

**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 MOTION

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 motion is a request for a court order. It can only be made after a lawsuit has been started. The party (plaintiff or defendant) making the motion is known as the movant.

What You Need to Know

- There is a \$45 fee to file a motion with the court.
Pay by cash, credit card or postal money order made out to the “Richmond County Clerk.”
- There is an additional fee of \$95 if the case is not yet assigned to a Judge. This fee is charged only once per case and paid by the first party in the case who requests a court order or conference. If you have a limited income, ask at HELP CENTER about applying for a Poor Person Order, which will allow you to make a motion without paying these fees.
- You are required to have all parties to the lawsuit notified that you are making a motion. This is done by having someone over the age of 18, who is not a party in the case, serve a copy of the motion papers on the attorney of each party or, if the party is unrepresented, on the party.
You cannot serve your own papers.

You may refer to the Civil Practice Law and Rules (CPLR) Article 22 for a more detailed discussion of motion practice. The Public Access Law Library at 25 Centre Street, 5TH FLOOR, Staten Island, N.Y, is open to the public, Monday to Friday, 900 A.M. to 1:00 P.M.

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 three exceptions (Article 70, 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. If an unrepresented person does not wish to participate in e-filing, he or she may opt out of doing so by filing a form so stating. This “opt-out form” can be accessed on the website of this court at www.nycourts.gov/courts/1jd/supctmanh/E-Filing.shtml. The form must be filed with the County Clerk.

Unrepresented parties who opt out of e-filing must file with the court in paper form and must serve paper copies of documents on all other parties. If other parties to a case e-file, they must serve copies of documents filed with the court in paper form on unrepresented parties who have opted out.

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

The following assumes that the filer has opted out of e-filing.

Notice of Motion (see attached form) - This form notifies all parties that you are making a motion and describes what you are requesting. You must include the date to come to court, known as the **return date**, time and assigned courtroom at 9:30 AM (or Civil Clerk’s Office Room 131). You pick the return date and may choose any Monday to Friday that does not fall on a holiday. Picking a return date more than 16 days after the day the motion papers will be served will allow you to have someone serve by regular mail and allow you to make a written response to any opposition to your motion.

A motion can in some circumstances be brought on by Order to Show Cause. See “How to File a Proposed Order to Show Cause.”

Motion to Dismiss

If a defendant decides to make a **motion to dismiss** before answering a **complaint**, he or she must include certain types of objections or defenses in the motion. If not included, they will be considered **waived** (given up). See CPLR 3211 (a) 1,3,4,5, and 6. To avoid losing any defenses you may have, carefully review this statute before making a motion to dismiss.

When You File A Motion by Notice of Motion

- You pick the date to come to court.
- Your request does not need immediate attention.
- You cannot ask for a Temporary Restraining Order (**TRO**) to **stay** (stop) an action being taken by a party.
- Service of motion papers is done before filing the papers with the court.
- Motion papers may be served by regular mail.
- You are not required to appear in front of the Judge unless you are notified to appear.

Affirmation in Support (see attached) - The affirmation is your statement and it must fully explain your request. You will not speak to the Judge unless the Judge wants “oral argument.” The Judge’s decision is based on the papers submitted by all parties.

Attach any **Exhibits** (copies of documents that help explain and support your request) to your affirmation. Label each exhibit at the bottom of the page, as Exhibit A, Exhibit B, and so on. Exhibits will not be returned. You must sign your affirmation.

Litigation Back (blue color) - On the right side of the Litigation Back, in black ink, fill in the Index Number, name(s), of Plaintiff(s), and Defendant(s). Sign and print your name, address, and telephone number. Do not fill in the left side of the page.

Request for Judicial Intervention (RJI) - If the case has not yet been assigned to a Judge, the first party to request a court order must file this form and pay the \$95 fee. You may access the RJI form at www.nycourts.gov/forms/rii/index.shtml, or contact the Help Center staff.

Preparing and Filing the Notice of Motion and Supporting Papers

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

- Arrange the papers listed below in the following order.
 - 1st Request for Judicial Intervention (RJI) if the case is not yet assigned to a Judge.
 - 2nd Notice of Motion.
 - 3rd Affirmation in Support.
 - 4th Exhibit A, B, C and so on.
 - 5th Litigation Back (blue color).

This is the **original** set of Notice of Motion and Supporting papers, which will go to the Judge. Make

sure you have *copies* served, not the original.

- Statements of fact are made in the Affirmation in Support. More than one such affirmations is permissible, if necessary. Any legal issues raised by the movant should be included in a document separate from but accompanying the Notice of Motion and Supporting papers. This document is called a **Memorandum of Law**.

- Make copies of the **original** Notice of Motion and Supporting papers (and RJI, front and back, if the case is not assigned to a Judge). You must have one copy for each unrepresented party or attorney to be served and one copy for your records. After the copies are made, staple each set together and staple the original.

Serving Copies of the Notice of Motion and Supporting Papers and the Affirmation of Service

- The server gives a copy of the Notice of Motion and Supporting papers (and a copy of the RJI if the case is not assigned to a Judge) to each unrepresented party and each attorney. Service may be done by regular or overnight mail or personal service.

The server then signs an **affirmation of service**. This affirmation describes when, how, and where service was made and identifies the papers and the parties served.

Or, the server may ask a party or attorney being served by personal service if they will sign or “stamp” the Litigation Back of the **original** Notice of Motion papers and the RJI form. The “stamp” is accepted as proof of service and can substitute for the Affirmation of Service insofar as the accepting party or attorney is concerned. However, the person served is not obligated to admit service. Make a copy of the proof of service for your records.

Filing the Original Notice of Motion and Supporting Papers with the Court

- After service, and at least 5 business days before the return date, go to the General Clerk’s Office, Richmond Supreme Court, 26 Central Avenue, Staten Island, N.Y. 10301, Room 131, 1st floor, with the following papers:
 - **original** Notice of Motion and Supporting papers
 - **original** RJI and one copy, if also served
 - Affirmation of Service or a party’s or attorney’s admission of service on the Notice of Motion papers and RJI (if a Judge has not yet been assigned)

- The Clerk will stamp your original papers and send you to the Cashier adjacent to the Clerk’s Office,

1st Floor, to pay the \$45 motion fee (and \$95 RJI fee, if an RJI was also served).

- In Room 131, the Cashier will also stamp your original papers (and keep the copy of the RJI, if also served). In Room 131, make a copy only of the two Notice of Motion. Coming to Court on the Return Date ***DO NOT BE LATE***
 - **At 9:30 A.M.** on the **return date**, be in the assigned Courtroom where the case has been assigned to a judge.
 - An unrepresented party or attorney can:
 - Contact you before or on 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.
 - If the parties do not agree, the court will hear the request on the return date.
 - Requests for adjournments must be made in person, or a party can answer with an **Affirmation in Opposition** asking that your motion be denied, or,
 - A party can make a motion in response to your motion, known as a **Cross-Motion**. This is done when a party wants to request an order for a form of relief in addition to denial of your motion. Opposition and cross-moving papers can be served by mail.

You can:

Request an adjournment to submit **Reply** papers.

A **Reply** allows you to respond only to statements or arguments made in opposition papers. You may not make new requests in Reply papers.

Note: A reply is allowed only if your motion was served at least 8 days by personal service or, if served by mail, at least 16 days before the return date.

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 at the Office of Self Help.

Original opposition and **original** Reply papers, with proof of service, are filed in Room 131, on the return or adjournment date.

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

Court Clerks will then send the papers to the Judge. 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 motion may be denied. The Judge will issue a written decision, usually within 2 months.

Getting a Decision on Your Motion

It is your responsibility to check if a decision has been made.

- Go to either website of the court at www.nycourts.gov or
- <https://iapps.courts.state.ny.us/webcivil/etrackMain> under the Decisions tab.

Decisions in matrimonial cases are not posted.

Or check the case file, under the Index Number, in the County Clerk's Office Record Room, 2nd Floor Room at 130 Stuyvesant Place, Staten Island, N.Y. 10301

[Print in black ink]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

Plaintiff(s)/Petitioner(s),

- against-

Defendant(s)/Respondent(s).

Index Number

NOTICE OF MOTION

PLEASE TAKE NOTICE

that upon the attached affirmation(s) of _____ [your
name(s)], the exhibits attached to the affirmations(s), and upon all proceedings
in this case to date, the plaintiff(s) / defendant(s) _____ [circle one and
give name of party making this request] will move this Court at 9:30 A.M. on the _____ day of
_____ 20____, [return date] at the Supreme Courthouse, 26 Central Avenue, Staten
Island, New York, in the assigned Motion Part Courtroom, Room 131, for an order, pursuant to the
Civil Practice Law and Rules (CPLR), granting the following relief to the movant(s): [briefly
describe what you are asking the Court to do]

and for 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 2214(b), you are hereby required to serve copies of your answering affidavits on the undersigned no later than the seventh day prior to the date set above for submission of this motion. **[For this paragraph to apply, motion papers must be served by personal delivery no later than 16 days before the return date.]**

Dated: _____, 20____

Respectfully submitted,

[sign your name]

[print your name]

To: Attorney for Plaintiff(s) / Defendant(s) **[circle one]**

[print name, address, telephone number]

[print name, address, telephone number]

[Print in black]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

Plaintiff(s)/Petitioner(s),

Index Number

- against -

AFFIRMATION IN SUPPORT

Defendant(s)/Respondent(s).

[your name], says:

1. I am the plaintiff / petitioner / defendant / respondent **[circle one]** in this matter. I make this affirmation in support of this motion for an order **[Describe what you are asking the Court to do. This relief must also be stated in the Notice of Motion or Proposed Order to Show Cause.]**

2. I believe the Court should grant this motion because **[Explain why you should be granted what you are requesting. Attach, identify, and explain any Exhibits (documents) you wish to present to the court in support of your position. Add more pages if needed.]**

3. A prior application **has not / has [circle one]** been made for the relief now requested. **[If you made this application before in this or any other court, describe where, when, the result, and why you are making this application again. Attach copies of previous decisions.]**

WHEREFORE, I respectfully request that this motion be granted, and that I have such other and further relief as may be just and proper.

(Signature)

I, affirm this _____ day of _____, 20____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature)

INSTRUCTIONS: THIS AFFIRMATION MUST BE USED FOR SERVICE OF INITIATING PAPERS (A SUMMONS AND COMPLAINT, SUMMONS WITH NOTICE, NOTICE OF PETITION AND PERITION, OR ORDER TO SHOW CAUSE AND PETITION). SERVER MUST SIGN AND PRINT NAME AND USE BLACK INK ONLY. FILL IN THE NAMES OF THE PARTIES AND COMPLETE THE BLANK SPACES PRINTED IN BOLD TYPE.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

[fill in name(s)] Plaintiff(s)/Petitioner(s),

- against-

Index Number _____
AFFIRMATION OF SERVICE
OF INTIATING PAPERS

[fill in name(s)] Defendant(s)/Respondent(s).

I, _____ **[name of person who served papers]**,
affirm, depose and say:

I am over 18 years of age and am not a party to this case.

I reside at _____ **[your address]**

On, _____, **[date of service]**, at _____ AM/PM **[time of day]**, I served a true
copy of the following papers _____ **[identify papers served]**,

On _____ **[name of party served]**, a Defendant / Respondent **[circle one]** in this case.

The address of the place where the papers were served is

_____. **[state location where
papers were served]**

I served the papers in the manner indicated below **[check box that applies]**:

- 1) **Individual** By delivering a copy of each to the defendant personally; I knew the person served to be the person named in those papers. **[Fill out description below]**

- 2) **Corporation** _____, a domestic corporation, by delivering a true copy of each to _____ **[Identify person served]** who is _____ **[Identify the individual to whom the papers were delivered and his/her job title]**; I knew the corporation to be that listed in the papers served and I knew the title of the person named above that he/she was authorized to accept service.

3) Substituted Service

By delivering a true copy of each to _____
_____ **[Insert Name of Person]**, a person of suitable age and discretion, at the actual place of business, dwelling house, or usual place of abode in the state, and mailing, as indicated below.

Substituted Service

By affixing a true copy to the door at _____

Which is the defendants _____.

I made prior attempts to serve at this location on the following dates and times:

_____.

Mailing
(Use with 3)

I also enclosed a copy of the above papers in a postpaid (already had the stamps on it), sealed envelope properly addressed to defendant at defendant's last know residence of actual place of business, located at _____
_____ **[address]**, and I deposited the envelope in a post office depository under the exclusive care and custody of the United States Postal Service within New York State.

Description
(Use with 1, 2, or 3)

The individual I served had the following characteristics:

[Check one box in each Category]

Sex	Height	Weight	Age
<input type="checkbox"/> Male	<input type="checkbox"/> Under 5'	<input type="checkbox"/> Under 100 lbs.	<input type="checkbox"/> 21 - 34 years
<input type="checkbox"/> Female	<input type="checkbox"/> 5'0" - 5'3"	<input type="checkbox"/> 100 - 130 lbs.	<input type="checkbox"/> 35 - 50 years
	<input type="checkbox"/> 5'4" - 5'8"	<input type="checkbox"/> 131 - 160 lbs.	<input type="checkbox"/> 51 - 61 years
	<input type="checkbox"/> 5'9" - 6'0"	<input type="checkbox"/> 161 - 200 lbs.	<input type="checkbox"/> Over 61 years
	<input type="checkbox"/> Over 6'	<input type="checkbox"/> Over 200 lbs.	

Color of skin _____ **[describe]**

Hair color _____ **[describe]**

Other identifying features, if any: _____ **[describe]**

Military
Service

I asked the person to whom I spoke whether the defendant was in active service in the military of the United States or New York State in any capacity and I was told that he/she was not. Defendant did not wear a military uniform. I state upon information and belief that the defendant is not in the military service of the United States or New York State. The bases for my belief are the conversations and observations described above

Dated: _____

I, _____ (Print or Type Name), affirm this ___ day of _____, _____, under the penalties of perjury, under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Server's Signature