



USNYWD'S PRO SE HANDBOOK
CHAPTER 4: MOTIONS
[ALL-IN-ONE DOCUMENT]

Pro Se Handbook
Chapter 4
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PRO SE HANDBOOK

US DISTRICT COURT, NEW YORK, WESTERN DISTRICT

CHAPTER: 4 MOTIONS

AUTHOR: US DISTRICT COURT, NEW YORK, WESTERN DISTRICT

DATE: January 1, 2017

ITEMS: 4.01 through 4.04



4.01 | INTRO - MOTIONS

A motion is an application to the Court asking that the Court take certain action (for example, to dismiss or to extend time) with respect to the conduct of the case. Unless made orally during a hearing or trial, motions must be in writing, should state the relief or action sought, and should be accompanied by an affidavit, and, in some instances, a memorandum of law setting forth the facts and legal authority supporting the motion. Motions are the primary way for litigants to ask the Court to take action in a case. They must be filed with the Clerk of Court and served on the opposing party. Written motions must not be sent directly to the judges. Each party opposing a motion must file papers in opposition to the relief requested in the motion. The Court will generally issue an order when the motion is filed advising the parties when the papers in response to the motion must be filed (generally the party has eight (8) days to respond after service of the motion) and when the party making the motion must file reply papers. (Summary judgment issues and deadlines are discussed in a later section). If a party fails to file a response to a motion, the Court will assume that the motion is not opposed. See Local Rule 7.1 regarding replies.

The proper form for motion papers requires you to present the Court with three separate documents which all become part of your motion papers. You may obtain forms for bringing a motion in person from the intake clerk in the Clerk's Office, by mail from the Pro Se Office, and from the Western District Court web site at <<http://www.nywd.uscourts.gov>>.

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4.02 | CAPTION FOR NOTICE OF MOTION

The first document is a Notice of Motion.

In the upper left hand corner of your Notice of Motion, copy the caption of your case as it appears on an official document (for example on the order granting or denying you permission to proceed in forma pauperis). In the upper right hand corner, at the same height on the paper as the caption, write the docket number of your case (for example 05-CV-1234C). Below the docket number write "Notice of Motion."

Beneath the caption your motion should say "PLEASE TAKE NOTICE, that the undersigned will bring a motion ____." In the blank space, you should write the relief you want the Court to give you. For example, you might say, "for an order appointing counsel to represent me" or "for an order compelling the defendants to respond to plaintiff's interrogatories" (read Local Rules of Civil Procedure 37 first) or "for an order compelling discovery pursuant to Federal Rules of Civil Procedure Rule 37;" or "for an order granting summary judgment" (Read Local Rules of Civil Procedure and Federal Rule of Civil Procedure 56 first).

Sign your Notice of Motion. The judge's courtroom deputy will schedule your motion according to the judge's calendar, and you will be notified. Most motions do not have an oral argument, but are decided based on the papers alone.

The Notice of Motion is addressed to your opponent and should look like the example below.



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Your Name,

Plaintiff,

NOTICE OF MOTION

_____-CV-_____

v.

_____'

_____'

Defendant(s).

PLEASE TAKE NOTICE, that the undersigned will bring a motion
(state here, briefly, what you are asking the Court to do in your motion)

before this Court on a date and time which will be provided
by the Court later.

(signature of the moving party)

(Print the name and address of the moving party)

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4.03 | AFFIDAVIT IN SUPPORT OF MOTION

The second document is an Affidavit in Support of your Motion.

The caption and index number on your affidavit should be written out just as on the Notice of Motion, but instead of writing "Notice of Motion," you should write "Affidavit in Support of Motion" below the docket number.

Your affidavit should briefly re-state the relief you want the Court to grant, and then should explain in short separately numbered paragraphs the reasons you believe you are entitled to that relief. For example, in moving for Appointment of Counsel, you should describe your inability to continue the action without legal assistance, you should explain to the Court why you believe your lawsuit has merit, and you should tell the Court what efforts you made to secure counsel on your own. You should also attach to the affidavit any exhibits that support your motion.

Note: These instructions assume that you have access to a Notary Public, and can get your papers notarized. An affidavit is a statement that a person swears is true before a Notary Public, and is witnessed by that Notary. If you do not have access to a Notary Public, you may use a declaration. The difference between an Affidavit and a Declaration is that, instead of a Notary's seal, the party who signs the declaration must include a short signed and dated statement declaring that the statement is true, as in the following:

"I declare under penalty of perjury that the foregoing is true and correct. Executed on (Date). (Signature)".

28 U.S.C. §1746.

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4.04 | MEMORANDUM OF LAW

The third document that is part of your motion papers is a Memorandum of Law.

A Memorandum of Law (which is required only for Motions to Dismiss, Motions for Summary Judgment and Motions for Injunctive Relief) should be captioned and titled as are the other motion papers. It should contain a statement of facts on which the motion is based; a discussion of the cases, statutes and/or regulations relevant to why you believe you are entitled to the relief you are seeking in the motion; and a statement describing the relief you are seeking. It must be signed.

You are required to serve a copy of any motion papers you file in your lawsuit on your opponents, or their lawyers if they have lawyers. The only exception to this rule is when you are filing a motion before your opponents have answered your complaint. In many cases, your motion will be addressed to the other party because you are trying to get the Court to order the other party to do something.

However, even when you are simply asking the Court to take some action on its own, you must send a copy of your motion papers to your opponent.

You must notify the Court that you have served a copy of your motion on your opponents by enclosing with your motion papers an Affidavit (or Affirmation) of Service. Like the Affidavit in Support of your motion, your affidavit of service must be signed and notarized, or, if it is a declaration (affirmation), signed under penalty of perjury (See p. 13).

Do not complete your affidavit of service until after you have prepared the copies of your motion papers for your opponent and placed them in an envelope.

Send a copy of your motion with an original signature to the Clerk's office in the city (Buffalo or Rochester) where the judge who is hearing your case is located. Judges Arcara, Skretny, Curtin, and Elfvin and Magistrate Judges Foschio, Scott and Schroeder are located in Buffalo, New York. Judges Larimer, Siragusa and Telesca, and Magistrate Judges Feldman and Payson are located in Rochester, New York. Addresses for the Clerk's office in those cities are on page 1 of these guidelines.



Do not send your motion papers directly to the judge's chambers. The motion must be recorded in the official record of your case (the docket sheet) by the Clerk's office before the judge can take any action on it. If you mail your papers directly to the judge, you will only delay the time it takes for your papers to be considered. Do not send extra copies of your papers to the judge.

Local Rule of Civil Procedure 7.1 governs service and filing of papers, and in paragraph (f) contains some page number restrictions for memoranda and briefs. Be sure to follow this rule very carefully.

Caution: if your papers do not comply to the form described above, they may not be filed and included in the docket sheet, and the judge may not act on your correspondence.

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APPENDIX



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