Pleadings and Motion Practice in Family Matters
A Guide to Resources in the Law Library

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These guides are provided with the understanding that they represent only a beginning to research. It is the responsibility of the person doing legal research to come to his or her own conclusions about the authoritativeness, reliability, validity, and currency of any resource cited in this research guide.

View our other research guides at https://jud.ct.gov/lawlib/selfguides.htm

This guide links to advance release slip opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar. The online versions are for informational purposes only.

Connecticut Judicial Branch Website Policies and Disclaimers
https://www.jud.ct.gov/policies.htm
• **Order of Pleadings:** “The order of pleadings shall be:
  - the plaintiff’s complaint;
  - the defendant’s motion to dismiss the complaint;
  - the defendant’s motion to strike the complaint or claims for relief;
  - the defendant’s answer, cross complaint and claims for relief;
  - the plaintiff’s motion to strike the defendant’s answer, cross complaint, or claims for relief;

• **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 (2018).

• **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 (2018).

• **Connecticut Judicial Branch Family Court Forms:**

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<td>Divorce without an Agreement</td>
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<td>Filing for a Divorce with Children</td>
<td>File for a Motion for Contempt</td>
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<td>Filing for a Divorce without Children</td>
<td>File for a Restraining Order</td>
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Section 1: Complaint

A Guide to Resources in the Law Library

**SCOPE:**
Bibligraphic sources relating to complaints for dissolution of marriage in Connecticut.

**SEE ALSO:**
- Dissolution of Marriages in Connecticut
- Child Custody in Connecticut
- Child Visitation in Connecticut

**DEFINITION:**
- “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).
- “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, 838 (1975).

**STATUTES:**
  - § 46b-40. Grounds for dissolution of marriage; legal separation, annulment.
  - § 46b-41. Complaint includes cross-complaints or cross actions.
  - § 46b-44. Residency requirement.
  - § 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.

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.
§ 46b-48. Dissolution of marriage or annulment upon conviction of crime against chastity; procedure.

Chapter 896. Civil Process, Service, and Time for Return

§ 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.

COURT RULES:

  - Chapter 8. Commencement of Action
    § 8-1. Process
    § 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

COURT FORMS:

- 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

FORMS:

  Form 504.1. Complaint for dissolution of marriage or legal separation

  Chapter 19. Pleadings
  § 19:5. Complaint—Form

  Form II-A-2. Complaint, p. 6
  - Form 1-004. Complaint
  - Form 1-011. Complaint-Seeking enforcement of premarital agreement

**CASES:**


**WEST KEY NUMBERS:**

- Divorce
  88-95. Pleading.

**ENCYCLOPEDIAS:**

  - I. Divorce and Separation Proceedings
    - Practice and Procedure in Divorce Actions
      §§ 216-237. Petition or complaint

  - IV. Proceedings, Trial, and Judgment
    §§ 152-163. Domicile or residence of parties
    §§ 215-227. Pleading

**TEXTS & TREATISES:**

  - Authors’ Comments for Form 504.1
  - Chapter 19. Pleadings
    - § 19:3. Complaint—Generally
    - § 19:4. —Prayer for relief
    - § 19:5. —Form
    - § 19:6. Complaint and summons—Official form
Authors’ Comments for § 25-2

  § 25-2. Complaints for dissolution of marriage or civil union, legal separation, or annulment

  II. Pleadings
  Complaint: Notes & Comments, p. 3

  Chapter 3. Dissolution of Marriage and Legal Separation
  Part III. Preparing the Complaint and Cross Complaint
  § 3.16. CHECKLIST: Preparing the complaint and cross complaint
  § 3.17. Preparing the complaint

  Chapter 20. Family Law Procedures
  § 250. Pleadings in dissolution actions
  b. The complaint

**LAW REVIEWS:**


Section 2: Motions and Requests (Overview)

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

DEFINITION:

- **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 (2018).

- **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 (2018).

- **Order of Pleadings**: “The order of pleadings shall be: the plaintiff’s complaint; the defendant’s motion to dismiss the complaint; the defendant’s motion to strike the complaint or claims for relief; the defendant’s answer, cross complaint and claims for relief; the plaintiff’s motion to strike the defendant’s answer, cross complaint, or claims for relief; the plaintiff’s answer.” Conn. Practice Book §25-11 (2018).

- "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 (2018).

- “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) (2018).

- “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, 352, 999 A.2d 713, 718 (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, 1284 (1982).
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.

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.

  - Chapter 11. Motions, Requests, Orders of Notice, and Short Calendar

- Family Law Forms (Full List)

  - Forms 501.1-508.2. Family Relations

  - Chapter 20. Pretrial Procedures and Preparation


  - Chapter 5. Motions

- Rosenfeld v. Rosenfeld, 115 Conn. App. 570, 577-578, 974 A. 2d 40, 44 (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, 698-699, 941 A. 2d 301, 308 (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, 799 (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.”

- **Ahneman v. Ahneman**, 243 Conn. 471, 484, 706 A.2d 960, 966 (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 . . .”

**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.

  - Chapter 20. Pretrial Procedures and Preparation

    - §§ 25-23-25-25. Motion Practice in Family Matters

  - Chapter 4. Pretrial Pleadings and Discovery
### Table 1: Default in Family Matters

<table>
<thead>
<tr>
<th>Failure to File an Appearance</th>
<th>“If, in any case involving a dissolution of marriage or civil union, legal separation, or annulment, the defendant has <strong>not filed an appearance by the case management date</strong>, the plaintiff may proceed to judgment on the case management date without further notice to such defendant. <strong>Section 17-20 concerning motions for default shall not apply</strong> to such cases.” Conn. Practice Book § 25-51(a) (2018). [Emphasis added.]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to Appear for Scheduled Disposition</td>
<td>“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.” Conn. Practice Book § 25-51(b) (2018).</td>
</tr>
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</table>
Table 2: Motion for Exclusive Possession of Home

<table>
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<th>Statute:</th>
<th>“...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. Stat. § 46b-83(a) (2017).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court Rule:</td>
<td>“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 § 25-25 (2018).</td>
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| Forms: | • **JD-FM-176**. Motion for Orders Before Judgment (Pendente Lite) in Family Cases (rev. 6/12)  
  Form 5-034. Motion for exclusive possession  
  Form 504.1-M. Motion to vacate premises  
  Form VI-E-1. Motion for exclusive possession, p. 120 |
  Chapter 25. Jurisdiction for Distribution of Property; Temporary Orders  
  § 25:7. Temporary use of the marital home  
  VI. Pendente Lite Motions  
  Exclusive Possession of the Family Home: Notes and Comments, p. 119  
  Chapter 4. Pretrial Pleadings and Discovery  
  Part III. Preparing Specific Pleadings  
  § 4.12. Filing a motion for exclusive possession  
  Chapter 2. Motion Practice for Temporary Orders  
  § 2.5.2 Motion for Exclusive Possession |

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

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Library of Connecticut Family Law Forms 2d is available at each Connecticut Judicial Branch Law Library.

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<td>5-016. Motion for Permission to Relocate</td>
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<td>5-017. Motion to Appoint Guardian Ad Litem for the Minor Child/Children</td>
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<td>5-018. Motion for Appointment of Attorney for Minor Child/Children</td>
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<td>5-019. Motion for Psychological Evaluation</td>
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<td>5-025. Motion for Order Re: Co-Parenting Counseling and/or Co-Parenting Coordinator</td>
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<td>5-047. Motion for Hearing Under <em>State v. Porter</em></td>
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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:

- **Grounds:** "The motion to dismiss shall be used to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process and (4) insufficiency of service of process." Conn. Practice Book § 25-13(a) (2018).

- "When a motion to dismiss is filed questioning subject matter jurisdiction it must be disposed of before there can be other proceedings . . . Jurisdiction must exist in three particulars: the subject matter of the case, the parties, and the process" Babouder v. Abdennur, 41 Conn. Supp. 258, 259, 566 A.2d 457, 458 (1989).

- "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." Babouder v. Abdennur, 41 Conn. Supp. 258, 263, 566 A.2d 457, 459 (1989).

COURT RULES:

    - § 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:

  - Form 5-001. Motion to dismiss

  - Form 106.1. Motion to dismiss

CASES:

- Zitkene v. Zitkus, 140 Conn. App. 856, 870, 60 A. 3d 322, 330 (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, 96-97 (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 A2d 797 (1999).”

- **Luster v. Luster**, 128 Conn. App. 259, 265, 17 A.3d 1068, 1074 (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, 193 (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, 218-219, 635 A.2d 295, 298 (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.”

**WEST KEY NUMBERS:**

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

**ENCYCLOPEDIAS:**

  - I. Divorce and Separation Proceedings
    - Practice and Procedure in Divorce Actions
      - § 250. Motion to dismiss in divorce action
  - **27A C.J.S. Divorce** (2016).
    - IV. Proceedings, Trial, and Judgment
      - § 235. Demurrer; Motion to dismiss for failure to state claim
      - §§ 308-318. Dismissal or discontinuance

**TEXTS & TREATISES:**

  - Chapter 18. Process
    - § 18:12. Defects in process
  - Chapter 19. Pleadings
    - § 19:11. Other responsive pleadings

- 1 Wesley W. Horton et al., **Connecticut Superior Court Civil Rules** (2017-2018).
  - Authors’ Comments for §§ 25-12, 25-13, 25-14

    - §§ 25-12-25-15. Motion to Dismiss

  - Chapter 4. Pretrial Pleadings and Discovery
Part III. Preparing Specific Pleadings
§ 4.09. Preparing a Motion to Dismiss

  VIII. Motion to Dismiss

  Chapter 20. Family Law Procedures
  § 250. Pleadings in dissolution actions
  c. Pleading by defendant
Table 4: Badouder v. Abdennur

<table>
<thead>
<tr>
<th>Case</th>
<th>Summary</th>
</tr>
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<tbody>
<tr>
<td>(1) personal service upon the defendant was accomplished by trick, fraud or artifice;</td>
<td>“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 come within the court’s jurisdiction by any false representation, deceitful contrivance or wrongful device for which the plaintiff is responsible . . . . 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.” Ibid., p. 262.</td>
</tr>
<tr>
<td>(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;</td>
<td>“The plaintiff in the present case sufficiently meets the residency requirement in § 46b-44 (a). This court, therefore, has subject matter jurisdiction.” Ibid., p. 267.</td>
</tr>
<tr>
<td>(3) there is pending in the Family Court, Patriarchy of Catholics, in Beirut, Lebanon, a prior claim commenced by the plaintiff claiming similar relief;</td>
<td>“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 state.‘ Sauter v. Sauter, 4 Conn. App. 581, 584, 495 A2d 1116 (1985).’ Ibid., p. 263.</td>
</tr>
<tr>
<td>(4) the plaintiff failed to file a custody statement as required by General Statutes § 46b-99;</td>
<td>“… failure to file such a statement is not a jurisdictional defect and there is jurisdiction, at least, for the purposes of a dissolution of the marriage.” Ibid., p. 261.</td>
</tr>
<tr>
<td>(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</td>
<td>“The clean hands doctrine cannot be raised on a motion to dismiss.” Ibid., p. 261.</td>
</tr>
<tr>
<td>complaint on the defendant, and by her misrepresentation as to her residence.</td>
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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.

**DEFINITION:**
- “Whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint or cross complaint, or of any one or more counts thereof, to state a claim upon which relief can be granted, or (2) the legal sufficiency of any claim for relief in any such complaint or cross complaint, or (3) the legal sufficiency of any such complaint or cross complaint, or any count thereof, because of the absence of any necessary party, or (4) the joining of two or more causes of action which cannot properly be united in one complaint or cross complaint, whether the same be stated in one or more counts, or (5) the legal sufficiency of any answer to any complaint or cross complaint, or any part of that answer contained therein, that party may do so by filing a motion to strike the contested pleading or part thereof.” Conn. Practice Book § 25-16(a) (2018).

**COURT RULES:**
  - **Chapter 25.** Procedure in Family Matters – General Provisions
    - § 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:**
  - Form 106.2. Motion to strike

**CASES:**
- Ferri v. Powell-Ferri, 317 Conn. 223, 237, 116 A.3d 297, 307 (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, 595 (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.”

- **Gibson v. Gibson**, 34 Conn. App. 139, 140, 640 A.2d 145, 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.”

**TEXTS & TREATISES:**

  - Chapter 19. Pleadings
    - § 19:11. Other responsive pleadings

  - Authors’ Comments for § 25-16

    - §§ 25-16-25-22.1. Motion to Strike

  - Chapter 4. Pretrial Pleadings and Discovery
    - Part III. Preparing Specific Pleadings
      - § 4.10. Preparing a Motion to Strike
  Chapter X. Motion to Strike

  Chapter 20. Family Law Procedures
  § 250. Pleadings in dissolution actions
  c. Pleading by defendant
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:**

**COURT RULES:**

**COURT FORMS:**
- JD-FM-159. Divorce Complaint (Dissolution of Marriage) (rev. 10/18)
- JD-FM-160. Dissolution Answer (rev. 6/14)

**FORMS:**

**CASES:**
- Ferri v. Powell-Ferri, 317 Conn. 223, 224-225, 116 A.3d 297, 300 (2015). "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 . . .”

- **Luster v. Luster**, 128 Conn. App. 259, 260, 17 A.3d 1068, 1071-1072 (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 (April 8, 2004) (2004 Conn. Super. Lexis 878) (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.”

- **LaCroix v. LaCroix**, 189 Conn. 685, 687-688, 457 A.2d 1076, 1078 (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:

- Divorce 96-101. Pleading.

ENCYCLOPEDIAS:

  I. Divorce and Separation Proceedings
  Practice and Procedure in Divorce Actions
  §§ 238-245. Response or answer
  §§ 246-249. Cross-petition, cross-complaint, cross-bill, or counterclaim

  IV. Proceedings, Trial, and Judgment
  §§ 228-231. Answer
  §§ 232-233. Cross action or counterclaim

TEXTS & TREATISES:

  Chapter 19. Pleadings
  § 19:9. Answer, cross-complaint, and claims for relief by defendant
  § 19:10. Answer and cross-complaint—Form

- 1 Wesley W. Horton et al., Connecticut Superior Court Civil Rules (2017-2018).
  Authors’ Comments for §§ 25-9. 25-10


  I. Pleadings
  Answer or Answer and Cross-Complaint: Notes & Comments, p. 9

  Chapter 3. Dissolution of Marriage and Legal Separation
  Part III. Preparing the Complaint and Cross Complaint
  § 3.16. CHECKLIST: Preparing the complaint and cross complaint
  § 3.20. Filing the answer and cross complaint

Chapter 20. Family Law Procedures
§ 250. Pleadings in dissolution actions
  c. Pleading 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 in dissolution of marriage proceedings in Connecticut.

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, 340 (1957).

STATUTES:

COURT RULES:

FORMS:
  - Form 1-006. Request to amend complaint
  - Form 1-007. Request for leave to amend complaint and to cite in third party defendants

CASES:
- *LaFrance v. Lodmell*, 322 Conn. 828, 846-847, 144 A.3d 373, 388 (2016). “While our courts have been liberal in permitting amendments ... this liberality has limitations. Amendments should be made seasonably. Factors to be considered in passing on a motion to amend are the length of the delay, fairness to the opposing parties and
the negligence, if any, of the party offering the amendment.... The motion to amend is addressed to the trial court’s discretion which may be exercised to restrain the amendment of pleadings so far as necessary to prevent unreasonable delay of the trial.... Whether to allow an amendment is a matter left to the sound discretion of the trial court. This court will not disturb a trial court’s ruling on a proposed amendment unless there has been a clear abuse of that discretion.... It is [the] burden [of the party proposing the amendment] to demonstrate that the trial court clearly abused its discretion....”

- **Viveros v. Viveros**, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA03-0193290-S (April 8, 2004) (2004 Conn. Super. Lexis 878) (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.”

- **Welch v. Welch**, Superior Court, Judicial District of Tolland at Rockville, No. FA00-0072505-S (May 17, 2002) (2002 Conn. Super. Lexis 1820) (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, 1062 (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, 261-262 (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.”

- **Kelsall v. Kelsall**, 139 Conn. 163, 165, 90 A.2d 878, 879 (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:**
  I. Divorce and Separation Proceedings
    Practice and Procedure in Divorce Actions
    §§ 234-237. Amendment; Supplemental pleadings

  IV. Proceedings, Trial, and Judgment
    §§ 237-240. Amended and supplemental pleadings

**TEXTS & TREATISES:**
  Chapter 19. Pleadings
    § 19:13. Amendment of pleadings

- 1 Wesley W. Horton et al., Connecticut Superior Court Civil Rules (2017-2018).
  Authors’ Comments for §§ 25-7, 25-8
  §§ 25-7-25-8.1. Amendments to complaint

  Chapter 3. Dissolution of Marriage and Legal Separation
  Part III. Preparing the Complaint and Cross Complaint
  § 3.21. Amending the complaint or cross complaint

  Chapter VII. Amendments to 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 in Connecticut.

DEFINITIONS:
- “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. 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.” Conn. Gen. Stat. § 46b-53(a) (2017).

STATUTES:
  - Chapter 815. Court Proceedings in Family Relations Matters
    - § 46b-10. Attempt at reconciliation in action for dissolution of marriage, legal separation or annulment.
  - Chapter 815j. Dissolution of Marriage, Legal Separation and Annulment
    - § 46b-53. Conciliation procedures; privileged communications.

FORMS:
  - Form 4-012. Request for conciliation
  - Form VI-D-1. Request for conciliation, p. 118

CASES:
- Weinberg v. Weinberg, 89 Conn. App. 649, 653, 874 A.2d 321, 324 (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.”
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."


**WEST KEY NUMBERS:**

- **Divorce**
  - 87.5. Conciliation proceedings.

**ENCYCLOPEDIAS:**

  - I. Divorce and Separation Proceedings
    - Practice and Procedure in Divorce Actions
      - §§ 280-281. Conciliation proceedings

  - IV. Proceedings, Trial, and Judgment
    - § 198. Conciliation proceedings

**TEXTS & TREATISES:**

  - Chapter 20. Pretrial Procedures and Preparation
    - § 20:7. Requests for conciliation

  - VI. Pendente Lite Motions
    - Conciliation: Notes & Comments, p. 117.

  - Chapter 3. Dissolution of Marriage and Legal Separation
    - Part VII. Providing for Conciliation
      - § 3.31 CHECKLIST: Providing for conciliation
      - § 3.32 Assessing conciliation procedures
Section 8: Request for New Trial
A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to request for new trial in dissolution of marriage proceedings in Connecticut.

SEE ALSO:
- 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 mispleading, 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. Stat. § 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 (2018).

- 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, 139 (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.
COURT RULES:

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

FORMS:

  - Form 604.14. Complaint for new trial

  - Form 602.20. Petition for new trial
  - Form 602.27. Motion for new trial

CASES:

- Baker v. Whitnum-Baker, 161 Conn. App. 227, 230, 127 A. 3d 330, 334 (2015). “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, 141-142, 988 A. 2d 314, 328 (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, 955-956 (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

- **Corbin v. Corbin**, 179 Conn. 622, 626, 427 A.2d 432, 434-435 (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, 755 (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.”

**WEST KEY NUMBERS:**

- **Divorce**
  - 151. New trial.

**ENCYCLOPEDIAS:**

  - I. Divorce and Separation Proceedings
    - Practice and Procedure in Divorce Actions
      - §§ 354-355. New trial

  - §§ 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

  - IV. Proceedings, Trial, and Judgment
    - §§ 341-344. New trial or hearing
  §§ 1-38. In general
  §§ 39-180. Grounds
  §§ 183-326. Proceedings to procure new trial
  §§ 327-333. Proceedings at new trial

  Authors’ Comments for Form 604.14

  Chapter 11. Verdict and Motions After Verdict
    § 11.33. Motion for new trial
    § 11.34. —Mispleading
    § 11.35. —Want of notice or opportunity to defend
    § 11.36. —Newly discovered evidence
    § 11.37. —Other reasonable cause
    § 11.38.—Procedure

• 1 Wesley W. Horton et al., Connecticut Superior Court Civil Rules (2017-2018).
  Authors’ Comments for § 16-35

  Chapter 52. Postjudgment Motions
    § 52:12 Request for new trial

  Chapter 17. Motions After Verdict; New Trials
    § 202. Petitions and motions for new trial
Figure 1: Complaint for New Trial (Form)

________________________________________  Superior Court

________________________________________  Judicial District of ____________
(First Named Plaintiff) v. at _________________________

________________________________________  (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.)