

***** 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.

- 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:

- 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 will be kept by the Court.
- 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.
- 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.
- 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: 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 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: _____

ADDRESS: _____
(Mailing)

(City/State/Zip Code)

PHONE NUMBER: _____

EMAIL _____

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

_____ Petitioner/Plaintiff, and _____ Respondent/Defendant.	Cause No.: _____ MOTION _____ _____ (Describe what you want the Court to do)
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I, _____, the [] Petitioner/Plaintiff or
[] Respondent/Defendant above-named respectfully request that the Court enter an Order that
does the following: _____

I am requesting this Order because _____

_____ [use attachment if necessary].

I am filing the following documents along with this Motion:

- My Affidavit in support of this Motion;
- A proposed Order for the Court's signature
- Other: _____

If a RESPONSE is filed in opposition to this Motion, I will file a Request for Contested Hearing. If no Response is filed, I will file a Request for an Uncontested Hearing.

Dated this _____ day of _____, 20____.

(date)

(month)

(year)

YOUR SIGNATURE

Certificate of Service

I herby certify that true and correct copies of the foregoing Motion, any referenced Affidavit, and other documents indicated above filed as attachments to this Motion were served upon the opposing party(ies) on the _____ day of _____, 20____ by the method and at the address as indicated below:

_____	Name	[] U.S. mail, first class postage prepaid
_____	Address	[] Hand Delivery
_____	City/State/Zip Code	

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.: _____ <u>AFFIDAVIT</u>
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I, _____, hereby state as follows:
(PRINT your name)

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

NAME: _____

ADDRESS: _____
(Mailing)

(City/State/Zip Code)

PHONE NUMBER: _____

EMAIL _____

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

_____, Petitioner/Plaintiff, and _____, Respondent/Defendant.	Cause No.: _____ REPLY TO RESPONSE TO MOTION _____ _____ (Print exact name of the Motion)
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I, _____, reply to the Response to my Motion
(PRINT your full name)

_____ filed by _____
(name of your Motion) *(name of the opposing party who filed the Response)*

as follows: _____

_____ [use attachment if necessary].

[] I am also filing at this time a **REQUEST FOR CONTESTED HEARING** and a proposed **ORDER** setting hearing. (Necessary unless the opposition has filed one previously).

Dated this _____ day of _____, 20____.
(date) (month) (year)

Your Signature

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Reply to Response to Motion was served upon 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

<p>_____, Petitioner/Plaintiff, and _____, Respondent/Defendant.</p>	<p>Cause No.: _____</p> <p>REQUEST FOR</p> <p><input type="checkbox"/> CONTESTED HEARING</p> <p><input type="checkbox"/> UNCONTESTED HEARING</p>
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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>ORDER GRANTING</p> <p><input type="checkbox"/> CONTESTED HEARING</p> <p><input type="checkbox"/> UNCONTESTED HEARING</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)

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

_____,)
)
Petitioner/Plaintiff,)
)
and)
)
_____,)
)
Respondent/Defendant.)

Cause No. _____

ORDER

Having considered the Petitioner's/Plaintiff's Respondent's/Defendant's

MOTION _____

AFFIDAVIT _____

RESPONSE _____

AFFIDAVIT _____

REPLY _____

and good cause being found, the Court HEREBY ORDERS: _____
(Describe what you want the Court to do)

DATED this _____ day of _____, 20_____.

DISTRICT COURT JUDGE

cc:

(Print name of Petitioner/Plaintiff)

(Print name of Respondent/Defendant)