

SUPREME COURT, CIVIL BRANCH
New York County
60 Centre Street, New York, N. Y. 10007

Office for the Self Represented
Room 116, (646) 386 - 3025

How to Respond to a Summons and Complaint

Note: All persons involved in a lawsuit should consult an attorney. This office gives you information, forms and instructions on court procedures. As an office of this court, we cannot give legal advice or act as your advocate.

Once a **summons and complaint** or **summons with notice** have been served, a defendant must respond in writing within a limited period of time. The response is sent to the plaintiff's attorney or directly to the plaintiff, if the plaintiff is appearing is self represented. The written response must be made within 20 days of personal service, or within 30 days of the time when service by any other means is complete. If the defendant fails to respond he or she is in **default** and plaintiff may be able to obtain a **default judgment** against the defendant.

A. How a Default Judgment is Obtained

There are two ways for a plaintiff to obtain a **default judgment**.

The first is by applying to the Judgment Clerk in the County Clerk's Office. This may only be done when the plaintiff's summons and complaint or summons with notice seek money damages only, and no other form of relief. Plaintiff must submit his or her detailed affidavit of facts together with proof of service of the legal papers upon defendant(s). This affidavit explains the facts of the case and shows that a summons with notice or summons and complaint were properly served and establishes that defendant is in default. The affidavit also explains how the sum sought is calculated.

The second way a plaintiff obtains a default judgment is to apply to the Court (a Judge) for a default judgment. This is done by preparing a **motion for a default judgment**. A Request for Judicial Intervention (RJI) is required to obtain the assignment of a Judge to a case . This motion must also prove the merit of the case, the sum due and have an affidavit of service attached to establish that the defendant is in default. If the motion papers are in proper form and there is no opposition from defendant, or if opposition is unconvincing, the court is likely to grant the motion and a judgment against the defendant will shortly follow.

B. How to Avoid a Default

To avoid a default, where a summons with notice was served, a defendant must prepare a

written response (a **notice of appearance**) to the summons, and have it served on the plaintiff within the applicable deadline. A **notice of appearance** indicates that the defendant intends to oppose the lawsuit. This form states the name of defendant's attorney, or indicates that the defendant will appear on his or her own behalf. A corporation must appear through an attorney. See Civil Practice Law and Rules(CPLR) 321(a).

A defendant must have plaintiff served with a copy of the **notice of appearance** (see attached). The **original, with proof of service**, must be timely filed in the Trial Support Office, 60 Centre St., Room 158, 1st floor, to avoid defaulting.

If the defendant has been served with a **summons with notice**, which lacks any details about the plaintiff's claims, the notice of appearance usually includes a **demand for a complaint**. The **complaint** describes the plaintiff's case in detail. This demand requires plaintiff to have defendant served with the **complaint within 20 days** from the date of service of the **demand**.

Once a complaint has been served, either with a **summons** or in response to a **demand for a complaint**, the defendant must respond by having the plaintiff served with an **answer** or a **motion**, usually, a **motion to dismiss**.

C. The Answer

An **answer**, like a complaint, states a party's position regarding the case. (See attached example of an answer).

First, the answer contains the caption of the case. The body of the answer consists of a series of numbered paragraphs. A defendant must respond to each allegation in the complaint by either:

- a) admitting its truth; **or**
- b) denying its truth; **or**
- c) denying that defendant has sufficient knowledge or information to know whether the allegation is true or false.

The law treats each allegation of a complaint that is not responded to, as having been admitted.

The answer may, and sometimes must, contain **affirmative defenses**. A defendant needs to be careful not to waive (give up) any defenses. See CPLR 3211(e) and CPLR 3018(b). Certain defenses, such as lack of proper service of the summons and complaint, are waived if the defendant does not either assert them in a written answer or by making a motion to dismiss prior to service of an answer. See CPLR 3211.

An answer to the complaint may also contain a **counterclaim**. A counterclaim seeks relief (for example, money damages) against the plaintiff. Counterclaims should be set forth in a separate section, following the portion of the answer described above. Counterclaims resemble the format of a complaint.

A defendant may assert claims against a fellow defendant or several defendants. These are known as **cross claims** and also follow the initial responses contained in the answer.

Generally, if the complaint has been sworn to (verified), then the answer must be verified as well. See CPLR 3020. In any event, the answer must be signed by defendant's attorney or by defendant if self-represented.

A copy of the answer must be served upon the plaintiff's attorney or upon a pro se plaintiff, and upon all other parties. Unlike service of papers initiating a lawsuit, an answer may be served by mail by someone (not you) over the age of eighteen, who is not a party to the case. See CPLR 2103(a). A sample of an affidavit of service is attached. The **original answer with the original affidavit of service** must then be timely filed in the County Clerk's Office, 60 Centre St., Room 141B in the basement.

D. The Motion to Dismiss

A **motion** is a request to the court that is made within an existing lawsuit and that seeks to have the court take some action concerning that lawsuit. As of July 14, 2003, a filing fee of \$45 is required to be paid when submitting a motion to the court.

A **motion to dismiss** may be used when a defendant believes the complaint fails to state a basis for a legal claim; or that the summons or summons with notice were not properly served; or that the lawsuit was not commenced on time; or for some other appropriate reason.

Instead of responding to the complaint with an answer, the defendant may make a motion to dismiss the complaint. This motion must be made in timely fashion or the defendant will be in default.

A timely motion to dismiss pursuant to CPLR 3211(a) extends a defendant's time to serve the answer. If the motion is **denied**, the case will continue, and the defendant must prepare an answer and have it served within 10 days from the date that the order denying the motion is served by the plaintiff upon the defendant, with **notice of entry**. See CPLR 3211(f). A **notice of entry** is a simple, one sentence notice which informs the defendant when the County Clerk's Office (the custodian of the files of the Supreme Court) "entered" (made a record of) the order.

For information on making a motion, see the pamphlet, How to Make a Motion, available in Room 116.

[Serve a copy on plaintiff/plaintiff's attorney. Then file original, with proof of service, in the Trial Support Office, Room 158.]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

Index Number

Plaintiff

- against -

NOTICE OF APPEARANCE

Defendant
-----X

Sir / Madam:

PLEASE TAKE NOTICE that the undersigned Defendant hereby appears in the above entitled action and demands that a copy of the Verified Complaint and all other papers in this action be served upon the Defendant at the address stated below:

Dated: _____, 200__

Defendant, Pro Se [sign your name]

[print your name]

[your address and telephone number]

To: Plaintiff / Attorney for Plaintiff

[name, address, telephone number]

This is only a *sample* of the form for an answer. Anyone seeking to serve an answer to a complaint must draft his / her own answer using the facts of his / her own case and the relevant law. Print or type, double spaced, using black ink only.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

Plaintiff

- against -

Defendant

-----X

Index Number

ANSWER

As and for his / her answer to the complaint herein, the defendant, _____

_____ respectfully shows and alleged as follows:

_____. Admits the truth of the allegations of Paragraph(s) _____ of the complaint.

_____. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph(s) _____ of the complaint.

_____. Denies the allegations of Paragraph(s) _____ of the complaint.

Affirmative Defenses

Counterclaims

Cross claims

WHEREFORE, defendant, prays that this Court dismiss the complaint of the plaintiff herein, with costs and disbursements to defendant, together with any other relief the Court finds to be just and proper.

Dated: _____, 200__

Signature

Print name

Address and telephone number

VERIFICATION

_____, being duly sworn,, deposes and says:

I am the defendant. I have read the foregoing answer and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

[sign your name in front of a Notary]

[print your name]

Sworn to before me on
____ day of _____, 200____

Notary Public

Plaintiff
- against -

Defendant

AFFIDAVIT OF SERVICE after
COMMENCEMENT of LITIGATION

STATE OF NEW YORK, COUNTY OF _____ ss:

I, [name of person who served papers] _____, being duly sworn,
depose and say: I am over 18 years of age and am not a party to this case.

I reside at [your address] _____

On [date of service] _____, 200__, at [time of day] _____ AM / PM, I served a true copy of
the following papers: [identify papers served] _____
_____, in the following manner. [check box that applies]

Personal Service By personally delivering the papers to [identify person served] _____
_____ at [address] _____

The individual I served had the following characteristics [check one box in each category]:

- | <u>Sex</u> | <u>Height</u> | <u>Weight</u> | <u>Age</u> |
|---------------------------------|-------------------------------------|---|--|
| <input type="checkbox"/> Male | <input type="checkbox"/> Under 5" | <input type="checkbox"/> Under 100 lbs. | <input type="checkbox"/> 21 - 34 years |
| <input type="checkbox"/> Female | <input type="checkbox"/> 5'0"- 5'3" | <input type="checkbox"/> 100 -130 lbs. | <input type="checkbox"/> 35 - 50 years |
| | <input type="checkbox"/> 5'4"- 5'8" | <input type="checkbox"/> 131 -160 lbs. | <input type="checkbox"/> 51 - 65 years |
| | <input type="checkbox"/> 5'9"- 6'0" | <input type="checkbox"/> 161 - 200 lbs. | <input type="checkbox"/> Over 65 years |
| | <input type="checkbox"/> Over 6' | <input type="checkbox"/> Over 200 lbs. | |

[describe]: Skin color _____ Hair color _____
Other identifying features, if any [describe]: _____

Mail By mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official
depository of the U.S. Postal Service within the State of New York, addressed to the last-known
address of the addressee(s) indicated below:

Overnight Delivery Service By depositing the same with an overnight delivery service in a wrapper properly addressed. Said
delivery was made prior to the latest time designated by the overnight delivery service for overnight
delivery. The delivery service used was [name of delivery service] _____

[Name(s) and address(es) of person(s) served by mail/overnight delivery]

Sworn to before me this
_____ day of _____, 200__

[sign name before a Notary]

Notary Public

[print your name]