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2009 Edition

Intent to Argue

A Guide to Resources in the Law Library

Procedure in Civil Matters

Practice Book § 11-18 — Notice of Intent to Argue:

(a) Oral argument is at the discretion of the judicial authority except as to motions to dismiss, motions to strike, motions for summary judgment, motions for judgment of foreclosure, and motions for judgment on the report of an attorney trial referee and/or hearing on any objections thereto. For those motions, oral argument shall be a matter of right, provided:

(1) the motion has been marked ready for adjudication in accordance with the procedure indicated in the notice that accompanies the short calendar on which the motion appears, and

(2) the movant indicates at the bottom of the first page of the motion or on a reclaim slip that oral argument or testimony is desired or

(3) a nonmoving party files and serves on all other parties pursuant to Sections 10-12 through 10-17, with proof of service endorsed thereon, a written notice stating the party's intention to argue the motion or present testimony. Such a notice shall be filed on or before the third day before the date of the short calendar date and shall contain (A) the name of the party filing the motion and (B) the date of the short calendar on which the matter appears.

(b) As to any motion for which oral argument is of right and as to any other motion for which the judicial authority grants or, in its own discretion, requires argument or testimony, the date for argument or testimony shall be set by the judge to whom the motion is assigned.

(c) If a case has been designated for argument as of right or by the judicial authority but a date for argument or testimony has not been set within thirty days of the date the motion was marked ready, the movant may reclaim the motion.

(d) Failure to appear and present argument on the date set by the judicial authority shall constitute a waiver of the right to argue unless the judicial authority orders otherwise.

(e) Notwithstanding the above, all motions to withdraw appearance, except those under Section 3-9(b), and any other motions designated by the chief court administrator in the civil short calendar standing order shall be set down for oral argument.

(P.B. 1978-1997, Sec. 211.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 29, 2007, to take effect Jan. 1, 2008.)

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Section 1

Notice of Intent to Argue

A Guide to Resources in the Law Library

SCOPE

- Bibliographic resources relating to Notice of Intent to Argue including related short calendar procedures.

DEFINITIONS

- "Oral argument is at the discretion of the judicial authority except as to motions to dismiss, motions to strike, motions for summary judgment, motions for judgment of foreclosure, and motions for judgment on the report of an attorney trial referee and/or hearing on any objections thereto. For those motions, oral argument shall be a matter of right…" CONN. PRACTICE BOOK § 11-18(a) (2004).

- "The substitute plaintiff argues in his reply brief that oral argument was available as a matter of right without meeting the procedure set forth in Practice Book § 11-18(a). That simply is inaccurate. Practice Book § 11-18(a) provides that oral argument shall be a matter of right *only* if the motion has been marked ready and the movant indicates at the bottom of the first page that oral argument is desired." *Bojila v. Shramko*, 80 Conn. App. 508, 518, 758 A.2d 906 (2003).

COURT RULES

- Connecticut Practice Book (2009)
  - § 11-18. Oral Argument of Motions in Civil Matters

STANDING ORDERS

- Superior Court Standing Orders
  - *Notice to Attorneys Regarding Civil Short Calendar (2/28/09)*
  - *Notice Regarding Arguable Civil Short Calendar Matters (2/28/09)*
  - *Notice Regarding Family Short Calendar (2/28/09)*

FORMS

- 3A Connecticut Practice Series, *Civil Practice Forms* (4th ed.).
  - Form S-170 – Request for Oral Argument
  - Form S-163 – Claim/Reclaim for Short Calendar (JD-CL-6)

- Kimberly A. Peterson, *Civil Litigation: Connecticut, Massachusetts, New Jersey, New York, & Rhode Island* (1999).
  - Example 7-1. Connecticut, Notice of Intent to Argue, p. 147.

- Kimberly A. Peterson, *Civil Litigation in Connecticut: Anatomy of a Lawsuit* (1998).

- *Chapter 8. Pleadings: an Overview*
  - Example 1, Notice of Intent to Argue, p. 86.

- Ralph P. Dupont, *Dupont On Connecticut Civil Procedure* (2008-2009 ed.).
  - Form 11-18. Notice of Intent to Argue, p. 11-36.

WEST KEY NUMBERS

- Trial # 12. Short-cause calendars.

COURT CASES

- Vertex v. Waterbury, 278 Conn. 557, 898 A.2d 178 (2006). "First, as noted previously herein, the trial court in its memorandum of decision acknowledged that no motion to strike or motion for summary judgment had been filed. The pretrial briefs that led to the dismissal of two counts of the complaint were filed on the trial judge's order and not at the initiative of either party. Second, the record does not demonstrate that the plaintiff knowingly waived the applicable procedures under the rules of practice for dispositive motions. . . .Finally, the record does not reveal that the plaintiff had a fair opportunity to respond to the potential dismissal of claims because it lacked notice that the trial court intended to use the parties' pretrial briefs to rule on the legal sufficiency of its claims."

- Curry v. Goodman, 95 Conn. App. 147, 895 A.2d 266 (2006). "We conclude that, in this instance, the parties had a right to oral argument on the motion for summary judgment. . . . Here, the defendant requested oral argument on its motion for summary judgment and, although the matter initially had appeared on the short calendar, both counsel initially agreed that the matter should be marked 'off,' and it was only later reclaimed for oral argument when the court did not respond to the plaintiff's preliminary objection to the motion. Additionally, once the matter had been reclaimed by the defendant for oral argument on October 7 and again on November 17, 2004, it does not appear that either party actually marked the matter ready for adjudication on either date. Although it was not the responsibility of the court to schedule a hearing on the defendant's motion absent the filing of a request for adjudication, in this instance we believe that the court either should have notified counsel that it did not intend to respond in piecemeal fashion to counsel's preliminary objection or taken no action on the motion for summary judgment until such time as the parties, in fact, marked the motion for summary judgment ready for adjudication. Although the court's action likely was induced by counsel, its effect was to deny the parties their right to oral argument on the defendant's motion for summary judgment."

- Haggerty v. Williams, 84 Conn. App. 675, 855 A.2d 264 (2004). "The defendant's second argument fails because the defendant did in fact present oral argument to the court on her succeeding motion to open. Although the defendant argues that she should have been able to argue before Judge Celotto instead of Judge DeMayo, there is no such rule in Connecticut. The defendant had her day in court to argue her motion to open and, accordingly,

that claim must fail."

- Davis v. Westport, 61 Conn. App. 834, 839-840, 767 A.2d 1237 (2001). "Therefore, we concluded that 'even if [Practice Book (1999) § 19-16] grants . . . oral argument as of right, it is not automatic but must be claimed for argument as provided in [Practice Book (1999) § 11-18]. . . .Aside from the plain meaning of the words of those sections, which do not grant oral argument as of right . . . judicial economy and practicality require a common sense reading of both sections.' Paulus v. LaSala, [56 Conn. App. 139, 146, 742 A.2d 379 (1999), cert. denied, 252 Conn. 928, 746 A.2d 789 (2000)]."

- Dietzel v. Redding, 60 Conn. App. 153, 166, 758 A.2d 906 (2000). "We note, parenthetically, that the Oppenheimers had requested oral argument on the motion to intervene. Pursuant to Practice Book § 11-18, however, oral argument is at the discretion of the trial court for that type of motion, and, therefore, the court was not obligated to provide them with an opportunity for oral argument."

TEXTS & TREATISES:

- 1 Wesley W. Horton And Kimberly A. Knox, Connecticut Practice Series, *Practice Book Annotated* (2009).
  - Chapter 11. Motions, requests, orders of notice
    - Authors' comments following § 11-18

- 18 Erin Carlson, Connecticut Practice Series, *Summary Judgment & Related Termination Motions* (2009).
  - § 3:39. Procedural considerations—Oral argument
  - § 3:95. Procedural considerations—Oral argument

- Kimberly A. Peterson, *Civil Litigation: Connecticut, Massachusetts, New Jersey, New York, & Rhode Island* (1999).
  Chapter 7. The pretrial stage: motions and objections
  - State summaries
    - Motion practice in Connecticut
      1. Motions and pleadings
         - D. Oral arguments as a right: Pbs 11-18
         - E. When oral argument is not requested
         - F. When an opposing party wants oral argument
         - G. Deadline for file Notice of Intent to Argue
         - H. Oral argument for other motions or objections

- Kimberly A. Peterson, *Civil Litigation in Connecticut: Anatomy of a Lawsuit* (1998).
  Chapter 8. Pleadings: an Overview
    - VI. How pleadings are decided: Short Calendar
      - E. When opposing party wants oral argument

- Ralph P. Dupont, Dupont on Connecticut Civil Procedure (2008-2009).

- Chapter 11. Motions, requests, [applications] orders of notice and short calendar
  - § 11-18.1 Requesting oral argument; testimony

COMPILER: Christopher Roy, Connecticut Judicial Branch Law Library at New Britain, 20 Franklin Square, New Britain, CT 06051. (860) 515-5110. Email: christopher.roy@jud.ct.gov.

** Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.*

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Table 1 — Unpublished Connecticut Cases: Notice of Intent to Argue (see next page)

Table 1: Unpublished Connecticut Cases Notice of Intent to Argue, Practice Book § 11-18	
Applicable to Family Cases	Marshall v. Marshall, No. FST FA 00 0176688 S45 (Conn Super. Ct., J.D. of Stamford-Norwalk at Stamford, May 6, 2008), Conn. L. Rptr. 440, 2008 WL 2169011 (Conn. Super. 2008). “The plaintiff also asserts that she had the right to argument on the motion for protective order. She argues that because P. B. § 11-18 is not referenced in P.B. § 25-23 it does not apply to family matters and therefore plaintiff had a right to argument ‘as of right.’ P.B. § 25-23 lists certain civil practice book sections that are incorporated in the family rules. This court does not find that listing exclusive. If only those rules referenced in P.B. § 25-23 apply to family matters, then plaintiff's instant motion to reargue pursuant to P.B. § 11-12 would not be permitted and, hence, not be here ruled on.”
Improperly Filed Motion	Patterson v. Mine Saf. App., No. HHD X04 CV-04-4034666 S (Complex Litigation Docket at Hartford, May 7, 2008), 45 Conn. L. Rptr. 462 (Conn. Super. 2008). “The plaintiffs' motion to strike is not addressed to a pleading. Accordingly, it is denied. Under these circumstances, where the plaintiffs improperly filed a motion to strike, they were not entitled to oral argument as of right. See Practice Book § 11-18(a).”
Nonappearance by Defense Counsel	Nadeau v. Tracy, No. CV 02-0282226S (Conn. Super. Ct., New Haven at Meriden, Dec. 2, 2003), 2003 WL 22905182 (Conn. Super. 2003). “Pursuant to Practice Book § 11-18(d), the court treated nonappearance by defense counsel at the hearing as a waiver of the defendants' right to argue, heard argument from plaintiff, and then denied the motion to strike for the reason stated below.”
Nonappearance by Both Counsel	Nair v. Belcher, No. CV 01 0163122 (Conn. Super. Ct., Waterbury, Dec. 10, 2001), 2001 WL 1681964 (Conn. Super. 2001). “The court had set the matter down for oral argument not only because argument was initially requested by the plaintiff, but also because the court determined, pursuant to Conn. P.B. § 11-18, that oral argument would be of assistance to the court in deciding the motion. In light of the failure of counsel for both the plaintiffs and the defendants to appear as ordered, the court declines to issue a ruling on the Motion to Strike (#110) at this time.”
Notice of Intent to Argue Without Explanation of Why Argument Is Necessary (For Class of Motions Not as of Right)	Matos v. B-Right Trucking Co., (Conn. Super. Ct., Fairfield at Bridgeport, January 9, 1996), 15 Conn. L. Rptr. 650, 1996 WL 38247 (Conn. Super. 1996). “The motion to reargue is denied. Under Practice Book § 211(A) [now 11-18], as amended effective October 1, 1995, oral argument on such motions is within the discretion of the court. When the defendant filed its Notice of Intent to Argue, it did not explain why oral argument was necessary nor did it explain why the defendant should prevail. Section 211 was amended to facilitate the resolution of short calendar motions. Clearly, the two motions decided by the court were ones which could be decided without oral argument. Whenever a litigant files a motion of the class for which oral argument does not exist as of right, the opposing party must do something more than merely file a notice of intent to argue. Otherwise, the amendment to § 211 will have had no effect whatsoever.”