

**SUPREME COURT, CIVIL BRANCH
Richmond County
26 Central Avenue, Staten Island. N.Y. 10301**

**HELP CENTER
25 Hyatt Street 5th Floor
Staten Island, N.Y. 10301
718 675 8589
How to Commence a Civil Action**

Note: All persons involved in a lawsuit should consult an attorney. The Help Center gives you information, forms and instructions on court procedures. As an office of the New York State Supreme Court, we cannot give legal advice or act as your advocate.

In general, a person who wishes to file a lawsuit in Staten Island (Richmond County) to obtain money damages of more than \$50,000 may commence a civil action in this court. Cases where a party seeks to stop certain actions by another party may also be heard in this court. An unrepresented person should refer to the Civil Practice Law and Rules (CPLR) Article 5 to determine in which county a lawsuit may be commenced (known as **venue**). Every lawsuit must be brought within one of various deadlines spelled out in the law, which are known as **statutes of limitations**. CPLR Article 2. Legal research may be done at the Public Access Law Library, 25 Hyatt Street, 5th Floor, Staten Island, N.Y., Monday to Friday, 9:00 A.M. to 100 P.M.

The complaining party is the **plaintiff**, and the alleged wrongdoer is the **defendant**. The basic procedures for starting an action are explained in this pamphlet. Either a **summons and complaint** or a **summons with notice** are prepared to start an action. If a summons with notice is used, you will have to file and serve a complaint later in the case. These are known as **initiating papers**.

Electronic Filing

The New York State Unified Court System operates an electronic filing system for cases filed and litigated in various state courts, including the New York State Supreme Court. This system is the **New York State Courts Electronic Filing System (“NYSCEF”)**.

In Richmond County Supreme Court, Civil Branch, electronic filing is mandatory. That is, new cases must, with four exceptions (Matrimonial, Article 78, Election Law, and Mental Hygiene law matters), be commenced through the NYSCEF system and filings with the court thereafter must be filed through NYSCEF. Thus, a person seeking to commence a new civil action or special proceeding (other than one covered by one of the exceptions) must file the commencement documents with the County Clerk of Richmond County through the NYSCEF system. Subsequent filings with the court after commencement, such as the submission of motion papers, must be filed via NYSCEF.

Although e-filing is generally mandatory in Richmond County, the rules permit persons who appear on their own behalf in this court to be exempt from the obligation to e-file.

Information on how the NYSCEF system works for unrepresented litigants can be found on the NYSCEF website at www.nycourts.gov/efile.

Prepare the Initiating Papers

The Summons

A **summons** contains the name of the court, the caption of the case (a box at the top left side of the page with the names of the parties), an Index Number (every lawsuit filed has its own identifying case number) and the date the initiating papers are filed with the County Clerk's Office. The **name, address and telephone number** of the **plaintiff's attorney** or the **unrepresented plaintiff** are stated on the summons. The plaintiff or attorney also signs his/her name on the summons. See N.Y. Code of Rules and Regulations, Section 130-1.1-a. The defendant should be the person (or entity) the plaintiff claims is legally responsible for the breach of some duty or obligation owed the plaintiff.¹ A sample of a summons is attached.

A summons is served with a **complaint** and requires the **defendant** to answer the allegations and claims of the plaintiff. The complaint describes the plaintiff's case.

A summons with notice is a type of summons. The summons with notice is not served with the complaint. It contains all of the information described above for the summons, plus a brief description of the type of case and the relief the plaintiff is asking the court to grant. After a summons with notice is served, the defendant will **demand** that the plaintiff serve a complaint. The plaintiff must then have the complaint served within 20 days after being served with the **demand**, or the case may be dismissed. CPLR 3012(b). A sample of a summons with notice is attached.

Each type of summons requires the defendant to serve a **notice of appearance** in the lawsuit. The notice of appearance informs the plaintiff that the defendant will respond to the lawsuit.

The Complaint

A **complaint** (and every other document served in a case in this court) shall be typed, double spaced, or legibly printed, in English, using black ink. It must be on 8 1/2 x 11 inch paper, using only one side of the paper. Papers should be stapled or otherwise bound securely. CPLR 2101.

The **complaint** describes plaintiff's charges against the defendant and must include certain essential allegations in order to add up to a legally sufficient claim. Each defendant must have taken part in the wrongdoing which allegedly damaged the plaintiff. It is not enough to state that a plaintiff feels he or she has been wronged by the conduct of someone else. The wrongdoing must also have resulted in some form

¹ Important: A person who wishes to bring a claim against a municipality may be required to file a **Notice of Claim** before starting the lawsuit and within a deadline that may be very short. **Failure to file a Notice of Claim on time may result in dismissal of the action.** For more information, consult an attorney. See, Notice of Claim, available in Office of Self Help, for general information on this subject.

of damages to plaintiff. A person, for instance, ordinarily may not sue for damages just because a supermarket clerk spoke rudely to him or her.

The complaint should begin with a brief identification of the plaintiff, followed by an identification of the defendant. The complaint should set forth the plaintiff's charges in separate, numbered paragraphs. Each paragraph should be short and contain only one allegation.

The complaint should next set forth a brief description of the events upon which the claim is based: what each defendant did or failed to do, how plaintiff was harmed as a result, and the type and extent of damages suffered. The facts should be stated in chronological order, including specific dates. The plaintiff should write the complaint in a clear, understandable and organized fashion. Although a plaintiff is familiar with the essential facts, he or she should keep in mind that the court will not know them unless they are presented in the complaint. The complaint is a document that sets out the essential claims of the plaintiff's case. It frames what the case is about. The complaint is not, however, a vehicle for presenting to the court all of the plaintiff's proof and thus should not be overly lengthy or verbose.

The complaint should conclude with a paragraph in which the plaintiff sets forth all the relief against the defendant that he or she is seeking from the court. In certain circumstances, the complaint must be verified, which means signed in a certain format under oath, before a notary. CPLR 3020. An unrepresented plaintiff will have to draft a complaint suited to the circumstances of his or her case. An example of a complaint is attached.

The court has the power to grant a variety of remedies depending upon the circumstances. The court, may, for example, order a defendant to compensate a plaintiff by paying a sum of money, known as **damages**. In certain circumstances, the court may order a party to do, or to refrain from doing, certain acts. This is known as **injunctive relief**. The court may decide the rights of parties to a dispute. This is known as **declaratory relief**.

Commencing the Action

Make one copy of the initiating papers for each defendant and a copy for your own records.

The action is started only after getting the Index Number. The original initiating papers must be filed in the County Clerk's Office, 130 Stuyvesant Place, 2nd Floor. Fill out an Index Number Application form, available at the counter (see page 5). Submit all of these items to the Cashier and pay the filing fee of \$210.²

You must write the Index Number and the date the summons was filed on the copies of initiating papers before they are served. Someone over the age of 18, not a party to the case, can serve the papers on each defendant in the manner provided by law. **You cannot serve your own papers.** CPLR 2103(a).

² If the plaintiff claims to be financially unable to proceed with the action, he/she may apply for a court order that will waive payment of the court filing fees. This is known as a poor person order. See, How to Apply for Poor Person Status, 25 Hyatt Street, 5th Floor.

Service of the Summons with Notice or the Summons and Complaint

Basic notions of fairness require that before the plaintiff may succeed in obtaining the relief demanded in the summons with notice or summons and complaint, the defendant be formally notified of the lawsuit and given an opportunity to put a defense before the court. The notification is known as **service of process**. This notification is also a mechanism formally to bring the defendant before the court. Proof of service of the initiating papers must be timely filed with the County Clerk's Office, 2nd Floor, at the Law and Equity counter or the case may be dismissed. See How to Serve Legal Papers, available in Office of Self Help 25 Hyatt Street, 5th Floor for information on service.

The Defendant's Response

If the steps described here are performed properly, a case now exists. The defendant now has approximately 20 or 30 days (see CPLR 320) within which to serve the plaintiff or plaintiff's attorney with a written response, depending on how the defendant was served. Defendant's response will take the form of an **answer**, or a **motion to dismiss the complaint**, with the notice of appearance.

The answer is the defendant's position regarding the essential claims of plaintiff's case.

If the complaint contains allegations that the defendant believes to be legally unsound, or if a defendant challenges service or the court's power over the defendant in the case, defendant may make an application to the court to end the case promptly (a motion to dismiss). If the plaintiff's case survives this motion, the case will continue. Plaintiff must then prove the truth of the allegations contained in the complaint. For more on the response process, see How to Respond to a Summons and Complaint, Office of Self Help 25 Hyatt Street, 5th Floor.

Request for Judicial Intervention (RJI)

Although a lawsuit is in existence upon the filing and service of a summons with notice or summons and complaint, the case has not yet entered the court system and is not known to the court. A civil action may proceed for a long time before the parties go before a Judge. The complaint and the answer set the frame of the dispute; additional action is required to bring the dispute to a head, or to put the plaintiff to his or her proof before the court or a jury. This will happen only when a party files a Request for Judicial Intervention (RJI) form and pays the \$95 court filing fee. Filing an RJI assigns the case to a Judge and asks the court to take some action in regard to the dispute.

A case may come before a judge when a motion is made or a preliminary conference is requested. The plaintiff may, at an appropriate time, have the case placed on the trial calendar. Until the case is placed on the trial calendar, it can never be called for trial. See, How to File a Request for Judicial Intervention, 25 Hyatt Street, 5th Floor.

Application for Index Number - This form is needed to get a case number (Index Number). The form brings about the assignment of the Index Number, which identifies your case from that point on.

Application for the Index Number

- [1] Your name(s) as Plaintiff(s) and
the name(s) of party(ies) - Defendant(s) you are suing.
- [2] Check the box that describes your lawsuit.
- [3] Your name(s), address(es), and telephone number(s).
- [4] Name(s), address(es), telephone number(s) of Defendant(s).
- [5] Describe the lawsuit you are filing.
- [6] Check "Plaintiff" box.
- [7] Check "No" box.
- [8] Your name(s) and name(s) of party(ies) you are suing.

[Print in black ink all areas in bold letters. This summons must be served with a complaint.]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

----- X

SUMMONS

[your name(s)] Plaintiff(s),

Index Number

- against-

Date Index Number Purchased

[name(s) of party being sued] Defendant(s).
----- X

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED to answer the complaint of the plaintiff(s) herein and to serve a copy of your answer on the plaintiff(s) at the address indicated below within 20 days after service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Dated : _____

[date of summons]

[sign your name]

Your address(es), telephone number(s)]

Defendants(s)

address(es) of party being sued

Venue: Plaintiff(s) designate(s) Richmond County as the place of trial. The basis of this designation is:

[check box that applies]

- Plaintiff's(s') residence in Richmond County
- Defendant's(s') residence in Richmond County
- Other [See CPLR Article 5]:

[Print in black ink all areas in bold letters. A complaint must be served in response to a demand or notice of appearance (CPLR 3012(b))]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

Plaintiff(s)/Petitioner(s),

- against-

Defendant(s)/Respondent(s).

SUMMONS WITH NOTICE

Index Number

Date Index Number Purchased

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED and required to serve upon plaintiff, at the address stated below, a notice of appearance or demand for a complaint within 20 days after service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to serve a notice of appearance or demand for a complaint, a judgment will be entered against you by default for the relief demanded herein.

Dated: _____

[date of summons]

[sign your name]

Defendant(s)

[print your name]

[address(es) of party being sued]

[your address(es), telephone number(s)]

Notice: The nature of this action is [**briefly describe the nature of your case against the defendant(s), such as, breach of contract, negligence**]:

The relief sought is [**briefly describe the kind of relief you are asking for, such as money damages of \$25,000**]

Should defendant(s) fail to appear herein or demand a complaint, judgment will be entered by default for the sum of _____ [**amount of money demanded**] with interest from the date _____ [**date from which interest on the amount demanded is claimed**] and the costs of this action.

Venue:

Plaintiff(s) designate Richmond County as the place of trial. The basis of this delegation is

[check box that applies]:

- Plaintiff's(s') residence in Richmond County
- Defendant's(s') residence in Richmond County
- Other [**See CPLR Article 5**]: _____

[This is only an example of a complaint. Anyone seeking to file and serve a summons and complaint must state the facts of his/her own case. Print or type, double spaced, using black ink only.]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

JOHN JONES,

Index No. 123456/2019

Plaintiff,

COMPLAINT

- against-

GEORGE SMITH,

Defendant.

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The complaint of the plaintiff, John Jones, respectfully shows and alleges as follows:

1. The plaintiff herein, John Jones, is a resident of the State of New York. Mr. Jones resides at 32 Barbary Coast Place, New York, New York.
2. The defendant herein, George Smith, has a principal place of business at 522A Fifth Avenue, New York, New York. Defendant is engaged in the business of building sailboats.
3. Plaintiff Jones desired to have a small sail boat built pursuant to a design prepared by him. He and defendant discussed his needs and specifications for this project.
4. On March 1, 2012, plaintiff and defendant entered into a written agreement. Pursuant thereto, plaintiff agreed to pay the sum of \$90,000 for the sailboat. Plaintiff was obligated to make a down payment of \$10,000 on or before April 1, 2012, with the balance to be due upon delivery of the boat. The defendant agreed to build the boat in accordance with plaintiff's design for the aforesaid price and to complete the work and deliver the boat to a fixed place on or before July 15, 2012.
5. On March 8, 2012, plaintiff delivered to defendant a certified check in the sum of \$10,000, which defendant cashed.
6. Defendant failed to deliver the boat on or before July 15, 2012, as agreed. Plaintiff made numerous phone calls and sent several letters to defendant about the contract, but received no response.
7. By reason of the facts and circumstances stated above, defendant has breached the contract.
8. By reason of the facts and circumstances stated above, plaintiff has been damaged by defendant in the

sum of \$40,000.

WHEREFORE, plaintiff demands judgment against defendant in the sum of \$40,000, plus interest from July 15, 2012, costs and disbursements, together with any other relief the Court finds to be just and proper.

Dated: January 1, 2019

John Jones

[sign name]

John Jones

[print name]

32 Barbary Coast Place
New York, New York 11010
212-473-5151

[address and telephone no.]

VERIFICATION

STATE OF NEW YORK

COUNTY OF RICHOND:

_____, being duly sworn, deposes and says:

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my 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.

[Sign your name in front of a Notary]

[print your name]

Sworn to before me this

Notary Public