

INSTRUCTIONS FOR PREPARING A MOTION IN A CIVIL ACTION

Check the Western District's web site at www.nywd.uscourts.gov for copies of many of the Court's forms and other useful information.

A "motion" is the means by which a party to a lawsuit requests the judge to take some specific action in the case.

A Motion can be brought to ask the Court to order any of the kinds of relief described in the Federal Rules of Civil Procedure, or to ask the Court to order a party to take any other action required by law, or to ask the Court to take some action itself.

The Federal Rules of Civil Procedure describe many of the purposes for which a Motion can be used. (*See, e.g.*, Rules 7, 11, 12, 37, 50 and 56). However, a Motion can be employed to ask the Court to do other things as well. The most common type of Motion in *pro se* cases which is not included in the above list is a Motion for Appointment of Counsel pursuant to 28 U.S.C. § 1915.

These instructions and attached examples are designed to assist you in preparing your Motion in the proper form; they are not intended to provide you with any information about the substantive relief you can request in various motions. To learn about the kinds of relief you can request by motion, you should carefully review the Federal Rules of Civil Procedure, review the substantive law under which you are bringing your lawsuit, review 28 U.S.C. § 1915, and familiarize yourself with the Western District of New York's Local Rules of Civil Procedure 5, 7, 26, 37, and 56 (the Local Rules are available at www.nywd.uscourts.gov on the Western District web site).

1. FORM OF YOUR MOTION PAPERS

A. Notice of Motion (see Form A below)

The proper form for Motion papers requires you to present the Court with two or three separate documents which all become part of your Motion papers. The first document is a Notice of Motion. The format for the Notice of Motion is set out in Form A below.

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 your Order granting 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 98-CV-0123C). 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 Fed.R.Civ.P. 56 first).

Sign your Notice of Motion. The judge's courtroom deputy will schedule your Motion according to the judge's calendar and advise you of the date. Not all motions are scheduled for hearings; some are decided on the basis of the papers submitted.

NOTE: If you are opposing a motion brought by another party, you do NOT need to file a notice of motion, but the following papers, the affidavits (and/or affirmations) may be used for opposing a motion.

B. Affidavit in Support (see Form B below)

The next part of your Motion is the 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.

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 an **affirmation**, instead. The difference between an Affidavit and an Affirmation is that in an affirmation, instead of a Notary's seal, the party who signs the affirmation must include a short statement affirming that the statement is true.

Your affidavit should briefly state the relief you want the Court to grant (in the first paragraph), and then should explain in short numbered paragraphs the reasons you believe you are entitled to that relief. (For example, in moving for Appointment of Counsel, you should describe why you believe that you are unable 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 have made to secure counsel on your own.) If you have exhibits which support your position, you should attach copies to the affidavit and state in the affidavit why/how the exhibit supports your position. You may also submit affidavits from other people also, if they are relevant to the relief you are seeking (or opposing) in your affidavit.

C. Memorandum of Law

In certain instances, if you believe it will assist the Court, you may wish to submit a Memorandum of Law in support of your motion. You are not required to submit a Memorandum of Law with every motion, but such memoranda are usually necessary when you expect a legal dispute as to whether you are entitled to the relief you have requested. A Memorandum of Law should be captioned and titled as are the other Motion papers. Like all papers submitted in federal court, **it must be signed**.

Please note that when submitting a Motion for Summary Judgment, you should include both a Memorandum of Law and a separate short and concise statement of the facts material to your case which you believe are not disputed by your opponent. (See Local Rules of Civil Procedure 56.) If you are opposing a motion for summary judgment, you must also submit a Memorandum of Law and a Statement of Undisputed Facts.

2. SERVICE OF YOUR MOTION PAPERS (see Form C(1) and Form C(2) below)

You are required to serve a copy of any Motion papers you file in your lawsuit on your opponents, or on their lawyer if they have one. 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 direct the other party to do something. However, even when you are simply asking the Court to take some action on its own (such as appoint counsel), you must send a copy of your Motion papers to your opponent.

You must also advise the Court that you have served a copy of all of your motion papers on your opponents by enclosing with the motion papers an Affirmation or Affidavit of Service (see Forms C(1) and C(2) below). Like the Affidavit/Affirmation in Support of your Motion, an affidavit of service is signed and notarized and an affirmation of service is signed under penalty of perjury.

Do not complete your affidavit of service until after you have prepared the copies of your Motion papers for all other parties and either mailed them or hand-delivered them to those parties.

3. TECHNICALITIES

You must file **original** papers with the Clerk of the Court. The requirement that you file original papers has been interpreted to mean that **the signature on the papers must be original**. If you have access to photocopying, you can make several copies of your Motion without signatures, and sign them all before you mail them. If you sign all of your papers before photocopying them, make sure to send the one with the original signature to the Court. If you use carbon paper, you must make sure that the Court receives a copy (or the original) that has an original signature on it.

Any attached exhibits may be and often should be copies of the original papers.

If you do not have access to photocopying or carbon paper, you may write out several hand-written copies of your motion. Make sure that every copy is **exactly** the same as every other copy.

Send a copy of your Motion with an original signature to the Clerk's office in the city where the judge who is hearing your case is located.

In Rochester: Chief Judge Larimer, Judges Siragusa and Telesca, and Magistrate Judges Feldman and Bauer are located in Rochester; address your motion papers to: Clerk's Office, United States District Court, 2120 U.S. Courthouse, 100 State Street, Rochester New York 14614. (Phone: (716) 263-6263.)

In Buffalo: Judges Arcara, Skretny, Curtin and Elfvin, and Magistrate Judges Foschio, Scott, Schroeder, and Maxwell are located in Buffalo; address your papers to: Clerk's Office, United States District Court, 304 U.S. Courthouse, 68 Street, Buffalo New York 14202-3498. (Phone: (716) 551-4211 or (716) 551-5759.)

Do **not** send your Motion papers directly to the judge's chamber. The Motion must be recorded in the official record of your case (the docket sheet) by the Clerk's office before the judge takes 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. Sending extra copies of your Motion papers only creates confusion, and will cause you unneeded expense and effort.

Please be assured that every Motion that is mailed to the Clerk's office is entered in the docket sheet of your case and given to the judge for consideration. However if your papers do not comply to the form described above, they may not be included in the docket sheet, and the judge may not act on your correspondence.

4. ADDITIONAL HELP

For additional examples of motions, see the Federal Rules of Civil Procedure Appendix of Forms. Specifically, you should look at Forms 19, 22, 22(b), and 23.

If you have any questions of a technical nature, you can write to the *Pro Se* Staff Attorney at either Clerk's office address. The *Pro Se* Staff Attorney maintains offices in both Buffalo and Rochester, and mail is forwarded to the *Pro Se* Staff Attorney from both Clerk's offices. **Please be aware, however, that the *Pro Se* Staff Attorney is only permitted to advise you on procedural matters, and cannot assist you with the substantive aspects of your case or give you legal advice.**

IMPORTANT NOTE: Please make additional copies of the attached forms before you use them the first time, so that you will have copies to use for subsequent filings over the course of your case

FORM A: NOTICE OF MOTION

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Plaintiff(s),

NOTICE OF MOTION

v.

_____ -CV- _____

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)

FORM B: AFFIDAVIT or AFFIRMATION IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Plaintiff(s),

v.

**AFFIDAVIT/AFFIRMATION
IN SUPPORT OF MOTION**

_____-CV-_____

Defendant(s).

STATE OF NEW YORK)
COUNTY OF _____) ss.:
 (*your residence*)

(Fill your name in one of the two blanks below, depending on whether you are having this notarized (use the first line) or swearing to this under penalty of perjury (use the second line); cross out the unused line.)

I, _____, being duly sworn, depose and say:

I, _____, make the following affirmation under penalty of perjury:

2. I am the plaintiff in the above-entitled action and respectfully request that the Court issue an order *(briefly describe what you want the Court to do)* _____

FORM C(1) — AFFIRMATION OF SERVICE
(If you are not having your signature notarized, use this form)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Plaintiff(s),

AFFIRMATION OF SERVICE

v.

_____ -CV- _____

Defendant(s).

I, (*print your name*) _____, make the following affirmation under penalty of perjury:

I have served a copy of the attached motion papers upon the all of the other parties in this case by (*check the one which applies*) Mailing _____ Hand-delivering _____ the motion papers to the attorneys for all of the other parties at the following addresses:

on (*state the date you hand-delivered or mailed the motion papers to the other parties*) _____

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief.

Executed on _____
(date)

(your signature)

FORM C(2) — AFFIDAVIT OF SERVICE
(If you are having your signature notarized, use this form)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Plaintiff(s),

AFFIRMATION OF SERVICE

v.

_____ -CV- _____

Defendant(s).

I, (*print your name*) _____, make the following affirmation under penalty of perjury:

I have served a copy of the attached motion papers upon the all of the other parties in this case by (*check the one which applies*) Mailing _____ Hand-delivering _____ the motion papers to the attorneys for all of the other parties at the following addresses:

on (*state the date you hand-delivered or mailed the motion papers to the other parties*) _____

(*your signature*)

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

Notary Public