



## THE RIGHT RESPONSE

*A process server comes to your door.  
Now what do you do?*

### THESE ARE THE 5 STEPS TO RESPOND TO A LAWSUIT

#### DON'T DODGE THE PROCESS SERVER

Service of process in the State of New York can be accomplished in many ways beyond the traditional hand delivery that we see in the movies. Hiding from the process server won't prevent the lawsuit, just your ability to defend it! In New York, service is permissible by hand delivery to the defendant, delivering the summons to a person of suitable age and discretion at the defendant's home (such as a housekeeper) or place of business (such as a secretary), delivering the summons to an authorized agent (companies generally designate the Secretary of State), or by a method called nail and mail. Under nail and mail, after approximately three attempts at personal service, the summons may simply be left at the defendant's door and subsequently mailed to the defendant's attention. If those four methods of service are impracticable, a court can direct service under any other way that exists within its imagination. In such, courts have ordered service via email, newspaper publication, or even social media. Just accept the summons when the process server shows up and get on with it.

#### NOTICE YOUR INSURER

Do you have car insurance? How about homeowner's insurance? What about title insurance? Does your job offer errors and omissions coverage or general liability? Immediately upon being sued, find your insurance policies. Then find the notice paragraph in such policies. Next, serve all the required notices to your insurers. Be warned, untimely notice is the number one basis to disclaim coverage by an insurance company. If you are unsure if you have coverage, see an attorney to analyze your policy and so advise. Remember, you must do this expeditiously so you don't get denied for untimely notice.

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## CALENDAR YOUR DEADLINE TO RESPOND

Depending on how you were served, you can have between 20 and 40 days to respond to a summons or you will default in the lawsuit and lose the case. While it's true that the summons does state its 20, 30 or 40 days to respond, technical procedural rules add an additional 10 days to the 30 in most circumstances from when an affidavit (a sworn statement under penalties of perjury) of service is filed. Just assume that you have 20 calendar days to answer the complaint irrespective of how you were served. Remember to mark your calendar accordingly.

## DON'T WISH IT AWAY

Many people just shut down and don't respond to a lawsuit. To be clear, at the end of a complaint is a paragraph that starts with the term "wherefore." This clause demands the damages sought in the lawsuit and such damages will be awarded should you not timely respond by way of a motion for a default judgment and subsequent order of the court. Again, a lawsuit is a very serious matter and ignoring it will result in losing the case. Unfortunately, many clients see their lawyer after judgment has been entered. These people wait until their bank account is frozen or their car is seized. At the eleventh hour they want relief. You need to know that when you wait so long your legal defense costs go up exponentially and the ability for an attorney to obtain positive results goes down drastically. To be clear, there are ways to vacate (undo) a default, but such methods should be used sparingly and only when truly necessary.

## UNDERSTAND AN ANSWER

Unfortunately, the term "Answer" is misleading to many, it often results in a defendant calling the plaintiff or the plaintiff's attorney and mistakenly believing that the summons was properly answered. To be clear, an Answer is a legal document that requires precision in draftsmanship to be accepted by the plaintiff, filed with the court and to provide necessary defensive rights. There are simple requirements such as format (font size, margin size, printing requirements, and so on), intermediate requirements such as captioning (identifying the parties, the court and the index number under which the matter was filed) and complex requirements of how to respond to the allegations in the complaint, drafting affirmative defenses (that is, even if the complaint is all true, arguments that will nonetheless dismiss the case) and counterclaims (pursuant to the old adage that the best defense is a good offense). As a result, when you are sued, you need to go to the law library, search the web and intensively study.

**Yes, individuals can represent themselves and don't technically need an attorney (corporations need legal representation and generally cannot represent themselves). Individuals can also give themselves stitches or fix their own car without a license, but just because you can doesn't mean you should. Get the help you need from an attorney and vigorously defend your rights.**