of execution is returned to the sheriff or levying officer for lack of sufficient information, the person returning the writ of execution shall indicate that the information provided was not sufficient to identify the judgment debtor.

Note: The next page contains a “Sample Form” of a “Notice of Levy”

- *The notice of levy form that follows complies with the notice of levy requirements put forth in M.C.A. 25-13-301 (3) and (4).*
- *The notice of levy provides both the formula for calculating the amount of wages that is exempt from levy in accordance with M.C.A. 25-13-602.*
- *The notice of levy also provides sufficient information to identify the judgment debtor.*

SAMPLE FORM ONLY

IN THE _____ COURT OF THE STATE OF MONTANA IN THE COUNTY OF _____

	-vs-		NOTICE of LEVY
Plaintiff			Case No. _____
Defendant(s)			

Please Take Note that this levy is in effect from today through the Expiration Date of: DATE

INSERT EMPLOYERS NAME must garnishee wages, salary, tips, bonus, commissions, contract funds, etc. of the following employee/s:

Insert the DEFENDANT(s) NAME(s)

Identifying information of the Insert the DEFENDANT(s) NAME(s):

Social Security #: Insert Defendant(s) Social Security Number(s)

Defendants Mailing address: STREET CITY STATE ZIP

The amount to be levied will include:

- a. Total Judgment plus interest since the writ was issued\$ AMOUNT
 b. Plus the costs of additional services already performed....\$ FEES
 c. **TOTAL AMOUNT NOW DUE**.....\$ **TOTAL**

To calculate the garnishment:

- Use the Payroll Test Formula below to verify that a deduction can be made and to calculate the exact amount of each deduction.
- The accrued costs for all prior services have already been inserted in judgment amount.
- Use the correct exempt amount based on your normal payroll schedule

FOR EACH & EVERY PAYROLL CALCULATE THIS TEST FORMULA:

- | | |
|---|---|
| 1. _____ TOTAL EARNINGS | 2. _____ DISPOSABLE EARNINGS |
| _____ MINUS FED TAX | 4. _____ MINUS TEST AMOUNT (4a, 4b, 4c, 4d) |
| _____ MINUS STATE TAX | 4a. \$217.50 weekly payroll |
| _____ MINUS FICA | 4b. \$435.00 bi weekly payroll |
| | 4c. \$471.25 semi monthly payroll |
| 2. _____ DISPOSABLE EARNINGS | 4d. \$942.50 monthly payroll |
| 3. _____ 25% OF LINE # 2 | 5. _____ LINE 2 MINUS LINE 4 |
| 6.\$_____ Compare line 3 with line 5, ENTER the lesser of the two. | |
| 7.\$_____ Enter amount of child support or student loan garnishment | |
| 8.\$_____ Subtract line 7 from line 6, enter result here. | |

25-13-302. Execution against principal debtor before surety. Upon the rendition of any judgment, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the said defendants are sureties of such principal debtor, the court may order the judgment so to state, and upon the issuance of an execution upon such judgment, it shall direct the sheriff or levying officer to make the amount due thereon out of the goods and chattels, lands and tenements of the principal debtor or debtors or, if sufficient thereof cannot be found within his county to satisfy the same, to levy and make the same out of the property, personal or real, of the judgment debtor who was surety.

25-13-303. Execution when only some of defendants served. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons or did not appear, it must direct the sheriff or levying officer to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action.

25-13-304. Execution against property of judgment debtor. If the writ be against the property of the judgment debtor, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the personal property of such debtor and, if sufficient personal property cannot be found, out of his real property as provided in 25-13-305.

25-13-305. Execution of lien on real property. If the judgment be a lien upon real property, the writ shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the real property belonging to the judgment debtor on the day when the judgment was docketed or at any time thereafter or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the clerk of the district court of such county, stating such day, or any time thereafter.

25-13-306. Execution against property in hands of representative. If the writ be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of such property.

25-13-307. Execution requiring delivery of possession of property. If the writ be for the delivery of the possession of real or personal property, it must require the sheriff or levying officer to deliver the possession of the same, particularly describing it, to the party entitled thereto and may at any time require the sheriff or levying officer to satisfy any costs, damages, rents, or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, the value of the property for which the judgment was rendered to be specified therein, if a delivery cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in 25-13-305.

25-13-308. Execution against person of judgment debtor. If the writ be against the person of the judgment debtor, it must require the sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged, according to law.

25-13-401. To whom execution issued. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff or levying officer of any county in the state. Where it requires the delivery of real or personal property, it must be issued to the sheriff or levying officer of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties.

25-13-402. How writ executed. (1) (a) The sheriff or levying officer shall, subject to subsections (6) and (7), execute the writ against the property of the judgment debtor not later than 120 days after receipt of the writ by:

- (i) levying on a sufficient amount of property if there is sufficient property;
- (ii) collecting or selling the things in action; and
- (iii) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the third party or upon a department or person designated by the third party or by serving the writ by mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer or supervising employee of the third party or to a department or person designated by the third party. Service may be mailed out of state, at the direction of the third party, if the third party processes garnishments or levies from a location outside the state. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ is required to forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ must be considered served on the date and time that the writ is received by the officer, supervising employee, or designee of the third party, but not later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

(6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ. Earnings withheld from a judgment debtor must be remitted to the sheriff or levying officer within 5 days of the day the earnings are withheld.

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection (8), multiple levies served under this subsection (6) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(7) A levy upon a state tax refund or any other funds that are due to the judgment debtor from a Montana state agency continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to any funds due on or after the date of service through the expiration of the writ. Payment of funds withheld from a judgment debtor must be remitted to the sheriff or levying officer within 10 days of the date the funds would have been sent to the judgment debtor in the normal course of business. Any levy on state funds is subordinate to the department of revenue's right of offset for delinquent taxes or other debt as provided in 15-30-149, 15-30-310, 15-31-404, 15-36-315, 15-39-106, 15-39-109, 15-68-516, 15-70-110, 15-72-113, Title 17, chapter 4, and 39-51-1307.

(8) This section is not intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions.

25-13-403. Security for costs when property seized. If the sheriff or levying officer will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of execution shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

25-13-404. Return of the execution. (1) Except as provided in 25-13-402(6) and subsection (3) of this section, execution may be made returnable to the clerk of the court in which the judgment was rendered, at any time not less than 10 or more than 120 days after receipt of the recovery by the sheriff or levying officer following imposition of levy, as provided in 25-13-402.

(2) The writ of execution issued by the county treasurer under 15-16-401 may be made returnable, at any time not less than 10 or more than 120 days after its receipt by the sheriff, to the county treasurer of the county in which the writ was issued.

(3) In compliance with the provisions of subsection (1) and in lieu of returning the writ of execution to the clerk of the court, the sheriff may enclose the return of the writ in an

envelope to the officer, agent, or attorney who sent it and deposit it in the post office, prepaying the postage.

25-13-405. Clerk to record returned execution when levy on real property. If any real estate be levied upon, the clerk must record the execution and the return thereto at large and certify the same under his hand as true copies in a book to be called the "execution book", which must be indexed, with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public, without charge. It is evidence of the contents of the originals whenever they or any part thereof may be destroyed or mutilated.

25-13-501. What property subject to execution. All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action are liable to execution. Shares and interest in any corporation or company, debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery may be attached on execution, in like manner as upon writs of attachment. Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property is not affected by the execution.

25-13-502. Debts owed to judgment debtor. After the issuing of an execution against property and before its return, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt or so much thereof as may be necessary to satisfy the execution; and the sheriff's receipt is sufficient discharge for the amount so paid.

25-13-503. Property claimed by third persons. If personal property levied upon be claimed by a third person, the same proceedings shall be had as provided in attachment in 27-18-602.

27-18-602. Claim of attached property by third person -- plaintiff to indemnify sheriff. If personal property attached be claimed by a third person, he shall give notice thereof to the sheriff and deliver to him an affidavit, stating his claim, ownership, and a description of the property; and unless the plaintiff, within 10 days after receiving notice thereof, give the sheriff a good and sufficient bond to indemnify him against loss or damage by reason of such retaining said property, the sheriff shall deliver the same to such person.

25-13-504. Garnishment of public officers. The provisions of 27-18-406, relating to the garnishment of public officers, apply to the levy of an execution.

27-18-406. Money, credits, or other property in control of public officer or board. Money, credits, or other property belonging to or due and owing to another, in the possession of or under the control of a public officer or board, including all officers or boards of a county, municipal corporation, and school district or state board or state government, may be attached or garnished while in such possession or under such control by making service, as provided in this part, upon the clerk of the county or chairman of the board of county

commissioners, the city clerk or mayor of a municipal corporation, or the clerk of the board of school trustees or chairman of such board, as the case may be.

25-13-505. Personal property subject to a security interest. Personal property subject to a security interest may be taken on execution issued at the suit of a creditor of the debtor under the security agreement; but before the property is so taken, the officer levying the writ must pay or tender to the secured party the amount of the security agreement debt and interest or must deposit the same with the county treasurer of the county in which the financing statement covering the security agreement is filed, if such statement is filed with a county clerk and recorder, or if such statement is filed with another filing officer pursuant to law, then with such other filing officer, payable to the order of the secured party.

25-13-506. Duty of secured party. (1) The secured party under any security agreement of record shall, upon 15 days' notice in writing served upon him in person by any creditor of the debtor seeking to satisfy a judgment of such creditor against the debtor, be required to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party; and such affidavit shall state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments of whatsoever kind, whether on principal or interest, made by the debtor to the date of the execution of such affidavit by the secured party, and the balance then remaining due and unpaid to the secured party. If within 15 days from the service of any such demand in writing on the secured party by any creditor of the debtor, the secured party shall fail, refuse, or neglect to file the affidavit herein required, the security agreement shall be of no force or effect as against such creditor upon the seizure of any such personal property on execution.

(2) In the event the amount shown to be due is paid to the county treasurer or to a filing officer, as aforesaid, or to the secured party in satisfaction of the security agreement by any execution creditor against the debtor, the secured party shall be required to surrender to the county treasurer or such filing officer the security agreement and any note or other evidence of indebtedness secured thereby, which security agreement or other evidence of indebtedness shall be delivered by the secured party, county treasurer, or filing officer to the execution creditor.

Post Judgment Execution -- Justice Court Only

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 or CITY JUDGE

)		
)		Case No.
Plaintiff)		
vs.)		WRIT OF 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 \$.....
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".

Property Exempt by Statute

Note: The exemption statutes listed under title 25 of M.C.A. are not all inclusive. Other titles of M.C.A. contain exemptions specific to that title and the Code of Federal Regulations contain exemptions not listed here as well.

25-13-601. Waiver of exemptions in unsecured note unenforceable. Any waiver of statutory exemption from execution in an unsecured promissory note shall be unenforceable.

25-13-606. Protection of property of residents. A resident of this state is entitled to the exemptions provided in this part.

25-13-607. Claim enforceable against exempt property. Notwithstanding any other provision of this part, a creditor may levy against exempt property to enforce a claim for:

- (1) the purchase price of the property; or
- (2) a loan made for the express purpose of enabling the judgment debtor to purchase the property and used for that purpose.

25-13-608. Property exempt without limitation -- exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

- (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) veterans' 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 U.S.C. 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 U.S.C. 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 the 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; and
 - (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 unmaturred 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 is for:
- (a) child support; or
 - (b) maintenance to be paid to a spouse or former spouse.

25-13-609. Personal property exempt subject to value limitations. 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.

25-13-610. Tracing exempt personal property. (1) If money or other property exempt under 25-13-608 and 25-13-609 has been sold or has been lost, damaged, or destroyed and the judgment debtor has been indemnified for it, he is entitled for 6 months to an exemption of proceeds that are traceable (for example, 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 (for example, in a bank or savings account).

(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

25-13-613. Property necessary to carry out governmental functions. (1) In addition to the property mentioned in 25-13-609(1), the following property is exempt from all judgment debtors:

(a) all necessary firefighting equipment and facilities of a governmental fire agency organized under Title 7, chapter 33;

(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;

(c) all courthouses, jails, public offices, and buildings, lots, grounds, and personal property and the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state; and

(d) all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds owned or held by any town or incorporated city or dedicated by a city or town to health, ornament, or public use or for the use of any fire or military company organized under the laws of the state.

(2) The property listed in this section is not exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien on the property, and a person who is not a resident of this state is not entitled to these exemptions.

Earnings of the Judgment Debtor

Note: Montana's exemption for earnings is based on thirty times the federal minimum hourly wage not Montana's minimum hourly wage.

25-13-614. Earnings of judgment debtor. (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 his 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 his 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 earnings for that week if he is supporting his 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 he is not supporting a spouse or dependent child described in subsection (4)(a)(i).

(b) 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 such 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 such workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672.

25-13-615. Homestead. The homestead of a judgment debtor exempt from execution is provided for in Title 70, chapter 32.

Sale of Levied Property

Note: M.C.A. 25-23-402 gives the levying officer the authority to sell property he has levied upon, but the statutes do not provide a method for selling the property. The accepted practice to sell levied property is to do so in the same fashion as a "Sheriff Sale". The current M.C.A. 25-13-701 through 25-13-714 statutes that describe the sale procedure are listed below for reference. The sale of real property is far more complex than the sale of personal property. Several of the statutes between M.C.A. 25-13-801 and 25-13-821 help clarify the procedure and are also listed below.

25-13-701. Notice of sale on execution. (1) Before the sale of the property on execution, notice must be given as follows:

(a) in case of perishable property, by posting written notice of the time and place of the sale in three public places in the county where the sale is to take place for a time that is reasonable considering the character and condition of the property;

(b) in case of other personal property, by posting a similar notice in three public places in the county where the sale is to take place for not less than 5 days or more than 10 days and by publishing a copy of the notice at least 1 week before the sale in a newspaper of general circulation published in the county if there is one;

(c) in case of real property, by posting a similar notice, particularly describing the property, for 20 days in three public places in the county where the property is situated and also where the property is to be sold, which may be either at the courthouse or on the premises, and publishing a copy of the notice once a week for the same period in some newspaper published in the county if there is one. The notice must be substantially as follows:

Form for Sheriff's Sale from M.C.A.

SHERIFF'S SALE

....., Plaintiff,

vs.

....., Defendant,

To be sold at sheriff's sale on the day of, 20..., at

(Here insert brief description of property.)

Signed, Sheriff

(2) Any sheriff publishing a notice that is not in accordance with the form set forth in

subsection (1)(c) and that costs more than that notice is not entitled to any costs for publication of the notice but is personally liable for the payment of the publication.

25-13-702. Penalty for selling without notice or destruction of notice. An officer selling without the notice prescribed by 25-13-701 forfeits \$500 to the aggrieved party in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or satisfaction of the judgment (if the judgment be satisfied before sale), forfeits \$500.

25-13-703. Postponement of sale. Good cause therefor appearing, the officer holding the execution may postpone any sale noticed thereunder for a period not exceeding 15 days, by public proclamation at the time and place fixed in the notice of sale and by posting a notice in three public places in the township where the property has previously been noticed to be sold.

25-13-704. Conduct of sale. (1) All sales of property under execution must be made at auction to the highest bidder, between the hours of 9 a.m. and 5 p.m. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser or be interested in any purchase at such sale.

(2) When the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property consisting of several known lots or parcels, they must be sold separately, or when a portion of such real property is claimed by a third person and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold when such property consists of several known lots or parcels or of articles which can be sold to advantage separately, and the sheriff must follow such directions.

25-13-705. Procedure when purchaser refuses to pay. If a purchaser refuses to pay the amount bid by him for the property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction, and the person refusing to pay the costs which have accrued by reason of his bid shall be deemed guilty of contempt of court and punished accordingly.

25-13-706. Rejection of subsequent bids after refusal to pay. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such purchaser.

25-13-707. Liability of officer after resale. Sections 25-13-705 and 25-13-706 must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser refusing to pay.

25-13-708. Conveyance of personal property capable of manual delivery. When the purchaser of any personal property capable of manual delivery pays the purchase price, the

officer making the sale shall deliver to the purchaser the property and, if desired, execute and deliver to the purchaser a certificate of sale. The certificate conveys to the purchaser all rights that the debtor had in the property on the day the execution or attachment was levied.

25-13-709. Conveyance of personal property not capable of manual delivery. When the purchaser of any personal property not capable of manual delivery pays the purchase price, the officer making the sale shall execute and deliver to the purchaser a certificate of sale. The certificate conveys to the purchaser all rights that the debtor had in the property on the day the execution or attachment was levied.

25-13-710. Real property -- what interest transferred. Upon a sale of real property, the purchaser is substituted to and acquires the right, title, interest, and claim of the judgment debtor thereto; and when the estate is less than a leasehold of 2 years' unexpired term, the sale is absolute. In all other cases, the property is subject to redemption, as provided in part 8 of this chapter.

25-13-711. Real property -- certificate of sale. (1) Upon a sale of real property, the officer must give to the purchaser a certificate of sale, containing:

- (a) a particular description of the property sold;
- (b) the price bid for each distinct lot or parcel;
- (c) the whole price paid;

(d) when subject to redemption, a statement to that effect. (2) A duplicate of such certificate must be filed by the officer in the office of the county clerk.

25-13-712. Property subject to a security interest -- disposition of proceeds, security agreement. (1) When the property taken under 25-13-505 is sold under process, the officer levying the writ must apply the proceeds of the sale as follows:

(a) to the repayment of the sum paid to the secured party, with interest from the date of such payment; and

(b) the balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

(2) In the event the property is sold under execution, such creditor shall be required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured party when the property is sold for the amount of the indebtedness under the security agreement or an amount in excess thereof.

25-13-713. Procedure when sale invalidated, revival of judgment. (1) If the purchaser of real property sold on execution or his successor in interest be evicted therefrom in consequence of irregularities in the proceedings concerning the sale or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor.

(2) If the purchaser of property at sheriff's sale or his successor in interest fail to recover possession in consequence of irregularity in the proceedings concerning the sale or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at

the same rate that the original judgment bore. When so revived, the said judgment shall have the same effect as an original judgment of the said court of that date, bearing interest as aforesaid; and any other or after-acquired property, rents, issues, or profits of the said debtor shall be liable to levy and sale under execution in satisfaction of such debt, but no property of such debtor sold bona fide before the filing of such petition shall be subject to the lien of said judgment. The notice of the filing of such petition shall be made by filing a notice thereof in the office of the county clerk where such property may be situated, and said judgment shall be revived in the name of the original plaintiff or plaintiffs for the use of said petitioner, the party in interest.

Redemption of Real Property sold by Execution

25-13-801. Who may redeem. (1) Property sold subject to redemption, as provided by 25-13-710, or any part sold separately may be redeemed in the manner hereinafter provided by the following persons or their successors in interest:

(a) the judgment debtor, the judgment debtor's spouse, or his successor in interest in the whole or any part of the property and, if the judgment debtor or successor be a corporation, a stockholder thereof;

(b) a creditor having a lien by judgment, mortgage, or attachment on the property sold or on some share or part thereof subsequent to that on which the property is sold. If a corporation be such creditor, then any stockholder thereof may redeem.

(2) The persons mentioned in subsection (1)(b) of this section are, in this part, termed "redemptioners".

25-13-802. Time for redemption -- amount to be paid. The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser:

(1) the amount of his purchase with interest at a rate established by the judgment in the action that led to the execution sale, up to the time of redemption;

(2) the amount of any assessment or taxes which the purchaser may have paid thereon after purchase and interest on such amount;

(3) the amount of any repairs, maintenance expenses, or other expenditures that the purchaser may reasonably have made after purchase for the maintenance of the property, with interest on the amounts from the date of expenditure; and

(4) if the purchaser is also a creditor having a prior lien to that of the redemptioner other than the judgment under which such purchase was made, the amount of such lien with interest.

25-13-804. Redemption by stockholder or corporation. (1) If a stockholder of a corporation redeems, the corporation, within 1 year after the date of sale, may redeem by paying to the redemptioner or the sheriff for his benefit the amount paid to effect the redemption, with interest thereon at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon.

(2) When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption and within 60 days after the expiration of 1 year from the date of sale, contribute to the redemption by paying to the redeeming stockholder or depositing with the sheriff for his benefit a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate established by the judgment in the action that led to the execution sale, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest thereon; and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed and shall succeed to the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit setting forth the number of shares of stock owned by him and, to the best of his knowledge, the number of shares of stock of the corporation outstanding.

25-13-805. Redemption by debtor from spouse. If the spouse of a judgment debtor redeem, the judgment debtor, within 1 year after the date of sale, may redeem by paying the spouse or the spouse's successors in interest or the sheriff for the benefit of the spouse or the successors in interest of the spouse the amount paid to effect the redemption, with interest thereon at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the spouse or the successors in interest of the spouse, with like interest thereon.

25-13-806. Notice of redemption, liens, and taxes and assessments paid. Written notice of redemption must be given to the sheriff and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk, and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien.

25-13-807. Papers redemptioner must produce. A redemptioner must produce, to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

(1) a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or by the clerk of the district court in the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the county clerk; or if upon an attachment, a copy of the affidavit of attachment, certified by the clerk of the district court;

(2) a copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto;

(3) an affidavit by himself or his agent showing the amount then actually due upon the lien.

25-13-808. To whom redemption money paid. The payment mentioned in 25-13-802 through 25-13-806 may be made to the purchaser or redemptioner, as the case may be, or for him to the officer who made the sale or, in case his term of office has expired, to his successor in office.

25-13-810. When purchaser entitled to conveyance. If no redemption be made within 1 year after the sale, the purchaser or his assignee is entitled to a conveyance; or if so redeemed, whenever 60 days have elapsed and no other redemption has been made and notice thereof given and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of 1 year from the date of the sale to redeem the property.

25-13-811. Who to execute conveyance. In all cases when, under the provisions of this chapter, a purchaser of property at execution sale shall be entitled to a conveyance of the same, such conveyance shall be executed to him by the officer who made the sale if he still be in office, but in the case the officer who made such sale is not in office at the time the purchaser may be entitled to such conveyance, then the conveyance shall be executed by his successor in office.

Municipal Court Rules and Statutes

25-30-101. Applicability of district court and justice's court rules. (1) The provisions of 3-10-222, 3-10-231 through 3-10-234, and 3-10-704 through 3-10-706; 25-31-102(2), 25-31-115, 25-31-402, 25-31-405, parts 7 through 11 of chapter 31 of this title (except 25-31-1002), and chapter 33 of this title; and chapter 9, part 10 of chapter 16, chapter 17, and part 15 of chapter 18 of Title 27 are applicable to municipal courts except when they are inconsistent with the provisions of this chapter and chapter 6 of Title 3, the words "municipal court" being substituted for justice's court and "judge" for justice of the peace.

(2) Except as otherwise provided by this chapter, chapter 6 of Title 3, and the supreme court's rules on disqualification of judges, the proceedings and practice in municipal court must be the same as in district court.

Small Claims Court Procedure

Note: A small claims complaint and order can only be served within the county the case was filed.

25-35-502. Jurisdiction. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed \$3,000, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) The small claims court has jurisdiction over an interpleader under 25-35-508 in which the amount claimed does not exceed \$3,000.

Legal Documents & Legal Terms Defined

Documents & Terms Defined

Affidavit -An affidavit is a written or printed declaration or statement of facts, made voluntarily, and confirmed by oath or affirmation of the party making it, taken before a person having the authority to administer an oath or affirmation, such as a Notary Public. (*Black's Law Dictionary.*) Occasionally, the term is used interchangeably with the term **declaration**.

An affidavit customarily is a statement or declaration, sworn to before a Notary Public and notarized. The certification of the Notary Public is a jurat, as distinguished from an acknowledgment. The jurat is recognized by the words "Sworn to before me, a Notary Public, on [date], at [the place where the affidavit is sworn to, signed and Notarized.]

The most common affidavit a process server would see is one he or she signs, such as an Affidavit for Service, especially services originating from out of state. Because the Affidavit of Service is sworn to by the process server, it should be completed, sworn to and signed in the presence of a Notary Public.

Brief – A written statement arguing a point in a case. Usually a summary or a condensed statement made in support of a Motion.

Complaint - The initial pleading in Montana in which an action is commenced, and sets forth a claim for relief. [*Black's Law Dictionary*]. The filing of the complaint is a charge against a defendant or several defendants and sets forth a cause or causes of actions against them. It may specify how the defendants are culpable, and will set forth the claim for damages sought. The filing of the complaint does not give the court jurisdiction over the defendant or defendants.

Complaint & Order – Common terms given to a small claims filing in which the Small Claims Court sets a date and time for the initial appearance of both parties in an action.

Certificate of Service – A term given to the return of service filed with the court by a sheriff or a registered process server in which the written statement and signature of the sheriff or registered process server that does not require a notary.

Declaration - An unsworn statement or narrative of facts made by an attorney, a party, a witness, or a person having an interest to assert facts or representations. A declaration is customarily one made under penalty of rather than sworn to before a Notary Public, but serves a similar function. [See Affidavit.]

Interrogatories – A series of written questions sent or served to a party in an action during the discovery period of a civil action.

Motion – An oral or written application made to a court to obtain a ruling in regards to some aspect of a case. When submitted in writing a motion will frequently be accompanied by a brief in support of the motion.

Notice to Pay Rent or Quit -A notice to a tenant of a rental property, informing him or her that the rent, or a portion of the rent, is due. Service on the tenant directs the tenant in writing that the rent is due, usually within three days after the date of service, and that if the rent is not paid, the tenant is requested to "quit" (leave) the premises.

If the rent is not paid in the days specified in the notice, the owner of the premises may file a complaint for "Unlawful Detainer."

The following are variations of this type of notice: Notice to Pay or Quit, Notice to Pay Rent or Surrender Possession, Notice to Pay Rent or Surrender Possession of the Premises. The title of the notice may specify the days the notice is giving, such as Three Day Notice to Pay Rent or Quit.

There are other types of notices to tenants that satisfy a variety of alternative legal requirements. A Notice to Cure or Quit would give the tenant notice that he or she is in breach of a covenant, and if the tenant does not cure the breach, he or she will be requested to leave.

A Notice to Perform or Quit would give the tenant notice to perform an act required under the rental agreement. For instance, the agreement may require that the tenant give the landlord evidence of premises liability insurance.

A Notice to Inspect the Premises gives the tenant notice that the landlord will be entering and inspecting the premises on a particular date and time.

Notice to Quit - This notice is given to tenants to terminate the tenancy of the premises. The notice states that at the end of a specified date, usually thirty days, the tenancy is terminated and directs that the tenant must move out. Alternative titles of this document are Notice to Terminate Tenancy or Termination Notice, or Thirty Day Notice to Quit.

Order for Appearance of Judgment Debtor - Upon application of the plaintiff to testify as to the location and amount of assets he or she has available to satisfy the judgment. The order, once served, places a lien on all of the judgment debtor's assets until the judgment is paid.

Process servers commonly refer to this document as a 'Debtors Exam'. Since this is a court order that compels a personal appearance of the judgment debtor, disobedience of the order by not appearing could subject the judgment debtor to a citation of contempt, and ultimately lead to an arrest.

Order to Show Cause -An order [...] to appear as directed, and present to the court such reasons or considerations as one has to offer why a particular order should not be confirmed, take effect or be executed. [*Black's Law Dictionary*].

The order customarily does not hold the person in contempt if he or she does not appear at court to "show cause," but disobedience of the directives in the order could bring the person into contempt.

Petition - A formal, written application to a court to a court requesting judicial action on a certain matter. [*Black's Law Dictionary*].

A petition for dissolution of marriage is the initial document filed in a divorce action and is similar to a complaint in a civil action

Preliminary Injunction - An interlocutory injunction issued after notice and hearing which restrains a party pending trial on the merits. [It is] [a] procedural device [...] which is designed to preserve the existing status of the litigants until a determination can be made on the merits of the controversy. [*Black's Law Dictionary*.]

Proof of Service - A declaration signed under penalty of by the process server or the person who served a document stating the date, time and manner of service, and the documents served. A proof of service also may be in the form of an affidavit, sworn to before a Notary Public.

Restraining Order or Temporary Restraining Order - An order in the nature of an injunction, [prohibiting and] forbidding the defendant to do the threatened act until a hearing on the application [for the order] can be obtained. [This order] is distinguishable from an injunction, in that the [restraining order] is intended only as a restraint until the propriety of granting an injunction can be determined. [*Black's Law Dictionary*.]

Signed – Includes any symbol executed or adopted by a party with present intention to authenticate a writing. U.C.C. 1-201(43) [*Black Law Dictionary*]

Subpoena - A command to appear at a certain time and place to give testimony as a witness. [*Black's Law Dictionary*.]

The witness is compelled to attend or respond to the subpoena on the date and time stated and may be subject to a citation for contempt if he or she does not appear. Subpoenas may be issued by a clerk of the court, a judge, or by an attorney of record.

Subpoena Duces Tecum -A command to appear at a certain time and place to give testimony as a witness. *Duces Tecum* is Latin and roughly defined as "to bring with", indicating that the subpoena requires the witness to bring or produce documents

designated and described in the Subpoena or an attachment.

Summons - A writ of process [issued by the clerk of the court and served on the defendant], notify[ing] the person named that an action has been commenced against him in the court from where the process issues, and that he is required to appear [...] and answer the complaint in such action. [*Black's Law Dictionary.*]

Writ - A writ is a written order of a judge requiring specific action by the person or entity to whom the writ is directed.

Writ of Attachment - A writ employed to enforce obedience to an order [...] of the court. [*Black's Law Dictionary.*]

A writ of attachment is a document issued under the authority of a court order (Right to Attach Order), directing the levying officer to serve and attach and encumber assets of the defendant to ensure that the assets will be available if the plaintiff prevails at trial. A variety of methods of attachment are available to the plaintiff and may involve registered process servers.

Writ of Execution - A writ to put in force the judgment or decree of a court. [Black's Law Dictionary.]

A writ of execution is a document issued directing the levying office to serve and take the assets of the judgment debtor. There are a variety of methods of levy available to a judgment creditor and may involve registered process servers.

Suggestions for Process Servers

Suggestions for Process Servers

What to Do Before Service

- Service and documents should be previewed before starting out to serve them.
- Know the laws regarding the service you are about to perform.
- Read the documents to know the general nature of the suit.
- Know who you are serving: Is the name of the defendant or the person you are serving on the documents? Do you know the name of the agent for service a corporate officer?
- Are the capacity notices checked correctly?
- Will service be timely?
- Are the copies properly conformed?
- Preview information provided.
- Are all of the documents included that are referred to in the instructions provided?
- Are any documents missing?
- Are there any documents included that are not referred to or listed in the instructions?
- Are there special instructions, such as suggested days and times, descriptions, habits, and cars?
- Do the instructions correspond to the documents being served and comply with the rules and laws of service?
- **MAKE SURE YOU HAVE THE PAPERS WITH YOU BEFORE YOU LEAVE!!!**
- The server's vehicle should be checked before beginning service.
- Make sure your car is in good working condition.
- Do you have enough gas?
- Do you have a spare tire?
- Do your lights work properly?

- Do you have enough money?
- Do you have an emergency kit for your car?
- Do you have an extra key?
- Is your car currently registered and insured?
- The server's destination should be known before starting service.
- Learn priorities.
- Learn court closing times.
- Learn traffic flows during different times of the day.
- Plan a route before you start. Look it up on a map or Mapquest.com before you start.
- Have a map of the area or plan to get one when you get there.
- Determine whether the address is a business or a home address.

Attempting to Effect Service

- Start observing as you drive.
- Park the car up the street, not right in front of the house and be sure that you have a clear exit.
- Are blinds open on the windows?
- Are lights on?
- Does anyone live there?
- Are there toys or strollers scattered around?
- Are newspapers or mail piling up?
- Are there vehicles parked on or near the property?
- Record any license plates of vehicles parked on or at the property address.
- Record business names on the side of trucks.
- Look for identifying parking stickers.
- Cover or turn face down the papers in your car you are not serving. They ID you as a process server.

- Check the defendant's name on the papers before you go to the door. Have them hidden if possible. If they are hidden, take them out slowly when serving them, especially if they are inside a coat.

During the Act of Service

- Explain the general nature of the document being served.
- Make the service and leave.
- If the person served asks you questions regarding the matter, keep your comments brief. You should not answer a legal question even if you know the answer.
- Keep any comments general in nature, and refer questions to a lawyer or the plaintiff's lawyer that appear on the document.
- Do not cross the threshold of the door to the premises. Stay out of the premises, even if you are invited inside.
- Be aware of the person's demeanor after service.
- Do not make any sudden moves.
- Do not turn your back to the person you are serving. Keep alert and be aware of your surroundings.

If Service is Not Accomplished

- What might be a good time to re-attempt service?
- Does the person live there?
- If so, what is a good time to see him or her?
- What is the name and relation of the person giving you the information?
- Can you verify the information with a neighbor?
- If there is no answer and the address is not confirmed listen for any noise, ie: footsteps, televisions, radios or stereos.
- Observe lighting, shadows, movement, and presence of someone

inside, darkened peek holes.

- Is the house vacant?
- Is it for rent or for sale? Record all relevant observations, dates and times.
- Make a note of the scene to determine changes during the next attempt.
- If the subject is avoiding service then calculate a plan accordingly.
- Is the location in an area where a stakeout could be made?
- Stakeout the location at reasonable times.
- Explain your purpose if neighbors become suspicious. Do so without disclosing the name or address of the person you are serving.
- If someone drives up, or leaves try to be sure it is the subject for service before approaching.
- If you determine that it is the proper person, approach when they are halfway out of the car and halfway to the door. Approach the person with caution and in a non-threatening way so as not to traumatize the person.

Following Service

- Date, time, place of service, description of the person served, statements made, events occurring at the time of service, other relevant factors. Record all relevant information on the service instruction sheet. Write your full name and registration number on all records.
- Give status of the service promptly. If the services relates to a domestic violence or violent situation, notify the appropriate party or parties immediately, including the appropriate law enforcement agency.
- Prepare, sign and deliver a proof of service promptly. If a special

declaration is necessary, prepare, sign and deliver it promptly.

Safety & Defensive Techniques

- Learn to be "Street Wise" while serving papers.
- Develop through practice an ability observe changes.
- Learn to recognize potential hazards.
- Learn to recognize bad or hazardous areas.
- Observe and respect a "Beware of Dog" sign or "Armed Response" warnings. Rattle the gate, wait and listen if you think a dog is present.
- Look for large dog dishes. Plan a retreat if a dog shows up.
- Pack and use strong smelling dog treats.
- Look around as you drive up to the address.
- Make sure it's safe to get out of your car.
- Secure your car when you leave it.
- Turn the remaining documents in the car face down when leaving the car.
- Have a plan for a quick, safe departure.
- Think safety first.
- **The service is never important enough to get hurt over.**