

SUPREME COURT, CIVIL BRANCH
New York County
60 Centre Street, New York, N. Y. 10007
Office for the Self Represented
Room 116, (646) 386 - 3025

How to Respond to a Summons and Complaint

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 appearing 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 plaintiff may be able to obtain a **default judgment** against the defendant.

A. How a Default Judgment is Obtained

There are two ways for a plaintiff to obtain a **default judgment**.

The first is by applying to the Judgment Clerk in the County Clerk's Office. This may only be done when the plaintiff's summons and complaint or summons with notice seek money damages only, and no other form of relief. Plaintiff must submit his or her detailed affidavit of facts together with proof of service of the legal papers upon defendant(s). This affidavit explains the facts of the case and shows that a summons with notice or summons and complaint were properly served and establishes that defendant is in default. The affidavit also explains how the sum sought is calculated.

The second way a plaintiff obtains a default judgment is to apply to the Court (a Judge) for a default judgment. This is done by preparing a **motion for a default judgment**. A Request for Judicial Intervention (RJI) is required to obtain the assignment of a Judge to a case . This motion must also prove the merit of the case, the sum due and have an affidavit of service attached to establish that the defendant is in default. If the motion papers are in proper form and there is no opposition from defendant, or if opposition is unconvincing, the court is likely to grant the motion and a judgment against the defendant will shortly follow.

B. How to Avoid a Default

To avoid a default, where a summons with notice was served, a defendant must prepare a

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