

SUPREME COURT, CIVIL BRANCH
BRONX COUNTY
851 Grand Concourse
Bronx, New York 10451
Help Center, Room 121

How to Respond to a Summons and Complaint - Matrimonial Actions

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.

Once a summons and complaint or summons with notice have been 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 self represented. 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 the Defendant fails to respond he or she is in **default** and the Plaintiff may be able to obtain a **default judgment** against the Defendant.

How to avoid a Default Judgment

To avoid a default, where a **summons with notice was served**, a Defendant must prepare a written response (**notice of appearance**) to the summons, and have it served on the Plaintiff within the applicable deadline. A **notice of appearance** includes a **demand for a complaint**. The **notice of appearance, with proof of service**, must be timely filed in the County Clerk's Office, Room 118, to avoid defaulting. The **complaint** describes the Plaintiff's case in detail. This demand requires Plaintiff to have Defendant served with the **complaint within 20 days** from the date of service of demand. Once a **complaint** has been served, either with a **summons** or in response to a **demand for a complaint**, the Defendant may respond by having the Plaintiff served with a **verified answer**. If a **verified answer** is not served to the Plaintiff and filed with the County Clerk's Office along with an **affidavit of service**, a **default judgment** may be obtained by the Plaintiff.

The Answer

An **answer**, like a **complaint**, states a party's position regarding the case. The **answer** must contain the original caption with index number. A Defendant **must** respond to **each** allegation in the **complaint** by either

- a) admitting it's truth; or
- b) denying it's truth; or
- c) denying that 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**.

An **answer** to a **complaint** may also contain a **counterclaim**. A **counterclaim** is prepared when the Defendant does not agree with the grounds which the Plaintiff has chosen as basis for the divorce and the Defendant wants to choose different grounds. A copy of the **answer** must be served upon the Plaintiff's attorney or directly to the Plaintiff if self represented. The **original answer** and **proof of service** must be timely filed in the County Clerk's Office, Room 118.

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

-----X

Plaintiff

-against-

Defendant

-----X

INDEX NO. _____

**NOTICE OF APPEARANCE
AND DEMAND FOR
VERIFIED COMPLAINT**

PLEASE TAKE NOTICE, that the Defendant, _____,
hereby appears in the above-entitled action and demands that the Verified Complaint and all
papers in this action be served upon the undersigned at the address stated below.

Dated: _____, 20

Defendant, Pro Se

Name: _____
Address: _____
Phone: _____

To: Plaintiff / Attorney for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

-against- Plaintiff,

Index No.: _____

AFFIDAVIT OF
SERVICE

Defendant.

-----X

_____ being sworn, says, I am not a party to the action, and am
over 18 years of age. I reside at _____

On _____, I served a true copy of the within *Notice of Appearance and
Demand for Verified Complaint* on the Plaintiff:

*by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository
under the exclusive care and custody of the U.S. Postal Service within New York State, to
the address designated by the Plaintiff at:*

Server's Signature

Subscribed and Sworn to before me
on the ____ day of _____, 20 ____

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

Index No.: _____

-against-

Plaintiff,

**VERIFIED ANSWER
AND COUNTERCLAIM
ACTION FOR DIVORCE**

Defendant.

-----X

Defendant, _____, herein, appearing pro se and responding to the Plaintiff's Verified Complaint respectfully alleges as follows:

FIRST:

Defendant denies each and every allegation contained in paragraphs _____ of the complaint.

SECOND:

Defendant denies sufficient knowledge to form a belief as to the truth or falsity of paragraphs _____ of the complaint.

THIRD:

Defendant admits the following allegations contained in paragraphs _____ of the complaint.

COUNTERCLAIMS

FOURTH: The grounds for divorce that are alleged as follows:

Cruel and Inhuman Treatment (DRL §170(1)):

- At the following times, none of which are earlier than (5) years prior to commencement of this action, the Plaintiff engaged in conduct that so endangered the mental and physical well-being of the Defendant, so as to render it unsafe and improper for the parties to cohabit (live together) as husband and wife.

(State the facts that demonstrate cruel and inhuman conduct giving dates, places and specific acts. Conduct may include physical, verbal, sexual or emotional behavior.)

Abandonment (DRL 170(2)):

- That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant left the marital residence of the parties located at _____, and did not return. Such absence was without cause or justification, and was without Plaintiff's consent.
- That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant refused to have sexual relations with the Plaintiff despite Plaintiff's repeated requests to resume such relations. Defendant does not suffer from any disability which would prevent *her / him* from engaging in such sexual relations with Plaintiff. The refusal to engage in sexual relations was without good cause or justification and occurred at the marital residence located at _____.
- That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant willfully and without cause or justification abandoned the Plaintiff, who had been a faithful and dutiful spouse, by depriving Plaintiff of access to the marital residence located at _____. This deprivation of access was without the consent of the Plaintiff and continued for a period of greater than one year.

Imprisonment (DRL §170(3)):

- That after the marriage of Plaintiff and Defendant, Defendant was confined in prison for a period of three or more consecutive years, to wit: that Defendant is/was confined in _____ prison on the _____ day of _____, _____, and remained confined until the _____ day of _____, _____; **OR** remains confined to this date.
Name of correctional facility
Month *Year* *Month* *Year*

Adultery (DRL §170(4)):

- That on the ___ day of _____, _____, at _____ the Defendant voluntarily committed of an act of sexual or deviate sexual intercourse with a person other than the Plaintiff after the marriage of Plaintiff and Defendant.
Month *Year* *Location*

Living Separate and Apart Pursuant to a Separation Decree or Judgment of Separation(DRL §170(5)):

- (a) That the _____ Court, _____ County, _____ (Country or State) rendered a decree or judgment of separation on _____, under Index Number _____; and
- (b) that the parties have lived separate and apart for a period of one year or longer after the granting of such decree; and
- (c) that the Plaintiff has substantially complied with all the terms and conditions of such decree or judgment.

Living Separate and Apart Pursuant to a Separation Agreement (DRL §170(6)):

- (a) That the Plaintiff and Defendant entered into a written agreement of separation, which they subscribed and acknowledged on _____, in the form required to entitle a deed to be recorded; and
- (b) that the *agreement / memorandum of said agreement* was filed on _____ in the Office of the Clerk of the County of _____, wherein *Plaintiff / Defendant* resided; and
- (c) that the parties have lived separate and apart for a period of one year or longer after the execution of said agreement; and
- (d) that the Plaintiff has substantially complied with all terms and conditions of such agreement.

Irretrievable Breakdown in Relationship for at Least Six Months (DRL §170(7)):

- That the relationship between Plaintiff and Defendant has broken down irretrievably for a period of at least six months.

WHEREFORE, Defendant demands judgment against the Plaintiff as follows:
A judgment dissolving the marriage between the parties

AND

The nature of any ancillary or additional relief requested (see p.16 of Instructions) is:

- Additional page describing ancillary relief requested is attached;
- Marital property to be distributed pursuant to separation agreement/stipulation;
- I waive distribution of Marital property;

For divorces commenced on or after 1/25/16 only: I am not seeking maintenance as payee as described in the Notice of Guideline Maintenance (the "Notice") other than what was already agreed to in a written agreement/stipulation ; OR I seek maintenance as payee, as described in the Notice.

NONE - I am not requesting any ancillary relief;
AND any other relief the court deems fit and proper

Dated: _____

- Defendant
 - Attorney(s) for Defendant
- Address:

STATE OF NEW YORK, COUNTY OF _____ SS:

I _____ (Print Name), am the Defendant in the within action for a divorce. I have read the foregoing complaint and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Subscribed and Sworn to
before me on

Defendant's Signature

NOTARY PUBLIC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

Index No.:

-against- Plaintiff,

AFFIDAVIT OF SERVICE

Defendant.

-----X

_____ being sworn, says, I am not a party to the action, and am over 18
years of age. I reside at _____.

On _____, I served a true copy of the within *Verified Answer and Counterclaim* on
the Plaintiff:

*by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under
the exclusive care and custody of the U.S. Postal Service within New York State, to the address
designated by the Plaintiff at:*

Server's Signature

Subscribed and sworn to before me
on the ___ day of _____, 20

Notary Public