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**2012 Edition**

# Frivolous Lawsuits in Connecticut

A Guide to Resources in the Law Library

- “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. Sup. 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).

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# 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 (C.A.2 (Conn.),1993)

**STATUTES:**

- CONN. GEN. STAT. (2011)
- [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.

**COURT RULES:**

- CONNECTICUT PRACTICE BOOK (2012 ed.)
  - [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](#)
    - § 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:**

- [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* § 700 (1997 rev.).
- Sample motion, *Cause Of Action Under 28 USC §1927 To Recover Excess Costs, Expenses, And Attorney’s Fees For Unreasonable And Vexatious Multiplication Of Proceedings*, 19 COA 447 § 31 (1989).
- Sample Complaint alleging successive actions brought, *Cause Of Action Under 28 USC §1927 To Recover Excess Costs, Expenses, And Attorney’s Fees For Unreasonable And Vexatious Multiplication Of Proceedings*, 19 COA 447 § 31.10 (new) (1989).

## 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 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).

- [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

**TEXTS &  
TREATISES:**

- 1 [DUPONT ON CONNECTICUT CIVIL PRACTICE](#) (2011-2012 ed.).
  - § 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](#) (2011-2012 ed.).
  - § 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).
  - § 36. Sham and frivolous pleadings
  - § 490. Sham and frivolous pleadings
  - § 496. 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)
- Susan L. Thomas, Annotation, *Bringing Of Frivolous Civil Claim Or Action As Ground For Discipline Of Attorney*, 85 ALR4th 544 (1991).
- Alan Stephens, Annotation, *Attorney’s Liability Under State Law For Opposing Party’s Counsel Fees*, 56 ALR4th 486 (1987).
- Debra T. Landis, Annotation, *What Conduct Constitutes Multiplying Proceedings Unreasonably And Vexatiously So As To Warrant Imposition Of Liability On Counsel Under 28 USCS § 1927 For Excess Costs, Expenses, And Attorney Fees*, 81 ALR Fed 36 (1987).
- Debra T. Landis, Annotation, *Inherent Power Of Federal District Court To Impose Monetary Sanctions On Counsel In Absence Of Contempt Of Court*, 77 ALR Fed 789 (1986).

- *Cause Of Action Under Civil Rights Act Of 1964 [42 Usc §§ 2000e Et Seq.] For Quid Pro Quo Sexual Harassment In Employment*, 6 COA 2d 141 (1994).  
§ 29. Attorney fees
- *Cause Of Action Under 28 USC §1927 To Recover Excess Costs, Expenses, And Attorney's Fees For Unreasonable And Vexatious Multiplication Of Proceedings*, 19 COA 447 (1989).

**LAW REVIEWS:**

- Mark Fass, *New York Court Boosts Sanctions Over 'Entirely Frivolous' Appeal*, NEW JERSEY LAW JOURNAL (July 17, 2006).

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Table 1: Frivolous Actions

<b>Frivolous Actions in Connecticut</b> 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.” <a href="#">Texaco, Inc. v. Golart</a>, 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.’” <a href="#">McCulley v. Chatigny</a>, 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:</p> <p>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> <ul style="list-style-type: none"> <li>(a) correctly or reasonably believes that under those facts the claim may be valid under the applicable law, or</li> <li>(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.” <a href="#">Pinsky v. Duncan</a>, 79 F.3d 306,312 (2nd Cir. 1996). </li></ul>

Table 2: Costs in Small Claims

<b>Costs in Small Claims</b> Conn. Practice Book § 24-33 (2012)	
Conn. Practice Book <a href="#">§ 24-33</a>	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 <b>frivolous or vexatious claim, defense or counterclaim</b> , 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

<b>Costs, Attorney's Fees on Small Claim Matters</b> Transferred to Regular Docket	
Conn. Gen. Stats <a href="#">§ 52-251a</a> (2011)	“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.”