

SUPREME COURT, CIVIL BRANCH
New York County
60 Centre Street, New York, N.Y. 10007

HELP CENTER
Room 116
646-386-3025

How to Start a Special Proceeding

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.

A **special proceeding** is a variety of lawsuit. It is brought on with the simplicity and speed of a **motion**. The special proceeding may be used only when authorized by law. One kind of special proceeding is the Article 78 proceeding, which seeks to challenge actions of administrative agencies and other government bodies. The person who files a special proceeding with the court is a **petitioner**. The agency, board, body, corporation, officer or other person answering the petition is called the **respondent**.

What You Need to Know

- The filing fees total **\$305** (\$210 (Index Number fee) & \$95 (RJI fee)).
Pay by cash, Visa/MasterCard/American Express, or postal money order made out to “New York County Clerk.”
If you have a limited income, ask in Room 116 about applying for a **Poor Person Order**, which will, if granted, allow you to file without paying these fees.
- There is a time limit for filing a special proceeding known as the “statute of limitations.” The statute of limitations cannot be extended. The time limit depends on the identity of the respondent. If you do not file within the statute of limitations, your case can be dismissed without further consideration of the dispute.
Note: If you are asking the court to reverse the decision of a respondent, you must have completed the last stage of appeal available with the respondent. A copy of the final determination and all earlier decisions must be submitted with your papers.
Generally, the time limit for filing is counted from the date of the final determination by the respondent. Check with the respondent for the statute of limitations that applies in your case.
- You must have the respondent notified that you have filed a petition. This is done by having someone over the age of 18, who is not a party in the case, give the respondent a copy of

your special proceeding papers, in person. This is known as **service** of the papers. You cannot serve your own papers.

Refer to the Civil Practice Law and Rules (CPLR) to review the law of special proceedings. Articles 4 and 5 give general information; Article 75 applies to proceedings concerning arbitration awards; Article 78 cases seek reversals of decisions of a government agency, body or officer.

The Public Access Law Library at 80 Centre Street, Room 468, is open to the public, Monday to Friday, 9:30 A.M. to 4:30 P.M., 646-386-3715.

Electronic Filing

New cases in this court (except for matrimonial, Election Law and three other types must be commenced and pursued by means of electronic filing through the New York State Courts Electronic Filing System (“NYSCEF”). Documents to be filed with the court must be e-filed through NYSCEF.

Unrepresented persons, however, are exempt from the e-filing mandate. They need do nothing to claim this status or to maintain it. They will file documents with the court in hard-copy format and will deliver documents to the other parties, and receive documents from those parties, in that format. Unrepresented persons may, if they wish, take part in e-filing and should obtain an e-filing ID to do so. For further information, consult the webpages for the unrepresented on the NYSCEF website (www.nycourts.gov/efile) or contact the clerk or the Help Center.

The discussion that follows assumes that the case is a paper case. In an e-filed case, the steps to be followed would be the same, but filings with the County Clerk and the court would be made via NYSCEF by participating parties.

The Special Proceeding Papers

You start a special proceeding (and satisfy the statute of limitations) by filing a **Petition** with the County Clerk.

Thereafter, the Petition must be filed with the court together with either a **Notice of Petition** or a Proposed **Order to Show Cause (OSC)** and the respondent must be served. Procedures differ depending upon whether a Notice of Petition or OSC is used.

When You File By:

Notice of Petition	Order to Show Cause (OSC)
You pick the date to come to court.	The Judge picks the date to come to court.

There is no need for expedited hearing.	There is need for expedited hearing.
You cannot ask for a Temporary Restraining Order (TRO) to stay (stop) an action being taken by the respondent.	You may ask for a Temporary Restraining Order (TRO) to stay (stop) an action being taken by the respondent.
The respondent is served at least 20 days before the return date (Article 78).	The respondent is served within the time fixed by the Judge.
The Notice of Petition is prepared by you.	The OSC is prepared by you, but is signed by the Judge and is a court order.

Important: If you file by OSC, the papers take more time to be processed. Be sure you have enough time to complete the OSC procedure and file within your statute of limitations.

Preparing to File the Petition with the County Clerk

Complete each step. Do not skip a step. Check the box when done.

- Arrange and staple together (after copying) the papers listed below in the following order.
 - 1st Verified Petition.
 - 2^d Exhibit A, B, C, and so on (if any).

This is the **original** Petition. It should be verified. This means that there should be attached to it an affidavit of verification to the effect that the petition is true to the knowledge of the petitioner, except as to matters therein stated to be alleged on information and belief, and that as to those matters the petitioner believes them to be true.

- Important:** If you are asking for poor person status, go to the Help Center, 60 Centre Street, Room 116, (1st floor), with the following completed by you:
 - Proposed Poor Person Order, Affidavit in Support, current proof of amount of income, and a copy of a photo ID.
 - Verified Petition and Exhibits (if any).
 - Application for Index Number form (available in the County Clerk's Office, Room 141B).
 - Request for Judicial Intervention (**RJI**) (form available on website at www.nycourts.gov/forms/rji/index.shtml).

The Help Center Staff will explain how the Proposed Poor Person Order will be presented to a Judge for action.

- Make copies of the **original** Verified Petition and Exhibits. You will need:
 - One copy to file in the County Clerk's Office to commence your proceeding.
 - One copy for each respondent, each of whom must be served (see below).

Note: In some instances you may be required to serve both the respondent New York City or New York State agency and the New York City Law Department (Corporation Counsel) or the New York State Attorney General. You must check if this is the case and proceed accordingly.

- One copy for your own records.
- You must file the original Verified Petition and Exhibits with the court.

Filing the Petition with the County Clerk

- Go to the County Clerk's Office, 60 Centre Street, Room 141B in the basement with:
 - **Original** Verified Petition and Exhibits and copies.
 - Application for Index Number form.

If you have received poor person status, go to the Law and Equity counter and show your copy of the Poor Person Order. If you are paying the \$210 filing fee, go directly to the Cashier in Room 141B.

- Give the Cashier in Room 141B:
 - One copy of the Verified Petition and Exhibits (not the original).
 - Application for Index Number form.

The cashier will give you a receipt with your **Index Number** on it. Write the Number on all your papers, the original and all copies. The statute of limitations is now satisfied if you file the copy within the applicable time limit.

- Go to the *Law and Equity* counter in Room 141B. Use the file stamp on the counter to stamp the original Petition and the original Notice of Petition and all copies of these papers. The stamp is proof of filing a copy of your papers with the County Clerk to start your case.

IF YOU ARE PROCEEDING BY NOTICE OF PETITION

Serving the Notice of Petition Papers and the RJI

- Arrange the papers for service in the following order:
 - 1st Copy of the Notice of Petition
 - 2nd Copy of the Verified Petition
 - 3^d Copy of the Exhibits
 - 4th Litigation Back (blue color)

- Complete the RJI and make copies, front and back. You must have:
 - One copy for each respondent (and respondent's attorney, if required).
 - One copy for your own records.

- One copy for the Cashier in Room 160, 60 Centre Street, 1st Floor.
 - The original RJI will be filed with the court and go to the Judge.
- Have someone over the age of 18 and not a party to the case (it cannot be you) give one copy of the special proceeding papers and the RJI to each respondent (and to their attorney, if necessary) by personal service. The server may ask a respondent (and attorney) being served if they will “stamp” the Notice of Petition page of the **original** Notice of Petition papers and the RJI. The “stamp” shows the date and time the papers were served and is accepted as proof of service. OR, the server signs an Affidavit of Service in front of a notary.

Filing the *Original* Notice of Petition Papers and *Original* Request for Judicial Intervention (RJI) With the Court (Calendering the Proceeding)

- After service, and at least 5 business days before the return date, go to the General Clerk’s Office, 60 Centre Street, Room 119, 1st floor, with the following papers:
- **Original** Notice of Petition papers.
 - **Original** Request for Judicial Intervention (**RJI**) and one copy.
 - Proof of service of both: **original** Notice of Petition papers and the RJI with the respondent’s (and attorney’s) “stamp” or the server’s notarized Affidavit of Service. Make 2 copies of the proof of service for later.
- In Room 119, the Clerk will stamp your original papers and send you to the Cashier in Room 160, 1st floor, to pay the \$95 RJI fee OR show a copy of your poor person order.
- In Room 160, the cashier will also stamp your original papers and keep the copy of the RJI. In Room 160, make a copy of only the Notice of Petition page.
- Return to Room 119. Give the Clerk the **original** Notice of Petition papers, the copy of the Notice of Petition page, the **original** RJI, and the **original** proof of service.
- Go to Room 141B in the basement. At the *Law and Equity* counter, file one copy of the proof of service. Keep the other for your records.

Coming to Court on the Return Date *DO NOT BE LATE*

- At **9:30 A.M.**, on the **return date**, be in the Motion Submission Part Courtroom, 60 Centre Street, Room 130, 1st floor. The calendar, which is a list of all cases scheduled, is posted near the door. Listen to the Clerk and answer “Here” when your case is called.

A respondent can:

- contact you before the return date to ask for an **adjournment** to submit papers.
An **adjournment** is a new date agreed to by the parties or set by the court. Generally, attorneys in litigation allow one another reasonable adjournments.
If the parties do not agree, the court will hear the request on the return date.
Requests for adjournment not agreed to by the other side must be made **in person** in Room 130.
- answer with an **Affidavit in Opposition** asking that your petition be denied.
Opposition papers can be served by mail. You may receive them before the return date or be told that papers have been mailed to you.

You can:

- request an adjournment to submit **Reply** papers.
A **Reply** allows you to respond only to statements made in opposition papers.
You may not make new requests or arguments in Reply papers.
A copy of your Reply must be served at least 1 day before the return or adjournment date by personal or mail service.
A sample Reply form is available in Room 116.

Original opposition and **original** reply papers, with proof of service, are filed in Room 130 on the return or adjournment date.

After reply papers, no further papers may be submitted without permission of a Judge.

The papers are now sent to the Judge. No argument on the petition takes place in Room 130. If the Judge wants “oral argument,” you will be notified, usually by mail, of the date, time, and courtroom. If argument is directed, you must appear to speak to the Judge or your petition may be denied.

The Judge will issue a written decision, usually within 2 months.

- It is your responsibility to check if a decision has been made.
 - go to the “Case Information (Scroll)” link at the court’s internet web site at www.nycourts.gov/supctmanh.
 - use a public access court computer located in Rooms 119, 311, and 141B.
 - check the case file, under the Index Number, in the County Clerk’s Office Record Room, Room 103B, in the basement at 60 Centre Street, from 9:00 A.M. to 3:00 P.M.

IF YOU ARE PROCEEDING BY PROPOSED ORDER TO SHOW CAUSE

Preparing to Proceed by Petition and Proposed Order to Show Cause

After you have commenced your case by filing the Verified Petition with the County Clerk as explained above, if you wish to provide notice by OSC rather than Notice of Petition, you must prepare proposed Order to Show Cause papers.

- Arrange the proposed OSC papers as follows and staple together (after copying):
 - 1st Proposed Order to Show Cause
 - 2nd Original of Verified Petition (with Index Number and County Clerk stamp showing filing and date thereof)
 - 3rd Exhibit A, B, C and so on.
 - 4th Litigation back (blue color)

This is the original Proposed Order to Show Cause papers, which will go to the Judge.

- Important. If you are asking for poor person status, proceed as explained above.**
- Make copies of the original OSC papers. Make one copy for each respondent, one for each attorney, if required, and one for your files. Staple each set together. Make one copy of the RJI for each respondent and attorney, one for your files, and one other. The Index Number should appear on all documents.
- Go to the Ex Parte Office, 60 Centre Street, Room 315, 3rd Floor.
Give the Clerk the following:
 - **original** Proposed Order to Show Cause (OSC) papers.
 - **original** Request for Judicial Intervention (RJI) and one copy.
 - Index Number receipt (from the County Clerk).
- In Room 315, the Clerk will stamp your original papers and send you to the Cashier in Room 160, 1st floor, to pay the \$95 RJI fee OR show a copy of your poor person order. The cashier will also stamp your papers and keep the copy of the RJI.
- Return to Room 315.
Give the Clerk the **original** Proposed OSC papers and the **original** RJI.
- Wait **24 - 48** hours and call the Help Center at 646-386-3025.
Say you have submitted a Proposed Order to Show Cause in Room 315 and give the name of the case.
You will be given one of the following instructions:
 - Your OSC papers were found to be “defective” by Room 315.
Pick up the papers in Room 116, correct the problem and resubmit the OSC papers to Room 315.

Or- Your OSC has been signed by the Judge and is ready to be served.
Go to Room 116, with your complete copy of the OSC papers and RJI, for further instructions about serving the OSC and RJI.

Or- Your Proposed OSC is ready to be submitted to the Judge.
Bring your complete copy of the Proposed OSC papers and RJI.
Pick up the original Proposed OSC papers in Room 116.
Go to the courtroom of the Judge assigned to your case.
In the courtroom, give the original Proposed OSC papers to the Part Clerk, who will give you further instructions. This is the procedure when the courtroom is located at 80 Centre Street, 111 Centre Street or 71 Thomas Street.

- When the Proposed Order to Show Cause (OSC) is signed:
 - Judge will pick the return date, time, courtroom, type of service and date when you **must** have copies of the OSC papers and RJI served on the respondent.
 - Judge may direct that you be served with answering papers by a certain date and the type of service allowed. If no date is given, answering papers are submitted on the return date and can be served at least 1 day before the return date by mail.
 - Judge may direct “oral argument.” It will be noted on the OSC and you and the other side will speak to the Judge about your petition on the return date.
 - Judge may permit you to file a **Reply**, which is your response only to what the respondent has said in opposition papers. If such permission is not noted on the OSC, you cannot submit a Reply.

- Important:** Now update your copy of the original OSC papers by replacing the unsigned Proposed OSC with a copy of the OSC signed by the Judge.

- Make copies of the signed OSC, Verified Petition, Exhibits, Litigation Back and the RJI.
You must have:
 - One copy for each respondent (and, if required, one copy for respondent’s attorney).
Note: If the respondent is a N.Y.C. or N.Y.S. government agency, you must check if the N.Y.C. Law Department (Corporation Counsel) or the N.Y.S. Attorney General are required to also be served with a copy of your papers.
 - One copy for your records.

Serving Copies of the Order to Show Cause (OSC) Papers and the Request for Judicial Intervention (RJI)

- The server (see above as to who may serve) gives a copy of the signed Order to Show Cause (OSC) papers and a copy of the Request for Judicial Intervention (RJI) to each respondent

(and their attorney, if required), by personal service or the type of service directed by the Judge.

The server then signs an Affidavit of Service in front of a notary.

A respondent may:

- answer with an **Affidavit in Opposition** asking the court to deny your petition.

Coming to Court on the Return Date *DO NOT BE LATE*

- On the return date set forth in the OSC:
 - Be on time.
 - Submit the **original** Affidavit of Service or your petition may be denied.
 - The respondent may appear and submit opposition papers.
 - Judge may **adjourn** the case (parties given a new date to come back to court).

After “oral argument,” if required, and after submission of all allowed papers, the Judge will issue a written decision, usually within 2 months.

- It is your responsibility to check if a decision has been made.
 - go to the “Case Information (Scroll)” link at the court’s internet web site at www.nycourts.gov/supctmanh.
 - use a public access court computer located in Rooms 119, 311, and 141B.
 - check the case file, under the Index Number, in the County Clerk’s Office Record Room, Room 103B, in the basement at 60 Centre Street, from 9:00 A.M. to 3:00 P.M.

[Print in black ink all areas in bold letters. Other spaces are for Court use.]

At I.A.S. Part ____ of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 60 Centre Street, New York, N.Y., on the ____ day of _____, 20__

PRESENT: HON. _____
Justice of the Supreme Court

-----x

Index Number

In the Matter of the Application of

[fill in name(s)]

Petitioner(s),

- against -

**ORDER TO SHOW CAUSE
IN A SPECIAL PROCEEDING**

[fill in name(s)]

Respondent(s).

-----x

Upon reading and filing the Verified Petition of _____

----- [your name(s)], sworn to on _____, 20__

[date Verified Petition notarized], and the exhibits attached to the Petition,

[Identify Exhibits below. List additional Exhibits on separate page.]

E x h i b i t A

- - - - -

- - - - - E x h i b i t B

- - - - -

[fill in name(s)]

Petitioner(s),

- against-

NOTICE OF PETITION

[fill in name(s)]

Respondent(s).

-----X

PLEASE TAKE NOTICE that upon the Verified Petition of

[your name(s)], sworn to on
_____, 20__

[date Verified Petition notarized], and the attached exhibits, petitioner(s) will, at 9:30 AM on the ____ day of _____, 20__, [return date] at the Courthouse at 60 Centre Street, New York, N.Y. in the Motion Submission Part Courtroom, Room 130, request that this court issue a judgment, pursuant to the Civil Practice Law and Rules (CPLR), granting the following relief to the petitioner(s):

[briefly describe what you are asking the Court to do]

and such other and further relief as to this Court may seem just and proper.

Dated: _____, 20__

Respectfully submitted,

To: Respondent(s)

Petitioner

WHEREFORE, your deponent respectfully requests that this Court **[briefly describe what you are requesting]**

and grant such other and further relief as may to the court seem just and proper.

_____, 20____
[date signed]

Petitioner **[sign your name]**

[print your name]

[your address and telephone no.]

VERIFICATION

STATE OF NEW YORK

COUNTY OF _____: ss:

[your name], being duly sworn, deposes and says that: I am the petitioner in this proceeding; I have read the foregoing petition and know the contents thereof; the same are true to my own 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.

Sworn to before me this

____ day of _____, 20__

Petitioner **[sign your name before a Notary]**

Notary Public

[print your name]

*****NOTICE OF ENTRY*****

Sir/Madam:

Please take notice that the within is a (certified) true copy of a

_____ duly entered in the office of the clerk of

the within named court on the ____ day of _____, 20__

Dated: _____ Yours, etc.

Attorney for: _____

_____ Office and

Post

_____ Office

Address

To:
Attorney(s) for

*****NOTICE OF SETTLEMENT*****

Sir/Madam:

Please take notice that an

of which the within is a true copy will be presented for settlement

to the Hon. _____, one of the Justices

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of the within court, at _____,
on

_____, 20__ at _____ AM/PM.

Dated: _____, 20__ Yours, etc.

Presenting Party

To:

INDEX NUMBER _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Plaintiff / Petitioner,

- against -

_____,'

Defendant / Respondent.

_____ To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers and the contentions therein are not frivolous as defined in subsection (c) of section 130 1.1 of the Rules of the Chief Administrator (22NYCRR).

Sign

Name: _____

—

Print

Name: _____

—

Address:

Telephone :

Service of a copy of the within is hereby admitted

Dated: _____, 20____

Attorney for
