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**2017 Edition**

# Default Motions and Judgments

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*

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<http://www.jud.ct.gov/policies.htm>

# Introduction

## A Guide to Resources in the Law Library

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- **“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 nonsuited or defaulted by the judicial authority.”** Conn. Practice Book § [17-19](#) (2018).
- “. . . there is a clear distinction between a default . . . and a 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).
- **“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).

# 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:**

- [Setting Aside or Opening a Default for Failure to Appear Before Judgment](#)
- [Judgment upon Default for Failure to Appear](#)
- [Motion for Default for Failure to Appear and Judgment](#)

## **DEFINITIONS:**

- "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 nonsuit or default be entered for failure to appear." Conn. Practice Book § [17-20\(a\)](#) (2018).
- "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\(d\)](#) (2018).
- "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\(d\)](#) (2018).

## **COURT RULES:**

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

- Conn. Practice Book (2018)
  - [Chapter 3](#). Appearances
    - § 3-2. Time to file appearance
  - [Chapter 9](#). Parties
    - § 9-1. Continuance for absent or nonresident defendant
  - [Chapter 17](#). Judgments
    - § 17-20. Motion for default . . . for failure to appear
    - § 17-21. Defaults under Servicemembers Civil Relief Act

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)
  - [Chapter 897](#). Parties and Appearances
    - § [52-84](#). When judgment by default may be rendered.
    - § [52-87](#). Continuance on account of absent or nonresident defendant. Exceptions.
    - § [52-88](#). Defense by garnishee. Continuance, postponement or adjournment of action.

## **FORMS:**

- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).
  - Chapter 9. Appearance and Default
  - Part IV: Forms

## § 9.28. Form: Motion for Default for Failure to Appear or Plead

- 2 Joel M. Kaye and Wayne D. Effron, [Connecticut Practice Series: Civil Practice Forms](#) (4th ed. 2004).
  - Form 102.4-A. Motion for default for failure to appear—Nonresident defendant
  - Form 107.8-A. Motion for default for failure to appear
- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).
  - F.17-20. Motion for Default for Failure to Appear
- 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
- Robert M. Singer, [Library of Connecticut Collection Law Forms](#) (2016).
  - Form 9-001. Motion for default for failure to appear
- Koskoff Koskoff & Bieder, PC, Joshua Koskoff and Sean K. McElligott, Editors., [Library of Connecticut Personal Injury Forms](#) (2nd ed. 2014).
  - Form 5-001. Motion for default for failure to appear

### **RECORDS & BRIEFS:**

- *Motion for Default for Failure to Appear*, Connecticut Appellate Court Records and Briefs (December 2009). [Abbott Terrace Health Center, Inc. v. Parawich](#), 120 Conn. App. 78, 990 A.2d 1267 (2010). [Figure 1](#).

### **CASES:**

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

- [Mortenson v. Peerless Insurance Co.](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. CV136038437S (September 8, 2014) (2014 Conn. Super. **Lexis 2311**) (2014 WL 5356979). "The defendant received **the plaintiff's** motion for default for failure to appear and **the plaintiff's** motion for hearing in damages. Peerless failed to appear throughout the entire process . . . although the plaintiff had been talking to two adjusters who acknowledged notice of the suit, defaults and notice of the hearings in damages. **They ignored the plaintiff's request that they appoint a counsel to appear.**"
- [Little v. Mackeyboy Auto, LLC](#), 142 Conn. App. 14, 20, 62 A.3d 1164, 1168 (2013). ". . . the defendant never claimed that it had not received notice of the plaintiff's action. As reflected in the record, **the plaintiff's** counsel certified that copies of the motion for default for failure to appear . . . were mailed to the defendant at its business address in New Haven. The court noted . . . that the defendant never claimed that it had not received those copies. The court, then, reasonably could have

determined that the defendant had legal and actual notice of the plaintiff's action."

- [Abbott Terrace Health Center, Inc. v. Parawich](#), 120 Conn. App. 78, 85-86, 990 A.2d 1267, 1272 (2010). "In the present case, the defendant was defaulted pursuant to Practice Book § 17-20 due to his failure to enter an appearance. As we recently observed, '[c]ase law makes clear . . . that once the defendants had been defaulted and had failed to file a notice of intent to present defenses, they, by operation of law, were deemed to have admitted to all the essential elements in the claim and would not be allowed to contest liability at the hearing in damages.' [Richey v. Main Street Stafford, LLC](#), 110 Conn. App. 209, 218, 954 A.2d 889 (2008); see also 1 E. Stephenson, Connecticut Civil Procedure (3d Ed. 1997) § 96, p. 282 ('[t]he entry of a default constitutes a technical admission by the defendant of the truth of the facts alleged in the complaint'). 'A default admits the material facts that constitute a cause of action . . . and entry of default, when appropriately made, *conclusively determines the liability of a defendant.*' (Emphasis added; internal quotation marks omitted.) [Schwartz v. Milazzo](#), 84 Conn. App. 175, 178, 852 A.2d 847, cert. denied, 271 Conn. 942, 861 A.2d 515 (2004). Accordingly, 'the entry of default against the defendant commands the rendering of judgment in favor of the plaintiff.' [Peterson v. Woldeyohannes](#), 111 Conn. App. 784, 791, 961 A.2d 475 (2008). Following the entry of a default, all that remains is for the plaintiff to prove the amount of damages to which it is entitled. [DeBlasio v. Aetna Life & Casualty Co.](#), supra, 186 Conn. 401. At a minimum, the plaintiff in such instances is entitled to nominal damages. See *id.*; [Cardona v. Valentin](#), 160 Conn. 18, 26, 273 A.2d 697 (1970)."

**WEST KEY NUMBERS:**

- *Appearance*  
29. Failure to appear

**ENCYCLOPEDIAS:**

- 46 [Am. Jur. 2d Judgments](#) (2017).  
IV. Particular Kinds of Judgments  
E. Judgment by Default  
§§ 245-251. Failure to appear, plead, or otherwise defend  
§ 262. **Effect of defendant's appearance** on entry of default judgment by court  
§ 272. Notice of default judgment requirement where there has been no appearance  
§ 273. Effect of appearance on notice of default judgment requirement  
§§ 274-276. What constitutes an appearance  
§§ 277-278. Form of notice; failure to give notice

- 6 [C.J.S. Appearances](#) (2016).  
In General  
§ 3. Failure to appear
- 49 [C.J.S. Judgments](#) (2009).  
X. Judgment by Default  
In General  
§ 253. Generally; definitions and distinctions  
Grounds for Judgment  
§ 264. Generally  
Failure to enter appearance  
Failure to appear after withdrawal of attorney

**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.

- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).  
Chapter 9. Appearance and Default  
Part III: Practical Guidance – Default  
§ 9.10. Topical Overview of Obtaining Default Judgments  
[1] Distinguishing Entry of Default and Default Judgment  
§ 9.11. Motion for Default for Failure to Appear  
[1] Determining Whether Grounds for Motion for Default Exist  
[a] Verify Proper Service on Opposing Party  
[b] Confirm Lack of Appearance by Opposing Party  
[2] Motion for Entry of Default  
[3] Clerk May Enter Default  
[4] Claim for Hearing in Damages  
[5] Motion for Default for Failure to Appear and Servicemembers Civil Relief Act  
**§ 9.14. Court’s Discretionary Authority to Grant Default**  
§ 9.15. Notice of Default by Clerk
- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).  
Chapter 17. Judgments  
E.2. Default for Failure to Appear  
§ 17-20.1. Defaults on Failure to Appear, Entry of
- 1 Renée Bevacqua Bollier et al., [Stephenson’s Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 1997, with 2014 supplement).  
§ 96. Judgment on Default  
d. Defaults for failure to appear
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998).  
V. Timing, Waivers and Defaults

3. Motions for Default

a. Motion for default for failure to appear, p. 71

- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).  
Chapter 14. Pleadings: Motions against defendants who do not file an appearance  
II. Motion for Default for Failure to Appear
- 2 Joel M. Kaye and Wayne D. Effron, [Connecticut Practice Series: Civil Practice Forms](#) (2017 pocket part).  
Authors' Commentary for Form 107.7
- 1 Wesley W. Horton et al., [Connecticut Practice Series: Superior Court Civil Rules](#) (2017-2018).  
Authors' Commentary for § 17-20
- 1 [West's Connecticut Rules of Court Annotated](#) (2017).  
Notes of Decisions for § 17-20



Figure 1: Motion for Default for Failure to Appear

DOCKET NO.: CV-08-5010555-S : SUPERIOR COURT  
ABBOTT TERRACE HEALTH CENTER, INC. : J.D. OF WATERBURY  
V. : AT WATERBURY  
ANNA PARAWICH, ET AL. : NOVEMBER 21, 2008

MOTION FOR DEFAULT FOR FAILURE TO APPEAR

Pursuant to Practice Book § 17-20, Plaintiff, Abbott Terrace Health Center, Inc., moves that a default be entered against Defendants, ANNA PARAWICH and WILLIAM HULSTRUNK a/k/a WILLIAM HULSTRUCK, for their failure to appear. The return date in this matter was November 18, 2008. As of the date of filing this motion, the Defendants have not filed an Appearance with the Court.

NO ORAL ARGUMENT REQUESTED  
NO TESTIMONY REQUIRED

PLAINTIFF,  
ABBOTT TERRACE HEALTH CENTER, INC.

BY: \_\_\_\_\_

Name  
Firm  
Address  
Phone Number

ORDER

The foregoing Motion for Default for Failure to Appear having been filed by the plaintiff, 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 to on November 21, 2008 to all counsel and pro se parties of record, as follows:

---

Name(s)

# Section 1a: Setting Aside or Opening Default for Failure to Appear Before 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.

## **SEE ALSO:**

- [Judgment upon Default for Failure to Appear](#)

## **DEFINITIONS:**

- "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\(d\)](#) (2018).
- "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](#) (2018).
- "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).

## **COURT RULES:**

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

- Conn. Practice Book (2018)
  - [Chapter 3](#). Appearances
    - § 3-2. Time to file appearance
  - [Chapter 17](#). Judgments
    - § 17-20(d). Motion for default . . . for failure to appear
    - § 17-42. Opening defaults where judgment has not been rendered

## **CASES:**

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

- [Chevy Chase Bank, F.S.B. v. Vladimir Avidon](#), 161 Conn. App. 822, 833, 129 A. 3d 757 (2015). "It is well established that '[the] determination of whether to set aside [a] default is within the discretion of the trial court . . . [and] such a determination will not be disturbed unless that discretion has been abused or where injustice will result. In the exercise of its discretion, the trial court may consider not only the presence of mistake, accident, inadvertence, misfortune or other reasonable cause . . . factors such as [t]he seriousness of the default, its duration, the reasons for it and the degree of contumacy involved . . . but also, the totality of the circumstances, including whether the delay has caused prejudice to the nondefaulting party.' (Citations omitted; internal quotation marks omitted.) *Id.*, 508."

- Collinsville Baking Co., Inc. v. Master Chef Restaurant Equipment, Inc., Superior Court, Judicial District of Litchfield at Litchfield, No. LLICV146010236S (December 11, 2014) (2014 Conn. Super. Lexis 3203) (2014 WL 7739152). **"On June 2, 2014, the court . . . granted the plaintiff's third motion for default for failure to appear. Both the June 2 order and the JDNO notice of the order which were sent to the defendant at its confirmed business address stated clearly that '[i]f you file an appearance in this case before judgment is entered against you, the default for failure to appear will automatically be set aside by the clerk. Practice Book Sec. 17-20.'"**
- Deutsche Bank National Trust Company v. Bertrand, 140 Conn. App. 646, 648, 59 A.3d 864, 866 (2013). **"On March 6, 2009, the plaintiff filed a motion to default the defendant for failure to appear, which the clerk of the court granted on March 9, 2009. See Practice Book § 17-20 (d). That same day, the defendant filed an appearance as a self-represented party, which automatically set aside the default as a matter of law. See Practice Book § 17-20 (d)."**
- Deercliff Homeowners Association, Inc. v. Seraya, Inc., Superior Court, Judicial District of New Britain at New Britain, No. CV970482805S (February 28, 2001) (2001 Conn. Super. Lexis 670) (2001 WL 283015). **"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."**

**WEST KEY  
NUMBERS:**

- *Judgment*  
135-177. Opening or setting aside default.

## **ENCYCLOPEDIAS:**

- A.S. Klein, 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).
- 47 [Am. Jur. 2d](#) *Judgments* (2017).
  - IX. Relief from Judgments
    - A. Opening, Modifying, and Vacating Judgments
      - Character of Judgment
        - § 639. Motion for relief from judgment by default
        - § 652. Grounds for relief from entry of default or default judgment
- 49 [C.J.S.](#) *Judgments* (2009).
  - G. Judgments by Default
    - XII. Alteration of and Relief from Judgment
      - §§ 521-534. Right to and grounds for opening or vacating

## **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.

- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).
  - Chapter 9. Appearance and Default
    - Part III: Practical Guidance – Default
      - § 9.21. Opening Defaults
        - [1] Opening Default When Judgment has Not Been Rendered
        - [2] Different Procedures Depending on Whether Plaintiff Has Filed Claim for a Hearing in Damages
- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).
  - Chapter 17. Judgments
    - E.2. Default for Failure to Appear
      - § 17-20.3. Setting Aside Default for Failure to Appear
        - Before entry of judgment by default
- 1 Renée Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 1997, with 2014 supplement).
  - § 96. Judgment on Default
    - f. Reopening defaults
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998).
  - V. Timing, Waivers and Defaults
    - 3. Motions for Default
      - b. Automatic cure of default for failure to appear, p. 71
    - XIV. Motions to Set Aside or Open, Reargue, Correct, Articulate and Enforce Settlements, and the Accidental Failure of Suit Statute

5. Motions to Set Aside Default, p. 153

- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).  
Chapter 14. Pleadings: Motions against defendants who do not file an appearance  
II. Motion for Default for Failure to Appear  
A. Opening or setting aside a default
- 1 Wesley W. Horton et al., [Connecticut Practice Series: Superior Court Civil Rules](#) (2017-2018).  
**Authors' Commentary for §§ 17-20 and 17-42**
- 1 [West's Connecticut Rules of Court Annotated](#) (2017).  
Notes of Decisions for §§ 17-20 and 17-42

# Section 1b: Judgment upon Default for Failure to Appear

A Guide to Resources in the Law Library

## **SCOPE:**

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

## **SEE ALSO:**

- [Setting Aside or Opening a Default for Failure to Appear Before Judgment](#)

## **DEFINITIONS:**

- “. . . 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](#) (2018).
- “Any judgment rendered . . . 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 . . . and that the plaintiff or the defendant was prevented by mistake, accident or other reasonable cause from . . . appearing to make the same.” Conn. Practice Book § [17-43\(a\)](#) (2018).
- “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).
- “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).

## **COURT RULES:**

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

- Conn. Practice Book (2018)
  - [Chapter 3](#). Appearances
    - § 3-2. Time to file appearance
  - [Chapter 17](#). Judgments
    - § 17-22. Notice of judgments of . . . default for

failure to enter an appearance  
§ 17-43(a). Opening judgment upon default or  
nonsuit

### **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. (2017)
  - [Chapter 873](#). Court Clerks
    - § [51-55](#). Judgments of default or nonsuit.
  - [Chapter 900](#). Court Practice and Procedure
    - § [52-212](#). Opening judgment upon default or nonsuit.
    - § [52-212a](#). Civil judgment or decree opened or set aside within four months only.
  - [Chapter 897](#). Parties and Appearances
    - § [52-84](#). When judgment by default may be rendered.

### **COURT FORMS:**

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

- [JD-CV-107](#). Motion to Open Judgment (Civil Matters Other Than Small Claims and Housing Matters) (rev. 4/12)
- [Forms to File if You Would Like to Have a Judgment Opened](#)

### **FORMS:**

- 2 Joel M. Kaye and Wayne D. Effron, [Connecticut Practice Series: Civil Practice Forms](#) (4<sup>th</sup> ed. 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
- 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 2, Motion to open judgment of default for failure to appear
    - Example 3, Affidavit to be filed with motion to open judgment upon default

### **RECORDS & BRIEFS:**

- *Motion to Open Judgment Upon Default*, Connecticut Appellate Court Records and Briefs (April 2013). [Dziedzic v. Pine Island Marina, LLC](#), 143 Conn. App. 644, 72 A.3d 406 (2013). [Figure 2](#).

### **CASES:**

- [Oquendo v. Club Assist Rd. Serv. U.S., Inc.](#), Superior Court, Judicial District of New Britain, HHB-CV14-6026540-S (Aug. 9, 2016) (2016 WL 5012349). "General Statutes § 52-212 (a) sets forth the requirements of a motion to open a judgment upon default or nonsuit if filed within four months on which the judgment was rendered or passed. Practice Book § 17-43 (a) tracks the language



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.

of General Statutes § 52-212 (a) and adds language that the four months runs succeeding the date notice was sent. The 1997 comment to the rule change clearly states that this notice is sent by the court. The rule and comment do not require the notice to be sent by the court to nonappearing defendants. The JDNO only goes to appearing parties. Therefore, no court notice is sent to nonappearing defendants nor is there any obligation on the court to do so.

Practice Book § 17-22, however, does obligate the prevailing party to send notice of the judgment after default for failure to enter an appearance to the party against whom it is directed, which necessarily, is the nonappearing party. Service must be made in accordance with Practice Book § 10-14 with a copy filed with the clerk's office. Section 10-14 requires the certification to a nonappearing party be made in accordance with Practice Book § 10-12 (a) and (b) and specify the address upon which it is made. . . .

In [McLaughlin v. Smoron](#), 62 Conn. App. 367, 771 A.2d 201 (2001), the court determined that the **defendants' motion to open, although filed more than two years later, was timely** because the plaintiff did not send proper notice of the default judgment required by Practice Book § 17-22. See also [Tyler E. Lyman, Inc. v. Lodrini](#), 63 Conn. App. 739, 746, 780 A.2d 932, cert. denied, 258 Conn. 902, 782 A.2d 137 (2001) ('Where the defendants have not *received* notice of the default judgment . . . the time within which they may move to set aside the judgment is extended by the delay in notification.' [Emphasis in original; internal quotation marks omitted.]) With [McLaughlin](#) in mind, because the plaintiff did not send notice as required by Practice Book § 17-22, the **defendant's four month period is extended, and the motion is timely."**

- [710 Long Ridge Operating Company II, LLC v. Randolph Stebbins](#), 153 Conn. App. 288, 295-296, 101 A.3d 292, 297 (2014). "The statutory limitation imposed on motions to open judgments **does not implicate the court's jurisdiction**. Rather, our Supreme Court has explained **that General Statutes '§ 52-212a operates as a constraint, not on the trial court's jurisdictional authority, but on its substantive authority to adjudicate the merits of the case before it.'** [Kim v. Magnotta](#), 249 Conn. 94, 104, 733 A.2d 809 (1999) . . . In the present case, the trial court lacked authority to open the judgment because the defendant never filed a motion to open pursuant to § 52-212 . . . Although the defendant filed his motion to dismiss within the four month time limit imposed by § 52-212, the motion to dismiss did not satisfy the requirements of § 52-212 (a), **specifically as to 'reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of the judgment or the**

passage of the decree, and that the plaintiff or defendant was prevented by mistake, accident or other reasonable cause from prosecuting the action or making the **defense.**”

- [Dziedzic v. Pine Island Marina, LLC](#), 143 Conn. App. 644, 652-653, 72 A.3d 406, 411-**412 (2013)**. “**The power of** the court to set aside a default judgment is governed by General Statutes § 52-212. **To obtain relief, ‘the movant** must make a two part showing that (1) a good defense existed at the time an adverse judgment was rendered; and (2) the defense was not at that time raised by reason of mistake, accident or other reasonable cause.... [B]ecause the movant must satisfy both prongs of this analysis, failure to meet either prong is fatal to its **motion.’ . . . The court in the present case concluded that** the defendant did not satisfy the latter requirement.

More specifically, the court found, and the defendant does not dispute, that it received notice of the proceedings in this case and made a conscious decision to ignore them . . .

**‘It is this court’s** well settled jurisprudence that [a] court should not open a default judgment in cases where the defendants admit they received actual notice and **simply chose to ignore the court’s** authority.... Negligence is no ground for vacating a judgment, and it has been consistently held that the denial of a motion to open a default judgment should not be held an abuse of discretion where the failure to assert a defense was the result of negligence.... Negligence of a party or [its] counsel is insufficient for purposes of § 52-212 to set **aside a default judgment.**”

- [Chambers v. Tyles](#), Superior Court, Judicial District of Hartford at Hartford, No. HHDCV106011127S (July 2, 2012) (2012 Conn. Super. Lexis 1720) (2012 WL **3089736**). “The defendant argues that the court should open the default judgment because the court lacked personal jurisdiction to render the judgment against him due to insufficiency of service of process . . . In the **present case, the marshal’s** return of service . . . states that the marshal made personal service on the defendant . . . In the defendant’s motion to open, the defendant argues that on **the date recited in the marshal’s** return, he was in New York, New York, and, therefore, was not personally served by the marshal . . . For the foregoing reasons, the defendant has satisfied the statutory requirements set forth in General Statutes § 52-212(a) and Practice Book § 17-43, and the court grants the **defendant’s** motion to open the default judgment **rendered against him.**”

**WEST KEY NUMBERS:**

- *Judgment*  
92-177. Judgment by Default.  
92. Nature of judgment by default.  
140. Judgments which may be opened or set aside.

**ENCYCLOPEDIAS:**

- James L. Buchwalter, Annotation, *Imposition Of Default Judgment Against Codefendant—Modern Treatment*, 102 [ALR5th](#) 647 (2002).
- James O. Pearson, Jr., Annotation, *Fraud in Obtaining or Maintaining Default Judgment as Ground for Vacating or Setting Aside in State Courts*, 78 [ALR3d](#) 150 (1977).
- A.S. Klein, 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).
- D.E. Ytreberg, Annotation, *Appealability of Order Setting Aside, or Refusing to Set Aside, Default Judgment*, 8 [ALR3d](#) 1272 (1966).
- E.H. Schopler, Annotation, *Doctrine of Res Judicata as Applied To Default Judgments*, 77 [ALR2d](#) 1410 (1961).
- 46 [Am. Jur. 2d](#) *Judgments* (2017).  
IV. Particular Kinds of Judgments  
§§ 222-295. Judgment by default
- 47 [Am. Jur. 2d](#) *Judgments* (2017).  
IX. Relief from Judgments  
A. Opening, Modifying, and Vacating Judgments  
Character of Judgment  
§ 639. Motion for relief from judgment by default  
§ 652. Grounds for relief from entry of default or default judgment  
§§ 669-670. Practice and procedure for opening, modifying, and vacating judgments
- 49 [C.J.S.](#) *Judgments* (2009).  
X. Judgment by Default  
§§ 253-293. In General  
XII. Alteration of and Relief from Judgment  
§§ 516-625. Judgments by default
- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).  
Chapter 9. Appearance and Default  
Part III: Practical Guidance – Default  
§ 9.17. Motion for Default Judgment  
[1] Defendant May Appear Before Entry of Default Judgment

**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.

- [2] Motion for Default Judgment
- [3] Affidavit Regarding Military Service Required With Motion for Judgment After Default
  - [a] Affidavit Contents
  - [b] Court May Appoint Attorney for Defendant in Military
  - [c] Bond May Be Required
  - [d] Stay
  - [e] Defendant May Seek Stay
  - [f] Defendant May Seek Additional Stay

**[7] Plaintiff's Relief on Default**

- § 9.19. Notice of Judgment for Default for Failure to Enter an Appearance
- § 9.20. Topical Overview of Obtaining Relief from Default Judgments
- § 9.21. Opening Defaults
  - [3] Opening Judgment Rendered upon Default
    - [a] Grounds
    - [b] Time Limit for Filing Motion
    - [c] Motion Must Be Verified
    - [d] Notice of Motion to Adverse Party
  - [4] Motion to Reopen Judgment Based on Equitable Grounds
  - [5] Appeal of Order on Motion to Open Judgment

- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).
  - 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
- 1 Renée Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 1997, with 2014 supplement).
  - § 96. Judgment on Default
    - b. Default judgment and default distinguished
    - g. Reopening judgments on default
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998).
  - 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, p. 152
    - 5. Motions to set aside default, p. 153
- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
  - Chapter 14. Pleadings: Motions against defendants who do not file an appearance

II. Motion for Default for Failure to Appear  
When a defendant fails to appear after default:  
Judgment  
IV. Motion to Open Judgment Upon Default: Four  
Month Deadline

- 2 Joel M. Kaye et al., [Connecticut Practice Series: Civil Practice Forms](#) (2004).  
**Authors' Commentary for Forms 107.7, 107.8, 107.8-F**
- 1 Wesley W. Horton et al., [Connecticut Practice Series: Superior Court Civil Rules](#) (2017-2018).  
**Authors' Commentary for § 17-43**
- 1 [West's Connecticut Rules of Court Annotated](#) (2017).  
Notes of Decisions for § 17-43

Figure 2: Motion to Open Default Judgment for Failure to Appear

DOCKET NO.: CV-11-5014143-S : SUPERIOR COURT  
JEFF DZIEDZIC : J.D. OF NEW LONDON  
V. : AT NEW LONDON  
PINE ISLAND MARINA, LLC : NOVEMBER 9, 2011

MOTION TO OPEN JUDGMENT UPON DEFAULT

The Defendant, Pine Island Marina, LLC, respectfully requests that the Default granted on September 28, 2011 be opened pursuant to Prac. Book §§ 17-43. Prac. Book §§ 17-43 allows “any judgment rendered...upon a default or non-suit may be set aside within four months succeeding the date on which notice was sent.” In this, case Notice was sent on July 12, 2011. That is less than four months from the filing date of this motion. The Defendant was ill advised that it should take no action in this case on the basis that no judgment could be rendered against it because of the dissolution. This was obviously error and is why the Defendant failed to file an appearance.

The Defendant has a number of good faith defenses to present. In this case the Defendant will allege that the limited liability company was dissolved prior to the claim being submitted. The Defendant will claim that the Plaintiff breached contract with the Defendant in that he did not properly manage the company as was his duty. The Defendant will also claim that the Plaintiff failed to act in the best interest of the **business by soliciting interference from a manager at People’s United Bank which** interfered with the relationship between the Plaintiff and the Defendant. The Plaintiff failed to give the Defendant full disclosure in accounting with regards to financial matters nor did the Plaintiff advise the Defendant of the financial decline of the business. Further, the Plaintiff failed to run the business in accordance with the quality and standards recognized and promulgated by the marina and boating

community, the Company and applicable federal, state, and local laws and ordinances. Finally, the Plaintiff failed to outline to the court that the employment agreement which is at the core of this lawsuit is subject to binding arbitration rather than judgment by the court. The Defendant may claim this right.

Given that the Defendant has numerous good faith defenses to this case, the Defendant respectfully requests that the Judgment against them be opened.

THE DEFENDANT

BY: \_\_\_\_\_

Name  
Firm  
Address  
Phone Number

ORDER

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

BY THE COURT

\_\_\_\_\_  
Judge/Clerk

[separate page]

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed postage prepaid on this the 9<sup>th</sup> day of November, 2011 to:

\_\_\_\_\_  
Name(s)

# Section 1c: 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](#) (2018).

## **DEFINITIONS:**

- “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.**” 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](#) (2017-2018), Appendix 1.
- “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\(a\)](#) (2018).

## **COURT RULES:**

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

- Conn. Practice Book (2018)
  - [Chapter 17](#). Judgments
    - § 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

## **COURT FORMS:**

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

- [JD-CV-49](#). Motion for Default for Failure to Appear, Judgment and Order for Weekly Payments (rev. 8/99)
- [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 (rev. 9/09)
- [JD-CV-50\\*](#). Notice of Judgment and Order for Weekly Payments (with automatic calculations)



**COURT PUBLICATIONS:**

- [JD-CV-52](#). Affidavit of Debt (rev. 5/99)
- 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](#) (2017-2018).  
Appendix 1

**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.

- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).  
Chapter 9. Appearance and Default  
Part III: Practical Guidance – Default  
§ 9.16. Streamlined Procedures for Entry of Default and Default Judgment for Contract Actions to Pay a Definite Sum  
[1] Motion for Default and Judgment to Enforce Promise to Pay Liquidated Sum  
[2] Motion Must Include Affidavits  
[3] Order for Weekly Payments  
[4] Entry of Judgment after Default in Action to Enforce Promise to Pay Liquidated Sum and Notice to All Parties  
[5] Enforcement of Judgment after Default in Action to Enforce Promise to Pay Liquidated Sum and Notice to All Parties
- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).  
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
- 1 Renée Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 1997, with 2014 supplement).  
§ 96. Judgment on Default  
d. Defaults for failure to appear (see especially p.285)  
§ 101. Affidavit of Debt and Related Procedures

b. Contract actions for liquidated damages

- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).  
Chapter 14. Pleadings: Motions against defendants who do not file an appearance  
III. Motion for Default for Failure to Appear and Judgment
- 2 Joel M. Kaye and Wayne D. Efron, [Connecticut Practice Series: Civil Practice Forms](#) (2004 with 2017 pocket part).  
Authors' Commentary for Form 107.7-A
- 1 Wesley W. Horton et al., [Connecticut Practice Series: Superior Court Civil Rules](#) (2017-2018).  
**Authors' Commentary for §§ 17-23 through 17-28**
- 1 [West's Connecticut Rules of Court Annotated](#) (2017).  
Notes of Decisions for § 17-28

## Section 2: 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:**

- [Setting Aside or Opening a Default for Failure to Plead Before Judgment](#)
- [Judgment upon Default for Failure to Plead](#)

### **DEFINITIONS:**

- "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\(a\)](#) (2018).

### **COURT RULES:**

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

- Conn. Practice Book (2018)
  - [Chapter 10](#). Pleadings
    - § 10-8. Time to plead
  - [Chapter 17](#). Judgments
    - § 17-31. Procedure where party is in default
    - § 17-32. Where defendant is in default for failure to plead

### **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. (2017)
  - [Chapter 898](#). Pleading
    - § [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.

### **FORMS:**

- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).
  - Chapter 9. Appearance and Default
  - Part III: Practical Guidance – Default
- 2 Joel M. Kaye and Wayne D. Effron, [Connecticut Practice Series: Civil Practice Forms](#) (4th ed. 2004 with 2017 pocket part).
  - Form 107.8-C. Motion for default for failure to plead
- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).
  - F.17-32. Motion for Default for Failure to Plead
  - F.17-32(1). Objection to Motion for Default [for Failure to Plead]

- Kimberly 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
- Robert M. Singer, [Library of Connecticut Collection Law Forms](#) (2016).  
Form 9-002. Motion for default for failure to plead

## **RECORDS & BRIEFS:**

## **CASES:**

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

- *Motion for Default for Failure to Plead*, Connecticut Appellate Court Records and Briefs (May 2012). [Giano v. Salvatore](#), 136 Conn. App. 834, 46 A.3d 996, (2012). [Figure 3](#).
- [Deutsche Bank National Trust Co. v. Thompson](#), 163 Conn.App. 827, 835, 136 A.3d 1277, 1282 (2016).  
“Although it is established that entry of default conclusively establishes the *liability* of a defendant, the plaintiff offers no authority to support its position that entry of default conclusively establishes the *subject matter jurisdiction* of the court. Moreover, we disagree with this position because it essentially posits that a party can waive a subject matter jurisdiction challenge by virtue of a pleading deficiency, namely, a failure to reply to **jurisdictional allegations during the pleading stage.**”
- [Clark v. Britagna](#), Superior Court, Judicial District of New London at New London, No. CV126013553 (February 4, 2015) (2015 Conn. Super. Lexis 230) (2015 WL 776787).  
“The defendant filed a **pro se appearance on June 13, 2012** . . . Plaintiff filed a Motion for Default for failure to plead over three months later on November 21, 2012. That motion was granted by the court on December 3, 2012, when the defendant was defaulted for failure to plead.”
- [Giano v. Salvatore](#), 136 Conn. App. 834, 843-844, 46 A.3d 996, **1003 (2012)**. “The defendant’s counsel admitted on the witness stand that he had actual notice that a default had entered against the defendant . . . yet he failed to file any responsive pleadings . . . The defendant’s mistaken belief that the plaintiff would be withdrawing the case is no excuse for her failure to plead after she received actual notice of the default and of the impending judgment.”
- [Argentinis v. Fortuna](#), 134 Conn. App. 538, 539, 39 A.3d **1207, 1213 (2012)**. “A motion for default for failure to plead may enter against a defendant who fails to answer a complaint; see Practice Book § 17–32; and judgment may be rendered on the default.”

**WEST KEY  
NUMBERS:**

- *Judgment*
  - 105. Default in pleading.
  - 106. Failure to plead in general.

**ENCYCLOPEDIAS:**

- 46 [Am. Jur. 2d Judgments](#) (2017).
  - IV. Particular Kinds of Judgments
  - E. Judgment by Default
  - §§ 243-277. Judgment by default
- 49 [C.J.S. Judgments](#) (2009).
  - X. Judgment by Default
  - Grounds for Judgment
  - §§ 266-271. Default in pleading

**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.

- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).
  - Chapter 9. Appearance and Default
  - Part III: Practical Guidance – Default
  - § 9.10. Topical Overview of Obtaining Default Judgments
    - [2] Default for Failure to Plead
  - § 9.12. Motion for Default for Failure to Plead
    - [1] Filing Motion for Default for Failure to Plead
    - [2] Defendant May File Answer Before Judgment Rendered
  - § 9.13. Effect of Default for Failure to Plead
  - § 9.14. Court’s Discretionary Authority to Grant Default**
  - § 9.15. Notice of Default by Clerk
- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).
  - Chapter 17. Judgments
  - E.5. Defaults Involving Pleadings and Discovery Orders
  - § 17-31. Procedure Where Party is in Default
  - § 17-32. Where Defendant is in Default for Failure to Plead
  - § 17-32.1. Defaulted Party, Pleadings by
- 1 Renée Bevacqua Bollier et al., [Stephenson’s Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 1997, with 2014 supplement).
  - § 96. Judgment on Default
  - e. Other Grounds for Default
  - (1) Failure to plead
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998).
  - V. Timing, Waivers and Defaults
  - 3. Motions for Default
  - c. Defaults for failure to plead or disclose a defense, p. 71

- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).  
Chapter 15. Pleadings: Motions against defendants who do not file pleadings  
I. Motion for default for failure to plead
- 2 Joel M. Kaye and Wayne D. Effron, [Connecticut Practice Series: Civil Practice Forms](#) (4th ed. 2004 with 2017 pocket part).  
Authors' Commentary for Form 107.8-C
- 1 Wesley W. Horton et al., [Connecticut Practice Series: Superior Court Civil Rules](#) (2017-2018).  
**Authors' Commentary for § 17-31 and 17-32**
- 1 [West's Connecticut Rules of Court Annotated](#) (2017).  
Notes of Decisions for §§ 17-31 and 17-32

Figure 3: Motion for Default for Failure to Plead

DOCKET NO.: CV-10-6005967-S : SUPERIOR COURT  
JOHN GIANO : J.D. OF NEW BRITAIN  
V. : AT NEW BRITAIN  
VANNA SALVATORE, PAUL RACZYNKSI  
and TD BANK, N.A. : SEPTEMBER 1, 2010

**PLAINTIFF'S MOTION FOR DEFAULT FOR FAILURE TO PLEAD**  
**AGAINST DEFENDANT VANNA SALVATORE**

Pursuant to the Connecticut Rules of Practice, including § 17-32, the plaintiff John Giano respectfully requests that the Court enter a default against Vanna Salvatore for failure to plead. In support, the plaintiff states as follows:

1. **Plaintiff commenced this action by marshal's service of a true and attested copy of the original Writ, Summons, Complaint, and Statement of Amount of defendant on or about June 21, 2010.**
2. The return date was July 27, 2010.
3. To date, defendant Vanna Salvatore has failed to plea.

WHEREFORE, plaintiff respectfully requests that the Court enter a default against defendant Vanna Salvatore for failure to plead.

THE PLAINTIFF,

JOHN GIANO

BY: \_\_\_\_\_

Name  
Firm  
Address  
Phone Number

ORAL ARGUMENT REQUESTED  
TESTIMONY NOT REQUIRED

ORDER

The foregoing Motion having been heard, it is hereby:

GRANTED/DENIED.

BY THE COURT

---

Judge/Clerk

[separate page]

CERTIFICATION

This is to certify that a copy of the foregoing was sent by first class mail, postage prepaid, to the following counsel of record this 1<sup>st</sup> day of September 2010:

---

Name(s)



# Section 2a: Setting Aside or Opening Default for Failure to Plead Before Judgment

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 prior to judgment.

## **SEE ALSO:**

- [Judgment upon Default for Failure to Plead](#)

## **DEFINITIONS:**

- "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 default shall automatically be set aside by operation of law unless a claim for a hearing in damages or a motion for judgment has been filed. 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. 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 notice of issuance of the default under this section." **Conn. Practice Book § 17-32(b)** (2018).
- "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** (2018).

## **COURT RULES:**

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

- Conn. Practice Book (2018)  
[Chapter 17](#). Judgments  
§ 17-32(b). Where defendant is in default for failure to plead  
§ 17-42. Opening defaults where judgment has not been rendered

## **FORMS:**

- Robert M. Singer, [Library of Connecticut Collection Law Forms](#) (2016).  
Form 9-018. Motion to set aside default (for failure to plead)

## **RECORDS & BRIEFS:**

- *Motion for Set Aside Default*, Connecticut Appellate Court Records and Briefs (October 1994). [Whalen v. Ives](#), 37 Conn. App. 7, 654 A.2d 798 (1995). [Figure 4](#).

## **CASES:**

- [Spilke v. Wicklow](#), 138 Conn. App. 251, 267-268, 53 A.3d 245, 254-255 (2012). "The defendants then filed a motion to open the default for failure to plead on October 18, 2010. In the motion, the defendants argued that the

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.

default was due to miscommunication between the defendants and their attorney as well as their attorney's chronic illness . . . The court stated that, although the defendants had apprised it that their attorney had health **issues in late 2009, that 'does not answer, or even** address, the question of how or why defaults which entered in March, 2007, were permitted to stand unchallenged for more than three years. The only explanation given, essentially that [the defendants] had **instructed [their counsel] to try to handle their case "on the cheap" ... is hardly "good cause" for allowing three** years ... or even the first two of those years, before [the **defendants' attorney's**] health problems created additional problems ... to pass without taking any action with **respect to the defaults.'** **The court therefore determined** that there was no good cause to set aside the default and **denied the defendants' motion."**

- [Snowdon v. Grillo](#), 114 Conn. App. 131, 138, 968 A.2d **984, 989 (2009)**. "The distinction between whether Practice Book § 17-32 applies or Practice Book § 17-42 applies is whether a claim for a hearing in damages is filed before, or after, a motion to set aside the default is filed."
- [Whalen v. Ives](#), 37 Conn. App. 7, 13, 654 A.2d 798, 801 (1995). "Section 376 [now § 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:**

**ENCYCLOPEDIAS:**

- *Judgment*  
135-177. Opening or setting aside default.
- A.S. Klein, 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).
- 47 [Am. Jur. 2d Judgments](#) (2017).  
IX. Relief from Judgments  
Opening, Modifying, and Vacating Judgments  
§ 639. Motion for relief from judgment by default  
§ 652. Grounds for relief from entry of default or default judgment

**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.

- 49 [C.J.S. Judgments](#) (2009).  
XII. Alteration of and Relief from Judgment  
§§ 521-534. Right to and grounds for opening or vacating
- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).  
Chapter 9. Appearance and Default  
Part III: Practical Guidance – Default  
§ 9.21. Opening Defaults  
[1] Opening Default when judgment Has Not Been Rendered  
[2] Different Procedures Depending on Whether Plaintiff Has Filed Claim for a Hearing in Damages
- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).  
Chapter 17. Judgments  
E.5. Defaults Involving Pleadings and Discovery Orders  
§ 17-32.1. Defaulted Party, Pleadings by
- 1 Renée Bevacqua Bollier et al., [Stephenson’s Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 1997, with 2014 supplement).  
§ 96. Judgment on Default  
f. Reopening defaults
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998).  
V. Timing, Waivers and Defaults  
3. Motions for Default  
d. Automatic cure of default for failure to plead, p. 71  
e. Motions to dismiss and strike and requests to revise
- Kimberly 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
- 1 Wesley W. Horton et al., [Connecticut Practice Series: Superior Court Civil Rules](#) (2017-2018).  
**Authors’ Commentary for §§ 17-32 and 17-42**
- 1 [West’s Connecticut Rules of Court Annotated](#) (2017).  
Notes of Decisions for §§ 17-32 and 17-42

Figure 4: Motion to Set Aside Default (for Failure to Plead)

DOCKET NO.: CV-91-0048216-S : SUPERIOR COURT  
DANIEL J. WHALEN : J.D. OF TOLLAND  
V. : AT ROCKVILLE  
MILTON E. IVES, SR. : FEBRUARY 5, 1992

MOTION TO SET ASIDE DEFAULT

The Defendant in the above-captioned matter hereby represents that:

1. Default for Failure to Plead was entered against the Defendant by the Court, acting through the Clerk, on January 17, 1992.

2. The responsive pleading of the Defendant was mailed to the Court on January 21, 1992.

3. Notice of the entered Default for Failure to Plead was sent by the Clerk on January 22, 1992, and received by the undersigned on January 24, 1992.

The Defendant wishes to have the opportunity to be heard by the Court.

WHEREFORE, the Defendant moves that the default for failure to plead be set aside pursuant to Section 376 [now § 17-42] of the Connecticut Practice Book (Rev. 1978 as amended).

THE DEFENDANT,

BY: \_\_\_\_\_

Name  
Firm  
Address  
Phone Number

ORAL ARGUMENT NOT REQUESTED  
TESTIMONY NOT REQUIRED

ORDER

The foregoing Motion having been heard, it is hereby ORDERED

GRANTED/DENIED.

BY THE COURT

---

Judge/Clerk

[separate page]

CERTIFICATION

I hereby certify that the foregoing was mailed to all counsel of record on this the 5<sup>th</sup> day of February, 1992.

---

Name(s)

# Section 2b: Judgment upon Default for Failure to Plead

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to a judgment after default for failure to plead, and opening or setting aside a judgment upon default for failure to plead.

## **SEE ALSO:**

- [Setting Aside or Opening a Default for Failure to Plead Before Judgment](#)

## **DEFINITIONS:**

- "Any judgment rendered . . . 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 . . . and that the plaintiff or the defendant was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same." Conn. Practice Book § [17-43\(a\)](#) (2018).
- "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).
- "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).

## **COURT RULES:**

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

- Conn. Practice Book (2018)  
[Chapter 17](#). Judgments  
§ 17-33(b). When judgment may be rendered after a default  
§ 17-43. Opening judgment upon default or nonsuit

## **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.

## **COURT FORMS:**

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

## **FORMS:**

- Conn. Gen. Stat. (2017)
  - [Chapter 900](#). Court Practice and Procedure
    - § [52-212](#). Opening judgment upon default or nonsuit.
    - § [52-212a](#). Civil judgment or decree opened or set aside within four months only.
- [JD-CV-107](#). Motion to Open Judgment (Civil Matters Other Than Small Claims and Housing Matters) (rev. 4/12)
- [Forms to File if You Would Like to Have a Judgment Opened](#) (Connecticut Judicial Branch – Civil Forms)
- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).
  - Chapter 9. Appearance and Default
  - Part IV: Forms
  - § 9.34. Form: Motion to Set Aside Default Judgment
- 2 Joel M. Kaye and Wayne D. Efron, [Connecticut Practice Series: Civil Practice Forms](#) (4th ed. 2004 with 2017 pocket part).
  - Form 107.8-F. Motion to open judgment upon default
- Robert M. Singer, [Library of Connecticut Collection Law Forms](#) (2016).
  - Form 9-029. Motion to open judgment (for default for failure to plead)

## **RECORDS & BRIEFS:**

- *Motion to Open Judgment Upon Default*, Connecticut Appellate Court Records and Briefs (January 2007). [Insurance Co. of Pennsylvania v. Waterfield](#), 102 Conn. App. 277, 925 A.2d 451 (2007). [Figure 5](#).

## **CASES:**

- [Kearse v. Taylor](#), 165 Conn. App. 780, 782, 140 A3d 389 (2016). "The defendants . . . **appeal from the trial court's** denial of their motion to open a default judgment rendered after a hearing in damages. On appeal, the defendants claim that the court improperly denied their motion as untimely because the court failed to send them notice that a default judgment had been rendered against them. We reverse the judgment of the trial court and remand the case for further proceedings."
- [Dawson v. Britagna](#), 162 Conn. App. 801, 806, 133 A.3d 880 (2016). "'Although . . . § 52-212 . . . normally limit[s] the authority [of the trial court] to open

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.

judgments to a four month period, [this statute does] not preclude the opening of a default judgment that is rendered without jurisdiction over a defendant . . . . As a matter of law, in the absence of jurisdiction over the parties, a judgment is void ab initio and is subject to both **direct and collateral attack . . . . A trial court’s authority** to open such judgments does not arise from . . . § 52-212(a) or Practice Book [§17-43] but from its inherent power to open a judgment rendered without jurisdiction . . . . In other words, a court always has the inherent authority to open a default judgment, irrespective of the four month rule and the valid defense and good cause requirement in Practice Book § 17-43 and General Statutes § 52-212(a), if the judgment was rendered without jurisdiction of the parties or of the subject **matter.’ (Internal quotation marks omitted.) [Weinstein & Wisser, P.C. v. Cornelius](#), 151 Conn. App. 174, 180-81, 94 A.3d 700 (2014).”**

- [Darlen Rowayton Bank v. Orifici](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. CV106013237 (May 16, 2011) (2011 Conn. Super. Lexis 1264) (2011 WL 2417505). **“On February 9, 2011, the defendant moved to open the judgment upon default on the grounds that he was participating in good faith negotiations with the plaintiff throughout the proceedings . . . . On March 30, 2011, the court denied the defendant’s motion to open the judgment upon default stating: ‘As recently as this month, the Appellate Court continues to state that “[t]o open a judgment pursuant to Practice Book § 17-43(a) and General Statutes § 52-212(a), the movant must make a two part showing that ‘(1) a good defense existed at the time an adverse judgment was rendered; and (2) the defense was not at that time raised by reason of mistake, accident or other reasonable cause.’(Internal quotation marks omitted.) [State v. Ritz Realty Corp.](#), 63 Conn.App. 544, 548, 776 A.2d 1195 (2001). The party moving to open a default judgment ‘must not only allege, but also make a showing sufficient to satisfy the two-pronged test [governing the opening of default judgments].’ (Citations omitted; internal quotation marks omitted.) [Eastern Elevator Co. v. Scalzi](#), 193 Conn. 128, 133-34, 474 A.2d 456 (1984).”** The negligence of a party or his counsel is insufficient for purposes of § 52-212 to set aside a default judgment. [Segretario v. Stewart-Warner Corp.](#), 9 Conn.App. 355, 362-63, 519 A.2d 76 (1986). Finally, because the movant must satisfy both prongs of this analysis, failure to meet either prong is **fatal to its motion.’ [Nelson v. The Contracting Group](#), 127 Conn.App. 45, 49, [14 A.3d 1009] (2011). The motion is denied because the defendant does not satisfy the second prong of Practice Book § 17-43(a).”**
- [Insurance Co. of Pennsylvania v. Waterfield](#), 102 Conn.



App. 277, 284-285, 925 A.2d 451, 456 (2007). "The defendant argues that the court improperly refused to open the judgment. Specifically, the defendant argues that the court failed to follow General Statutes §§ 52-120 and 52-121(a) and (c) . . . Section 52-120, which requires a written agreement, is inapplicable because no such agreement exists. The defendant argues that the federal scheduling order was the written agreement. He neither cites, nor does our research reveal, however, any legal support for his argument. Likewise, § 52-121(c) is not applicable in this case because the court did not impose a penalty on the defendant for failure to plead, but rather rendered judgment of default for failure to plead pursuant to General Statutes § 52-121(b). Finally, § 52-121(a) does not result in an automatic grant of a motion to open, as the defendant claims; rather, the **granting of a motion to open is within the court's** discretion. The defendant had ample time to respond to the amended complaint, which was filed on May 7, 2004. Furthermore, the fact that the defendant filed a third **motion for an extension of time is irrelevant to the court's denial of the defendant's motion to open. In this case, on the basis of the detailed time line, which reveals that the defendant's dilatory tactics permeate this litigation, the court was well within its discretion to handle the situation as it did."**

- [Richards v. Trudeau](#), 54 Conn. App. 859, 863, 738 A.2d 215, 217 (1999). "An examination of the transcript of the hearing in damages, held on May 17, 1996, discloses that the defendants offered an answer to the trial court, which they were attempting to file that morning. The trial court ruled, however, that it would not permit the defendants to file the answer at that time. It noted that it had been almost one year since the default had been entered against them and ruled that to permit the filing of the answer, the result of which would have been to set aside the default under Practice Book § 17-32, would have been 'highly improper.' **The trial court found that the attempted filing of the defendants' answer at that time was 'a patent attempt to stall unfairly and unreasonably a matter that has already been defaulted.'** Our review of the record reveals that the trial court did not abuse its discretion in **refusing to accept the defendants' answer or in refusing to set aside the default judgment for failure to plead."**

**WEST KEY NUMBERS:**

- *Judgment*  
92-177. Judgment by Default.  
92. Nature of judgment by default.  
140. Judgments which may be opened or set aside.

**ENCYCLOPEDIAS:**

- James L. Buchwalter, Annotation, *Imposition Of Default Judgment Against Codefendant—Modern Treatment*, 102 [ALR5th](#) 647 (2002).

- James O. Pearson, Jr., Annotation, *Fraud in Obtaining or Maintaining Default Judgment as Ground for Vacating or Setting Aside in State Courts*, 78 [ALR3d](#) 150 (1977).
- A.S. Klein, 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).
- D.E. Ytreberg, Annotation, *Appealability of Order Setting Aside, or Refusing to Set Aside, Default Judgment*, 8 [ALR3d](#) 1272 (1966).
- E.H. Schopler, Annotation, *Doctrine of Res Judicata as Applied To Default Judgments*, 77 [ALR2d](#) 1410 (1961).
- 46 [Am. Jur. 2d](#) *Judgments* (2017).  
IV. Particular Kinds of Judgments  
§§ 222-295. Judgment by default
- 47 [Am. Jur. 2d](#) *Judgments* (2017).  
IX. Relief from Judgments  
§ 639. Motion for relief from judgment by default  
§ 648. Time to move for relief from judgment by default . . .  
§ 652. Grounds for relief from entry of default or default judgment  
§§ 669-675. Practice and procedure for opening, modifying, and vacating judgments
- 49 [C.J.S.](#) *Judgments* (2009).  
X. Judgment by Default  
§§ 253-293. Judgment by default  
XII. Alteration of and Relief from Judgment  
§§ 516-625. Judgments by default
- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).  
Chapter 9. Appearance and Default  
Part III: Practical Guidance – Default  
§ 9.17. Motion for Default Judgment  
[1] Defendant May Appear Before Entry of Default Judgment  
[2] Motion for Default Judgment  
[3] Affidavit Regarding Military Service Required With Motion for Judgment After Default  
[a] Affidavit Contents  
[b] Court May Appoint Attorney for Defendant in Military  
[c] Bond May Be Required  
[d] Stay

**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.

- [e] Defendant May Seek Stay
- [f] Defendant May Seek Additional Stay

**[7] Plaintiff's Relief on Default**

§ 9.21. Opening Defaults

- [3] Opening Judgment Rendered upon Default
  - [a] Grounds
  - [b] Time Limit for Filing Motion
  - [c] Motion Must Be Verified
  - [d] Notice of Motion to Adverse Party
- [4] Motion to Reopen Judgment Based on Equitable Grounds
- [5] Appeal of Order on Motion To Open Judgment

- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2015-2016).
  - Chapter 17. Judgments
    - § 17-43. Opening Judgment Upon Default . . .
    - § 17-43.1. Reasonable Cause; Existence of Good Cause of Action or Defense
- 1 Renée Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 1997, with 2014 supplement).
  - § 96. Judgment on Default
    - b. Default judgment and default distinguished
    - g. Reopening judgments on default
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998).
  - 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, p. 152
    - 5. Motions to set aside default, p. 153
- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
  - Chapter 15. Pleadings: Motions against defendants who do not file pleadings
    - III. Judgment Upon Default
- 2 Joel M. Kaye et al., [Connecticut Practice Series: Civil Practice Forms](#) (4th ed. 2004 with 2017 pocket part).
  - Authors' Commentary for Forms 107.8-F**
- 1 Wesley W. Horton et al., [Connecticut Practice Series: Superior Court Civil Rules](#) (2017-2018).
  - Authors' Commentary for § 17-43** (includes examples of good cause to open judgment and where no good cause existed to open judgment)
- 1 [West's Connecticut Rules of Court Annotated](#) (2016).
  - Notes of Decisions for § 17-43

Figure 5: Motion to Open Default Judgment for Failure to Plead

DOCKET NO.: CV-03-0071645-S : SUPERIOR COURT  
INSURANCE COMPANY OF THE  
STATE OF PENNSYLVANIA : J.D. OF WINDHAM  
V. : AT PUTNAM  
DEAN J. WATERFIELD : DECEMBER 2, 2005

MOTION TO OPEN JUDGMENT UPON DEFAULT

The Defendant in the above-captioned case, hereby requests this Honorable Court to open the judgment upon default entered by the Court on August 4, 2005. This Court has jurisdiction because this motion is timely filed within the four months allowed by Conn. Gen. Stat. §52-212 (2005) and the \$70 filing fee required by Conn. Gen. Stat. § 52-259c (2005) has been paid.

This is not a case where I placed my head in the sand and hoped for the best. **I have diligently opposed the Plaintiff's claims, at every step** of the litigation. The August 30, 2004 default was granted on the same day that my motion to extend the **time to Respond to Plaintiffs' Revised Complaint was denied. As explained above,** subsequent to the State Court's denial of my request for an extension within which **to respond to the plaintiff's complaint, while in Federal Court, the parties signed an** agreement to give me an extension. I have not ignored this litigation, and I request the opportunity to clear my name of these scandalous, unfounded larceny charges, and to prove my Special Defenses and Counterclaims, all of which is in the best interests of justice.

THE DEFENDANT,  
DEAN J. WATERFIELD  
BY: \_\_\_\_\_

Name  
Firm  
Address  
Phone Number

ORDER

The foregoing Motion, having been presented to this Court, is hereby  
ORDERED: GRANTED/DENIED.

BY THE COURT

---

Judge/Clerk

[separate page]

CERTIFICATION

I hereby certify that a copy of the foregoing Motions was mailed on December  
2, 2005 to all counsel and pro se parties of record, namely:

---

Name(s)

# Section 3: Other Grounds for Default

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to defaults for failure to:

- Comply with order of judicial authority
- Appear for trial
- Make disclosures, answer interrogatories or comply with a discovery order
- Disclose defense
- Obey pretrial orders

Also, opening or setting aside a default prior to judgment, and opening or setting aside a judgment upon default for the grounds listed above.

## **DEFINITIONS:**

- **Comply with order:** "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](#) (2018).
- **Trial:** "If a defendant is defaulted for failure to appear for trial, evidence may be introduced and judgment rendered without notice to the defendant." Conn. Practice Book § [17-33\(a\)](#) (2018).
- **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. (b) Such orders may include the following: (1) The entry of a . . . default against the party failing to comply." Conn. Practice Book § [13-14](#) (2018).
- **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 ten days of the filing of such demand in any action to foreclose a mortgage or lien or to quiet title, or in any action upon any written contract, 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](#) (2018).

- **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 . . . default against the party failing to comply and an award to the complying party **of reasonable attorney's fees.**" Conn. Practice Book § [14-13](#) (2018).

#### **COURT RULES:**

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

- Conn. Practice Book (2018)
  - [Chapter 13.](#) Discovery and Depositions
    - § 13-14. Order for compliance; Failure to answer or comply with order
    - § 13-19. Disclosure of defense
  - [Chapter 14.](#) Dockets, Trial Lists, Pretrials and Assignment Lists
    - § 14-13. Pretrial; Assignment for pretrial—Pretrial procedure
  - [Chapter 17.](#) Judgments
    - § 17-19. Procedure where party fails to comply with order of judicial authority or to appear for trial
    - § 17-33(a). When judgment may be rendered after a default
    - § 17-42. Opening defaults where judgment has not been rendered
    - § 17-43. Opening judgment upon default or nonsuit

#### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)
  - [Chapter 900.](#) Court Practice and Procedure
    - § [52-212](#). Opening judgment upon default or nonsuit.
    - § [52-212a](#). Civil judgment or decree opened or set aside within four months only.

## **COURT FORMS:**

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

## **FORMS:**

- [JD-CV-107](#). Motion to Open Judgment (Civil Matters Other Than Small Claims and Housing Matters) (rev. 4/12)
- [Forms to File if You Would Like to Have a Judgment Opened](#)
- 3A Joel M. Kaye and Wayne D. Efron, [Connecticut Practice Series: Civil Practice Forms](#) (4th ed. 2004 with 2017 pocket part).
  - Form S-1. Demand for disclosure of defense
  - Form S-2. Motion for default for failure to disclose defense
  - Form S-2-A. Motion for judgment upon default for failure to disclose defense
  - Form S-7. Motion for sanctions for failure to comply with discovery
- Robert M. Singer, [Library of Connecticut Collection Law Forms](#) (2016).
  - Form 9-009. Motion for order of default for failure to respond to discovery

## **CASES:**

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

- [Spatta v. American Classic Cars, LLC](#), 150 Conn. App. 20, 23-24, 90 A.3d 318, 320-321 (2014). **“In the course of ruling on the motion for sanctions, the court did not impose the sanction of default that was threatened in the court’s July 25, 2011 order. Instead, the court . . . gave the defendants another opportunity to meet their discovery obligations . . . The responses to all seven requests for production are woefully deficient and suggest bad faith by the defendants . . . In view of the history regarding discovery issues in this case, the inadequate responses by the defendants justify the imposition of sanctions at this time. [See] Practice Book [§] 13-14(b).”**
- [Thompson v. Orcutt](#), 70 Conn. App. 427, 442, 800 A.2d 530, 541 (2002). **“Entry of a default for failure to appear for trial is a matter left to the sound discretion of the trial court. [Brunswick School, Inc. v. Hutter](#), 53 Conn.App. 455, 459, 730 A.2d 1206 (1999). Practice Book § 17-19 provides in relevant part: ‘If a party ... fails without proper excuse to appear in person or by counsel for trial, the party may be nonsuited or defaulted by the judicial authority.’ In response to the defendants’ motion for articulation, the trial court stated that the bankruptcy trustee had been defaulted for failure to appear at trial. Apart from the entry of a formal appearance on February 23, 1999, O’Neil did not submit any pleadings in the case, did not appear on the scheduled trial date and has not filed a motion to open the default. We conclude that the court did not abuse its discretion in defaulting O’Neil for**



his failure to appear at trial.”

### **Reopening default**

- [Janetty Racing Enterprises, Inc. v. Site Development Technologies, LLC et al.](#), Superior Court, Judicial District of Waterbury at Waterbury, No. UWYCV050444820 (October 8, 2010) (2010 Conn. Super. Lexis 2543) (2010 WL 4352712). **“Given the court’s decision to open the Judgment of Default in this matter, defendants’ Motion to Set Aside the Default that entered on May 15, 2008 when they failed to attend the pretrial is governed by Practice Book § 17-42: ‘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.’ The record clearly demonstrates that the only notice defendants received of the May 15, 2008 pretrial was Attorney Miller’s certified letter informing them of his intention to seek leave to withdraw as their counsel. Attorney Miller mentions the pretrial on the second page of his letter and it is understandable defendants may have overlooked it or simply did not realize what a pretrial was or that they had to attend. This is particularly plausible in light of the evidence that the letter was sent as a result of a deteriorated relationship between defendants and Attorney Miller. As a result, the court finds that good cause existed for defendants’ failure to attend the pretrial and the default entered on May 15, 2008 is hereby set aside.”**

### **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*
  - 92-177. Judgment by Default.
  - 92. Nature of judgment by default.
  - 103. Default of appearance.
  - 109. Absence at trial or other proceeding.
  - 135-177. Opening or setting aside default.
  - 140. Judgments which may be opened or set aside.
- *Pretrial Procedure*
  - 46. Failure to disclose; Sanctions — Dismissal or default judgment
  - 226. Failure to appear or testify; Sanctions — Dismissal or default judgment
  - 316. Failure to answer; Sanctions — Default judgment
  - 435. Failure to comply; Sanctions — Dismissal or default judgment

**ENCYCLOPEDIAS:**

- John E. Theuman, Annotation, *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 [ALR4th](#) 9 (1984).
- John E. Theuman, Annotation, *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 [ALR4th](#) 849 (1983).
- J. A. Bryant, Jr., Annotation, *Failure of party or his attorney to appear at pretrial conference*, 55 [ALR3d](#) 303 (1974).
- A.S. Klein, 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).
- D.E. Ytreberg, Annotation, *Appealability of Order Setting Aside, or Refusing to Set Aside, Default Judgment*, 8 [ALR3d](#) 1272 (1966).
- 23 [Am. Jur. 2d](#) *Depositions and Discovery* (2013).
  - IX. Enforcing Discovery; Sanctions
  - Sanctions for Failure to Comply with Discovery Order
    - § 231. Default judgment
    - § 232. – Particular applications

- 46 [Am. Jur. 2d Judgments](#) (2017).
  - IV. Particular Kinds of Judgments
    - Judgment by Default
      - § 251. Excusable neglect; Fault of attorney
      - § 252. Failure to appear at trial as grounds for default judgment
      - § 253. Failure to appear at trial – Judgment on merits as opposed by default
- 47 [Am. Jur. 2d Judgments](#) (2017).
  - IX. Relief from Judgments
    - § 639. Motion for relief from judgment by default
    - § 648. Time to move for relief from judgment by default . . .
    - § 652. Grounds for relief from entry of default or default judgment
    - §§ 669-675. Practice and procedure for opening, modifying, and vacating judgments
- 27 [C.J.S. Discovery](#) (2009).
  - II. Oral Examination
    - § 45. Failure to appear or answer; Sanctions
  - III. Interrogatories and Examination Thereunder
    - 3. Sanctions for Failure or Refusal to Answer
      - § 100. Judgment by default
  - VI. Requests for Admissions of Facts
    - F. Failure to Respond; Sanctions
      - § 183. Relief from default
- 49 [C.J.S. Judgments](#) (2009).
  - X. Judgment by Default
    - §§ 253-293. Judgment by default
  - XII. Alteration of and Relief from Judgment
    - §§ 516-625. Judgments by default
      - §§ 521-534. Right to and grounds for opening or vacating
- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).
  - Chapter 9. Appearance and Default
    - Part III: Practical Guidance – Default
      - § 9.17. Motion for Default Judgment
        - [4] Default Judgment After Defendant’s Failure To Appear for Trial**
- 1 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).
  - 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
    - § 13-19. Disclosure of 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.

- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).
  - Chapter 14. Dockets, Trial Lists, Pretrials and Assignment Lists
    - § 14-13. Pretrial procedure
  - Chapter 17. Judgments
    - E.1. Defaults and Nonsuits. In General.
      - § 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
        - § 17-19.2. Failure to comply with court order
        - § 17-19.3. Dismissal for failure to prosecute with due diligence, Distinguished
    - E.5. Defaults Involving Pleadings and Discovery Orders
      - § 17-31. Procedure where party is in default
        - § 17-31.2. Discovery; Sanctions under P.B. Secs. 13-14 or 13-11
    - E.6. Judgment After Default Entered
      - § 17-33. When judgment may be rendered after a default
        - § 17-33.2. Case assigned for trial; Non-Appearing party
      - § 17-43. Opening judgment upon default or nonsuit
- 1 Renée Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 1997, with 2014 supplement).
  - § 96. Judgment on Default
    - e. Other Grounds for Default
      - (2). Failure to make disclosures, answer interrogatories or comply with a discovery order
      - (3). Failure to obey pretrial orders
      - (4). Failure to disclose a defense
    - f. Reopening defaults
    - g. Reopening judgments on default
- 2 Renée Bevacqua Bollier and Susan V. Busby, [Stephenson's Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 2002, with 2003 supplement).
  - § 128. Discovery sanctions
  - § 159. Nonsuits and defaults for reasons not evidential
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998).
  - V. Timing, Waivers and Defaults
    - 3. Motions for Default
      - c. Defaults for failure to plead or disclose a defense, p. 71
    - 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, p. 152

5. Motions to set aside default, p. 153

- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).  
Chapter 26. Discovery: Motions for order of compliance  
Chapter 28. Closing the pleadings and pretrial  
IV. Failure to Appear at a Pretrial
- Susan Kim, Donald J. Marchesseault, Editors, [A Practical Guide to Discovery and Depositions in Connecticut](#) (2013).  
Chapter 7. Requests for Production, Inspection, and Examination  
§ 7.4. Seeking an order for compliance  
Chapter 11. Other Discovery Rules and Devices  
§ 11.4. Disclosure of defense  
Chapter 12. Motions for Orders of Compliance
- 6 Robert B. Yules, [Connecticut Practice Series: Trial Practice](#) (2d ed. 2000, with 2017-2018 supplement).  
Chapter 2. Preliminary Matters  
§ 2.17. Failing to appear for trial
- 3A Joel M. Kaye and Wayne D. Efron, [Connecticut Practice Series: Civil Practice Forms](#) (4<sup>th</sup> ed. 2004 with 2017 supplement).  
**Authors' Commentary for Forms S-1 and S-7**
- 1 Wesley W. Horton et al., [Connecticut Practice Series: Superior Court Civil Rules](#) (2017-2018).  
**Authors' Commentary for §§ 17-42 and 17-43**
- 1 [West's Connecticut Rules of Court Annotated](#) (2017).  
Notes of Decisions for §§ 13-14, 13-19, 17-19, 17-42 and 17-43

Table 1: Default in Summary Process (Eviction)

| Default in Summary Process   |  |
|--|--|
| <p><b><u>STATUTES (2017):</u></b></p> <p>You can visit your local law library or search the most recent <a href="#">statutes</a> and <a href="#">public acts</a> on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.</p> | <ul style="list-style-type: none"> <li>• § <a href="#">47a-26</a>. <b>Failure to appear. Judgment.</b> “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 <b>complainant’s costs, and execution shall issue subject to the provisions of sections 47a-35 to 47a-41, inclusive.</b>”</li> <li>• § <a href="#">47a-26a</a>. <b>Failure to plead. Judgment.</b> “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.”</li> <li>• § <a href="#">47a-26c</a>. <b>Advancement of pleadings. Failure to plead.</b> “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 <b>occupancy with costs.</b>”</li> </ul> |
| <p><b><u>COURT RULES (2018):</u></b></p> <p>Amendments to the Practice Book (Court Rules) are published in the <a href="#">Connecticut Law Journal</a> and posted <a href="#">online</a>.</p>  | <ul style="list-style-type: none"> <li>• § <a href="#">17-30(a)</a>. “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 <b>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</b> 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.”</li> </ul>   |

|   |  |
|---|--|
|   | <ul style="list-style-type: none"> <li>• § <a href="#">17-30(b)</a>. “If the defendant in a summary process action appears but does not plead within two days after the return day or within three days after the filing of the preceding pleading or motion, 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 <b>costs.</b>”</li> <li>• § <a href="#">17-30(c)</a>. “In summary process actions, a motion for judgment by default that is sent to the court either electronically or is hand-delivered to the court shall be deemed to be filed on the third business day following such delivery unless the party filing the motion for judgment by default certifies that the motion has also been sent electronically or hand-delivered on the same day to all <b>opposing parties or their counsel.</b>”</li> <li>• § <a href="#">17-33(b)</a>. “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 summary process actions, 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 <b>authority.</b>”</li> </ul> |
| <p><b>FORMS:</b></p> <p>Official Judicial Branch forms are frequently updated. Please visit the <a href="#">Official Court Webforms page</a> for the current forms.</p> | <ul style="list-style-type: none"> <li>• <a href="#">JD-HM-9</a>. Motion for Default for Failure to Appear and Judgment for Possession (rev. 6/16)</li> <li>• <a href="#">JD-HM-10</a>. Motion for Default for Failure to Plead and Judgment for Possession (rev. 5/16)</li> <li>• <a href="#">JD-CV-51</a>. Motion to Open Judgment (Small Claims and Housing Matters) (rev. 5/15)</li> <li>• Joel M. Kaye and Wayne D. Effron, <a href="#">Connecticut Practice Series: Civil Practice Forms</a> (4<sup>th</sup> ed. 2004 with 2017 supplement). <ul style="list-style-type: none"> <li>Form 107.8-D. Motion for judgment for failure to plead—Summary process (vol. 2)</li> <li>Form 704.10-A Motion for judgment for failure to appear (vol. 3)</li> <li>Form 704.10-B Motion for judgment for failure to plead (vol. 3)</li> </ul> </li> <li>• Paul J. Marzinotto, <a href="#">Connecticut Summary Process Manual</a> (1986, supplemented to 2002). <ul style="list-style-type: none"> <li>VI. Summary Process Motions—Plaintiff <ul style="list-style-type: none"> <li>Form 6.1. Motion for Judgment for Failure to Appear</li> </ul> </li> </ul> </li> </ul>  |

Form 6.3. Motion for Judgment for Failure to Plead

**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.

- [A Landlord’s Guide to Summary Process \(Eviction\)](#)  
Default Judgments, p. 5
- Noble F. Allen, [Connecticut Landlord and Tenant Law with Forms](#) (2d ed. 2014).  
8-6: 4 Responsive pleadings to summary process complaint  
8-6: 4.1 Failure to appear  
8-6: 4.2 Failure to plead
- 1 Renée Bevacqua Bollier et al., [Stephenson’s Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 1997, with 2014 supplement).  
§ 101c. Failure to appear for trial, foreclosure, summary process
- 1 Denis R. Caron and Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure](#) (7th ed. 2017).  
Chapter 6. Motions, the hearing on judgment, the judgment file, and the bill of costs  
§ 6-1:3. Defaulting the defendants  
§ 6-1:3.1. For failure to appear  
§ 6-1:3.1a. Military Affidavits  
§ 6-1:3.1b. When the Defendant Is a Servicemember  
§ 6-1:3.2. For failure to plead  
§ 6-1:3.2a. Practice Book § 170-32 “Automatic” Reopening Provision  
§ 6-1:3.3. Disclosure of defense
- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).  
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
- Victor A. Feigenbaum, “*An Overview of Connecticut Housing Law*”, Chapter 18, [Connecticut Lawyers’ Deskbook: A Reference Manual](#) (3d ed. 2008).  
Procedure and Pleadings, p. 461
- 1 Wesley W. Horton et al., [Connecticut Practice Series: Superior Court Civil Rules](#) (2017-2018).  
**Authors’ Commentary for 17-30 and 17-33**
- 3 Joel M. Kaye and Wayne D. Efron, [Connecticut Practice Series: Civil Practice Forms](#) (4<sup>th</sup> ed. 2004 with 2017 supplement).



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|  | <p style="text-align: center;"><b>Authors' Commentary for Form 704.10</b></p> <p style="text-align: center;">IV-H-1. Motion for judgment for failure to appear<br/>IV-H-2. Motion for judgment for failure to plead</p> <ul style="list-style-type: none"> <li>• Paul J. Marzinotto, <a href="#">Connecticut Summary Process Manual</a> (1986, supplemented to 2002). <ul style="list-style-type: none"> <li>VI. Summary Process Motions—Plaintiff <ul style="list-style-type: none"> <li>Motion for default for failure to appear and judgment of possession, p. 64</li> <li>Motion for default for failure to plead and judgment of possession, p. 64</li> </ul> </li> </ul> </li> </ul> |
| <p><b>CASES:</b></p> <p>Once you have identified useful cases, it is important to update them to ensure they are still good law. You can <a href="#">contact your local law librarian</a> to learn about updating cases.</p> | <ul style="list-style-type: none"> <li>• <u>Mackenzie v. Rascati</u>, Superior Court , Judicial District of New Haven at New Haven, Housing Session, No. SPNH 941241586 (January 17, 1995) (13 Conn. L. Rptr. 450, 451) (1995 Conn. Super. Lexis 344) (1995 WL 55087). <b>“The Court finds that the Defendant’s request for discovery establishes good cause for extension of time to plead.”</b></li> </ul>   |

Table 2: Default in Family Matters

| Default in Family Matters   |   |
|---|---|
| <p><b><u>STATUTES</u></b><br/><b>(2017):</b></p> <p>You can visit your local law library or search the most recent <a href="#">statutes</a> and <a href="#">public acts</a> on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.</p> | <ul style="list-style-type: none"> <li>• § <a href="#">46b-160(4)(e)(2)</a>. <b>Petition by mother or expectant mother. Venue. Continuance of case. Evidence. Jurisdiction over nonresident putative father. Personal service. Petition to include answer form, notice and application for appointment of counsel. Genetic tests. Default judgment, when.</b> “The notice to the putative father shall inform him that (A) he has a right to be represented by an attorney, and if he is indigent, the court will appoint an attorney for him, (B) if he is found to be the father, he will be required to financially support the child until the child attains the age of eighteen years, (C) if he does not admit he is the father, the court or family support magistrate may order a genetic test to determine paternity and that the cost of such test shall be paid by the state in IV-D support cases, and in non-IV-D cases shall be paid by the petitioner, except that if he is subsequently adjudicated to be the father of the child, he shall be liable to the state or the petitioner, as the case may be, for the amount of such cost and (D) if he fails to return the answer form or fails to appear for a scheduled genetic test without <b>good cause, a default judgment shall be entered.</b>”</li> </ul> |
| <p><b><u>COURT RULES</u></b><br/><b>(2018):</b></p> <p>Amendments to the Practice Book (Court Rules) are published in the <a href="#">Connecticut Law Journal</a> and posted <a href="#">online</a>.</p>  | <ul style="list-style-type: none"> <li>• § <a href="#">25-51(a)</a>. “If, in any case involving a dissolution of marriage or civil union, legal separation, or annulment, the defendant has not filed an appearance by the case management date, the plaintiff may proceed to judgment on the case management date without further notice to such defendant. Section 17-20 concerning motions for default shall not apply to such cases.”</li> <li>• § <a href="#">25-51(b)</a>. “If the defendant files an appearance by the case management date, the presiding judge or a designee shall determine which track the case shall take pursuant to Section 25-50.”</li> <li>• § <a href="#">25-52</a>. “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 <b>such party who failed to appear.</b>”</li> </ul>   |

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| <p><b>FORMS:</b></p> <p>Official Judicial Branch forms are frequently updated. Please visit the <a href="#">Official Court Webforms page</a> for the current forms.</p>  | <ul style="list-style-type: none"> <li>• <a href="#">JD-CV-107</a>. Motion to Open Judgment (Civil Matters Other Than Small Claims and Housing Matters) (rev. 4/12)</li> </ul>  |
| <p><b>TEXTS &amp; TREATISES:</b></p> <p>You can click on the links provided to see which law libraries own the title you are interested in, or visit our <a href="#">catalog</a> directly to search for more treatises.</p>  | <ul style="list-style-type: none"> <li>• 7 Arnold H. Rutkin et al. <a href="#">Connecticut Practice Series: Family Law And Practice with Forms</a> (3rd ed. 2010). <ul style="list-style-type: none"> <li>Part 4. Dissolution of Marriage <ul style="list-style-type: none"> <li>Chapter 18. Process <ul style="list-style-type: none"> <li>§ 18.11. Appearance of defendant</li> </ul> </li> </ul> </li> <li>Part 5. Pre-Trial Proceedings in Dissolution <ul style="list-style-type: none"> <li>Chapter 20. Pretrial Procedures and Preparation <ul style="list-style-type: none"> <li>§ 20.4. Default, non-suit and dismissal</li> </ul> </li> </ul> </li> <li>Part 6. Evidentiary Matters and Trial <ul style="list-style-type: none"> <li>Chapter 24. Trial; Procedural Aspects <ul style="list-style-type: none"> <li>§ 24.12 Default</li> </ul> </li> </ul> </li> </ul> </li> <li>• Louise Truax, Editor, <a href="#">LexisNexis Practice Guide: Connecticut Family Law</a> (2018 ed.). <ul style="list-style-type: none"> <li>Chapter 10: Paternity <ul style="list-style-type: none"> <li>§ 10.15. Entering a Default Judgment</li> </ul> </li> </ul> </li> <li>• 2 Renée Bevacqua Bollier and Susan V. Busby, <a href="#">Stephenson's Connecticut Civil Procedure</a> (3<sup>rd</sup> ed. 2002, with 2003 supplement). <ul style="list-style-type: none"> <li>Chapter 20. Family Law Procedures <ul style="list-style-type: none"> <li>§ 258d. Proceeding without the defendant</li> <li>§ 258f. Setting aside or opening judgments</li> </ul> </li> </ul> </li> </ul> |
| <p><b>CASES:</b></p> <p>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 <a href="#">contact your local law librarian</a> to learn about the tools available to you to update cases.</p> | <ul style="list-style-type: none"> <li>• <a href="#">O'Brien v. Davis</a>, 49 Conn. Supp. 474, 484, 894 A.2d 1072, 1078. “. . . [s]ince 1998, a default of the defendant for failure to file an appearance is no longer part of the uncontested procedure. Practice Book § 25-51.”</li> </ul>   |

Table 3: Default in Foreclosure Cases

| Default in Foreclosure Cases   |   |
|--|---|
| <p><b><u>STATUTES (2017):</u></b></p> <p>You can visit your local law library or search the most recent <a href="#">statutes</a> and <a href="#">public acts</a> on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.</p> | <ul style="list-style-type: none"> <li>• <a href="#">§ 49-311(c)</a>. <b>Foreclosure mediation: Notice of foreclosure mediation program. Forms. Procedure. Stay of litigation.</b> “(7) With respect to foreclosure actions with a return date on or after July 1, 2011, to June 30, 2019, inclusive, notwithstanding any provision of the general statutes or any rule of law to the contrary, the mortgagee shall be permitted following the eight-month or fifteen-day period described in subdivision (6) of this subsection, to simultaneously file, as applicable, (A) a motion for default, and (B) a motion for judgment of strict foreclosure or a motion for judgment of foreclosure by sale with respect to the mortgagor in the foreclosure action.”</li> <li>• <a href="#">§ 49-31s(a)</a>. <b>Simultaneous filing of motions for judgment of foreclosure and for default for failure to appear permitted for vacant, abandoned and unoccupied real property.</b> “In a foreclosure action, the mortgagee may, notwithstanding any other law or rule to the contrary, file a motion for judgment of foreclosure simultaneously with a motion for default for failure to appear, if such mortgagee proves, by clear and convincing evidence and the use of a proper affidavit, that the real property that is the subject of the foreclosure action is not occupied by a mortgagor, tenant or other occupant and not less than three of <b>the following conditions exist . . .</b>”</li> </ul> |
| <p><b><u>COURT RULES (2018):</u></b></p> <p>Amendments to the Practice Book (Court Rules) are published in the <a href="#">Connecticut Law Journal</a> and posted <a href="#">online</a>.</p>  | <ul style="list-style-type: none"> <li>• <a href="#">§ 13-19</a>. “If the defendant fails to disclose a defense within ten days of the filing of such demand in any action to foreclose a mortgage or lien or to quiet title, or in any action upon any written contract, 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 <b>motions.</b>”</li> <li>• <a href="#">§ 17-20(b)</a>. “In an action commenced by a mortgagee prior to July 1, 2014, for the foreclosure of (1) 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, or</li> </ul>   |

|   |  |
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|   | <p>(2) a mortgage on real property owned by a religious organization with a return date during the period from October 1, 2011, to June 30, 2014, inclusive, 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.”</p> <ul style="list-style-type: none"> <li>• § <a href="#">17-33(b)</a>. “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 . . . 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 <b>submitted to the judicial authority.</b>”</li> <li>• § <a href="#">17-33A</a>. “<b>In all foreclosure actions, motions for judgment shall not be filed prior to the expiration of 30 days after the return date.</b>”</li> </ul> |
| <p><b>FORMS:</b></p> <p>Official Judicial Branch forms are frequently updated. Please visit the <a href="#">Official Court Webforms page</a> for the current forms.</p>   | <ul style="list-style-type: none"> <li>• <a href="#">JD-CV-107</a>. Motion to Open Judgment (Civil Matters Other Than Small Claims and Housing Matters) (rev. 4/12)</li> </ul>   |
| <p><b>TEXTS &amp; TREATISES:</b></p> <p>You can click on the links provided to see which law libraries own the title you are interested in, or visit our <a href="#">catalog</a> directly to search for more treatises.</p> | <ul style="list-style-type: none"> <li>• 1 Denis R. Caron and Geoffrey K. Milne, <a href="#">Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure</a> (7th ed. 2017) <ul style="list-style-type: none"> <li>Chapter 6. Motions, the hearing on judgment, the judgment file, and the bill of costs <ul style="list-style-type: none"> <li>§ 6-1:3. Defaulting the defendants <ul style="list-style-type: none"> <li>§ 6-1:3.1. For failure to appear <ul style="list-style-type: none"> <li>§ 6-1:3.1a. Military Affidavits</li> <li>§ 6-1:3.1b. When the Defendant Is a Servicemember</li> </ul> </li> <li>§ 6-1:3.2. For failure to plead <ul style="list-style-type: none"> <li>§ 6-1:3.2a. Practice Book § 170-32 “Automatic” Reopening Provision</li> </ul> </li> <li>§ 6-1:3.3. Disclosure of defense</li> </ul> </li> </ul> </li> </ul> </li> <li>• Christian R. Hoheb, Editor, <a href="#">A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut</a> (2011). <ul style="list-style-type: none"> <li>Chapter 9. Foreclosure Procedure from Complaint Through Sale</li> </ul> </li> </ul>   |

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|  | <p>§ 9.2. Motions<br/> § 9.2.1. Defaults<br/> Failure to Appear<br/> Failure to Plead<br/> § 9.2.2. Disclosure of Defense<br/> § 9.4. Judgment<br/> § 9.4.1. Findings and Orders<br/> Defaults</p> <ul style="list-style-type: none"> <li>• Susan Kim, Donald J. Marchesseault, Editors, <a href="#">A Practical Guide to Discovery and Depositions in Connecticut</a> (2013). Chapter 11. Other Discovery Rules and Devices<br/> § 11.4. Disclosure of defense</li> <li>• Connecticut Fair Housing Center, <a href="#">Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners</a>, 10th ed. Motions and Court Proceedings<br/> Motion for Default for Failure to Appear<br/> Motion for Default for Failure to Plead</li> <li>• 1 <a href="#">West's Connecticut Rules of Court Annotated</a> (2017). Notes of Decisions for §§ 13-19, 17-20, 17-32, 17-33</li> </ul>   |
| <p><b>CASES:</b></p> <p>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 <a href="#">contact your local law librarian</a> to learn about the tools available to you to update cases.</p> | <ul style="list-style-type: none"> <li>• <a href="#">Deutsche Bank National Trust Co. v. Thompson</a>, 163 Conn.App. 827, 835, 136 A.3d 1277, 1282 (2016). <b>"Although it is established that entry of default conclusively establishes the <i>liability</i> of a defendant, the plaintiff offers no authority to support its position that entry of default conclusively establishes the <i>subject matter jurisdiction</i> of the court. Moreover, we disagree with this position because it essentially posits that a party can waive a subject matter jurisdiction challenge by virtue of a pleading deficiency, namely, a failure to reply to jurisdictional allegations during the pleading stage."</b></li> <li>• <a href="#">U.S. Bank National Association v. Works</a>, 160 Conn App. 49, 60, 124 A.3d 935 (2015). <b>"The court then had to decide whether to set aside the default entered against the defendant. '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.'</b> <a href="#">Automotive Twins, Inc. v. Klein</a>, 138 Conn. 28, 33, 82 A.2d 146 (1951). In setting aside the default, the court permitted the defendant to file an answer and any special defenses and, in fact, instructed her to do so. The court's ruling setting aside the default was interlocutory, as it did not result in a final judgment, and therefore we may not <b>review it at this time."</b></li> <li>• <a href="#">Chase Manhattan Mortgage Corp. v. Burton</a>, 81 Conn. App. 662, 666, 841 A.2d 248, 251 (2004). <b>"Section 17-33(b) . . . provides in relevant part that 'the judicial</b></li> </ul> |

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|  | <p>authority, <i>at or after</i> the time it renders the default, <i>notwithstanding Section 17-32(b)</i>, may also render judgment in foreclosure cases ... provided the plaintiff has also made a <b>motion for judgment....</b>' (Emphasis added.) Although the phrase 'notwithstanding Section 17-32(b)' was added as part of the 2003 revision of our rules of practice, which was after the date at issue in this appeal, the commentary to Practice Book § 17-33(b) makes it clear that this amendment 'was made for clarity.'"</p> |
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Table 4: Default in Small Claims Actions

| Default in Small Claims Actions   |   |
|---|---|
| <p><b><u>COURT RULES (2018):</u></b></p> <p>Amendments to the Practice Book (Court Rules) are published in the <a href="#">Connecticut Law Journal</a> and posted <a href="#">online</a>.</p> | <ul style="list-style-type: none"> <li>• <a href="#">§ 24-16(a)</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 24-21. 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 <b>hearing by the judicial authority.</b>"</li> <br/> <li>• <a href="#">§ 24-24</a>. "(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 <b>attorney's fees, if the defendant has not filed an answer by</b> 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. <br/><br/>                     (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 <b>plaintiff . . .</b>" </li> <br/> <li>• <a href="#">§ 24-25</a>. "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</li> </ul> |



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|  | <p>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.”</p>   |
| <p><b>FORMS:</b></p> <p>Official Judicial Branch forms are frequently updated. Please visit the <a href="#">Official Court Webforms page</a> for the current forms.</p>  | <ul style="list-style-type: none"> <li>• <a href="#">JD-CV-51</a>. Motion to Open Judgment (Small Claims and Housing Matters) (rev. 5/15)</li> </ul>   |
| <p><b>TEXTS &amp; TREATISES:</b></p> <p>You can click on the links provided to see which law libraries own the title you are interested in, or visit our <a href="#">catalog</a> directly to search for more treatises.</p>  | <ul style="list-style-type: none"> <li>• <a href="#">How Small Claims Court Works</a> (Connecticut Judicial Branch Pamphlet)</li> <li>• 1 Wesley W. Horton et al., <a href="#">Connecticut Practice Series: Superior Court Civil Rules</a>, 2017-2018 edition.<br/><b>Official and Authors’ Commentary for §§ 24-16, 24-24, 24-25, 24-26, 24-28 &amp; 24-31</b></li> <li>• 3A Joel M. Kaye et al., <a href="#">Connecticut Practice Series: Civil Practice Forms</a>, 4<sup>th</sup> ed. (2004 with 2017 supplement).<br/><b>Authors’ Commentary for Form S-143</b></li> <li>• 1 <a href="#">West’s Connecticut Rules of Court Annotated</a> (2017).<br/>Notes of Decisions for §§ 24-24 &amp; 24-31</li> </ul>  |
| <p><b>CASES:</b></p> <p>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 <a href="#">contact your local law librarian</a> to learn about the tools available to you to update cases.</p> | <ul style="list-style-type: none"> <li>• <a href="#">Veterans Memorial Medical Center v. Townsend</a>, 49 Conn. App. 198, 202-203, 712 A.2d 993, 995-996 (1998). “Small claims proceedings are governed by Practice Book § 547 et seq., now Practice Book (1998 Rev.) § 24-1 et seq. These rules establish a procedure in the event that the defendant does not file an answer by the answer date, as occurred in the present case. Pursuant to these rules, a defendant shall be defaulted unless he answers the small claims complaint by the answer date . . .</li> </ul> <p>Therefore, under § 24-24, the trial court could have rendered judgment for the plaintiff because the defendant did not answer by the answer date or, if it appeared to the trial court that additional information or evidence was required, it should have held a hearing prior to rendering judgment.”</p> |

Table 5: Other Unreported Decisions on Defaults and Default Judgments

| Unreported Decisions   |  |
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| <p><u>Kinsella v. Maines Paper &amp; Food Service, Inc.</u>, Superior Court, Judicial District of New Haven at New Haven, No. NNHCV106016043 S (November 25, 2014) (2014 Conn. Super. Lexis 2922) (2014 WL 7497400).</p> | <p><b>"The court will next consider whether the defendants have met their burden of showing reasonable cause for granting the motion to open. As stated earlier, '[t]he power of a court to set aside a default judgment is governed by § 52-212(a). Section 52-212 requires a party moving for the opening of a judgment to make a two part showing that: (1) a good defense existed at the time an adverse judgment was rendered; and (2) the defense was not at that time raised by reason of mistake, accident or other reasonable cause.'</b> (Internal quotation marks omitted.) <u>Tsitaridis v. Tsitaridis</u>, 100 Conn.App. 115, 119, 916 A.2d 877 (2007) . . . The defendants assert that they had a defense of comparative negligence; the plaintiffs do not dispute this, but rather focus on whether there was a reasonable cause <b>for the defendants'</b> failure to cure the default. The plaintiffs also extensively discuss the discovery history in this case, claiming that the <b>defendants'</b> frequent delays in producing evidence and witnesses for depositions justify the court denying the motion to open."</p>  |
| <p><u>Bonenfant v. Rota</u>, Superior Court, Judicial District of Hartford at Hartford, No. CV010811769S (August 5, 2003) (2003 Conn. Super. Lexis 2225) (2003 WL 22041458).</p>   | <p><b>"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.'</b> (Citations omitted.) <u>Kloter v. Carabetta Enterprises, Inc.</u>, 186 Conn. 460, 464, 442 A.2d 63 (1982). <b>'[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.'</b> (Internal quotation marks omitted and citation omitted.) <u>Murray v. Taylor</u>, 65 Conn. App. 300, 334-35, 782 A.2d 702, cert. denied, 258 Conn. 928, 783 A.2d 1029 (2001)."</p> |
| <p><u>Fiamengo v. Duffy</u>, Superior Court, Judicial</p>  | <p><b>"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</b></p>  |

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| <p>District of Hartford at Hartford, No. CV000801777S (April 3, 2001) (2001 Conn. Super. Lexis 978) (2001 WL 417650).</p>   | <p><b>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 <b>only by the judicial authority.</b>’ Practice Book § 17-32 (b). Construing these two provisions together, it would appear <b>that a defendant’s</b> 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. <b>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.”</b></b></p>  |
| <p><u>Deercliff Homeowners Assn. v. Seraya</u>, Superior Court, Judicial District of New Britain at New Britain, No. CV970482805S (February 28, 2001) (2001 Conn. Super. LEXIS 670) (2001 WL 283015).</p> | <p><b>“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 <b>November 3, 2000 order</b>). 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 <b>prejudice to the nondefaulting party.</b>’ (Internal quotation marks and citation omitted.) Id.</b></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 <b>to plead.”</b></p> |

## Section 4: Hearing in Damages

A Guide to Resources in the Law Library

### **SCOPE:**

Bibliographic resources related to hearing in damages following a default.

### **DEFINITIONS:**

- "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\(a\)](#) (2018).

### **COURT RULES:**

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

- Conn. Practice Book (2018)
  - [Chapter 17](#). Judgments
    - § 17-34. Hearings in damages; Notice of defenses
    - § 17-35. —Requirements of notice; Time
    - § 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
    - § 17-41. Relief permissible on default

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)
  - [Chapter 900](#). Court Practice and Procedure
    - § [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 FORMS:**

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

- [JD-CV-11](#). Certificate of Closed Pleadings (rev. 6/12)

### **FORMS:**

- 2 Joel M. Kaye and Wayne D. Efron, [Connecticut Practice Series: Civil Practice Forms](#) (4<sup>th</sup> ed. 2004 with 2017 supplement).
  - Form 107.8-G. Notice as to hearing in damages

- Koskoff Koskoff & Bieder, PC, Joshua Koskoff and Sean K. McElligott, Editors, [Library of Connecticut Personal Injury Forms](#) (2nd ed. 2014).  
Form 6-010. Objection to Motion for Stay of Hearing in Damages

### **CASES:**

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

- Commission on Human Rights and Opportunities v. Peterson, Superior Court, Judicial District of Litchfield at Litchfield, No. LLICV106002882S (September 23, 2013) (2013 Conn. Super. Lexis 2138) (2013 WL 5663282).  
“**The court’s** function at a hearing in damages is to assess and award damages. Because the defendant has been defaulted for failure to plead, all allegations in the **plaintiffs’** complaint as to the defendant’s liability are **deemed true.** **‘A default admits the material facts that constitute a cause of action and entry of default, when appropriately made, conclusively determines the liability of a defendant . . . . Following the entry of a default, all that remains is for the plaintiff to prove the amount of damages to which it is entitled. At a minimum, the plaintiff in such instances is entitled to nominal damages.’** (Citations omitted; internal quotation marks omitted.) [Argentinis v. Fortuna](#), 134 Conn. App. 538, 545-46 (2012).  
Because the entry of a default conclusively determines the liability of the defendant, the plaintiff is not obligated to prove the allegations of the complaint except as to the damages. [Bank of New York v. National Funding](#), 97 Conn.App. 133, 138-39, cert. denied, 280 Conn. 925 (2006).”
- Venkatesan et al. v. Venkatesan, Superior Court, Judicial District of Middlesex at Middletown, No. MMXCV106002880S (January 4, 2013) (2013 Conn. Super. Lexis 10) (2013 WL 388126). **“In a hearing in damages the plaintiff must prove its damages by a preponderance of the evidence.’** *Enfield Family Dental v. Erickson*, Superior Court, judicial district of Hartford, Docket No. CV 99 0586994 (August 8, 2002, Hennessey, J.); see also [Whitaker v. Taylor](#), 99 Conn.App. 719, 735, 916 A.2d 834 (2007) (stating that although the elements of fraud must be proved by clear and convincing evidence, damages may be proved by the preponderance of the evidence). **‘[T]he trial court has broad discretion in determining whether damages are appropriate.’** (Internal quotation marks omitted.) [Barber v. Mulrooney](#), 61 Conn.App. 108, 111, 762 A.2d 520 (2000). **‘Where the court has found that the plaintiff has suffered a technical legal injury, the plaintiff is entitled to at least nominal damages.’** [Lyons v. Nichols](#), 63 Conn.App. 761, 768, 778 A.2d 246, cert. denied, 258 Conn. 906, 782 A.2d 1244 (2001). **‘The award of nominal damages is appropriate when there is a clear invasion of a legal right . . . but no**

finding of a compensable injury.’ *Id.*, 769.”

- [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. Zasciurinkas](#), 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).”

### **ENCYCLOPEDIAS:**

- B. Finberg, Annotation, *Defaulting Defendant’s Right to Notice and Hearing as to Determination of Amount of Damages*, 15 [ALR3d](#) 586 (1967).
- 46 [Am. Jur. 2d](#) *Judgments* (2017).
  - IV. Particular Kinds of Judgments
    - §§ 279-284. Motion, Hearing and Notice of Judgment
    - §§ 285-293. Determination of Liability and Damages
    - §§ 294-295. Operation and Effect
- 25A [C.J.S.](#) *Damages* (2012).
  - X. Proceedings for Assessment
    - §§ 397-399. Hearing and verdict or finding
- 49 [C.J.S.](#) *Judgments* (2009).
  - X. Judgment by Default
    - §§ 287-290. Hearing, Determination, and Relief
- Margaret Penny Mason, general editor, [LexisNexis Practice Guide: Connecticut Civil Pretrial Practice](#) (2017 edition).
  - Chapter 9. Appearance and Default
    - Part III: Practical Guidance – Default
      - § 9.11. Motion for Default for Failure to Appear
        - [4] Claim for Hearing in Damages
      - § 9.18. Hearing on Motion for Default Judgment and Defendant’s Notice of Defense
        - [1] Defendant Must Give Notice to Present Defense
        - [2] Notice of Defense Must Be Specific
        - [3] Deadline to File Notice of Defense
        - [4] Amending Notice of Defense
        - [5] Plaintiff May Not Reply to the Notice of Defense
        - [6] Defendant’s Burden to Prove Defense
      - § 9.21. Opening Defaults
        - [2] Different Procedures Depending on Whether Plaintiff Has Filed Claim for a

### **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.

## Hearing in Damages

- 2 Ralph P. DuPont, [DuPont on Connecticut Civil Practice](#) (2017-2018).
  - 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
        - § 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
      - § 17-41. Relief permissible on default
- 1 Renée Bevacqua Bollier et al., [Stephenson's Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 1997, with 2014 supplement).
  - § 102. Hearing in Damages
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998).
  - V. Timing, Waivers and Defaults
    - 3. Motions for Default
      - f. Hearing in damages, p.72
- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
  - Chapter 14. Pleadings: Motions against defendants who do not file an appearance
    - II. Motion for Default for Failure to Appear
      - B. When a defendant fails to appear after default: Judgment
        - 1. Hearings in damages: C.G.S. sec. 52-220 et seq.
        - 2. Motion for judgment instead of a hearing in damages
  - 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  
IV. Hearing in Damages

- 1 Wesley W. Horton et al., [Connecticut Practice Series: Superior Court Civil Rules](#) (2017-2018).  
**Authors' Commentary for §§ 17-34 through 17-41**
- 1 [West's Connecticut Rules of Court Annotated](#) (2017).  
Notes of Decisions for §§ 17-34 through 17-41