

## SELF-HELP CENTER

**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.**

### **Suggested Procedures to Extend the Deadline to Answer a Complaint or Make a Motion**

A defendant who needs more time to serve his/her answer or to make a motion concerning a complaint he/she has been served with may proceed as follows:

1) The defendant may ask the plaintiff to agree to the extension. If the plaintiff agrees, the parties (that is the plaintiff and the defendant) should write their agreement down (the agreement is called a stipulation). The stipulation should contain all terms of the agreement including the name of the case, the index number and a statement that both parties agree that the defendant has asked for and been given an extension of time to serve his/her answer or make a motion concerning the complaint and that the new deadline is (whatever date has been agreed to.)

If the plaintiff will not agree to the extension, the defendant can ask the court for an extension using one of the two procedures outlined below. Remember merely asking the court for an extension does not automatically give you one or temporarily stop the time in which you must act from running out.

#### **IF THE TIME TO ANSWER OR MAKE THE MOTION HAS NOT PASSED (Run out)**

The defendant must submit an affidavit (in general an affidavit is a written statement sworn to before a notary public) requesting the extension. (Fill in the blank affidavit forms which are available from the Public Legal Resource Center.) After putting the name of the case and the Index Number on the top of the affidavit, the defendant must explain:

- 1) Why he/she needs more time
- 2) What happened when he/she asked the plaintiffs attorney (or if the plaintiff has no attorney the plaintiff himself/herself) for an extension. This must include a brief summary of the actual conversation between the defendant and the plaintiff or his/her attorney;
- 3) A statement that the case involved is not one for summary judgment in lieu of a complaint. (If the complaint does not specifically say it is a motion for summary judgment in lieu of a complaint it isn't);
- 4) Whether or not the defendant has previously asked the Supreme Court or any other court for an extension in this case and if so what happened as a result of that request or requests.

In addition to the affidavit, the defendant must submit a proposed order that the justice

assigned to the case could sign granting the extension. (Attached to these instructions is a proposed fill in the blanks form order you can complete and submit with the affidavit).

The completed affidavit and proposed order are then submitted to the Court Clerk's Office.

(The proposed order is submitted to the court without first giving notice (telling) the other parties to the lawsuit).

If the request is granted, the Justice assigned to the case will sign the proposed order and direct you (that is the party who submitted the proposed order ) to give notice of the signed order to all the other parties involved in the case by serving a copy of the signed order on each party's attorney (or if a party does not have an attorney on the party himself or herself).

In the order the justice will specifically tell you how and when the order is to be served.

**THIS PROCEDURE MAY ONLY BE USED ONCE.**

**NOTE:** If a Request for Judicial Intervention (RJI for short) has not already been filed for your case, you will have to submit one. There is a separate instruction sheet available from the Office of Public Information on how to do this and it does require a \$95.00 filing fee.

**IF THE TIME TO ANSWER HAS ALREADY PASSED (Run out) OR IF ONE OR MORE EXTENSIONS HAVE ALREADY BEEN GRANTED. USE THE PROCEDURE BELOW:**

If the time to answer the complaint or make a motion has already passed or if you already received an extension before, the defendant (you) must make a formal written motion with proper prior notice on all the other parties to the lawsuit asking the court for permission to serve your answer late or make the motion you weren't able to make on time. (Remember a motion is merely a request that the court sign an order granting you the relief you seek).

Motions on notice are made either by using a Notice of Motion plus supporting papers OR an Order to Show Cause and supporting papers. If you use an Order to Show Cause you can include an immediate (but temporary) request that the court freeze the running of time for you to answer the complaint or make your motion until the court holds a hearing on your actual application for an extension of time.

The moving party or movant (which is you - the person making the motion) may also request that the court make an immediate but again temporary order prohibiting the plaintiff and/or his/her attorney from filing and entering a default judgment until there is a hearing on your motion (request) for an extension. The Office of Public Information can supply you with fill in the blank forms for a Notice of Motion or Order To Show Cause together with the needed supporting papers. Again, if an RJI has not been filed for the case you will need to submit one. There is a \$95.00 fee required and separate instructions on how to do this are available from the

Public Legal Resource Center.

You may also obtain more detailed instructions on how to make such a motion from the Public Legal Resource Center.

**\*\*\*PLEASE NOTE: PURSUANT TO CPRL 2004, A COURT HAS THE AUTHORITY TO EXTEND MOST TIME LIMITS OR EXCUSE UNTIMELINESS, EXCEPT STATUTES OF LIMITATIONS, AND THUS, THE LITIGANT CAN ALSO ASK THE COURT TO EXTEND OR EXCUSE OTHER TIME LIMITS OR LATER RESPONSES BY THE SAME PROCEDURES.**