

CIVIL COURT OF THE CITY OF NEW YORK

Civil Court Directive

Subject: Procedure for Counterclaims
In Small and Commercial Claims Actions

Class: DRP-141
Category: SC-10
Eff. Date: Sept. 3, 1996

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BACKGROUND:

Chapter 90 of the Laws of 1996 amends Sections 1803 and 1803A of the New York City Civil Court Act regarding the filing of counterclaims in small and commercial claims actions.

POLICY:

It is the policy of the Civil Court, effective Tuesday, September 3, 1996, that we will implement the recently amended Section 1803(c) and recently created Section 1803A (d) as follows:

1. If the Defendant appears before the Clerk within the statutory period (i.e., within five days of receipt of the Notice of Claim) the Clerk will provide the Defendant with the appropriate form for filing a counterclaim, will accept the appropriate fee and will send notice to the original claimant of the counterclaim amount and cause of action.

2. It shall not be the Clerk's responsibility to determine whether or not the counterclaim is timely (i.e., within five days of receipt of the Notice of Claim by the Defendant). The determination of timeliness will remain with the Court.

3. The statute also provides that if the Defendant fails to file the counterclaim within the five day period, he/she is NOT precluded from filing the counterclaim at a later date, and that in such instances the Claimant may (but shall not be required) to request and obtain adjournment of the hearing to a later date. This has been interpreted to mean that we will accept the filing of a counterclaim in the Clerk's Office until five days before the hearing, and that a Defendant may make application to the Court on the night of the hearing (as has been our policy in the past) to state his/her counterclaim.

4. If the application is made to the Court, after determining the circumstances:

A. If both parties are present, and the Claimant requests an adjournment, the Judge shall:

1) **grant the adjournment** as required by statute, and either,

a) **accept the application for the counterclaim orally**, in which case the Defendant shall file the counterclaim immediately with the Clerk of the Part,

or

b) **require that the counterclaim be submitted in writing** to all parties and to the Court, in which case the Defendant shall file the counterclaim in the Small Claims Office at least five days prior to the adjourned date, in order to provide sufficient time for postal delivery by First Class mail.

B. If both parties are present, and the Claimant does not request an adjournment, the Judge may either:

1) **accept the application for the counterclaim orally**, in which case the Defendant shall file the counterclaim immediately with the Clerk of the Part, and the Court may either

a) immediately hold the hearing, or

b) adjourn the case for hearing on a future date,

or

2) ***sua sponte* require that the counterclaim be submitted in writing**, in which case the Defendant shall file the counterclaim with the Clerk in the Small Claims Office at least five days prior to the adjourned date, in order to provide sufficient time for postal delivery by First Class mail to all parties and to the Court, **and adjourn the case for hearing on a future date.**

C. If the Claimant is not present, the Judge may **require that the counterclaim be submitted in writing** in which case the Defendant shall file the counterclaim with the Clerk in the Small Claims Office at least five days prior to the adjourned date in order to provide sufficient time for postal delivery by First Class mail to all parties and to the Court, **and adjourn the case for hearing on a future date.**

5. The Chief Clerk shall provide procedures for the Clerks to follow to implement this Directive.

Dated: September 3, 1996

Jacqueline W. Silbermann
Administrative Judge

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In accordance with the Policy of the Administrative Judge, the following are the procedures to be followed regarding Counterclaims in Small and Commercial Claims Actions.

PROCEDURES:

1. In accordance with Sections 1803 (c) and 1803A (d) of the New York City Civil Court Act, as amended, a Defendant “who wishes to file a counterclaim shall do so by filing with the clerk a statement containing such counterclaim **“within five days of receiving such notice of claim.”** We will advise Defendants of such right at the time of service of the Notice of Claim form which is being amended to reflect this revised statute.

2. Based upon CPLR § 2103, the Clerk may accept the filing of such counterclaim **at any time up to five days prior to the scheduled hearing date.** The Clerk’s Office will have no responsibility for determining whether or not the filing of such counterclaim is timely (i.e., within five days of receipt by the Claimant). The determination of such question will remain with the Court.

3. A Defendant who attempts to file such counterclaim in the Clerk’s Office **any later than the fifth day prior to the scheduled hearing date** is to be advised that because we do not have enough time to notify the Claimant, the counterclaim should be presented to the Court as an application at the time of the hearing.

4. The amended sections go on to say that at the time of such filing (see 1. above) the Defendant shall pay to the Clerk a filing fee of three dollars plus the cost of mailings which are required pursuant to this subdivision. Accordingly, the Cashier is to collect the fee of \$3.32 at the time of such filing.

5. The fee information is to be entered into the Cash Register. The claim information is to be entered into the Small Claims database, including the fact that a counterclaim was filed, the date of the filing of the counterclaim, the amount of the counterclaim and the cause of action alleged in the counterclaim.

6. A new Notice of Counterclaim form, CIV-SC-56, has been designed. The form is to be mailed to the Claimant promptly in order to insure receipt prior to the date of the hearing.

7. The amended statute goes on to state that a Defendant who failed to file the counterclaim in accordance with the provisions of the first part of the amended statute (i.e., **within five days of receipt of the Notice of Claim**) nevertheless retains the right to file a counterclaim. However, under these circumstances there is an additional proviso which permits

the Claimant to request and be granted an adjournment of the hearing to a later date. The Clerk is advised to accept the filing of the counterclaim at any time, with the one condition being that it be **at least five days prior to the scheduled hearing date** in order to provide time for the service of the counterclaim by First Class mail. Any Defendant who attempts to file the counterclaim **less than five days prior to the hearing date** is to be advised to make application to the Court on the night of the scheduled hearing.

8. If the Defendant does not give notice of his/her counterclaim until he/she is before the Court on the date of the initial schedule hearing, and if the Judge grants an adjournment, either sua sponte for the purpose of having the counterclaim filed in writing in the Clerk's Office with notice to the Claimant, or at the claimants request as permitted by statute, then the filing must be made **at least five days before the adjourned date**, the fee of \$3.32 must be collected, the claim information is to be entered into the Small Claims data base as in 5. above, and a mailing by the Clerk of the Notice of Counterclaim to the original Claimant must be made promptly.

9. If the Defendant does not give notice of his/her counterclaim until he/she is before the Court on the date of the scheduled hearing, and if the Judge accepts the counterclaim where there is no request for an adjournment, the Court must make the proper endorsement on the case card. A \$3.00 fee (there is no 32¢ mailing fee) is to be collected following a) or b) below:

- a) If the Small Claims Office is open, the Defendant/ Counter-Claimant is to be directed to pay the fee To the Cashier, the Clerk in the Office is to enter the required information into the Small Claims database, including the date of the notice of counterclaim, the amount of the counterclaim and the cause of action alleged in the counterclaim, as in 5. above.
- b) If the Small Claims Office is closed, the Clerk in the Part is to accept the fee, issue a receipt from a manual sequentially press-numbered receipt book (CIV-RB-70) using the space marked "Other," and secure the money at the end of the evening. On the following morning the Cashier in the Small Claims Office is to record the transaction in the cash register as the first entry and the Clerk in the Office is to enter the required information into the Small Claims database, including the date of the notice of counterclaim, the amount of the counterclaim and the cause of action alleged in the counterclaim, as in 5. above.

Dated: September 3, 1996

Jack Baer
Chief Clerk