

HOW TO ANSWER 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.]

To properly answer a motion, you must do as follows.

1. Prepare answering papers, also referred to as opposing papers. These papers consist of a copy of your affidavit in opposition with exhibits attached; a memo of law (optional); and a litigation cover (also called a blue back).
2. Serve a copy of the answering papers on all other parties to the case.
3. Obtain an affidavit(s) of service.
4. Submit the original answering papers to the court with an affidavit(s) of service attached. This is done at the time and place indicated on the notice of motion or order to show cause. Below are details for each of these steps.

1. Preparing Answering Papers

Answering papers must include an “affidavit in opposition.” This affidavit must be carefully written and organized, since motions, unless temporary restraining orders (TRO for short) are involved, are usually decided "upon the papers," which means that the parties will not appear personally in court to present their arguments.

After it is written, an affidavit in opposition must be notarized. Any exhibits, documents which support your position, must be attached to the affidavit. The exhibits must be labeled Exhibit A, Exhibit B, and so forth. Exhibit tabs are recommended and can be purchased at any legal stationery store.

If appropriate, you may submit affidavits of other people together with your affidavit in opposition. For example, a person with personal knowledge of issues raised by the motion may provide you with an affidavit to support your allegations. This is only appropriate, however, where the person submitting the affidavit has first-hand knowledge of the dispute. Affidavits by well-meaning friends, politicians, and others who have no first-hand knowledge of the issues will only hurt, not help your case, and should be avoided.

Any legal, as opposed to factual issues, raised by the motion should be presented in a separate memo referred to as a “memorandum of law.” If the moving party, your opponent in the case, has submitted a memorandum of law, the law library has resources so that you may research the legal arguments presented and answer them in your own memorandum of law in opposition.

When are opposing papers due? Opposing papers must be served on the date indicated in the notice of motion or order to show cause. If the notice of motion does not demand service by a specific date, opposing papers must be served at least two days before the return date of the motion. See the Civil Practice Laws and Rules §2214(b). If the motion was made by order to show cause, opposing papers must be served by the return date of the order to show cause, or sooner, if it requires earlier service.

2. Service of Opposing Papers

It is usually proper to serve answering papers by mail (see CPLR §2103). However, if the court orders some other means of service, you must follow the directive of the court. Legal papers must be served by a person who is not a party to the lawsuit (CPLR §2103[a]). You must have a New York State resident who is over 18 years of age serve the papers for you and give you a signed, notarized affidavit of service. When the opposing party is represented by an attorney, opposing papers may be served upon the attorney by mail, by delivery at the attorney's office, or in any other manner permitted by CPLR §2214.

3. Obtaining Affidavits of Service

The person serving your affidavit in opposition must give you an affidavit of service which includes the details of service for each person served. An affidavit of service states the item served (in this case, your Affidavit in Opposition), the manner of service (by mail or personal service) and other details of service. The affidavit must be notarized and attached to the original opposition papers before they are submitted to the court.

Another acceptable way to prove service is by an acknowledgment of service. If the party receiving opposing papers is willing to sign an acknowledgment of service (printed on most litigation covers), the signed and dated acknowledgment of service can serve as proof of service. The term “proof of service” is defined by the CPLR to include affidavits of service and acknowledgments of service. A litigant can't, therefore, assume that any other “proof” will be acceptable to the court.

4. Submitting Opposing Papers to the Court

On the return date of the motion, you must come to court and submit the original affidavit in opposition, with an affidavit(s) of service attached. Without affidavits or acknowledgments of service, the opposing papers will not be accepted. If the Justice assigned to decide the motion wishes to hear the motion argued orally, that argument may take place immediately at calendar call or at some other date. If the argument is adjourned or postponed, you will be notified of the date of argument. Once the motion is submitted, it is your responsibility to keep track of it until a decision is rendered.