

**SUPREME COURT, CIVIL BRANCH
QUEENS COUNTY
COURT HELP CENTER**

NOTE: All persons involved in a legal action should consult an attorney. Neither the Office of Public Information nor any member of the court's staff may give you legal advice, prepare your papers or act as your attorney.

HOW TO ANSWER A MOTION

To properly answer a motion, you must take the following steps:

1. **Write answering papers**, also referred to as opposing papers. These papers consist of a copy of your **affidavit in opposition** with exhibits attached and lettered e.g. A,B etc.; a **memo of law** (optional); and a **litigation cover** (also called a blue back).
2. **Have copies of the answering papers served** upon all other parties to the case.
3. **Obtain affidavits of service.**
4. **Submit the original answering papers** to the court, **with affidavits of service attached**. This is done at the time and place indicated in the Notice of Motion or Order to Show Cause. Below are details for each of these steps.

1. PREPARING THE ANSWERING PAPERS

Answering papers must include an "affidavit in opposition." This affidavit must be carefully written and organized, since motions (unless Temporary Restraining Orders TRO's for short are involved) are usually decided "upon the papers," which means that the parties will not appear personally in court to present their arguments.

After it is written, an affidavit in opposition must be notarized. Any exhibits (documents which support your position) must be attached to the affidavit. The exhibits must be labeled Exhibit A, Exhibit B, and so forth. Exhibit tabs are recommended; they may be purchased at any legal stationery store.

If appropriate, you may submit affidavits of other people together with your affidavit in opposition. For example, a person with personal knowledge of issues raised by the motion may provide you with an affidavit to support your allegations. This is only appropriate, however, where the person submitting the affidavit has first-hand knowledge of the dispute. Affidavits by well-meaning friends, politicians, and others who have no firsthand knowledge of the issues will likely only hurt, not help your case, and should be avoided.

Any legal, as opposed to factual issues, raised by the motion should be addressed (presented) in a separate memo (referred to as a "Memorandum of Law"). If the moving party (your opponent in the case) has submitted a Memorandum of Law, you should go to a law library (one is located at the main courthouse 88-11 Sutphin Blvd., 6th Floor, Jamaica, New York), research the legal arguments presented, and answer them in your own Memorandum of Law in Opposition.

When are opposing papers due? Opposing papers must be served on the date indicated in the Notice of Motion or Order to Show Cause. If the Notice of Motion does not demand service by a specific date, opposing papers must be served at least two days before the return date of the motion. See the Civil Practice Laws and Rules (CPLR for short) Section 2214(b). If the motion was been made by Order to Show Cause, opposing papers must be served by the return date of the Order to Show Cause, or sooner, if the Order to Show Cause requires earlier service. **2. SERVICE OF OPPOSING PAPERS**

It is usually proper to serve answering papers by mail. See, CPLR Rule 2103. However, if the court orders some other means of service, you must follow the directive of the court. Legal papers must be served by a person who is not a party to the lawsuit (i.e., not you). CPLR 2103(a). You must have a New York State resident who is over the age of eighteen serve the papers for you and give you a signed, notarized Affidavit of Service. You may obtain a blank Affidavit of Service from the Queens Supreme Court Office of Public Information. Please note: when the opposing party is represented by an attorney, opposing papers may be served upon the attorney by mail, by delivery at the attorney's office, or in any other manner permitted by CPLR 2214.

3. OBTAINING AFFIDAVITS OF SERVICE

The person serving your Affidavit in Opposition must give you an Affidavit of Service which includes the details of service for each person served. An Affidavit of Service states the item served (in this case, your Affidavit in Opposition), the manner of service (whether by mail or personal service) and other details of service. The affidavit must be notarized, and attached to the original opposition papers before they are submitted to the court.

Another acceptable way to prove service of papers is the Acknowledgment of Service. If the party receiving opposing papers is willing to sign an Acknowledgment of Service (printed on most litigation covers), the signed, dated Acknowledgment of Service can serve as proof of service. The term "proof of service" is defined by the CPLR to include Affidavits of Service and Acknowledgments of Service. A litigant cannot, therefore, assume that any other "proof" will be acceptable to the court.

4. SUBMITTING OPPOSING PAPERS TO THE COURT.

On the return date of the motion, you must come to court and hand up to the original affidavit in opposition, with affidavit(s) of service attached. Without affidavits or acknowledgments of service, the opposing papers will not be accepted. If the Justice assigned to decide the motion wishes to hear the motion orally argued, that argument may take place immediately at calendar call or at some other date. If the argument is adjourned (postponed) you will be notified of the date of argument. Once the motion is submitted it is your responsibility to keep track of it until a decision is rendered. You may do this by checking the N.Y. Law Journal or calling the Motion Support Office 718-298-1009 (for Matrimonial Matters call 718-298-0950).

