

**ASKING THE COURT TO DO SOMETHING –
FILING MOTIONS IN YOUR DISSOLUTION (DIVORCE) CASE
DISCLAIMER**

Documents are not legal advice. These documents are adaptations of the documents distributed by the Montana Supreme Court Commission on Self-Represented Litigants and have been approved by the Judges of the 4th Judicial District. These documents do not constitute legal advice, and no information contained in these documents can be relied upon to replace the advice of competent legal counsel licensed to practice in Montana.

About Motions

A Motion is the name of the document that you must file to ask a Judge to make a ruling or take some action once you have an ongoing Parenting case. ***A Motion does not start a Parenting case.*** To legally begin your Parenting Plan, you need to file a Petition for Establishment of Permanent Parenting Plan, Proposed Parenting Plan, Summons, and other supporting documents with the Clerk of District Court.

There are only two acceptable ways to communicate with the Judge about your Parenting Plan case once it is started:

- 1) in writing by filing Motion documents or responding to Motion documents;
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, which you file with the Clerk of District Court, to the opposing party by first 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 close a lawsuit filed by you or 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 adopt a specific part of your case, for example, adopt the Petitioner's or Respondent's Proposed Parenting Plan as the Interim Parenting Plan. This Order, if signed by Judge, will last until the Judge issues an Amended Interim Parenting Plan or Final Parenting Plan.
- 4) Motion for Expedited Consideration: asks the Court to speed up the process and to decide an issue quickly. 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.

1. The person who wants the Court to issue an Order begins the process by filing a Proposed Order, Motion and an Affidavit.
2. The person who does not want the Court to enter the other party's Proposed Order files a Response to Motion, an Affidavit and Proposed Order.
3. A Reply to Response may be filed by the person who filed the Motion. A Reply to Response is not mandatory but is used for clarification or if you need to defend statements or issues brought up by the other party's Response to Motion or Affidavit.

Knowing the laws of Montana concerning your legal issue is recommended. If you are unsure of the laws, you can go online to http://www.leg.mt.gov/bills/mca_toc/index.htm or use a search engine to locate Montana Codes Annotated. Once at this site, **search** using words related to your request. For example, if you are asking that your parenting plan be adopted as the Interim (temporary) parenting plan, you may want to focus on the, "Best Interests of the Child" law. If you cannot access the internet, call the Montana State Law Library, 406-444-3660, or the University of Montana Law School Library, 406-243-2699 or visit the Libraries in person.

Filing a Motion

To begin the process, you fill out three forms: a proposed **Order (Form #190)**, a **Motion (Form #191)**, and an **Affidavit (Form #192)**. Write the caption and case number **EXACTLY** as it appears on your other court documents. If you were the Respondent in the Petition to Establish a Permanent Parenting Plan, you are still the Respondent in the caption of your Motion. If you provide your email address, you must confirm with the Clerk of District Court that you would like Orders and other Court correspondence to be either physically mailed to you or emailed to you.

- 1) The proposed **Order (Form #190)** is the document you ask the Judge to sign which makes your request an enforceable Order. You write the Order as if you were the Judge. This is a statement written in very simple, clear terms which is short and to the point, so if the Judge agrees, he or she only has to sign the proposed Order to make it enforceable.
If you begin filling out the Order by completing the statement, "the Court HEREBY ORDERS:" with a specific statement, you have a better chance of staying focused on your issue or request when filling out your Motion and Affidavit documents.
- 2) The **Motion (Form #191)** tells the Judge what you want and why you want it. If the Order you wrote out, for example, states, "the Court HEREBY ORDERS: the Petitioner's Proposed Parenting Plan is adopted as the Interim Parenting Plan," your Motion may state you are requesting an Order that, "adopts the Petitioner's Proposed Parenting Plan as the Interim Parenting Plan." It is not necessary to go into detail why you are

making your request in your Motion. When you come to the word, "BECAUSE," a simple, clear statement will be enough. For example, "BECAUSE the Petitioner's Proposed Parenting Plan is in the best interests of the child."

In your Motion you will also tell the Judge what other documents are attached, such as your Affidavit and Proposed Order. You will state whether you want a hearing, whether you have contacted the other person regarding your Motion and whether the other party agrees with your Motion.

- 3) The ***Affidavit (Form #192)*** is a sworn statement made under oath. You write one, first person, "I" statement of fact at a time. Number each statement of fact 1. 2. 3. etc.... The first statement could contain introductory information, for example: "The Respondent and I are the parents of three children ages, 1, 4, and 6." A first statement which introduces you and your relationship gives the reader valuable information. Another statement could describe what has been completed in your Parenting case, such as "The Final Parenting Plan was Ordered in 2009," or "As Ordered by this Court, the Respondent and I have attended mediation." The purpose of this form is to state all the important and relevant facts which support your reasons for making your request. An Affidavit is a form of evidence the Court uses when making decisions, just like live testimony in Court. Your Affidavit includes only the facts that you know from personal experience. An Affidavit is a sworn statement that must be signed in front of a Notary (or Notary Public).

Certificate of Service:

The last pages of the Motion and the Affidavit explain how you served or delivered copies of the documents after you filed them. This section is called the Certificate of Service. Here you include how you gave the other party or their attorney a copy of the documents you have filed, when you mailed or handed the documents to the other party or their attorney, and the name and address of the other party or their attorney.

IF THE OTHER PARTY HAS AN ATTORNEY YOU MUST MAIL OR HAND DELIVER THE COPIES TO THE ATTORNEY, NOT TO THE OTHER PARTY

Once you have completely filled out your forms, signed, dated, and have the signature on your Affidavit notarized then make **TWO** copies of all the documents. File the originals with the Clerk of District Court and ask the Clerk to "conform" your two sets of copies. Mail or hand deliver one set of the copies to the other party or their attorney. Keep the other set of copies for your files. If you hand deliver the Motion documents to the opposing party or their attorney, they have 14 calendar days (including Saturdays, Sundays and holidays) to respond to your Motion and tell his/her side of the story. If you mail your Motion

documents to the opposing party or their attorney, they have an extra 3 calendar days (including Saturdays, Sundays, and holidays) to respond to your Motion. They must mail you a copy of everything they file with the Clerk of District Court also.

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

Replying to a Response

YOU WILL NEED TO PICK UP A COPY OF THIS DOCUMENT AT THE SELF HELP CENTER OR PRINT IT FROM THE DISTRICT COURT WEBSITE IF YOU CHOOSE TO FILE A REPLY, AS IT IS NOT INCLUDED IN THE INITIAL MOTION PACKET.

If you filed the Motion, the other party may file a response and then you have the option of filing your Reply (#194) 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 or another Order.** The Reply should contain only your response to the arguments raised by the opposing party in his/her Response and not completely new arguments. Make sure and fill out the Certificate of Service, (see rules above). If you decide to file a Reply, you must file it within 14 calendar days (including Saturdays, Sundays and holidays) of the date that the Response was hand-delivered to you. If the Response was mailed to you instead, you have an extra 3 days (including Saturdays, Sundays and holidays) plus the 14 calendar days (including Saturdays, Sundays and holidays). Once again, you must make **TWO** copies of your completed Reply to Response and serve a copy of the Reply to Response once you have filed the Original with the Clerk of District Court.

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 means: do not count the day that the other side's paperwork arrived). If the paperwork was hand-delivered to you, count forward 14 calendar (including Saturdays, Sundays and holidays). If the paperwork was mailed to you, first count forward another 14 calendar days (including Saturdays, Sundays and holidays) and then count 3 days (including Saturdays, Sundays and holidays). The date that you count is the last day that you can file your Response/Reply according to the rules. See Montana Rule of Civil Procedure 6(a).

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 review the Local Rules of Civil Procedure that apply where your case is filed.