

SELF-HELP CENTER

HOW TO COMMENCE A SPECIAL PROCEEDING

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.

***TAKE NOTICE: A **SPECIAL PROCEEDING CAN BE USED ONLY WHERE IT IS SPECIFICALLY AUTHORIZED BY A STATUTE.** THERE ARE A NUMBER OF THESE, BUT GENERALLY THEY RELATE TO CHALLENGING THE ACTION OR DETERMINATION OF A GOVERNMENTAL OFFICER OR AGENCY (SEE CPLR ARTICLE 78). LANDLORD-TENANT RELATIONS CAN ALSO BE DETERMINED IN A SPECIAL PROCEEDING IN SOME INSTANCES OTHERWISE, SPECIAL PROCEEDINGS USUALLY CANNOT BE BROUGHT AGAINST PRIVATE PARTIES.

In order to commence the kind of lawsuit known as a special -proceeding, a person must prepare a document called a petition, which is a statement of the person's charges or the grievance of which the person complains. The person bringing the case is called the -petition.

Preparing the Petition

Every document served in a case in this court, including the petition, should be typed or printed legibly in English, in black ink, on 8 1/2 X 11 inch paper, double spaced, using one side of the paper only. CPLR 2101.

The top left-hand corner of the petition should designate the court and county of the proceeding. Next comes the caption, a box inside in which appears the names of all the parties, the petitioner first and the party sued, called the respondent, below. The respondent or respondents named should be those persons claimed to have made the determination or decision at issue. A space should be left on the right-hand side for the insertion of an identifying number, called the index

numb, which number will be filled in later as explained below. Attached as Appendix A is a blank form of petition.

The petition should set forth the allegations in the case in separate, numbered paragraphs. Each paragraph should be short and contain only one material allegation. The petition should begin with a brief identification of the petitioner and the respondent(s).

The petition should next set forth a factual description of the determination or events upon which the claim is based in chronological order (including the dates of key events). The petitioner should be certain to set out factual assertions in a clear and coherent fashion. Although the petitioner is familiar with the facts, he or she should keep in mind that the court will be unaware of them except insofar as they are presented to the court in the petition. Accuracy is important and errors may be damaging to the petitioner's cause. Legible copies of any pertinent documentary evidence should be included as exhibits, with index tabs annexed to each such exhibit. If the proceeding concerns a claim that a government agency acted incorrectly or illegibly, **A PHOTOCOPY OF THE AGENCY'S FINAL DETERMINATION WHICH IS THE SUBJECT OF THE PROCEEDING AND ANY INTERMEDIATE RULINGS MUST BE INCLUDED.**

Generally speaking, a petitioner may only obtain relief in this court in the form of review (and if successful, reversal) of a final agency action. In the case of a parking ticket, for example, the petitioner will likely be unsuccessful in this court if he or she failed to take an appeal entirely through the appeal process. The petitioner should clearly describe each step in the administrative process that the petitioner took, each decision made by the agency along the way, and what the final action by the agency was. There are time limitations of varying lengths within which lawsuits must

be brought. In the case of Article 78 proceedings, the limitation generally is four months from the final agency action.' The petition must make clear when the final agency action took place.

The petition should conclude with a demand for a form of relief. Frequently, the petitioner will seek a reversal of the agency's action (e. g., setting aside and vacating the parking ticket). In such proceeding, the petition should, therefore, state, in so many words or in effect, that the "petitioner prays (requests) that the decision of the _____ agency, dated _____ providing _____ be set aside and annulled."

In a special proceeding challenging a decision of a government agency in regard to some claimed right of the petitioner, the petition should specifically state, in detail, why the petitioner contends that the agency action was wrong and must be annulled. The court may overturn agency action only if the determination or action made or taken (i) was in contravention of law, (ii) was arbitrary, capricious or an abuse of discretion, or (iii) (where a hearing was held at the agency level) was not supported by substantial evidence in the record.

The petitioner should attach to the petition a verification, which is a sworn statement by the petitioner, under penalty of perjury, that the facts contained in the petition are all true. This document must be signed by the petitioner in front of a notary public, who must acknowledge, stamp and sign the verification. An example of a verification is included in Appendix A.

In addition to the above, the petitioner should also be sure that he or she brings the special proceeding in the proper county. There are a number of rules about what is a proper venue for a case that generally relate to the residence of the various parties and where the underlying subject matter

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Certain substantive statutes mandate different time limitations. A review of the pertinent statute (law) should be made prior to commencement of such a proceeding.

of the lawsuit arose. See, Article 5 of the Civil Practice Law and Rules. Generally, the petitioner must commence a special proceeding against a public body or officer in any county within the judicial district in which the respondent made the determination complained about or refused to perform the duty allegedly violated, or where the underlying proceedings were brought, or where the material events took place, or where the principal office of the respondent is located. The judicial district of our court is the Sixth Judicial District.

Once the petitioner has prepared a petition, he or she must start the case. This is done as follows:

How to Set the Wheels in Motion

New York law requires that papers commencing a special proceeding must be filed with the County Clerk and that an identifying number, an Index Number, be obtained. The petitioner should go to the County Clerk's Office. The petitioner will have to fill out an Index Number Cover Sheet form and purchase an Index Number from the cashier (cost \$21 0). The petitioner must write in the Index Number assigned by the County Clerk in the Index Number space to the right of the caption on each of the documents prepared by petitioner. A copy of all of these documents must be filed with the County Clerk, who will open a court file for the case. The Clerk will stamp the petitioner's copies to show that the papers were filed and will issue a receipt for the purchase of an Index Number. The petitioner needs to file with the Clerk the following initial legal papers: (i) a copy of a petition and a notice of petition, or (ii) a copy of the petition and a copy of an order to show cause.

In order to bring the proceeding before a Justice (the proper title of a Judge assigned to Supreme Court is Justice) of this court, the petitioner needs to request that the case be placed before

a Justice on a calendar. This is done in either of two ways: (1) by serving and filing a notice of -petition, or (2) proceeding by order to show cause. A notice of petition is a document directed to the respondent(s) that advises the respondent(s) of where and when the petition is to be submitted to a Justice and identifies all papers upon which the special proceeding is based. An example of a notice of petition is included in Appendix A. An order to show cause also serves to give notice to all parties, but the form of the document is different. Annexed as Appendix B is an example of an order to show cause in the context of a special proceeding. This document, unlike the notice of petition, is in reality a court order and must be presented to and be signed by a Justice of the court at the outset of the process in the court.

*****PLEASE NOTE: THE COURT IS UNDER NO OBLIGATION TO SIGN THE ORDER TO SHOW CAUSE OR GRANT TEMPORARY RELIEF, AND MAY INSTEAD TELL YOU TO MAKE YOUR APPLICATION BY MEANS OF A NOTICE OF PETITION.**

Filing in Court - Moving by Order to Show Cause

When moving by order to show cause, the petitioner should prepare the petition as explained above and also, an order to show cause in a form similar to the example annexed as Appendix B. The petitioner should bring the original and two copies of the papers to court. One copy should be filed with the County Clerk, as explained above. The petitioner must also complete and file a form known as a Request for Judicial Intervention ("RJI," for short). The purpose of this form is to make clear to the court the kind of case involved and to formally request the intervention of a Justice. The filing fee for the RJI is \$95. An RJI form may be obtained from the Supreme & County Court Clerk's Office or the Public Legal Resource Center.

At this point, a filing with the County Clerk has been made, but a filing with the Court has not yet occurred. The petitioner should next proceed to the Supreme & County Court Clerk's Office. The original petition and order to show cause must then be presented to a clerk in that office, together with proof of the previous filing with the County Clerk, proof of purchase of an Index Number and a completed RJ1 form together with a certified check or money order for \$95 payable to the Office of the County Clerk. The Clerk's Office will then review the petitioner's papers to make sure that they are in proper form, and if so, will assign the case to a Justice on a random basis. If emergency relief is requested, petitioner must also submit an emergency affidavit which briefly explains the nature of the relief requested and why immediate or emergency relief is needed. (Sample Emergency Affidavit forms are available from the Public Legal Resource Center.)

The papers will then be delivered to the assigned Justice for immediate review and if found acceptable, signed by him or her and then given to you so you can copy them (return the originals to the Court Clerk's Office) and arrange to have them served in the manner directed by the Court. If emergency relief is not required, the papers are simply left with the Court Clerk's Office.

After the papers are reviewed, they will be either:

- a) Marked to be returned to you for correction, or
- b) sent to the assigned Justice for signature.

You can check the status of your Order to Show Cause by calling the Court Clerk's Office. (Wait at least 48 hours before calling).

If your papers need corrections, you should return to the Court Clerk's Office, pick them up, correct them as needed and resubmit them.

If your papers are correct as to form, they will be forwarded by the Court Clerk's Office to the assigned Justice's Chambers for signature. If the Justice finds them satisfactory, he/she will sign them, then fill in the return date and specify when and how the papers are to be served.

When the order has been signed, the petitioner must "conform a copy," that is, reproduce on a copy of the papers with each and every marking made thereon by the Justice. This copy must then be photocopied and served upon the attorneys for all parties to the case in the manner and within the deadline set by the Justice. (For information about service, ask the Public Legal Resource Center about its brochure, How to Serve Legal Papers.)

After service is made, the petitioner must see to it that an affidavit of service is prepared. The original must be presented to the Court on the return date. (The case will be called in the assigned Justice's courtroom.) The petitioner must be present at that time especially if the Court granted a stay (TRO) until the hearing date of the motion and the petitioner wishes it to continue until the motion is decided. Petitioners must ask for this when the order to show cause is called before the Court at calendar call. If the other parties do not submit opposing papers and do not appear on the return date, the court may take action on the order to show cause provided that it is satisfied from the affidavit of service that the other parties were properly served with the order to show cause and supporting papers.

The other parties may submit papers in opposition to the petition (usually in the form of an answer together with opposing affidavits and exhibits). This ordinarily will be done within the time specified by the Justice when the Order to Show Cause is signed. All opposition papers must also be properly served on the petitioner as well as all other parties to the case.

Moving by Notice of Petition

The proceeding can be brought before the court without need for a Justice to sign an order to show cause at the outset. Instead, the petitioner may proceed directly by notice of petition, as follows.

The petitioner should prepare a notice of petition and petition and an RJI. Since the initiating papers will not first be presented to a Justice, the petitioner must select a return date and identify the place at which the matter is to be heard. That place is the Courtroom of the assigned Justice. The return date can be any weekday at 9:30 A.M., but the return date must be selected keeping in mind that the respondent(s) must be given adequate time to prepare an opposing or answering papers. Therefore, the return date selected must be at least 8 days after service of the initiating papers has been made on all respondents.'

As explained earlier, the petitioner should file one copy of these papers with the County Clerk and should purchase an Index Number before service is made. Next, the petitioner should

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In an Article 78 proceeding, 20 days advance notice must be provided. Also, if a notice of petition that was served at least 12 days prior to the return date expressly demands that the answer be served days prior to the return date, the respondents must serve his/her/its answer at least 7 days prior thereto. In that event, the petitioner will have a right to serve affidavits and a memorandum of law in response to the answer (called a reply at least one day prior to the return date.

cause a copy of the papers and an RJI form to be served upon all respondents. Then the petitioner should file the originals of all of the papers and the original RJI with the court. At the same time, the petitioner must file two duplicate original affidavits of service; one with the Court Clerk's Office and one with the County Clerk. The petitioner will also have to pay the \$95 RJI fee at that time by certified check or money order payable to the Office of the County Clerk.

The Court Clerk's Office will randomly assign the matter to a Justice and will place it on a calendar for the return date selected by the petitioner. For more on this subject, see How to File a Request for Judicial Intervention which is available from the Public Legal Resource Center.

The original papers must be delivered to the Court Clerk's Office at least five business days prior to the return date so that the petition may be recorded in the court's computer system and placed on the calendar. In the first instance, the place at which the motion will be returnable is the Assigned Justice's Courtroom. Oral (spoken) argument may take place there but usually oral argument takes place only when, where and if the assigned Justice directs. This is so for all petitions brought in our court by notice of petition. The parties are free upon agreement to adjourn petitions (within limits) so as to accommodate their schedules. Answering and reply papers are to be served upon all other parties to the case within the deadlines applicable. The original answering and reply papers (to which must be attached proof that the papers were served on all other parties) must be delivered to the Courtroom at the call of the calendar at 9:30 A.M. on the return date.

A word of caution on return dates. Sometimes the assigned Justice and/or the Court Clerk's Office will direct or require a change in the return date you selected.

Accordingly, a few days after you submit your notice of petition you must check with the Clerk's Office to see if this happened. You can do this by calling the Court Clerk's Office. (Have your Docket Number ready).

Once the motion is marked submitted, it is either sent to the Justice assigned to the case for decision or is scheduled for oral argument in front of that Justice. This depends upon the procedures adopted by the Justice in question.

Remember, you are responsible for keeping track of the status of your petition after it is submitted and doing whatever follow-up is necessary after it is decided.

To check the status of your petition, call the Court Clerk's Office (have your Index Number ready). For information on follow-up steps that are required if the petition is granted, obtain the brochure from the Public Legal Resource Center called, Submit-Settle-Enter Orders.