

\* \* \* 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.*

## ***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:**

- 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).
- 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.
- 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.
- 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 along with your Request for Contested Hearing.



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[Use additional sheet if necessary.]

I would like a hearing before the Court on this Response.

I have filed the following documents along with this Response:

My Affidavit in support (Also explain why you want a hearing in your Affidavit)

A Request for Contested Hearing with a proposed Order

Other: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(date) (month) (year)

\_\_\_\_\_  
*Your Signature*

**Certificate of Service**

I herby certify that true and correct copies of the foregoing Response and any referenced Affidavit or other documents indicated above filed as attachments were served on the opposing party(ies) on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the method and at the address as indicated below:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip Code

[ ] U.S. mail, first class postage prepaid

[ ] Hand Delivery

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*Your Signature*

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

ADDRESS: \_\_\_\_\_  
(Mailing)

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

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

EMAIL \_\_\_\_\_

**MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY**

_____, Petitioner/Plaintiff,  and  _____, Respondent/Defendant.	Cause No.: _____  <b>REQUEST FOR</b>  <input type="checkbox"/> <b>CONTESTED HEARING</b>  <input type="checkbox"/> <b>UNCONTESTED HEARING</b>
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• COMES NOW the Petitioner/Plaintiff Respondent/Defendant and respectfully requests the Court to schedule a hearing in the above entitled cause on the Motion To/For \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*Your Signature*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served upon the opposing party or parties, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ by the as indicated:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/ State/ Zip Code

- U.S. Mail (first class postage prepaid)
- Hand Delivery

\_\_\_\_\_  
*Your Signature*

**MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY**

<p>_____, Petitioner/Plaintiff,  and  _____, Respondent/Defendant.</p>	<p>Cause No.: _____</p> <p><b>ORDER GRANTING</b></p> <p><input type="checkbox"/> <b>CONTESTED HEARING</b></p> <p><input type="checkbox"/> <b>UNCONTESTED HEARING</b></p>
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**IT IS HEREBY ORDERED** that a hearing on the matter of  Petitioner/Plaintiff's  
and/or  Defendant/Respondent's \_\_\_\_\_

is scheduled for the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .m.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
DISTRICT COURT JUDGE

cc:

\_\_\_\_\_  
(Print name of Petitioner/Plaintiff)

\_\_\_\_\_  
(Print name of Respondent/Defendant)