

ASKING THE COURT TO DO SOMETHING – FILING MOTIONS IN YOUR PARENTING CASE

DISCLAIMER

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About Motions

A Motion is the name of a paper 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 a 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** send a copy of all of the paperwork that you file in Court to the opposing party by 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: 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: asks the Court to postpone a deadline, such as a hearing date or a date 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: 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 FAQs below for more information.

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

Step #1: Filing a Motion

To begin the process, you usually must fill out four forms: the **Motion (FORM 190)**, the **Affidavit (FORM 191)**, the proposed **Order (FORM 192)**, and the **Certificate of Service (FORM 193)**. Write the caption and case number **EXACTLY** as it appears on your other court documents. If you were the Respondent in the Petition for Parenting Plan, you are still the Respondent in the caption of your Motion.

- 1) The **Motion (Form 190)** 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 or University of Montana law school 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.
- 2) The **Affidavit (Form 191)** is a sworn statement made under oath. This form 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. Because an Affidavit is a sworn statement, you must sign it in front of a Notary (or Notary Public). You will need to show the Notary picture I.D. to verify that you are who you claim to be.
- 3) The proposed **Order (Form 192)** 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. As a result, the Judge may change your Order or sign a different Order altogether.

- 4) The ***Certificate of Service (Form 193)*** is a document that explains how you served or delivered copies of the documents that you filed with the Court to the opposing party. You must deliver to the other side a copy of every document that you file in Court by sending the copies through 1st class mail or by hand delivering the documents to the opposing party. If the other party has a lawyer, you must hand deliver or mail the documents to the lawyer instead of the opposing party.

NOTE: The service requirements may be different if you are filing something other than the documents discussed here.

Once you have filled out your forms and served a copy on the other side, you must file the forms in the appropriate Court. At that point, you must simply wait. If you hand delivered the Motion to the opposing party, that person will have 10 business days (Mondays – Fridays, but don't count any holidays) to respond to your request and to tell the Judge his/her side of the story. If you mailed your Motion, he/she will have an extra 3 days (including Saturdays, Sundays, and holidays) to respond. To figure out when the response will be due, count the 3 extra days first, and then count the normal 10 business days.

Step #2: Responding to a Motion

If you were served with a Motion, you have the right to respond and tell the Judge whether you agree or disagree with the other side's request. You must respond within a certain period of time. If the Motion was hand delivered to you, you have 10 business days (Mondays through Fridays, not counting holidays or weekends) to file your response. If the Motion was mailed to you, you have an extra 3 days (including Saturdays, Sundays and holidays). You must count these extra 3 days first, then count the normal 10 business days, to figure out when your response is due. ***If you do not respond to the Motion on time, the Court may take that to mean that you agree with the Motion.*** To respond to the Motion, you usually must fill out four forms: the ***Response***, the ***Affidavit***, the proposed ***Order***, and the ***Certificate of Service***.

- 1) The ***Response (Form 194)*** tells the judge what you disagree with in the other side's Motion, Affidavit, and 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 the Response and whether you want the Court to hold a hearing on the Motion.

- 2) The **Affidavit (Form 191)** is a sworn statement made under oath. This form 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. Because an Affidavit is a sworn statement, you must sign it in front of a Notary (or Notary Public). You will need to show the Notary picture I.D. to verify that you are who you claim to be.
- 3) The proposed **Order (Form 192)** 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. As a result, the Judge may change your Order or sign a different Order altogether. If you disagree with everything about the Motion and you don't want the Court to make a different Order instead, your proposed Order will say something like, "The Motion is denied."
- 4) The **Certificate of Service (Form 193)** is a document that explains how you served or delivered copies of the documents that you filed with the Court to the opposing party. You must deliver to the other side a copy of every document that you file in Court by sending the copies through 1st class mail or by hand delivering the documents to the opposing party. If the other party has a lawyer, you must hand deliver or mail the documents to the lawyer instead of the opposing party.

NOTE: The service requirements may be different if you are filing something other than the documents discussed here.

Once you have filled out your forms and served a copy on the other side, you must file the forms in the appropriate Court. At that point, you must simply wait. If you hand delivered the Response to the opposing party, that person will have 10 business days (Mondays – Fridays, but don't count any holidays) to file a Reply. If you mailed your Response, the opposing party will have an extra 3 days (including Saturdays, Sundays, and holidays) to respond. To figure out when the Reply will be due, count the 3 extra days first, and then count the 10 normal business days.

Step #3: Replying to the Response

If you filed the Motion, you can file a **Reply (Form 195)** to the Response if you think it is necessary. A Reply is **not** required. 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 not completely new arguments. If you decide to file a Reply, you must file it within 10 business days of the date that the Response was hand-delivered to you (don't count Saturdays, Sundays or holidays). If the Response was mailed to you instead, you have an extra 3 days (count weekends and holidays) plus the normal 10 business days. Once again, you must also serve a copy of the Reply on the opposing party (or his/her attorney if the other side has one) and you must fill out a **Certificate of Service (Form 193)** that indicates how you served the Reply.

Frequently Asked Questions about Motion Practice

1) How do I calculate the filing deadlines for a Response/Reply?

Do not count the first day (that is, do not count the day that the other side's paperwork arrived). If the paperwork was hand delivered to you, count forward 10 business days; do not count Saturdays, Sundays, or holidays. If the paperwork was mailed to you, first count 3 days, including Saturdays, Sundays, and holidays, and then count forward another 10 business days. The date that you land on is the last day that you can file your Response/Reply according to the rules. See Montana Rule of Civil Procedure 6(a).

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

2) When will the Judge decide my Motion?

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 deciding the Motion. However, it may take some time before the Judge actually issues a decision on the Motion. Usually a decision will be issued within a few weeks, but it could take months. 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.

The Judge may decide that a hearing is necessary. 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.

3) 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.