

SELF-HELP CENTER

HOW TO COMMENCE A CIVIL ACTION (WHICH MAY ALSO BE CALLED A CIVIL CASE OR A LAWSUIT)

NOTE: PERSONS WITHOUT COUNSEL ARE ADVISED TO CONSULT AN ATTORNEY. COURT STAFF MAY **NOT GIVE LEGAL ADVICE, PREPARE YOUR PAPERS OR ACT AS YOUR ATTORNEY.**

As a general proposition, a self-represented person who wishes to obtain money damages or some other form of legally-authorized relief from a private person or entity (for example, a corporation) because that person or entity violated the self-represented rights or negligently injured the self-represented person or property may commence a civil action in this court.

The Summons and Complaint

The complaining party, the plaintiff, starts a civil action by purchasing an index number (exception: if the plaintiff obtains a poor person order, the index number fee may be waived) and then filing and serving either: (i) a summons with notice, or (ii) a summons and complaint.

An ordinary summons is served with a complaint and together they formally call upon and require the alleged wrongdoer(s), the defendant(s), to answer the allegations and claims of the plaintiff(s). A summons with notice is a document that formally calls and requires the defendant(s) to serve a notice of appearance in the lawsuit, after which the complaint must be served. Both types of summons contain the name of the court, the caption of the case (a sort of box at the top containing the names of the parties), the Index Number (an identifying number explained below) on the right side, a space for the date the summons is filed with the Office of the County Clerk, and the name,

address and telephone number of the plaintiffs lawyer or the self-represented plaintiff. The defendant(s) named should be the person (or other legal entity, e.g., a corporation) claimed by the plaintiff to be the wrongdoer. Legal responsibility is based upon breach of some legal duty or obligation owed by the defendant(s) to the plaintiff(s). A copy of an example of a summons is attached as Exhibit A.

A "summons with notice" is a special type of summons. It contains all of the items referred to above plus a brief description of the type of case and the relief the plaintiff(s) is/are seeking. (In the case of a plain summons, such a description is unnecessary since the summons is accompanied by the complaint, which sets forth the plaintiff s case in some detail. The summons with notice is not accompanied by the complaint.) After the summons with notice is served, the defendant(s) can demand that the plaintiff(s) serve a formal complaint, which must be done within 20 days after service of the demand or the case maybe dismissed. See, Civil Practice Law and Rules (the "CPLR for short), Section 3012(b). An example of a summons with notice is attached as Appendix B.

The complaint is the document that sets out the plaintiffs charges against the defendant(s). The law determines the allegations that are essential to setting forth a legally sound claim. Each defendant sued must be alleged to have taken part in the wrongdoing claimed to have damaged the plaintiff(s). It is not enough to succeed that a plaintiff(s) feels he or she has been wronged by the conduct of someone else. A person, for instance, ordinarily may not sue for damages because a supermarket clerk spoke rudely to him or her.

If a plaintiff(s) sets forth in the complaint a legal theory that the defendant(s) believes to be unsound, the defendant(s) may make an application to the court to end the case promptly for that

reason, which is known as a motion to dismiss. If the plaintiff's case survives such a motion, the case is not over; the plaintiff must still prove the truth of the allegations, contained in the complaint.

***** PLEASE NOTE: IF YOU ARE UNSURE WHAT LEGAL RIGHT OR THEORY YOUR FACTS SUPPORT, IT IS SUGGESTED THAT YOU CONSULT AN ATTORNEY OR LEGAL REFERENCE BOOK TO ASSURE THAT YOUR FACTS SUPPORT YOUR CLAIM. IF IT CLEARLY DOES NOT SUPPORT YOUR CLAIM, YOUR CLAIM COULD BE DISMISSED WITH A SANCTION AS FRIVOLOUS.**

A complaint (and every other document served in a case in this court) should be typed or legibly printed in English, in black ink, on 8 1/2 X 11 inch paper, double spaced, using one side of the paper only. Papers should be stapled or otherwise bound securely. CPLR 21 01.

The complaint should set forth the plaintiff's claims in separate, numbered paragraphs. Each paragraph should be short and contain only one material (i.e., relevant and meaningful) allegation. The complaint should begin with a brief identification of the plaintiff(s). This should be followed by an identification of the defendant(s).

The complaint should next set forth a brief description of the events upon which the claim is based; what each defendant did or failed to do; how the actions or inactions of the defendant(s) harmed the plaintiff; and the type and extent of injuries suffered. The facts should be recited in chronological order, including specific dates. The plaintiff(s) should be certain to set out his/her/their assertions in a clear and coherent fashion. Although the plaintiff(s) is/are familiar with

the facts, he/she/they should keep in mind that the court will be unaware of them except insofar as they are presented to the court in the complaint. Accuracy is important and errors may be damaging to the plaintiff's case. The allegations must be clear, to the point and comprehensible.'

The court has the power to grant a variety of remedies depending upon the circumstances. The court, may, for example, order a defendant to compensate a plaintiff for injuries suffered by payment of a sum of money, known as damages. The court may also, or in the alternative, order a party to do, or to refrain from doing, certain acts. This is known as injunctive relief. The court may declare the rights of parties to a dispute. This is known as declaratory relief. The complaint should conclude with a paragraph in which the plaintiff(s) sets forth all of the relief against the defendant(s)

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Attached as Appendix C is a form of complaint. This is illustrative only. A self-represented plaintiff(s) will have to draft (write out) a complaint suited to the circumstances of his/her/their case.

If a self-represented person intends to bring a case, he or she should prepare the summons with notice or summons and complaint and deliver the original of that document or documents to

It is important to point out that an individual desirous of bringing a tort claim (e. g., for personal injury) against a municipality may be obligated to file a written Notice of Claim prior to commencing the lawsuit and within a deadline that may be quite short. **FAILURE TO FILE A NOTICE OF CLAIM ON TIME MAY RESULT IN DISMISSAL OF THE ACTION.** For more information on this subject, the self-represented person is advised to consult an attorney. The Public Legal Resource Center has additional information as well.

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In certain circumstances, pleadings must be verified, that is, signed in a certain format under oath, in the presence of a notary public. See, CPLR 3020.

the County Clerk, complete an Index Number purchase form with cover sheet, submit these items to the clerk and pay the required fee (\$21 0).' The plaintiff should write the Index Number and the date of the filing of the summons on a copy of the summons with notice or the summons and the complaint, and cause this item or these items to be served upon each defendant in the manner provided by law.

Service of the Summons with Notice or the Summons and Complaint

Basic notions of fairness require that before the plaintiff(s) may succeed in obtaining the relief demanded in the summons with notice or complaint, the defendant(s) be formally notified of the fact that a case has been commenced against him or her and be afforded an opportunity to put a defense before the court. The formal notification is accomplished by what is known as service of a copy of the summons with notice, or the summons and complaint. (This is sometimes shortened and called service of process.) Proof of such service must be filed with the County Clerk or the case may be dismissed. For information on service, see How to Serve Legal Papers.

The Defendant's Response

If the steps described above are performed properly, a civil case/action is now in existence. The defendant is then allotted 20 or 30 days (see, CPLR 320) within which to serve a responding

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If the plaintiff claims to be financially unable to proceed with the action, he or she may apply to the court for a court order relieving him or her of the obligation to pay filing fees and costs connected with the lawsuit. This is known as a poor person order.

document, the answer or to make a motion to dismiss the complaint. For more on the response process, see How to Respond to a Summons and Complaint.

Requests for Judicial Intervention

Although a lawsuit is in existence upon filing and service of a summons with notice or summons and complaint, the matter has not yet initialized into the court's computer system and is still unknown to the court. The court will only learn about the case when a party (plaintiff or defendant) files a "Request for Judicial Intervention Form" (an "RJI" for short), pays the fee therefor, and asks the court to take some immediate action in regard to the case. A civil action may proceed for a considerable time before judicial intervention becomes necessary and before the case is actually brought before the court. The complaint and the answer set the frame of the dispute; however, some additional action is required to bring the lawsuit to a head, or to put the plaintiff to his or her proof before the court or jury.

A point at which many cases first appear before the court is when a motion is made. See the outline entitled Motions. If the case does not come before the court for some other reason, the plaintiff may, at an appropriate time, cause the case to be placed on the trial calendar. Until the case is placed on the trial calendar, it can never be called for trial.