

PRO SE OFFICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE
500 PEARL STREET, ROOM 230
NEW YORK, NEW YORK 10007

J. MICHAEL McMAHON
CLERK OF COURT

HOW TO AMEND YOUR COMPLAINT

If you have failed to state important facts or legal claims in the original complaint, discover a new and significant fact, or want to add additional defendants or insert the real name of a John Doe defendant, you will need to file an amended complaint. An amended complaint does not simply add to the first complaint. Once an amended complaint is filed, it completely replaces the original. Therefore, it is important that you include in the amended complaint all the necessary information that was contained in the original complaint.

Rule 15(a) of the Federal Rules of Civil Procedure govern amended complaints. It states that:

[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

In other words, if the defendant has not yet filed an answer to your complaint, you may file one amended complaint without the Judge's permission. If the defendant has filed a motion to dismiss the complaint but has not yet filed an answer, you still may file one amended complaint without the Judge's permission. If, however, the defendant has already filed his answer to your complaint, or if you wish to file a second amended complaint, you must get written consent from the defendant or the Judge's permission before amending your complaint. If the defendant agrees in writing to let you file an amended complaint, you must then ask the Judge to write "So Ordered" on the written consent, indicating that the Judge has approved the consent. If the defendant does not give you written consent, you may ask the Judge's permission by filing a motion to amend the complaint pursuant to Rule 15 and attaching a copy of the proposed amended complaint to your motion as an exhibit.

Drafting the Amended Complaint

The amended complaint does not merely add to your original complaint; it completely replaces

it. Therefore, when drafting your amended complaint, you should review your original complaint and include in your amended complaint any defendants, allegations, and claims from the original complaint that you wish to keep. It might be helpful to take a copy of your original complaint and cross-out any defendants, allegations, and claims you want to take out. What is left will be the starting point for your amended complaint, and you may then add whatever new information you want to.

The amended complaint must be titled "Amended Complaint". Any further amended complaints must be titled by number: e.g. "Second Amended Complaint", "Third Amended Complaint." Remember to include all plaintiff(s) and defendant(s) in the caption of the amended complaint. If you fail to include a party in the caption of the amended complaint, that party will not be part of your lawsuit. Any time you add new defendants to your case, the *Pro Se* Office will issue a new summons and you will receive a new package of materials for serving your new defendants. You should, therefore, tell the *Pro Se* Office whenever you have added new defendants in an amended complaint.

Amended Complaint forms for Prisoner Civil Rights Cases, Employment Discrimination Cases and other Civil Cases may be obtained from the *Pro Se* Office. You may also create your own form by inserting your docket number and the title "Amended Complaint" on any complaint form you get from the *Pro Se* Office.

Once you have drafted your amended complaint, you should make at least one copy of it for your own records. Remember to include your docket number on the first page of the amended complaint. If there is more than one plaintiff, all plaintiffs must sign and date the amended complaint.

Filing and Serving the Amended Complaint

The following steps will assist you in filing and serving your amended complaint correctly.

- (1) **Amending the complaint before the original complaint has been served on any defendant:**

 - (a) Send your amended complaint (dated and signed with an original signature in pen or pencil) to the *Pro Se* Office.
 - (b) Your amended complaint will be stamped "filed" and you will then receive from the *Pro Se* Office a sufficient number of copies of the amended complaint for service on the defendants.
 - (c) If you have added new defendants, the *Pro Se* Office will issue an "Amended Summons" and you will then receive from the *Pro Se* Office a sufficient number of copies of the amended summons for service on the defendants.
 - (d) Serve a copy of the amended complaint and the amended summons (if you have added new defendants) or the original summons (if you have not added any new defendants) on each defendant in accordance with Rule 4 of the Federal Rules of Civil Procedure. (If you have been granted *in forma pauperis* status by asking the judge to waive the filing fee to start the action, you are entitled to have the United States Marshal Service

serve your papers for you. Once service is completed, the Marshal Service will send you a copy of the proof of service and you may skip Steps "e" & "f".)

- (e) Have the person who served the amended complaint and amended or original summons complete an affirmation of service for each defendant served and attach it to the amended or original summons which has the Court's raised seal on it.
- (f) Make a copy of all of the affirmations of service and the amended or original summons for your records, and send the originals to the *Pro Se* Office for filing.

(2) Amending the complaint after the original complaint has been served on all defendant(s):

- (a) Make one copy of your amended complaint for each defendant.
- (b) Serve a copy of your amended complaint on each defendant or his/her attorney (if represented by counsel) by mail (ordinary first-class mail is sufficient, although certified mail/return receipt requested or overnight mail will also suffice).
- (c) Complete an affirmation of service for each defendant and make a copy of each for your records. Attach the original affirmations of service to your amended complaint.
- (d) Send your amended complaint (dated and signed with an original signature in pen or pencil) to the *Pro Se* Office. In a note attached to the amended complaint, tell the *Pro Se* Office if you have added new defendants.
- (e) If you have added new defendants the *Pro Se* Office will issue an "Amended Summons" and you will then receive from the *Pro Se* Office a sufficient number of copies of the amended summons and amended complaint for service on the defendants.
- (f) Serve a copy of the amended complaint and the amended summons on each new defendant in accordance with Rule 4 of the Federal Rules of Civil Procedure. (If you have been granted *in forma pauperis* status by asking the judge to waive the filing fee to start the action, you are entitled to have the United States Marshal Service serve your papers for you. Once service is completed, the Marshal Service will send you a copy of the proof of service and you may skip Steps "e" & "f".)
- (e) Have the person who served the amended complaint and amended or original summons complete an affirmation of service for each defendant served and attach it to the amended or original summons which has the Court's raised seal on it.
- (f) Make a copy of all of the affirmations of service and the amended or original summons for your records, and send the originals to the *Pro Se* Office for filing.

(3) Amending the complaint after the original complaint has been served on some of the defendant(s):

- (a) Make one copy of your amended complaint for each defendant who has already been served with the original complaint..
- (b) Serve a copy of your amended complaint on each of those defendant(s) or his/her attorney (if represented by counsel) by mail (ordinary first-class mail is sufficient, although certified mail/return receipt requested or overnight mail will also suffice).
- (c) Complete an affirmation of service for each defendant you have sent the amended complaint to and make a copy of each one for your records. Attach the original

- affirmations of service to your amended complaint.
- (d) Send your amended complaint (dated and signed with an original signature in pen or pencil) to the *Pro Se* Office. In a note attached to the amended complaint, tell the *Pro Se* Office if you have added new defendants.
 - (e) If you have not added new defendants, you must serve a copy of the original summons and the amended complaint on each of the remaining defendant(s) in accordance with Rule 4 of the Federal Rules of Civil Procedure (Skip to Step "h").
 - (f) If you have added new defendants, the *Pro Se* Office will issue an "Amended Summons" and you will then receive from the *Pro Se* Office a sufficient number of copies of the amended summons and amended complaint for service on the remaining original defendants, as well as the new defendants.
 - (g) Serve a copy of the amended complaint and the amended summons on each of the remaining original defendants, as well as the new defendant(s) in accordance with Rule 4 of the Federal Rules of Civil Procedure. (If you have been granted *in forma pauperis* status by asking the judge to waive the filing fee to start the action, you are entitled to have the United States Marshal Service serve your papers for you. Once service is completed, the Marshal Service will send you a copy of the proof of service and you may skip Steps "h" & "I".)
 - (h) Have the person who served the amended complaint and amended or original summons complete an affirmation of service for each defendant served and attach it to the amended or original summons which has the Court's raised seal on it.
 - (I) Make a copy of all of the affirmations of service and the amended or original summons for your records, and send the originals to the *Pro Se* Office for filing.