

**\*\*\* WARNING\*\*\***

***The following information is not legal advice. This information is not being provided on behalf of the Montana Courts or any particular Judge. The Judge in your case may require you to change a form or to submit a different one, and you always must follow the Local Rules for the Court where your case is pending. If you have questions about Local Rules, you should contact the local Clerk of Court or the State Law Library Reference Librarian. If you need help filling out your forms or other legal advice, you are strongly urged to contact an attorney.***

## **About Motions**

A Motion is the name of a document that you must file to ask a Judge to make a ruling or to take some other action for you once you have started a lawsuit. **A Motion does not start a lawsuit.** To start a lawsuit, you need to file a Complaint or, in certain family law cases like divorce and parenting plan cases, a Petition. There are only two acceptable ways to communicate with the Judge about your lawsuit once it is started:

- 1) In writing by filing a Motion or responding to a Motion; or
- 2) In person at a hearing scheduled by the Judge, with both sides present.

Because both sides must have an opportunity to speak and let the Judge know how they feel about an issue, you **MUST** provide a copy of all of the paperwork that you file in Court to the opposing party(ies) by either 1st class mail or hand delivery. See Montana Rule of Civil Procedure 5 for more information. Common types of Motions include:

- 1) Motion to Dismiss: This asks the court to throw out a lawsuit filed against you. See Montana Rule of Civil Procedure 12 for more information.
- 2) Motion for a Continuance: This asks the Court to postpone a deadline, such as a hearing date or when a certain paper must be filed in Court.
- 3) Motion for an Interim Order: Asks the Court to enter an Order that will last only until the Judge has a chance to make a final decision on your case (in other words, an Order that will last throughout the lawsuit but not after it is over).
- 4) Motion for Expedited Consideration: This asks the Court to speed up the process and to decide an issue (usually another Motion) on a faster schedule than normal. Motions for Expedited Consideration are not usually granted and should be used only when a true emergency exists. See Frequently Asked Questions below for more information.

When you file a **MOTION**, you start a three-step process known as Motion Practice. See Montana Rule of Civil Procedure 7(b) and Montana Uniform District Court Rule 2. The person who wants the Court to grant the Motion and issue an Order will follow the steps #1 and #3 in this motion packet. The person who does not want the Court to enter the Order will follow step #2.

## **Step #1: Filing a Motion**

To begin the process, you must fill out three forms: a **Motion**, an **Affidavit**, and a proposed **Order**.

**\*\*NOTE:** After you file your Motion, Affidavit, and proposed Order with the Clerk of Court, if the other party files a **RESPONSE** (as defined in Step #2) you are responsible for filing a **REQUEST FOR CONTESTED HEARING**. If the other party does not file a **RESPONSE**, you will file a **REQUEST FOR UNCONTESTED HEARING**. Filing the Request for Hearing is what will move your motion forward to be heard by the Court. Specific information about the Request for Hearing is contained below.**\*\***

All SIX of the following described forms are included for you in this packet. Information regarding the process of filing them is contained on the following page under Motion Instructions.

- A) The **MOTION** tells the Judge what you want and why you should get it. Be sure to tell the Judge all the important facts and to make any argument that helps to support your request for an order. You should tell the Judge what law or laws your Motion is based on. If you are unsure of the law, you should contact the Reference Librarian at the State Law Library for help finding the law that applies to your Motion. You will also tell the Judge what other documents are attached to the Motion and whether you want the Court to hold a hearing on the Motion.
- B) The **AFFIDAVIT** is a statement signed by you which must be filed simultaneously with your Motion. You will be declaring under penalty of perjury that all matters contained in your statement are true and correct. This statement is where you tell the Judge all of the important and relevant facts in support of your Motion. An Affidavit is a form of evidence that the Court can consider when making decisions, just like live testimony in Court and exhibits. Your Affidavit must include only the facts that you know from personal experience.
- C) The proposed **ORDER** is the document that you are asking the Judge to sign. It tells anyone who reads it exactly what the Judge has ordered in very simple, clear terms. It should be short and to the point. Basically, you act like the Judge's secretary – you draft an Order for the Judge to sign so that the Judge does not need to write one. However, the Judge may not like the Order that you have written and as a result the Judge may change your Order or sign a different Order altogether. You MUST submit stamped, self-addressed envelopes for all parties (including yourself) along with your proposed Order.

- D) *If the other party files a **RESPONSE** to your Motion, you have the option of filing a **REPLY TO RESPONSE TO MOTION**. This is your opportunity to respond to the opposing party's response to your Motion.*
- E) The **REQUEST FOR CONTESTED HEARING** or a **REQUEST FOR UNCONTESTED HEARING** is necessary to move your MOTION forward to be heard by the Judge and to obtain a Court Order. As the party who filed the Motion, it is your responsibility to file the Request for Hearing. If the opposing party does not file a Response, the matter is uncontested. If the opposing party files a Response, the matter is contested.
- F) A proposed **ORDER** must also be submitted along with your Request for Contested/Uncontested Hearing. It must be submitted with self-addressed, stamped envelopes to all parties in your case.

### **MOTION INSTRUCTIONS:**

- o You will complete and file the original Motion, the original Affidavit, and the original proposed Order with the Clerk of Court. However, before filing the originals you will need to make copies for all parties, including yourself. Submit the originals to the Clerk of Court. On the same day you must mail or hand-deliver copies of all filed documents to all other parties in your case (**as you indicate in the Certificate of Service**). The proposed Order and all copies of the proposed Order (along with self-addressed stamped envelopes) will be kept by the Court.
- o From that point you will simply wait. If you hand deliver the Motion and Affidavit to the opposing party, they will have 14 days to respond to your Motion and in their **RESPONSE** tell the Judge their side of the story. If you mailed your Motion and Affidavit to the opposing party, they will have an extra 3 days (including Saturdays, Sundays, or holidays) to respond – or in other words 17 days. See **“HOW TO CALCULATE TIME”** in Step #2 below.
- o If the other party files a **RESPONSE** to your Motion go to Step #3. If the other party does not file a **Response** within the time frame as calculated above, you will need to immediately file the **Request for Uncontested Hearing** and the proposed **Order** setting the hearing (along with self-addressed, stamped envelopes for all parties).
- o If you receive an Order scheduling a Contested or Uncontested Hearing, be certain to note the date and time on your calendar as the Judge will expect you to appear and provide testimony. If you fail to appear on the date and time set for the hearing, the Judge may dismiss your MOTION or enter an Order in favor of the opposing party.

## **Step #2: Responding to a Motion**

If you receive a **Motion** from an opposing party, you have the right to respond and tell the Judge whether you agree or disagree with the other side's Motion. If you disagree, you must file a **RESPONSE TO MOTION** within a specific period of time. ***If you do not respond to a Motion on time, the Court may take that to mean that you agree with the Motion.***

### **How to calculate time:** *See also Montana Rule of Civil Procedure 6(a)*

- If the Motion was hand-delivered to you, count the following day as day one and you have up to and including the 14th day to file your Response. Example: if you were hand-delivered a Motion on Tuesday, October 1, 2013, begin counting October 2<sup>nd</sup> as day 1 and forward 14 days. Your Response is due by 5:00 p.m. on October 15<sup>th</sup>. If the date your Response is due falls on a weekend or a Court holiday, you still have until the next business day to file your Response.
- If the Motion was mailed to you, you have 17 days to respond (3 extra days for mailing). Count the day following the date on the Certificate of Service as day 1 and forward and you have up to and including the 17<sup>th</sup> day to file your Response. Example: the Certificate of Mailing states that the Motion was mailed to you on October 1, 2013. Begin counting October 2<sup>nd</sup> as day 1 and your Response is due by 5:00 p.m. on October 18<sup>th</sup>. If the date your Response is due falls on a weekend or a Court holiday, you still have until the next business day to file your Response.

***Note: the counting method and deadlines above may be different if you are filing something other than the documents discussed herein.***

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To properly respond to a **Motion**, you will fill out the following forms: a **RESPONSE TO MOTION** and an **AFFIDAVIT**. Both of those forms are provided in this packet.

- A) The **RESPONSE TO MOTION** tells the Judge what you disagree with in the other side's Motion, Affidavit, and proposed Order; what you would like the Court to do instead; and why you should get what you want. Be sure to tell the Judge all of the important and relevant facts and to make any argument that helps to support your position. You should tell the Judge what law or laws your Response is based on. If you are unsure of the law, you should contact the Reference Librarian at the State Law Library for help finding the law that applies to your Motion. You will also tell the Judge what other documents are attached to your Response.

- B) The **AFFIDAVIT** is a statement signed by you which must be filed along with your Response. You will be declaring under penalty of perjury that all matters contained in your statement are true and correct. This statement is where you tell the Judge all of the important and relevant facts in support of your Response. An Affidavit is a form of evidence that the Court can consider when making decisions, just like live testimony in Court and exhibits. Your Affidavit must include only the facts that you know from personal experience.

**RESPONSE INSTRUCTIONS:**

- o You will complete and file the original Response to Motion and the original Affidavit with the Clerk of Court. **HOWEVER**, before filing the originals you will make copies for all parties, including yourself. Submit the originals to the Clerk of Court. On the same day you must mail or hand-deliver copies of all filed documents to all other parties in your case (as indicated in the Certificate of Service).
- o From that point you simply wait. The opposing party has 14 days to **REPLY** to your Response from the date you hand delivered it to them, or 17 days from the date you mailed your Response to them. See "How to Calculate Time" above.
- o The other party may file a **REPLY** or they may simply file a **REQUEST FOR CONTESTED HEARING**. In either event, you will receive copies of those documents from the other party. If you receive an Order scheduling a contested hearing, be certain to note the date and time on your calendar as the Judge will be expecting you to appear at the hearing and present your side. If you fail to appear, the Judge may enter an Order without hearing your testimony.
- o If the other party fails to file a Reply or a Request for Contested Hearing within the time allowed frame, you may file a **REQUEST FOR CONTESTED HEARING** to move the matter forward and be heard by the Judge. The party who files the Request for Contested Hearing must also submit a proposed Order and stamped, self-addressed envelopes for all parties (including yourself) along with your Request for Contested Hearing.

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***\*\*NOTE: The service requirements may be different if you are filing something other than the documents discussed here.***  
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## **Step #3: Replying to the Response & Filing a Request for Contested Hearing**

If you are the party that filed the Motion, you can file a **Reply** to the Response to Motion if you think it is necessary. Your Reply must be filed within 14 days if the Response was hand delivered to you or within 17 days if the Response was mailed to you. See above "HOW TO CALCULATE TIME" if you have questions.

A Reply is *not* required – **HOWEVER YOU MUST AT THIS TIME FILE THE REQUEST FOR CONTESTED HEARING if the other party has not already done so.**

### **REPLY INSTRUCTIONS:**

- A Reply cannot raise new facts that were not previously discussed by one of the parties, and you cannot file another Affidavit in support of your Motion.
- The Reply should contain only your response to the arguments raised by the opposing party in his/her Response and should not contain completely new arguments.
- You must serve a copy of the Reply on the opposing party (or his/her attorney if the other side has one).
- You must file the Request for Contested Hearing and the proposed Order (along with self-addressed, stamped envelopes for all parties) at this time. If you fail to file the Request for Contested Hearing, your case may not move forward. A copy of the Request for Contested Hearing must be served on the opposing party (or his or her attorney).

## **Frequently Asked Questions about Motion Practice**

### 1) When will the Judge decide my Motion?

There are many factors that affect how long a decision takes, including how complicated the Motion is and how busy the Judge's schedule is.

- If the deadline for filing the Response passes and no Response is filed, the Court will decide the Motion at that time.
- If a Response is filed on time, the Court will wait until after the deadline for filing a Reply passes before scheduling the Contested Hearing or ruling.
- Usually a decision will be issued within a few weeks, or the Court will schedule a Contested Hearing. In that case, there will be no

decision until after the hearing. It may take several weeks to get a hearing set on the Court's calendar. The Judge may issue a decision orally from the bench during your hearing or the Judge may take the matter under advisement and issue a decision in writing later. Again, it may take weeks or even months for a written decision to be issued.

## 2) What if there is an emergency and I need my Motion decided right away?

If a true emergency exists, you can file a Motion for Expedited Consideration of your Motion. If the Judge grants your Motion for Expedited Consideration, it will speed up the process; it does **NOT** prevent the other side from having a chance to tell his/her side of the story, however. Keep in mind that these Motions are rarely granted and you must have a very good reason to file one. Special rules may apply to these Motions for Expedited Consideration. Before you fill out this type of Motion, you should contact the local Clerk of Court for assistance or the State Law Library Reference Librarian for a copy of the Local Rules that apply where your case is filed.

NAME: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_  
(Street or P. O. Box)

\_\_\_\_\_  
(City/State/Zip Code)

PHONE NUMBER: \_\_\_\_\_

MONTANA Justice

COURT, park COUNTY

\_\_\_\_\_  
Petitioner/Plaintiff,

and

\_\_\_\_\_  
Respondent/Defendant.

Cause No.: \_\_\_\_\_

**AFFIDAVIT**

I, \_\_\_\_\_, hereby state as follows:  
(PRINT your name)

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**I DECLARE UNDER PENALTY OF PERJURY AND UNDER THE LAWS OF THE  
STATE OF MONTANA THAT ALL STATEMENTS AND INFORMATION  
CONTAINED IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
*(day) (month) (year)*

\_\_\_\_\_  
YOUR SIGNATURE

\_\_\_\_\_  
PRINT YOUR NAME