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2016 Edition

Frivolous Lawsuits in Connecticut

A Guide to Resources in the Law Library

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Introduction

A Guide to Resources in the Law Library

- **"A sham lawsuit is** one instituted by plaintiff in bad faith, on grounds so flimsy that no reasonable prudent person could hold a bona fide belief in the existence of facts **necessary to prove the case."** (Citations omitted; internal quotation marks omitted.) [New Milford Savings Bank v. Jajer, et al.](#), Superior Court, No. CV920061073 (Jan. 2, 2001) (28 Conn. L. Rptr. 490) (2001 WL 51829).
- **"The definition of a frivolous appeal is set forth in the comment to Rule 3.1, wherein it is stated that '[t]he action is frivolous if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.'"** [Texaco, Inc. v. Golart](#), 206 Conn. 454, 463-464, 538 A.2d 1017 (1988).
- **Sham Pleading:** "A sham pleading is one that is so bad in fact and so obviously false that it has no possible substance and could not conceivably result in a triable issue." [Municipal Serv. Co v. Town of Colonie](#), 12 A.D.2d 22, 23 [3d Dept 1960], 208 N.Y.S.2d 193.
- **"A sham pleading is one incompatible with the law or the nature** and condition of things within the judicial knowledge, or appearing to be false by comparison with other declarations of the pleadings. [Flatt v. Norman](#), 91 Mont. 543, 549." [Tulin v. Johnson](#), 18 Conn. Supp. 395, 396 (1953).
- **Summary Judgment Procedure:** "Our Supreme Court has explained that '[t]he summary judgment procedure is designed to eliminate the delay and expense incident to a trial where there is no real issue to be tried. . . . It is an attempt to dispose of cases involving sham or frivolous issues in a manner which is speedier and less expensive for all concerned than a full-dress trial.'" (Citations omitted; internal quotation marks omitted). [Mac's Car City, Inc. v. American National Bank](#), 205 Conn. 255, 261, 532 A.2d 1302 (1987).

Section 1: Frivolous Lawsuits in Connecticut

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to frivolous lawsuits in Connecticut including Connecticut federal courts

SEE ALSO: [Vexatious Litigation in Connecticut](#) (Research Guide)

- Vexatious Suits
- Malicious Prosecution
- Abuse of Process

- DEFINITIONS:**
- **Frivolous Appeal:** "The definition of a frivolous appeal is set forth in the comment to Rule 3.1, wherein it is stated that "[t]he action is frivolous if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law." [Texaco, Inc. v. Golart](#), 206 Conn. 454, 463-464, 538 A.2d 1017 (1988).
 - **Test for Frivolous Appeal:** "We hereby adopt this test, and further hold that the burden of proof lies on the moving party to establish the frivolity of the appeal. On the present record, we find that the plaintiff has not met that burden of proof. As to the first prong, the plaintiff has not established facts tending to show that the defendants brought this appeal for the purpose of harassing or maliciously injuring the plaintiff. As to the second prong, we have concluded that the defendants' arguments on appeal did have some merit, even though they did not warrant a reversal." [Ibid.](#)
 - **Right of Access to the Courts:** "Plaintiff's blatant abuse of the judicial process can no longer continue unchecked. Plaintiff's right of access to the court is not absolute or unconditional. *Green v. Warden*, 699 F.2d 364, 369 (7th Cir.1983), *See also Green v. White*, 616 F.2d 1054 (8th Cir.1980). This is particularly true where plaintiff has demonstrated a propensity for filing numerous meritless and vexatious lawsuits which clutter the docket of this court and put defendants to the time and expense of answering frivolous and frequently incomprehensible allegations. Henceforth, plaintiff will be required to seek leave from this court before filing a civil action in this district." [Brown v. Gibson](#), 571 F. Supp. 1075, 1076-1077 (1983).
 - "The unfortunate tendency of some individuals to abuse the litigation process has prompted courts to adopt a variety of techniques to protect both themselves and the public from the harassing tactics of vexatious litigants. Usually these techniques are rules of general application, such as Rule 11 of the Federal Rules of Civil Procedure, authorizing sanctions for groundless lawsuits, and Rule 38 of the Federal Rules of Appellate Procedure, authorizing damages for taking a frivolous appeal. Occasionally, however, the tactics of certain

individuals so far exceed the bounds of tolerable litigation conduct that courts have responded with specially crafted sanctions that impose severe limitations on the opportunity of such individuals to pursue their penchant for vexatious litigation” [In re Martin-Trigona](#) 9 F.3d 226 (2d Cir. 1993).

LEGISLATIVE:

- [P.A. 13-310](#) - An Act Concerning the Court’s Authority to Deny an Application for the Waiver of Court Fees.

[OLR Summary](#)

STATUTES:

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

Conn. Gen. Stat. (2015)

- [Chapter 898. Pleading](#)
§ 52-99. Untrue allegations or denials; costs
- [Chapter 901. Damages, costs and fees](#)
§ 52-251a. **Costs, attorney’s fees on small claim matters transferred to regular docket.**

§ 52-259b. Waiver of fees and payment of the cost of service of process for indigent party.
“(c) Nothing in this section shall preclude the court from (1) finding that a person whose income does not meet the criteria of subsection (b) of this section is indigent and unable to pay a fee or fees or the cost of service of process, or (2) **denying an application for the waiver of the payment of a fee or fees or the cost of service of process when the court finds that (A) the applicant has repeatedly filed actions with respect to the same or similar matters, (B) such filings establish an extended pattern of frivolous filings that have been without merit, (C) the application sought is in connection with an action before the court that is consistent with the applicant’s previous pattern of frivolous filings, and (D) the granting of such application would constitute a flagrant misuse of Judicial Branch resources.** If an application for the waiver of the payment of a fee or fees or the cost of service of process is denied, the court clerk shall, upon the request of the applicant, schedule a hearing on the application. Nothing in this section shall affect the inherent authority of the court to manage its docket.” (Emphasis added.)

COURT RULES:

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

- Connecticut Practice Book (2016)
[Chapter 4. Pleadings](#)
§4-2. Signing of pleadings
(b). The signing of any pleading, motion, objection or request shall constitute a certificate that the signer has read such document, that to the best of the signer’s knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. Each pleading and every other court-filed document signed by an attorney or party shall set forth the signer’s telephone number and mailing

address.

[Chapter 10](#). Pleadings

§ 10-5. Untrue allegations or denials

§ [24-33](#). Costs in small claims ([See: Table 2](#))

§ [85-2](#). Other actions subject to sanctions

(5). Presentation of a frivolous appeal or
frivolous issue on appeal

§ [85-3](#). Procedure on sanctions

RULES OF PROFESSIONAL CONDUCT:

Amendments to the Rules of Professional Conduct are published in the Connecticut Law Journal and posted [online](#).

- [Rules of Professional Conduct](#)

- [Rule 3.1](#). Meritorious Claims And Contentions

- "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of **existing law. . . .**"

- [Comment to Rule 3.1](#)

- "The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about **the facts of their clients' cases and the applicable law** and determine that they can make good faith arguments in support **of their clients' positions. Such action** is not frivolous even though the lawyer believes that the **client's position ultimately** will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law."

FORMS:

- Affidavit—Appeal not taken for purpose of delay, 2 [Am. Jur. Pleading & Practice Appeal and Error](#) § 23 (2000 rev.).
- Complaint, petition, or declaration—Undertaking on appeal from money judgment—Dismissal of appeal—Sanctions awarded for frivolous appeal or appeal taken solely for delay, 2 [Am. Jur. Pleading & Practice Appeal and Error](#) § 382 (2000 rev).
- Complaint, petition, or declaration—Intentional interference with business—Baseless lawsuits to force abandonment of lease, 23A [Am. Jur. Pleading & Practice Torts](#) § 7 (2002 rev.).
- Motion—For judgment on the pleadings—Sham and frivolous defense, 19B [Am. Jur. Pleading & Practice Pleading](#) § 428 (2007 rev.).

CASES:

- [Ostapowicz v. J.M. Equipment & Transp., Inc.](#), Superior Court, Judicial District of Hartford at Hartford. No. CV-06-6000866S (October 4, 2010) (2010 Ct. Sup. 18775) (2010 WL 4351737). "Our Supreme Court has adopted a definition of a 'frivolous action' set forth in an earlier version of the commentary to the rule. The commentary, in effect in 1988, stated: 'The action is frivolous, however, if the client desires

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.

to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of **existing law.**' *Practice Book, 1986, Rule 3.1, Comment.* In *Texaco, Inc. v. Golart*, 206 Conn. 454, 465 (1988), the Court held: 'We hereby adopt this test, and further hold that the burden of proof lies on the moving party to establish the **frivolity of the appeal.**'"

- [Costanzo v. Mulshine](#), 94 Conn. App. 655, 665 (2006). "Fifteen years ago, in *Burns v. Bennett*, 220 Conn. 162, 595 A.2d 877 (1991), our Supreme Court considered the purposes behind the statute permitting an award of attorney's fees to a prevailing plaintiff on a case transferred from small claims court by a defendant. The court stated: 'Section 52-251a . . . creates a substantial and effective disincentive for a defendant who might otherwise raise defenses bordering on the frivolous in an effort to gain a tactical advantage over a plaintiff by obtaining a transfer of a case from the **Small Claims division.**' *Id.*169. This court recently applied that interpretation to a case in affirming an award of attorney's fees that was ten times the amount in dispute. We stated that '[t]he very purpose of § 52-251a is to deter . . . defendants from transferring a case from the small claims session and turning a relatively clear-cut case into a **pitched legal battle.**' *Krack v. Action Motors Corp.*, supra, 87 Conn. App. [687,] 697[2005]."
 - [Krack v. Action Motors Corp.](#), 87 Conn. App. 687, 697 (2005). "The very purpose of § 52-251a is to deter similarly situated defendants from transferring a case from the small claims session and turning a relatively clear-cut case into a pitched legal battle. The defendant claims that the court's award was punitive, and that is not entirely untrue. As stated **by our Supreme Court:** 'Section 52-251a thus creates a substantial and effective disincentive for a defendant who might otherwise raise defenses bordering on the frivolous in an effort to gain a tactical advantage over a plaintiff by obtaining a transfer of a case from the Small Claims division.'" (Citations omitted; internal quotation marks omitted).
- [Burrill Mut. Sav. Bank of New Britain v. Tucker](#), 183 Conn. 369, 373, 439 A.2d 396 (1981). "Courts have an inherent power to disregard sham or frivolous pleadings which have been interposed for the purpose of thwarting the orderly progress of a case."
- [Town Bank & Trust Co. v. Benson](#), 176 Conn. 304, 307-308, 407 A.2d 971 (1978). "Summary judgment procedure, generally speaking, is an attempt to dispose of cases involving sham or frivolous issues in a manner which is speedier and less expensive for all concerned than a full-dress trial."

**WEST KEY
NUMBERS:**

- Action
 - # 8. Frivolous or collusive action
 - # 9. Unnecessary or vexatious actions
- Costs
 - #259. Damages and penalties for frivolous appeal or delay
 - # 259.1. – In general
 - # 260. –Rights and grounds
 - (1). In general
 - (2). On dismissal
 - (3). Failure to prosecute appeal in general
 - (4). What constitutes frivolous appeal or delay
 - (5). Nature and form of judgment, action, or proceedings for review
 - (6). Necessity that appellee be damaged
 - (6.5). Persons entitled or liable
 - (7). Waiver or loss of right
 - # 261. –Discretion of the court
 - # 262. –Application and allowance
 - # 263. –Amount or rate and computation
 - # 264. –Taxation of costs on appeal or error
- Pleading
 - # 358. Frivolous pleading
 - # 359. Sham answer or defense

**TEXTS &
TREATISES:**

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

- 1 [Dupont on Connecticut Civil Practice](#) (2015-2016)
 - § 10-5. Untrue allegations or denials
 - § 10-5.1. Sanctions
 - § 10-5.2. Sanctions taxed as costs
 - Appealing from sanctions
 - § 10-5.3. Sanctions imposed on attorneys
- 2 [Dupont on Connecticut Civil Practice](#) (2015-2016)
 - § 24-33. Costs in small claims
 - § 24-33.1. Costs not to exceed lesser of fifty dollars or amount of judgment

ENCYCLOPEDIAS:

- 1A [C.J.S.](#) Actions (2005)
 - § 73. Unnecessary, vexatious, or frivolous actions
- 61A [Am. Jur.2d](#) Pleading (2010).
 - § 35. Sham and frivolous pleadings
 - § 434. Sham and frivolous pleadings
 - § 435. Motion to strike sham or frivolous pleading
- Robin Miller, J.D. *Validity, Construction, and Application of State Vexatious Litigant Statutes*, 45 A.L.R.6th 493 (2009)

LAW REVIEWS:

- Mark Fass, *New York Court Boosts Sanctions Over 'Entirely Frivolous' Appeal*, New Jersey Law Journal (July 17, 2006).

Table 1: Frivolous Actions

Frivolous Actions in Connecticut State and Federal	
Appeal (State)	<p>"Finally, we consider the plaintiff's renewed motion for sanctions for a frivolous appeal, and its request for attorney's fees incurred in defending the appeal. Deciding the motion as a matter of first impression, we find that the defendants' appeal was not frivolous." Texaco, Inc. v. Golart, 206 Conn. 454, 463, 538 A.2d 1017.</p>
In forma pauperis actions (Federal)	<p>"Under 28 U.S.C. § 1915(e)(2)(B), 'the court shall dismiss the case at any time if the court determines that ... the action ... is frivolous or malicious, ... fails to state a claim on which relief may be granted; or ... seeks monetary relief against a defendant who is immune from such relief.' 28 U.S.C. §§ 1915(e)(2)(B)(i)-(iii). An action is 'frivolous' within the meaning of § 1915(e)(2)(B)(i) 'when either: (1) the factual contentions are clearly baseless, such as when allegations are the product of delusion or fantasy; or (2) the claim is based on an indisputably meritless legal theory ... [i.e.,] either the claims lacks an arguable basis in law or a dispositive defense clearly exists on the face of the complaint.'" McCulley v. Chatigny, 390 F.Supp.2d 126, 129 (D. Conn. 2005).</p>
Federal Rules of Civil Procedure, Rule 11	<p>"In establishing the requisite element of lack of probable cause, reference must be made to the definition existing at the time of the enactment of § 1983. At that time, probable cause was defined as follows:</p> <p style="padding-left: 40px;">Probable cause--or, as the expression oftener is, reasonable and probable cause--is any such combination of facts and proofs as may fairly lead the reasonable mind to the belief (and the person relying on it must believe) that, in the absence of hitherto unknown qualifying or rebutting evidence, the prosecution or other suit ought to be successful.</p> <p>. . . . It is interesting to note that a more modern definition of probable cause to initiate civil proceedings incorporates similar elements: One who takes an active part in the initiation, continuation or procurement of civil proceedings against another has probable cause for doing so if he reasonably believes in the existence of the facts upon which the claim is based, and either</p> <p style="padding-left: 40px;">(a) correctly or reasonably believes that under those facts the claim may be valid under the applicable law, or</p> <p style="padding-left: 40px;">(b) believes to this effect in reliance upon the advice of counsel, sought in good faith and given after full disclosure of all relevant facts within his knowledge and information." Pinsky v. Duncan, 79 F.3d 306,312 (2nd Cir. 1996).</p>

Table 2: Costs in Small Claims

Costs in Small Claims Conn. Practice Book § 24-33 (2016)	
Conn. Practice Book § 24-33	The actual legal disbursements of the prevailing party for entry fee, witness' fees, execution fees, fees for copies, fees of an indifferent person, and officers' fees shall be allowed as costs. No other costs shall be allowed either party except by special order of the judicial authority. The judicial authority shall have power in its discretion to award costs, in a sum fixed by the judicial authority, not exceeding \$100 (exclusive of such cash disbursements, or in addition thereto) against any party, whether the prevailing party or not, who has set up a frivolous or vexatious claim, defense or counterclaim , or has made an unfair, insufficient or misleading answer, or has negligently failed to be ready for trial, or has otherwise sought to hamper a party or the judicial authority in securing a speedy determination of the claim upon its merits, and it may render judgment and issue execution therefor, or set off such costs against damages or costs, as justice may require. In no case shall costs exceed the amount of the judgment. [Emphasis added].

Table 3: Small Claims Transferred to Regular Docket

Costs, Attorney's Fees on Small Claim Matters Transferred to Regular Docket	
Conn. Gen. Stats § 52-251a (2015)	"Whenever the plaintiff prevails in a small claims matter which was transferred to the regular docket in the Superior Court on the motion of the defendant, the court may allow to the plaintiff his costs, together with reasonable attorney's fees to be taxed by the court."