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**2017 Edition**

# Pleadings and Motion Practice in Family Matters

A Guide to Resources in the Law Library

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Judge Support Services, Law Library Services Unit*

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**Related Research Guides:**

<a href="#">Child Custody in Connecticut</a>	<a href="#">Child Visitation in Connecticut</a>
<a href="#">Discovery (Financial) in Family Matters</a>	<a href="#">Dissolution of Marriages in Connecticut</a>
<a href="#">Enforcement of Family and Foreign Matrimonial Judgments</a>	<a href="#">Motion for Articulation</a>
<a href="#">Motion for Clarification</a>	<a href="#">Motion for Modification in Family Matters</a>
<a href="#">Motion to Open in Family Matters</a>	<a href="#">Motion to Reargue</a>
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<http://www.jud.ct.gov/policies.htm>

# Introduction

A Guide to Resources in the Law Library

- **Order of Pleadings**

Conn. Practice Book [§ 25-11](#) (2017).

The order of pleadings shall be:

- (1) **the plaintiff's complaint;**
- (2) **the defendant's motion to dismiss the complaint;**
- (3) **the defendant's motion to strike** the complaint or claims for relief;
- (4) **the defendant's answer, cross complaint and claims for relief;**
- (5) **the plaintiff's motion to strike the defendant's answer, cross complaint, or claims for relief;**
- (6) **the plaintiff's answer.**

- **Motion:** "means any application to the court for an order, which application is to be acted upon by the court or any judge thereof . . ." Conn. Practice Book [§ 11-2](#) (2017).
- **Request:** "means any application to the court which shall be granted by the clerk by operation of these rules unless timely objection is filed." Conn. Practice Book [§ 11-2](#) (2017).
- "The paramount role of a court when considering domestic relations cases is one of a 'court of equity.' The **court's equity powers** are essential to its ability to fashion the appropriate relief in domestic relations cases." [LaBow v. LaBow](#), 13 Conn. App. 330, 351, 537 A.2d 157 (1988). [Emphasis added.]
- **Connecticut Judicial Branch Family Court Forms:**

<a href="#">Family Law Forms</a> (Full List)	<a href="#">Nonadversarial (simplified or "non-ad") Divorce</a>
<a href="#">Divorce Forms</a> , including <a href="#">Divorce Navigator</a>	<a href="#">Responding to a Divorce</a>
<a href="#">Divorce with an Agreement (or "waive 90")</a>	<a href="#">File for Custody or Visitation (or both)</a>
<a href="#">Divorce without an Agreement</a>	<a href="#">File for a Motion for Modification</a>
<a href="#">Filing for a Divorce with Children</a>	<a href="#">File for a Motion for Contempt</a>
<a href="#">Filing for a Divorce without Children</a>	<a href="#">File for a Restraining Order</a>

# Section 1: Complaint

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic sources relating to complaints for dissolution of marriage in Connecticut.

## **SEE ALSO:**

- [Dissolution of Marriages in Connecticut](#) (Research Guide)
- [Child Custody in Connecticut](#) (Research Guide)
- [Child Visitation in Connecticut](#) (Research Guide)

## **DEFINITIONS:**

- "The paramount role of a court when considering domestic relations cases is one of a 'court of equity.' The **court's equity powers** are essential to its ability to fashion the appropriate relief in domestic relations cases." [LaBow v. LaBow](#), 13 Conn. App. 330, 351, 537 A.2d 157 (1988) [emphasis added].
- "The power to act equitably is the keystone to the court's ability to fashion relief in the infinite variety of circumstances which arise out of the dissolution of a marriage. Without this wide discretion and broad equitable power, the courts in some cases might be unable fairly to **resolve the parties' dispute, i.e., Where the sole asset of the parties is their residence to which both have contributed. Equity certainly does not contemplate such a result . . . Equity jurisdiction once obtained will be retained for the purpose of administering complete relief.**" [Pasquariello v. Pasquariello](#), 168 Conn. 579, 585, 362 A.2d 835 (1975).

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017).
  - [§ 46b-40](#). Grounds for dissolution of marriage; legal separation, annulment.
  - [§ 46b-41](#). Complaint includes cross-complaints or cross actions.
  - [§ 46b-44](#). Residency requirement.
  - [§ 46b-44a](#). Filing of joint petition for nonadversarial dissolution of marriage. Procedure.  
**See Public Act No. 17-47, sec. 1** (effective October 1, 2017)
  - [§ 46b-45](#). Service and filing of complaint.  
**See Public Act No. 17-47, sec. 3** (effective October 1, 2017)
  - [§ 46b-45a](#). Allegation of pregnancy in pleadings. Disagreement as to paternity. Hearing.
  - [§ 46b-46](#). Notice to nonresident party; jurisdiction over nonresident party for alimony and support.
  - [§ 46b-47](#). Complaint for dissolution of marriage on ground of confinement for mental illness; procedure.
  - [§ 46b-48](#). Dissolution of marriage or annulment upon conviction of crime against chastity; procedure.

- [§ 52-45a.](#) Commencement of civil actions. Contents and signature of process.
- [§ 52-54.](#) Service of summons.
- [§ 52-57.](#) Manner of service upon individuals, municipalities, corporations, partnerships and voluntary associations.

### **FORMS:**

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- Court Forms – Connecticut Judicial Branch
  - [Divorce Forms](#), Including [Divorce Navigator](#)
  - [Nonadversarial \(simplified or “non-ad”\) divorce](#)
  - [Divorce with an Agreement \(or “waive 90”\)](#)
  - [Divorce without an Agreement](#)
  - [Filing for a Divorce with Children](#)
  - [Filing for a Divorce without Children](#)
  - [File for Custody or Visitation \(or both\)](#)
- Amy Calvo MacNamara et al., eds., [Library of Connecticut Family Law Forms](#), (2nd. Ed. 2014).
  - Chapter 1. Initial Pleadings, Complaint
    - 1-011. Complaint – Seeking Enforcement of Premarital Agreement
- 7 Arnold H. Rutkin and Kathleen A. Hogan, [Connecticut Practice, Family Law and Practice with Forms](#) (2010)
  - § 19.5. Complaint - Form

### **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Conn. Practice Book (2017).
  - [Chapter 8. Commencement of Action](#)
    - § 8-1. Process
  - [Chapter 25. Procedure in Family Matters](#)
    - § 25-2. Complaints for Dissolution of Marriage or Civil Union, Legal Separation, or Annulment
    - § 25-7. Pleadings in General; Amendments to Complaint or Application
    - § 25-8. —Amendment; New Ground for Dissolution of Marriage or Civil Union
    - § 25-23. Motions, Requests, Orders of Notice and Short Calendar

### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Luster v. Luster](#), 128 Conn. App. 259, 274, 17 A.3d 1068 (2011). “Furthermore, “[a]n action for a divorce or a legal separation obviously is a civil action...””
- [Vanderlip v. Vanderlip](#), 1 Conn. App. 158, 160, 468 A 2d 1253 (1984). “The unanswered complaint claimed only a dissolution of the marriage. The defendant filed no claims for relief. The case was, however, presented to and tried by the court on the contested issues of support, alimony and property division. See *Falker v. Samperi*, 190 Conn.

412, 427, 461 A.2d 681 (1983). Because of this procedure, we need not consider any of the questions raised in *Tsopanides v. Tsopanides*, 181 Conn. 248, 435 A.2d 34 (1980). Compare *LaCroix v. LaCroix*, 189 Conn. 685, 457 A.2d 1076 (1983).”

- [LaCroix v. LaCroix](#), 189 Conn. 685, 687-688, 457 A.2d 1076 (1983) “On appeal, the plaintiff’s sole claim is that the trial court was without jurisdiction to award alimony or any part of the proceeds of the sale of real property to the defendant on the basis of the cross complaint. He asserts that General Statutes § 46b-67 mandates a twenty-day waiting period after the filing of a cross complaint in a dissolution proceeding before any action may be taken on that cross complaint. He therefore claims that the alimony and property awards are void, because those issues were not raised in his complaint and could not be considered under the cross complaint without violating § 46b-67. We agree that § 46b-67 by its clear language forbids the consideration of a cross complaint until twenty days after it is filed and, therefore, the court could not make awards **based on the defendant’s cross complaint. We cannot** agree, however, that the trial court lacked jurisdiction to **make the challenged awards. We find no error.**”

**WEST KEY NUMBERS:**

- *Marriage* #57-58.
- *Divorce* # 88-95. Pleading.
- *Husband and Wife* #285 et seq.

**ENCYCLOPEDIAS:**

- 24 [Am. Jur. 2d Divorce and Separation](#) (2008).  
§§ 216-237. Petition or Complaint
- 27A [C.J.S. Divorce](#) (2016).  
§§ 152-163. Domicile or Residence of Parties  
§§ 215-243. Pleading

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Louise Truax, ed., [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).  
Chapter 3. Dissolution of Marriage and Legal Separation  
Part III. Preparing the Complaint and Cross Complaint
- 2 Renee Bevacqua Bollier and Susan V. Busby, [Stephenson’s Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 2002).  
Chapter 20. Family law procedures  
§ 250. Pleadings in dissolution actions  
b. The complaint
- [Dupont on Connecticut Civil Practice](#) (2016-2017).  
Chapter 25. Procedure in Family Matters, General Provisions  
§ 25-2. Complaints for Dissolution of Marriage or Civil Union, Legal Separation, or Annulment

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- 7 Arnold H. Rutkin and Kathleen A. Hogan, [Connecticut Practice, Family Law and Practice with Forms](#) (2010).  
Chapter 19. Pleadings
- Cynthia C. George and Barbara M. Schelenger, *Family Law Jurisdiction*, 64 [Connecticut Bar Journal](#) 455 (1990).
- Prof. Max Rubenstein, *Domicile or Jurisdictional Basis of Divorce Decrees*, 23 [Connecticut Bar Journal](#) 280 (1949).
- Francis X. Hennessy, *Jurisdiction - Notice in Matrimonial Matters*, 58 [Connecticut Bar Journal](#) 213 (1984).

## Section 2: Motions and Requests (Overview)

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources relating to family motions and requests motion practice in general.

- DEFINITION:**
- **Order of Pleadings:** Conn. Practice Book [§ 25-11](#) (2017).  
The order of pleadings shall be:
    - (1) the plaintiff's complaint;
    - (2) the defendant's motion to dismiss the complaint;
    - (3) the defendant's motion to strike the complaint or claims for relief;
    - (4) the defendant's answer, cross complaint and claims for relief;
    - (5) the plaintiff's motion to strike the defendant's answer, cross complaint, or claims for relief;
    - (6) the plaintiff's answer.
  - **Motion:** "means any application to the court for an order, which application is to be acted upon by the court or any judge thereof . . ." Conn. Practice Book [§ 11-2](#) (2017).
  - **Request:** "means any application to the court which shall be granted by the clerk by operation of these rules unless timely objection is filed." Conn. Practice Book [§ 11-2](#) (2017).
  - **Requirements:** "Every motion, request, application or objection directed to pleading or procedure, unless relating to procedure in the course of a trial, shall be in writing." Conn. Practice Book [§ 11-1](#) (2017).
  - "Each such motion shall state clearly, in the caption of the motion, whether it is a pendente lite or a postjudgment motion." Conn. Practice Book [§ 25-24\(b\)](#) (2017).
  - "In addition, Practice Book [§ 10-3\(a\)](#) provides in relevant part that, "[w]hen any claim made in a . . . pleading is grounded on a statute, the statute shall be specifically identified by its number." [Remillard v. Remillard](#), 297 Conn. 345, 999 A.2d 713 (2010).
  - **Due Process:** "It is a fundamental premise of due process that a court cannot adjudicate a matter until the persons directly concerned have been notified of its pendency and have been given a reasonable opportunity to be heard in sufficient time to prepare their positions on the issues involved." [Costello v. Costello](#), 186 Conn. 773, 776-777, 443 A.2d 1282 (1982).

**COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Connecticut Practice Book (2017)  
[Chapter 11 — Motions, Requests, Orders of Notice, and](#)



## [Short Calendar](#)

### [Chapter 25 — Procedure in Family Matters](#)

#### **FORMS:**

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- Connecticut Judicial Branch, Official Court Webforms  
[Individual Family Forms](#)  
[Grouped by Type of Case](#)
- Thomas D. Colin, Editor, [Library of Connecticut Family Law Forms](#) (2014).
- 2 Joel M. Kaye and Wayne D. Effron, [Connecticut Practice Series, Civil Practice Forms](#) (4th ed. 2004).
- 7 Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice with Forms](#) (3d ed. 2010).
- Mary Ellen Wynn and Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).

#### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Rosenfeld v. Rosenfeld](#), 115 Conn.App. 570, 577-578, 974 A.2d 40 (2009). **“It is hornbook law that a court's decision whether to grant a motion for a continuance ordinarily is left to the court's discretion.”**
- [Eckert v. Eckert](#), 285 Conn. 687, 698, 941 A.2d 301 (2008). **“Relying on our decision in *Ahneman v. Ahneman*, 243 Conn. 471, 480, 706 A.2d 960 (1998), the plaintiff contends that the trial court's grant of the defendant's objection without first holding an evidentiary hearing amounted to a refusal to consider her motion for alteration or modification. *Ahneman*, however, is readily distinguishable from the present case. In that case, the trial court had rendered an oral decision specifically declining to consider the subject motions. Id., at 475, 706 A.2d 960. The trial court in the present case did not so decline consideration of the plaintiff's motion. The court heard argument.... The plaintiff appears to contend, however, that by not allowing her to present evidence, the court functionally refused to consider her motion for modification or alteration. In considering a motion that involves only a question of law and not one of fact, however, a trial court is not obligated to conduct an evidentiary hearing. By allowing the parties to present arguments in support of their respective positions, the court duly considered both the plaintiff's motion and the defendant's objection.”**
- [Ramin v. Ramin](#), 281 Conn. 324, 338, 915 A.2d 790 (2007). **“We also recognized, in *Ahneman*, however, that exceptions to the general rule that a trial court must consider and decide on a reasonably prompt basis all motions properly placed before it may exist *in an extreme, compelling***

*situation. For example...”*

- [Ahneman v. Ahneman](#), 243 Conn. 471, 484 (1998). “More fundamentally, basic principles of jurisprudence refute the plaintiff’s proposition that a trial court has discretion, based on notions of judicial efficiency, to decline to exercise its jurisdiction by refusing to consider certain motions. Courts are in the business of ruling on litigants’ contentions . . .”
- [Costello v. Costello](#), 186 Conn. 773, 776-777, 443 A.2d 1282 (1982). “It is a fundamental premise of due process that a court cannot adjudicate a matter until the persons directly concerned have been notified of its pendency and have been given a reasonable opportunity to be heard in sufficient time to prepare their positions on the issues involved.”

**TEXTS &  
TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Louise Truax, ed., [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
- 2 Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2016–2017 ed.)  
§§ 25-23 et seq. Motion Practice in Family Matters
- 7 Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice with Forms](#) (3d ed. 2010).  
Chapter 20 – Pretrial Procedures and Preparation  
Chapter 52 – Postjudgment Motions
- 1 [Family Law Practice in Connecticut](#) (1996).  
Chapter 4, *Motion Practice in Matrimonial Actions*, by Sandra P. Lax  
Chapter 5, *Motion Practice before Trial*, by Sheldon A. Rosenbaum
- Barry F. Armata and Campbell D. Barrett, eds., [A Practical Guide to Divorce in Connecticut](#) (2013).

Table 1: Default in Family Matters

<p>Failure to file an Appearance</p>	<p>"If, in any case involving a dissolution of marriage or civil union, legal separation, or annulment, the defendant has <b>not filed an appearance by the case management date</b>, the plaintiff may proceed to judgment on the case management date without further notice to such defendant. <b>Section 17-20 concerning motions for default shall not apply to such cases.</b>" <a href="#">Conn. Practice Book § 25-51(a)</a> (2017). [Emphasis added.]</p>
	<p>"If the defendant files an appearance by the case management date, the presiding judge or a designee shall determine which track the case shall take pursuant to Section 25-50." <a href="#">Conn. Practice Book § 25-51(b)</a> (2017).</p>
<p>Failure to appear for scheduled disposition</p>	<p>"If a party fails to appear in person or by counsel for a scheduled disposition, the opposing party may introduce evidence and the case may proceed to judgment without further notice to such party who failed to appear." <a href="#">Conn. Practice Book § 25-52</a> (2017).</p>
<p>See also:</p>	<ul style="list-style-type: none"> <li>• 7 Arnold H. Rutkin and Kathleen A. Hogan, <a href="#">Connecticut Practice, Family Law and Practice with Forms</a> (2010). Chapter 24. Trial; Procedural Aspects § 24.12. Default</li> <li>• 2 Renee Bevacqua Bollier and Susan V. Busby, <a href="#">Stephenson's Connecticut Civil Procedure</a> (3<sup>rd</sup> ed. 2002). Chapter 20. Family law procedures § 258. Limited contested and contested trials d. Proceeding without the defendant</li> </ul>

Table 2: Motion for Exclusive Possession of Home

<p>Statute:</p>	<p>"...The court may also award exclusive use of the family home or any other dwelling unit which is available for use as a residence pendente lite to either of the parties as is just and equitable without regard to the respective interests of the parties in the property." Conn. Gen. Stats. <a href="#">§ 46b-83(a)</a> (2017).</p>
<p>Court Rule:</p>	<p><b>Motion for Exclusive Possession</b></p> <p>"Each motion for exclusive possession shall state the nature of the property, whether it is rental property or owned by the parties or one of them, the length of tenancy or ownership of each party, the current family members residing therein and the grounds upon which the moving party seeks exclusive possession." Conn. Practice Book <a href="#">§ 25-25</a> (2017).</p>
<p>Forms:</p>	<ul style="list-style-type: none"> <li>• Motion for Orders Before Judgment (Pendente Lite) in Family Cases - <a href="#">JD-FM-176</a> (Connecticut Judicial Branch Court Form)</li> <li>• Amy Calvo MacNamara et al., eds., <a href="#">Library of Connecticut Family Law Forms</a>, (2nd. Ed. 2014). Form 5-034 - <i>Motion for Exclusive Possession</i></li> <li>• 3 Joel M. Kaye and Wayne D. Effron, <a href="#">Connecticut Practice Series, Civil Practice Forms</a> (4th ed. 2004). § 504.1-M. <i>Motion to vacate premises</i></li> <li>• Mary Ellen Wynn and Ellen B. Lubell, <a href="#">Handbook of Forms for the Connecticut Family Lawyer</a> (1991). Form VI-E-1. <i>Motion for exclusive possession</i>, p. 120.</li> <li>• 1 <a href="#">Family Law Practice in Connecticut</a> (1996), Chapter 5, <i>Motion Practice before Trial</i> by Sheldon A. Rosenbaum. § 5.72. <i>Motion for Exclusive Possession</i></li> </ul>
<p>Texts &amp; Treatises:</p>	<ul style="list-style-type: none"> <li>• 7 Arnold H. Rutkin et al., Connecticut Practice Series, <a href="#">Family Law and Practice with Forms</a> (3d ed. 2010). § 25.7. Temporary use of the marital home</li> <li>• 1 <a href="#">Family Law Practice in Connecticut</a> (1996), Chapter 5, <i>Motion Practice before Trial</i> by Sheldon A. Rosenbaum. § 5.71. Exclusive use of residence</li> <li>• Mary Ellen Wynn and Ellen B. Lubell, <a href="#">Handbook of Forms for the Connecticut Family Lawyer</a> (1991). Exclusive possession of the Family Home Pendente Lite: Notes and Comments</li> <li>• Louise Truax, ed., <a href="#">LexisNexis Practice Guide: Connecticut Family Law</a> (2017). § 6.22 Awarding a Party Exclusive Possession of the Home</li> </ul>

	<ul style="list-style-type: none"><li>• Barry F. Armata and Campbell D. Barrett, eds., <a href="#">A Practical Guide to Divorce in Connecticut</a> (2013). § 2.5.2 Motion for Exclusive Possession</li></ul>
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Table 3: Motions in Library of Connecticut Family Law Forms (2014).

[Library of Connecticut Family Law Forms, 2d](#), is available at each Connecticut Judicial Branch [Law Library](#).

## **Chapter 5. Motions**

### ***General Motions***

- 5-000. Commentary—Motions
- 5-001. Motion to Dismiss
- 5-002. Motion to Withdraw Appearance
- 5-003. Motion to Seal File and Close Courtroom
- 5-007. Motion for Alimony
- 5-008. Motion for Child Support
- 5-009. Motion for Alimony and Support
- 5-011. Claims for Relief Re: Alimony and Child Support Pendente Lite

### ***Motions—Custody & Visitation***

- 5-012. Motion for Temporary Sole Legal and Physical Custody
- 5-013. Motion to Set Parenting Plan
- 5-015. Emergency Motion for Temporary Sole Legal and Physical Custody
- 5-016. Motion for Permission to Relocate
- 5-017. Motion to Appoint Guardian Ad Litem for the Minor Child/Children
- 5-018. Motion for Appointment of Attorney for Minor Child/Children
- 5-019. Motion for Psychological Evaluation
- 5-020. Motion for Psychiatric Evaluation
- 5-021. Motion for a Private Custody Evaluation
- 5-022. Motion for Order to Update Custody Evaluation
- 5-023. Motion for Family Services Division Evaluation
- 5-024. Motion to Appoint Mental Health Professional for the Minor Child/Children
- 5-025. Motion for Order Re: Co-Parenting Counseling and/or Co-Parenting Coordinator
- 5-026. Motion for Order Re: Alcohol Testing
- 5-027. Motion for Order Re: Drug Testing
- 5-028. Claims for Relief Re: Alcohol Testing
- 5-029. Claims for Relief Re: Drug Testing
- 5-030. Temporary Parenting Plan (Short Form)
- 5-031. Parenting Plan (Long Form)

### ***Pendente Lite Motions—Contempt & Modification***

- 5-035. Motion for Contempt Re: Unallocated Alimony and Support
- 5-036. Motion for Contempt Re: Automatic Orders
- 5-037. Motion for Contempt Re: Parenting Plan
- 5-038. Motion for Modification of Unallocated Alimony and Support
- 5-039. Motion for Modification of Parenting Plan

### ***Pendente Lite Motions—Fees***

- 5-040. Motion for Counsel Fees
- 5-041. Affidavit of Services
- 5-042. Motion for Expert Fees

### ***Pendente Lite Motions—Miscellaneous***

- 5-044. Motion for Relief from Automatic Orders
- 5-045. Motion to Expunge
- 5-047. Motion for Hearing Under *State v. Porter*

# Section 3: Motion to Dismiss

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic references relating to the motion to dismiss in a dissolution of marriage proceeding in Connecticut

## **DEFINITIONS:**

- "When a motion to dismiss is filed questioning subject matter jurisdiction it must be disposed of before there can be other proceedings." Babouder v. Abdennur, 41 Conn. Sup. 258, 259, 566 A2d 457 (1989).
- "Jurisdiction must exist in three particulars: the subject matter of the case, the parties, and the process." *Ibid.*, p.259
- "**The pendency of a prior action between the same parties** is a ground for dismissal for the second action, for reasons of justice and equity and for the further reason that it is duplicative and therefore vexatious . . . . This rule does not apply, however, where the purposes of the two actions and the issues to be determined in them are different." *Ibid.*, p.263 [emphasis added].

## **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Conn. Practice Book (2017).  
[Chapter 25. Procedure in Family Matters](#)
  - § 25-12. Motion to Dismiss
  - § 25-13. — Grounds on Motion to Dismiss
  - § 25-14. — Waiver and Subject Matter Jurisdiction
  - § 25-15. — Further Pleading by Defendant

## **FORMS:**

- Amy Calvo MacNamara et al., eds., [Library of Connecticut Family Law Forms](#), (2nd. Ed. 2014).  
Chapter 5. Motions, Motion to Dismiss (Form 5-001)
- 2 [Conn. Practice Book](#) (1997).  
Form 106.1. Motion to dismiss

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Zitkene v. Zitkus](#), 140 Conn. App. 856, 870, 60 A. 3d 322 (2013). "Because the court, in its discretion, properly could grant comity to the judgment of dissolution rendered by the Lithuanian court in light of the undisputed facts set forth in the defendant's affidavit and the decision of the Lithuanian appellate court, it was free to dismiss the plaintiff's action 'without further proceedings';... as that determination conclusively established that jurisdiction was lacking in the present case."
- [Narayan v. Narayan](#), 305 Conn. 394, 402-403, 46 A. 3d 90 (2012). "[T]he Superior Court...may exercise jurisdiction over a person only if that person has been properly served with process, has consented to the jurisdiction of the court

or has waived any objection to the court's exercise of personal jurisdiction.' (Internal quotation marks omitted.) *Kim v. Magnotta*, 249 Conn. 94, 101-102, 733 A.2d 809 (1999).

"...[T]he filing of an appearance on behalf of a party, in and of itself, does not waive that party's personal jurisdiction claims. Nevertheless, "[a]ny defendant, wishing to contest the court's jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss within thirty days of the filing of the appearance..." Practice Book § 10-30. The rule specifically and unambiguously provides that any claim of lack of jurisdiction over the person as a result of an insufficiency of service of process is waived unless it is raised by a motion to dismiss filed within thirty days in the sequence required by Practice Book § 10-6, formerly [Practice Book (1978-97)] § 112. Thus, thirty-one days after the filing of an appearance or the failure to adhere to the requisite sequence, a party is deemed to have submitted to the jurisdiction of the court. Any claim of insufficiency of process is waived if not sooner raised.' *Pitchell v. Hartford*, 247 Conn. 422, 432-33, 722 A.2d 797 (1999)."

- [Luster v. Luster](#), 128 Conn. App. 259, 265, 17 A.3d 1068 (2011). "We note the principles that guide us in our review of this appeal. 'A motion to dismiss properly attacks the jurisdiction of the court, essentially asserting that the plaintiff *cannot* as a matter of law and fact state a cause of action that should be heard by the court.... A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.' (Emphasis in original; internal quotation marks omitted.) *LaBow v. LaBow*, 85 Conn.App. 746, 752, 858 A.2d 882 (2004), cert. denied, 273 Conn. 906, 868 A.2d 747 (2005). '[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor ... clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute.' (Internal quotation marks omitted.) *May v. Coffey*, 291 Conn. 106, 113, 967 A.2d 495 (2009). 'If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause.' (Internal quotation marks omitted.) *Carrubba v. Moskowitz*, 274 Conn. 533, 550, 877 A.2d 773 (2005). '[A] determination regarding a trial court's subject matter jurisdiction is a question of law, [and therefore] our review is plenary.' (Internal quotation marks omitted.) *In re Matthew F.*, 297 Conn. 673, 688, 4 A.3d 248 (2010)."
- [Panganiban v. Panganiban](#), 54 Conn. App. 634, 638, 736 A.2d 190 (1999). "We conclude that the trial court properly denied the motion to dismiss because the defendant did have sufficient contact with Connecticut and the exercise of



jurisdiction in this case does not offend the traditional notions of fair play and substantial justice.”

- [Rummel v. Rummel](#), 33 Conn. App. 214, 219, 635 A2d 295 (1993). “The parties herein agree that by going forward on this trial without an answer having been filed, the defendant waived any defect regarding jurisdiction over the person that may have existed.”
- [Babouder v. Abdennur](#), 41 Conn. Sup. 258, 259, 566 A2d 457 (1989). “The defendant has filed a motion to dismiss the complaint on five grounds: (1) personal service upon the defendant was accomplished by trick, fraud or artifice; (2) the plaintiff is not a resident of Connecticut now or when this action was commenced, and therefore has no standing to bring or to maintain this action under General Statutes § 46b-44; (3) there is pending in the Family Court, Patriarchy of Catholics, in Beirut, Lebanon, a prior claim commenced by the plaintiff claiming similar relief; (4) the plaintiff failed to file a custody statement as required by General Statutes § 46b-99; (5) the plaintiff allegedly violated the clean hands doctrine by her unauthorized removal of the parties’ minor children from Lebanon in violation of a court order, by the method she used to serve the complaint on the defendant, and by her misrepresentation as to her residence.” *The motion to dismiss was denied. See [Table 4](#), below.*

**WEST KEY NUMBERS:**

- *Divorce* #138-139.5. Dismissal.
- *Divorce* #57-65. Jurisdiction.

**DIGESTS:**

- [West’s Connecticut Digest](#): *Divorce, IV. Proceedings (K) Dismissal*

**ENCYCLOPEDIAS:**

- 24 [Am. Jur. 2d](#) *Divorce and Separation* (2008). § 250. Motion to dismiss
- 27A [C.J.S.](#) *Divorce* (2016). § 235. Demurrer; motion to dismiss for failure to state claim  
§§ 308-318. Dismissal or Discontinuance

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Louise Truax, ed., [LexisNexis Practice Guide: Connecticut Family Law](#) (2017). Chapter 4. Pretrial Pleadings and Discovery § 4.09. Preparing a Motion to Dismiss
- 2 Renee Bevacqua Bollier and Susan V. Busby, [Stephenson’s Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 2002). Chapter 20. Family law procedures § 250. Pleadings in dissolution actions c. Pleading by defendant

- Jeanine M. Dumont, [Pleadings and Pretrial Practice](#) (1998).  
Chapter VII. Motion to Dismiss
- [Dupont on Connecticut Civil Practice](#) (2015).  
Chapter 10. Pleadings  
B.7. Dilatory Motions and Requests; Motions to Dismiss  
or Strike and Request to Revise.
- 7 Arnold H. Rutkin and Kathleen A. Hogan, [Connecticut Practice, Family Law and Practice with Forms](#) (2010).  
§ 18.12. Defects in process  
§ 19.11. Other responsive pleadings

Table 4: Badouder v. Abdennur

Badouder v. Abdennur 41 Conn. Sup. 258, 566 A2d 457 (1989)	
(1) personal service upon the defendant was accomplished by trick, fraud or artifice.	<p>"In Connecticut, as in other states, the court will not exercise jurisdiction in a civil case which is based upon service of process on a defendant who has been decoyed, enticed or induced to <b>come within the court's jurisdiction by any false representation, deceitful contrivance or wrongful device for which the plaintiff is responsible . . . .</b> This rule does not, however, when the defendant enters the state on his own, even if the plaintiff and his agents then engage in trickery to make service of process." <i>Ibid.</i>, p. 262.</p>
(2) the plaintiff is not a resident of Connecticut now or when this action was commenced, and therefore has no standing to bring or to maintain this action under C.G.S. § 46b-44	<p>"The plaintiff in the present case sufficiently meets the residency requirement in § 46b-44 (a). This court, therefore, has subject matter <b>jurisdiction.</b>" <i>Ibid.</i>, p. 267</p>
(3) there is pending in the Family Court, Patriarchy of Catholics, in Beirut, Lebanon, a prior claim commenced by the plaintiff claiming similar relief;	<p>"The rule that the pendency of a prior action between the same parties and to the same ends is grounds for dismissal has efficacy only where the actions are pending in the same jurisdiction. The pendency of an action in one state is not a ground for abatement of a later action in another <b>state.</b>" <a href="#">Sauter v. Sauter</a>, 4 Conn. App. 581, 584, 495 A2d 1116 (1985).</p>
(4) the plaintiff failed to file a custody statement as required by General Statutes § 46b-99.	<p>". . . <b>failure</b> to file such a statement is not a jurisdictional defect and there is jurisdiction, at least, for the purposes of a dissolution of the <b>marriage.</b>" <i>Ibid.</i>, p. 261</p>
(5) the plaintiff allegedly violated the clean hands doctrine by her unauthorized removal of the <b>parties' minor children from Lebanon</b> in violation of a court order, by the method she used to serve the complaint on the defendant, and by her misrepresentation as to her residence.	<p>"The clean hands doctrine cannot be raised on a <b>motion to dismiss.</b>" <i>Ibid.</i>, p. 261</p>

# Section 4: Motion to Strike

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic references relating to the motion to strike in a dissolution of marriage or legal separation proceeding in Connecticut

## **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Conn. Practice Book (2017).  
[Chapter 25. Procedure in Family Matters](#)
  - § 25-16. Motion to Strike; In General
  - § 25-17. —Date of Hearing
  - § 25-18. —Reasons
  - § 25-19. —Memorandum of Law
  - § 25-20. —When Memorandum of Decision Required
  - § 25-21. —Substitute Pleading; Judgment
  - § 25-22. —Stricken Pleading Part of Another Cause or Defense

## **FORMS:**

- 2 [Conn. Practice Book](#) (1997).  
Form 106.2. Motion to strike

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Ferri v. Powell-Ferri](#), 317 Conn. 223, 237, 116 A.3d 297 (2015). "Thus, failure by [a defendant] to [strike] any portion of the ... complaint does not prevent [that defendant] from claiming that the [plaintiff] had no cause of action and that [summary judgment was] warranted.... [Indeed], this court repeatedly has recognized that the desire for judicial efficiency inherent in the summary judgment procedure would be frustrated if parties were forced to try a case where there was no real issue to be tried.... [*Larobina v. McDonald*, supra, 274 Conn. at 401–402, 876 A.2d 522]. On the other hand, the use of a motion for summary judgment instead of a motion to strike may be unfair to the nonmoving party because [t]he granting of a defendant's motion for summary judgment puts [a] plaintiff out of court ... [while the] granting of a motion to strike allows [a] plaintiff to replead his or her case.... Id. [at], 401 [876 A.2d 522]; see Practice Book §§ 10–44 and 17–49.... *American Progressive Life & Health Ins. Co. of New York v. Better Benefits, LLC*, supra, 292 Conn. at 120–21, 971 A.2d 17." (Internal quotation marks omitted.)
- [LaBow v. LaBow](#), 69 Conn. App. 760, 764, 796 A.2d 592 (2002). "Ronald LaBow [defendant] filed a motion to strike the petition for failure to state a claim for which relief can be granted, pursuant to Practice Book § 10-39. In ruling on the motion to strike, the court, Moran, J., sua sponte considered whether the court had subject matter jurisdiction over the petition for a new trial. Relying on *Summerville v. Warden*, 229 Conn. 397, 426, 641 A.2d 1356 (1994), the court concluded that the statute of limitations, General Statutes § 52-582, barred the petition for a new trial and that the court therefore lacked subject matter jurisdiction. The court dismissed the petition, and Myrna LaBow appealed."

- [Gibson v. Gibson](#), 34 Conn. App. 139, 140, 640 A.2d 145 (1994). "The plaintiff in this dissolution of marriage action has filed a motion to strike the issue of postjudgment counsel fees from the defendant's brief. The dispositive issue is whether this court's January 27, 1994 dismissal of the defendant's amended appeal, which raised the issue of counsel fees, precludes the defendant from addressing this same issue in his brief on the main appeal."

**WEST KEY  
NUMBERS:**

- *Divorce* #88-108. Pleading.

**TEXTS &  
TREATISES:**

- Louise Truax, ed., [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).  
Chapter 4. Pretrial Pleadings and Discovery  
§ 4.10. Preparing a Motion to Strike
- 2 Renee Bevacqua Bollier and Susan V. Busby, [Stephenson's Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 2002).  
Chapter 20. Family law procedures  
§ 250. Pleadings in dissolution actions  
c. Pleading by defendant
- Jeanine M. Dumont, [Pleadings and Pretrial Practice](#) (1998).  
Chapter X. Motion to Strike
- [Dupont on Connecticut Civil Practice](#) (2016-2017).  
Chapter 10. Pleadings  
B.7. Dilatory Motions and Requests; Motions to Dismiss or Strike and Request to Revise.
- 7 Arnold H. Rutkin and Kathleen A. Hogan, [Connecticut Practice, Family Law and Practice with Forms](#) (2010).  
§ 19.11. Other responsive pleadings

# Section 5: Answer/Cross Complaint

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic sources relating to answers and/or cross complaints in dissolution of marriage proceedings in Connecticut

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017).  
[§ 46b-41](#). Complaint includes cross-complaints or cross actions.  
“Whenever the word ‘complaint’ is used in this chapter or section 46b-1 or 51-348a, it shall include cross-complaints or cross actions where appropriate.”

## **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Conn. Practice Book (2017).  
[Chapter 25. Procedure in Family Matters](#)  
§ 25-9. —Answer, Cross Complaint, Claims for Relief by Defendant  
§ 25-10. —Answer to Cross Complaint

## **FORMS:**

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- Court Forms  
[JD-FM-159](#). Divorce Complaint (Dissolution of Marriage)  
[JD-FM-160](#). Dissolution Answer
- 7 Arnold H. Rutkin and Kathleen A. Hogan, [Connecticut Practice, Family Law and Practice with Forms](#) (2010)  
§ 19.10. Answer and Cross Complaint—Form
- Amy Calvo MacNamara et al., eds., [Library of Connecticut Family Law Forms](#), (2nd. Ed. 2014).  
Chapter 1. Initial Pleadings, Answer and Cross-Complaint  
1-012. Answer and Cross-Complaint – in Avoidance of Premarital Agreement  
1-013. Cross-Complaint – Seeking Enforcement of Premarital Agreement  
1-014. Reply and Special Defenses to Answer and Cross-Complaint and Pleading in Avoidance of Premarital Agreement

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Ferri v. Powell-Ferri](#), 317 Conn. 223, 224, 116 A.3d 297 (2015). “This appeal arises from a dissolution action, dissolving the marriage of the named defendant, Nancy Powell-Ferri, and the defendant, Paul John Ferri, Jr. (Ferri). The dispositive issue in this appeal is whether the trial court properly rendered summary judgment in favor of Ferri on the cross complaint filed by Powell-Ferri on the ground that it failed to plead a legally sufficient cause of action. Specifically, Powell-Ferri’s cross complaint alleged that Ferri had breached his duty to preserve marital assets during the pendency of their marital dissolution action by failing to take any affirmative steps to contest the decanting of certain assets from a trust by the plaintiffs, Michael Ferri and Anthony Medaglia, who were then

serving as trustees. We conclude that this state does not require a party to a dissolution action to take affirmative steps to recover marital assets taken by a third party..."

- [Luster v. Luster](#), 128 Conn. App. 259, 260, 17 A.3d 1068 (2011). "In this issue of first impression, we are called on to determine whether the involuntary conservators of a conserved person can respond to an action for legal separation filed against the conserved person by filing an answer and cross complaint seeking a dissolution of marriage on behalf of the conserved person. We answer that question in the affirmative and, therefore, reverse the judgment of the trial court dismissing this cross complaint."
- [Viveros v. Viveros](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA03-0193290-S (Apr. 8, 2004) (2004 WL 886907). "On December 19, 2003 the plaintiff filed a request for leave to amend complaint. No objection was filed and the amended complaint is deemed filed by consent of the defendant. The amended complaint alleges adultery as the sole ground for dissolution. It is one of the many causes recited in § 46b-40(c), Conn. Gen. Statutes upon a finding that it occurred. In this case the plaintiff has not proven her allegation of adultery occurring prior to the irretrievable breakdown, *Venuti v. Venuti*, 185 Conn. 156, 158, 440 A.2d 878 (1991). The defendant filed a cross complaint alleging that the marriage has broken down irretrievably. The plaintiff filed an answer admitting the allegation. The Court concludes that the marriage had broken down irretrievably by December 2002."
- [Rummel v. Rummel](#), 33 Conn. App. 214, 218-219, 635 A2d 295 (1993) "The parties herein agree that by going forward on this trial without an answer having been filed, the defendant waived any defect regarding jurisdiction over the person that may have existed."
- [LaCroix v. LaCroix](#), 189 Conn. 685, 687-688, 457 A.2d 1076 (1983) "On appeal, the plaintiff's sole claim is that the trial court was without jurisdiction to award alimony or any part of the proceeds of the sale of real property to the defendant on the basis of the cross complaint. He asserts that General Statutes 46b-67 mandates a twenty-day waiting period after the filing of a cross complaint in a dissolution proceeding before any action may be taken on that cross complaint. He therefore claims that the alimony and property awards are void, because those issues were not raised in his complaint and could not be considered under the cross complaint without violating 46b-67. We agree that 46b-67 by its clear language forbids the consideration of a cross complaint until twenty days after it is filed and, therefore, the court could not make awards based on the defendant's cross complaint. We cannot agree, however, that the trial court lacked jurisdiction to make the challenged awards. We find no error."

**ENCYCLOPEDIAS:**

- 24 [Am. Jur. 2d](#) *Divorce and Separation* (2008).  
§§ 238-245. Response or Answer  
§§ 246-249. Cross-Petition, Cross-Complaint, Cross-Bill, or Counterclaim
- 27A [C.J.S.](#) *Divorce* (2016).  
§§ 228-231. Answer  
§§ 232-233. Cross action or Counterclaim

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 7 Arnold H. Rutkin and Kathleen A. Hogan, [Connecticut Practice, Family Law and Practice with Forms](#) (2010).  
Chapter 19. Pleadings  
§ 19.9. Answer, cross-complaint, and claims for relief by defendant  
§ 19.10. Answer and Cross Complaint—Form
- Louise Truax, ed., [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).  
Chapter 3. Dissolution of Marriage and Legal Separation  
§ 3.19. Filing Appearances and Limited Appearances  
§ 3.20. Filing the Answer and Cross-Complaint
- 2 Renee Bevacqua Bollier and Susan V. Busby, [Stephenson's Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 2002).  
Chapter 20. Family law procedures  
§ 247. Domicile and residence in cross-complaints  
§ 250. Pleadings in dissolution actions  
c. Pleading by defendant
- [Dupont on Connecticut Civil Practice](#) (2015-2016).  
Chapter 25. Procedure in Family Matters, General Provisions  
§ 25-9. Answer, Cross Complaint, Claims for Relief by Defendant.



# Section 6: Amendment to Complaint

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic sources relating to amendment of a complaint or cross-complaint

## **DEFINITIONS:**

- **Allowance of amendment:** "Much depends upon the particular circumstances of each case. The factors to be considered include unreasonable delay, fairness to the opposing parties, and negligence of the party offering the amendment." [Antonofsky v. Goldberg](#), 144 Conn. 594, 597, 136 A.2d 338 (1957).

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017).  
[§ 46b-47](#). Waiting period. Effect of decree.

## **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Conn. Practice Book (2017).  
[Chapter 10. Pleadings](#)  
§ 10-59. Amendments; Amendment as of Right by Plaintiff  
§ 10-60. —Amendment by Consent, Order of Judicial Authority, or Failure to Object  
§ 10-61. —Pleading after Amendment  
[Chapter 25. Procedure in Family Matters](#)  
§ 25-2. Complaints for dissolution of marriage or Civil Union, Legal Separation, or Annulment  
§ 25-3. Action for Custody of Minor Child  
§ 25-4. Action for Visitation of Minor child  
**§ 25-7. Pleadings in General; Amendments to Complaint or Application**  
**§ 25-8. —Amendment; New Ground for Dissolution of Marriage or Civil Union**

## **FORMS:**

- Amy Calvo MacNamara et al., eds., [Library of Connecticut Family Law Forms](#), (2nd. Ed. 2014).  
Chapter 1. Initial Pleadings, Answer and Cross-Complaint  
Form 1-006 Request to Amend Complaint  
Form 1-007 Request for Leave to Amend Complaint and to cite in Third Party Defendants

## **CASES:**

- [Viveros v. Viveros](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA03-0193290-S (Apr. 8, 2004) (2004 WL 886907). "On December 19, 2003 the plaintiff filed a request for leave to amend complaint. No objection was filed and the amended complaint is deemed filed by consent of the defendant. The amended complaint alleges adultery as the sole ground for dissolution. It is one of the many causes recited in § 46b-40(c), Conn. Gen. Statutes upon a finding that it occurred. In this case the plaintiff has not proven her allegation of adultery occurring prior to the irretrievable breakdown, *Venuti v. Venuti*, 185

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

Conn. 156, 158, 440 A.2d 878 (1991). The defendant filed a cross complaint alleging that the marriage has broken down irretrievably. The plaintiff filed an answer admitting the allegation. The Court concludes that the marriage had **broken down irretrievably by December 2002.**"

- [Welch v. Welch](#), Superior Court, Judicial District of Tolland at Rockville, No. FA00-0072505-S (May 17, 2002) (2002 WL 1332028). "Here the defendant did not seek leave to amend her cross-complaint until after the trial. The plaintiff objects to the allowance of the amendment because it raises a new cause of action not previously alleged. In exercising its discretion in determining whether the court should allow the amendment, the court is guided by the considerations referred to in *Antonofsky* . . . Lastly, it is not fair to the plaintiff to allow the amendment where he has not been put on notice of it and where its necessity, if any, **is caused by the defendant's own failure to prove the grounds** alleged in her cross-complaint. The request for leave to amend the cross-complaint **is denied.**"
- [Cugini v. Cugini](#), 13 Conn. App. 632, 636, 538 A.2d 1060 (1988). "The defendant also claims an abuse of discretion by the trial court in permitting an amendment to the complaint to allege as an additional ground for dissolution that he had been convicted of an infamous crime. This is one of the grounds upon which dissolution may be sought; General Statutes 46b-40(c)(9); and, in any event, it was not the ground upon which dissolution was granted in this case."
- [Rodearmel v. Rodearmel](#), 173 Conn. 273, 274, 377 A.2d 260 (1977). "On the appeal, the defendant briefed six claims of error. Four of these are addressed to discretionary rulings of the court in granting the plaintiff permission to amend his complaint to add a new claim for **relief, in assigning the defendant's interest in the marital residence to the plaintiff, in not awarding a greater amount of alimony and in not awarding to the defendant additional counsel fees.** We find no error in any of these rulings as to **each of which the trial court has broad discretion.**"
- [Kilpatrick v. Kilpatrick](#), 144 Conn. 738, 739, 131 A2d 645 (1974). "The only other claim advanced by the defendant upon which we wish to comment is that at the time of trial the court permitted the plaintiff to amend her prayers for relief by adding a request for alimony. The record fails to show that the defendant raised at trial any claim of law in this regard. But if it is assumed that he did so, the amendment was within the discretion of the court and we **find nothing to indicate that its discretion was abused.**"
- [Kelsall v. Kelsall](#), 139 Conn. 163, 165, 90 A.2d.878 (1952). "An amendment to a complaint relates back to the institution of the action for some purposes; . . . but when it sets up a new and different cause of action it speaks as of the date when it is filed . . . . To be valid, it must state a

cause of action which exists at that time. A cause of action must arise from a single group of facts . . . . Acts amounting to intolerable cruelty and acts amounting to desertion do not constitute a single group of facts. They are separate and distinct. An amendment to a complaint for divorce on the ground of intolerable cruelty which sets up desertion in a new count is the statement of a new **cause of action.**”

**WEST KEY NUMBERS:**

- Divorce #104. Amended and Supplemental Pleadings.

**ENCYCLOPEDIAS:**

- 27A [C.J.S. Divorce](#) (2016).  
§ 237-240. Amended and Supplemental Pleadings
- 24 [Am. Jur. 2d Divorce and Separation](#) (2008).  
§ 234-237. Amendment; Supplemental Pleadings

**DIGESTS:**

- [West’s Connecticut Digest: Divorce, IV. Proceedings, \(I\) Pleading. 104. Amended and supplemental pleadings.](#)

**TEXTS & TREATISES:**

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- Louise Truax, ed., [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).  
Chapter 3. Dissolution of Marriage and Legal Separation  
§ 3.21. Amending the Complaint or Cross Complaint
- Jeanine M. Dumont, [Pleadings and Pretrial Practice](#) (1998).  
Chapter VII. Amendments to Pleadings
- [Dupont on Connecticut Civil Practice](#) (2016-2017).  
Chapter 25. Procedure in Family Matters, General Provisions  
§ 25-8. Amendment; new Ground For Dissolution of Marriage or Civil Union.
- 7 Arnold H. Rutkin and Kathleen A. Hogan, [Connecticut Practice, Family Law and Practice with Forms](#) (2010).  
§ 19.13. Amendment of Pleadings

# Section 7: Request for Conciliation

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to attempts for reconciliation in action for dissolution of marriage, legal separation or annulment.

## **DEFINITIONS:**

- **Conciliation:** "On or after the return day of a complaint seeking the dissolution of a marriage or a legal separation and prior to the expiration of the ninety-day period specified in section 46b-67 either spouse or the counsel for any minor children of the marriage may submit a request for conciliation to the clerk of the court." Conn. Gen. Stats. [§ 46b-53\(a\)](#) (2017).
- **Conciliator:** "The clerk shall forthwith enter an order that the parties meet with a conciliator mutually acceptable to them or, if the parties cannot agree as to a conciliator, with a conciliator named by the court. The conciliator shall, in any case, be a clergyman, a physician, a domestic relations officer or a person experienced in marriage counseling." Conn. Gen. Stats. [§ 46b-53 \(a\)](#) (2017).
- **Mandatory consultations:** (b) "Within such ninety-day period or within thirty days of the request, whichever is later, there shall be two mandatory consultations with the conciliator by each party to explore the possibility of reconciliation or of resolving the emotional problems which might lead to continuing conflicts following the dissolution of the marriage . . . . Further consultations may be held with the consent of both parties, or, if the conciliator recommends one or more additional consultations and either one of the parties agrees, the court may order such additional consultations." Conn. Gen. Stats. [§ 46b-53 \(b\)](#) (2017).
- **Failure to attend:** "Failure of the plaintiff or defendant to attend these consultations except for good cause shall preclude further action on the complaint until the expiration of six months from the date of the return day; provided the court may order the termination of such stay, upon the motion of either party and for good cause shown." Conn. Gen. Stats. [§ 46b-53 \(b\)](#) (2017).
- **Privileged communication:** "All communications during these consultations shall be absolutely privileged, except that the conciliator shall report to the court whether or not the parties attended the consultations." Conn. Gen. Stats. [§ 46b-53 \(c\)](#) (2017).
- **Fees:** "The reasonable fees of the conciliator shall be paid by one or both of the parties as the court directs. No fee shall be charged by a domestic relations officer for such services."

If the parties are unable to pay the fees which may be charged by the conciliator, only a domestic relations officer may be named as the conciliator." Conn. Gen. Stats. [§ 46b-53](#) (d) (2017).

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)  
[§ 46b-10](#). Attempt at reconciliation in action for dissolution of marriage, legal separation or annulment.  
[§ 46b-53](#). Conciliation procedures; privileged communication  
*See definitions above for text of statute*

### **FORMS:**

- Thomas D. Colin, Editor, [Library of Connecticut Family Law Forms](#), (2008).  
Forms 4-012 – 4-014
- Mary Ellen Wynn and Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).  
Request for Conciliation, Form VI-D-1, p. 118.
- 1 [Family Law Practice in Connecticut](#) (1996).  
§ 5.81. Form- Request for Reconciliation, p. 5-69

### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Weinberg v. Weinberg](#), 89 Conn. App. 649, 653, 874 A.2d 321 (2005). "The court did not abuse its discretion by denying the defendant's oral motion for conciliation. The statute under which the defendant sought conciliation does not mandate that the court order conciliation on request. Rather, it provides that a court may order conciliation. General Statutes § 46b-10. The court heard ample testimony from the plaintiff that the marriage had broken down irretrievably, and the court was, therefore, within its discretion to find that the marriage had broken down irretrievably."
- [Cabrera v. Cabrera](#), 23 Conn. App. 330, 338, 580 A.2d 1227 (1990). "The public policy underlying this statute in general and the latter provision in particular must, in part, have been intended to encourage marital reconciliation by providing a safe, confidential setting in which problems as well as possible solutions could be explored fully and honestly."
- [Emerick v. Emerick](#), 5 Conn. App. 649, 657-658, 502 A.2d 933 (1985). "A conciliator is, by statutory definition, a clergyman, a physician, a domestic relations officer or a person experienced in marriage counseling. General Statutes 46b-53(a)."

**TEXTS &  
TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 7 Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice with Forms](#) (3d ed. 2010).  
§ 20.7. Requests for conciliation
- Louise Truax, ed., LexisNexis [Practice Guide: Connecticut Family Law](#) (2017)  
§ 3.31 CHECKLIST: Providing for Conciliation  
§ 3.32 Assessing Conciliation Procedures
- 1 [Family Law Practice in Connecticut](#) (1996).  
§ 5.80. Conciliation
- Mary Ellen Wynn and Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).  
Conciliation: Notes & Comments, p. 117.

# Section 8: Request for New Trial

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to request for new trial

## **TREATED ELSEWHERE:**

- [Motion for Articulation](#) ~ [Motion for Review](#)
- [Motion for Clarification](#)
- [Motion to Reargue](#)

## **DEFINITIONS:**

- **Petition for a New Trial:** "The Superior Court may grant a new trial of any action that may come before it, for misleading, the discovery of new evidence or want of actual notice of the action to any defendant or of a reasonable opportunity to appear and defend, when a just defense in whole or part existed, or the want of actual notice to any plaintiff of the entry of a nonsuit for failure to appear at trial or dismissal for failure to prosecute with reasonable diligence, or for other reasonable cause, according to the usual rules in such cases. The judges of the Superior Court may in addition provide by rule for the granting of new trials upon prompt request in cases where the parties or their counsel have not adequately protected their rights during **the original trial of an action.**" Conn. Gen. Stats. [§ 52-270\(a\)](#) (2017).
- **Motion for New Trial:** "Motions. . . for new trials, unless brought by petition served on the adverse party or parties, and motions pursuant to General Statutes 52-225a for reduction of the verdict due to collateral source payments must be filed with the clerk within ten days after the day the verdict is accepted; provided that for good cause the judicial authority may extend this time. The clerk shall notify the trial judge of such filing. Such motions shall state the specific **grounds upon which counsel relies.**" Conn. Practice Book [§ 16-35](#) (2017).
- **Motion vs. Petition:** "So far as the right of appeal is concerned, there is a distinction between an order granting a **motion for a new trial** and a judgment entered upon a **petition for a new trial**, which may be instituted at any time within three years after a judgment is rendered . . . . **The latter is appealable.**" [Hoberman v. Lake of Isles, Inc.](#), 138 Conn. 573, 576, 87 A.2d 137 (1952). [Emphasis added].

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)  
Chapter 903. New trials and writs of error  
[§ 52-270](#). Causes for which new trials may be granted

## **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

## **FORMS:**

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

## **COURT CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- Connecticut Practice Book (2017)  
Chapter 16. Jury Trials  
[§ 16-35](#). Motions after Verdict: Motions in Arrest of Judgment, to Set Aside Verdict, for Additur or Remittitur, for **New Trial**, or for Collateral Source Reduction [Emphasis added.]
- 3 [Connecticut Practice Book Civil Practice Forms](#) (4<sup>th</sup> ed., 2004).  
Form 604.14. Complaint for New Trial
- 1A Hon. Douglass B. Wright, [Connecticut Legal Forms](#) (1983).  
602.20. Petition for new trial  
602.27. Motion for New Trial
- [Baker v. Whitnum-Baker](#), 161 Conn. App. 227, 230, 127 A. 3d 330 (2015), cert denied 321 Conn. 922 (2016). "A petition will never be granted except upon substantial grounds. It does not furnish a substitute for, or an alternative to, an ordinary appeal but applies only when no other remedy is adequate and when in equity and good conscience relief against a judgment should be granted.... In considering a petition, trial judges must give first consideration to the proposition that there must be an end to litigation." (Internal quotation marks omitted.) [Murphy v. Zoning Board of Appeals](#), 86 Conn.App. 147, 152, 860 A.2d 764 (2004), cert. denied, 273 Conn. 910, 870 A.2d 1080 (2005)."
- [Marshall v. Marshall](#), 119 Conn. App. 120, 988 A. 2d 314 (2010). "The plaintiff does not contend that the defendant cannot satisfy the reasonable cause test for a new trial on the basis of the underlying facts. Instead, she maintains that the petition itself is technically deficient in that it fails to set forth adequately the claim that a new trial is warranted for 'other reasonable cause.' Consequently, the defendant's petition for a new trial, according to the plaintiff, fails to state a cause of action on which relief can be granted. . . .  
  
"Upon our careful examination of the petition, construing it in the light most favorable to the defendant, we conclude that a claim for a new trial on the basis of 'other reasonable cause' was sufficiently pleaded."
- [Bleidner v. Searles](#), 19 Conn. App. 76, 78, 561 A.2d 954 (1989). "A petition for a new trial is a statutory remedy that is essentially equitable in nature. *State v. Grimes*, 154 Conn. 314, 325, 228 A.2d 141 (1966). General Statutes 52-270 sets forth the limited circumstances in which a new trial will be granted. The petitioner has the burden of proving by a preponderance of the evidence that he is entitled to a new trial on the grounds claimed. *Johnson v. Henry*, 38 Conn.



Sup. 718, 719-20, 461 A.2d 1001, cert. denied, 464 U.S. 1011, 104 S.Ct. 533, 78 L.Ed.2d 714 (1983). The petition is addressed to the sound discretion of the trial court. *Rizzo v. Pack*, 15 Conn. App. 312, 315, 544 A.2d 252 (1988).”

- [Burr v. Lichtenheim](#), 190 Conn. 351, 355, 460 A.2d 1290 (1983). “Any motion for a new trial is addressed to the sound discretion of the trial court and will not be granted **except on substantial grounds.**”
- [Corbin v. Corbin](#), 179 Conn. 622, 626, 427 A.2d 432 (1980). “Whether the plaintiff’s motion is treated as a motion to open judgment or as a petition for a new trial is immaterial. The granting or denial of such motions rests in the sound discretion of the trial court, reviewable only in the case of abuse . . . . One of the essential requirements for the granting of either motion is that the evidence which the party seeks to offer could not have been known and with reasonable diligence produced at trial . . . . Since it is undisputed that the evidence the plaintiff sought to introduce was known to him at the time of the trial, the court did not err in denying the plaintiff’s motion.”
- [Pass v. Pass](#), 152 Conn. 508, 511-512, 208 A.2d 753 (1965). “The rules for granting a new trial on the ground of newly discovered evidence are well established. The evidence must, in fact, be newly discovered, material to the issue on a new trial, such that it could not have been discovered and produced on the former trial by the exercise of due diligence, not merely cumulative and likely to produce a different result.”
- [Jaser v. Jaser](#), 37 Conn. App. 194, 198 fn.3, 655 A.2d 790 (1955). “We understand and appreciate the reasons which might conflict with a rule mandating that minor children be represented at every stage of the proceedings in every matrimonial case. Matrimonial actions, although brought to a public arena because of the inability of persons to resolve their conflicts, are extraordinarily private in nature and **should continue to be so viewed.**”
- [Miner v. Miner](#), 137 Conn. 642, 645-646, 80 A.2d 512 (1951). “One of the burdens assumed by a petitioner for a new trial is that of proving the substance of the new evidence proposed to be offered. No such proof was furnished. The situation was similar to that in *Luth v. Butwill*, 119 Conn. 697, 176 A. 552, where we said (p. 698): ‘When the motion came on for hearing, no witnesses were produced and the case was argued upon the allegations of the motion. The production of witnesses in support of the newly discovered evidence was necessary unless their testimony was formally admitted. . . . Under these circumstances there was no basis upon which the trial court could properly make a finding. No issue of law was made as to the sufficiency of

the allegations and the record affords no basis upon which we can review the denial of the motion.’ When the adverse party elects to file a demurrer, the allegations of the petition are admitted for the purpose of ruling on the demurrer. *Krooner v. State*, 137 Conn. 58, 62, 75 A.2d 51. No such procedure was adopted in the case at bar.”

**WEST KEY NUMBERS:**

- West Key Numbers: Divorce # 151. New Trial

**ENCYCLOPEDIAS:**

- 58 [Am. Jur. 2d. New Trial](#) (2012).
  - §§ 7-12. Power to order
  - §§ 13-36. Right to new trial
  - §§ 37-321. Grounds for granting new trial
  - §§ 322-352. Procedure
  - §§ 353-398. Hearing and determination of application
  - §§ 399-411. Conditions to granting or denying of new trial
  - §§ 412-415. Proceedings at new trial
- 27A [C.J.S. Divorce](#) (2016).
  - §§ 341-344. New Trial or Hearing
- 66 [C. J.S. New Trial](#) (2009).
  - §§ 1-38. In general
  - §§ 39-180. Grounds
  - §§ 183-326. Proceedings to procure new trial
  - §§ 327-333. Proceedings at new trial

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 8A Arnold H. Rutkin et al. [Connecticut Practice Series, Family Law and Practice with Forms](#) (3d ed. 2010).
  - Chapter 52. Post-Judgment Motions
    - § 52.12 Request for new trial
- Wesley Horton, et al. [1 Connecticut Superior Court Civil Rules, Authors’ Comments following § 16-35](#) (2016-2017).
- 2 [Family Law Practice in Connecticut](#) (1996).
  - Chapter 15 by Ronald T. Scott
    - III. Request for new trial
      - [15.6]. General
      - [15.7] Time for filing
      - [15.8] Grounds for a new trial
- 6 Robert B. Yules, [Connecticut Practice Series. Connecticut Trial Practice](#) (2d ed. 2000).
  - Chapter 11. Verdict and motions after verdict
    - § 11.33. Motion for New Trial
    - § 11.34. Motion for New Trial—Mispleading
    - § 11.35. Motion for New Trial—Want of Notice or Opportunity to Defend
    - § 11.36. Motion for New Trial—Newly Discovered Evidence

§ 11.37. Motion for New Trial—Other Reasonable Cause

§ 11.38. Motion for New Trial—Procedure

Figure 1: Complaint for New Trial (Form)

_____	Superior Court
_____	Judicial District of _____
(First Named Plaintiff)	at _____
v.	
_____	_____
(First Named Defendant)	(Date)

Complaint for New Trial

1. The defendant brought an action against the plaintiff for breach of contract to this court, in which action a trial was thereafter had to the jury, upon issue joined on the answer of this plaintiff, and a verdict was rendered against this plaintiff for \$ damages, which verdict was accepted by the court, and judgment rendered thereon on
2. At the trial it became and was a material question whether ***(here state the particular point in dispute to which the newly discovered evidence relates)***.
3. Exhibit A, annexed, is a correct statement of all the evidence relevant to the issue produced by the defendant at the trial.
4. Exhibit B, annexed, is a correct statement of all the evidence relevant to the issue produced by this plaintiff at the trial.
5. Since the trial, this plaintiff has discovered material evidence in his favor, which evidence he failed to discover, and was unable to discover, before or during the trial, although he used all reasonable diligence in endeavoring to find testimony in his favor.
6. Said newly discovered evidence is the following, to wit:  
***(set out the names and residences of witnesses, and the substance of what they will testify; also any newly discovered documentary evidence)***.
7. The verdict and judgment against the plaintiff are unjust.

The plaintiff claims, that the former verdict and judgment be set aside, and that he be allowed a new trial of the cause.

(P.B. 1963, Form 398; see Conn. Gen. Stat., [§ 52-270.](#))