

**SUPREME COURT, CIVIL BRANCH
Richmond County
26 Central Avenue, Staten Island, N.Y. 10301**

**Office of Self Help
25 Hyatt Street 5th Floor
Staten Island, N.Y. 10301
718 675-8589**

How to Commence a Special Proceeding

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.

A **special proceeding** is a variety of lawsuit. It is brought on with the simplicity and speed of a **motion**. The special proceeding may be used only when authorized by law. One kind of special proceeding is the Article 78 proceeding, which seeks to challenge actions of administrative agencies and other government bodies. The person who files a special proceeding with the court is a **petitioner**. The agency, board, body, corporation, officer or other person answering the petition is called the **respondent**.

What You Need to Know

- The filing fees total **\$305** (\$210 (Index Number fee) & \$95 (RJI fee)).
Pay by cash, certified bank check, or postal money order made out to "Richmond County Clerk."
If you have a limited income, ask in the Office of Self Help about applying for a **Poor Person Order**, which will, if granted, allow you to file without paying these fees.
- There is a time limit for filing a special proceeding known as the "statute of limitations." **The statute of limitations cannot be extended. The time limit depends on the identity of the respondent. If you do not file within the statute of limitations, your case can be dismissed without further consideration of the dispute.**
Note: If you are asking the court to reverse the decision of a respondent, you must have completed the last stage of appeal available with the respondent. A copy of the final determination and all earlier decisions must be submitted with your papers. Generally, the time limit for filing is counted from the date of the final determination by the respondent. Check with the respondent for the statute of limitations that applies in your case.
- You must have the respondent notified that you have filed a petition. This is done by having someone over the age of 18, who is not a party in the case, give the respondent a copy of your special proceeding papers, in person. This is known as **service** of the papers. You cannot serve your own papers.

Refer to the Civil Practice Law and Rules (CPLR) to review the law of special proceedings. Articles 4 and 5 give general information; Article 75 applies to proceedings concerning arbitration awards; Article 78 cases seek reversals of decisions of a government agency, body or officer.

The Public Access Law Library at 25 Hyatt Street 5th Floor, is open to the public, Monday to Friday, 9:00 A.M. to 1:00 P.M.

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 Richmond 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 Richmond 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 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 Special Proceeding Papers

You start a special proceeding (and satisfy the statute of limitations) by filing a **Petition** with the County Clerk.

Thereafter, the Petition must be filed with the court together with either a **Notice of Petition** or a Proposed **Order to Show Cause (OSC)** and the respondent must be served. Procedures differ depending upon whether a Notice of Petition or OSC is used.

When You File By:

Notice of Petition	Order to Show Cause (OSC)
You pick the date to come to court.	The Judge picks the date to come to court.
There is no need for expedited hearing.	There is need for expedited hearing.
You cannot ask for a Temporary Restraining Order (TRO) to stay (stop) an action being taken by the respondent.	You may ask for a Temporary Restraining Order (TRO) to stay (stop) an action being taken by the respondent. Notification as per NYCRR 202.7(F)
The respondent is served at least 20 days before the return date (Article 78).	The respondent is served within the time fixed by the Judge.
The Notice of Petition is prepared by you.	The OSC is prepared by you, but it is signed by the Judge and is a court order.

Important: If you file by OSC, the papers take more time to be processed. Be sure you have enough time to complete the OSC procedure and file within your statute of limitations.

Preparing to File the Petition with the County Clerk

Complete each step. Do not skip a step. Check the box when it is done.

- Arrange and staple together (after copying) the papers listed below in the following order.
 - 1st Verified Petition.
 - 2^d Exhibit A, B, C, and so on (if any).

This is the **original** Petition. It should be verified. This means that there should be attached to it an affidavit of verification to the effect that the petition is true to the knowledge of the petitioner, except as to matters therein stated to be alleged on information and belief, and that as to those matters the petitioner believes them to be true.

- **Important:** If you are asking for poor person status, go to the Help Center, 25 Hyatt Street 5th Floor floor), with the following completed by you:
 - Proposed Poor Person Order, Affidavit in Support, current proof of amount of income, and a copy of a photo ID.
 - Verified Petition and Exhibits (if any).
 - Application for Index Number form (available in the County Clerk's Office, 2nd Floor).
 - Request for Judicial Intervention (**RJI**) (form available on website at www.nycourts.gov/forms/rii/index.shtml).

The Help Center Staff will explain how the Proposed Poor Person Order will be presented to a Judge for action.

- Make copies of the **original** Verified Petition and Exhibits.

You will need:

- One copy to file in the County Clerk's Office to commence your proceeding.
- One copy for each respondent, each of whom must be served (see below).

Note: In some instances, you may be required to serve both the respondent New York City or New York State agency and the New York City Law Department (Corporation Counsel) or the New York State Attorney General. You must check if this is the case and proceed accordingly.

- One copy for your own records.
- You must file the original Verified Petition and Exhibits with the court.

Filing the Petition with the County Clerk

- Go to the County Clerk's Office, 130 Stuyvesant Place, Staten Island, N.Y. 10301 2nd Floor:
 - **Original** Verified Petition and Exhibits and copies.
 - Application for Index Number form.

If you have applied for poor person status, go to the Law and Equity counter and give them the Affidavit In Support of Application to Proceed As A Poor Person. If you are paying the \$210 filing fee, go directly to the Cashier.

- Give the Cashier on 2nd Floor:
 - One copy of the Verified Petition and Exhibits (not the original).
 - Application for Index Number form.

The cashier will give you a receipt with your **Index Number** on it. Write the Number on all your papers, the original and all copies. The statute of limitations is now satisfied if you file the copy within the applicable time limit.

- Go to the *Law and Equity* counter.

Use the file stamp on the counter to stamp the original Petition and the original Notice of Petition and all copies of these papers. The stamp is proof of filing a copy of your papers with the County Clerk to start your case.

IF YOU ARE PROCEEDING BY NOTICE OF PETITION

Serving the Notice of Petition Papers and the RJI

- Arrange the papers for service in the following order:
 - 1st Copy of the Notice of Petition
 - 2nd Copy of the Verified Petition
 - 3^d Copy of the Exhibits
 - 4th Litigation Back (blue color)

- Complete the RJI and make copies, front and back.
You must have:
 - One copy for each respondent (and respondent's attorney, if required).
 - One copy for your own records.
 - One copy for the Cashier at 130 Stuyvesant Place, 2nd Floor.
 - The original RJI will be filed with the court and go to the Judge.

- Have someone over the age of 18 and not a party to the case (it cannot be you) give one copy of the special proceeding papers and the RJI to each respondent (and to their attorney, if necessary) by personal service. The server may ask a respondent (and attorney) being served if they will "stamp" the Notice of Petition page of the **original** Notice of Petition papers and the RJI. The "stamp" shows the date and time the papers were served and is accepted as proof of service. OR, the server signs an Affidavit of Service in front of a notary.

Filing the *Original* Notice of Petition Papers and *Original* Request for Judicial Intervention (RJI) With the Court (Calendering the Proceeding)

- After service, and at least 5 business days before the return date, go to the General Clerk's Office at 26 Central Avenue, Staten Island, N.Y. 10301 room 131, with the following papers:
 - **Original** Notice of Petition papers.
 - **Original** Request for Judicial Intervention (**RJI**) and one copy.
 - Proof of service of both: **original** Notice of Petition papers and the RJI with the respondent's (and attorney's) "stamp" or the server's notarized Affidavit of Service. Make 2 copies of the proof of service for later.

- In Room 131, the Clerk will stamp your original papers and send to adjacent window (County Clerk Cashier) to pay the \$95 RJI fee OR show a copy of your poor person order.

- The cashier will also stamp your original papers and keep the copy of the RJI. In Room 131, make a copy of only the Notice of Petition page.

- Give the Clerk the **original** Notice of Petition papers, the copy of the Notice of Petition page, the **original** RJI, and the **original** proof of service.

Coming to Court on the Return Date *DO NOT BE LATE*

- At **9:30 A.M.**, on the **return date**, be in the Motion Submission Part Courtroom for your case. If one is not assigned go to room 131 at 26 Central and inquire where your case will be heard.

A respondent can:

- contact you before the return date to ask for an **adjournment** to submit papers.

An **adjournment** is a new date agreed to by the parties or set by the court. Generally, attorneys in litigation allow one another reasonable adjournments.

If the parties do not agree, the court will hear the request on the return date.

- answer with an **Affidavit in Opposition** asking that your petition be denied.

Opposition papers can be served by mail. You may receive them before the return date or be told that papers have been mailed to you.

You can:

- request an adjournment to submit **Reply** papers.

A **Reply** allows you to respond only to statements made in opposition papers.

You may not make new requests or arguments in Reply papers.

A copy of your Reply must be served at least 1 day before the return or adjournment date by personal or mail service.

A sample Reply form is available in Office of Self.

Original opposition and **original** reply papers, with proof of service, are filed in Room 131 at 26 Central Avenue on the return or adjournment date.

After reply papers, no further papers may be submitted without permission of a Judge.

The papers are now sent to the Judge. If the Judge wants "oral argument," you will be notified, usually by mail, of the date, time, and courtroom. If argument is directed, you must appear to speak to the Judge or your petition may be denied.

The Judge will issue a written decision, usually within 2 months.

- It is your responsibility to check if a decision has been made.

- use a public access court computer located in Rooms 131 at 26 Central Avenue
- check the case file, under the Index Number, in the County Clerk's Office Record Room, 2nd Floor 130 Stuyvesant Street, from 9:00 A.M. to 3:00 P.M.

IF YOU ARE PROCEEDING BY PROPOSED ORDER TO SHOW CAUSE

Preparing to Proceed by Petition and Proposed Order to Show Cause

After you have commenced your case by filing the Verified Petition with the County Clerk as explained above, if you wish to provide notice by OSC rather than Notice of Petition, you must prepare proposed Order to Show Cause papers.

- Arrange the proposed OSC papers as follows and staple together (after copying):

1st Proposed Order to Show Cause

2nd Original of Verified Petition (with Index Number and County Clerk stamp showing filing and date thereof)

3rd Exhibit A, B, C and so on.

4th Litigation back (blue color)

This is the original Proposed Order to Show Cause papers, which will go to the Judge.

- **Important. If you are asking for poor person status, proceed as explained above.**
- Make copies of the original OSC papers. Make one copy for each respondent, one for each attorney, if required, and one for your files. Staple each set together. Make one copy of the RJI for each respondent and attorney, one for your files, and one other. The Index Number should appear on all documents.
- Go to the Civil Term Office, 26 Central Avenue Room 131.
Give the Clerk the following:
 - **original** Proposed Order to Show Cause (OSC) papers.
 - **original** Request for Judicial Intervention (RJI) and one copy.
 - Index Number receipt (from the County Clerk).
- In Room 131, the Clerk will stamp your original papers and send you to the Adjacent Window Cashier to pay the \$95 RJI fee OR show a copy of your poor person order.
The cashier will also stamp your papers and keep the copy of the RJI.
- Return to Room 131.
Give the Clerk the **original** Proposed OSC papers and the **original** RJI.
- Wait until you are sent to the court to the judge assigned to your case.:
 - Your OSC papers were found to be “defective” see the Office of Self Help.

Or- Your OSC has been signed by the Judge and is ready to be served.

Go to The Office of Self Help, with your complete copy of the OSC papers and RJI, for further instructions about serving the OSC and RJI.

When the Proposed Order to Show Cause (OSC) is signed:

- Judge will pick the return date, time, courtroom, type of service and date when you **must** have copies of the OSC papers and RJI served on the respondent.
- Judge may direct that you be served with answering papers by a certain date and the type of service allowed. If no date is given, answering papers are submitted on the return date and can be served at least 1 day before the return date by mail.
- Judge may direct “oral argument.” It will be noted on the OSC and you and the other side will speak to the Judge about your petition on the return date.
- Judge may permit you to file a **Reply**, which is your response only to what the respondent has said in opposition papers. If such permission is not noted on the OSC, you cannot submit a Reply.

- **Important:** Now update your copy of the original OSC papers by replacing the unsigned Proposed OSC with a copy of the OSC signed by the Judge.
- Make copies of the **signed OSC, Verified Petition, Exhibits, Litigation Back and the RJI.**
You must have:
 - One copy for each respondent (and, if required, one copy for respondent's attorney). **Note:** If the respondent is a N.Y.C. or N.Y.S. government agency, you must check if the N.Y.C. Law Department (Corporation Counsel) or the N.Y.S. Attorney General are required to also be served with a copy of your papers.
 - One copy for your records.

Serving Copies of the Order to Show Cause (OSC) Papers and the Request for Judicial Intervention (RJI)

- The server (see above as to who may serve) gives a copy of the signed Order to Show Cause (OSC) papers and a copy of the Request for Judicial Intervention (RJI) to each respondent (and their attorney, if required), by personal service or the type of service directed by the Judge. The server then signs an Affidavit of Service in front of a notary. A respondent may:
 - answer with an **Affidavit in Opposition** asking the court to deny your petition.

Coming to Court on the Return Date *DO NOT BE LATE*

- On the return date set forth in the OSC:
 - Be on time.
 - Submit the **original** Affidavit of Service or your petition may be denied.
 - The respondent may appear and submit opposition papers.
 - Judge may **adjourn** the case (parties given a new date to come back to court).

After "oral argument," if required, and after submission of all allowed papers, the Judge will issue a written decision, usually within 2 months.

- **It is your responsibility to check if a decision has been made.**
 - Go to the "Case Information (Scroll)" link at the court's internet web site at www.nycourts.gov
 - CHECK THE E-FILE
 - YOU can open an account under e- file to check on the decision.
 - Call Richmond Supreme Civil Court Motion Department at 718 675-8700 option 2 then motion support. Have your index ready when you inquire about your case.
 - check the case file, under the Index Number, in the County Clerk's Office 2nd Floor at 130 Stuyvesant Street Staten Island, NY 10301.

[Print in black ink all areas in bold letters. Other spaces are for Court use.]

At I.A.S. Part _____ of the Supreme Court
of the State of New York, held in and for
the County of Richmond, at the Courthouse
thereof, 26 Central Avenue, Staten Island,
N.Y., on the ____ day of _____,
20____

PRESENT: HON. _____

 Justice of the Supreme Court

 In the Matter of the Application of _____

Index Number

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

ORDER TO SHOW CAUSE IN
A SPECIAL PROCEEDING

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

Upon reading and filing the Summons and Complaint/Summons With Notice [circle one], filed the _____ day of, _____ 20____, and the affidavit in support of _____, sworn to the _____ day of, _____ 20____, and The exhibits attached thereto, namely **[Identify Exhibits; use additional page if needed]**

_____ Let the party or attorney in opposition show cause at I.A.S. Part,
 _____ Room _____, of this Court, to be held at the Courthouse, 26 Central Avenue, Staten Island,
 N.Y., on the _____ day of _____ 20 _____, at _____ o'clock in the _____ or as soon as the
 parties to this proceeding may be heard why an order should not be issued, providing the following relief
[briefly describe what you are asking the Court to do]

and such other and further relief as may to the court seem just and proper, for the reasons that briefly
describe the reasons why you should be granted what you are requesting]

_____ Sufficient cause appearing therefor, let personal service
of a copy of this order, the affidavit in support, and all other papers upon which this order is granted upon the
attorneys for all parties and all unrepresented parties who have appeared in this action on or before the
_____ day of _____, 2019 _____ be deemed good and sufficient. An affidavit or other proof of
service shall be presented to this Court on the return date fixed above.

ENTER

[Print in **black** ink all areas in bold letters]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

[fill in names(s)]

Plaintiff(s)/Petitioner(s),

- against -

Index Number

[fill in names(s)]

Defendant(s)/Respondent(s).

NOTICE OF PETITION

PLEASE TAKE NOTICE that upon the Verified Petition of _____ [your name(s)],
sworn to on, _____ 20 _____ [date Verified Petition notarized], and the attached exhibits,
petitioner(s) will, at 9:30 AM on the _____ day of _____, 20____, [return date] at the
Courthouse at 26 Central Avenue, Staten Island N.Y. in the Motion Submission Part Courtroom, Room 131,
request that this court issue a judgment, pursuant to the Civil Practice Law and Rules (CPLR), granting the
following relief to the petitioner(s): _____

_____ [briefly describe what you are asking the Court to do]
and such other and further relief as to this Court may seem just and proper.

Dated: _____, 20____

Respectfully submitted,

To: Respondent(s)

Petitioner

[name, address, telephone number]

[your name, address, telephone number]

SUPREME COURT OF THE STATE OF

**Index
Number**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

[fill in names(s)]

Plaintiff(s)/Petitioner(s),
- against-

Index Number

[fill in names(s)]

Defendant(s)/Respondent(s).

VERIFIED PETITION

[Print in black ink all areas in bold letters]

TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK:

The petition of _____ **[your name]** respectfully shows to this court as follows:

1. Petitioner resides at _____ **[your address]**

2. The respondent(s) is / are _____ **[identify the respondent(s)]**

3. **[Describe what you are requesting and the reasons therefor. Add more pages if needed. If you are appealing the decision of a government agency, give the date and outcome of the final determination. Explain why this Court should reverse that decision.]** _____

4. Attached as exhibits are copies of all relevant documents. **[Attach the decision you are asking the court to reverse as Exhibit A. Attach any other documents as Exhibit B, Exhibit C, and so on. Identify each exhibit and explain how it supports your position List additional Exhibits on a separate page.]**

Exhibit A - Exhibit B - Exhibit C - Exhibit D - Exhibit E -

5. A prior application *has not / has* **[circle one]** been made for the relief now requested. **[If you made this application before in this or any other court, describe where, when, the result and why you are making it again.]**

WHEREFORE, your deponent respectfully requests that this Court **briefly describe what you are requesting]** _____

and grant such other and further relief as may to the court seem just and proper.

[date signed]

Petitioner
[sign your name]

[print your name]

[your address and phone no.]

STATE OF NEW YORK

COUNTY OF:

ss:

_____ **[your name]**, being duly sworn, deposes and says that: I am the petitioner in this proceeding; I have read the foregoing petition and know the contents thereof; the same are true to my own 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.

Sworn to before me this

_____ day of, _____ 20 _____

_____ **[sign your name before a Notary]**

Petitioner

Notary Public

_____ **[print your name]**