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2010 Edition

Default Motions and Judgments

A Guide to Resources in the Law Library

- **Default:** “If a party fails to comply with an order of a judicial authority or a citation to appear or fails without proper excuse to appear in person or by counsel for trial, the party may be . . . defaulted by the judicial authority.” CONN. PRACTICE BOOK § [17-19](#) (2011 ed.).
- **Default vs. judgment upon default:** “There is a clear distinction between a default . . . and a judgment upon default. A default is not a judgment. It is an interlocutory order of the court, the effect of which is to preclude the defendant from making any further defense in the case so far as liability is concerned. A judgment upon default, on the other hand, is the final judgment in the case which is entered after the default and after a hearing in damages.” Esposito v. Pinecrest Country Club, Inc., 24 Conn. Sup. 81, 82, 186 A.2d 822, 823 (1962).
- **Effect of default:** “A default ‘admits the material facts that constitute a cause of action’; *Travelers Indemnity Co. v. Rubin*, 209 Conn. 437, 445, 551 A.2d 1220 (1988); and ‘entry of default, when appropriately made, conclusively determines the liability of a defendant.’ *Ratner v. Willametz*, 9 Conn. App. 565, 579, 520 A.2d 621 (1987). Despite the entries of default, had the defendants sought to challenge the right of the plaintiffs to maintain their action, or had they intended to prove any matter of defense, they would have been permitted to do so at the hearing in damages upon written notice to the plaintiffs. See Practice Book § 367 [now 17-34]. Moreover, pursuant to Practice Book § 374 [now 17-40], the defendants would have been permitted to appear and offer evidence to reduce the amount of damages claimed without giving any notice.” LaRosa v. Kline, 36 Conn. App. 501, 503-504, 651 A.2d 1324, 1326 (1995).

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only a beginning to research.

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**The links to cases in this guide are to advance release slip opinions
and are for informational purposes only.**

Section 1: Failure to Appear

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion for default for failure to appear (without judgment).

SEE ALSO:

- [§ 2 Motion for Default for Failure to Appear and Judgment](#)
- [§ 3 Setting Aside \(Opening \) a Default for Failure to Appear](#)

DEFINITION :

- "If a party fails to comply with an order of a judicial authority or a citation to appear . . . the party may be . . . defaulted by the judicial authority." CONN. PRACTICE BOOK § [17-19](#) (2011 ed.).
- "Except as provided in subsection (b), if no appearance has been entered for any party to any action on or before the second day following the return day, any other party to the action may make a motion that a . . . default be entered for failure to appear." CONN. PRACTICE BOOK § [17-20\(a\)](#) (2011 ed.).
- ". . . motions for default for failure to appear shall be acted on by the clerk not less than seven days from the filing of the motion and shall not be printed on the short calendar. The motion shall be granted by the clerk if the party who is the subject of the motion has not filed an appearance." CONN. PRACTICE BOOK § [17-20\(d\)](#) (2011 ed.).
- **Soldiers' and Sailors' Relief Act:** "The provisions of Section 17-21[Defaults under Servicemembers Civil Relief Act] shall not apply to such motions, but such provisions shall be complied with before a judgment may be entered after default." CONN. PRACTICE BOOK § [17-20\(d\)](#) (2011 ed.).
- **Notice:** "It shall be the responsibility of counsel filing a motion for default for failure to appear to serve the defaulting party with a copy of the motion. Service and proof thereof may be made in accordance with Sections 10-12, 10-13 and 10-14. Upon good cause shown, the judicial authority may dispense with this requirement when judgment is rendered." CONN. PRACTICE BOOK § [17-20\(c\)](#) (2011 ed.).
- **Automatic set aside:** "If the defaulted party files an appearance in the action prior to the entry of judgment after default, the default shall automatically be set aside by operation of law." CONN. PRACTICE BOOK § [17-20\(d\)](#) (2011 ed.).

STATUTES:

- CONN. GEN. STATS. (2009)
[§ 52-84. When judgment by default may be rendered.](#) "When any process has been served on any defendant and returned to court, if he does not appear on or before the second day after the return day, judgment by default may be rendered against him."
[§ 52-87.](#) Continuance on account of absent or nonresident defendant. Exception

COURT RULES:

- CONN. PRACTICE BOOK (2011 ed.)

- § [3-2](#). Time to file appearance
- § [9-1](#). Continuance for absent or nonresident defendant
- § [17-20](#). Motion for default . . . for failure to appear
- § [17-21](#). Defaults under Servicemembers Civil Relief Act

FORMS:

- 2 Joel M. Kaye et al., [Connecticut Practice Series: Civil Practice Forms](#), 4th ed., (2004).
 - Form 103.1-C. Certification of service of pleading on non-appearing parties
 - Form 107.8-A. Motion for default for failure to appear
- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.). Chapter 17. Judgments.
 - F.17-20. Motion for default for failure to appear, p. 17-190
- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998). Chapter 14. Pleadings: motions against defendants who do not file an appearance.
 - Example 1. Motion for default for failure to appear, p. 149
- Robert M. Singer, [Library of Connecticut Collection Law Forms](#) (2009). Chapter 9. Motions.
 - Form 9-001. Motion for default for failure to appear, p. 344-346
- Koskoff, Koskoff & Bieder, Joshua Koskoff, Editor, [Library of Connecticut Personal Injury Forms](#) (2007).
 - Chapter 5. Motions and Requests.
 - Form 5-001. Motion for default for failure to appear, pp. 399-401

RECORDS & BRIEFS:

- CONN. APPELLATE COURT RECORDS AND BRIEFS (September/October 1998), [Blue Cross Blue Shield of Connecticut v. Gurski](#), 49 Conn. App. 731, 715 A.2d 819 (1998).

CASES:

- [Hydropress Environmental v. Paladino](#), No. CV 96-0390175 (Jul. 18, 2001), 30 CLR 146, 2001 WL 951305. “While the procedure of § 17-20 (c) was not followed in the present case, the defendant has directed the court to no authority whatsoever for the proposition that such a procedural flaw deprives the court of jurisdiction over the subject matter. The fact that Practice Book § 17-20(c) provides that the default should have been automatically set aside in the present case before the damages judgment was rendered does not leave the court without subject matter jurisdiction. It merely provides the defendant with an opportunity to file a timely motion to open and set aside the improperly entered judgment. The defendant found himself in a situation which he could have readily corrected by filing a timely motion to open, and his failure to do so must be deemed a waiver of this issue. Instead, he inexplicably waited nearly four years to raise an argument that he could and should have filed within four months of receiving notice of the judgment in accordance with Gen. Stats. § 52-212.”
- [Dontigney v. Warden](#), No. CV 98-058 54 16 (Oct. 26, 1999), 1999 WL 1063407. “The file indicates that defendant was defaulted for failure to appear on June 25, 1999. An appearance was filed by an Assistant Attorney General, on behalf of defendant, on July 30, 1999. Since no judgment (for damages) had entered after the default, it was

automatically set aside by the filing of an appearance. Prac. Bk. Sec. 17-20(c).”

- [World Saving & Loan Assn. v. Baylis](#), No. CV 34 93 29 S (Nov. 10, 1998), 1998 WL 811451. “It is not necessary to address the motion to set aside the default at this time because the default will automatically be set aside by the clerk if Longshore, the defaulted party, files an appearance in this action prior to the entry of judgment after default. Practice Book § 352, now Practice Book (1998 Rev.) § 17-20.”

WEST KEY NUMBERS:

- Appearance #29 – Failure to appear
- Judgment # 92-134
 - # 92. Nature of judgment by default
 - # 96. Persons against whom judgment by default may be rendered
 - # 103. Default of appearance

ENCYCLOPEDIAS:

- 46 [AM. JUR. 2D](#) *Judgments*
Defaults §§ 264-321
- 49 [CJS](#) *Judgments*
Judgment by Default §§ 253-258

TEXTS & TREATISES:

- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.).
Chapter 17. Judgments, E.2 Default for Failure to Appear.
§ 17-20.1. Defaults on failure to appear, entry of.
- Renee Bevacqua Bollier et al., [Stephenson’s Connecticut Civil Procedure](#) (3rd ed., 1997).
§ 96d. Defaults for failure to appear.
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#).
Section V. Timing, waivers and defaults
3. Motion for default
 - a. Motion for default for failure to appear, p. 71 (1998 ed.)
 - a. Motion for default for failure to appear, p. 44 (1995 ed.)
- Kimberley A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
Chapter 14. Pleadings: Motions against Defendants Who Do Not File an Appearance
Section II. Motion for default for failure to appear, p. 140
- Joel M. Kaye et al. [Connecticut Practice Series: Civil Practice Forms](#), 4th ed. (2004)
Authors’ Commentary for Form 107.7, vol. 2, pp. 314-321
- Wesley W. Horton et al. [Connecticut Practice Series: Superior Court Civil Rules](#), 2010 edition
Authors’ Commentary for 17-19 through 17-21
- [West’s Connecticut Rules of Court Annotated](#), 2010 ed.
Notes of Decisions for 17-19 through 17-21, vol. 1

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

Section 2: Motion for Default for Failure to Appear and Judgment

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion for default for failure to appear and a motion for judgment used in contract actions seeking judgment under CONN. PRACTICE BOOK § [17-25](#) (2011).

TREATED ELSEWHERE:

- [§ 3 Setting Aside \(Opening\) a Default for Failure to Appear](#)

DEFINITION :

- “The motion for Default for Failure to Appear and Judgment is a procedure which allows the plaintiff to file a Motion for Default for Failure to Appear simultaneously with a Motion for Judgment and an order requesting weekly payments. The motion is reviewed by the civil clerk’s office and is forwarded to a judge for approval and for signature.” Hartford Superior Court Civil Clerk’s Office, Practice Book Section 17-25 motions Manual. Reprinted in 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.), Appendix 1, p. 17-76.
- **Promise to Pay Liquidated Sum:** “In any action based upon an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest, a reasonable attorney’s fee and other lawful charges, the procedure set forth in Section 17-20 and in Sections 17-25 through 17-28 shall be followed, if there is a default of appearance.” CONN. PRACTICE BOOK § [17-24\(a\)](#) (2011 ed.).

STATUTES:

- CONN. GEN. STAT. (2009)
 - § [51-55. Judgments of default or nonsuit.](#) “A clerk of the Superior Court shall not enter any judgment of default or nonsuit, unless directed by the court, except where the parties fail to appear; provided, in any civil action in which a notice of an intention to suffer a default has been filed, the clerk shall, upon request of either party, enter judgment of default.”
 - § [52-84. When judgment by default may be rendered.](#) “When any process has been served on any defendant and returned to court, if he does not appear on or before the second day after the return day, judgment by default may be rendered against him.”

COURT RULES:

CONN. PRACTICE BOOK (2011 ed.)

- § [3-2.](#) Time to file appearance
- § [17-23.](#) Contract actions to pay a definite sum where there is a default for failure to appear; Limitations
- § [17-24.](#) —Promise to pay liquidated sum
- § [17-25.](#) —Motion for default and judgment; Affidavit of debt; Military affidavit; Bill of costs; Debt instrument
- § [17-26.](#) —Order for weekly payments
- § [17-27.](#) —Entry of judgment
- § [17-28.](#) —Enforcement of judgment

- § [17-29](#). Default motion not on short calendar
- § [17-33](#). When judgment may be rendered after a default

FORMS:

“When moving for default and judgment pursuant to Sections 17-25 through 17-28, a party shall move for default and judgment on forms prescribed by the office of the chief court administrator.” CONN. PRACTICE BOOK § [17-24\(b\)](#) (2011 ed.).

- [JD-CV-49](#). Motion for Default for Failure to Appear, Judgment and Order for Weekly Payments
- [JD-CV-49*](#). Motion for Default for Failure to Appear, Judgment and Order for Weekly Payments (with automatic calculations)
- [JD-CV-50](#). Notice of Judgment and Order for Weekly Payments
- [JD-CV-50*](#). Notice of Judgment and Order for Weekly Payments (with automatic calculations)
- [JD-CV-52](#). Affidavit of Debt

Robert M. Singer, [Library of Connecticut Collection Law Forms](#), Connecticut Law Tribune

- Motion for Default for failure to appear, pp. 344-346

COURT PUBLICATIONS:

- Hartford Superior Court Civil Clerk’s Office, Practice Book Section 17-25 motions Manual. Reprinted in 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.), Appendix 1, pp. 17-73 to 17-98.

TEXTS & TREATISES:

- Kimberley A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998). Chapter 14. Pleadings: Motions against Defendants Who Do Not File an Appearance
 - Section III. Motion for default for failure to appear and judgment
 - A. Required documents
 - B. Filing the motion for default for failure to appear and judgment
 - C. 20-day delay to enforce judgment
- Renee Bevacqua Bollier et al., [Stephenson’s Connecticut Civil Procedure](#) (3rd ed., 1997).
 - § 96d. Defaults for failure to appear (see especially p.285)
 - § 101b. Contract actions for liquidated damages
- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.).
 - Chapter 17. Judgments
 - E.3. Default of appearance in contract action: judgment
 - Introduction
 - § 17-23. Contract Actions to Pay a Definite Sum Where There is a Default for Failure to Appear: Limitations
 - § 17-24. Promise to Pay Liquidated Sum
 - § 17-24.1. Attorney’s fees; Recovery of
 - § 17.25. Motion for Default and Judgment; Affidavit of Debt; Military Affidavit; Bill of Costs; Debt Instrument
 - § 17-25.1. Affidavit of debt

§ 17-26. Order for weekly payments
§ 17-27. Entry of Judgment [Clerk to Present Papers]
§ 17-28. Enforcement of Judgment
§ 17-29. Default Motion not on Short Calendar

- Wesley W. Horton et al. [Connecticut Practice Series: Superior Court Civil Rules](#), 2010 edition
Authors' Commentary for 17-23 through 17-29
- Joel M. Kaye et al. [Connecticut Practice Series: Civil Practice Forms](#), 4th ed. (2004)
Authors' Commentary for Form 107.7-A, vol. 2, pp. 323-324

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Table 1: Default in Summary Process (Eviction)

<h1 style="margin: 0;">Default in Summary Process</h1>	
<p><u>CONN. GEN. STATS. (2009)</u></p>	<p>§ 47a-26. Failure to appear. Judgment. “If the defendant does not appear within two days after the return day and a motion for judgment for failure to appear and an endorsed copy of the notice to quit is filed with the clerk, the court shall, not later than the first court day after the filing of such motion, enter judgment that the complainant recover possession or occupancy of the premises with the complainant's costs, and execution shall issue subject to the provisions of sections 47a-35 to 47a-41, inclusive.”</p> <p>§ 47a-26a. Failure to plead. Judgment. "If the defendant appears but does not plead within two days after the return day, the complainant may file a motion for judgment for failure to plead, served upon the defendant in the manner provided in the rules adopted by the judges of the Superior Court for the service of pleadings. If the defendant fails to plead within three days after receipt of such motion by the clerk, the court shall forthwith enter judgment that the complainant recover possession or occupancy with his costs."</p> <p>§ 47a-26c. Advancement of pleadings. Failure to plead. “All pleadings, including motions, shall advance at least one step within each successive period of three days from the preceding pleading or motion. If the defendant fails to plead within any such period, the complainant may file a motion for judgment for failure to plead, served upon the defendant in the manner provided in the rules adopted by the judges of the Superior Court for the service of pleadings. If the defendant fails to plead within three days after receipt of such motion by the clerk, the court shall forthwith enter judgment that the complainant recover possession or occupancy with costs.”</p>
<p><u>CONN. PRACTICE BOOK (2011 ed.)</u></p>	<p>§ 17-30(a). Summary Process; Default and Judgment for Failure to Appear or Plead "If the defendant in a summary process action does not appear within two days after the return day and a motion for judgment for failure to appear and the notice to quit signed by the plaintiff or plaintiff's attorney and endorsed, with his or her doings thereon, by the proper officer or indifferent person who served such notice to quit is filed with the clerk, the judicial authority shall, not later than the first court day after the filing of such motion, enter judgment that the plaintiff recover possession or occupancy of the premises with costs, and execution shall issue subject to the statutory provisions."</p> <p>§ 17-30(b). "If the defendant in a summary process action appears but does not plead within two days after the return day, the plaintiff may file a motion for judgment for failure to plead, served in accordance with Sections 10-12 through 10-17. If the defendant fails to plead within three days after receipt of such motion by the clerk, the judicial authority shall forthwith enter judgment that the plaintiff recover possession or occupancy with costs."</p> <p>§ 17-33(b). When Judgment May Be Rendered after a Default "Since the effect of a default is to preclude the defendant from making any further defense in the case so far as liability is concerned, the judicial authority, at or after the time it renders the default, notwithstanding Section 17-32 (b), may also render judgment in foreclosure cases, in actions similar thereto, in summary process actions, and in any contract action where the damages are liquidated, provided the plaintiff has also made a motion for</p>

	<p>judgment and provided further that any necessary affidavits of debt or accounts or statements verified by oath, in proper form, are submitted to the judicial authority."</p>
<u>COURT PUBLICATIONS:</u>	<ul style="list-style-type: none"> • A Landlord's Guide to Summary Process (Eviction), http://www.jud.ct.gov/Publications/hm014.pdf, Default Judgments, pp. 5-6
<u>FORMS:</u>	<ul style="list-style-type: none"> • Motion for Default for Failure to Appear and Judgment for Possession, JD-HM-9, http://www.jud2.ct.gov/webforms/forms/hm009.pdf • Motion for Default for Failure to Plead and Judgment for Possession, JD-HM-10, http://www.jud2.ct.gov/webforms/forms/hm010.pdf • Motion to Open Judgment (Small Claims and Housing Matters), JD-CV-51, http://www.jud2.ct.gov/webforms/forms/cv051.pdf • Joel M. Kaye et al. Connecticut Practice Series, Practice Book Annotated (2004). Form 107.8-D. Motion for judgment for failure to plead—Summary process (vol. 2) Form 704.10-A Motion for judgment for failure to appear (vol. 3) Form 704.10-B Motion for judgment for failure to plead (vol. 3) • Paul J. Marzinotto, The Connecticut Summary Process Manual (1986 supplemented to 2002). Form 6.1 Motion for Judgment for Failure to Appear, p. 67 Form 6.2 Motion for Default for Failure to Appear and Judgment for Possession, p. 67a Form 6.3 Motion for Judgment for Failure to Plead, p. 68 Form 6.4 Motion for Default for Failure to Plead and Judgment for Possession, p. 68a
<u>TEXTS & TREATISES:</u>	<ul style="list-style-type: none"> • Renee Bevacqua Bollier et al., Stephenson's Connecticut Civil Procedure (3rd ed. 1997). § 101c. Failure to appear for trial, foreclosure, summary process • Noble F. Allen, Connecticut Landlord and Tenant Law with Forms (2008) 8-6:4 Responsive Pleadings to Summary Process Complaint 8-6:4.1 Failure to Appear, p. 69 8-6:4.2 Failure to Plead, p. 69 • Ralph P. DuPont, DuPont on Connecticut Civil Practice (2010-2011 ed.) Chapter 17, Judgments, E.4 Summary Process § 17-30.1 Default of Appearance in Summary Process Action § 17-30.2 Default for Failure to Plead; Summary Process • Wesley W. Horton et al. Connecticut Practice Series: Superior Court Civil Rules, 2010 edition Authors' Commentary for 17-30 and 17-33 • Joel M. Kaye et al. Connecticut Practice Series: Civil Practice Forms, 4th ed. (2004) Authors' Commentary for Form 704.10, vol. 3 IV-H-1. Motions for Judgment for Failure to Appear, p. 471 IV-H-2. Motion for Judgment for Failure to Plead, p. 472

	<ul style="list-style-type: none"> • Paul J. Marzinotto, The Connecticut Summary Process Manual (1986 supplemented to 2002). VI. Summary Process Motions – Plaintiff, p. 64, A. Motion for default for failure to appear and judgment of possession and B. Motion for default for failure to plead and judgment of possession • Victor A. Feigenbaum, “An Overview of Connecticut Housing Law”, chapter 18, Connecticut Lawyers’ Deskbook: A Reference Manual 3d Procedure and Pleadings, p. 461
<u>CASES:</u>	<ul style="list-style-type: none"> • <u>Mackenzie v. Rascati</u>, No. SPNH 941241586, Judicial District of Housing Court Session at New Haven, 13 Conn. L. Rptr. 450, 451 (January 17, 1995). “The Court finds that the Defendant’s request for discovery establishes good cause for extension of time to plead.”

Table 2: Default in Family Matters

<h1 style="margin: 0;">Default in Family Matters</h1>	
<u>CONN. PRACTICE BOOK (2011 ed.)</u>	<ul style="list-style-type: none"> • § 25-51(a). “Any case claiming a dissolution of marriage or civil union, legal separation, or annulment in which the defendant has failed to file an appearance may be assigned a date certain for disposition as an uncontested matter pursuant to Section 25-50. If the defendant has not filed an appearance by the date assigned for disposition, the case may proceed to judgment without further notice to such defendant. Section 17-20 concerning motions for default shall not apply to such cases.” • § 25-52. "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."
<u>CASES:</u>	<ul style="list-style-type: none"> • <u>O’Brien v. Davis</u>, 49 Conn. Supp. 474, 484, 894 A2d 1072, 1078. “Since 1998, a default of the defendant for failure to file an appearance is no longer part of the uncontested procedure. Practice Book § 25-51.”
<u>TEXTS & TREATISES:</u>	<ul style="list-style-type: none"> • Arnold H. Rutkin et al, Connecticut Practice Series: Family Law and Practice with Forms, 1999, vol. 7 Part 4. Dissolution of Marriage Chapter 18. Process § 18.11. Appearance of defendant Part 5. Pre-Trial Proceedings in Dissolution Chapter 20. Pre-Trial Procedures and Preparation § 20.4. Default, non-suit and dismissal Part 6. Evidentiary Matters and Trial Chapter 24. Trial ; Procedural Aspects § 24.12 Default

Table 3: Default in Foreclosure Cases

<h2 style="margin: 0;">Default in Foreclosure Cases</h2>	
<p><u>CONN. PRACTICE BOOK (2011 ed.)</u></p>	<ul style="list-style-type: none"> • § 17-20(b). “In an action commenced by a mortgagee prior to July 1, 2010, for the foreclosure of a mortgage on residential real property consisting of a one to four-family dwelling occupied as the primary residence of the mortgagor, with a return date on or after July 1, 2008, if no appearance has been entered for the mortgagor on or before the fifteenth day after the return day or, if the court has extended the time for filing an appearance and no appearance has been entered on or before the date ordered by the court, any other party to the action may make a motion that a default be entered for failure to appear.” • § 17-33(b). "Since the effect of a default is to preclude the defendant from making any further defense in the case so far as liability is concerned, the judicial authority, at or after the time it renders the default, notwithstanding Section 17-32 (b), may also render judgment in foreclosure cases, in actions similar thereto, in summary process actions, and in any contract action where the damages are liquidated, provided the plaintiff has also made a motion for judgment and provided further that any necessary affidavits of debt or accounts or statements verified by oath, in proper form, are submitted to the judicial authority." • § 17-33A. “In all foreclosure actions, motions for judgment shall not be filed prior to the expiration of 30 days after the return date.” • § 13-19. “...If the defendant fails to disclose a defense within five days of the filing of such demand, or within ten days of the filing of such demand in any action to foreclose a mortgage, the plaintiff may file a written motion that a default be entered against the defendant by reason of the failure of the defendant to disclose a defense. If no disclosure of defense has been filed, the judicial authority may order judgment upon default to be entered for the plaintiff at the time the motion is heard or thereafter, provided that in either event a separate motion for such judgment has been filed. The motions for default and for judgment upon default may be served and filed simultaneously but shall be separate motions.”
<p><u>TEXTS & TREATISES:</u></p>	<ul style="list-style-type: none"> • Denis R. Caron et al, Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure (2004 with 2010 supplement) Chapter 5 5.01D. Defaulting the Defendants 5.01D1. For Failure to Appear, pp.106-109 5.01D2. For Failure to Plead, pp. 109-111 5.01E. Disclosure of Defense, pp. 111-113 • Connecticut Fair Housing Center, Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners, 3d ed. (http://ctfairhousing.org/wp/wp-content/uploads/2010/08/CFHC-ForeclosMan-Repr3-Jul10.pdf) Pleadings/Mediation, p.10 Motion for Default for Failure to Appear Motion for Default for Failure to Plead

Table 4: Default in Small Claims Actions

<h2 style="margin: 0;">Default in Small Claims Actions</h2>	
<p><u>CONN. PRACTICE BOOK, 2011 ed.</u></p>	<ul style="list-style-type: none"> • § 24-16(a). “A defendant, unless the judicial authority shall otherwise order, shall be defaulted and judgment shall enter in accordance with the provisions of Section 24-24, unless such defendant shall, personally or by representative, not later than the answer date, file an answer or file a motion to transfer pursuant to Section 21-21. The answer should state fully and specifically, but in concise and untechnical form, such parts of the claim as are contested, and the grounds thereof, provided that an answer of general denial shall be sufficient for purposes of this section. Each defendant shall send a copy of the answer to each plaintiff and shall certify on the answer form that the defendant has done so, including the address(es) to which a copy has been mailed. Upon the filing of an answer, the clerk shall set the matter down for hearing by the judicial authority.” • § 24-24. “(a) In any action based on an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest and reasonable attorney’s fees, if the defendant has not filed an answer by the answer date and the judicial authority has not required that a hearing be held concerning any request by the defendant for more time to pay, the judicial authority may render judgment in favor of the plaintiff without requiring the presence of the plaintiff or representative before the court, provided the plaintiff has complied with the provisions of this section and Section 24-8. Nothing contained in this section shall prevent the judicial authority from requiring the presence of the plaintiff or representative before the court prior to rendering any such default and judgment if it appears to the judicial authority that additional information or evidence is required prior to the entry of judgment. <p>(b) In order for the judicial authority to render any judgment pursuant to this section at the time set for entering a judgment whether by default, stipulation or other method, the following affidavits must have been filed by the plaintiff.</p> <p>(1) An affidavit of debt signed by the plaintiff or representative who is not the plaintiff’s attorney. A small claims writ and notice of suit signed and sworn to by the plaintiff or representative who is not the plaintiff’s attorney shall be considered an affidavit of debt for purposes of this section only if it sets forth either the amount due or the principal owed as of the date of the writ and contains an itemization of interest, attorneys fees and other lawful charges. Any plaintiff claiming interest shall separately state the interest and shall specify the dates from which and to which interest is computed, the rate of interest, the manner in which it was calculated and the authority upon which the claim for interest is based.</p> <p>(A) If the instrument on which the contract is based is a negotiable instrument or assigned contract, the affidavit shall state that the instrument or contract is now owned by the plaintiff and a copy of the executed instrument shall be attached to the affidavit. If the plaintiff is not the original party with whom the instrument or contract was made, the plaintiff shall either (1) attach all bills of sale back to the original creditor and swear to its purchase of the debt from the last owner in its affidavit of debt while also referencing the attached chain of title in the affidavit of debt or (2) in the affidavit of debt, recite the names of all prior owners of the debt with the date of each prior sale, and also</p>

	<p>include the most recent bill of sale from the plaintiff's seller and swear to its purchase of the debt from its seller in the affidavit of debt. If applicable, the allegations shall comply with General Statutes § 52-118.</p> <p>(B) The affidavit shall simply state the basis upon which the plaintiff claims the statute of limitations has not expired.</p> <p>(C) If the plaintiff has claimed any lawful fees or charges based on a provision of the contract, the plaintiff shall attach to the affidavit of debt a copy of a portion of the contract containing the terms of the contract providing for such fees or charges and the amount claimed.</p> <p>(D) If a claim for a reasonable fee for an attorney at law is made, the plaintiff shall include in the affidavit the reasons for the specific amount requested. Any claim for reasonable fees for an attorney at law must be referred to the judicial authority for approval prior to its inclusion in any default judgment.</p> <p>(2) A military affidavit as required by Section 17-21.”</p> <ul style="list-style-type: none"> • § 24-25. “If the defendant does not file an answer by the answer date, a notice of default shall be sent to all parties or their representatives and if the case does not come within the purview of Section 24-24, the clerk shall set a date for hearing, and the judicial authority shall require the presence of the plaintiff or representative. Notice of the hearing shall be sent to all parties or their representatives. If a defendant files an answer at any time before a default judgment has been entered, including at the time of a scheduled hearing in damages, the default shall be vacated automatically. If the answer is filed at the time of a hearing in damages, the judicial authority shall allow the plaintiff a continuance if requested by the plaintiff, or representative.” • § 24-26. “(a) If the plaintiff or representative fails to appear before the court on the hearing date, the judicial authority may dismiss the claim for want of prosecution, render a finding on the merits for the defendant or make such other disposition as may be proper. (b) If the defendant fails to appear before the court at any time set for hearing, the judicial authority may render judgment in favor of the plaintiff based on such proofs as it deems necessary to establish the amount due under the claim, or make such other disposition as may be proper, provided that the plaintiff has appeared at the hearing..”
<p><u>TEXTS & TREATISES:</u></p>	<ul style="list-style-type: none"> • Wesley W. Horton et al. Connecticut Practice Series: Superior Court Civil Rules, 2010 edition Official and Authors' Commentary for 24-16, 24-24, 24-25 & 24-26 • Joel M. Kaye et al. Connecticut Practice Series: Civil Practice Forms, 4th ed. (2004) Authors' Commentary for Form S-143, vol. 3A, p. 493 • West's Connecticut Rules of Court Annotated, 2010 ed. Notes of Decisions for 24-24, vol. 1 • “How Small Claims Court Works”, p.9 http://www.jud.ct.gov/Publications/CV045.pdf

Section 3: Setting Aside or Opening Default for Failure to Appear Prior to Judgment

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to setting aside or opening a default for failure to appear prior to judgment upon default.

TREATED ELSEWHERE:

- [§ 2. Motion for Default for Failure to Appear and Judgment](#)

DEFINITION :

- **Automatic set aside by clerk:** “If the defaulted party files an appearance in the action prior to the entry of judgment after default, the default shall automatically be set aside by operation of law. A claim for a hearing in damages shall not be filed before the expiration of fifteen days from the entry of a default under this subsection” CONN. PRACTICE BOOK § [17-20\(d\)](#) (2011 ed.).
- **Court order required:** “A motion to set aside a default where no judgment has been rendered may be granted by the judicial authority for good cause shown upon such terms as it may impose. . . . Certain defaults may be set aside by the clerk pursuant to Sections 17-20 and 17-32.” CONN. PRACTICE BOOK § [17-42](#) (2011 ed.).
- **Prior to judgment:** “Section 376 [now § [17-42](#)] applies to all defaults and permits the court to set aside such defaults prior to judgment.” [Whalen v. Ives](#), 37 Conn. App. 7, 13, 654 A.2d 798, 801 (1995), cert. den. 233 Conn. 905.
- **For good cause:** [Deercliff Homeowners Assn. v. Seraya](#), No. CV-97-0482805-S (Feb. 28, 2001). “Concerning the determination as to whether to open a default, rule of practice § 17-42 states: ‘[a] motion to set aside a default may be granted by the judicial authority for good cause shown upon such terms as it may impose.’ The court, in its discretion, may consider the presence of mistake, inadvertence, misfortune or other reasonable cause. See [Higgins v. Karp](#), 243 Conn. 495, 508, 706 A.2d 1 (1998) (previously cited by the court in its November 3, 2000 order). It may consider ‘factors such as the seriousness of the default, its duration, the reasons for it and the degree of contumacy involved . . . [as well as] the totality of the circumstances, including whether the delay has caused prejudice to the nondefaulting party.’ (Internal quotation marks and citation omitted.) *Id.*”

COURT RULES:

- CONN. PRACTICE BOOK (2011 ed.)
 - § [3-2](#). Time to file appearance
 - § [17-20](#). Motion for default and nonsuit for failure to appear
 - § [17-22](#). Notice of . . . default for failure to enter an appearance

§ 17-42. Opening defaults where judgment has not been rendered.

CASES:

- [Distasio v. Allstate Indemnity Company](#), 81 Conn. App. 92, 94, 838 A2d 1010, 1011 (2004). “The defendant claims that the court improperly denied its motion to set aside or to open the default for failure to appear. The defendant argues that the court should have granted the motion because the court clerk improperly failed to set aside the default. Alternatively, the defendant argues that the motion itself was unnecessary because the rules of practice require the court clerk to set aside a default when the defaulting party files an appearance. We agree with the defendant's alternative argument.”
- [Bove v. Bove](#), 77 Conn. App. 355, 362, 822 A.2d 383, 388 (2003). “The operation of this provision of the rules of practice [§ 17-20] presumes that the person a movant seeks to default for failure to appear has been summoned properly and has not appeared. Without a proper summons, a person is not a party to the action. Here, the record is clear that the defendant Howard Bove did appear and there was a judicial determination on his motion holding that he was served improperly by attempted abode service at a place other than his usual place of abode.”
- [Bonenfant v. Rota](#), No. CV-01-0811769 S (Aug. 5, 2003) “‘Upon default, the plaintiff ordinarily becomes entitled to recover nominal damages . . . The right to further substantial damages remains to be established by the plaintiff at a hearing in damages.’ (Citations omitted.) *Kloter v. Carabetta Enterprises, Inc.*, 186 Conn. 460, 464, 442 A.2d 63 (1982). ‘[The] entry of default, when appropriately made, conclusively determines the liability of a defendant . . . In an action at law, the rule is that the entry of a default operates as a confession by the defaulted defendant of the truth of the material facts alleged in the complaint which are essential to entitle the plaintiff to some of the relief prayed. It is not the equivalent of an admission of all of the facts pleaded. The limit of its effect is to preclude the defaulted defendant from making any further defense and to permit the entry of a judgment against him on the theory that he has admitted such of the facts alleged in the complaint as are essential to such a judgment. It does not follow that the plaintiff is entitled to a judgment for the full amount of the relief claimed. The plaintiff must still prove how much of the judgment prayed for in the complaint he is entitled to receive.’ (Internal quotation marks omitted and citation omitted.) [Murray v. Taylor](#), 65 Conn. App. 300, 334-35, 782 A.2d 702, cert. denied, 258 Conn. 928, 783 A.2d 1029 (2001).”

WEST KEY NUMBERS:

- Judgments – Opening or Setting Aside Default - # 135-177
 - # 138. Right to relief in general
 - # 139. Discretion of court
 - # 140. Judgments which may be opened or set aside
 - # 143. Excuses for default
 - # 147. Waiver of right to relief
 - # 153. Time for application
 - # 156. Stay of proceedings on judgment
 - # 176. Proceedings after opening default
 - # 177. Objections and exceptions

ENCYCLOPEDIAS:

- 47 [AMJUR. 2D](#) *Judgments* (2006)
Judgments §§ 662-664, 673, 682, 684-685

- 49 [CJS Judgments](#) (2009)
Judgments §§ 516-625
- Annotation, *Appealability of Order Setting Aside, or Refusing to Set Aside, Default Judgment*, 8 [ALR 3d](#) 1272 (1966).
- Annotation, *Fraud in Obtaining or Maintaining Default Judgment as Ground for Vacating or Setting Aside in State Courts*, 78 [ALR 3d](#) 150 (1977).
- Annotation, *Opening Default or Default Judgment Claimed To Have Been Obtained Because Of Attorney's Mistake As To Time Or Place Of Appearance, Trial, Or Filing Of Necessary Papers*, 21 [ALR3d](#) 1255 (1968).

TEXTS & TREATISES:

- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.)
Chapter 17. Judgments
§ 17-20.3. Setting aside default for failure to appear
—Before entry of Judgment by default
—Case pending on Hearing in Damage List
—After entry of Judgment by Default
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#)
Section V. Timing, waivers and defaults
3. Motion for default
b. Automatic cure of default for failure to appear, p. 71 (1998 ed.)
b. Automatic cure of default for failure to appear, p. 45 (1995 ed.)
Section XIV. Motions to set aside or open, reconsider and reargue
2. Motions to set aside or open judgments
g. Motions to Set Aside Default (1995 ed.)
(i) When motion to set aside is necessary
(ii) Effect of default
5. Motions to set aside default
(a) When a motion to set aside is necessary
(i) Automatic cure of default
(ii) Motion to set aside default
(b) Effect of default
(c) The four-month rule
(d) Unreasonable delays
- Renee Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#) (3rd ed. 1997).
§ 96f. Reopening defaults, p.288
- Kimberley A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
Chapter 14. Pleadings: Motions Against Defendants Who Do Not File an Appearance
Section II. Motion for default for failure to appear
A. Opening or setting aside a default

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Section 4: Judgment Upon Default for Failure to Appear

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to:

1. Judgment upon (or after) Default for Failure to Appear
2. Opening or Setting aside a judgment upon default

SEE ALSO:

- [§ 3. Setting Aside \(Opening\) a Default for Failure to Appear Prior to Judgment](#)

DEFINITION :

- **Default vs. judgment upon default:** “A default is not a judgment. It is an order of the court the effect of which is to preclude the defendant from making any further defense in the case so far as liability is concerned. A judgment upon default, on the other hand, is the final judgment in the case” *Automotive Twins, Inc. v. Klein*, 138 Conn. 28, 33, 82 A.2d 146, 149 (1951).
- **Judgment upon Default:** “Any judgment rendered or decree passed upon a default . . . may be set aside within four months succeeding the date on which notice was sent, and the case reinstated on the docket on such terms in respect to costs as the judicial authority deems reasonable, upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of such judgment or the passage of such decree, and that the plaintiff or the defendant was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same. Such written motion shall be verified by the oath of the complainant or the complainant's attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or the defendant failed to appear. The judicial authority shall order reasonable notice of the pendency of such written motion to be given to the adverse party, and may enjoin that party against enforcing such judgment or decree until the decision upon such written motion.” CONN. PRACTICE BOOK § [17-43\(a\)](#) (2011 ed.).
- **Effect:** “Except where otherwise prescribed herein or by statute, an appearance for a party in a civil or family case should be filed on or before the second day following the return day. Appearances filed thereafter in such cases shall be accepted but an appearance for a party after the entry against such party of a . . . judgment after default for failure to appear shall not affect the entry of . . . any judgment after default.” CONN. PRACTICE BOOK § [3-2](#) (2011 ed.).
- **Military Affidavit:** “The granting of . . . a motion for judgment after default for failure to appear shall be subject to the provisions of Sections 9-1 and 17-21. Such motion shall contain either (1) a statement that a military affidavit is attached thereto, or (2) a statement, with reasons therefore, that it is not necessary to attach a military affidavit to the motion.” CONN. PRACTICE BOOK § [17-20\(f\)](#) (2011 ed.).

STATUTES:

- CONN. GEN. STATS. (2009)
 - § [51-55](#). Judgments of default or nonsuit.
 - § [52-212](#). Opening judgment upon default or nonsuit.
 - § [52-212a](#). Civil judgment or decree opened or set aside within four months only.
 - § [52-259c](#). Fee to open, set-aside, modify, extend or reargue judgment. (2010 supplement)

COURT RULES:

- CONN. PRACTICE BOOK (2011 ed.)
 - § [17-22](#). Notice of judgments of nonsuit and default for failure to enter an appearance.
 - § [17-43](#). Opening judgment upon default or nonsuit.

FORMS:

- Motion to Open Judgment (Civil Matters Other Than Small Claims and Housing Matters), JD-CV-107, <http://www.jud2.ct.gov/webforms/forms/CV107.pdf>
- 2 Joel M. Kaye et al., [Connecticut Practice Series: Civil Practice Forms](#) (2004).
 - Form 107.8-F. Motion to Open Judgment upon Default
 - Form 107.7. Judgment by Default against Corporate Defendant
 - Form 107.8. Judgment by Default against Individual Defendant
- Kimberley A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 14. Pleadings: Motions Against Defendants who do not File an Appearance
 - Example 2, Motion to Open Judgment of Default for Failure to Appear
 - Example 3, Affidavit to be filed with Motion to Open Judgment upon Default
- Forms to File if You Would like to Have a Judgment Opened: <http://www.jud.ct.gov/forms/grouped/civil/judgment.htm>

CASES:

- [Jackson v. R. G. Whipple, Inc.](#), 225 Conn. 705, 717-718, 627A.2d 374, 379-380 (1993). “Although not every default judgment should have the same issue preclusive effect as an actual adjudication between the present parties, in the interest of judicial economy and repose for litigants, we envision some circumstances where it would be appropriate to give issue preclusive effect to a default judgment. We have previously noted, after addressing the scope of issue and claim preclusion, that the appropriate inquiry with respect to both types of preclusion is whether the party had an ‘adequate opportunity to litigate the matter in the earlier proceeding. . . .’ (Internal quotation marks omitted.) *State v. Ellis*, supra, [197 Conn. 436,] 464-65 [497 A.2d 974 (1985)] n. 22, quoting D. Currie, ‘Res Judicata: The Neglected Defense,’ 45 U. Chi. L. Rev. 317, 342 (1978). Our decision in *Ellis* indicates that had there been a full and fair opportunity to litigate issues and such issues were necessary to a default judgment, that judgment should put to rest subsequent litigation of all issues necessary for the

rendering of the default judgment.”

WEST KEY NUMBERS:

- Judgments # 92-177
- # 138. Right to relief in general
- # 139. Discretion of the court
- # 140. Judgments which may be opened or set aside
- # 143. Excuses for default
- # 147. Waiver of right to relief
- # 153. Time for application
- # 156. Stay of proceedings on judgment
- # 177. Objections and exceptions

ENCYCLOPEDIAS:

- 46 [AMJUR. 2D](#) (2006) *Judgments*
E. Judgment by Default §§ 232-305
- 49 [CJS](#) (2009) *Judgments*
X. Judgment by Default §§ 253-293
- Annotation, *Doctrine of Res Judicata as Applied To Default Judgments*, 77 [ALR2d](#) 1410 (1961).

TEXTS & TREATISES:

- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.).
Chapter 17. Judgments, § 17-43 Opening Judgment Upon Default or Nonsuit.
§ 17-43.1. Reasonable cause; Existence of good cause of action or defense.
 - Written, Particularized and Verified Motion Required.
 - Denial of Motion to Reopen; Appeal.§ 17-43.2. Reasonable cause for failure to appear.
§ 17-43.3. Four month time limit, effect of.
§ 17-43.4. *Audita Querela*, Writ of Use and Effect of.
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998 ed.).
Section XIV. Motions to set aside or open, reconsider and reargue
2. Motions to set aside or open judgments
f. Motions to open default judgment
 - (i) Grounds for the motion
 - (ii) When motion may be denied
 - (iii) Effect of default judgment
- Renee Bevacqua Bollier et al., [Stephenson’s Connecticut Civil Procedure](#) (3rd ed. 1997).
§ 96. Judgment on default
- Kimberley A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
Chapter 14. Pleadings: motions against defendants who do not file an appearance
Section II. Motion for Default for Failure to Appear
B. When a defendant fails to appear after default:
Judgment
 - 1. Hearing in Damages: C.G.S. § 52-220 et seq.
 - 2. Motion for Judgment instead of a Hearing in DamagesSection IV. Motion to Open Judgment upon Default: four

month deadline

A. Contents of a Motion to Open Judgment upon Default

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Section 5: Failure to Plead

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to a motion for default for failure to plead.
- SEE ALSO:**
- [§ 6. Setting Aside \(Opening\) Default for Failure to Plead](#)
 - [§ 7. Judgment upon Default for Failure to Plead](#)
- DEFINITION :**
- **Motion for Default for Failure to Plead.** “(a) Where a defendant is in default for failure to plead pursuant to Section 10-8, the plaintiff may file a written motion for default which shall be acted on by the clerk not less than seven days from the filing of the motion, without placement on the short calendar.” CONN. PRACTICE BOOK § [17-32\(a\)](#) (2011 ed.).
- STATUTES:**
- CONN. GEN. STATS. (2009)
 - § [52-119](#). Pleading to be according to rules and orders of court.
 - § [52-120](#). Pleading filed by consent after expiration of time.
 - § [52-121](#). Pleading may be filed after expiration of time fixed, but prior to hearing on motion for default judgment or nonsuit. Judgment or penalty for failure to plead.
- COURT RULES:**
- CONN. PRACTICE BOOK (2011 ed.)
 - § [17-31](#). Procedure where Party is in Default
 - § [17-32](#). Where Defendant is in Default for Failure to Plead
- FORMS:**
- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010 - 2011 ed.).
 - Chapter 17. Judgments
 - F.17-32. Motion for default for failure to plead, p. 17-193.
 - F. 17-32(1). Objection to Motion for Default [for Failure to Plead], p. 17-194
 - Koskoff, Koskoff & Bieder, [Library of Connecticut Personal Injury Forms](#), Connecticut Law Tribune, 2007
 - Form 5-002 Motion for Default for Failure to Plead, pp. 402 – 404
 - Kimberley A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 15. Pleadings: Motions against Defendants Who Do Not File Pleadings, pp. 153 - 157
 - Example 1, Motion for Default for Failure to Plead, p. 157
 - Robert M. Singer, [Library of Connecticut Collection Law Forms](#), Connecticut Law Tribune, 2009
 - Form 9-002 Motion for Default for Failure to Plead, pp. 347 - 349

CASES:

- [CAS Construction Co. v. Dainty Rubbish Service, Inc.](#), 60 Conn. App. 294, 300, 759 A.2d 555, 559 (2000). ‘A plaintiff may not claim a case to the trial list (a hearing in damages) without first having obtained a default for failure to plead. *Wooding v. Zasciurinskas*, 14 Conn. App. 164, 167, 540 A.2d 93 (1988). A hearing in damages cannot be conducted unless there has been compliance with Practice Book § 363, now 17-31 If a judgment is rendered prematurely, it must be set aside if it deprives a party of a right to which there is entitlement under the rules of practice. *New Milford Savings Bank v. Jajer*, 52 Conn. App. 69, 84-85, 726 A.2d 604 (1999).’

WEST KEY NUMBERS:

- WEST KEY NUMBER: Judgments # 92-134
105. Default in pleading
106. Failure to plead in general

ENCYCLOPEDIAS:

- 46 [AM.JUR. 2D](#) *Judgments* (2006)
Defaults §§ 265-321
- 49 [CJS](#) *Judgments* (2009)
Default in Pleading §§ 266-271

TEXTS & TREATISES:

- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010 – 2011 ed.).
Chapter 17. Judgments, E.5 Defaults Involving Pleadings and Discovery Orders
§ 17-31. Procedure where party is in default
§ 17-31.1. Discovery and pleading defaults; Obtaining judgment of dismissal or judgment after default entered
§ 17-32. Where defendant is in default for failure to plead
§ 17-32.1. Defaulted party, pleadings by
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#).
Section V. Timing, waivers and defaults (1998 ed.)
3. Motions for default
c. Defaults for failure to plead or disclose a defense
d. Automatic cure of default for failure to plead
e. Motion to dismiss and strike and requests to revise
f. Hearing in damages
g. Military affidavits
h. Effect of Default
Section V. Timing, waivers and defaults (1995 ed.)
3. Motions for default
c. Defaults for failure to plead or disclose a defense
d. Automatic cure of default for failure to plead
e. Hearing in damages
f. Military affidavits
- Kimberley A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
Chapter 15. Pleadings: Motions against Defendants Who Do Not File Pleadings
Section I. Motion for Default for Failure to Plead (pp. 153-154)
A. Applicable sections
B. No short calendar

C. After default is granted

- Renee Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#) (3rd ed. 1997).
 - § 96e. Other grounds for default.
 - (1). Failure to plead

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Figure 1: Motion for default for failure to plead

DOCKET NO.: CV-97-0082651S : SUPERIOR COURT
CAS CONSTRUCTION CO., INC. : J.D. OF MIDDLESEX
V. : AT MIDDLETOWN
DAINTY RUBBISH SERVICE, INC. : AUGUST 11, 1997

MOTION FOR DEFAULT FOR FAILURE TO PLEAD

The Plaintiff, CAS Construction Co., Inc., in the above entitled action hereby moves that a default be entered against the Defendant, Dainty Rubbish Service, Inc. as no responsive pleading has been filed by or on behalf of the Defendant and the time for filing such pleading has passed.

PLAINTIFF,

CAS CONSTRUCTION CO., INC.

BY: _____

Name

Firm

Address

Phone Number

ORDER

The foregoing Motion having been presented to the Court

It is hereby ORDERED: GRANTED/DENIED.

BY THE COURT

Judge/Clerk

[separate page]

CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid, first class mail to _____ on this 11th day of August, 1997.

Name

Section 6: Setting Aside (Opening) Default for Failure to Plead

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to setting aside or opening a motion for default for failure to plead.
- SEE ALSO:**
- [§ 7. Judgment Upon Default for Failure to Plead](#)
- DEFINITION :**
- **Automatic set aside by clerk.** "If a party who has been defaulted under this section files an answer before a judgment after default has been rendered by the judicial authority, the clerk shall set aside the default." CONN. PRACTICE BOOK § [17-32\(b\)](#) (2011 ed.).
 - **Court order required.** "If a claim for a hearing in damages or a motion for judgment has been filed, the default may be set aside only by the judicial authority." CONN. PRACTICE BOOK § [17-32\(b\)](#) (2011 ed.).
 - "A motion to set aside a default where no judgment has been rendered may be granted by the judicial authority for good cause shown upon such terms as it may impose. As part of its order, the judicial authority may extend the time for filing pleadings or disclosure in favor of a party who has not been negligent. Certain defaults may be set aside by the clerk pursuant to Sections 17-20 and 17-32." CONN. PRACTICE BOOK § [17-42](#) (2011 ed.).
 - "We conclude that once the defendant invoked the court's discretion pursuant to § 376 [now 17-42], he was bound by the court's order thereon and was not entitled to the benefit of § 363A [now § 17-32] with respect to the same default." *Whalen v. Ives*, 37 Conn. App. 7, 14, 654 A.2d 798, 802 (1995).
- COURT RULES:**
- CONN. PRACTICE BOOK (2011 ed.)
 - § [17-32](#). Where defendant is in default for failure to plead
 - § [17-42](#). Opening defaults where judgment has not been rendered
- FORMS:**
- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.).
 - Chapter 17. Judgments
 - F.17-32(1). Objection to motion for default for failure to plead
 - F.17-32(2). Motion to strike defaulted defendant's responsive pleadings
 - Kimberley A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 15. Pleadings: motions against defendants who do not file pleadings.
 - Example 1, Motion for default for failure to plead, p. 157
 - Robert M. Singer, [Library of Connecticut Collection Law Forms](#),

Connecticut Law Tribune

Motion for Default for Failure to Plead, pp. 347-349

Motion to Set Aside Default for Failure to Plead, pp. 402-404

CASES:

- [CAS Construction Co. v. Dainty Rubbish Service, Inc.](#), 60 Conn. App. 294, 300, 759 A.2d 555 (2000). ‘A plaintiff cannot claim a case to the trial list (a hearing in damages) without first having obtained a default for failure to plead. *Wooding v. Zasciurinskas*, 14 Conn. App. 164, 167, 540 A.2s 93 (1988). A hearing in damages cannot be conducted unless there has been compliance with Practice Book § 363, now 17-31 If a judgment is rendered prematurely, it must be set aside if it deprives a party of a right to which there is entitlement under the rules of practice. *New Milford Savings Bank v. Jajer*, 52 Conn. App. 69, 84-85, 726 A.2d 604 (1999).’
- [Brunswick School, Inc. v. Hutter](#), 53 Conn. App. 455, 460, 730 A.2d 1206, 1209 (1999). ‘Finally, on June 17, 1997, the trial court, *D’Andrea, J.*, denied the defendant’s request to open the default. Practice Book § 17-42 provides that ‘[a] motion to set aside a default where no judgment has been rendered may be granted by the judicial authority for *good cause shown* upon such terms as it may impose. . . .’ (Emphasis added.) In its February 20, 1998 articulation, the trial court, *Lewis, J.*, noted that the defendant had provided outdated medical documentation in support of his motion to open the default, including a hospital record of admission on October 6, 1996, *three months prior* to the trial, and a letter from a physician indicating that the defendant had hypertension. In articulating its basis for denying the defendant’s motion for reconsideration, the trial court found it significant that the defendant did not provide any reference to a more current report from a physician. In making ‘every reasonable presumption in favor of [the court’s] action’; *Walton v. New Hartford*, . . . [223 Conn. 155, 169, 612 A.2d 1153, 1160 (1992)]; we conclude that the trial court did not abuse its discretion in entering the default against the defendant and in denying the defendant’s motion to open the default.’
- [Whalen v. Ives](#), 37 Conn. App. 7, 13, 654 A.2d 798, 801 (1995). "Section 376 [now section 17-42] applies to all defaults and permits the court to set aside such defaults prior to judgment. A party who is defaulted for a reason other than failure to plead must use this section. A defendant who wants to file a pleading that precedes the answer may also resort to this section. In contrast, § 363A [now § 17-32] applies only to defaults for failure to plead and only when the defendant elects to waive the right to file preceding pleadings by filing an answer prior to judgment."

WEST KEY NUMBERS:

- Judgment # 135-177 – Opening or Setting Aside Default.
 - # 138. Right to relief in general
 - # 139. Discretion of the court
 - # 140. Judgments which may be opened or set aside
 - # 143. Excuses for default
 - # 147. Waiver of right to relief
 - # 149. Persons as against whom judgment may be opened or set aside.
 - # 153. Time for application
 - # 156. Stay of proceedings on judgment
 - # 175. Defenses after opening default

- # 176. Proceedings after opening default
- # 177. Objections and exceptions

ENCYCLOPEDIAS:

- 46 [AM.JUR. 2D](#) *Judgments* (2006).
Defaults §§ 255-297
- 49 [CJS](#) *Judgments* (2009).
Judgments by Default – In General - §§ 516 – 520
Right to and Grounds for Opening or Vacating - §§ 521 – 534
- James L. Buchwalter, *Annotation, Imposition of Default Judgment Against Codefendant—Modern Treatment*, 102 [ALR5th](#) 647 (2002).
- Annotation, *Doctrine of Res Judicata as Applied To Default Judgments*, 77 [ALR2d](#) 1410 (1961).
- Annotation, *Opening Default or Default Judgment Claimed To Have Been Obtained Because Of Attorney’s Mistake As To Time Or Place Of Appearance, Trial Or Filing Of Necessary Papers*, 21 [ALR3d](#) 1255 (1968).
- Annotation, *Appealability of Order Setting Aside, or Refusing to Set Aside, Default Judgment*, 8 [ALR3d](#) 1272 (1966).

TEXTS & TREATISES:

- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.).
Chapter 17. Judgments
§ 17-32.1. Defaulted party, Pleadings by.
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#).
Section V. Timing, waivers and defaults (1998 ed.)
3. Motions for default (pp. 71-72)
d. Automatic cure of default for failure to plead
e. Motion to dismiss and strike and requests to revise
Section V. Timing, waivers and defaults (1995 ed.)
3. Motions for default (p. 45)
d. Automatic cure of default for failure to plead
- Renee Bevacqua Bollier et al., [Stephenson’s Connecticut Civil Procedure](#) (3rd ed. 1997).
§ 96e(1). Failure to plead
- Kimberley A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
Chapter 15. Pleadings: Motions against Defendants Who Do Not File Pleadings
II. Two ways to open a default (p. 154)
A. By the clerk
B. When opening a default requires a court order

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

Table 5: Unreported Decisions: Motion to Set Aside Default

Unreported Decisions	
<p><u>Fiamengo v. Duffy</u>, No. CV00-0801777S (Apr. 3, 2001), 2001 WL 417650</p>	<p>“Practice Book § 17-32 (b) provides that ‘[a] claim for a hearing in damages or motion for judgment shall not be filed before the expiration of fifteen days from the date of the issuance of the default under this section.’ The plaintiffs claim, having been filed only four days after the granting of his request for a default, was thus filed too early. The same Practice Book section also provides that ‘[i]f a claim for a hearing in damages or a motion for a judgment has been filed the default may be set aside only by the judicial authority.’ Practice Book § 17-32 (b). Construing these two provisions together, it would appear that a defendant’s remedy when, as here, a claim for a hearing in damages is filed too early is to move to set aside the default under Practice Book § 17-42. This section provides that ‘[a] motion to set aside a default where no judgment has been rendered may be granted by the judicial authority for good cause shown upon such terms as it may impose.’ Certainly the plaintiff’s premature filing of a claim for a hearing in damages may constitute the ‘good cause’ that would justify setting aside the default under this section. Because, in this case, the defendant failed to file a motion to set aside the default, the court will not relieve him of his default for failure to plead.”</p>
<p><u>Deercliff Homeowners Assn. v. Seraya</u>, No. CV-97-0482805-S (Feb. 28, 2001), 2001 WL 283015</p>	<p>Concerning the determination as to whether to open a default, rule of practice § 17-42 states: ‘[a] motion to set aside a default may be granted by the judicial authority for good cause shown upon such terms as it may impose.’ The court, in its discretion, may consider the presence of mistake, inadvertence, misfortune or other reasonable cause. See <u>Higgins v. Karp</u>, 243 Conn. 495, 508, 706 A.2d 1 (1998) (previously cited by the court in its November 3, 2000 order). It may consider ‘factors such as the seriousness of the default, its duration, the reasons for it and the degree of contumacy involved . . . [as well as] the totality of the circumstances, including whether the delay has caused prejudice to the nondefaulting party.’ (Internal quotation marks and citation omitted.) <i>Id.</i></p> <p>As noted, except for its procedural arguments, which the court addressed above, and its advancement of what it claims are meritorious defenses, which the court addresses below, Seraya has advanced no argument explaining why the defaults should be vacated. It has not even contended, for example, that the November, 1997 default was the result of mistake, inadvertence, misfortune or other reasonable cause. Instead, it has chosen to act as though that court action, taken over three years ago, did not exist. It has done so in the face of being put on notice of it again, by the court, on the record, on September 18, 2000. Deercliff also pleaded the existence of this default in its objection to the September, 2000 motion to open the April, 2000 default for failure to plead.”</p>

Unreported Decisions (cont'd)

<p><u>Holbrook v. Cadle Prop. of Connecticut</u>, No. CV97-0567429 (Dec. 4, 2000), 2000 WL 1872041, 29 CLR 167</p>	<p>“The defendant did not file a Motion to Set Aside the Default pursuant to Practice Book § 17-42. Furthermore, the defendant did not file a Notice of Defenses within the time period allowed in Practice Book §§ 17-34 and 17-35. Absent such a notice, the defendant is not entitled to have the trier of fact consider evidence for the purpose of contradicting any of the allegations in the plaintiff’s complaint, except such as relating to the amount of damages. In this case, the issue of damages related to the requested assignment of civil penalties and equitable obligations. Practice Book § 17-34.”</p>
<p><u>Barile v. Lenscrafters, Inc.</u>, No. CV98-0415048 (Jun. 8, 2000), 2000 WL 804664</p>	<p>“Our Rules do no [<i>sic</i>] contemplate opening of a default upon demand. There must be some good and sufficient basis for the motion.”</p>
<p><u>Papadopoulos v. Josem</u>, No. CV99 0173837 S (May 12, 2000), 2000 WL 670024</p>	<p>“ ‘If a defaulted party wishes to file a motion to strike, the party must first move the court to open the default pursuant to Practice Book § 376 [now § 17-42]. <u>McGhie v. Reliable Taxi Co.</u>, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. 280107 (August 4, 1993, <u>Leheny, J.</u>) (8 C.S.C.R. 904).’ <u>Martin v. Martins</u>, Superior Court, judicial district of Waterbury, Docket No. 124326 (July 26, 1996, <u>Pellegrino, J.</u>); see also <u>Kapral v. King Conn Enterprises, Inc.</u>, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. 320144 (January 9, 1996, <u>Maiocco, J.</u>); <u>Scott Swimming Pools v. Aniscovich</u>, Superior Court, judicial district of Waterbury, Docket No. 114383 (October 19, 1993, <u>Sylvester, J.</u>). ‘A motion to strike cannot be entertained when a motion for default has been granted against the defendant and the defendant has not moved to open the default pursuant to Practice Book § 376 [now § 17-42].’ (Internal quotation marks omitted.) <u>Martin v. Martins</u>, supra, Superior Court, Docket No. 124326; see also <u>Kapral v. King Conn Enterprises, Inc.</u>, supra, Superior Court, Docket No. 320144 (the motion to strike was not properly before the court since the default motion against the defendant had not been set aside); <u>McGhie v. Reliable Taxi Co.</u>, supra, 8 C.S.C.R. 904 (the motion to strike was not properly before the court since the defendant had not moved to open the default); <u>Catalina v. General Accident Ins. Co.</u>, Superior Court, judicial district of Waterbury, Docket No. 109676 (February, 1, 1993, <u>Sylvester, J.</u>) (same); <u>Neiman Marcus Group, Inc. v. Meehan</u>, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. 387601 (September 19, 1991, <u>Schaller, J.</u>) (5 Conn.L. Rptr. 16, 17) (same).</p> <p>In the present case, the defendant has not filed a motion to set aside the default pursuant to Practice Book § 17-42. See <u>Martin v. Martins</u>, supra, Superior Court, Docket No. 124326; <u>Kapral v. King Conn Enterprises, Inc.</u>, supra, Superior Court, Docket No. 320144. Thus, the defendant’s motion to strike is not properly before the court, and is, accordingly, denied.”</p>

Figure 2: Motion to Open Default for Failure to Plead

NO. CV-97-0082651 S

CAS CONSTRUCTION CO., INC. : SUPERIOR COURT
VS. : J.D. OF MIDDLESEX
AT MIDDLETOWN
DAINTY RUBBISH SERVICE, INC. : SEPTEMBER 25, 1997

MOTION TO OPEN DEFAULT

In accordance with Section 17-42 of the Connecticut Practice Book, as amended, the defendant respectfully moves that the Court open the default entered in the above entitled action, and in support thereof respectfully submits the following:

1. The return date in this action is July 8, 1997.
2. On or about August 12, 1997, plaintiffs Motion for Default for Failure to Plead was filed.
3. On or about Friday, August 22, 1997, plaintiff filed a claim for a hearing in damages.
4. On or about Monday, August 25, 1997, defendant filed a Request to Revise.
5. Due to inadvertency, defendant's Request to Revise was not filed prior to plaintiffs aforesaid pleading.

ORAL ARGUMENT AND/OR
TESTIMONY IS REQUESTED

6. As the Request to Revise was filed one filing day after the claim for hearing in damages, no significant preparation for trial has taken place, there is no prejudice to the Olaintiff at this stage of the proceeding and the plaintiff will not have been misled in any way.

7. In accordance with Section 1-8 of the Connecticut Practice Book, as amended, defendant requests that the Court open the default in this matter in that strict adherence to the rules of pleading would work injustice to the defendant.

WHEREFORE, it is respectfully requested that this honorable Court open the default.

FOR THE DEFENDANT,

By _____
Name

ORDER

The foregoing Motion to Open having been duly heard, it is hereby ORDERED:

GRANTED/DENIED.

BY THE COURT,

Clerk/J.

Section 7: Judgment Upon Default for Failure to Plead

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to:

1. Judgment upon (or after) Default for Failure to Plead
2. Opening or Setting aside a judgment upon default

SEE ALSO:

- [§ 6. Setting Aside \(Opening\) a Default for Failure to Plead](#)

DEFINITION :

- **Default vs. judgment upon default:** “A default is not a judgment. It is an order of the court the effect of which is to preclude the defendant from making any further defense in the case so far as liability is concerned. A judgment upon default, on the other hand, is the final judgment in the case which is entered after the default and after a hearing in damages.” *Automotive Twins, Inc. v. Klein*, 138 Conn. 28, 33, 82 A.2d 146, 149 (1951).
- **Judgment upon Default:** “Any judgment rendered or decree passed upon a default . . . may be set aside within four months succeeding the date on which notice was sent, and the case reinstated on the docket on such terms in respect to costs as the judicial authority deems reasonable, upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of such judgment or the passage of such decree, and that the plaintiff or the defendant was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same. Such written motion shall be verified by the oath of the complainant or the complainant's attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or the defendant failed to appear. The judicial authority shall order reasonable notice of the pendency of such written motion to be given to the adverse party, and may enjoin that party against enforcing such judgment or decree until the decision upon such written motion.” CONN. PRACTICE BOOK § [17-43\(a\)](#) (2011 ed.).
- **Good Cause:** “A judgment rendered upon a default or nonsuit may be set aside only if the moving party demonstrates that he has been prejudiced by the judgment, that ‘reasonable cause’ or a ‘good cause of action or defense . . . existed at the time of the rendition of the judgment’ and that the movant was prevented by ‘mistake, accident or other reasonable cause from prosecuting the action or making the defense.’” *Steve Viglione Sheet Metal Co. v. Sakonchick*, 190 Conn. 707, 712, 462 A.2d 1037, 1041 (1983).

STATUTES:

- CONN. GEN. STATS.
 - § [51-55](#). Judgments of default or nonsuit (2009)
 - § [52-212](#). Opening judgment upon default or nonsuit (2009)

§ [52-259c](#). Fee to open, set-aside, modify, extend or reargue judgment (2010 supplement)

COURT RULES:

- CONN. PRACTICE BOOK (2011 ed.)
 - § [17-22](#). Notice of judgments of nonsuit and default for failure to enter an appearance
 - § [17-43](#). Opening judgment upon default or nonsuit

FORMS:

- Motion to Open Judgment, JD-CV-107:
<http://www.jud2.ct.gov/webforms/forms/CV107.pdf>
- Forms to File if You Would like to have a Judgment Opened:
<http://www.jud.ct.gov/forms/grouped/civil/judgment.htm>
- 2 Joel M. Kaye et al., [Connecticut Practice Series: Civil Practice Forms](#) (2004).
 - Form 107.7. Judgment by Default against Corporate Defendant
 - Form 107.8. Judgment by Default against Individual Defendant
 - Form 107.8-F. Motion to Open Judgment upon Default
- Robert M. Singer, [Library of Connecticut Collection Law Forms](#), 2009, Connecticut Law Tribune
 - Form 9-029 Motion to Open Judgment, pp.448-451

CASES:

- [Eastern Elevator Co. v. Scalzi](#), 193 Conn. 128, 131, 474 A.2d 456, 458-459 (1984). “It is thus clear that there is a two-pronged test to set aside a judgment rendered after a default. *A.D.C. Contracting & Supply Corporation v. Thomas J. Riordan, Inc.*, [176 Conn. 579, 580, 409 A.2d 1027 (1979)]. . . There must be a showing that (1) a good defense, the nature of which must be set forth, existed at the time judgment was rendered, and (2) the party seeking to set aside the judgment was prevented from making that defense because of mistake, accident or other reasonable cause.”
- [Steve Viglione Sheet Metal Co. v. Sakonchick](#), 190 Conn. 707, 713, 462 A.2d 1037, 1041 (1983). “The theory underlying these rules governing the vacating of judgments is the equitable principle that once a judgment is rendered it is to be considered final . . . and should be left undisturbed by post-trial motions except for a good and compelling reason.”

WEST KEY NUMBERS:

- Judgment # 92-177
 - # 92. Nature of judgment by default
 - # 94. Actions in which judgment by default is authorized
 - # 95. Parties who may take judgment by default
 - # 96. Parties against whom judgment by default may be rendered
 - # 115. Relief awarded on judgment by default
 - # 121. Application for judgment
 - # 128. Final judgment

ENCYCLOPEDIAS:

- 46 [AM.JUR. 2D](#) *Judgments* (2006)
 - Judgment by Default §§ 232-305
- 49 [CJS](#) *Judgments* (2009)

Judgment by Default §§ 253-293

- James L. Buchwalter, *Annotation, Imposition Of Default Judgment Against Codefendant—Modern Treatment*, 102 [ALR5th](#) 647 (2002).
- *Annotation, Doctrine of Res Judicata as Applied To Default Judgments*, 77 [ALR2d](#) 1410 (1961).
- James O. Pearson, *Annotation, Fraud In Obtaining Or Maintaining Default Judgment As Ground For Vacating Or Setting Aside In State Courts*, 78 [ALR3d](#) 150 (1977).
- *Annotation, Opening Default or Default Judgment Claimed To Have Been Obtained Because Of Attorney's Mistake As To Time Or Place Of Appearance, Trial Or Filing Of Necessary Papers*, 21 [ALR3d](#) 1255 (1968).
- James O. Pearson, *Fraud In Obtaining Or Maintaining Default Judgment*, 10 [POF2d](#) 427 (1976).

TEXTS & TREATISES:

- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.).
 - Chapter 17. Judgments
 - § 17-43. Opening Judgment upon Default or Nonsuit
 - § 17-43.1. Reasonable cause; Existence of good cause of action or defense
 - § 17-43.2. Reasonable cause for failure to appear
 - § 17-43.3. Four month time limit, effect of
 - § 17-43.4. *Audita Querela*, Writ of Use and Effect of
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998 ed.).
 - Chapter XIV. Motions to Set Aside or Open, Reargue, Correct, Articulate and Enforce Settlements, and the Accidental Failure of Suit Statute
 - § 4. Motions to Open Default Judgments, pp. 152-153
 - a. Grounds for the Motion
 - b. When Motion may be Denied
 - c. Effect of Default Judgment
- Renee Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#) (3rd ed. 1997).
 - § 96b. Default judgment and default distinguished
 - § 96g. Reopening judgments on default
- Kimberley A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 15. Pleadings: Motions against Defendants Who Do Not File Pleadings.
 - Section III. Judgment upon default (p. 154)

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

Section 8: Other Grounds for Default

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to defaults for failure to:

1. Comply with order of judicial authority
2. Appear for trial
3. Make disclosures, answer interrogatories or comply with a discovery order
4. Disclose defense
5. Obey pretrial orders

DEFINITION :

- **Default:** "If a party fails to comply with an order of a judicial authority or a citation to appear or fails without proper excuse to appear in person or by counsel for trial, the party may be nonsuited or defaulted by the judicial authority." CONN. PRACTICE BOOK § [17-19](#) (2011 ed.).
- **Discovery:** "If any party has failed to answer interrogatories or to answer them fairly, or has intentionally answered them falsely or in a manner calculated to mislead, or has failed to respond to requests for production or for disclosure of the existence and contents of an insurance policy or the limits thereof, or has failed to submit to a physical or mental examination, or has failed to comply with a discovery order made pursuant to Section 13-13, or has failed to comply with the provisions of Section 13-15, or has failed to appear and testify at a deposition duly noticed pursuant to this chapter, or has failed otherwise substantially to comply with any other discovery order made pursuant to Sections 13-6 through 13-11, the judicial authority may, on motion, make such order as the ends of justice require." CONN. PRACTICE BOOK § [13-14\(a\)](#) (2011 ed.).
- **Disclosure of Defense:** "In any action to foreclose or to discharge any mortgage or lien or to quiet title, or in any action upon any written contract, in which there is an appearance by an attorney for any defendant, the plaintiff may at any time file and serve in accordance with Sections 10-12 through 10-17 a written demand that such attorney present to the court, to become a part of the file in such case, a writing signed by the attorney stating whether he or she has reason to believe and does believe that there exists a bona fide defense to the plaintiff's action and whether such defense will be made, together with a general statement of the nature or substance of such defense. If the defendant fails to disclose a defense within five days of the filing of such demand, or within ten days of the filing of such demand in any action to foreclose a mortgage, the plaintiff may file a written motion that a default be entered against the defendant by reason of the failure of the defendant to disclose a defense. If no disclosure of defense has been filed, the judicial authority may order judgment upon default to be entered for the plaintiff at the time the motion is heard or thereafter, provided that in either event a separate motion for such judgment has been filed. The motions for default and for judgment upon default may

be served and filed simultaneously but shall be separate motions."
CONN. PRACTICE BOOK § [13-19](#) (2011 ed.).

- **Pretrial Procedure** "... If any person fails to attend...the judicial authority may make such order as the ends of justice require, which may include the entry of a nonsuit or default against the party failing to comply and an award to the complying party of reasonable attorney's fees." CONN. PRACTICE BOOK § [14-13](#) (2011 ed.).

STATUTES:

- CONN. GEN. STATS.
 - § [52-212](#). Opening judgment upon default or nonsuit. (2009)
 - § [52-259c](#). Fee to open, set aside, modify, extend or reargue judgment. (2010 supplement)

COURT RULES:

- CONN. PRACTICE BOOK (2011 ED.)
 - § [17-42](#). Opening defaults where judgment has not been rendered
 - § [17-43](#). Opening judgment upon default

FORMS:

- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.)
 - Form F.17-33 Judgment by Default [Appearance] Against Individual Defendant, p. 17-196
- Joel M. Kaye et al. [Connecticut Practice Series: Civil Practice Forms](#) 4d, vol. 3A
 - Form S-1 Demand for Disclosure of Defense, p. 196
 - Form S-2 Motion for Default for Failure to Disclose Defense, p. 197
 - Form S-2-A Motion for Judgment Upon Default for Failure to Disclose Defense, p. 198
- Koskoff, Koskoff & Bieder, [Library of Connecticut Personal Injury Forms](#)
 - Objection to Motion for Non-Suit, pp. 363-364
 - Objection to Motion for Non-Suit for Failure to Answer Interrogatories, pp. 544-547
 - Objection to Motion for Non-Suit for Failure to Produce Experts for Deposition, pp. 555-558
- Robert M. Singer, [Library of Connecticut Collection Law Forms](#), 2009, Connecticut Law Tribune
 - Motion for Nonsuit for Failure to Respond to Discovery, pp. 379-381
- [Civil Discovery Practice in Connecticut](#), Law Practice Handbooks, Inc., 1995
 - Motion for Default and/or Other Relief, p. 9-21

CASES:

Reopening default

- [Brill v. State of Connecticut](#), 26 Conn. Supp. 29, 34, 210 A.2d 451,454 (1965). "The court believes that a proper remedy for the defendant's frustration of the court's order is a default for failure to comply with the court's order of October 16, 1964, that depositions be taken. Such a

default may, of course, be set aside upon such terms as the court may impose. Practice Book § 280 [now 14-24]. At the hearing on a motion to set aside, the court may consider the expense incurred by the plaintiff in taking Mitchell's deposition, as well as any other matters."

Reopening judgment upon default

- Automotive Twins, Inc. v. Klein, 138 Conn. 28, 34, 82 A.2d 146, 149-150 (1951). "An application to open a judgment upon default is, when not based on a pure error of law, addressed to the sound discretion of the court. *Jartman v. Pacific Fire Ins. Co.*, 69 Conn. 355, 362, 37 A. 970. For this discretion to be exercised in favor of the defaulted party, it must be shown that he was prevented from appearing by 'mistake, accident or other reasonable cause.' The judgment should not ordinarily be opened if his failure to appear or procure a continuance resulted from his own negligence. *Schoonmaker v. Albertson & Douglass Machine Co.*, supra, 392.

The defendant's excuse for not appearing was that he was engaged in trial elsewhere. We are cognizant of the custom which has grown up of adjourning the trial of a case if, when it is reached, counsel for any party is actually engaged in the trial of another case. Such an adjournment, however, is not a matter of right. It is a matter of courtesy - a courtesy extended by both opposing counsel and the court. Its exercise calls for the reciprocal courtesy on the part of the lawyer engaged elsewhere of at least communicating the fact of his engagement to both opposing counsel and the court in advance of the time set for the trial. Under ordinary circumstances, an attorney who fails so to advise of his inability to attend the trial thereby evinces a lack of proper respect for the court. If a default results from such failure, he has no ground for complaint. The default is the result of his own neglect."

WEST KEY NUMBERS:

- Judgment – Default of appearance - #103
- Judgment – Excuses for default – Appearance # 143
- Judgment – Absence at trial or other proceeding #109
- Discovery – Sanctions – Default Judgment as Sanction
Generally Pretrial Proc #46
Depositions Pretrial Proc #226
Interrogatories Pretrial Proc #316
Production of Documents and Things Pretrial Proc #435

ENCYCLOPEDIAS:

- 46 [AMJUR. 2D](#) *Judgments* (2006)
Defaults §§ 261-263
- 23 [AMJUR 2D](#) *Depositions and Discovery* (2002)
Default Judgment § 224
- Judgment in favor of plaintiff in state court action for defendant's failure to obey request or order to answer interrogatories or other discovery questions, 30 [ALR 4th](#) 9.
- Judgment in favor of plaintiff in state court action for defendant's failure to obey request or order for production of documents or other objects, 26 [ALR 4th](#) 849.
- Opening Default or Default Judgment Claimed To Have Been Obtained Because Of Attorney's Mistake As To Time Or Place Of

Appearance, Trial Or Filing Of Necessary Papers, 21 [ALR 3d](#) 1255 (1968).

- Failure of party or his attorney to appear at pretrial conference, 55 [ALR 3d](#) 303 (1974).

TEXTS & TREATISES:

- [Civil Discovery Practice in Connecticut](#), 1995, Law Practice Handbooks
Chapter 4. Production of Documents and Tangible Things by Ernest F. Teitell
3. [4.19] Nonsuit or Default, p. 4-13
- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010 – 2011 ed.).
Chapter 17. Judgments, E. Defaults and Nonsuits.
§ 17-19 Procedure Where Party Fails to Comply With Order of Judicial Authority or to Appear for Trial.
§ 17-19.1 Failure to Appear at Trial.
- *Engagement in Another Court*
§ 17-19.2 Failure to Comply with Court Order.
§ 17-19.3 Dismissal for Failure to Prosecute With Due Diligence, Distinguished.
§ 17-31.2 Discovery; Sanctions Under P.B. Secs. 13-14 or 13-11
Chapter 13. Discovery and Depositions
§ 13-14 Order for Compliance; Failure to Answer or Comply With Order.
§ 13-14.1 Sanctions, Discovery – Depositions.
§ 13-14.2 Sanctions; Hearing Required.
§ 13-14.3 Discovery Sanctions, Attorney Disqualification
§ 13-19 Disclosure of Defense
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1995 & 1998 eds.).
Chapter V. Timing, Waivers and Defaults
3. Motions for Default
c. Defaults for Failure to Plead or Disclose a Defense
- Renee Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#), vol. 1, (3rd ed. 1997).
§ 96. Judgment on Default
e. Other Grounds for Default
- Renee Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#), vol. 2, (3rd ed. 2002).
§ 129. Discovery Sanctions
§ 159. Nonsuits and Defaults for Reasons Not Evidential
- Kimberley A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
Chapter 16. Pleadings: Motions against Defendants Who Do Not Comply with the Rules of Court
Chapter 26: Discovery: Motions for Order of Compliance
Chapter 28: Closing the Pleadings and Pretrial
IV. Failure to Appear at Pretrial

- Denis R. Caron et al, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#) (2004 with 2010 supplement)
Chapter 5
5.01E. Disclosure of Defense, pp. 111-113

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Figure 3: Motion for Default for Failure to Disclose a Defense

Docket No: : SUPERIOR COURT
First Named Plaintiff : JUDICIAL DISTRICT OF _____
v. : AT _____
First Named Defendant : DATE

MOTION FOR DEFAULT FOR FAILURE TO DISCLOSE A DEFENSE

The Plaintiff in the above-entitled matter hereby moves that default enter against the Defendant, _____ for his failure to disclose a defense within the time prescribed by law.

THE PLAINTIFF

BY:

ORAL ARGUMENT NOT REQUESTED

TESTIMONY NOT REQUIRED

Order

The foregoing motion having been heard, it is hereby ORDERED:
GRANTED/DENIED.

THE COURT

BY: _____

Judge/Clerk

[separate page]

Certification

I hereby certify that a copy of the above was mailed on (*date*) _____

to: (List pro se parties and counsel of record and their addresses.)

(*Name*) _____

(Attorney or Pro Se)

Section 9: Hearing in Damages

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources related to hearing in damages following a default.

DEFINITION :

- "The entry of the default, however, does not preclude the defendant from raising a defense at the hearing in damages. If timely written notice is furnished to the plaintiff, the defendant may offer evidence contradicting any allegation of the complaint. The defendant may also challenge the right of the plaintiff to maintain the action or prove any matter of defense." DeBlasio v. Aetna Life & Casualty Co., 186 Conn. 398, 401, 441 A.2d 838 (1982).
- **Evidence:** "In any hearing in damages upon default, the defendant shall not be permitted to offer evidence to contradict any allegations in the plaintiff's complaint, except such as relate to the amount of damages, unless notice has been given to the plaintiff of the intention to contradict such allegations and of the subject matter which the defendant intends to contradict, nor shall the defendant be permitted to deny the right of the plaintiff to maintain such action, nor shall the defendant be permitted to prove any matter of defense, unless written notice has been given to the plaintiff of the intention to deny such right or to prove such matter of defense." CONN. PRACTICE BOOK § [17-34\(a\)](#) (2011 ed.)
- **Requirements of notice:** "The notices required by Section 17-34 shall be given in the manner provided in Sections 10-12 through 10-14, the original with proof of service being filed with the clerk." CONN. PRACTICE BOOK § [17-35\(a\)](#) (2011 ed.)
- **Requirements of time:** "In all actions in which there may be a hearing in damages, notice of defenses must be filed within ten days after notice from the clerk to the defendant that a default has been entered." CONN. PRACTICE BOOK § [17-35\(b\)](#) (2011 ed.)
- **Notice by Clerk:** "The clerk shall give notice of entry of a default, in the case of a defendant who has filed an appearance, in person to the defendant or the defendant's attorney, by mail, or by electronic notice, and in the case of a nonappearing defendant, by mailing such notice to the defendant at his or her last known address. The clerk shall enter on the docket the date when the clerk gives, mails or sends the notice, and said period of ten days shall run from said date." CONN. PRACTICE BOOK § [17-36](#) (2011 ed.).
- **Notice of defenses:** "The notice shall not contain a general denial, but shall specify which, if any, of the allegations, or parts thereof, of the complaint will be controverted; and only those allegations should be specified which it is intended to controvert by proof. The denial of the right of the plaintiff to maintain the action must go to the plaintiff's right to maintain it in the capacity in which the plaintiff sues, and not otherwise controvert the right of action. Any new matter by way of confession and avoidance must be specified. The defense of

contributory negligence must be specified and the grounds stated. Partial defenses must be specified in the same manner as complete defenses." CONN. PRACTICE BOOK § [17-37](#) (2011 ed.).

STATUTES:

- CONN. GEN. STATS. (2009)
 - § [52-220](#). Hearing in damages; when to jury
 - § [52-221](#). Hearing in damages. Evidence. Notice
 - § [52-221a](#). Hearing in damages: Proof of damages on defendant's failure to appear.

COURT RULES:

- CONN. PRACTICE BOOK (2011 ED.)
 - § [17-34](#). Hearings in damages; Notice of defenses
 - § [17-35](#). Requirements of notice; Time
 - § [17-36](#). Notice by clerk
 - § [17-37](#). Notice of defenses to be specific
 - § [17-38](#). Amending notice of defense
 - § [17-39](#). No reply allowed
 - § [17-40](#). Evidence to reduce damages
 - § [17-41](#). Relief permissible on default

CASES:

- *DeBlasio v. Aetna Life & Casualty Co.*, 186 Conn. 398, 401-402, 441 A.2d 838, 839-840 (1982). "The entry of the default, however, does not preclude the defendant from raising a defense at the hearing damages. If timely written notice is furnished to the plaintiff, the defendant may offer evidence contradicting any allegation of the complaint. The defendant may also challenge the right of the plaintiff to maintain the action or prove any matter of defense. Practice Book § 367 [now 17-34]; see also General Statutes § 52-221; *Bonner v. American Financial Marketing Corporation*, 181 Conn. 57, 58, 434 A.2d 323 (1980); *Upton v. Windham*, 75 Conn. 288, 289-90, 53 A. 660 (1902).

If the defendant appears in the action and furnishes the required notice, the subsequent hearing in damages takes on 'the nature of a supplemental trial involving the determination of questions of law and fact, and the determination of the damages to be assessed after such trial.' *New York, N.H. & H. R. Co. v. Hungerford*, 75 Conn. 76, 78-79, 52 A. 487 (1902).

At such a proceeding the burden of proof is on the defendant to disprove those allegations of the complaint which he contests. *Hourigan v. Norwich*, 77 Conn. 358, 367-68, 59 A. 487 (1904). If the defendant simply claims that he is not liable, he assumes the burden of proving that fact. *Bernhard v. Curtis*, 75 Conn. 476, 481, 54 A. 213 (1903). If the defendant sustains his burden, the plaintiff is entitled to nominal damages only. *Cardona v. Valentin*, supra, 26."

FORMS:

- Affidavit of debt ([JD-CV-52](#))
- Certificate of Closed Pleadings ([JD-CV-11](#))
- Plaintiffs' Objection to Motion for Stay of Hearing in Damages, Koskoff, Koskoff & Bieder, [Library of Connecticut Personal Injury Forms](#), pp. 562-567

ENCYCLOPEDIAS:

- 46 [AMJUR2D](#) *Judgments* (2006)
Defaults §§ 291- 303
- 25A [CJS](#) *DAMAGES* (2002)
§§ 325-327
- 49 [CJS](#) *JUDGMENTS* (2009)
§§ 287-290
- B. Finberg, *Defaulting defendant's right to notice and hearing as to determination of amount of damages*, 15 [ALR 3D](#) 586 (1967).

TEXTS & TREATISES:

- Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2010-2011 ed.).
Chapter 17. Judgments
F. Hearings in Damages Only
§17-34 Hearings in Damages; Notice of Defenses
§ 17-34.1. Hearing in damages. P.B. Secs. 17-34 through 17-41
—Markings for this list
§ 17-34.2. Notice of Defense; Scope of and Defenses.
§ 17-34.3. Hearing in Damages; Evidence; Notice.
§ 17-34.4. Hearing in Damages; Jury.
§ 17-34.5. Hearing in Damages List; Motion to Strike.
§ 17-34.6. Time Within Which to Claim Jury Trial; Hearing Damages.
§17-35. Requirements of Notice; Time.
§ 17-35.1. Ten Days Allowed Within Which to File Notice of Defenses.
§17-36. Notice by Clerk.
§17-37. Notice of Defense to be Specific.
§17-38. Amending Notice of Defense.
§17-39. No Reply Allowed.
§17-40. Evidence to Reduce Damages.
- Wesley W. Horton and Kimberly A. Knox, [Connecticut Practice Series: Connecticut Superior Court Rules](#) (2010 Ed.).
Authors' comments following §§ 17-34 to 17-40
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#)
(1998 ed.).f. Hearing in Damages, p. 72
(1995 ed.) e. Hearing in Damages, p. 45
- Renee Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#) (3rd ed. 1997).
§ 102. Hearing in damages
a. When necessary
b. Scheduling the hearing
c. Issues triable; notice
- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998)
Chapter 14. Pleadings: Motions against defendants who do not file an appearance
B. When a defendant fails to appear after default: Judgment
1. Hearing in Damages: C.G.S. sec. 52-220 et seq.

- 2. Motion for Judgment instead of a Hearing in damages,
pp. 141
- Chapter 15. Pleadings: Motions against defendants who do not file
pleadings
 - I. Motion for default for failure to plead
 - C. After the default is granted, p. 154
 - IV. Hearing in Damages, p. 155

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