

HOW TO COMMENCE A CIVIL ACTION

(Also called a Civil Case or Lawsuit)

[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.]

As a general proposition, a self-represented person who wishes to obtain money damages or some other form of legally-authorized relief from a private person or entity (*for ex., a corporation*) because that person or entity violated the self-represented person's rights or negligently injured the self-represented person or his/her property may commence a civil action in this court.

If you are unsure what legal right or theory your facts support, it is suggested that you consult with an attorney or legal reference book to assure that your facts support your claim. If it clearly does not support your claim, your claim could be dismissed with a sanction as frivolous. By signing a paper, such as a complaint or motion, that party certifies that to the best of his/her knowledge, information and belief, the presentation of the paper or the information contained therein is not frivolous. See Rules of the Chief Administrative Judge, Section 130-1.1a Signing of Papers.

SUMMONS AND COMPLAINT

The complaining party, the Plaintiff, starts a civil action by purchasing an Index Number and filing and then serving either: (i) a summons with notice, or (ii) a summons and complaint. If the Plaintiff obtains a poor person order, the Index Number fee may be waived. An ordinary summons is served with a complaint and together they formally call upon and require the alleged wrongdoer(s), the Defendant, to answer the allegations and claims of the Plaintiff. A summons with notice is a document that formally calls upon and requires the Defendant to serve a notice of appearance in the lawsuit, after which the complaint must be served. Both types of summons contain the name of the court, the caption of the case (*a sort of box at the top containing the names of the parties*), the Index Number (*an identifying number explained below*) on the right side, a space for the date the summons is filed with the Office of the County Clerk, and the name, address and telephone number of the Plaintiff's lawyer or the self-represented Plaintiff. The Defendant named should be the person (*or other legal entity, e.g., a corporation*) claimed by the Plaintiff to be the wrongdoer. Legal responsibility is based upon breach of some legal duty or obligation owed by the Defendant to the Plaintiff.

A summons with notice is a special type of summons. It contains all of the items referred to above plus a brief description of the type of case and the relief the Plaintiff is seeking. In the case of a plain summons, such a description is unnecessary since the summons is accompanied by the complaint, which sets forth the Plaintiff's case in some detail. The summons with notice is not accompanied by the complaint. After the summons with notice is served, the Defendant can demand that the Plaintiff serve a formal complaint, which must be done within 20 days after service of the demand or the case maybe dismissed. See, Civil Practice Law and Rules (CPLR for short) §3012(b).

The complaint is the document that sets out the Plaintiff's charges against the Defendant. The law determines the allegations that are essential to setting forth a legally sound claim. Each Defendant sued must be alleged to have taken part in the wrongdoing claimed to have damaged the Plaintiff.

It is not enough to succeed that a Plaintiff feels he or she has been wronged by the conduct of someone else. A person, for instance, ordinarily may not sue for damages because a supermarket clerk spoke rudely to him or her.

If a Plaintiff sets forth in the complaint a legal theory that the Defendant believes to be unsound, the Defendant may make an application to the court to end the case promptly for that reason, which is known as a motion to dismiss. If the Plaintiff's case survives such a motion, the case is not over; the Plaintiff must still prove the truth of the allegations, contained in the complaint.

A complaint (*and any other document served in this court*) should be typed or legibly printed in English, in black ink, on 8½x11 inch paper, using one side of the paper only. Papers should be stapled or otherwise bound securely (CPLR §2101).

The complaint should set forth the Plaintiff's claims in separate, numbered paragraphs. Each paragraph should be short and contain only one material (*i.e., relevant and meaningful*) allegation. The complaint should begin with a brief identification of the Plaintiff. This should be followed by an identification of the Defendant.

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 the actions or inactions of the Defendant harmed the Plaintiff; and the type and extent of injuries suffered. The facts should be recited in chronological order, including specific dates. The Plaintiff should be certain to set out his/her/their assertions in a clear and coherent fashion. Although the Plaintiff is familiar with the facts, he/she/they should keep in mind that the court will be unaware of them except insofar as they are presented to the court in the complaint. Accuracy is important and errors may be damaging to the Plaintiff's case. The allegations must be clear, to the point and comprehensible.¹ In certain circumstances, pleadings must be verified, that is, signed in a certain format under oath, in the presence of a notary public (CPLR §3020).

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 for injuries suffered by payment of a sum of money, known as damages. The court may also, or in the alternative, order a party to do, or to refrain from doing, certain acts. This is known as injunctive relief. The court may declare the rights of the parties to a dispute. This is known as declaratory relief. The complaint should conclude with a paragraph in which the Plaintiff sets forth all of the relief requested against the Defendant.

If a self-represented person intends to bring a case, he/she should prepare the summons with notice or summons and complaint and deliver the original of that document or documents to the County Clerk, complete an Index Number purchase form with cover sheet, submit these items to the clerk

¹ It is important to point out that an individual desirous of bringing a tort claim (e.g., for personal injury) against a municipality may be obligated to file a written Notice of Claim prior to commencing the lawsuit and within a deadline that may be quite short. **FAILURE TO FILE A NOTICE OF CLAIM ON TIME MAY RESULT IN DISMISSAL OF THE ACTION.** For more information on this subject, the self-represented person is advised to consult an attorney.

and pay the required fee (\$210).² The Plaintiff should write the Index Number and the date he/she is filing the summons on a copy of the summons with notice or the summons and the complaint, and cause this item or these items to be served upon each Defendant in the manner provided by law.

SERVICE OF THE SUMMONS WITH NOTICE OR 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 complaint, the Defendant be formally notified of the fact that a case has been commenced against him or her and be afforded an opportunity to put a defense before the court. The formal notification is accomplished by what is known as service of a copy of the summons with notice, or the summons and complaint. This is sometimes shortened and called service of process. Proof of such service must be filed with the County Clerk or the case may be dismissed. For information on service, see [How to Serve Papers When Commencing an Action or Special Proceeding](#).

DEFENDANT'S RESPONSE

If the steps described above are performed properly, a civil case/action is now in existence. The Defendant is then given 20 or 30 days (CPLR §320) within which to serve a responding document, the answer or to make a motion to dismiss the complaint. For more on the response process, see [How to Respond to a Complaint](#).

If the plaintiff claims to be financially unable to proceed with the action, he or she may apply to the court for an order relieving him or her of the obligation to pay filing fees and costs connected with the lawsuit. This is known as a poor person order.

REQUESTS FOR JUDICIAL INTERVENTION

Although a lawsuit is in existence upon filing and service of a summons with notice or summons and complaint, the matter has not yet initialized into the court's computer system and is still unknown to the court. The court will only learn about the case when a party (*Plaintiff or Defendant*) files a Request for Judicial Intervention Form (RJI for short), pays the fee, and asks the court to take some immediate action in regard to the case. A civil action may proceed for a considerable time before judicial intervention becomes necessary and before the case is actually brought before the court. The complaint and the answer set the frame of the dispute; however, some additional action is required to bring the lawsuit to a head, or to put the Plaintiff to his or her proof before the court or jury.

A point at which many cases first appear before the court is when a motion is made, see [How to Make a Motion](#). If the case does not come before the court for some other reason such as to hold a conference, the Plaintiff may, at an appropriate time, cause the case to be placed on the trial calendar. Until the case is placed on the trial calendar, it can never be called for trial.

² If Plaintiff claims to be financially unable to proceed with the action, he/she may apply to the court for an order relieving him/her from having to pay the filing fees and costs of the lawsuit. This is known as a poor person order.