

SUPREME COURT, CIVIL BRANCH
Richmond County
26 Central Avenue, Staten Island N.Y. 10301
HELP CENTER
25 Hyatt Street 5th Floor
Staten Island, N.Y. 10301
(718) 675-8590

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.

Electronic Filing

New cases in this court (except for matrimonial, Election Law, Article 78, Mental Hygiene and Mechanic Liens) must be commenced and pursued by means of electronic filing through the New York State Courts Electronic Filing System (“NYSCEF”). Documents to be filed with the court must be e-filed through NYSCEF.

Although e-filing is generally mandatory in Richmond County, the rules permit persons who appear on their own behalf in this court to be exempt from the obligation to e-file.

Information on how the NYSCEF system works for unrepresented litigants can be found on the NYSCEF website at www.nycourts.gov/efile.

The discussion that follows assumes that the case is a paper case. 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.

What You Need to Know

To answer a motion, whether one brought on by Notice of Motion or by Order to Show Cause, 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, if you wish) and a **litigation back**.

Step 2. Have copies of the answering papers **served** upon all 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 or on the adjourned date, if any.

Step 1 - Prepare the Answering Papers

Answering papers are your response to the motion and include an affidavit in opposition. The affidavit in opposition is your sworn, notarized statement that 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 will 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 that 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 in support of 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 document called a **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 at 25 Hyatt Street, 5th Floor, New York, N.Y. 10301, Mon-Fri, (9:00 AM-1:00 PM).

When are the opposing papers due? Opposing papers must be served by the date stated in the Notice of Motion or Order to Show Cause or the adjourned date, of any. 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

A copy of all legal papers being submitted to the court 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 2214 or specified by the Judge.

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(s) in opposition, with exhibits, if any and a memorandum of law, if any), the manner of service (whether by mail or personal service) and other details. The affidavit must be attached to the **original opposition papers** before they are submitted to the court.

Another acceptable way to prove service on 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 on the litigation back of the **original** opposition papers, 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 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 may be mailed to you.

Note: Cross-Motion (See CPLR 2215)

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 adequate proof of financial hardship. However, your motion must be made by means of an Order to Show Cause if you are requesting the fee to be waived. Ask the Clerk in the Help Center for details about applying for poor person status for making an Order to Show Cause.

[Print in black ink all areas in bold letters]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

_____ **[fill in name(s)]**

Plaintiff(s)/Petitioner(s),

Index Number

- against- _____

_____ **[fill in name(s)]**

Defendant(s)/Respondent(s).

AFFIDAVIT IN OPPOSITION

_____ **[your name]**, being duly sworn,
deposes and says:

1. I am the plaintiff / defendant **[circle one]** in this matter. I make this affidavit in opposition to the motion or petition by _____ **[Name of Party]** for an order: **[Describe what the other party asked for]**

2. I believe the Court should deny the motion or petition because **[Explain why it should be denied. If you wish to present Exhibits (documents), identify and explain each. Add more pages if needed.]**

WHEREFORE, I respectfully request that this motion/petition be denied.

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

[sign your name before a Notary]

[print your name]

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X

[fill in name(s)] Plaintiff(s), **Index Number** _____
- against- AFFIDAVIT OF SERVICE AFTER
COMMENCEMENT OF LITIGATION

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

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

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

ex	Height	Weight	Age
Male	<input type="checkbox"/> Under 5'	<input type="checkbox"/> Under 100 lbs.	<input type="checkbox"/> 21 - 34 years
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 _____ [describe]

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 Name]