

**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 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 New York 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 New York 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 New York County, the rules permit persons who appear on their own behalf in this court to be exempt from the obligation to e-file. If an unrepresented person does not wish to participate in e-filing, he or she may opt out of doing so by filing a form so stating. This "opt-out form" can be accessed on the website of this court at

[www.nycourts.gov/courts/1jd/supctmanh/E-Filing.shtml](http://www.nycourts.gov/courts/1jd/supctmanh/E-Filing.shtml). The form must be filed with the County Clerk.

Unrepresented parties who opt out of e-filing must file with the court in paper form and must serve paper copies of documents on all other parties. If other parties to a case e-file, they must serve copies of documents filed with the court in paper form on unrepresented parties who have opted out.

Information on how the NYSCEF system works can be found on the NYSCEF website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile).

The following assumes that the filer has opted out of e-filing.

## 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, 1<sup>st</sup> 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 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]

**This is only a sample of the form for an answer. Anyone seeking to serve an answer to a complaint must draft his / her own answer using the facts of his / her own case and the relevant law. Print or type, double spaced, using black ink only.**

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

-----X

**Index Number**

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

\_\_\_\_\_

- against-

ANSWER

\_\_\_\_\_,  
[fill in name(s)] Defendant(s).

-----X

As and for his / her answer to the complaint herein, the defendant, \_\_\_\_\_, respectfully show s and alleges as follow s **[number separate paragraphs**

**below]:**

\_\_\_\_\_. Admits the truth of the allegation(s) of Paragraph(s) \_\_\_\_\_ of the complaint.

\_\_\_\_\_. Denies knowledge or information sufficient to form a belief as to the truth of the allegation(s) of Paragraph(s) \_\_\_\_\_ of the complaint.

\_\_\_\_\_. Denies the allegations of Paragraph(s) \_\_\_\_\_ of the complaint.

\_\_\_\_\_.

Affirmative Defenses

\_\_\_\_\_  
\_\_\_\_\_

Counterclaims

\_\_\_\_\_  
\_\_\_\_\_

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: \_\_\_\_\_, 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

-----X

Index Number

\_\_\_\_\_  
[fill in name(s)] Plaintiff(s),  
- against -

\_\_\_\_\_

AFFIDAVIT OF SERVICE AFTER  
COMMENCEMENT OF LITIGATION

\_\_\_\_\_  
[fill in name(s)] Defendant(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 [your address] \_\_\_\_\_

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]