

RICHMOND COUNTY SUPREME COURT

**26 Central Ave
Staten Island, NY 10301**

OFFICE OF SELF HELP

**25 Hyatt Street 5th Floor
Staten Island, NY 10301
718 675-8589**

How to Respond to a Summons and Complaint

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.

After a **summons with notice** or **summons and complaint** are served, a defendant must respond in writing within a limited period of time. The response is sent to the plaintiff's attorney or directly to the plaintiff if the plaintiff is unrepresented. The written response must be made within 20 days of personal service, or within 30 days of the time when service by any other means is complete. If defendant fails to respond, he or she is in **default** and plaintiff may be able to obtain a **default judgment** against the defendant for the relief requested.

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.

How to Avoid a Default

To avoid a default, where a summons with notice was served, a defendant must prepare a **notice of appearance** and have it served on plaintiff or plaintiff's attorney within the applicable deadline. A notice of appearance indicates that defendant will appear on his or her own behalf.

A corporation must appear through an attorney. See Civil Practice Law and Rules (CPLR) 321(a).

A defendant must have plaintiff served with a copy of the notice of appearance (see attached). The **original**, with proof of service, **must be timely filed in the County Clerk's Office, 130 Stuyvesant Place, 2nd floor to avoid defaulting.**

A summons with notice lacks details about the plaintiff's claims. Therefore, the defendant's notice of appearance usually includes a **demand for a complaint**. The **complaint** describes the plaintiff's case in detail. This demand requires the complaint to be served within 20 days from the date of service of the demand.

Once a complaint has been served, whether with a summons at the outset or in response to a demand, the defendant must respond by having the plaintiff served with an **answer** or a **motion**, usually, a **motion to dismiss**.

The Answer

An answer, like a complaint, states a party's position regarding the case. (See attached example of an answer).

First, the answer contains the caption of the case. The body of the answer consists of a series of numbered paragraphs. A defendant must respond to each allegation in the complaint by either:

- a) admitting its truth; **or**
- b) denying its truth; **or**
- c) denying that the defendant has sufficient knowledge or information to know whether the allegation is true or false.

The law treats each allegation of a complaint that is not responded to as having been admitted.

The answer may, and sometimes must, contain **affirmative defenses**. A defendant needs to be careful not to waive (give up) any defenses. See CPLR 3211(e) and CPLR 3018(b). Certain defenses, such as lack of proper service of the summons and complaint, are waived if the defendant does not either assert them in a written answer or make a motion to dismiss prior to service of an answer. See CPLR 3211.

An answer to the complaint may also contain a **counterclaim**. A counterclaim seeks relief (for example, money damages) against the plaintiff. Counterclaims should be set forth in a separate section titled "COUNTERCLAIMS" after the portion of the answer described above.

Counterclaims resemble the format of a complaint.

A defendant may assert claims against a fellow defendant or several defendants. These are known as **cross claims** and also follow the initial responses contained in the answer.

There shall be a response (**a reply**) to a counterclaim designated as such and to a cross claim (**an answer**) if the cross claim contains a demand therefor.

Generally, if the complaint has been sworn to (verified), then the answer must be verified as well. See CPLR 3020. In any event, the answer must be signed by defendant's attorney or by defendant if unrepresented.

A copy of the answer must be served upon the plaintiff's attorney or upon an unrepresented plaintiff and upon all other parties. Unlike service of papers initiating a lawsuit, an answer may be served by mail by someone (not you) over the age of eighteen, who is not a party to the case. See CPLR 2103(a). A sample of an affidavit of service is attached. Although it is not required, it is permissible for the defendant to file the **original answer** with the **original affirmation of service** annexed in the **County Clerk's Office, 130 Stuyvesant Place, 2nd Floor, Staten Island, New York 10301.**

The Motion to Dismiss

A **motion** is a request to the court that is made within an existing lawsuit and that seeks to have the court take some action concerning that lawsuit. A \$45 filing fee is required to be paid by the party making a motion when submitting motion papers to the court.

Instead of responding to the complaint with an answer, the defendant may make a motion to dismiss the complaint. This motion must be made in timely fashion or the defendant will be in default.

A **motion to dismiss** may be used when a defendant believes the complaint fails to state a basis for a legal claim; or that the summons and complaint or summons with notice were not properly served; or that the lawsuit was not commenced on time; or for some other appropriate reason.

A timely motion to dismiss pursuant to CPLR 3211(a) extends a defendant's time to serve the answer. If the motion is **denied**, the case will continue, and the defendant must prepare an answer and have it served within 10 days from the date that the order denying the motion is served by the plaintiff upon the defendant with **notice of entry**. See CPLR 3211(f). A notice of entry is a simple, one-sentence notice that informs the defendant when the County Clerk's Office (the custodian of the files of the Supreme Court) "entered" (made a record of) the attached order.

For information on making a motion, see the pamphlet How to Make a Motion, **available in Office of Self Help 25 Hyatt Street 5th floor, Staten Island, N.Y. 10301.**

[Serve a copy on plaintiff's attorney, or if there is none, on plaintiff. Then file original, with proof of service, to County Clerk 130 Stuyvesant Place 2nd Floor]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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

Index Number

- against-

NOTICE OF APPEARANCE

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

Sir / Madam:

PLEASE TAKE NOTICE that the undersigned Defendant hereby appears in the above-entitled action and demands that a copy of the Verified Complaint and all other papers in this action be served upon the Defendant at the address stated below:

Dated: _____

Defendant (Unrepresented)
[sign your name]

To: Attorney for Plaintiff / Plaintiff
[name, address, telephone number]

[print your name]
[your address and telephone number]

Cross Claims

WHEREFORE, defendant prays that this court dismiss the complaint of the plaintiff herein, with costs and disbursements to defendant, together with any other relief the Court finds to be just and proper.

Dated: _____

[Signature]

[Print name, Address & Telephone]

VERIFICATION

STATE OF NEW YORK

COUNTY OF RICHMOND

_____, being duly sworn, deposes and says:

I am the/a defendant in the above-entitled action. I have read the foregoing answer 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

_____ day of _____, 20_____

Notary Public

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 AFTER
COMMENCEMENT OF LITIGATION

[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], in
the following manner [check box that applies]:

- Personal** By personally delivering the papers to _____ [identify person served]
Service at _____ [address]
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]

- Mail** By mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official
depository of the U.S. Postal Service within the State of New York, addressed to the last-known address
of the addressee(s) indicated below:

- Overnight Delivery Service** By depositing the same with an overnight delivery service in a wrapper properly addressed. Said
delivery was made prior to the latest time designated by the overnight delivery service for overnight
delivery. The delivery service used was _____ [name of delivery service]

Name(s) and address(es) of person(s) served by mail/overnight delivery: _____

[Print Name]

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