

HOW TO AMEND YOUR COMPLAINT

If you have forgotten to state an important matter in your complaint, you discover something new after you filed your complaint, you want to add a defendant, or you want to insert the real name of a “John Doe” defendant, you may want to file an amended complaint. An amended complaint does not just add to the first complaint. An amended complaint entirely replaces the original complaint. Therefore, an amended complaint must include those portions of the original complaint that are necessary, while adding the new material to be considered.

Amendments to a complaint are governed by Rule 15(a) of the Federal Rules of Civil Procedure. Rule 15(a) provides that:

(1) A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

This means that you can file **one** amended complaint without permission of the Court or the consent of the defendant(s) so long as the amended complaint is filed within 21 days after serving the original complaint or the amended complaint is filed within 21 days after service of the answer or a motion under Rule 12(b), (e) or (f). After the 21-day period has expired, you **must** get written consent from the defendant or the Court’s permission before amending your complaint. Unless the defendant(s) agrees in writing that you can file an amended complaint, you must ask the judge for permission to amend by filing a motion to amend the complaint and attaching a copy of the proposed amended complaint to your motion. Instructions for preparing a motion are attached.

If you file an amended complaint. It **must** be captioned as an “**Amended Complaint.**” An example of the face page of an amended complaint is attached.

Revised 7/1/10

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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Plaintiff,

-against-

Defendants.

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**AMENDED
COMPLAINT**

___ CV _____ (___) (___)