

SUPREME COURT, CIVIL BRANCH
BRONX, COUNTY

HELP CENTER
Room 121

How to Answer a Motion

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.

To answer a motion, the following steps are taken:

- Step 1. Write **answering papers**, also known as **opposing papers**. These papers consist of your **affidavit in opposition** with exhibits.
- Step 2. Have copies of the answering papers **served** upon all other parties to the case.
- Step 3. Obtain **affidavits of service**.
- Step 4. **Submit** the original answering papers, with original affidavits of service to the court. This is done at the time and place stated in the Notice of Motion or Order to Show Cause.

Step 1 - Prepare the Answering Papers

Answering papers are your response to the motion and includes an **affidavit in opposition**. The **affidavit in opposition** is your sworn, notarized statement which explains why you want the motion to be denied. Include everything you want to say about the facts of the case and all documents you want considered by the Judge. You may not be given the opportunity to speak to the Judge unless he or she requires oral argument of the motion. Do not leave important details or papers out, expecting to add them later. Any exhibits (documents which support your position) must be attached to the affidavit and labeled Exhibit A, Exhibit B, and so on.

If appropriate, you may submit the affidavits of others, 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 position. This is only appropriate, however, where the person submitting the affidavit has first-hand knowledge of the dispute.

Any legal, as opposed to factual issues, raised by the motion should be addressed in a separate **Memorandum of Law**. If the party making the motion has submitted a **Memorandum of Law**, you may answer in your own **Memorandum in Opposition**. Legal research may be done at the Public Access Law Library Room 819 at 851 Grand Concourse Bronx, N.Y. 10451, Mon-Fri, (9:30 AM - 1:00 PM), to research and respond to the legal arguments presented.

When are opposing papers due? Opposing papers must be served by the date stated 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 2 days before the return date of the motion. See Civil Practice Law and Rules (CPLR) 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 the Order to Show Cause requires earlier service.

Step 2 - Service of Opposing Papers

Legal papers must be served on all parties by someone, over the age of 18, who is not a party to the lawsuit. **You cannot serve your own papers.** See CPLR 2103(a). It is usually proper to have answering papers served by mail. See CPLR 2103. However, if the Judge orders some other means of service, you must follow the directive of the court. **Important:** When the opposing party is represented by an attorney, opposing papers must be served upon the attorney (not that attorney's client), by mail, or by delivery to the attorney's office, or in any other manner permitted by CPLR 2103(b).

Step 3 - Obtain Affidavits of Service

The person serving your opposing papers must give you a sworn, notarized **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, with exhibits, if any), the manner of service (whether by mail or personal service) and other details of service. The affidavit must be attached to the original opposition papers before they are submitted to the court.

Another acceptable way to prove service of papers is the **acknowledgment of service**. If the attorney or self-represented party receiving opposing papers by personal delivery is willing to sign an **acknowledgment of service**, the signed, 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 cannot assume that any other "proof" will be acceptable to the court.

Step 4 - Submit Opposing Papers to the Court DO NOT be late!

On the return date of the motion, you must come to court and submit the original opposition papers, with the original affidavit(s) of service attached. Without affidavits or acknowledgments of service, the opposing papers will not be accepted. If the Judge assigned to your case wishes to hear "oral argument" of the motion, you will be notified (usually by mail, if the motion was made by Notice of Motion, or as specified in the Order to Show Cause) of the date, time and courtroom where you must appear to explain why the motion should be denied. When submitting your opposition papers, you may include a stamped, self-addressed envelope, so that a copy of the Judge's decision can be mailed to you.

Note: Cross-motion (See CPLR 2215 Amended 7/07) If, in addition to asking the court to deny your opponent's motion, you want to ask for any other relief, you must ask by making a cross-motion. Prepare a notice of cross-motion (the return date is the same as the return date of the motion). Also prepare an affidavit in support of the cross-motion. Your affidavit in support should also include facts in opposition to your opponent's motion. Cross-motion papers must be served in the same manner as opposition papers. A filing fee of \$45 is required to be paid when submitting a cross-motion to the court. This fee may be waived, upon proof of financial hardship. Ask the Clerk in Room 121 about applying for poor person status.

[Print in black ink to fill in the spaces next to the instructions]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

_____,
[Fill in name(s)] Plaintiff(s)/Petitioner(s)

-against-

_____,
[Fill in name(s)] Defendant(s)/Respondent(s)

-----X

STATE OF NEW YORK
COUNTY OF _____ ss:

Index No.

_____/_____

AFFIDAVIT

IN OPPOSITION

_____, [your name],

being duly sworn, deposes and says:

1. I am the plaintiff/petitioner/defendant/respondent **[circle the right one]** in this matter. I make this affidavit in opposition to the motion or petition by _____ **[name of party]** for an order **[state what the other party asked for]** _____

2. I believe the Court should deny the motion or petition because **[Explain why it should be denied. Attach any exhibits. Use more paper if needed]**. _____

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Affidavit of Service After Commencement of Litigation

_____ against _____ Index No. _____ / _____

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 the right boxes]

- | <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"/> 36-50 years |
| | <input type="checkbox"/> 5'9"-6'0" | <input type="checkbox"/> 161-200 lbs. | <input type="checkbox"/> 51-65 years |
| | <input type="checkbox"/> Over 6' | <input type="checkbox"/> Over 200 lbs. | <input type="checkbox"/> Over 65 yrs. |

[describe]: Skin color _____ 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 used]

[Name(s) and address(es) of person(s) served]

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

[Sign name before a Notary]

Notary Public

[Print your name]