

FACILITATING ACCESS TRAINING PROGRAM



REFERENCE MANUAL

VOLUME TWO

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I. Introduction

Volume Two of the Unified Court System's Facilitating Access Program training materials present guidelines for answering the questions that the public most frequently asks court staff. The Facilitating Access Committee's Subcommittee on Frequently Asked Questions canvassed the courts to determine these questions. In some instances, the text of an actual recommended answer is provided; however, the Facilitating Access Program recognizes that local variation may be required. Where appropriate, additional suggestions highlight particular questions and answers that require careful attention to the need to distinguish between giving legal information and giving legal advice.

Frequently Asked Questions presents thirteen subject areas:

- General questions
- Supreme Court - Criminal Term
- Supreme Court - Civil Term
- Supreme Court - Matrimonial Term
- Family Court
- Surrogate's Court
- City and District Court - Criminal Term
- Traffic
- City and District Court - Civil Term
- Landlord Tenant
- Small Claims
- Commercial Claims
- Commissioners of Jurors

Frequently Asked Questions is intended always to be a work-in-progress. New questions, answers and guidelines, as well as revisions to the material in this volume, are to be expected as the Facilitating Access Committee's work continues.

II. GENERAL QUESTIONS

A. Recommending an Attorney

Question: Do I need an attorney?

Answer: Clerks should advise parties that they have a right to retain an attorney, but whether they need one in a particular case depends on the complexity of the matter and the type of case (e.g., criminal matter). It is appropriate to refer the individuals to the library to research the particulars of their situation to determine whether they do, in fact, need an attorney.

Question: Can you recommend an attorney? Where do I get one?

Answer: Clerks are not allowed to recommend specific attorneys or law firms. Parties should be advised to contact their local attorney referral service. (A list of many of these, with telephone numbers, is provided at www.nycourthelp.gov). If they indicate that they are unable to afford the services of a private attorney, they should be referred to two web sites for information about free legal services: www.lawhelp.org (for New York City) and www.nylegalservices.org (for outside New York City).

B. Communicating with Judges

Question: Can I talk to a judge?

Answer: Clerks must be cautious about allowing people direct access to a judge. Access to the judiciary should be determined by specific court policy, since access varies from court to court and within the courts themselves. Depending on the inquiry being made, some courts may refer the parties directly to the judge's chambers; others may require the request be submitted to the court in writing. When addressing the court in writing, advise the party to include the title of the case, case number and an address where the party can be contacted.

C. Scheduling and Court Appearances

Question: How do I postpone a court date (get an adjournment)?

Answer: Clerks must determine if the party is represented by an attorney. If the answer is yes, then direct the party to contact his/her attorney for further assistance. If the answer is no and the party is self-represented then that court's specific policy will prevail.

If a party is being represented by another party due to illness or other extreme circumstances, documentation as to the specific illness or emergency must be provided to the court.

Question: What will happen to me when I appear in front of the judge?

Answer: Clerks cannot speculate on what actions a judge may take; however, they may inform the party of specific court procedures (e.g., arraignment proceedings, custody hearings, probate hearings, etc.).

D. Process

Question: How do I take someone to court?

Answer: In this instance, the clerk must engage the party in conversation in order to determine what type of court will best serve the individual (e.g.: were you assaulted?; was there a monetary loss?; does it involve the loss of a family member? etc.).

Question: Can you help me fill out this paperwork (court forms or court prescribed forms)?

Answer: Clerks have limited authority to act as a scribe in assisting physically challenged or illiterate parties. Certain courts and agencies grant clerks the authority to act as scribes for a petitioner in the course of normal business. A scribe must write down exactly what has been said by the party or petitioner.

Question: What should I say in my papers?

Answer: If the party is represented by counsel, advise the party to consult their attorney as to the contents of the papers. If the party is self-represented, the clerk may provide legal information as to the form and general content of the papers. For example, the clerk may inform the SRL that the papers must contain the case caption, index number, relief requested (what they are asking the court to do), an affirmation in support (a sworn explanation of the reasons for the request), and proof of service upon the other parties to the proceeding (assuming it is not an ex-parte application). The clerk cannot give legal advice as to what the substantive content of the papers should be. For example, the clerk cannot provide the language for the relief requested (e.g., “You should ask the judge for an order to preclude.”), nor provide the specific arguments in support of the request (e.g., “Tell the judge that it is not discoverable because...”). The clerk may direct the party to the law library to conduct legal research.

Question: May I look at some records?

Answer: The clerk should determine what records the party is seeking. It must also be determined if these files are subject to public access. Some records are sealed by court order and some records are confidential and not accessible to the public.

E. Notary

Question: I need to have this document notarized. Where do I go?

Answer: Notaries are available at local banks, police agencies, funeral homes, county clerk’s office and some attorney’s offices. The party should be made aware that a fee may be charged.

III. SUPREME COURT - CRIMINAL

A. Process

Question: **My case has been held for the Grand Jury. What do I do next?**

Answer: If the matter has been held for the Grand Jury or is to be directly presented to the Grand Jury by the District Attorney's Office, the clerk should inform the defendant that the matter is now in the jurisdiction of the Grand Jury. The defendant should contact his/her counsel for any further information.

If the defendant does not have counsel or counsel has not been assigned, the matter will be scheduled in front of a Supreme or County Court judge to afford the defendant a right to counsel. The court may address the issue of bail at that time.

Question: **My case has been indicted. What do I do next?**

Answer: In the event that an indictment warrant has not been issued, the defendant will be notified prior to the scheduled date that he/she is to appear in Supreme or County Court for arraignment. At that time the defendant will be arraigned on the indictment, and the court will address the issues of counsel and bail. If an indictment warrant has been issued, the defendant should be directed to turn himself in to the nearest arresting agency.

Question: **How do I post bail, and how do I get my bail money back?**

Answer: Bail is posted to secure the appearance of a defendant in court while a case is pending. The clerk should inform the party of the type of bail which may be posted (i.e., cash, bond, property) and the procedures that must be followed to post bail. Bail cannot be released until the criminal case is completed; the defendant is returned to custody; the court lowers the amount of bail; or the court releases the defendant on his/her own recognizance. The clerk should also inform the party(ies) of the 3% surcharge on cash bails, which cannot be returned when there is a conviction.

Question: How do I make a motion to the court?

Answer: The clerk must inquire if the party has counsel. If so, then the clerk should inform the party that all motions must be made through his/her attorney. If the party is not represented by counsel, the clerk should inform the party that all applications must be made to the assigned judge in the matter and that all interested parties must be served with the appropriate motion papers.

Question: I have had a fine and/or surcharge imposed by the court. What do I do now?

Answer: The clerk should direct the defendant to the court-ordered collection agency to make payment.

B. Appeals

Question: How do I file a criminal appeal from Supreme or County Court?

Answer: The party taking the appeal must prepare a notice of appeal. The notice of appeal must be filed with the court and Appellate Division within thirty days of sentence or order of the court.

Question: How do I file a criminal appeal from a local court to County Court?

Answer: The party taking the appeal (appellant) must prepare a notice of appeal. One copy must be served on the other party (respondent) and one copy must be filed with the court from which the appeal is being taken. One copy of the notice of appeal must be filed with the local County Clerk's Office.

C. Certificate of Relief

Question: What is a Certificate of Relief from Disabilities, and how do I get one?

Answer: A "Certificate of Relief from Disabilities" may be granted as provided in Corrections Article 23 to relieve an "eligible offender" of any forfeiture or disability, or to remove any bar to his or her employment automatically imposed by law, by reason of his or her conviction of the crime or

offense specified in the certificate. An eligible offender is a person who has been convicted of a crime or an offense, but who has not been convicted more than once of a felony (see OCA Operations Manual, available on the court system's Intranet web site). Applications for a Certificate of Relief from Disabilities are available in the Chief Clerk's Office.

D. Sealing a Record

Question: How do I get my record sealed?

Answer: First the clerk should check the record to see if it is a sealed case. With proper identification shown, the party can then be told the section of the law, either CPL 160.50 or 160.55, under which the case was sealed. They can be told that in certain circumstances those records sealed under CPL 160.50 would be made available to outside parties (e.g., if a defendant is trying to obtain a position in law enforcement). They can be told that a sealing under CPL 160.55 means that only the fingerprints and photos are sealed. If for some reason through clerical error the record should have been sealed and was not, the clerk should take immediate steps to correct the error.

Question: How do I get my record expunged?

Answer: The clerk should determine if the party is eligible to have any part of his/her criminal history expunged. If the party is eligible and the record remained opened due to clerical error, the clerk should immediately take the necessary steps to correct the error and have the record(s) sealed.

IV. SUPREME COURT - CIVIL

A. Filing Fee

Question: What if I can't afford to pay the filing fee, how can I file my lawsuit?

Answer: The clerk can advise the party to make an application to the court requesting waiver of fees because of indigence. At the time of commencing the action, an application (available in many of the offices for the self-represented) listing the amounts and sources of income, property, etc., must be filed along with the summons and complaint or summons with notice, or notice of petition and petition. The party should also forward a copy of the filed application to the local county attorney. The party should be advised that the application and supporting documentation will be reviewed by a judge who will determine the application. If granted, the no-fee status will apply to all filing fees incurred until the disposition of the matter. The party should also be advised not to serve his/her adversary until an index number is assigned to the case and printed on the forms.

B. Filing a Summons and Complaint

Question: How do I file a civil action? Where do I get the papers, and what do I put in the papers?

Answer: A clerk may advise a party that filing a Summons and Complaint or a Summons with Notice, along with the applicable filing fees, with the County Clerk's Office, starts a civil action. Likewise, a Notice of Petition and Petition, along with filing fees, is filed to commence a special proceeding. The party files the original documents with the County Clerk's Office, then serves copies, which include the index number, on the adversary.

The clerk should advise the party that for most civil actions there are no pre-printed court-authored forms. Some courts may have fill-in forms available for petitions, notice of appearances, answers, and other applications.

When forms are not available, the party should be advised to look either at sample documents in the form books in a law library or contact a legal stationery store. Some websites may also offer forms for a fee.

The clerk should tell the party that legal advice as to a specific case cannot be given. The clerk may advise the party to seek legal counsel.

Question: I got this paper (Summons and Complaint) and it says I'm supposed to appear. Where do I go?

Answer: The party should be advised that appearing means to answer the allegations mentioned in the complaint by sending a written response to whoever sent the complaint, either directly to the plaintiff or the plaintiff's attorney. The party should also be advised to submit the same response to the County Clerk's Office.

C. Enforcement of Judgment

Question: How do I enforce the judgment of divorce when the other party is in non-compliance?

Answer: The clerk can advise party that a formal application, either by Order to Show Cause or Notice of Motion, must be submitted to the court, requesting enforcement. The clerk may advise the party that in certain circumstances, such as issues involving child support or child custody, the enforcement application may also be submitted to Family Court. Legal research needs to be done to determine what papers should look like since the court does not provide pre-printed forms.

LAW LIBRARIES CAN PROVIDE COPIES OF THE FORMS BUT DO NOT HAVE SAMPLES OF THE FORMS FILLED IN.

Question: My child is 18 and according to the settlement, he/she can receive all the money. How does he/she get money from the bank?

Answer: If the court's order states that at 18 the child can receive all the money, the party should be advised that a copy of the order (preferably a certified copy) should be presented to the bank and the bank must release the money to the child. The bank may require proof of age of the child.

V. SUPREME COURT - MATRIMONIAL

A. Assigning Judges

Question: How do I get a judge assigned to my case?

Answer: The party should be advised that in Supreme Court a judge is assigned to a case once the court is in receipt of a properly filed copy of a Request for Judicial Intervention (RJI) form. The party should be advised that the RJI form can be obtained from either the Court Clerk's Office or the County Clerk's Office. The RJI form must be filed, with the appropriate filing fee, at the County Clerk's Office.

B. Name Change

Question: I've been divorced for 5 years and I want to change my name to my maiden name. How do I do this?

Answer: The clerk should tell the party to check the judgment of divorce for authorization to resume using her maiden name. The party does not require a new order if the judgment so states. The party should then contact all agencies, such as Social Security Office, credit card companies, etc., to ascertain the type of documentation needed to formalize change.

Question: I want to change my name. (I want to change my child's name.) How do I do that?

Answer: The clerk should remember that this simple question has many variations to it, and a proposed order with accompanying index number must be submitted to the court for approval.

If changing infant's name, the party should be aware that in certain situations, notice of intention to change infant's name should be given to other parent. The clerk should advise party to seek legal counsel.

C. Serving Divorce Papers

Question: My estranged wife served me with divorce papers a year ago, and I still haven't heard anything. Am I divorced?

Answer: The clerk should check the court data base and provide appropriate information to the party. The clerk should also direct the party to the local County Clerk's Office to obtain a copy of the judgment of divorce. Identification is required.

D. Looking at Files

Question: May I look at this file?

Answer: The clerk should inform the party that all papers filed regarding a Supreme Court civil action or special proceeding will be found in the County Clerk's Office. By county law, the County Clerk is also the Clerk of the Court and is the custodian of all civil Supreme Court documents. Identification is required in matrimonial actions. Matrimonial files can only be reviewed by the parties, their counsel, or someone who has been given permission (by notarized letter from a party) to view or copy the file.

E. Child Support

Question: My child received money from a settlement, and it's in trust. How can I get some money for the child's education?

Answer: The clerk can inform the party that a formal application must be submitted to the court. This can be done either as an *ex parte* application (petition and proposed order) or on notice (Order to Show Cause, Notice of Petition and Petition) depending on the circumstances. The party should be advised to seek legal counsel or do legal research to determine which type of formal application to submit as well as format of papers to be submitted. Many courts have forms available for this application.

Question: I want to get child support. My husband and I have a separation agreement on file in the County Clerk's Office. I went to Family Court for enforcement and they said I couldn't proceed in Family Court. Help!

Answer: The clerk can advise the party that Family Court cannot enforce a separation agreement, which is simply a written contract between parties. To enforce the agreement, the party can sue for breach of contract in either City (Town/Village/Small Claims) or Supreme Court, depending on the monetary amount. The party could commence a divorce action in Supreme Court or could go to Family Court, file an original petition for child support and get an original support order from Family Court.

VI. FAMILY COURT

A. Filing a Petition

Question: How do I file a Petition?

Answer: This response should be based on local training.

B. Legal Representation

Question: Do I need an attorney to appear with me in Family Court?

Answer: Attorneys are not required in Family Court. If you would like to have an attorney present for your court date, it is up to you. In certain types of cases, attorneys can be appointed by the Judge to represent you based on your income.

Question: How can I obtain a free attorney?

Answer: This response should be based on local training.

C. Receiving Copy of Order

Question: Can I have a copy of an order? Can I review my file?

Answer: Yes, copies of orders are available to you as long as you were a party to the proceeding. Family Court is a confidential court and records are not open to the public. Photo identification must be presented to receive a copy of your order. Files can be reviewed by attorneys representing one of the parties, or by agency staff, or by a party to the proceeding subject to certain documents being removed prior to the viewing.

D. PINS

Question: My child is out of control. What do I do with him/her?

Answer: If the child is under the age of 18, you can commence a PINS (Person In Need of Supervision) proceeding. As a preliminary procedure, services will be provided to children and families in order to avoid the need to file a petition,

direct detention of the child or place the child in foster care. Please call the Family Court for additional information and assistance.

Question: How do I become emancipated, or how do I emancipate my child?

Answer: There is no New York State statute that permits emancipation. In child support matters, parents may be relieved of their requirement to pay support if the child is self-supporting.

E. Establishing Paternity

Question: Can I obtain a blood test to determine if I'm the father?

Answer: In order to request a blood test, the person must file a paternity petition which contains language that alleges the named male is the father of a child born out of wedlock. When the petition is filed, the putative father can make a motion for the blood test before the trier of the case.

F. Obtaining Temporary Order of Protection

Question: How do I get a Temporary Order of Protection (TOP) in Family Court?

Answer: In order to obtain a temporary order of protection, you should contact your local Family Court where you reside or if you have sought emergency shelter, where the shelter is located. Each county should have their own domestic violence intake (some use outside agencies to assist victims of domestic violence; others use Probation). It will be necessary to file a petition and a sworn statement as to what has occurred and why you are seeking a temporary order of protection.

G. Vacating Temporary Order of Protection

Question: How do I vacate a Temporary Order of Protection?

Answer: In order to vacate a TOP you must file a written withdrawal with the court. In many counties, you must

appear before a judge in order to have the order vacated. It is important to note that until you receive an order vacating the TOP, it remains in full force and effect.

H. Filing an Appeal

Question: How do I file an objection to a Support Magistrate's decision?

Answer: The objections must be in writing and contain the name and docket number of the case. The reasons for the objections and the parts of the order objected to must be clearly stated. The opposing party must be served with a copy of the objections, either in person or by mail and an affidavit of service must be completed and notarized. The original of the objections and the affidavit of service must be filed with the Clerk of the Family Court within 30 days of the date the order was received in court or personally served or, if the order was received by mail, within 35 days of the mailing of the order.

The party served with objections has a right to file a rebuttal, which is an answer to the objections. The rebuttal must be in writing and contain the name and docket number of the case. It must state the date the objections were received, the specific objections being answered and the reasons for the rebuttal. The rebuttal must be filed with the Clerk of the Family Court. The opposing party must be served with a copy of the rebuttal, either in person or by mail, within 13 days after receipt of the objections, and an affidavit of service must be filled out.

Question: How do I file an appeal? How do I perfect an appeal (requirements of the Appellate Division)?

Answer: An original plus two copies of the Notice of Appeal must be filed with Family Court within 35 days of the mailing of the order that is to be appealed. Family Court cannot assist you with your questions regarding the perfecting of an appeal or the requirements of the Appellate Division. It is suggested that you read the instructions and, if you still need assistance, you should consult an attorney.

VII. SURROGATE'S COURT

Question: How can I transfer personal property/assets such as bank accounts, nursing home accounts or automobiles that were in the name of a decedent?

Answer: In order to transfer assets in the decedent's name alone, someone must obtain authority from the court to administer the estate. The court requires proof of the decedent's death, which in almost all cases means a certified copy of the death certificate. The court will make initial inquiries as to the decedent's domicile, the relationship of the inquiring party to the decedent, the existence of a will and the nature and value of the decedent's assets in order to direct the individual to the right department. The initial inquiry should reveal whether or not the amount or the type of property at issue will qualify for the expedited procedure for Small Estates under Article 13 of the Surrogate's Court Procedure Act.

To qualify as a Small Estate (Voluntary Administration), the estate must consist of personal property (no real estate or causes of action) and total less than \$20,000 (\$30,000 effective January 1, 2009), exclusive of exempt property. If the matter qualifies as a Small Estate, the court will provide the person with the affidavit required and instructions for its completion. When the affidavit has been completed, the clerk will check it for completeness. The affidavit is available and may be completed on-line.

If the estate exceeds \$20,000 (\$30,000 effective January 1, 2009) or for some other reason cannot be processed as a Small Estate under Article 13, the court will refer the applicant to the Administration Department (if there is no will) or to the Probate Department (if there is a will) where the party can obtain the appropriate forms to commence a proceeding.

Note that in many instances, the transfer of a motor vehicle to the next of kin may be taken care of at the Department of Motor Vehicles (DMV) without any Surrogate's Court proceeding. Individuals should check with DMV for procedures and necessary transfer forms.

Question: Where the decedent left a will, what must be done to have it admitted to probate?

Answer: The original will should be filed in the court together with the probate petition and various other supporting papers. The attesting witnesses' depositions must be filed, or in certain cases it may be necessary for the witnesses to testify at the court; jurisdiction must be obtained over distributees (persons who would benefit if the will is invalid); and the court must be satisfied that the decedent was competent in all respects to make the will. If any distributee files formal objections to the probate of the will, those objections must be resolved before the will is admitted to probate. In some cases there are other persons who may have the right to file objections, and they also must either consent or be served with process in the proceeding.

Question: How can I find an estate file?

Answer: Most records in the Surrogate's Court are public records. The individual seeking information will be directed to the Record Room where the clerk will search the computer and other records to help in finding an estate file. A fee may be charged for a record search. It is a good idea to call ahead to make sure that the file sought exists and to allow time to retrieve the file from storage if it is old or if several files are being sought. The individual must look in the correct county, that is the county of the decedent's domicile. If the individual has questions as to what procedures took place in the court, or the status of a pending proceeding, court staff will further assist or direct the individual. Certain Surrogate's Courts post information about their proceedings online. To access the information, an individual must log on to the web site and obtain a user ID and password.

Question: Can I use Surrogate's Courts records to obtain family information (genealogy)?

Answer: An individual can utilize the court's public access computers to search for family information or, in certain courts, search for records online. In the case of older proceedings not entered into the computer, the court staff can offer limited assistance to individuals who know the names of the decedents who died domiciled in the county. If this basic information is unknown, it is possible to request searches by staff on payment of a search fee of \$30 or \$90 depending whether the estate is more or less than 25 years old.

Question: How do I obtain guardianship over a child's person and/or property?

Answer: It is not unusual for people to obtain letters of guardianship of the person or property of a child without using the services of a lawyer. The court will provide the necessary forms and instructions for their completion. The child's birth certificate is required and the value of the infant's property should be supplied where guardianship of the property is requested. A parent is generally the natural guardian of the person of his or her own child, but even a parent must obtain letters of guardianship of the infant's property to act for the child in a lawsuit or to receive monies on the child's behalf. If the petitioner is not a parent, the consent of the parents and others more closely related than the petitioner must be filed or a reasonable explanation given for why they are not attached. For instance, if it is alleged that a parent abandoned the infant, that parent must be served with process, or if the parent's whereabouts are unknown, due diligence must be used to find the missing parent. In all cases, information is requested from the State Central Register of Child Abuse and Maltreatment as to the petitioner and other adults in the household and petitioners may be fingerprinted to make sure they do not have criminal records which would disqualify them from serving as a guardian.

Question: How can I obtain information regarding an adoption?

Answer: Adoption records are the principal exception to the general rule that Surrogate's Court records are open to the public. By statute, adoption records are strictly confidential. The files are sealed at the time of the adoption and can only be opened pursuant to court order where the exceptional circumstances set forth by statute have been established. To make a formal application to open sealed adoption records on the grounds set forth in the Domestic Relations law, an individual is advised to consult an attorney familiar with this area of the law.

If you are adopted, placed a child for adoption or are the biological sibling of an adopted person, you may be able to obtain information from the New York State Health Department's Adoption Information Registry. The court has information about the Adoption Information Registry or you can go online at http://www.health.state.ny.us/vital_records/adoption.htm.

VIII. CITY AND DISTRICT COURT - CRIMINAL

Question: Where do I find a bail bondsman?

Answer: Bondsmen are independent of the court system; however, most courts have a listing of area bondsmen and make that list available to the public. Bond companies are listed in the yellow pages of the local telephone directory.

Question: How do I post bail, and when do I get my money back?

Answer: Bail is posted to secure the appearance of a defendant in court while his/her case is pending. The clerk should inform the party of the type of bail that may be posted (i.e., cash, bond, property) and the procedures to follow to post said bail. Bail cannot be released until the criminal case is finished, the defendant is returned to custody, the court lowers the bail or releases the defendant, or the defendant is released on his/her own recognizance. The clerk should also inform the party(ies) of the 3% poundage fee on cash bails, which cannot be returned if there is a conviction.

Question: I was arrested and the police took my personal belongings, how do I get my property back?

Answer: The clerk should direct the defendant to contact the local arresting agency to inquire as to the procedure to be followed for the return of property.

Question: I have an outstanding warrant, and I don't want to be arrested. If I come to court is the judge going to put me in jail?

Answer: The clerk should advise the defendant that the warrant will not be withdrawn until he/she makes a personal appearance in court. Whether or not the defendant will be placed into custody is at the discretion of the judge.

Question: I've been arrested, but I'm not guilty. What will happen to me when I appear in court?

Answer: The clerk should advise the defendant to appear in court on his/her scheduled date. The clerk should advise the defendant that the charges filed against him/her will be explained to him/her by the judge, he/she will be given a copy of the charges, the judge will determine whether he/she has or can afford an attorney and the issue of bail will also be discussed.

- Question:** I was the victim of a crime. Do I need an attorney?
Answer: In a criminal matter the complainant/victim is represented by the district attorney's office or other local prosecuting agencies.
- Question:** How do I get an Order of Protection?
Answer: You must have a criminal action pending to request an Order of Protection in a criminal court. The judge will make the determination as to what kind of order will be issued.
- Question:** How do I vacate an Order of Protection?
Answer: You must appear before the judge presiding for that case to make your request, and the judge will determine whether the order will be vacated.
- Question:** How do I file a criminal appeal from a local court to County Court?
Answer: The party taking the appeal (appellant) must prepare a notice of appeal. One copy must be served on the other party (respondent); one copy must be filed with the court from which the appeal is being taken; and one copy must be filed with the local County Clerk's Office.

IX. TRAFFIC COURT

A. Fines

Question: Will there be a fine, and how is this going to affect my license?

Answer: Explain to the party that by pleading guilty to a charge he or she will be subject to the imposition of a fine and mandatory surcharge. Further, if the party pleads to certain infractions there will be points attached to the driver's license, which can affect the cost of the driver's car insurance.

B. Insurance

Question: Why can't the court accept my insurance card as proof of insurance on my vehicle?

Answer: You can still possess an insurance card even if your insurance has been canceled. An original letter is required from the insurance agent after a ticket has been issued.

Question: Will this affect my insurance?

Answer: Yes, if you plead guilty to a moving violation it can affect your insurance.

C. Driver Improvement School

Question: Why do I have to come into court to ask the judge for permission to attend the driver improvement school? Can't the clerk just give me permission?

Answer: Only a judge can give permission for you to attend driver improvement school. After reviewing your conviction and driving record, supplied to the court by DMV, along with asking you about your past attendance in other similar classes and when you attended, the judge will make the decision whether to order you to attend driver improvement school.

Question: Do I need a license to attend the driver improvement school?

Answer: Yes, you must have a driver's license to attend the school.

D. Pleading Not Guilty

Question: If I plead not guilty to these charges, what is going to happen to me?

Answer: If you plead not guilty to the charges you will be given a trial date. On that date, you and/or your attorney (if you chose to be represented by counsel) will meet with the person handling the case. After consulting with the officer or officers who issued the ticket(s), the prosecutor and you and/or your attorney will appear before the judge.

If you plead guilty to or are convicted after trial of any charges, the judge will make a determination as to fines and/or surcharges. Please be advised that failure to appear may (depending on court location and jurisdiction) result in the issuance of a bench warrant for your arrest or in your license being scooped.

Question: What is a supporting deposition, and should I check that box indicating I want one?

Answer: The supporting deposition contains any information or comments about why the ticket or tickets were issued, the location of the stop, conditions of the road, etc.. You must decide for yourself whether you want to request the deposition.

E. Tickets

Question: If I don't take any action on this ticket what happens? (This question is usually from out-of-state drivers.)

Answer: Your license can be suspended and/or a warrant can be issued for your arrest.

Question: Can I go to jail for a traffic ticket and for how long?

Answer: Yes, you can go to jail for up to 15 days on a single traffic infraction.

Question: I received a traffic ticket. Where do I go?

Answer: The clerk should inform the party to look on the ticket. The name and address of the court is listed as well as the time and date when the party is to appear. The ticket also will inform the party of appearance rules for that particular jurisdiction. (The location of this information on the ticket can vary.)

Question: I received a ticket and Department of Motor Vehicles (DMV) told me to talk to County Court.

Answer: The clerk should look at the ticket, if available, to determine if the ticket is for a felony. If it is for a felony, the superior court clerk should check the computer database to determine information as to appearance and disposition, if any. If the ticket is for a violation or infraction, the clerk should advise the party to contact the appropriate local traffic bureau or town, city, or district court where ticket was issued.

F. License Suspension

Question: My license was suspended. How do I get it back?

Answer: The clerk can advise the party that an application to the Department of Motor Vehicles may be made after obtaining written permission from the sentencing judge. The party should be aware that final approval is the decision of DMV.

Question: My license was taken away because I was charged with DWI. My case was dismissed, but DMV won't give back my license. What do I do?

Answer: The clerk should inform the party that the DMV makes the final determination as to the reinstatement of licenses. The court has no remedy. The clerk can advise the party to seek legal counsel.

Question: I have an outstanding warrant, and I don't want to be arrested. If I come to court, is the judge going to put me in jail?

Answer: The clerk should inform the defendant that the warrant will not be withdrawn until he/she makes a personal appearance in court. Whether or not the defendant will be placed into custody is at the discretion of the judge.

Question: I didn't understand that pleading guilty to the charge would result in my losing my license. How do I go about vacating the judgment?

Answer: If your plea was by mail, contact the court where the plea was taken and request to have your case scheduled for a court date for the purpose of vacating your mail plea. If your plea was taken in court before a judge, you need to consult an attorney about the process for vacating a plea.

X. CITY COURT - CIVIL

A. Filing a Petition

Question: What is a civil case?

Answer: If a case does not fall within the jurisdiction of small claims or summary proceeding, you may be able to bring a civil action in City Court.

Question: How do I start an action?

Answer: You need to file a Summons and Complaint. Forms are available from a stationery store, the law library or your attorney. You must file the completed forms with the court with proof of service. It is recommended that you review this matter with your attorney. The court cannot assist with the completion of the forms.

Question: What is the jurisdiction of the court?

Answer: Monetary: actions and proceedings for the recovery of money or personal property where the amount sought or the value of the property does not exceed \$15,000 (\$25,000 in New York City Civil Court), exclusive of interest or costs. There is no monetary limit on counterclaims.

Geographical: plaintiff or defendant must

1. be a resident of the city or be a resident of a town contiguous to the city; or
2. have regular employment within the city; or
3. have a place for the regular transaction of business within the city.

B. Answering the Petition

Question: I received a summons, and I know I owe the money. What do I do now?

Answer: Immediately contact the attorney listed on the summons and discuss the case with that office.

Question: I received a summons, but I don't owe any money. What do I do?

Answer: You can file an answer with the court stating why you feel you do not owe the money. The answer must contain the name of the case and it must be notarized. A copy should also be sent to the plaintiff or his/her attorney. The summons states the time frame you have to file the answer – be sure to read it carefully.

Question: **Is there a fee to file my answer with the court?**

Answer: There is no fee to file an answer if the case has been filed with the court and an index number assigned. If the case has not been filed, you will need to pay a fee for an index number. You may file the answer directly with the plaintiff and avoid paying the filing fee. Note: You can advise the litigant to check back in a couple of days to see if it has been filed, and if it has, then they can file the answer.

C. Collection of Judgment

Question: **Why did I get a judgment against me?**

Answer: If you did not contact the plaintiff or file an answer, the plaintiff is entitled to receive a default judgment. If you wish to have the matter re-opened, you may do so by submitting a written request stating the reason you wish to have it re-opened. The judge will review it and respond in writing. Any correspondence sent to the court also should be sent to the plaintiff.

Question: **I paid this debt - why is there still a judgment?**

Answer: It is up to the plaintiff to file a satisfaction of judgment. Sometimes failure to do so is just an oversight on the plaintiff's part. It is recommended that you contact the plaintiff and ask that s/he file a satisfaction. If this does not work, write a letter to the judge documenting that you have attempted to have the plaintiff file the satisfaction and have received no response. You must be prepared to submit documentation (e.g., receipts, pay stubs, etc.) that the debt has been paid in full. The judge will review your request, and the court will be in contact with you regarding this issue.

XI. LANDLORD/TENANT

A. Process of Eviction

Question: I want to evict someone. How do I do that?

Answer: First you must give notice to the tenants that you wish to evict them. A three (3) day notice if they owe rent; a thirty (30) day notice for any other reason. Thirty day notice must be given at least one day before the rent is due. The 30 days are the following calendar month.

After the notice time has elapsed, the landlord must file the eviction papers (Notice of Petition and Petition, which have been purchased from a legal stationery store, filled in, signed and notarized) with the court, arrange for service upon the tenants and receive the court date. On the court date, the landlord and tenant appear before the judge who will then make the decision as to the eviction, money judgment and warrant for removal.

B. Affidavit of Service

Question: When does the Affidavit of Service need to be returned?

Answer: An Affidavit of Service must be returned within three (3) calendar days of service on the tenant. The day of return is the filing date.

Question: By when do I have to serve this affidavit?

Answer: An affidavit is not served. The affidavit is completed by the person that served the notice of petition and petition to attest to the time, date, place and person served. Tenant must have at least 5 days notice but no more than 12 days before the court date.

Question: Where do I purchase the forms for filing?

Answer: You can purchase the forms at any legal stationery store, or you may find them online at <http://www.nycourts.gov/litigants/forms.shtml>.

C. Court Proceedings

Question: Can I bring a witness?

Answer: Witnesses can be helpful if they actually saw or heard notice being given or rent being demanded or paid. Damages to property are not part of these proceedings.

Question: Do I find out right in court if I win or not?

Answer: Yes.

D. Payment/Collection of Judgment

Question: If I win, how long before I get my money? If they don't pay, what can I do?

Answer: The court has nothing to do with the collection of money. If you do not receive money owed within a short time after your day in court, the proper authority can help you collect. Provide the proper authority with the place of employment or names, etc. to locate bank accounts. (Locality specific)

Question: Is there a time limit in which to file a claim?

Answer: If a judgment is awarded in landlord/tenant court, that judgment will be entered automatically.

XII. SMALL CLAIMS

A. Filing a Small Claims Case

Question: How do I file a Small Claim proceeding?

Answer: You will need to come into the Small Claims Court and fill out an application, with the name, address and zip code of the person or business you are suing, the amount you are suing for and a brief reason for the lawsuit. After evaluating your application, you will be given a court date, approximately 6 to 8 weeks from the date of filing. You will then pay a filing fee of either \$15 if you are suing for \$1,000 or less, or \$20 if you are suing for over \$1,000. A summons will then be sent to the party being sued by regular mail and certified mail.

Question: How much can I sue for in Small Claims?

Answer: The maximum you may sue for is \$5,000.

Question: May I ask for “pain & suffering”?

Answer: No. Not in Small Claims.

Question: Will you take a personal check or credit card for the filing fee?

Answer: Answer is locality specific.

Question: What does “DBA” mean?

Answer: “Doing business as” is an individual operating as a business or “doing business as” a business.

Question: What is the age limit of the defendant?

Answer: A defendant must be 18 years of age. If the defendant is not yet 18, you must sue the child’s parents, naming them by first and last name.

Question: What happens if the defendant fails to show up in court?

Answer: You would still present your case and show whatever proof necessary to support your claim, then the Hearing Officer may issue a default judgment against the defendant.

Question: Can I sue an insurance company?

Answer: Yes, if it is your own insurance company. Otherwise, if it involves an auto accident, you would have to file against the owner and driver of the other vehicle.

Question: What if I am unhappy with the Hearing Officer's decision? Can I appeal?

Answer: If you are unhappy with the Hearing Officer's decision you may file a request for a trial *de novo* which is Latin for "new trial." The filing fee for filing such a request is \$75, which is non-refundable. Your case would then be scheduled before a judge within thirty days.

B. Collection of Judgment

Question: Once I go to court and win my claim, how do I collect my money?

Answer: What you win in Small Claims is a money judgment. If the defendant fails to pay you, you would have to try to collect, by either knowing where the defendant works or has a bank account, or if they own a vehicle or a major asset. You would first have to wait for 30 or 35 days before collecting. If you know whether the defendant works, you can garnish his wages through the Marshal's office by filing an income execution. If you know whether the defendant has a bank account, you may file a property execution with the Marshal and he can go into the bank account and seize the money out of the account, for a fee which is added onto the amount of your judgment (you would have to pay the fee up front and the Marshal would add it on to the amount of your judgment when he collects). To go after a vehicle, you would have to do a lien and title search through the Department of Motor Vehicles, then proceed through the Marshal's office.

Question: What if I don't know where the defendant works or has a bank account?

Answer: If you don't know anything about the defendant, you may do information subpoenas to the different banks to try and find out where the defendant has a bank account. The court can supply you with the subpoenas, at a fee of \$2.00 per bank.

Question: How long do I have to collect my judgment?

Answer: Your judgment is good for twenty years.

XIII. COMMERCIAL CLAIMS

A. Filing a Commercial Claim

Question: What is a commercial claim?

Answer: Basically, a commercial claim is small claims court for plaintiffs who are corporations, partnerships or associations.

Question: What is the difference between Commercial Claims and Commercial Claims Consumer Transaction?

Answer: A regular commercial claim is usually a case against another business.

A commercial claims consumer transaction is a case in which the subject of the transaction is primarily for personal, family or household purposes. You are required to send the defendant a demand letter (available from the Clerk) at least 10 days but no more than 180 days before you start the lawsuit. It is recommended that a copy of the letter be kept for your files.

Refer to the filing requirements for the proper forms.

Question: What are the limits in commercial claims?

Answer: Monetary: up to \$5,000 for money damages only.

Geographical: defendant must reside, work or have a place of business in the county or district.

Question: What do I need to file? Where do I get the forms?

Answer: To file a Commercial Claim, you will need the following:

- Application (available from the Court Clerk).
- Verification that no more than five claims have been instituted by you anywhere in the State during the calendar month (available from the Clerk).
- Filing fee (consult with the Clerk). Current fee is \$25 plus mailing costs for each defendant.
- If the case is a Consumer Transaction, you will need a demand letter certification (available from the Clerk). The demand letter also is available from the Clerk.

Question: What happens next?

Answer: The Court schedules a hearing date and sends a summons to the defendant. You will receive a notice of the hearing date as well. Be prepared to present your case on that date.

XIV. COMMISSIONER OF JURORS

A. Jury Service Questions

Question: How can I postpone my jury duty ?

Answer: The Judiciary Law allows jurors to receive a postponement of no more than 6 months the first time they are summoned. In many counties jurors can access a dial-in system, use the internet or a telephone call to speak to a staff member to arrange the deferral. Beyond the first time, jurors may be required to provide written or other documentation as justification. No juror can be postponed for more than 18 months.

Question: If I refuse to return my qualification questionnaire or appear when summoned, what will the courts do to me ?

Answer: Jury service is a right and a legal obligation in New York State. A finding of non-compliance can result in a fine of up to \$250 and an order compelling a person to serve as a juror.

Question: My boss refuses to pay me when I serve as a juror, and I can't afford to serve without some pay. What should I do ?

Answer: The Employer / Employee Guide to Jury Service will help to answer all jury pay related questions. An employer of more than 10 employees must pay a juror at least the first \$40.00 of daily wages for the first three days of jury service. Refer persons to www.nyjuror.gov where they can download a chart or request hard copy of the booklet.

Question: I want to be excused from serving for medial reasons. What should I do ?

Answer: Depending on the situation, you may have to provide written documentation from a physician about your condition and why it prevents you from serving. For other situations such as financial hardship, clergy, etc., refer to the Rules of the Chief Administrator part 128 - Uniform Rules For The Jury System - Appendix A - Guidelines For Postponements And Excusals.

Question: I am a disabled person who wants to serve as a juror. Will you make accommodations for me ?

Answer: Yes. Under the ADA, the Unified Court System is obligated to make reasonable accommodations and provide services such as interpreters for the deaf, assistive listening devices, forms with large fonts, assistance with the completion of forms and physical accessibility. Questions should be referred to the ADA liaison in your court or judicial district.