

2016 Edition

Oral Argument in Civil Matters

A Guide to Resources in the Law Library

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*Prepared by Connecticut Judicial Branch, Superior Court Operations,
Judge Support Services, Law Library Services Unit*

lawlibrarians@jud.ct.gov

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Table 1: Practice Book [§ 11-18](#)

Procedure in Civil Matters

Practice Book [§ 11-18](#) —Oral Argument of Motions in Civil Matters

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

For those motions, oral argument shall be a matter of right, provided:

(1) the motion has been marked ready in accordance with the procedure that appears on the short calendar on which the motion appears, or

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

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

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

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

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

(f) For those motions for which oral argument is not a matter of right, oral argument may be requested in accordance with the procedure that is printed on the short calendar on which the motion appears.

(P.B. 1978-1997, Sec. 211.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 20, 2011, to take effect Jan. 1, 2012.)

Section 1: Intent to Argue (Arguable Matters)

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to oral argument of arguable matters, including related short calendar procedures.

DEFINITIONS:

- "Oral argument is at the discretion of the judicial authority except as to motions to dismiss, motions to strike, motions for summary judgment, motions for judgment of foreclosure, and motions for judgment on the report of an attorney trial referee and/or hearing on any objections thereto. For those motions, oral argument shall be a matter of right, provided..." Conn. Practice Book [§ 11-18\(a\)](#) (2016).
- "Thus, even though Practice Book § 11-18 `grants...oral argument as of right, it is not automatic but must be claimed for argument as provided in [Practice Book (1999) § 11-18].'" [Curry v. Goodman](#), 95 Conn. App. 147, 895 A.2d 266 (2006).

COURT RULES:

- Connecticut Practice Book (2016)
 - [§ 11-18](#). Oral Argument of Motions in Civil Matters

STANDING ORDERS:

- [Superior Court Standing Orders](#)
 - [Civil Short Calendar Standing Order](#)
 - [Notice Regarding Arguable Civil Short Calendar Matters \(2/28/09\)](#)
 - [Family Short Calendar Standing Order](#)
 - [Short Calendar Notice for Foreclosure Matters](#)

E-FILING:

- [Mark Short Calendar Matters](#) (Instructions and Reference Guides)
- [Quick Reference Guide: Short Calendar and the Marking Process](#)

SHORT CALENDAR INFORMATION:

- [Short Calendars](#) (<http://civilinquiry.jud.ct.gov/ShortCalMenu.aspx>)
 - [Short Calendar Notices](#)

COURT CASES:

- [Wasilewski v. Commissioner of Transportation](#), 152 Conn. App. 560, 569, 99 A.3d 1181 (2014). "[E]ven though Practice Book sec. 11-18 grants ... oral argument as a matter of right, it is not automatic but must be claimed for argument as provided [by the rule]."
- [Cornelius v. Rosario](#), 138 Conn. App. 1, 20, 51 A. 3d 1144 (2012). "Section 11-18 sets forth the proper procedure for, inter alia, requesting oral argument or testimony with respect to various motions in civil matters. This section does not state or indicate that oral testimony is permitted or required on a motion for summary judgment; rather, it provides the procedure for requesting oral argument or testimony on motions on which either or both is appropriate."

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

- [Town of Stratford v. Castater](#), 136 Conn. App. 535, 46 A. 3d 953 (2012). “Whether to allow counsel fees and in what amount calls for the exercise of judicial discretion.... Generally, when the exercise of the court's discretion depends on issues of fact which are disputed, due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses.’ (Citation omitted; internal quotation marks omitted.) *Esposito v. Esposito*, 71 Conn. App. 744, 747, 804 A.2d 846 (2002).

“Here, the defendant requested a hearing on his motion for attorney's fees for the first time in his motion for reconsideration. In the motion for reconsideration, the defendant's counsel specifically stated that ‘[o]n Thursday, March 31, 2011, counsel marked the motion “take on the papers”: no objection had been made.’ It is well established that ‘[t]he knowledge and admissions of an attorney are imputed to his client.’ *Lafayette Bank & Trust Co. v. Aetna Casualty & Surety Co.*, 177 Conn. 137, 140, 411 A.2d 937 (1979). Thus, even assuming that the defendant had a right to a hearing on his motion for attorney's fees, he waived that right when his counsel marked the motion for attorney's fees ‘take on the papers’; the later request for a hearing on the motion for reconsideration, therefore, was ineffective.”

- [Marut v. Indymac Bank](#), 132 Conn. App. 763 (2012). “The plaintiff relies on Practice Book § 11-18 (a), which states that a motion for summary judgment is subject to oral argument as of right. The court, however, is not responsible for absenteeism in the courts by either the parties or their counsel. The court afforded the plaintiff the opportunity for oral argument on December 6, 2010, in accordance with Practice Book § 11-18 (a), but the plaintiff did not appear after his motion for a continuance was denied. As the court noted in its January 5, 2011 order, Practice Book § 11-18 (d) also provides in relevant part: ‘Failure to appear and present argument on the date set by the judicial authority shall constitute a waiver of the right to argue unless the judicial authority orders otherwise.’ Therefore, the court did not abuse its discretion in denying the motion to open.”
- [Vertex v. Waterbury](#), 278 Conn. 557, 898 A.2d 178 (2006). “First, as noted previously herein, the trial court in its memorandum of decision acknowledged that no motion to strike or motion for summary judgment had been filed. The pretrial briefs that led to the dismissal of two counts of the complaint were filed on the trial judge's order and not at the initiative of either party. Second, the record does not demonstrate that the plaintiff knowingly waived the applicable procedures under the rules of practice for dispositive motions. . . Finally, the record does not reveal that the plaintiff had a fair opportunity to respond to the potential dismissal of claims because it lacked notice that the trial court intended to use the parties' pretrial briefs to rule on the legal sufficiency of its claims.”

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

- [Curry v. Goodman](#), 95 Conn. App. 147, 895 A.2d 266 (2006). “We conclude that, in this instance, the parties had a right to oral argument on the motion for summary judgment. . . . Here, the defendant requested oral argument on its motion for summary judgment and, although the matter initially had appeared on the short calendar, both counsel initially agreed that the matter should be marked ‘off,’ and it was only later reclaimed for oral argument when the court did not respond to the plaintiff’s preliminary objection to the motion. Additionally, once the matter had been reclaimed by the defendant for oral argument on October 7 and again on November 17, 2004, it does not appear that either party actually marked the matter ready for adjudication on either date. Although it was not the responsibility of the court to schedule a hearing on the defendant’s motion absent the filing of a request for adjudication, in this instance we believe that the court either should have notified counsel that it did not intend to respond in piecemeal fashion to counsel’s preliminary objection or taken no action on the motion for summary judgment until such time as the parties, in fact, marked the motion for summary judgment ready for adjudication. Although the court’s action likely was induced by counsel, its effect was to deny the parties their right to oral argument on the defendant’s motion for summary judgment.”
- [Haggerty v. Williams](#), 84 Conn. App. 675, 855 A.2d 264 (2004). “The defendant’s second argument fails because the defendant did in fact present oral argument to the court on her succeeding motion to open. Although the defendant argues that she should have been able to argue before Judge Celotto instead of Judge DeMayo, there is no such rule in Connecticut. The defendant had her day in court to argue her motion to open and, accordingly, that claim must fail.”
- [Bojila v. Shramko](#), 80 Conn. App. 508, 518, 758 A.2d 906 (2003). “The substitute plaintiff argues in his reply brief that oral argument was available as a matter of right without meeting the procedure set forth in Practice Book § 11-18(a). That simply is inaccurate.”
- [Davis v. Westport](#), 61 Conn. App. 834, 839-840, 767 A.2d 1237 (2001). “Therefore, we concluded that ‘even if [Practice Book (1999) § 19-16] grants . . . oral argument as of right, it is not automatic but must be claimed for argument as provided in [Practice Book (1999) § 11-18]. . . .Aside from the plain meaning of the words of those sections, which do not grant oral argument as of right . . . judicial economy and practicality require a common sense reading of both sections.’ Paulus v. LaSala, [56 Conn. App. 139, 146, 742 A.2d 379 (1999), cert. denied, 252 Conn. 928, 746 A.2d 789 (2000)].”
- [Dietzel v. Redding](#), 60 Conn. App. 153, 166, 758 A.2d 906 (2000). “We note, parenthetically, that the Oppenheimers had requested oral argument on the motion to intervene. Pursuant to Practice Book § 11-18, however, oral argument is at the

discretion of the trial court for that type of motion, and, therefore, the court was not obligated to provide them with an opportunity for oral argument.”

WEST KEY NUMBERS:

TEXTS & TREATISES:

- Trial # 12. Short-cause calendars.

- 1 Wesley W. Horton and Kimberly A. Knox, Connecticut Practice Series, [Connecticut Superior Court Civil Rules](#) (2015-2016).
 - Chapter 11. Motions, requests, orders of notice
 - Authors’ comments following § 11-18

- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2015).
 - § 3:39. Procedural considerations—Oral argument
 - § 3:95. Procedural considerations—Oral argument

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

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

- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2015-2016 ed.).
 - Chapter 11. Motions, requests, [applications] orders of notice and short calendar
 - § 11-18.1 Requesting oral argument; testimony

FORMS:

- [JD-CL-6](#). Short Calendar List, Claim/Reclaim.

- 2 & 3A Connecticut Practice Series, [Connecticut Civil Practice Forms](#) (4th ed. 2004).
 - Form S-170 – Request for Oral Argument (See comments in pocket part.)
 - Form S-163 – Claim/Reclaim for Short Calendar (JD-CL-6) (See comments in pocket part.)
 - Form 106.1. Motion to dismiss (See comments in pocket part.)

- part.)
- Form 106.2. Motion to strike (See comments in pocket part.)
- Form 106.15. Motion for summary judgment (See comments in pocket part.)
- Kimberly A. Peterson, [*Civil Litigation: Connecticut, Massachusetts, New Jersey, New York, & Rhode Island*](#) (1999).
 - Example 7-1. Connecticut, Notice of Intent to Argue, p. 147.
- Kimberly A. Peterson, [*Civil Litigation in Connecticut: Anatomy of a Lawsuit*](#) (1998).
 - *Chapter 8. Pleadings: an Overview*
 - Example 1, Notice of Intent to Argue, p. 86.
- Ralph P. Dupont, [*Dupont on Connecticut Civil Practice*](#) (2015-2016 ed.).
 - Form 11-18. Notice of Intent to Argue.

Section 2: Request for Oral Argument (Non-Arguable Matters)

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SCOPE:

- Bibliographic resources relating to requests to argue motions for which oral argument is not a matter of right, including related short calendar procedures.

DEFINITIONS:

- “For those motions for which oral argument is not a matter of right, oral argument may be requested in accordance with the procedure that is printed on the short calendar on which the motion appears.” Conn. Practice Book [§ 11-18\(f\)](#) (2016).

COURT RULES:

- Connecticut Practice Book (2016)
 - [§ 11-18](#). Oral Argument of Motions in Civil Matters

COURT FORMS:

- [JD-CV-128](#). Request For Argument, Non-Arguable Civil Short Calendar Matter
- [JD-CL-6](#). Short Calendar List, Claim/Reclaim

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- [Marcus v. Cassara](#), 142 Conn. App. 352, 66 A.3d 894 (2013). “It is unfair to the court to leave it with the impression that counsel is in agreement with the court’s preference to decide the motion on the papers and then argue on appeal that the court abused its discretion by failing to schedule an evidentiary hearing. See *Stratford v. Castater*, 136 Conn. App. 535, 545-46, 46 A.3d 953 (2012). Accordingly, we decline to review the merits of the defendant’s claim.”
- [Town of Stratford v. Castater](#), 136 Conn. App. 535, 46 A.3d 953 (2012). “The defendant cites no authority, nor are we aware of any, in support of his argument that the trial court was obligated to hold a hearing on the motion for reconsideration itself. ‘[A] motion to reargue ... is not to be used as an opportunity to have a second bite of the apple....’

(Internal quotation marks omitted.) *Opoku v. Grant*, 63 Conn. App. 686, 692-93, 778 A.2d 981 (2001)."

- [Haggerty v. Williams](#), 84 Conn. App. 675, 855 A.2d 264 (2004). "The defendant's second argument fails because the defendant did in fact present oral argument to the court on her succeeding motion to open. Although the defendant argues that she should have been able to argue before Judge Celotto instead of Judge DeMayo, there is no such rule in Connecticut. The defendant had her day in court to argue her motion to open and, accordingly, that claim must fail."
- [Dietzel v. Redding](#), 60 Conn. App. 153, 166, 758 A.2d 906 (2000). "We note, parenthetically, that the Oppenheimers had requested oral argument on the motion to intervene. Pursuant to Practice Book § 11-18, however, oral argument is at the discretion of the trial court for that type of motion, and, therefore, the court was not obligated to provide them with an opportunity for oral argument."

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

Table 2: Unpublished Connecticut Decisions — Oral Argument

Unpublished Connecticut Decisions — Oral Argument	
Marking Motion "Ready" Versus "Take Papers"	<u>Discover Bank v. Freedman</u> , Superior Court, Judicial District of Litchfield at Litchfield, No. LLI-CV-12-6007025S (April 23, 2013) (2013 WL 1943887). "Practice Book § 11-18(a)(1) provides that oral argument is a matter of right on a motion for summary judgment, provided that the motion was marked 'ready.' In the present case, the motion for summary judgment was marked 'take papers.' Therefore, no oral argument was conducted and this court's decision is based upon the arguments and evidence set forth in the motion for summary judgment." [Footnote 1]
Improperly Filed Motion	<u>Patterson v. Mine Saf. App.</u> , Superior Court, Judicial District of Hartford, Complex Litigation Docket at Hartford, No. HHD X04 CV-04-4034666 S (May 7, 2008) (45 Conn. L. Rptr. 462). "The plaintiffs' motion to strike is not addressed to a pleading. Accordingly, it is denied. Under these circumstances, where the plaintiffs improperly filed a motion to strike, they were not entitled to oral argument as of right. See Practice Book § 11-18(a)."
Nonappearance by Defense Counsel	<u>Nadeau v. Tracy</u> , Superior Court, Judicial District of New Haven at Meriden, No. CV 02-0282226S (Dec. 2, 2003) (2003 WL 22905182). "Pursuant to Practice Book § 11-18(d), the court treated nonappearance by defense counsel at the hearing as a waiver of the defendants' right to argue, heard argument from plaintiff, and then denied the motion to strike for the reason stated below."
Nonappearance by Both Counsel	<u>Nair v. Belcher</u> , Superior Court, Judicial District of Waterbury, No. CV 01 0163122 (Dec. 10, 2001) (2001 WL 1681964). "The court had set the matter down for oral argument not only because argument was initially requested by the plaintiff, but also because the court determined, pursuant to Conn. P.B. § 11-18, that oral argument would be of assistance to the court in deciding the motion. In light of the failure of counsel for both the plaintiffs and the defendants to appear as ordered, the court declines to issue a ruling on the Motion to Strike (#110) at this time."
Notice of Intent to Argue Without Explanation of Why Argument Is Necessary (For Class of Motions Not as of Right)	<u>Matos v. B-Right Trucking Co.</u> , Superior Court, Judicial District of Fairfield at Bridgeport, No. CV 94310065S (January 9, 1996) (15 Conn. L. Rptr. 650) (1996 WL 38247). "The motion to reargue is denied. Under Practice Book § 211(A) [now 11-18], as amended effective October 1, 1995, oral argument on such motions is within the discretion of the court. When the defendant filed its Notice of Intent to Argue, it did not explain why oral argument was necessary nor did it explain why the defendant should prevail. Section 211 was amended to facilitate the resolution of short calendar motions. Clearly, the two motions decided by the court were ones which could be decided without oral argument. Whenever a litigant files a motion of the class for which oral argument does not exist as of right, the opposing party must do something more than merely file a notice of intent to argue. Otherwise, the amendment to § 211 will have had no effect whatsoever."

<p>Motion to Reargue</p>	<p><u>Faile v. Zarich</u>, Superior Court, Judicial District of Hartford, Complex Litigation Docket at Hartford, No. HHD X04 CV-06-5015994 S (Sep. 10, 2009). "As discussed above, the defendants base their motion to reargue on Practice Book § 11-12, not on Chapter 13. The standing order does not require this court to hold a hearing on the motion to reargue."</p>
<p>Motion to Open</p>	<p><u>Stanley v. Stanley</u>, Superior Court, Judicial District of Tolland at Rockville, No. FA-09-4011831S (Dec. 29, 2010) (2010 WL 5644928). "Under Practice Book Section 11-18, there is no right to oral argument on motions to withdraw a complaint or on motions to open, and oral argument in civil matters is instead 'at the discretion of the judicial authority.'"</p>
<p>Applicable to Family Cases</p>	<p><u>Marshall v. Marshall</u>, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FST FA 00 0176688 S45 (May 6, 2008) (Conn. L. Rptr. 440) (2008 WL 2169011). "The plaintiff also asserts that she had the right to argument on the motion for protective order. She argues that because P. B. § 11-18 is not referenced in P.B. § 25-23 it does not apply to family matters and therefore plaintiff had a right to argument 'as of right.' P.B. § 25-23 lists certain civil practice book sections that are incorporated in the family rules. This court does not find that listing exclusive. If only those rules referenced in P.B. § 25-23 apply to family matters, then plaintiff's instant motion to reargue pursuant to P.B. § 11-12 would not be permitted and, hence, not be here ruled on."</p>