

WHAT IS A MOTION TO DISMISS?

By the Federal Pro Se Legal Assistance Project

Are you a pro se Plaintiff who filed a Complaint, or a Defendant(s) that has been served? If you are involved in a civil lawsuit, this resource can help you understand important information about a Motion to Dismiss, a request that can significantly impact the outcome of your case.

What is a Motion to Dismiss?

A motion to dismiss is a written request by a defendant asking the Court to dispose of some or all the claims raised in the Complaint before the case can move forward in the litigation process. The Defendant has 21 days to file an Answer, or otherwise respond to the Complaint. A Motion to Dismiss filing can be referred to as one of the ways to "respond to" the Complaint.

Why file a Motion to Dismiss?

The Defendant may decide to write a motion to:

- limit the issues/claims raised
- avoid unnecessary future costs in litigation
- point out the plaintiff is lacking facts to support their claims

There are seven grounds for which a dismissal can be granted under Rule 12 of the Federal Rules of Civil Procedure:

- The Court lacks subject matter jurisdiction
- The Court lacks personal jurisdiction
- Improper venue
- Insufficient process
- Insufficient service of process
- Failure to state a claim upon which relief can be granted, and/or
- Failure to join a party under Rule 19

WHAT IS A MOTION TO DISMISS?

By the Federal Pro Se Legal Assistance Project

Why did I receive a Motion to Dismiss?

Most often, a Plaintiff receives a Motion to Dismiss based on their “failure to state a claim upon which relief can be granted.” (Fed. R. Civ. P. 12(b)(6)). The Defendant argues that even if the facts alleged in the complaint are true, they are not sufficient to support the legal claims. This is usually because the Clerk’s Office Complaint form when filing a case has limited space for telling the full story. This often leads the Plaintiff to provide conclusions instead of facts, or facts that only suggest the possibility that the Defendant did something wrong. As a result, the Defendant most often asks for a dismissal.

What can I do if I receive a Motion to Dismiss?

Depending on the case, a plaintiff may either:

1. Amend the Complaint

OR

2. Respond, which includes providing more facts. Pro se litigants do not need to worry about writing legal arguments and can ask for the opportunity to amend the Complaint.

WHAT IS A MOTION TO DISMISS?

By the Federal Pro Se Legal Assistance Project

What happens after a Motion to Dismiss has been filed?

There are a few possible outcomes that will vary from case to case:

- Dismissal of the Complaint, ending the case;
- The Court dismisses the entire Complaint, but gives the litigant the opportunity to amend; **or**
- The Court dismisses certain claims but allows other claims to go forward.

For more information about a related topic, contact the City Bar Justice Center's Federal Pro Se Legal Assistance Project. The Project can connect with you about your matter – whether you received a Motion to Dismiss, or if you are at a different stage in your self-represented case.

Jean Soo Park, Director of the Federal Pro Se Legal Assistance Project at the City Bar Justice Center, is the author of this publication. Please visit the City Bar Justice Center's website to find out more about our Federal Pro Se Legal Assistance Project and other projects. This communication is for the general education and knowledge of our readers. Because all legal problems involve their own specific set of facts, this informational resource is not and should not be used as a substitute for independent legal advice. This informational resource also is not intended to create, and its receipt does not constitute, an attorney-client relationship. Please contact competent, independent legal counsel for an assessment of your particular legal concerns, or contact our Federal Pro Se Legal Assistance Project (212-382-4729 or www.citybarjusticecenter.org/projects/federal-pro-se-legal-assistance-project/) to determine whether you qualify for assistance from the City Bar Justice Center.