

**KINGS COUNTY SUPREME COURT
HELP CENTER ROOM 123
360 ADAMS STREET
BROOKLYN, NY 11201**

This summary will **BRIEFLY** describe how to commence a special proceeding. It is not intended to be a substitute for legal research or representation. **ANYONE INTERESTED IN BEGINNING A LAWSUIT IS STRONGLY ENCOURAGED TO SEEK LEGAL COUNSEL. THE HELP CENTER CANNOT PROVIDE YOU WITH LEGAL ADVICE OR COMPLETE FORMS ON YOUR BEHALF.**

HOW TO COMMENCE A SPECIAL PROCEEDING

Special Proceeding Filing Instructions

1. Although you may commence your special proceeding by Notice of Petition **OR** Order to Show Cause, you may find the Order to Show Cause form to be less complicated to complete and process. Both forms are provided for your convenience. Prepare your Notice of Petition and Petition or Order to Show Cause and Petition. Have your verification notarized where indicated. Label and attach all submitted documents. If you are filing an Article 78, you **MUST** attach a copy of the agency's final decision and review that you are appealing.
2. Purchase an index number (\$210) and file a Request for Judicial Intervention (\$95) at the County Clerk Office (Rm. 189) Write the index number on the front page of your Petition and Notice of Petition or Order to Show Cause. **IF YOU ARE FILING AS A POOR PERSON, YOU MUST SUBMIT YOUR POOR PERSON APPLICATION WITH THE COUNTY CLERK WHEN FILING FOR THE INDEX NUMBER.**
3. If moving by Notice of Petition, you must write the requested date for your case to be heard on the Notice of Petition, pursuant to CPLR Service requirements. Make copies of all papers and have them served on all parties named in the proceeding. Bring your original court papers with your RJl and your notarized Affidavit of Service to the motion support office (Rm. 227) within 5 days of service on the respondent parties. If your papers are accepted and your case calendared, you must appear at 9:30AM for your court date. Check the court website (www.nycourts.gov) to confirm your court date. **Often the date is changed administratively, but you will not be notified by mail. It is your responsibility to know your court appearance date.**

4. If moving by Order to Show Cause (OSC), bring the order, verified (notarized) petition with exhibits and RJI (Request for Judicial Intervention) to the Ex Parte office (Rm. 295). If requesting a Temporary Restraining Order (TRO), prepare and include affidavits of emergency and of notification. Complete the OSC form with TRO instead of the OSC. The court will select the date to return and when service of the papers on respondent parties must be served. Ask the clerk in the Ex Parte office how to follow up to determine if the order was signed and how to get a copy in order to make arrangements for service, as directed by the judge. The person serving the papers for you must complete and have notarized the affidavit of service and return it to you.

NOTE: YOUR POOR PERSON ORDER MUST BE SUBMITTED TO THE EX PARTE OFFICE WITH YOUR COURT PAPERS AS SOON AS YOU RECEIVE YOUR INDEX NUMBER FROM THE COUNTY CLERK, EVEN IF YOU ARE MOVING BY NOTICE OF PETITION.

In order to commence the kind of lawsuit known as a special proceeding, a person must prepare a document called a Petition, which is a statement of the person's charges or the grievance of which the person complains. The person bringing the case is called the petitioner.

Preparing the Petition

Every document served in a case in this court, including the Petition, should be typed or printed legibly in English, in black ink, on 8 ½ x 11 inch paper, double spaced, using one side of the paper only.

The top left hand corner of the Petition should designate the court and county of the proceeding. Next comes the caption, a box inside in which appears the names of all the parties, the petitioner first and the party sued, called the respondent, below. The respondent or respondents named should be those persons claimed to have made the determination or decision at issue. A space should be left on the right hand side for the insertion of an identifying number, called the index number, which will be filled in later as explained below. **Please refer to Exhibit A for a copy of a notice of petition. We also include a copy of an order to show cause which you may find to be less complicated to complete and process, in lieu of the notice of petition.**

The Petition should set forth the allegations in the case in separate, numbered paragraphs. Each paragraph should be short and contain only one material allegation. The Petition should begin with a brief identification of the petitioner and the respondent(s). The Petition should next set forth a factual description of the determination or events upon which the claim is based in chronological order (including the dates of key events). The petitioner should be certain to set out their factual assertions in a clear and coherent fashion. Although the petitioner is familiar with the facts, they should keep in mind that the court will be unaware of them except insofar as they are presented to the court in the Petition. Accuracy is important and errors may be damaging to the petitioner's cause. Legible copies of any pertinent documentary

evidence should be included as exhibits, with index tabs annexed to each such exhibit. If the proceeding concerns a claim that a government agency acted incorrectly or illegibly, **A PHOTOCOPY OF THE AGENCY'S FINAL DETERMINATION WHICH IS THE SUBJECT OF THE PROCEEDING AND ANY INTERMEDIATE RULINGS MUST BE INCLUDED.**

Generally speaking, a petitioner may only obtain relief in this court in the form of review (and if successful, reversal) of a final agency action. In the case of a parking ticket, for example, the petitioner will likely be unsuccessful in this court if they failed to take an appeal entirely through the Parking Violations Bureau appeal process. The petitioner should clearly describe each step 2 in the administrative process that the petitioner took, each decision made by the agency along the way, and what the final action by the agency was. There are time limitations of varying lengths within which lawsuits must be brought. In the case of Article 78 proceedings, the limitation generally is four months from the final agency action.¹ The Petition must make clear when the final agency action took place.

The Petition should conclude with a demand for a form of relief. Frequently, the petitioner will seek a reversal of the agency's action (e.g., setting aside and vacating the parking ticket). In such proceeding, the Petition should, therefore, state, in so many words or in effect, that the "petitioner prays (requests) that the decision of the

_____ agency, dated _____ providing
_____ be set aside and annulled."

In a special proceeding challenging a decision of a government agency in regard to some claimed right of the petitioner, the Petition should specifically state, in detail, why the petitioner contends that the agency action was wrong and must be annulled. The court may overturn agency action only if the determination or action made or taken (i) was in contravention of law, (ii) was arbitrary, capricious or an abuse of discretion, or (iii) (where a hearing was held at the agency level) was not supported by substantial evidence in the record.

The petitioner should attach to the petition a **verification** (i.e., a verified petition), which is a sworn statement by the petitioner, under penalty of perjury, that the facts contained in the petition are all true. This document must be signed by the petitioner in front of a notary public, who must acknowledge, stamp, and sign the verification. **Please refer to Exhibit B for a copy of a verified petition and verification form.**

In addition to the above, the petitioner should also be sure that they bring the special proceeding in the proper county. There are a number of rules about what is a proper venue for a case that generally relate to the residence of the various parties and where the underlying subject matter of the lawsuit arose. (See Article 5 of the Civil Practice Law and Rules.) Generally, the petitioner must commence a special proceeding against

¹ Certain substantive statutes mandate different time limitations. A review of the pertinent statute (law) should be made prior to commencement of such a proceeding.

a public body or officer in any county within the judicial district in which the respondent made the determination complained about or refused to perform the duty allegedly violated, or where the underlying proceedings were brought, or where the material events took place, or where the principal office of the respondent is located. The judicial district of our court is the same as the County of Kings (i.e., 2nd Judicial District).

Once the petitioner has prepared a Petition, they must start the case. This is done as follows:

How to Set the Wheels in Motion

New York law requires that papers commencing a special proceeding must be filed with the County Clerk and that an identifying number, an Index Number, be obtained. The petitioner should go to the County Clerk's Office (Room 189). The petitioner must write in the Index Number assigned by the County Clerk in the Index Number space to the right of the caption on each of the documents prepared by petitioner. A copy of all of these documents must be filed with the County Clerk, who will open a court file for the case. The Clerk will stamp the petitioner's copies to show that the papers were filed and will issue a receipt for the purchase of an Index Number. The petitioner needs to file with the Clerk the following initial legal papers; (i) a copy of a **petition** and a **notice of petition**, or (ii) a copy of an **order to show cause**.

In order to bring the proceeding before a Justice (the proper title of a Judge assigned to Kings Supreme Court is Justice) of this court, the petitioner needs to request that the case be placed before a Justice on a calendar. This is done in either of two ways:

1. by **serving** and filing a Notice of Petition (**the Notice of Petition, Verified Petition and RJI must be served, and an affidavit of service prepared and attached to the papers, before submitting the papers to the Motion Support Office**), or
2. proceeding by **Order to Show Cause**. A Notice of Petition is a document directed to the respondent(s) that advises the respondent(s) of where and when the Petition is to be submitted to a Justice and identifies all papers upon which the special proceeding is based. An Order to Show Cause also serves to give notice to all parties, but the form of the document is different unlike the Notice of Petition, is in reality a court order and must be presented to and be signed by a Justice of the court **at the outset** of the process in the court.

Filing in Court - Moving by Order to Show Cause

When moving by an Order to Show Cause, the petitioner should prepare the Petition as explained above and also, an Order to Show Cause. The petitioner should bring the original and two copies of the papers to court. One copy should be filed with the County Clerk, as explained above. The petitioner must also complete and file a form known as a **Request for Judicial Intervention** ("RJI" for short). The purpose of this form is to make clear to the court the kind of case involved and to formally request the intervention

of a Justice. The filing fee for the RJI is \$95 (to be paid in Room 189). An RJI form may be obtained from the Help Center in room 123.

At this point, a filing with the County Clerk has been made, but a filing with the Court has not yet occurred. The petitioner should next proceed to the Ex Parte Office of the Court (Room 295). The original Petition and Order to Show Cause must then be presented to a clerk in that office, together with proof of the previous filing with the County Clerk, proof of purchase of an Index Number and a completed RJI form together with a certified check or money order for \$95 payable to the Kings County Clerk. The Ex Parte Office will then review the petitioner's papers to make sure that they are in proper form, and if so, will assign the case to a Justice on a random basis. If emergency relief is requested, petitioner must also submit an emergency affidavit which briefly explains the nature of the relief requested and why immediate or emergency relief is needed. (Sample Emergency Affidavit forms are available from the Office of Public Information.)

The papers will then be delivered to the assigned Justice for immediate review and if found acceptable, signed by him or her and then given to you so you can copy them (return the originals to the Ex Parte Office) and arrange to have them served in the manner directed by the Court. If immediate emergency is not required, the papers are simply left with the Ex Parte staff.

After the papers are reviewed, they will be either:

1. Marked to be returned to you for correction, or
2. Sent to the assigned Justice for signature.

You can check the status of your Order to Show Cause by calling the Ex Parte Clerk's office at (347) 296-1721. (Wait at least 48 hours before calling.)

If your papers need to be corrected, you should return to the Clerk's office, pick them up, correct them as needed and resubmit them.

If your papers are correct as to form, they will be forwarded by the Ex Parte Office staff to the assigned Justice's Chambers for signature. If the Justice finds them satisfactory, they will sign them, then fill in the return date and specify when and how the papers are to be served.

When the order has been signed, the petitioner must "conform a copy," that is, reproduce a copy of the papers with each and every marking made thereon by the Justice. This copy must then be photocopied and served upon the attorneys for all parties to the case in the manner and within the deadline set by the Justice.

For more information on service, request a copy of the "How to Serve Legal Papers" packet from the Help Center, Room 123 or obtain a downloadable copy from the court website.

After service is made, the petitioner must see to it that an affidavit of service is prepared. The original must be presented to the Court on the return date. (The case will be called in the assigned Justice's courtroom.) The petitioner must be present at that time especially if the Court granted them a stay (TRO) until the hearing date of the motion and the petitioner wishes it to continue until the motion is decided. Petitioners must ask for this when the Order to Show Cause is called before the Court at calendar call. If the other parties do not submit opposing papers and do not appear on the return date, the court may take action on the Order to Show Cause provided that it is satisfied from the affidavit of service that the other parties were properly served with the Order to Show Cause and supporting papers.

The other parties may submit papers in opposition to the Petition (usually in the form of an answer together with opposing affidavits and exhibits). This ordinarily will be done within the time specified by the Justice when the Order to Show Cause is signed. All opposition papers must also be properly served on the petitioner as well as all other parties to the case.

Moving by Notice of Petition

The proceeding can be brought before the court without need for a Justice to sign an Order to Show Cause at the outset. Instead, the petitioner may proceed directly by Notice of Petition, as follows:

The petitioner should prepare a **Notice of Petition**, and an **RJI**. Since the initiating papers will not first be presented to a Justice, the petitioner must select a return date and identify the place at which the matter is to be heard. That place is the Courtroom of the assigned Justice. The return date can be any weekday at 9:30 A.M., but the return date must be selected keeping in mind that the respondent(s) must be given adequate time to prepare opposing or answering papers. Therefore, the return date selected must be **at least 8 days after** service of the initiating papers has been made on all respondents.²

As explained earlier, the petitioner should file one copy of these papers with the County Clerk (Room 189) and should purchase an Index Number **before** service is made. Next, the petitioner should cause a copy of the papers and an RJI form to be served upon all respondents. Then the petitioner should file the originals of all of the papers and the original RJI with the court. Since the petitioner is **not** proceeding by Order to Show Cause, they should file the papers in the Motion Support Office (Room 227), **not** in the Ex Parte Office. **At the same time**, the petitioner must file **two duplicate original affidavits of service**: one with the Motion Support Office and one with the County

² In an Article 78 proceeding, 20 days advance notice must be provided. Also, if a Notice of Petition that was served at least 12 days prior to the return date expressly demands that the answer be served days prior to the return date, the respondents must serve their answer at least 7 days prior thereto. In that event, the petitioner will have a right to serve affidavits and a memorandum of law in response to the answer (called a reply) at least one day prior to the return date.

Clerk. The petitioner will also have to pay the \$95 RJI fee at that time by certified check or money order payable to the Kings County Clerk.

The Motion Support Office will randomly assign the matter to a Justice and will place it on a calendar for the return date selected by the petitioner. For more on this subject, see **How to File a Request for Judicial Intervention** which is available from the Help Center, Room 123.

The original papers must be delivered to the Motion Support Office Information Window at least nine business days prior to the return date so that the Petition may be recorded in the court's computer system and placed on the calendar. In the first instance, the place at which the motion will be returnable is the Assigned Justice's Courtroom. Oral (spoken) argument may take place there, but usually oral argument takes place only when, where and if the assigned Justice directs. This is so for all petitions brought in our court by **Notice of Petition**. Answering and reply papers are to be served upon all other parties to the case within the deadlines applicable. The original answering and reply papers (to which must be attached proof that the papers were served on all other parties) must be delivered to the Courtroom at the call of the calendar at 9:30 A.M. on the return date.

A word of caution on return dates. Sometimes the assigned Justice and/or the Court Clerk's Office will direct or require a change in the return date you selected. Accordingly, a few days after you submit your Notice of Petition you must check with the Motion Support Clerk's Office to see if this happened. You can do this by calling the Motion Support Clerk's Office at 347-401-9249. (Have your Index Number ready).

Once the motion is marked submitted, it is either sent to the Justice assigned to the case for decision or is scheduled for oral argument in front of that Justice. This depends upon the procedures adopted by the Justice in question.

Remember, you are responsible for keeping track of the status of your Petition after it is submitted and doing whatever follow-up is necessary after it is decided.

To check the status of your Petition, call the Motion Support Clerk's office at 347-401-9249. (Have your Index Number ready). For information on follow-up steps that are required if the Petition is granted, please go to the General Info. / General tab and refer to the document titled, **How to Submit/Settle and Enter Orders**.

EXHIBIT A

At IAS Part _____ of the Supreme Court of the State of New York, held in and for the county of Kings at the Courthouse, thereof, 360 Adams Street, Brooklyn, NY on the _____ day of _____, 20_____.

-----X

Index No. _____ / _____

**ORDER TO SHOW CAUSE
IN SPECIAL PROCEEDING**

-----X

exhibits attached to the affidavit, and **[LIST OTHER SUPPORTING PAPERS, E.G., ADDITIONAL AFFIDAVITS, EXHIBITS]**

Let the respondents or his/her/their attorney show cause at IAS PART _____,
Room _____, of this Court, to be held at the Courthouse, 360 Adams Street, Brooklyn
N.Y., on the _____ day of _____, 20_____, at _____ o'clock in _____

the morning/afternoon or as soon thereafter as counsel may be heard why an order should not be made **[DESCRIBE THE RELIEF BEING SOUGHT]** _____

for the reasons that **[BRIEFLY DESCRIBE THE REASONS FOR THE RELIEF YOU ARE REQUESTING]** _____

Sufficient cause appearing therefor, let personal service of a copy of this order, and the papers upon which this order is granted, upon the plaintiff(s)/defendant(s) on or before the _____ day of _____, 20_____ be deemed good and sufficient. A proof of service shall be presented to this Court on the return date directed in the second paragraph of this order.

ENTER

J.S.C.

INSTRUCTIONS: FILL IN THE NAMES OF THE PARTIES AND THE INDEX NUMBER. COMPLETE THE BLANK SPACES NEXT TO THE INSTRUCTIONS IN BOLD. PRINT AND USE BLACK INK ONLY.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
In the Matter of the Application of

Index No. _____ / _____

NOTICE OF PETITION

[FILL IN NAMES] Petitioner(s)

- against -

[FILL IN NAMES] Respondent(s)

-----X

PLEASE TAKE NOTICE that upon the verified petition of _____
_____**[INSERT YOUR NAME]** sworn to on the
____ day of _____, 20____, **[INSERT DATE PETITION SWORN TO IN THE PRESENCE OF A**

NOTARY PUBLIC] and the exhibits attached thereto, and upon all the proceedings in the
case to date, the petitioner(s)**[INSERT NAMES OF ALL PETITIONER(S)]** _____

_____ will petition this court,

at 9:30 A.M. on the _____ day of _____ 20____ **[INSERT RETURN DATE]** at the

courthouse, _____, New York,

in the Assigned IAS Justices Courtroom, ___ for a judgment, pursuant to Civil Practice

Law and Rules granting the following relief to the petitioner(s): **[INSERT BRIEF**

STATEMENT OF

RELIEF REQUESTED] _____

_____ and granting such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to Civil Practice Law and Rules 403(b), you are hereby required to serve copies of your answer on the undersigned no later than the seventh day prior to the date set above for the submission of this proceeding.

Dated: _____, New York

_____, 20 ____

Respectfully Submitted,

Petitioner(s)
[PRINT NAME AND ADDRESS]

To: _____

Attorney(s) for Respondent(s)
[PRINT ATTORNEY'S NAME AND ADDRESS]

EXHIBIT B

INSTRUCTIONS: FILL IN THE BLANK SPACES BELOW FOLLOWING THE DIRECTIONS GIVEN IN (BOLD PRINT). PRINT IN BLACK INK ONLY.

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

-----X

In the Matter of the Application of

Index No. _____/_____

[FILL IN NAME(S)] Petitioner(s)

-against-

VERIFIED PETITION

[FILL IN NAME(S)] Respondent(s)

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF KINGS:

The petition of **[YOUR NAME(S)]**

respectfully shows to this Court as follows:

1. Your petitioner(s) resides at **[YOUR ADDRESS]** _____

2. The respondent(s) is/are **[IDENTIFY THE RESPONDENT(S)]** _____

3. **[DESCRIBE ALL FACTS CONCERNING YOUR CLAIMS IN THIS PROCEEDING, INCLUDING THE UNDERLYING EVENTS AND THE NATURE OF ANY ACTION OR DECISION TAKEN BY RESPONDENT(S) THAT YOU WISH TO CHALLENGE. ADD MORE PAGES IF NEEDED.]** _____

4. _____

5. _____

6. _____

7. Attached hereto as Appendix/Appendices is/are copies of all relevant documents showing petitioner's right to win this case, including determination(s) issued by respondent(s) that have a bearing on this case and/or of which petitioner herein complains, if any. These documents are:
[IDENTIFY ALL SUCH DOCUMENTS, INCLUDING ALL WRITTEN DECISIONS OR DETERMINATIONS MADE BY RESPONDENT(S) THAT ARE PERTINENT TO THIS CASE AND ATTACH COPIES THEREOF. SEPARATELY MARK EACH SEPARATE DOCUMENT AS EXHIBIT A, EXHIBIT B, EXHIBIT C, ETC. EXPLAIN WHAT EACH EXHIBIT SHOWS]. _____

The following exhibits are attached **[IDENTIFY BY LETTER]** _____

8. A prior application ____has ____has not been made for the relief requested herein.
[CHECK ONE. CHECK THAT A PRIOR APPLICATION HAS BEEN MADE ONLY IF YOU SOUGHT
THE SAME RELIEF YOU ARE NOW SEEKING.] The prior application was made [DESCRIBE
WHERE, WHEN, AND BY WHOM THE PRIOR APPLICATION WAS MADE, THE RESULT, AND
WHY YOU ARE MAKING A SECOND APPLICATION.] _____

WHEREFORE, your deponent prays that this Court [DESCRIBE THE RELIEF YOU ARE
REQUESTING - *WHAT YOU ARE ASKING THE COURT TO DO FOR YOU*]: _____

Dated: Kings County, New York

_____, 20_____
[DATE SIGNED]

Petitioner
[SIGN YOUR NAME BEFORE NOTARY PUBLIC]

[PRINT NAME]

Sworn to before me on this ____ day
of _____, 20_____

Notary Public

[PETITIONER'S ADDRESS & TELEPHONE NO.]

VERIFICATION

STATE OF NEW YORK)

ss:

COUNTY OF KINGS)

_____ **[YOUR NAME]**, being duly sworn, deposes and says: That I am the petitioner in this proceeding, that I have read the foregoing petition and know the contents thereof; that the same are true to my knowledge, except as to matters therein stated to be alleged on information and belief; and that as to those matters I believe them to be true. To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers or the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1 of the Rules of the Chief Administrator (22 NYCRR).

Petitioner
[SIGN YOUR NAME BEFORE A NOTARY PUBLIC]

[PRINT NAME]

Sworn to before me on this _____ day
of _____, 20_____.

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X

INDEX NO. _____/_____

Plaintiff/Petitioner

– against –

**Part 130 Certification
Legal Back**

Defendant/Respondent

-----X

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

[SIGN YOUR NAME]

[PRINT NAME]

[PETITIONER'S ADDRESS AND TELEPHONE NUMBER]