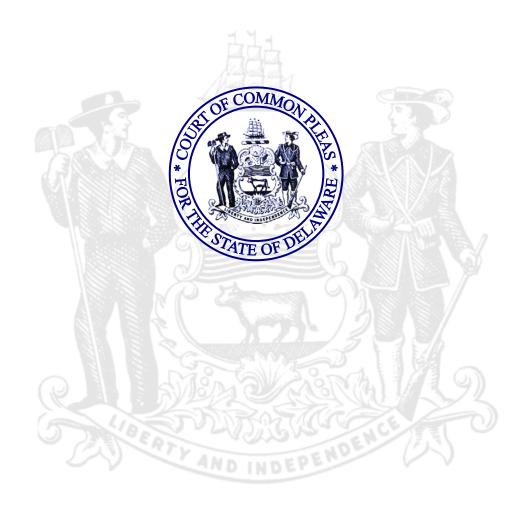
COURT OF COMMON PLEAS for the State Of Delaware



HOW TO PREPARE A CIVIL MOTION

http://courts.state.de.us/commonpleas/

COURT OF COMMON PLEAS

HOW TO PREPARE A CIVIL MOTION

A motion is a petition for some type of relief, or some action, you ask the Court to grant you; it also may be a request for the Court to take notice of certain facts. A sample motion is attached.

There are several documents that you **must** prepare when filing a motion. They are:

1) Notice of Motion

The notice advises the other party that a motion will be filed, what it will be about, what facts will be offered, and when it will be presented to the Court. This gives the other side the opportunity to prepare a response. It also advises the Court and the other party of the date and time the motion will be heard.

2) The Motion

The actual body of the motion states your request and explains the reasons for making the request. As some motions may require affidavits, please refer to the Court of Common Pleas Civil Rules found in the Delaware Code Annotated, which is available at any law library or public library.

3) Order

The order is a document signed by the judge granting the request made in the motion. You must prepare it in advance so the judge can sign it, if the motion is granted.

4) Certificate of Service

This is a notarized document; it states that you did notify the other party of your intent to file a motion and that you did provide the other party with copies of all the documents you are filing.

As Needed/Optional:

5) Exhibits

Exhibits may be any item of evidence that supports your position. These may be contracts, letters, photographs, receipts, etc.

To file a motion, you will need to file one original set and one copy of all the required documents listed above. In addition, you must provide two copies of all the documents to the other party. Keep a copy for your file.

- You must arrange to copy all these documents, as the Court is unable to make copies for you.
- The Court is <u>unable</u> to provide you with legal advice. If you require further clarification to prepare your motion, you may contact the Legal Help Link at (302) 478-8850 for New Castle County or (800) 773-0606 for Kent and Sussex counties.
- Dispositive motions (motions, that if granted, would conclude the case) must be filed with the Court at least thirteen (13) days before the hearing is scheduled to be heard.
- Non-dispositive motions (motions, that if granted, would not conclude the case) must be filed with the Court at least six (6) days before the hearing is scheduled to be heard.

CAPTION INFORMATION

The following is the Caption portion of any pleading* presented to the Court. It does not change unless the case changes. Therefore, for any motion pertaining to an ongoing case, always use the <u>same caption</u> for the motion itself and each of its required components (Notice, the Motion, Order and Certificate of Service.)

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

Name(s) of Plaintiff(s) (**)	
Plaintiff(s)	
) C.A. No. <u>Number assigned to the case by</u>) the Court when it was first filed
Name(s) of Defendant(s) (**)	
Defendant(s).	
(See a	OF THE MOTION attached sample)

^{*} A "pleading" is part of a series of statements and answers, or counter-statements, made by the various parties to a lawsuit; these documents follow a specific format. For example, the initial complaint in a case is a pleading; the answer filed by the other side is also a pleading.

^{**} If several names are listed for Plaintiffs and/or Defendants, you must use the name listed first on the original pleading in the Plaintiff space and in the Defendant space, but you may add *et al.* instead of copying all the other names. For example, if John Doe, Jane Smith, Dr. Harry Brown, XYZ Hospital and ABC Company are all listed as Defendants on the first Complaint, in subsequent documents, such as your motion, you can write: John Doe, *et al.*, Defendants.

SAMPLE MOTION

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

	Plaintiff, v.	
	Defendant.	
		NOTICE OF MOTION
TO:	Name of Individual/Firm Street Address Town, State, Zip Code	
name,		t the attached Motion will be presented to the Court by <i>(your</i> * at <i>(time)</i> * or at the convenience of the Court.
ŕ	SIL	<u>Your Signature</u> <u>Print Your Name</u> <u>Print Your Address</u>
		Your Daytime Telephone
Dated:		

^{*} Please contact the Civil Division of the Court to request a date and time for your motion to be heard.

	, , <i>)</i>	
) Plaintiff,)	
V.) C.A. No	
	<u> </u>	
	Defendant.	
	TITLE OF THE MOTION	
COM	MES NOW the (Plaintiff/Defendant), acting on (his/her) own behalf, hereby moves this	3
Honorable (Court to enter an Order to and offers in support the	Э
following:		
1.	On (date), briefly describe the background of the case leading to your motion.	
2.	Briefly state other facts that help describe the situation using short, numbered	d
	paragraphs. This sample has three numbered paragraphs, you may use more o	r
	fewer.	
3.	Additional statements of fact, reasons, or rules why the judge should agree with you	ır
	motion.*	
WHE	EREFORE, (Plaintiff/Defendant) respectfully requests the Court enter an Order granting	'n
	in favor of <i>(Plaintiff/Defendant)</i> .	פ
	III lavoi oi (i laintiii/Delendant).	
	Your Signature	
	Print Your Name	
	<u>Print Your Address</u>	
	Your Daytime Telephone	
	1 our Dayanio Tolophono	
Dated:		

^{*}You may support your request by referring to the Court of Common Pleas Civil Rules, which may be found in the Delaware Code Annotated. The Delaware Code Annotated and other resources to research legal decisions are available in any law library or public library.

,)
Plaintiff,)
V.)) C.A. No
Defendant.	
	ORDER
NOW TO WIT, this day of	, 20, (Plaintiff's/Defendant's) motion for
(explain the relief you are requesting fr	om the Court) is hereby granted. (If the motion is for a
judgment, the specific dollar amount of	relief must be included in the order.)
IT IS SO ORDERED.	
	AND THE RESERVE TO TH

,)		
Plaintiff,)		
V.) C.A	. No	
	7)		
Defendant.			
CERTIF	ICATE OF SE	RVICE	
I, <i>(your name)</i> , do hereby certify tha	at two (2) copie	s of the attached No	otice of Motion, Motion
and Order were (hand-delivered/mailed) to	(name and ac	ldress of the individu	ial or firm to whom the
motion is hand-delivered/mailed), this	day of	, .	20
(Nictory eignoture and each)			
(Notary signature and seal)			
S PERTY AN		Your Signature	
		Print Your Name	
		Print Your Addre	<u> </u>
		Your Daytime To	elephone
		•	
Dated:			

^{*} Individuals are required to sign the Certificate of Service in front of a Notary Public and have the Certificate notarized. Some Notaries Public are listed in the telephone book; certain officers of banks are Notaries and will witness your signature at no charge; also, many companies have someone in their business offices who is a Notary.

MOTIONS FREQUENTLY FILED WITH THE COURT

Motion to Amend the Complaint – A party's request that the Court permit the party to change a Complaint previously filed with the Court.

Motion to Compel Discovery – A party's request that the Court order the party's opponent to respond to the party's discovery request. Discovery in a lawsuit is a way to learn more about your opponent's case.

Motion for Default Judgment – A request by the plaintiff that the Court enter a judgment against a defendant who has failed to file a pleading or otherwise defend against a plaintiff's claim.

Motion to Dismiss – A party's request that the Court dismiss a case because of settlement, voluntary withdrawal, or a procedural defect.

Motion for Enlargement of Time – A party's request that the Court extend the time allowed to respond or to perform an action.

Motion for Judgment on the Pleadings – A party's request that the Court rule in its favor based on the pleadings filed with the Court, without accepting any evidence, because the outcome of the case is based on the Court's interpretation of the law.

Motion to Vacate Judgment – A party's request that the Court cancel or invalidate a judgment.

Motion for a More Definite Statement – A party's request that the Court require an opponent to change a vague or ambiguous pleading to which the party is unable to adequately respond.

Samples of these Motions are attached. Each Motion must have a Notice of Motion, an Order and a Certificate of Service attached.

Plaintiff,)	
v.) C.A. No	
Defendant.	
MOTION TO AMEND COMPLAI	<u>NT</u>
COMES NOW the (Plaintiff), acting on (his/her) own beh	alf, hereby moves this Honorable
Court to enter an order to Amend the Complaint and offers in su	upport the following:
On (date), briefly describe the background of the	e case leading to your motion.
2. Briefly state other facts that help describe the	situation using short, numbered
paragraphs. This sample has three numbered p	aragraphs, you may use more o
fewer.	
 State facts or rules why the judge should grant y 	our request.*
WHEREFORE, (Plaintiff) respectfully requests that the C	Court enter an Order to Amend the
Complaint as follows:	
(List the amendment(s) to the Complaint)	
(21st are differentially)	
	<u>ır Signature</u>
	nt Your Name
<u>Prin</u>	t Your Address
You	ır Daytime Telephone
Dated:	

^{*} You may support your request by referring to the Court of Common Pleas Civil Rules, which may be found in the Delaware Code Annotated. The Delaware Code Annotated and other resources to research legal decisions are available in any law library or public library.

V.	Plaintiff,	,))))) C.A. No
	Defendant.	
	<u>N</u>	MOTION TO COMPEL
C	OMES NOW the (Plaintiff/D	Defendant), acting on (his/her) own behalf, hereby
moves thi	is Honorable Court to enter a	n Order to Compel (state what you wish the Court to
compel) a	and offers in support the follo	wing:
1.	On (date), briefly state	what was requested and how the request was made.
2.	Briefly state other fac	cts that help describe the situation using short,
	numbered paragraphs	. This sample has three numbered paragraphs, you
	may use more or fewer	
3.	To date, (name of the i	individual/firm) has not responded.
W	HEREFORE, (Plaintiff/Defer	ndant) respectfully requests that the Court enter an
Order re	equiring (Plaintiff/Defendant)	to provide full and complete responses to the above
request.		
		Your Signature Print Your Name Print Your Address Your Daytime Telephone
Dated:		

^{*} You may support your request by referring to the Court of Common Pleas Civil Rules, which may be found in the Delaware Code Annotated. The Delaware Code Annotated and other resources to research legal decisions are available in any law library or public library.

	,)
	Plaintiff,)
V.) C.A. No
	,)
	Defendant.	
	MOTION FOR	DEFAULT JUDGMENT
CO	MES NOW the (Plaintiff), acting	on (his/her) own behalf, hereby moves this Honorable
Court to en	nter an Order for Default Judgme	ent and offers in support the following:
1.	On (date), briefly describe to	he background of the case leading to your motion.
2.	Briefly state other facts that	nt help describe the situation using short, numbered
	paragraphs. This sample ha	as three numbered paragraphs, you may use more or
	fewer.	
3.	Additional statements of fact	, reasons, or rules why the judge should agree with your
	motion.*	
WH	HEREFORE, (Plaintiff) respectfu	Illy requests that the Court enter an Order granting
Judgment	t in favor of (Plaintiff).	
		Your Signature
		Print Your Name Print Your Address
		Your Daytime Telephone
Dated:		

^{*} You may support your request by referring to the Court of Common Pleas Civil Rules, which may be found in the Delaware Code Annotated. The Delaware Code Annotated and other resources to research legal decisions are available in any law library or public library.

) Plaintiff,)	
V.)	C.A. No
	,	
	Defendant.	
	MOTION T	O DISMISS
COM	MES NOW the (Plaintiff/Defendant), a	acting on (his/her) own behalf, hereby moves this
Honorable C	Court to enter an Order to Dismiss (st	ate what you wish the Court to dismiss) and offers
in support th	the following:	
1.	On (date), briefly describe the ba	ckground of the case leading to your motion.
2.	Briefly state other facts that hel	p describe the situation using short, numbered
	paragraphs. This sample has thr	ree numbered paragraphs, you may use more o
	fewer.*	
3.	Additional statements of fact, reas	cons, or rules why the judge should agree with you
	motion.*	
WHE	IEREFORE, (Plaintiff/Defendant) res	pectfully requests that the Court enter an Orde
dismissing t	the action and assessing costs and f	ees to (Plaintiff/Defendant).
		Your Signature
		Print Your Name
		Print Your Address
		Your Daytime Telephone
Dated:		

^{*} You may support your request by referring to the Court of Common Pleas Civil Rules, which may be found in the Delaware Code Annotated. The Delaware Code Annotated and other resources to research legal decisions are available in any law library or public library.

	,) `
	Plaintiff,)
V.) C.A. No
	Defendant.
	MOTION FOR ENLARGEMENT OF TIME
СО	MES NOW the (Plaintiff/Defendant), acting on (his/her) own behalf, hereby moves this
Honorable	Court to enlarge the time for and offers in support the
following:	
1.	On (date), briefly describe the background of the case leading to your motion.
2.	Briefly state other facts that help describe the situation using short, numbered
	paragraphs. This sample has three numbered paragraphs, you may use more or
	fewer.
3.	Additional statements of fact, reasons, or rules why the judge should agree with your
	motion.*
WH	IEREFORE, (Plaintiff/Defendant) respectfully requests that the Court enter an Order
to enlarge	time for
	Your Signature
	Print Your Name
	Print Your Address
	Your Daytime Telephone
Dated:	

^{*} You may support your request by referring to the Court of Common Pleas Civil Rules, which may be found in the Delaware Code Annotated. The Delaware Code Annotated and other resources to research legal decisions are available in any law library or public library.

) Plaintiff,)
V.) C.A. No
	Defendant.)
	MOTION FOR JUDGMENT ON THE PLEADINGS
CON	MES NOW the (Plaintiff/Defendant), acting on (his/her) own behalf, hereby moves this
Honorable (Court to enter Judgment on the Pleadings in (Plaintiff's/Defendant's) favor and offers in
support the	following:
1.	On (date), briefly describe the background of the case leading to your motion.
2.	Briefly state other facts that help describe the situation using short, numbered
	paragraphs. This sample has three numbered paragraphs, you may use more or
	fewer.
3.	State facts or rules why the judge should grant your request.*
WH	EREFORE, (Plaintiff/Defendant) respectfully requests that the Court enter Judgment
on the Plea	dings in favor of (Plaintiff/Defendant).
	Your Signature Print Your Name Print Your Address Your Daytime Telephone
Dated:	

^{*} You may support your request by referring to the Court of Common Pleas Civil Rules, which may be found in the Delaware Code Annotated. The Delaware Code Annotated and other resources to research legal decisions are available in any law library and public library. This motion must be filed within ten (10) days after the event and shall be noticed at the convenience of the Court.

	,
) Plaintiff,)
٧.) C.A. No
	Defendant.
	MOTION TO VACATE JUDGMENT
CON	MES NOW the (Plaintiff/Defendant), acting on (his/her) own behalf, hereby moves this
Honorable (Court to enter an Order to Vacate Judgment and offers in support the following:
1.	On (date), briefly describe the background of the case leading to your motion.
2.	Briefly state other facts that help describe the situation using short, numbered
	paragraphs. This sample has three numbered paragraphs, you may use as many as
	you need.
3.	State facts or rules why the judge should grant your request.*
WHE	EREFORE, (Plaintiff/Defendant) respectfully requests that the Court enter an Order to
Vacate Jud	Igment in favor of (Plaintiff/Defendant).
	Your Signature
	<u>Print Your Name</u> <u>Print Your Address</u>
	Time rour radies
	Your Daytime Telephone
Dated:	

^{*} You may support your request by referring to the Court of Common Pleas Civil Rules, which may be found in the Delaware Code Annotated. The Delaware Code Annotated and other resources to research legal decisions are available in any law library or public library.

	,)) Plaintiff,)
V.) C.A. No
	Defendant.
	MOTION FOR A MORE DEFINITE STATEMENT
СОМ	ES NOW the (Plaintiff/Defendant), acting on (his/her) own behalf, hereby moves this
Honorable Co	ourt to enter an Order requiring (Plaintiff/Defendant) file a more definite statement and
offers in supp	ort the following:
1.	On (date), briefly describe the background of the case leading to your motion.
2.	Briefly state other facts that help describe the situation using short, numbered
	paragraphs. This sample has three numbered paragraphs, you may use as many a
	you need.
3.	State facts or rules why the judge should grant your request.*
WHE	REFORE, (Plaintiff/Defendant) respectfully requests that the Court orde
(Plaintiff/Dei	endant) to file a more definite statement.
	Your Signature
	Print Your Name
	Print Your Address
	Your Daytime Telephone
Dated:	

^{*} You may support your request by referring to the Court of Common Pleas Civil Rules, which may be found in the Delaware Code Annotated. The Delaware Code Annotated and other resources to research legal decisions are available in any law library or public library.