

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. AF 07-0157

FILED

JAN 31 2012

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE MATTER OF THE)
MONTANA RULES OF CIVIL PROCEDURE)

ORDER)

In order to conform with the Montana Rules of Civil Procedure effective October 1, 2011, it is necessary to change several of the forms appended to the Rules. The Advisory Commission on Rules of Civil and Appellate Procedure has proposed adoption of the attached Forms 1, 18, 18A, and 18B to conform with the Rules that went into effect on October 1, 2011. The Commission also suggests that Form 20, "Motion for Production, Etc., under Rule 34," be repealed, as it is no longer necessary. The Court approves the changes proposed by the Commission.

Therefore,


IT IS ORDERED that the attached Forms 1, 18, 18A, and 18B are adopted for inclusion in the Appendix of Forms attached to the Montana Rules of Civil Procedure, effective immediately. The attached Forms 1, 18, and 18A shall be substituted for the same-numbered forms in the Appendix of Forms.

IT IS FURTHER ORDERED that Form 20 in the Appendix of Forms attached to the Rules of Civil Procedure is repealed because it is no longer necessary.

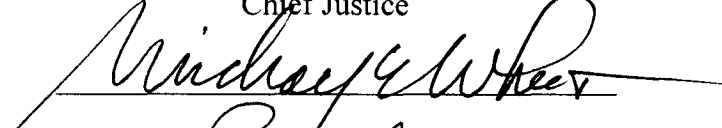
The Clerk is directed to provide copies of this Order and the attached forms to each Clerk of the District Court in the State of Montana; each District Judge for the State of Montana; Todd Everts at the Montana Legislative Services Division; the Montana Attorney General; the Director of the Montana Trial Lawyers; the Director of the Montana Defense Trial Lawyers; the Clerk of the United States District Court for the District of Montana; the President of the Montana Magistrates' Association; the Executive Director of the State Bar of Montana; the University of Montana School of

Law; the State Law Librarian; Thomson Reuters for inclusion in the Montana Rules of Court; and the Chair and each member of the Advisory Commission on Rules of Civil and Appellate Procedure.


DATED this 31st day of January, 2012.



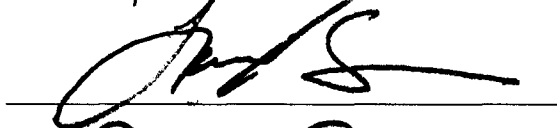
Chief Justice



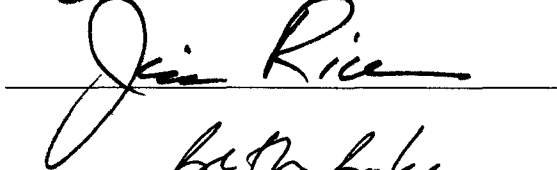
Nicholas Wheeler



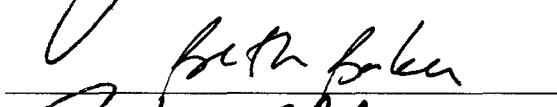
Patricia Cotter



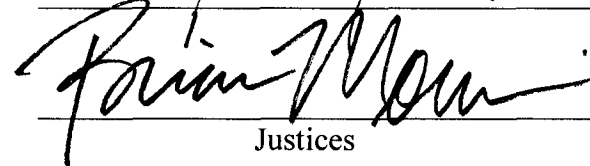
John S.



Jim Rice



Beth Baker



Brian Moran
Justices

Form 1. Summons—Official Form

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE
STATE OF MONTANA, IN AND FOR THE COUNTY OF _____

A.B., Plaintiff,
vs.
C.D., Defendant.

Civil No. . . .
SUMMONS

To: _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you or (42 days if you are the State of Montana, a state agency, or a state officer or employee), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Montana Rules of Civil Procedure. Do not include the day you were served in your calculation of time. The answer or motion must be served on the plaintiff or plaintiff's attorney, if plaintiff is represented by an attorney, whose name and address are listed above.

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.

You also must file your answer or motion with the court.

Date: _____

CLERK OF THE DISTRICT COURT

(Seal)

By: _____

Form 18. Third-Party Summons

A.B., Plaintiff,
vs.
C.D., Defendant and
Third-Party Plaintiff,
vs.
E.F., Third-Party Defendant.

Civil No. . . .
THIRD-PARTY SUMMONS

To: (name the third-party defendant):

A lawsuit has been filed against defendant _____, who as third-party plaintiff is making this claim against you to pay part or all of what [he] may owe to the plaintiff _____.

Within 21 days after service of this summons on you (not counting the day you receive it), you must serve on the plaintiff and the defendant an answer to the attached third-party complaint, or a motion under Rule 12 of the Montana Rules of Civil Procedure. The answer or motion must be served on the defendant's attorney, _____, whose address is _____; and also on the plaintiff's attorney, _____, whose address is _____. If you fail to do so, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may—but are not required to—respond to it.

Date: _____

CLERK OF THE DISTRICT COURT

(Seal)

By: _____

Form 18-A. Notice of a Lawsuit and Request to Acknowledge and Waive Service of a Summons

A.B., Plaintiff,
vs.
C.D., Defendant.

Civil No. . . .
NOTICE OF A LAWSUIT AND REQUEST TO
ACKNOWLEDGE AND WAIVE SERVICE OF A SUMMONS

To: (name of defendant—or if the defendant is a corporation, partnership or association name, an officer or agent authorized to receive service):

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you acknowledge and waive formal service of a summons by signing and returning the enclosed acknowledgment and waiver. To avoid these expenses, you must return the signed acknowledgment and waiver within 21 days (42 days if you are the State of Montana, a state agency, or a state officer or employee) from the date shown below, which is the date this notice was sent. Two copies of the acknowledgment and waiver are enclosed, along with a stamped, self-addressed envelope, or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed acknowledgment and waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 21 days from the date you sign the acknowledgment and waiver (42 days if you are the State of Montana, a state agency, or a state officer or employee sued in an official capacity) to answer the complaint.

If you do not return the signed acknowledgment and waiver within the time indicated, I will arrange to have the summons and complaint served on you, and I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____

Signature of the attorney or unrepresented party

Printed name

Relationship to entity or authority to receive service

Address

E-mail address

Telephone number

Comment: Both Form 18B and the “Duty to Avoid Unnecessary Expenses of Serving a Summons” page should always accompany this form.

Form 18-B. Acknowledgment and Waiver of Service of a Summons

A.B., Plaintiff,
vs.
C.D., Defendant.

Civil No. . . .
**ACKNOWLEDGMENT AND WAIVER OF
SERVICE OF A SUMMONS**

To: (name of plaintiff's attorney or the unrepresented plaintiff):

I have received your request to acknowledge and waive service of a summons in this action along with a copy of the complaint, two copies of this acknowledgment and waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Montana Rule of Civil Procedure 12 within 21 days from the date I sign this acknowledgment and waiver form (or 42 days if I am signing on behalf of the State of Montana, a state agency, or a state officer or employee).

If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

Printed name

Relationship to entity or authority to receive service

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Montana Rules of Civil Procedure has a provision to avoid the unnecessary expenses of serving a summons and complaint. A defendant who fails to return a signed acknowledgment and waiver of service requested by a plaintiff will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

“Good cause” does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant’s property.

If the acknowledgment and waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the acknowledgment and waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court.