

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

**HELP CENTER
Room 116
646-386-3025**

How to Make a Motion

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.

A **motion** is a request for a court order. It can only be made after a lawsuit has been started. The party (plaintiff or defendant) making the motion is known as the **movant**.

What You Need to Know

- There is a **\$45** fee to file a motion with the court.
Pay by cash, Visa/MasterCard, or postal money order made out to the “New York County Clerk.”
- There is an additional fee of **\$95** if the case is not yet assigned to a Judge.
This fee is charged only once per case and paid by the first party in the case who requests a court order or conference. If you have a limited income, ask in Room 116 about applying for a **Poor Person Order**, which will allow you to make a motion without paying these fees.
- You are required to have all parties to the lawsuit notified that you are making a motion.
This is done by having someone over the age of 18, who is not a party in the case, serve a copy of the motion papers on the attorney of each party or, if the party is unrepresented, on the party.
You cannot serve your own papers.

You may refer to the Civil Practice Law and Rules (CPLR) Article 22 for a more detailed discussion of motion practice. The Public Access Law Library at 80 Centre Street, Room 468, New York, N.Y, is open to the public, Monday to Friday, 9:30 A.M. to 4:30 P.M., 646-386-3715.

Electronic Filing

The New York State Unified Court System operates an electronic filing system for cases filed and litigated in various state courts, including the New York State Supreme Court. This system is the **New York State Courts Electronic Filing System (“NYSCEF”)**.

In New York County Supreme Court, Civil Branch, electronic filing is mandatory. That is, new cases must, with four exceptions (matrimonial, Article 78, Election law, and mental hygiene law matters), be commenced through the NYSCEF system and filings with the court thereafter must be filed through NYSCEF. Thus, a person seeking to commence a new civil action or special proceeding (other than one covered by one of the exceptions) must file the commencement documents with the County Clerk of New York County through the NYSCEF system. Subsequent filings with the court after commencement, such as the submission of motion papers, must be filed via NYSCEF.

Although e-filing is generally mandatory in New York County, the rules permit persons who appear on their own behalf in this court to be exempt from the obligation to e-file. If an unrepresented person does not wish to participate in e-filing, he or she may opt out of doing so by filing a form so stating. This “opt-out form” can be accessed on the website of this court at www.nycourts.gov/courts/1jd/supctmanh/E-Filing.shtml. The form must be filed with the County Clerk.

Unrepresented parties who opt out of e-filing must file with the court in paper form and must serve paper copies of documents on all other parties. If other parties to a case e-file, they must serve copies of documents filed with the court in paper form on unrepresented parties who have opted out.

Information on how the NYSCEF system works can be found on the NYSCEF website at www.nycourts.gov/efile.

The following assumes that the filer has opted out of e-filing.

Notice of Motion (see attached form) – This form notifies all parties that you are making a motion and describes what you are requesting. You must include the date to come to court, known as the **return date**, time and courtroom (9:30 AM in the Motion Submission Part Courtroom (Room 130)). You pick the return date and may choose any Monday to Friday that does not fall on a holiday. Picking a return date more than 16 days after the day the motion papers will be served will allow you to have someone serve by regular mail, and allow you to make a written response to any opposition to your motion.

A motion can in some circumstances be brought on by Order to Show Cause. See “How to File a Proposed Order to Show Cause.”

Motion to Dismiss

If a defendant decides to make a **motion to dismiss** before answering a **complaint**, he or she must include certain types of objections or defenses in the motion. If not included, they will be

considered **waived** (given up). See CPLR 3211 (a) 1,3,4,5, and 6. To avoid losing any defenses you may have, carefully review this statute before making a motion to dismiss.

When You File A Motion by Notice of Motion

- You pick the date to come to court.
- Your request does not need immediate attention.
- You cannot ask for a Temporary Restraining Order (**TRO**) to **stay** (stop) an action being taken by a party.
- Service of motion papers is done before filing the papers with the court.
- Motion papers may be served by regular mail.
- You are not required to appear in front of the Judge unless you are notified to appear.

Affidavit in Support (see attached) - The affidavit is your sworn statement and it must fully explain your request. You will not speak to the Judge unless the Judge wants “oral argument.” The Judge’s decision is based on the papers submitted by all parties.

Attach any **Exhibits** (copies of documents that help explain and support your request) to your affidavit. Label each exhibit at the bottom of the page, as Exhibit A, Exhibit B, and so on. Exhibits will not be returned. You must sign your affidavit in front of a notary. There is a free notary in the County Clerk’s Office, 60 Centre Street, Room 141B, in the basement.

Litigation Back (blue color) - On the right side of the Litigation Back, in black ink, fill in the Index Number, name(s), of Plaintiff(s), and Defendant(s). Sign and print your name, address, and telephone number. Do not fill in the left side of the page.

Request for Judicial Intervention (RJI) - If the case has not yet been assigned to a Judge, the first party to request a court order must file this form and pay the \$95 fee. You may access the RJI form at www.nycourts.gov/forms/rji/index.shtml, or contact the Help Center staff.

Preparing and Filing the Notice of Motion and Supporting Papers

Complete each step. Do not skip a step. Check the box when done.

- Arrange the papers listed below in the following order.
 - 1st Request for Judicial Intervention (RJI) if the case is not yet assigned to a Judge.
 - 2nd Notice of Motion.
 - 3rd Affidavit in Support.
 - 4th Exhibit A, B, C and so on.
 - 5th Litigation Back (blue color).

This is the **original** set of Notice of Motion and Supporting papers, which will go to the Judge. Make sure you have *copies* served, not the original.

- Statements of fact are made in the Affidavit in Support. More than one such affidavit is permissible, if necessary. Any legal issues raised by the movant should be included in a document separate from but accompanying the Notice of Motion and Supporting papers. This document is called a **Memorandum of Law**.
- Make copies of the **original** Notice of Motion and Supporting papers (and RJI, front and back, if the case is not assigned to a Judge). You must have one copy for each unrepresented party or attorney to be served and one copy for your records. After the copies are made, staple each set together and staple the original.

Serving Copies of the Notice of Motion and Supporting Papers and the Affidavit of Service

- The server gives a copy of the Notice of Motion and Supporting papers (and a copy of the RJI if the case is not assigned to a Judge) to each unrepresented party and each attorney. Service may be done by regular or overnight mail or personal service.

The server then signs an **affidavit of service** in front of a notary. This affidavit describes when, how, and where service was made and identifies the papers and the parties served.

Or, the server may ask a party or attorney being served by personal service if they will sign or “stamp” the Litigation Back of the **original** Notice of Motion papers and the RJI form. The “stamp” is accepted as proof of service and can substitute for the Affidavit of Service insofar as the accepting party or attorney is concerned. However, the person served is not obligated to admit service. Make a copy of the proof of service for your records.

Filing the Original Notice of Motion and Supporting Papers with the Court

- After service, and at least 5 business days before the return date, go to the General Clerk’s Office, 60 Centre Street, Room 119, 1st floor, with the following papers:
 - **original** Notice of Motion and Supporting papers
 - **original** RJI and one copy, if also served
 - Affidavit of Service or a party’s or attorney’s admission of service on the Notice of Motion papers and RJI (if a Judge has not yet been assigned)
- Take your papers to Room 119. The Clerk will stamp your original papers and send you to the Cashier in Room 160, 1st floor, to pay the \$45 motion fee (and \$95 RJI fee, if an RJI was also served).
- In Room 160, the Cashier will also stamp your original papers (and keep the copy of the RJI, if also served). In Room 160, make a copy only of the two Notice of Motion pages.

- Return to Room 119. Give the Clerk the **original** Notice of Motion and Supporting papers, the copy of the Notice of Motion pages (and **original** RJI).
- In certain cases, the clerk in Room 119 may direct you to Room 116 to have the papers “scanned.”

Coming to Court on the Return Date *DO NOT BE LATE*

- **At 9:30 A.M.** on the **return date**, be in the Motion Submission Part Courtroom, 60 Centre Street, Room 130, 1st Floor. The calendar, which is a list of all motions scheduled, is posted near the door. Listen to the Clerk and answer “Here” when your motion is called.

An unrepresented party or attorney can:

- Contact you before or on the return date to ask for an **adjournment** to submit papers. An adjournment is a new date agreed to by the parties or set by the court.
- If the parties do not agree, the court will hear the request on the return date.
- Requests for adjournments must be made in person, in Room 130. Or a party can answer with an **Affidavit in Opposition** asking that your motion be denied, or,
- A party can make a motion in response to your motion, known as a **Cross-Motion**. This is done when a party wants to request an order for a form of relief in addition to denial of your motion. Opposition and cross-moving papers can be served by mail.

You can:

Request an adjournment to submit **Reply** papers.

A **Reply** allows you to respond only to statements or arguments made in opposition papers.

You may not make new requests in Reply papers.

Note: A reply is allowed only if your motion was served at least 8 days by personal service or, if served by mail, at least 16 days before the return date.

A copy of your Reply must be served at least 1 day before the return or adjournment date by personal or mail service. A sample Reply form is available in Room 116.

Original opposition and **original** Reply papers, with proof of service, are filed in Room 130, on the return or adjournment date.

After Reply papers, no further papers may be submitted without permission of a Judge.

Court Clerks will then send the papers to the Judge. If the Judge wants “oral argument,” you will be notified, usually by mail, of the date, time, and courtroom. If “argument” is directed, you must appear to speak to the Judge or your motion may be denied. The Judge will issue a written decision, usually within 2 months.

Getting a Decision on Your Motion

- It is your responsibility to check if a decision has been made.
 - Go to the web site of the court at www.nycourts.gov/supctmanh (under “Case Information (Scroll)”).
Decisions in matrimonial cases are not posted.
 - Or use a public access court computer located in Rooms 119, 311 and 141B.
 - Or check the case file, under the Index Number, in the County Clerk’s Office Record Room, Room 103B, in the basement at 60 Centre Street, from 9:00 A.M. to 3:00 P.M.

[Print in black ink beside instructions in bold letters]

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

-----x

Index Number

[fill in name(s)] Plaintiff(s),

- against-

NOTICE OF MOTION

[fill in name(s)] Defendant(s).

-----x

PLEASE TAKE NOTICE that upon the attached affidavit(s) of _____

_____ **[your name(s)]**, sworn to on _____, 20__

[date Affidavit in Support notarized], the exhibits attached to the affidavit(s), and upon all proceedings in this case to date, the plaintiff(s) / defendant(s) **[circle one and give name of party making this request]** _____ will move this Court, at 9:30 A.M.

on the ___ day of _____, 20 __, **[return date]** at the Courthouse, 60 Centre Street, New York, New York, in the Motion Submission Part Courtroom, Room 130, for a order, pursuant to the Civil Practice Law and Rules (CPLR), granting the following relief to the movant(s):

[briefly describe what you are asking the Court to do] _____

and for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Civil Practice Law and Rules 2214(b), you are hereby required to serve copies of your answering affidavits on the undersigned no later than the seventh day prior to the date set above for submission of this motion. **[For this paragraph to apply, motion papers must be served by personal delivery no later than 16 days before the return date.**

Dated: _____, 20____
 [date signed]

Respectfully submitted,

[sign your name]

[print your name]

[address, telephone number]

To: Attorney for Plaintiff(s) / Defendant(s) **[circle one]**

[print name, address, telephone number]

-----X

Index Number

[fill in name(s)] Plaintiff(s)/Petitioner(s),

- against -

AFFIDAVIT OF SERVICE AFTER
COMMENCEMENT of LITIGATION

[fill in name(s)] Defendant(s)/Respondent(s).

-----X

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 _____, 20__, [date of service], 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]

- | Sex | Height | Weight | Age |
|---------------------------------|--------------------------------------|---|--|
| <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 - 61 years |
| | <input type="checkbox"/> 5'9" - 6'0" | <input type="checkbox"/> 161 - 200 lbs. | <input type="checkbox"/> Over 61 years |
| | <input type="checkbox"/> Over 6' | <input type="checkbox"/> Over 200 lbs. | |

Color of skin [describe] _____ 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 _____, 20__

[sign your name before a Notary]

Notary Public

[print your name]

***** NOTICE OF ENTRY*****

Sir/Madam:

Please take notice that the within is a (certified) true copy of a

_____ duly entered in the office of the clerk of

the within named court on the ___ day of _____, 20__

Dated: _____ Yours, etc.

Attorney for: _____

_____ Office and Post

_____ Office Address

To:
Attorney(s) for _____

***** NOTICE OF SETTLEMENT*****

Sir/Madam:

Please take notice that an _____,

of which the within is a true copy, will be presented for settlement

to the Hon. _____, one of the Justices

of the within court, at _____, on

_____, 20__ at _____ AM/PM.

Dated: _____, 20__ Yours, etc.

Presenting Party _____

To: _____

Attorney(s) for _____

INDEX NUMBER _____

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

_____,
Plaintiffs / Petitioners,

- against -

Defendant / Respondent,

To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers and the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1 of the Rules of the Chief Administrator (22NYCRR).

Sign Name: _____

Print Name: _____

Address: _____

Telephone : _____

Service of a copy of the within is hereby admitted.

Dated: _____, 20__

Attorney for _____