

ASKING THE COURT TO CHANGE YOUR PARENTING PLAN

Motions

A Motion is used to ask the Court to make some change in your case, such as changing your current Parenting Plan. **A Motion does not start a lawsuit.** To start a lawsuit, you need to file a Petition.

Because both sides are given an opportunity to let the Judge know how they feel about an issue, you **MUST** send a copy of your motion to the opposing party by 1st class mail or by hand delivery.

Making Changes to Your Parenting Plan

Changed Circumstances: A Motion to Amend a Parenting Plan is covered by Montana Code Annotated § 40-4-219, which states, in part, that in order for a court to consider changes to the parenting plan, there must be a **change in circumstances of the child or parent and that the amendment is necessary to serve the best interest of the child.**

Child Support: If the only change that you want to make is regarding child support, then you may not need to file anything with the court. If it has been at least three years since child support was ordered, you can apply directly to Child Support Enforcement Division (CSED) for a modification or the Missoula Family Law Self-Help Center can recalculate child support for you and you can file a motion with the court.

Note: If parents are in agreement that the existing parenting plan needs to be changed, then both parents can file a **joint** motion to amend the parenting plan, and provide the judge with a proposed Amended Parenting Plan. The judge will then most likely adopt the amended parenting plan.

Step #1: Filing a Motion to Amend Parenting Plan

To begin the process, you usually fill out five forms: the **Motion (FORM 283)**, the **Affidavit (FORM 284)**, the **Proposed Amended Parenting Plan (FORM 285)**, the proposed **Order (FORM 286)**, and the **Certificate of Service (FORM 287)**. 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 or Petition for Dissolution, you are still the Respondent in the caption of your Motion.

- 1) The **Motion to Amend Parenting Plan (Form 283)** tells the judge briefly why you want to amend your Parenting Plan. 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 284)** is your sworn statement made under oath. This form is where you tell the Judge specifically all of the important and relevant facts in support of your Motion. What circumstances have changed? Your Affidavit must include only the facts that you know from personal experience. You must sign it in front of a Notary Public.
- 3) **Proposed Amended Parenting Plan (Form 285)** is your new proposed parenting plan. Included is Attachment A which is the Child Support Order. You may need to have child support calculations re-run. Attachment B is the Medical Support Order.
- 4) The proposed **Order (Form 286)** is the document that you are asking the Judge to sign.
- 5) The **Certificate of Service (Form 287)** is a document that explains how you delivered copies of your documents you filed with the Court to the other party

Once you have filled out your forms, filed them with the court and served a copy on the other side, you simply wait. If you hand delivered the Motion to the opposing party, that person will have 14 calendar days (including Saturdays, Sundays and holidays) to respond to your request and to tell the Judge his/her side of the story. If you mailed your Motion, the opposing party will have an extra 3 calendar days (including Saturdays, Sundays, and holidays) to respond. If you mailed your Motion, to figure out when the opposing party's response will be due, count the 14 calendar days, then count the 3 extra days.

Step #2: Replying to the Response

Once the other party receives your motion, he/she has 14 days to file a response. If they do not file a response, the motion is often granted by the court, but not always. If you have not received a decision after receiving no response from the other party, file a "Notice to the Court".

If you received a Response, you can file a **Final Reply (Form 288)** to the Response if you think it is necessary. A Reply is **not** required.

Frequently Asked Questions about Motions

- 1) When will the Judge decide my Motion?

It may take some time before the Judge actually rules on your Motion. Usually a decision will be issued within a few weeks.

The Judge may decide that a hearing on your motion is necessary. It may take several weeks to get a hearing set. 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.

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

If a true emergency exists, such as the other parent becomes incarcerated, leaves the state with the children, etc. you can file a Motion for Immediate Parenting Plan. Keep in mind you must have a real “emergency” in order to file a Motion for Immediate Parenting Plan.

3) What if I can't reach the other party or don't know where they are located?

You must make a good faith effort to notify the opposing party of any motions, hearings, or requests to the court. If you are unable to contact or find opposing party, you must send a copy of your motion to their last known address. If they still do not respond, file a Notice to the Court.