

**SUPREME COURT, CIVIL BRANCH
Bronx County**

HELP CENTER

How to Commence a Civil Action

Note: All persons involved in a lawsuit should consult an attorney. The Help Center gives you information, forms and instructions on court procedures. As an office of the New York State Supreme Court, we cannot give legal advice or act as your advocate.

In general, a person who wishes to file a lawsuit in Bronx County, to obtain money damages of more than \$50,000 may commence a civil action in this court. Cases where a party seeks to stop certain actions by another party may also be heard in this court. An unrepresented person should refer to the Civil Practice Law and Rules (CPLR) Article 5 to determine in which county a lawsuit may be commenced (known as **venue**). Every lawsuit must be brought within one of various deadlines spelled out in the law, which are known as **statutes of limitations**. CPLR Article 2. Legal research may be done at the Public Access Law Library, 851 Grand Concourse, Room 214, Bronx, NY, Monday to Friday, 9:30 A.M. to 1:00 P.M.

The complaining party is the **plaintiff**, and the alleged wrongdoer is the **defendant**. The basic procedures for starting an action are explained in this pamphlet. Either a **summons and complaint** or a **summons with notice** are prepared to start an action. If a summons with notice is used, you will have to file and serve a complaint later in the case. These are known as **initiating papers**.

**Prepare the Initiating Papers
The Summons**

A summons contains the name of the court, the caption of the case (a box at the top left side of the page with the names of the parties), an Index Number (every lawsuit filed has its own identifying case number) and the date the initiating papers are filed with the County Clerk's Office. The name, address and telephone number of the plaintiff's attorney or the unrepresented plaintiff are stated on the summons. The plaintiff or attorney also signs his/her name on the summons. See N.Y. Code of Rules and Regulations, Section 130-1.1-a. The defendant should be the person (or entity) the plaintiff claims is legally responsible for the breach of some duty or obligation owed the plaintiff.¹ A sample of a summons is attached.

¹ Important: A person who wishes to bring a claim against a municipality may be required to file a Notice of Claim before starting the lawsuit and within a deadline that may be very short. Failure to file a Notice of Claim on time may result in dismissal of the action. For more information, consult an attorney. See, Notice of Claim, available in Office of Self Help, for general information on this subject.

A summons is served with a complaint and requires the defendant to answer the allegations and claims of the plaintiff. The complaint describes the plaintiff's case.

A summons with notice is a type of summons. The summons with notice is not served with the complaint. It contains all of the information described above for the summons, plus a brief description of the type of case and the relief the plaintiff is asking the court to grant. After a summons with notice is served, the defendant will demand that the plaintiff serve a complaint. The plaintiff must then have the complaint served within 20 days after being served with the demand, or the case may be dismissed. CPLR 3012(b). A sample of a summons with notice is attached.

Each type of summons requires the defendant to serve a notice of appearance in the lawsuit. The notice of appearance informs the plaintiff that the defendant will respond to the lawsuit.

The Complaint

A complaint (and every other document served in a case in this court) shall be typed, double spaced, or legibly printed, in English, using black ink. It must be on 8 1/2 x 11 inch paper, using only one side of the paper. Papers should be stapled or otherwise bound securely. CPLR 2101.

The complaint describes plaintiff's charges against the defendant and must include certain essential allegations in order to add up to a legally sufficient claim. Each defendant must have taken part in the wrongdoing which allegedly damaged the plaintiff. It is not enough to state that a plaintiff feels he or she has been wronged by the conduct of someone else. The wrongdoing must also have resulted in some form of damages to plaintiff. A person, for instance, ordinarily may not sue for damages just because a supermarket clerk spoke rudely to him or her.

The complaint should begin with a brief identification of the plaintiff, followed by an identification of the defendant. The complaint should set forth the plaintiff's charges in separate, numbered paragraphs. Each paragraph should be short and contain only one allegation.

The complaint should next set forth a brief description of the events upon which the claim is based: what each defendant did or failed to do, how plaintiff was harmed as a result, and the type and extent of damages suffered. The facts should be stated in chronological order, including specific dates. The plaintiff should write the complaint in a clear, understandable and organized fashion. Although a plaintiff is familiar with the essential facts, he or she should keep in mind that the court will not know them unless they are presented in the complaint. The complaint is a document that sets out the essential claims of the plaintiff's case. It frames what the case is about. The complaint is not, however, a vehicle for presenting to the court all of the plaintiff's proof and thus should not be overly lengthy or verbose.

The complaint should conclude with a paragraph in which the plaintiff sets forth all the relief against the defendant that he or she is seeking from the court. In certain circumstances, the complaint must be verified, which means signed in a certain format under oath, before a notary.

CPLR 3020. An unrepresented plaintiff will have to draft a complaint suited to the circumstances of his or her case. An example of a complaint is attached.

The court has the power to grant a variety of remedies depending upon the circumstances. The court, may, for example, order a defendant to compensate a plaintiff by paying a sum of money, known as damages. In certain circumstances, the court may order a party to do, or to refrain from doing, certain acts. This is known as injunctive relief. The court may decide the rights of parties to a dispute. This is known as declaratory relief.

Commencing the Action

Make one copy of the initiating papers for each defendant and a copy for your own records. The papers must be filed in the County Clerk's Office, Room 118.

The action is commenced only after getting an Index Number. The original initiating papers must be filed in the County Clerk's room 118. Submit all of these items to the Cashier and pay the filing fee of \$210.2

You must write the Index Number and the date the summons was filed on the copies of initiating papers before they are served. Someone over the age of 18, not a party to the case, can serve the papers on each defendant in the manner provided by law. **You cannot serve your own papers.** CPLR 2103(a).

Service of the Summons with Notice or the Summons and Complaint

Basic notions of fairness require that before the plaintiff may succeed in obtaining the relief demanded in the summons with notice or summons and complaint, the defendant be formally notified of the lawsuit and given an opportunity to put a defense before the court. The notification is known as service of process. This notification is also a mechanism formally to bring the defendant before the court. Proof of service of the initiating papers must be timely filed with the County Clerk's Office, room 118, or the case may be dismissed. See How to Serve Legal Papers, available in in room 121 for information on service.

² If the plaintiff claims to be financially unable to proceed with the action, he/she may apply for a court order that will waive payment of the court filing fees. This is known as a poor person order. See, How to Apply for Poor Person Status, in room 121. A defendant must be given an opportunity to put a defense before the court.

The Defendant's Response

If the steps described here are performed properly, a case now exists. The defendant now has approximately 20 or 30 days (see CPLR 320) within which to serve the plaintiff or plaintiff's attorney with a written response, depending on how the defendant was served. Defendant's response will take the form of an answer, or a motion to dismiss the complaint, with the notice of appearance.

The answer, (like a complaint) is the defendant's position regarding the essential claims of plaintiff's case.

If the complaint contains allegations that the defendant believes to be legally unsound, or if a defendant challenges service or the court's power over the defendant in the case, defendant may make an application to the court to end the case promptly (a motion to dismiss). If the plaintiff's case survives this motion, the case will continue. Plaintiff must then prove the truth of the allegations contained in the complaint. For more on the response process, see *How to Respond to a Summons and Complaint*, available in Room 121.

Request for Judicial Intervention (RJI)

Although a lawsuit is in existence upon the filing and service of a summons with notice or summons and complaint, the case has not yet entered the court system and is not known to the court. A civil action may proceed for a long time before the parties go before a Judge. The complaint and the answer set the frame of the dispute; additional action is required to bring the dispute to a head, or to put the plaintiff to his or her proof before the court or a jury. This will happen only when a party files a Request for Judicial Intervention (RJI) form and pays the \$95 court filing fee. Filing an RJI assigns the case to a Judge and asks the court to take some action in regard to the dispute.

A case may come before a judge when a motion is made or a preliminary conference is requested. The plaintiff may, at an appropriate time, have the case placed on the trial calendar. Until the case is placed on the trial calendar, it can never be called for trial. See, *How to File a Request for Judicial Intervention*, available in Room 121.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

SUMMONS WITH NOTICE

Index Number

Plaintiff(s)/Petitioner(s),

- against-

Date Index Number Purchased

Defendant(s)/Respondent(s).

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED and required to serve upon plaintiff, at the address stated below, a notice of appearance or demand for a complaint within 20 days after service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to serve a notice of appearance or demand for a complaint, a judgment will be entered against you by default for the relief demanded herein.

Dated:

[sign your name]

Defendant(s)

Notice: The nature of this action is:

The relief sought is

Should defendant(s) fail to appear herein or demand a complaint, judgment will be entered by default for the sum of _____ with interest from the date _____ and the costs of this action.

Venue:

Plaintiff(s) designate Bronx County as the place of trial. The basis of this delegation is:

- Plaintiff's(s') residence in Bronx County
- Defendant's(s') residence in Bronx County
- Other [See CPLR Article 5]: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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SUMMONS

Index Number

Plaintiff(s),

- against-

Date Index Number Purchased

Defendant(s).

----- X

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED to answer the complaint of the plaintiff(s) herein and to serve a copy of your answer on the plaintiff(s) at the address indicated below within 20 days after service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Dated : _____

[Sign Your Name]

Defendants(s)

Venue: Plaintiff(s) designate(s) Bronx County as the place of trial. The basis of this designation is:

- Plaintiff's(s') residence in Bronx County
- Defendant's(s') residence in Bronx County
- Other [See CPLR Article 5]:

[This is only an example of a complaint. Anyone seeking to file and serve a summons and complaint must state the facts of his/her own case. Print or type, double spaced, using black ink only.]

SUPREME COURT OF THE STATE OF NEW YORK COUNTY
OF BRONX

JOHN JONES,

Index No. 123456/2019

Plaintiff,

- against-

COMPLAINT

GEORGE SMITH,

Defendant.

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The complaint of the plaintiff, John Jones, respectfully shows and alleges as follows:

1. The plaintiff herein, John Jones, is a resident of the State of New York. Mr. Jones resides at 32 Barbary Coast Place, New York, New York.
2. The defendant herein, George Smith, has a principal place of business at 522A Fifth Avenue, New York, New York. Defendant is engaged in the business of building sailboats.
3. Plaintiff Jones desired to have a small sail boat built pursuant to a design prepared by him. He and defendant discussed his needs and specifications for this project.
4. On March 1, 2012, plaintiff and defendant entered into a written agreement. Pursuant thereto, plaintiff agreed to pay the sum of \$90,000 for the sailboat. Plaintiff was obligated to make a down payment of \$10,000 on or before April 1, 2012, with the balance to be due upon delivery of the boat. The defendant agreed to build the boat in accordance with plaintiff's design for the aforesaid price and to complete the work and deliver the boat to a fixed place on or before July 15, 2012.
5. On March 8, 2012, plaintiff delivered to defendant a certified check in the sum of \$10,000, which defendant cashed.
6. Defendant failed to deliver the boat on or before July 15, 2012, as agreed. Plaintiff made numerous phone calls and sent several letters to defendant about the contract, but received no response.
7. By reason of the facts and circumstances stated above, defendant has breached the contract.
8. By reason of the facts and circumstances stated above, plaintiff has been damaged by defendant in the sum of \$50,000.

WHEREFORE, plaintiff demands judgment against defendant in the sum of \$50,000, plus interest from July 15, 2012, costs and disbursements, together with any other relief the Court finds to be just and proper.

John Jones

[sign name]

Dated: January 1, 2019

John Jones

[print name]

32 Barbary Coast Place New
York, NY 11010 212-473-5151
[address and telephone no.]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index Number

Plaintiff(s)/Petitioner(s),

- against-

COMPLAINT

Defendant(s)/Respondent(s).

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The complaint of the plaintiff, _____, respectfully
shows and alleges as follows:

Dated:

[signature]

VERIFICATION

STATE OF NEW YORK

COUNTY OF BRONX:

_____, being duly sworn, deposes and says:

I am the plaintiff in the above-entitled action. I have read the foregoing complaint 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.

I, _____ (**print name**), affirm on this _____ day of _____, 20____ under the penalties of perjury, under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Signature

Instructions: This affirmation is to be completed by the person who served a Summons and Complaint, Summons with Notice, Notice of Petition and Verified Petition, Order to Show Cause and Verified Petition, or Subpoena. PRINT LEGIBLY or TYPE in BLACK INK ONLY to fill in the spaces next to the instructions. Check CPLR 307, 803, 2103, and the relevant statute(s) relating to your case to verify the proper manner of service required. This form is NOT to be used in initiating Matrimonial proceedings (DRL232).

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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

Index No. _____ / 20__

- against -

AFFIRMATION OF SERVICE
OF INITIATING PAPERS

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

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STATE OF NEW YORK
COUNTY OF _____

I, _____, [name of person who served papers] affirm:

(1) I am over 18 years of age and am not a party to this case.

(2) I reside at _____ [your address].

(3) On _____, 20 __, [date of service], at _____ AM/PM [time of day], I served the attached papers entitled _____ [name of the papers served], on the defendant, _____, [name of defendant] in this case. The address of the place where the papers were served is: _____

(4) I served the papers in the manner indicated below: [Check appropriate box and fill in respective blanks].

(a) **Individual** By delivering a true copy of each to the defendant personally. I knew the person served to be the person named in those papers because: _____

_____ [How did you know defendant? Also Complete #5].

(b) **Substituted Service** By delivering a true copy of each to _____, [Name of person served. Also Complete # 5] a person of suitable age and discretion, at the actual place of business, dwelling house, or usual place of abode in the state, **and** I also enclosed a copy of the above papers in a postpaid, sealed envelope properly addressed to defendant's last known residence or actual place of business, located at _____ [address], and I deposited the envelope in a post office depository under the exclusive care and custody of the United States Postal Service within New York State on _____ [date of mailing].

(c) **Conspicuous** After attempting to serve in the manners described above with due diligence, by **Place Service** affixing a true copy of each to the door of the actual place of business, dwelling (**"Nail & Mail"**) place or usual place of abode within the state of the person to be served on _____ [date of affixing to door], **and**, within 20 days, mailing the summons to such person on _____ [date of mailing] at _____ [address of mailing], their last known residence or mailing by first-class mail to the person at their actual place of business in an envelope bearing the legend "personal and confidential" with no indication that the communication concerns an action against said person. Prior attempts of personal service took place at the address listed in paragraph 3 on the following dates:

Date _____ Time _____ Date _____ Time _____

List additional dates and times, if any: _____

(d) **Corporation** _____ [name of business], a domestic corporation, by delivering a true copy of each to _____ [Name of person served. Complete #5] _____ [Person's job title]. I knew the corporation to be that listed in the papers served and I knew the title of person named above and that he/she was authorized to accept service because _____

(5) **Description** I perceived the individual whom I served to have the following characteristics:

<u>Gender</u>	<u>Approximate Height</u>	<u>Approximate Weight</u>	<u>Approximate 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 yrs.
	<input type="checkbox"/> Over 6'	<input type="checkbox"/> Over 200 lbs.	

Race: _____ Hair color: _____

Other identifying features, if any: _____

Military Service

(Use with a, b, or d)

I asked the person with whom I spoke whether the defendant was in the military of the United States or New York State in any capacity and was told that he/she was not. If I served defendant personally, defendant did not wear a military uniform. I state upon information and belief that the defendant is not in the military service of the United States or New York State. The basis for my belief is the conversation(s) and observation(s) described above. Additional basis (if any):

I, _____ [Print Name], affirm this _____ day of _____, 20____, under the penalties of perjury, under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

[Server's signature]

Rev. 12/24