

SUPREME COURT, CIVIL BRANCH
QUEENS COUNTY
88-11 Sutphin Boulevard, Jamaica, N.Y. 10007

Self Represented Information Office

How to Commence a Civil Action

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.

In general, a person who wishes to file a lawsuit in Queens county, to obtain money damages of more than \$25,000, may commence a civil action in this court. Cases where a party seeks to stop certain actions by another party may also be heard in this court. A self represented person should refer to the Civil Practice Law and Rules (CPLR) Article 5, to determine which county a lawsuit may be commenced (known as **venue**). Every lawsuit must be brought within one of various deadlines spelled out in the law, which are known as **statutes of limitations**. CPLR Article 2. Legal research made be done at the Public Access Law Library on the Sixth floor, Monday to Friday, 9:30 A.M. to 4:30 P.M..

The complaining party, is the **plaintiff**, and the alleged wrongdoer is the **defendant**. The basic procedures for starting an action are explained in this pamphlet. To start an action, either a **summons and complaint** or a **summons with notice** are prepared. They are known as **initiating papers**.

Prepare the Initiating Papers

The Summons

A **summons** contains the name of the court, the caption of the case (a box at the top left side of the page with the names of the parties), an Index Number (every lawsuit filed has its own identifying case number) and the date the initiating papers are filed with the County Clerk's Office. The **name, address and telephone number** of the **plaintiff's attorney** or the **self represented plaintiff** are stated on the summons. The plaintiff or attorney also signs his/her name on the summons. See N.Y. Code of Rules and Regulations, Section 130-1.1-a. The defendant should be the person (or entity) the plaintiff claims is legally responsible for the breach of some duty or obligation owed the plaintiff.* A sample of a summons is attached.

* **Important:** A person who wishes to bring a claim against a municipality may be required to file a **Notice of Claim** before starting the lawsuit and within a deadline that may be very short. **Failure to file a Notice of Claim on time may result in dismissal of the action.** For more information, consult an attorney. See, Notice of Claim, available in Room 109, for general information on this subject.

A **summons** is served with a **complaint** and requires the **defendant** to answer the allegations and claims of the plaintiff. The **complaint** describes the plaintiff's case in detail.

A **summons with notice** is a type of summons. The summons with notice is not served with the complaint. It contains all of the information described above, plus a brief description of the type of case and the relief the plaintiff is asking the court to grant. After a **summons with notice** is served, the defendant can **demand** that the plaintiff serve a **complaint**. The plaintiff must then have the complaint served within 20 days after being served with the **demand**, or the case may be dismissed. CPLR 3012(b). A sample of a summons with notice is attached.

Both types of **summonses** require the **defendant** to serve a **notice of appearance** in the lawsuit. The **notice of appearance** informs the plaintiff that the defendant will respond to the lawsuit.

The Complaint

A complaint (and every other document served in a case in this court) should be typed, double spaced or legibly printed, in English, using black ink. It must be on 8½ x 11 inch paper, using only one side of the paper. Papers should be stapled or otherwise bound securely. CPLR 2101.

The complaint describes plaintiff's charges against the defendant and must include certain essential allegations in order to add up to a legally sufficient claim. Each defendant must be alleged to have taken part in the wrongdoing which is alleged to have damaged the plaintiff. It is not enough to state that a plaintiff feels he or she has been wronged by the conduct of someone else. The wrongdoing must also have resulted in some form of damages to plaintiff. A person, for instance, ordinarily may not sue for damages just because a supermarket clerk spoke rudely to him or her.

The complaint should begin with a brief identification of the plaintiff, followed by an identification of the defendant. The complaint should set forth the plaintiff's charges in separate, numbered paragraphs. Each paragraph should be short and contain only one allegation.

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 plaintiff was harmed as a result, and the type and extent of damages suffered. The facts should be stated in chronological order, including specific dates. The plaintiff should write the complaint in a clear, understandable and organized fashion. Although a plaintiff is familiar with the facts, he or she should keep in mind that the court will not know them unless they are presented in the complaint.

The complaint should conclude with a paragraph in which the plaintiff sets forth all the relief against the defendant that he or she is seeking from the court. In certain circumstances, the complaint must be verified, which means signed in a certain format under oath, before a notary. CPLR 3020. A self represented plaintiff will have to draft a complaint suited to the circumstances of his or her case. An *example* of a complaint is attached.

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, by paying a sum of money, known as **damages**. The court may also order a party to do, or to refrain from doing, certain acts. This is known as **injunctive relief**. The court may decide the rights of parties to a dispute. This is known as **declaratory relief**.

Commencing the Action

Make 1 copy of the **initiating papers** for each defendant and a copy for your own records.

The action is started only after getting the Index Number. The original initiating papers must be filed in the County Clerk's Office, 88-11 Sutphin Boulevard, Room 106. Submit all of these items to the Indexing Department and pay the filing fee of \$210.** You must write the Index Number and the date the summons was filed on the copies of initiating papers before they are served. Now someone over the age of 18, not a party to the case, can serve the papers on each defendant in the manner provided by law. **You cannot serve your own papers.** CPLR 2103(a).

Service of the Summons with Notice or the Summons and Complaint

Basic notions of fairness require that before the plaintiff may succeed in obtaining the relief demanded in the summons with notice or summons and complaint, the defendant be formally notified of the lawsuit.

A defendant must be given an opportunity to put a defense before the court. The notification is known as **service of process**. Proof of service of the initiating papers must be timely filed with the County Clerk's Office, Room 100, or the case may be dismissed. See How to Serve Legal Papers, available in Room 109 for information on service.

** If the plaintiff claims to be financially unable to proceed with the action, he/ she may apply for a court order that will waive payment of the court filing fees. This is known as a poor person order. See, How to Apply for Poor Person Status, in Room 109.

If these steps are performed properly, a case now exists. The defendant now has approximately 20 or 30 days (see CPLR 320) within which to serve the plaintiff or plaintiff's attorney with a written response, depending on how the defendant was served. Defendant's response will take the form of an **answer**, or a **motion to dismiss the complaint**, with the notice of appearance.

The **answer**, (like a complaint), is the defendant's position regarding the case.

If the complaint contains allegations which defendant believes to be legally unsound, defendant may make an application to the court, to end the case promptly (a **motion to dismiss**). If the plaintiff's case survives this motion, the case will continue. Plaintiff must then prove the truth of the allegations contained in the complaint. For more on the response process, see How to Respond to a Summons and Complaint, available in Room 109.

Request for Judicial Intervention (RJI)

Although a lawsuit is in existence upon the filing and service of a summons with notice or summons and complaint, the case has not yet entered the court system and is not known to the court. A civil action may proceed for a long time before the parties go before a Judge. The complaint and the answer set the frame of the dispute; additional action is required to bring the dispute to a head, or to put the plaintiff to his or her proof before the court or a jury. This will happen only when a party files a Request for Judicial Intervention (RJI) form and pays the \$95 court filing fee. Filing a RJI assigns the case to a Judge and asks the court to take some action in regard to the dispute.

A case may come to court when a motion is made or a preliminary conference is requested. The plaintiff may, at an appropriate time, have the case placed on the trial calendar. Until the case is placed on the trial calendar, it can never be called for trial. See, How to file a Request for Judicial Intervention, available in Room 109.

INSTRUCTIONS: FILL IN THE NAMES IN THE BOX NUMBER BELOW, THE INDEX NUMBER AND THE DATE THE INDEX NUMBER WAS PURCHASED. COMPLETE ALL BLANKS IN ACCORDANCE WITH THE DIRECTIONS SET FORTH IN BOLD PRINT.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X

[YOUR NAME(S)]

Plaintiff(s),

Index No. _____/____

-against-

Date Index No.
purchased _____

[NAME OF PERSON(S) SUED]

SUMMONS

Defendant(s)

-----X

To the Person(s) Named as Defendant(s) Above:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the complaint of the plaintiff(s) herein and to serve a copy of your answer on the plaintiff(s) at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Dated: _____, 200__
[DATE OF SUMMONS]

[YOUR NAME(S)]

**[YOUR ADDRESS(ES) and
PHONE NUMBER(S)]**

Defendant's Address _____
[ADDRESS OF PERSON(S) SUED]

Venue: Plaintiff(s) designate(s) Queens County as the place of trial. The basis of this designation is **[CHECK ONE]**:

- ___ Plaintiff(s)' Residence in Queens County.
- ___ Defendant(s)' Residence in Queens County.
- ___ Other -- Describe: _____.

NOTE: THIS FORM OF SUMMONS MUST BE SERVED WITH A COMPLAINT

THIS IS ONLY A SAMPLE OF A COMPLAINT. IT IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY. ANYONE SEEKING TO FILE AND SERVE A SUMMONS AND COMPLAINT MUST DRAFT HIS OR HER OWN COMPLAINT USING THE FACTS OF HIS OR HER OWN CASE AND THE RELEVANT LAW.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
JOHN JONES,

Plaintiff,

Index No. 700130/96

- against -

COMPLAINT

GEORGE SMITH,

Defendant.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The complaint of the plaintiff, John Jones, respectfully shows and alleges as follows:

1. The plaintiff herein, John Jones, is a resident of the State of New York. Mr. Jones resides at 32 Pirate's Cove, Whitestone, New York.

2. The defendant herein, George Smith, has a principal place of business at 522A Jamaica Avenue, Jamaica, New York. Defendant is engaged in the business of building submarines.

3. Plaintiff Jones desired to have a small submarine built pursuant to a design prepared by him. He and defendant discussed his needs and specifications for this project.

4. On March 1, 1996, plaintiff and defendant entered into a written agreement. Pursuant thereto, plaintiff agreed to pay the sum of \$200,000.00 for the submarine. Plaintiff was obligated to make a downpayment of \$100,000.00 on or before April 1, 1996, with the balance to be due upon delivery of the submarine. The defendant agreed to build the submarine in accordance with plaintiff's design for the aforesaid price and to complete the work and deliver the boat to a fixed place on or before July 15, 1996.

5. On March 8, 1996, plaintiff delivered to defendant a certified check in the sum of \$100,000.00, which defendant cashed.

6. Defendant failed to deliver the submarine on or before July 15, 1996, as agreed. Plaintiff made numerous phone calls and sent several letters to defendant about the contract, but received no response.

7. By reason of the facts and circumstances stated above, defendant has breached the contract.

8. By reason of the facts and circumstances stated above, plaintiff has been damaged by defendant in the sum of \$120,000.00.

WHEREFORE, plaintiff demands judgment against defendant in the sum of \$120,000.00, plus interest from July 15, 1996, costs and disbursements, together with any other relief the Court finds to be just and proper.

Dated: January 4, 1997

John Jones **[Printed]**
Plaintiff

32 Pirate's Cove
Whitestone, New York 11010
718-520-5151

VERIFICATION

John Jones, being duly sworn, deposes and says:

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

John Jones **[Signature]**
John Jones **[Printed]**
Plaintiff

Sworn to before me this
15th day of January 1997

William Brown
Notary Public

[Print in black ink to fill in the spaces next to the instructions. Both pages must be completed. This summons cannot be used for divorce actions.]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X

[Your name(s)] Plaintiff(s)

-against-

SUMMONS WITH NOTICE

Index No. _____ / _____

_____, 200____
Date Index No. purchase

[Name(s) of party being sued] Defendant(s)

-----X

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to appear in this action by serving a notice of appearance on the plaintiff(s) at the address set forth below, and to do so within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer or appear, a judgment will be entered against you by default for the relief demanded below.

Dated: _____, 200__

[Date of summons]

[Your name(s)]

[Your address(es) and telephone no.(s)]

Defendant(s) _____
[Address(es) of party being sued]

Notice: The nature of this action is [briefly describe the nature of your case against the defendant(s), such as, breach of contract, negligence]: _____

The relief sought is [briefly describe the kind of relief you are asking for, such as, money damages of \$25,000] _____

Should defendant(s) fail to appear herein, judgment will be entered by default for the sum of _____ [amount of money demanded], with interest from the date of _____ [date from which interest on the amount demanded is claimed] and the costs of this action.

Venue:

Plaintiff(s) designate Queens County as the place of trial. The basis of this designation is [check box that applies]:

- Plaintiff(s) residence in Queens County
- Defendant(s) residence in Queens County
- Other [See CPLR Article 5]: _____