

**SUPREME COURT, CIVIL BRANCH
New York County
60 Centre Street, New York, N.Y. 10007**

**HELP CENTER
Room 116
646-386-3025**

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 time period. 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

Unrepresented persons **may** (if they wish to without obligation) commence a new case by means of electronic filing (e-filing) through the New York State Courts Electronic Filing System ("NYSCEF"). In an e-filed case, the steps to be followed would be the same, but filings with the County Clerk and the court would be made via NYSCEF. Information on how to create an e-filing account can be found on the NYSCEF website at <https://iapps.courts.state.ny.us/nyscef/Login>. The discussion that follows assumes that the case is a paper case.

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 General Clerk's Office, 60 Centre Street, Room 119, 1st 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.

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 enough 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 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 affidavit of service** annexed in the County Clerk's Office, 60 Centre Street, Room 141B, in the basement.

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 Room 116.

[Serve a copy on plaintiff's attorney, or if there is none, on plaintiff. Then file original, with proof of service, in the General Clerk's Office, Room 119]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x

Index Number

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

- against-

NOTICE OF APPEARANCE

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

-----x

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: _____, 20____

Defendant (Unrepresented)
[sign your name]

[print your name]

[your address and telephone number]

To: Attorney for Plaintiff / Plaintiff

[name, address, telephone number]

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: _____, 20__

Signature

Print name

Address and Telephone Number

VERIFICATION

STATE OF NEW YORK

COUNTY OF _____ ss:

_____, 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 NEW YORK

-----X

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

Index Number

- against-

AFFIDAVIT OF SERVICE AFTER
COMMENCEMENT OF LITIGATION

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

-----X
STATE OF NEW YORK, COUNTY OF _____ ss:

I, [name of person who served papers], _____
being duly sworn, depose and say:

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

I reside at [address of person who served papers] _____

On _____, 20____, [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 Service** By personally delivering the papers to [identify person served] _____
_____ at [address] _____

The individual I served had the following characteristics [check one box in each category]

<u>Sex</u>	<u>Height</u>	<u>Weight</u>	<u>Age</u>
<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 _____

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]

Sworn to before me this
_____ day of _____, 20____

[sign your name before a Notary]

Notary Public

[print your name]