

HOW TO EXTEND THE DEADLINE TO ANSWER A COMPLAINT OR MAKE A MOTION

[NOTE: Persons without counsel are advised to consult with an attorney. Court staff MAY NOT give legal advice, prepare your papers or act as your attorney.]

A Defendant who needs more time to serve his or her answer or to make a motion concerning a complaint he/she has been served with may proceed as follows:

- 1) The Defendant may ask the Plaintiff to agree to the extension. If the Plaintiff agrees, the parties (*Plaintiff and Defendant*) should write their agreement down (*called a stipulation*). The stipulation should contain all the terms of the agreement, including the name of the case, the Index Number and a statement that both parties agree that the Defendant has asked for and been given an extension of time to serve his/her answer or to make a motion concerning the complaint and that the new deadline is _____ and give whatever date has been agreed to.
- 2) If the Plaintiff will not agree to the extension, the Defendant can ask the court for an extension using one of two procedures (A or B) outlined below. Remember, merely asking the court for an extension does not automatically give you one or temporarily stop the time in which you must act from running out.

A. IF THE TIME TO ANSWER OR MAKE THE MOTION HAS NOT PASSED (*Run Out*)

The Defendant must submit an affidavit (*a written statement sworn to before a notary public*) requesting the extension. Make sure you put the name of the case and the Index Number at the top of the affidavit and then explain:

- 1) Why he/she needs more time;
- 2) What happened when he/she asked the Plaintiff's attorney or, if Plaintiff has no attorney, the Plaintiff himself/herself for an extension. This must include a brief summary of the actual conversation between the Defendant and Plaintiff or his/her attorney;
- 3) A statement that the case involved is not one for summary judgment in lieu of a complaint. If the complaint does not specifically say it is a motion for summary judgment in lieu of a complaint, it isn't;
- 4) Whether or not the Defendant has previously asked the Supreme Court or any other court for an extension in this case and, if so, what happened as a result of that request(s).

In addition to the affidavit, the Defendant must submit a proposed order that the Justice assigned to the case could sign granting the extension. The completed affidavit and proposed order are then

submitted to the Court Clerk's Office. The proposed order is submitted to the court without first giving notice (*telling*) to the other parties in the lawsuit.

If the request is granted, the Justice assigned to the case will sign the proposed order and direct you to give notice of the signed order to all other parties involved by serving a copy of the signed order on each party's attorney or, if a party does not have an attorney, on the party himself/ herself. In the order the Justice will specifically tell you how and when the order is to be served.

This procedure may only be used once!

[NOTE: If a Request for Judicial Intervention (*RJI for short*) has not already been filed, you will have to submit one. There is a \$95.00 filing fee.]

B. IF THE TIME TO ANSWER HAS ALREADY PASSED (*Run Out*) OR IF ONE OR MORE EXTENSIONS HAVE ALREADY BEEN GRANTED, USE THE PROCEDURE BELOW

If the time to answer the complaint or make a motion has already passed or if you already received an extension before, the Defendant must make a formal written motion with proper prior notice on all other parties to the lawsuit asking the court for permission to serve your answer late or make the motion you weren't able to make on time. Remember, a motion is merely a request that the court sign an order granting you the relief you seek.

Motions on notice are made either by using a Notice of Motion plus supporting papers or an Order to Show Cause and supporting papers. If you use an Order to Show Cause, you can include an immediate but temporary request that the court freeze the running of time for you to answer the complaint or make your motion until the court holds a hearing on your actual application for an extension of time.

The moving party or movant may also request that the court make an immediate, but temporary, order prohibiting the Plaintiff and/or his/her attorney from filing and entering a default judgment until there is a hearing on your motion (*request*) for an extension. Again, if an RJI has not been filed for the case you will need to submit one.

[PLEASE NOTE: Pursuant to CPLR §2004, a court has the authority to extend most time limits or excuse untimeliness, *except* statutes of limitation, and thus, the litigant can also ask the court to extend or excuse other time limits or later responses by the same procedures.]