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2018 Edition

Motion to Dismiss

A Guide to Resources in the Law Library

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- [Motion to Transfer](#)
- [Oral Argument in Civil Matters](#)
- [Request to Revise](#)

Introduction

A Guide to Resources in the Law Library

- **Motion to Dismiss:** “shall be used to assert: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; and (4) insufficiency of service of process”. Conn. Practice Book [§ 10-30\(a\)](#) (2018).
- **Time to file:** “Any defendant, wishing to contest the court’s jurisdiction, shall do so by filing a motion to dismiss within thirty days of the filing of an appearance.” Conn. Practice Book [§ 10-30\(b\)](#) (2018).
- **Objection to Motion to Dismiss:** “Any adverse party shall have thirty days from the filing of the motion to dismiss to respond to the motion to dismiss...” Conn. Practice Book [§ 10-31\(a\)](#) (2018).
- **Memorandum of Law:** “This motion shall always be filed with a supporting memorandum of law and, where appropriate, with supporting affidavits as to facts not apparent on the record.” Conn. Practice Book [§ 10-31\(c\)](#) (2018).
- “A **motion to dismiss** tests, inter alia, whether, on the face of the record, the court is without jurisdiction.” [Walson v. Ballou Stoll Bader and Nadler, P.C.](#), 121 Conn. App. 366 (2010).
- **Appealability of denial:** “The general rule is that the denial of a motion to dismiss is an interlocutory ruling and, therefore, is not a final judgment for purposes of appeal. *Sasso v. Aleshin*, 197 Conn. 87, 90, 495 A.2d 1066 (1985); see also *State v. Coleman*, 202 Conn. 86, 92, 519 A.2d 1201 (1987) (motion based on General Statutes § 54-193 (b), statute of limitations for felony). We have recognized, however, that otherwise interlocutory orders may constitute appealable final judgments in two circumstances: ‘(1) where the order or action terminates a separate and distinct proceeding, or (2) where the order or action so concludes the rights of the parties that further proceedings cannot affect them.’ *State v. Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983).” [Shay v. Rossi](#), 253 Conn. 134 (2000).
- **Motion to Strike:** “The motion to dismiss is governed by Practice Book §§ 10–30 through 10–34. Properly granted on jurisdictional grounds, it essentially asserts that, as a matter of law and fact, a plaintiff cannot state a cause of action that is properly before the court. *Third Taxing District v. Lyons*, 35 Conn.App. 795, 803, 647 A.2d 32, cert. denied, 231 Conn. 936, 650 A.2d 173 (1994); see Practice Book § 10–31. By contrast, the motion to strike attacks the sufficiency of the pleadings. Practice Book § 10–39; see also 1 E. Stephenson, Connecticut Civil Procedure (3d Ed.1997) § 72(a), pp. 216–17.” [Egri v. Foisie](#), 83 Conn. App. 243, 848 A.2d 1266 (2004).

Section 1: Lack of Subject Matter Jurisdiction

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion to dismiss filed on the grounds of a lack of subject matter jurisdiction.

DEFINITIONS:

- "Jurisdiction of the **subject-matter** is the power [of the court] to hear and determine cases of the general class to which the proceedings in question belong." (Internal quotation marks omitted.)" [Esposito v. Specyalski](#), 268 Conn. 336, 348, 844 A.2d 211 (2004).
- **Subject matter jurisdiction:** "involves the authority of a court to adjudicate the type of controversy presented by the action before it.... A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it.... Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action.... It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." [Amodio v. Amodio](#), 247 Conn. 724, 727–28, 724 A.2d 1084 (1999).
- **Standing:** "is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy." [Electrical Contractors, Inc. v. Dept. of Education](#), 303 Conn. 402, 411, 35 A.3d 188 (2012).
- **Mootness:** "is a threshold issue that implicates subject matter jurisdiction, which imposes a duty on the court to dismiss a case if the court can no longer grant practical relief to the parties.... **Mootness** presents a circumstance wherein the issue before the court has been resolved or had lost its significance because of a change in the condition of affairs between the parties...." [Wilcox v. Ferraina](#), 100 Conn. App. 541, 547, 920 A.2d 316 (2007).
- **Exhaustion of Administrative Remedies:** "Under our **exhaustion of administrative remedies** doctrine, a trial court lacks subject matter jurisdiction over an action that seeks a remedy that could be provided through an administrative proceeding, unless and until that remedy has been sought in the administrative forum." [Caltabiano v. L & L Real Estate Holdings 7I, LLC](#), 122 Conn. App. 751, 758–59, 998 A.2d 1256 (2010).
- "Circumstantial defects not subject to abatement by reason of § 52–123 or its predecessors have included the mistaken use of a Practice Book form...failure to designate

an apartment number in a writ...an erroneous reference in appeal papers to next term instead of next return day...a copy of the affidavit attached to the writ served upon the defendant that did not bear the signature of the affiant...an erroneous reference in the return to the City Court held at New Haven in and for the city of New Haven instead of The City Court of New Haven...an erroneous prayer for relief on the writ and declaration rather than on the writ alone...and a defendant who had signed his name in the body of a plea in abatement signed defendant at the end of the plea instead of again signing his name.” [Kubala v. Hartford Roman Catholic Diocesan Corp.](#), 52 Conn. Supp. 218, 234, 41 A.3d 351, 362 (Super. Ct. 2011) aff'd, 134 Conn. App. 459, 38 A.3d 1252 (2012).

- **Sovereign immunity:** “The principle that the state cannot be sued without its consent, or **sovereign immunity**, is well established under our case law.’ Id., at 349, 977 A.2d 636. ‘[T]he practical and logical basis of the doctrine [of sovereign immunity] is today recognized to rest...on the hazard that the subjection of the state and federal governments to private litigation might constitute a serious interference with the performance of their functions and with their control over their respective instrumentalities, funds, and property.’ *Gold v. Rowland*, supra, 296 Conn. at 212, 994 A.2d 106.” [Markley v. Department of Public Utility Control](#), 301 Conn. 56, 23 A.3d 668 (2011).

STATUTES:

- Conn. Gen. Stat. (2017)
[Chapter 898](#) – Pleading
 § [52-123](#). Circumstantial defects not to abate pleadings.

COURT RULES:

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

- Connecticut Practice Book (2018)
 § [10-6](#). Pleadings Allowed and Their Order.
 § [10-30](#). Motion to Dismiss; Grounds.
 § [10-31](#). Opposition; Date for Hearing Motion to Dismiss.
 § [10-33](#). Waiver and Subject Matter Jurisdiction.
 § [10-34](#). Further Pleading by the Defendant.

FORMS:

- [Figure 1](#): Motion to Dismiss
- 3 Joel M. Kaye, Connecticut Practice Series, [Connecticut Civil Practice Forms](#) (2004).
 106.1 Motion to Dismiss
- Margaret Penny Mason, [Connecticut Civil Pretrial Practice](#) (2017).
 § 2.15 Motion to Dismiss for Lack of Subject Matter Jurisdiction
 § 2.15 Affidavit in Support of Motion to Dismiss for Lack

of Subject Matter Jurisdiction, when Needed
§ 7.29 Motion to Dismiss

- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2017).
§ 4:168 Motion to dismiss count of plaintiff's action [sovereign immunity and lack of jurisdiction] — Memorandum of points and authorities in support of motion to dismiss
- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2017-2018).
F.10-30(1) Motion to Dismiss (106.1)
F.10-30(2) Motion to Dismiss
- Robert M. Singer, [Library of Connecticut Collection Law Forms](#) (2015).
4-006. Motion to Dismiss.

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.

- [Izzo v. Quinn](#), 170 Conn. App. 631, 638-639, 155 A.3d 315 (2017). "As this court previously has observed: '[T]he nonjoinder of an indispensable party ... would create a jurisdictional defect, and therefore require dismissal, *only if* a statute mandates the naming and serving of [a particular] party.' (Emphasis altered; internal quotation marks omitted.) *Yellow Cab Co. of New London & Groton, Inc. v. Dept. of Transportation*, 127 Conn. App. 170, 176-77, 13 A.3d 690, cert. denied, 301 Conn. 908, 19 A.3d 178 (2011). For example, our Supreme Court held in *Simko v. Zoning Board of Appeals*, 205 Conn. 413, 533 A.2d 879 (1987), that the failure to name the town clerk in a zoning appeal deprived the trial court of subject matter jurisdiction because General Statutes (Rev. to 1986) § 8-8 (b), at that time, provided in relevant part that '[n]otice of such appeal shall be given by ... serving a true and attested copy upon the clerk of the municipality.' *Id.*, at 414, 533 A.2d 879 n.2. 'Conversely, when a party is indispensable but is not required by statute to be made a party, the [trial] court's subject matter jurisdiction is not implicated and dismissal is not required.' *Demarest v. Fire Dept.*, 76 Conn. App. 24, 31, 817 A.2d 1285 (2003); see *D'Appollonio v. Griffio-Brandao*, 138 Conn. App. 304, 313, 53 A.3d 1013 (2012); *Yellow Cab Co. of New London & Groton, Inc. v. Dept. of Transportation*, supra, at 176-77, 13 A.3d 690."
- [Lewis v. Clarke](#), 137 S. Ct. 1285, 1291, 197 L. Ed. 2d 631 (2017) [reversed and remanded [320 Conn. 706](#)]. "This is a negligence action arising from a tort committed by Clarke on an interstate highway within the State of Connecticut. The suit is brought against a tribal employee operating a vehicle within the scope of his employment but on state lands, and the judgment will not operate against the Tribe. This is not a suit against Clarke in his official capacity. It is

simply a suit against Clarke to recover for his personal actions, which 'will not require action by the sovereign or disturb the sovereign's property.' *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 687, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949). We are cognizant of the Supreme Court of Connecticut's concern that plaintiffs not circumvent tribal sovereign immunity. But here, that immunity is simply not in play. Clarke, not the Gaming Authority, is the real party in interest."

- [Bruno v. The Travelers Companies](#), 172 Conn. App. 717, 729, 161 A.3d 630 (2017). "We further conclude, however, that, because absolute immunity protects a party from suit and implicates the trial court's subject matter jurisdiction, once the trial court determined that the doctrine of absolute immunity applied in this matter, it should have dismissed the plaintiff's original complaint against the defendants. The plaintiff should not have been given the opportunity to replead because the court was without jurisdiction to permit a repleading. Accordingly, any action taken after the court determined that absolute immunity applied to all of the plaintiff's causes of action against the defendants is void; the court had no jurisdiction."
- [Allied Associates v. Q-Tran, Inc.](#), 165 Conn. App. 239, 245, 138 A.3d 1104 (2016). "Although the trial court reasonably relied upon the meaning of 'mistake' as being the absence of negligence as articulated in *DiLieto* and *Kortner*, our Supreme Court has since clarified that the term 'mistake' as used in § 52-109 does not mean the absence of negligence. Because the trial court denied the motion on the basis of its finding that the plaintiff had been negligent by filing the action in its name rather than in Bishop's name, we conclude that the judgment must be reversed and the case remanded to the trial court to consider the plaintiff's motion to substitute in light of the clarified standard set forth in *Fairfield Merrittview Ltd. Partnership*."
- [Bongiorno v. J & G Realty, LLC](#), 162 Conn. App. 430, 436, 131 A.3d 1230 (2016). "The plaintiff argues that the parties agreed to an unrestricted arbitration, and therefore all issues, including subject matter jurisdiction, must be submitted to the arbitrator. We are not persuaded. The rules of practice and our case law make clear that a claim that the court lacks jurisdiction over the subject matter cannot be waived; Practice Book § 10-33; and must be addressed when brought to the court's attention. *Manifold v. Ragaglia*, 94 Conn. App. 103, 116, 891 A.2d 106 (2006). '[O]nce the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented . . . and the court must fully resolve it before proceeding further with the case.' *Raftopol v. Ramey*, 299 Conn. 681, 689-90, 12 A.3d 783 (2011)."

- [Cuozzo v. Town of Orange](#), 315 Conn. 606, 617, 109 A.3d 903 (2015). “In the present case, a factual dispute remains as to whether the driveway is indeed public, thereby invoking § 13a-149 and its procedural requirements, or whether it is a private thoroughfare on which the public is neither encouraged nor anticipated to traverse; see *Kozlowski v. Commissioner of Transportation*, 274 Conn. 497, 505, 876 A.2d 1148 (2005); see also *New Haven v. United Illuminating Co.*, supra, 168 Conn. 485; in which case § 52-557n is the governing statute. This is a critical fact, the determination of which will resolve the trial court's jurisdiction in this case.”
- [Cumberland Farms, Inc. v. Dubois](#), 154 Conn. App. 448, 462, 107 A.3d 995 (2014). “Our case law has treated persons sued in their official capacity as parties different from those sued in their individual capacity. See *C & H Management, LLC v. Shelton*, 140 Conn. App. 608, 614, 59 A.3d 851 (2013) (concluding for res judicata purposes that municipal official sued in individual capacity was not same party as municipal official who was sued in mandamus action, nor were two in privity). Because the defendant trooper Dubois in his official capacity is a separate party from Dean Dubois in his individual capacity, the plaintiff cannot replead its complaint to allege recklessness, and attempt thereby to bring Dean Dubois into the lawsuit in his individual capacity without ever having made proper service on him. A court would have no jurisdiction over such claim, and dismissal is the appropriate remedy.”
- [Bochanis v. Sweeney](#), 148 Conn. App. 616, 628, 86 A.3d 486 (2014). “Much like this court held in *Caltabiano*, the plaintiffs' claim of irreparable harm should have been raised in a direct appeal from the commission's permit approval in 2006. Because the plaintiffs failed to appeal the 2006 permit approval to the Superior Court within fifteen days of publication, as provided for by statute, the plaintiffs failed to exhaust their administrative remedies. The plaintiffs may not now commence an action that should have been filed in 2006 by claiming that they are attacking the permit extension—an argument we address in the second part of this opinion—and not the original approval of the wetlands permit.”
- [Emerick v. Town of Glastonbury](#), 145 Conn. App. 122, 128, 74 A.3d 512, 517 (2013). “‘The plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised.’ *Fink v. Golenbock*, 238 Conn. 183, 199 n. 13, 680 A.2d 1243 (1996). A plaintiff has the burden of proof with respect to standing. *Sadloski v. Manchester*, 235 Conn. 637, 648–49, 668 A.2d 1314 (1995).”

- [Greco Construction v. Edelman](#), 137 Conn. App. 514, 519, 49 A. 3d 256 (2012). "In the present case, it is not disputed that Greco Construction was the trade name or assumed business name of Brian Greco doing business as Greco Construction. Because the plaintiff instituted the action using a trade name or assumed business name of 'Greco Construction,' which is not a legal entity and which does not have a separate legal existence, an action brought under that trade name cannot confer jurisdiction. See *id.*, at 477-78, 866 A.2d 698. Due to lack of subject matter jurisdiction, dismissal is required. See *id.*, at 480, 866 A.2d 698."
- [Conboy v. State](#), 292 Conn. 642, 650-651, 974 A.2d 669 (2009). "Trial courts addressing motions to dismiss for lack of subject matter jurisdiction pursuant to § 10-31(a)(1) may encounter different situations, depending on the status of the record in the case. As summarized by a federal court discussing motions brought pursuant to the analogous federal rule, '[l]ack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.' *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir.2001). Different rules and procedures will apply, depending on the state of the record at the time the motion is filed."
- [Kelly v. University of Connecticut Health Center](#), 290 Conn. 245, 252, 963 A.2d 1 (2009). "It is well established that 'the state cannot be sued without its consent.' (Internal quotation marks omitted.) *Lagasse v. State*, 268 Conn. 723, 732, 846 A.2d 831 (2004), quoting *Horton v. Meskill*, 172 Conn. 615, 623, 376 A.2d 359 (1977). This doctrine of sovereign immunity 'implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss.' *Lagasse v. State*, *supra*, at 736, 846 A.2d 831."
- [Romano v. Town of Westport](#), Superior Court, Judicial District of Fairfield, No. CV05-4013008-S (November 13, 2006) (2006 WL 3491256). "[t]he objection of want of jurisdiction may be made at any time ... [a]nd the court or tribunal may act on its own motion, and should do so when the lack of jurisdiction is called to its attention ... The requirement of subject matter jurisdiction cannot be waived by any party and can be raised at any stage in the proceedings.' (Internal quotation marks omitted.) *Firillici v. Westport*, 264 Conn. 266, 280, 823 A.2d 1172 (2003). Therefore, even though the defendant has been defaulted, the issue of subject matter jurisdiction has been raised by the defendant's motion to dismiss and the court is obliged to determine if it has subject matter jurisdiction to hear the

dispute.”

WEST KEY NUMBERS:

TREATISES:

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- *Pretrial Procedure*, Key Numbers 531-710
- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 10. Pleadings: Defendant’s Motion to Dismiss and Plaintiff’s Response.
- Margaret Penny Mason, [Connecticut Civil Pretrial Practice](#) (2017).
 - Chapter 2. Subject Matter Jurisdiction.
Sec. 2.09. Motion to Dismiss Based on Lack of Subject Matter Jurisdiction.
 - Chapter 7. Pleadings.
Sec. 7.18. Motion to Dismiss
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998 ed.).
 - Chapter VIII. Motion to Dismiss.
- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2017).
 - Chapter 4. Dismissal Motions.
 - VI. Dismissal Based on Lack of Jurisdiction.
- Renee Bevacqua Bollier, [Stephenson’s Connecticut Civil Procedure](#) (1997).
 - Chapter 6. Dilatory Pleas
Sec. 59. Challenging Jurisdiction.
Sec. 64 Procedure for Dilatory Pleas
Sec. 65 Effect of Decision on Dilatory Plea
 - Chapter 9. Disposition Short of Trial
Sec. 92. Motion to Dismiss.
- Corey M. Dennis, [Roadmap to Connecticut Procedure](#), 83 Connecticut Bar Journal 271 (2009).

LAW REVIEWS:

Section 2: Lack of Personal Jurisdiction

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion to dismiss filed on the grounds of a lack of personal jurisdiction.

SEE ALSO:

- [Table 1: Motions to Dismiss and Timeliness](#)

DEFINITIONS:

- **Personal Jurisdiction:** "Jurisdiction over the person is the legal power and authority of a court to render a personal judgment against a party to an action or proceeding." [Talenti v. Morgan and Bro. Manhattan Storage](#), 113 Conn. App. 845, 853-854, 968 A.2d 933 (2009).
- "[I]f a challenge to the court's **personal jurisdiction** is raised by a defendant, either by a foreign corporation or by a nonresident individual, the plaintiff must bear the burden of proving the court's jurisdiction." [Knipple v. Viking Communications, Ltd.](#), 236 Conn. 602, 607, 674 A.2d 426 (1996).
- "...[A] court possesses **personal jurisdiction** over a nonresident individual with respect to a cause of action arising from any business transacted in this state by that individual." [Ryan v. Cerullo](#), 282 Conn. 109, 118, 918 A.2d 867 (2007).
- **Waiver:** "Unlike the situation with subject matter jurisdiction, a party **waives** the right to dispute personal jurisdiction unless that party files a motion to dismiss within thirty days of the filing of an appearance. *Lostritto v. Community Action Agency of New Haven, Inc.*, 269 Conn. 10, 32, 848 A.2d 418 (2004); see also Practice Book §§ 10-30, 10-32." [Foster v. Smith](#), 91 Conn. App. 528, 536, 881 A.2d 497 (2005).

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 896](#) – Civil Process, Service and Time for Return
 - § [52-57](#). Manner of service upon individuals, municipalities, corporations, partnerships and voluntary associations.
 - § [52-59b](#). Jurisdiction of courts over nonresident individuals, foreign partnerships and foreign voluntary associations. Service of process.
 - [Chapter 601](#) – Business Corporations
 - § [33-663](#). Service of process on corporation.
 - § [33-929](#). Service of process on foreign corporation.
 - [Chapter 602](#) – Nonstock Corporations
 - § [33-1053](#). Service of process on corporation.

COURT RULES:

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

- Connecticut Practice Book (2018)
- § [10-6](#). Pleadings Allowed and Their Order.
 - § [10-30](#). Motion to Dismiss; Grounds.

§ [10-31](#). Opposition; Date for Hearing Motion to Dismiss.

§ [10-32](#). Waiver Based on Certain Grounds.

FORMS:

- [Figure 1](#): Motion to Dismiss
- 3 Joel M. Kaye, Connecticut Practice Series, [Connecticut Civil Practice Forms](#) (2004).
106.1 Motion to Dismiss
- Margaret Penny Mason, [Connecticut Civil Pretrial Practice](#) (2017).
§ 3.08 Motion to Dismiss for Lack of Personal Jurisdiction
§ 7.29 Motion to Dismiss
- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2017-2018).
F.10-30 Motion to Dismiss for Lack of Personal Jurisdiction

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.

- [Pronovost v. Tierney](#), 174 Conn. App. 368, 376, 166 A.3d 852, 857 (2017). "In the present case, the defendant had no contact with Connecticut relating to or arising out of the automobile accident in Maryland, and there is no evidence that the defendant derived any revenue from Connecticut with respect to her interstate commerce activities. That automobile accident is the sum total of the interaction between the parties upon which the plaintiff relies for the establishment of personal jurisdiction in Connecticut over the defendant. For the plaintiff to assert that the court has personal jurisdiction over the nonresident defendant under these circumstances is problematic. See *Cogswell v. American Transit Ins. Co.*, supra, 282 Conn. at 523, 923 A.2d 638 (due process clause protects individual's liberty interest in not being subject to binding judgments of forum with which he has established no meaningful contacts, ties, or relations)."
- [Sullo v. FoodServiceWarehouse.com, LLC](#), Judicial District of Hartford at Hartford, No. CV166067424S (Apr. 27, 2017) (64 Conn. L. Rptr. 377) (2017 WL 2257140), "Here the defendant allegedly made misrepresentations, by email and telephone, to the plaintiff, who was located in Connecticut, such as to induce him to wire transfer from his account in Connecticut \$1,000,000 to the company of which the defendant was, by his own admission, CEO. Therefore General Statutes § 52-59b(a)(2) also applies to give the court jurisdiction over the defendant."
- [Brown v. Lockheed Martin Corp.](#), 814 F.3d 619, 636 (2d Cir. 2016). "The *Talenti* court's dicta have been questioned in light of federal due process (and other) concerns by at least

one federal district court in the state, however. See *WorldCare Ltd. v. World Ins. Co.*, 767 F.Supp.2d 341 (D.Conn.2011). In our view, good reason supports the question. Like that District Court, we are inclined respectfully to believe that the Connecticut Appellate Court's comments on the effect of registration do not apply outside of the facts there presented. We hazard that the Appellate Court erred in reading the registration and agent appointment statutes as constituting corporate consent to the exercise of general jurisdiction by the Connecticut state courts, and—more within this Court's ordinary domain—that it also erred in casually dismissing related federal due process concerns in a brief footnote.”

- [Ingersoll Auto of Danbury v. Weis](#), Judicial District of Hartford at Hartford, No. CV14-6053880-S (Aug. 4, 2015) (2015 WL 5314856). “The judges of Superior Court are divided in their opinions as to whether the thirty-day limit of Practice Book §§ 10–30 and 10–32 can be extended upon a timely motion. The court has not found any case, however, and the plaintiff has not cited one in which a motion to dismiss filed within the thirty-day period required by §§ 10–30 and 10–32 has been denied solely because the defendant had previously filed a motion for extension of time. Indeed, as the division in Superior Court authority suggests, some courts have granted motions to dismiss even after the thirty-day period had passed when a timely motion for extension of time had been granted.”
- [Talenti v. Morgan and Bro. Manhattan Storage](#), 113 Conn. App. 845, 854-855, 968 A.2d 933 (2009). “...[W]hen a foreign corporation complies with the requisites of General Statutes § 33–920 by obtaining a certificate of authority and complies with the requisites of General Statutes § 33–926 by authorizing a public official to accept service of process, it has consented to the exercise of jurisdiction over it by the courts of this state. *Wallenta v. Avis Rent A Car System, Inc.*, 10 Conn.App. 201, 207–208, 522 A.2d 820 (1987). ‘This consent is effective even though no other basis exists for the exercise of jurisdiction over the corporation.’ (Internal quotation marks omitted.) *Id.*, at 208, 522 A.2d 820.”
- [Cogswell v. American Transit Ins. Co.](#), 282 Conn. 505, 514, 923 A.2d 638 (2007). “When a defendant challenges personal jurisdiction in a motion to dismiss, the court must undertake a two part inquiry to determine the propriety of its exercising such jurisdiction over the defendant. ‘The trial court must first decide whether the applicable state long-arm statute authorizes the assertion of jurisdiction over the [defendant]. If the statutory requirements [are] met, its second obligation [is] then to decide whether the exercise of jurisdiction over the [defendant] would violate

constitutional principles of due process.’ (Internal quotation marks omitted.) *Knipple v. Viking Communications, Ltd.*, 236 Conn. 602, 606, 674 A.2d 426 (1996); see also *Thomason v. Chemical Bank*, 234 Conn. 281, 286, 661 A.2d 595 (1995); *Frazer v. McGowan*, 198 Conn. 243, 246, 502 A.2d 905 (1986).”

WEST KEY NUMBERS:

TREATISES:

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- *Pretrial Procedure*, Key Numbers 531-710
- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
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 - Chapter 3. Personal Jurisdiction.
 - Sec. 3.06. Motion to Dismiss for Lack of Personal Jurisdiction.
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998 ed.).
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 - Sec. 65 Effect of Decision on Dilatory Plea
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 - Chapter 4. Dismissal Motions.
 - VI. Dismissal Based on Lack of Jurisdiction.
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LAW REVIEWS:

Table 1: Motions to Dismiss and Timeliness

Motions to Dismiss and Timeliness	
<p><u>Antoine v. Elm City Communities</u>, Superior Court, Judicial District of New Haven at New Haven, No. CV16-5037046-S, (Feb. 22, 2017) (63 Conn. L. Rptr. 943) (2017 WL 1194247)</p>	<p>"This court's view is that a superior court has the authority to extend the time limitation set forth in Practice Book § 10-30(b) and toll the corresponding automatic' waiver provision contained in § 10-32. This specialized relief, however, is not within the scope of a boilerplate extension of time filed without reference to either of these particularized deadline/waiver provisions. In other words, if a party wants an extension of the deadline contained in § 10-30(b), and wishes to avoid the otherwise applicable waiver provision of § 10-32, then he or she needs to request that relief expressly."</p>
<p><u>Arnold v. FYC Entm't, LLC</u>, Superior Court, Judicial District of Hartford at Hartford, No. CV15-6062624-S, (Oct. 4, 2016) (63 Conn. L. Rptr. 176) (2016 WL 6499147)</p>	<p>"The motion to dismiss was filed only three days beyond the original thirty-day deadline and well within the order extending the time to file a responsive pleading. The circumstances of this case suggest that far from waiving the right to consider and file the appropriate pleading, counsel intended to preserve that right and duly exercised the obligation to file the appropriate motion and memorandum of law with requisite affidavit. Moreover, the fact that our superior courts are divided on the issue suggests that under these facts, Practice Book § 1-8's call to interpret the rules liberally where a strict adherence will work surprise or injustice seems especially appropriate..."</p> <p>"This court thus concludes that whether or not an order granting a motion to extend the time to file a responsive pleading encompasses a motion to dismiss, Practice Book § 1-8 allows this court to consider the underlying merits of the motion to dismiss."</p>
<p><u>Ingersoll Auto of Danbury v. Weis</u>, Superior Court, Judicial District of Hartford at Hartford, No. CV14-6053880-S (August 4, 2015) (60 Conn. L. Rptr. 785)</p>	<p>"The judges of the Superior Court are divided in their opinions as to whether the thirty-day limit of Practice Book §§10-30 and 10-32 can be extended upon a timely motion. The court has not found any case, however, and the plaintiff has not cited one in which a motion to dismiss filed within the thirty-day period required by §§10-30 and 10-32 has been denied solely because the defendant had previously filed a motion for extension of time. Indeed, as the division in Superior Court authority suggests, some courts have granted motions to dismiss even after the thirty-day period had passed when a timely motion for extension of time had been granted.</p> <p>"In this case, the defendant filed a motion to dismiss that was timely under Practice Book §§10-30 and 10-32. The court concludes that the defendant did not waive his jurisdictional</p>

	challenge merely by previously filing a motion for extension of time to plead.”
<u>Traylor v. Parker</u> , Superior Court, Judicial District of New London at New London, No. CV13-5014662-S (July 8, 2015) (60 Conn. L. Rptr. 614)	“In the present case, the court adopts the rule from <i>Tortora v. Shelton Board of Fire Commissioners</i> , supra, Superior Court, Docket No. CV-12-6011979-S (56 Conn. L. Rptr. 737), and from other jurisdictions and holds that removal of a case to federal court tolls Practice Book pleading deadlines. Accordingly, Mr. Kopp's motion to dismiss is untimely. Mr. Kopp filed his appearance on December 3, 2013. Defendants Parker, DePalma, Neves, and Meredith Corporation removed the case to federal court on December 11, 2013. The District Court remanded the case to Superior Court on March 20, 2015. Mr. Kopp filed his motion to dismiss on April 20, 2015. Eight days elapsed between Mr. Kopp's appearance and the day the case was removed. Once the case was remanded, the case stood as it had at the time of the removal, meaning that Mr. Kopp had twenty-two days left to file his motion to dismiss. Mr. Kopp did not file his motion until thirty days after the remand. At that time, the instant motion was eight days late.”
<u>Mathis v. Marriott Int'l, Inc.</u> , Superior Court, Judicial District of New Haven, No. CV14-6044292-S (Sept. 12, 2014) (2014 WL 5138023)	“In the present case, the defendant filed an appearance on January 24, 2014, and, therefore, it had until February 24, 2014, to file a motion to dismiss for lack of personal jurisdiction. The defendant conceded at short calendar that the motion to dismiss was not filed thirty days after the appearance, as required by § 10-30, but was filed on May 5, 2014. The defendant argues, in its reply and during short calendar, that filing its motion to enlarge time on May 27, 2014, if granted by the court, will lengthen the defendant's allotted time to file its motion to dismiss and render it timely. This type of motion might have been entertained by this court had the motion been timely filed. Nonetheless, it was not and, therefore, given the clarity of the applicable rules of practice and case law, both the defendant's motion to enlarge time to file a motion to dismiss and the motion to dismiss were not timely filed. Accordingly, the defendant is subject to this court's jurisdiction.”
<u>Strother v. Mall, Inc.</u> , Superior Court, Judicial District of New London at New London, No. CV12-6012030-S (October 3, 2013) (2013 WL 5969302) (57 Conn. L. Rptr. 24).	“...[W]hen the deadline for a defendant to challenge personal jurisdiction has passed, the court acquires unconditional personal jurisdiction over the defendant; that is, jurisdiction over the defendant is not conditioned on the absence of any later objection by defendant. Thirty days after a defendant appears, there is no lack of personal jurisdiction to which to object. Second, if the judges of the Connecticut courts, who approve and propound the Practice Book, had meant to permit personal jurisdiction to be revisited on the filing of ANY appearance, they could and would have said so.”

Section 3: Insufficiency of Process and Service of Process

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion to dismiss filed on the grounds of insufficiency of process or service of process.

DEFINITIONS:

- **Legal process:** "a writ of summons or attachment, describing the parties, the court to which it is returnable, the return day, the date and place for the filing of an appearance and information required by the Office of the Chief Court Administrator." C.G.S. § [52-45a](#) (2017).
- **Waiver:** "[Practice Book § 10-32] specifically and unambiguously provides that any claim of lack of jurisdiction over the person as a result of an **insufficiency of service of process is waived** unless it is raised by a motion to dismiss filed within thirty days in the sequence required by Practice Book § 10-6...." [Adler v. Rosenthal](#), 163 Conn. App. 663, 680, 134 A.3d 717, 729 (2016)
- **Method of Service:** "[W]hen a particular method of serving process is set forth by statute, that method must be followed.... Unless service of process is made as the statute prescribes, the court to which it is returnable does not acquire jurisdiction." [Commissioner of Transportation v. Kahn](#), 262 Conn. 257, 272, 811 A.2d 693 (2003).
- **Abode Service:** "For service pursuant to § 52-57(a), the 'usual place of abode' presumptively is the defendant's home at the time when service is made. *Grant v. Dalliber*, 11 Conn. 234, 237-38 (1836). Whether a particular locale is the usual place of abode is a question of fact. *Collins v. Scholz*, 34 Conn.Supp. 501, 502, 373 A.2d 200 (1976)." [Jimenez v. DeRosa](#), 109 Conn. App. 332, 338, 951 A.2d 632 (2008).
- **Return date:** "determines how to compute the time for service of process; General Statutes § 52-46; the time for filing the writ with the court; General Statutes § 52-46a; the time for the defendant to file an appearance with the court; General Statutes § 52-84; and the time for the defendant to respond to the complaint ... Practice Book § 114 [now § 10-8]." [Coppola v. Coppola](#), 243 Conn. 657, 707 A.2d 281 (1998). [Footnote 8]

STATUTES:

- Conn. Gen. Stat. (2017)
 - [Chapter 896](#) – Civil Process, Service and Time for Return
 - § [52-46](#). Time for service.
 - § [52-46a](#). Return of process.
 - § [52-48](#). Return day of process.
 - § [52-54](#). Service of summons.
 - § [52-57](#). Manner of service upon individuals,

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.

municipalities, corporations, partnerships and voluntary associations.

§ [52-59b](#). Jurisdiction of courts over nonresident individuals, foreign partnerships and foreign voluntary associations. Service of process.

§ [52-72](#). Amendment of process.

§ [52-109](#). Substituted plaintiff.

[Chapter 601](#) – Business Corporations

§ [33-663](#). Service of process on corporation.

§ [33-929](#). Service of process on foreign corporation.

[Chapter 602](#) – Nonstock Corporations

§ [33-1053](#). Service of process on corporation.

COURT RULES:

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

- Connecticut Practice Book (2018)
 - § [10-6](#). Pleadings Allowed and Their Order.
 - § [10-30](#). Motion to Dismiss; Grounds.
 - § [10-31](#). Opposition; Date for Hearing Motion to Dismiss.
 - § [10-32](#). Waiver Based on Certain Grounds.
 - § [10-59](#). Amendments; Amendment as of Right by Plaintiff
 - § [10-60](#). --Amendment by Consent, Order of Judicial Authority, or Failure to Object

FORMS:

- [Figure 1](#): Motion to Dismiss
- 3 Joel M. Kaye, Connecticut Practice Series, [Connecticut Civil Practice Forms](#) (2004).
 - 106.1 Motion to Dismiss
- Margaret Penny Mason, [Connecticut Civil Pretrial Practice](#) (2017).
 - § 7.29 Motion to Dismiss
- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2017).
 - § 4:159 Sample supporting and opposition briefs — Motion to dismiss plaintiff's action [failure to timely return process] — Notice of motion to dismiss
 - § 4:160 Sample supporting and opposition briefs — Motion to dismiss plaintiff's action [failure to timely return process] — Memorandum of points and authorities in support of motion to dismiss
 - § 4:161 Sample supporting and opposition briefs — Motion to dismiss plaintiff's action [failure to timely return process] — Declaration of defendant in support of motion to dismiss
 - § 4:162 Sample supporting and opposition briefs — Motion to dismiss plaintiff's action [failure to timely return process] — Order to dismiss

action [failure to timely return process]

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.

- [Prenderville v. Sinclair](#), 164 Conn. App. 439, 448, 138 A.3d 336, 341 (2016). “Notwithstanding the remedial purpose and policy expressed in § 52–72, however, the court in *Coppola* also recognized that for an amendment to be ‘proper’ within the meaning of § 52–72, the amended return date must comply with § 52–48(b). ‘A return date ... must comply with the time limitations set forth in § 52–48(b). Section 52–48(b) requires that “[a]ll process shall be made returnable not later than two months after the date of the process....” Section 52–48(b), therefore, with its two month limit, circumscribes the extent to which a return date may be amended.’ *Id.*, at 666–67, 707 A.2d 281.”
- [Adler v. Rosenthal](#), 163 Conn. App. 663, 682–83, 134 A.3d 717, 730–31 (2016). “Once the plaintiff’s first amendment took effect, the only option available to the defendant was to file a second, amended motion to dismiss to address the newly amended writ of summons and complaint in order to assert his claim that the amended return date still presented a jurisdictional defect. He did not do so. Subsequently, when the defendant later filed a request to revise the complaint on April 20, 2010, without having filed a subsequent motion to dismiss based on his claim that the amended return date still posed a jurisdictional defect, he waived any further right to pursue dismissal of the action based on insufficiency of service of process or lack of personal jurisdiction. See Practice Book § 10–32.”
- [Elbardissy v. Beta Theta Pi](#), Superior Court, Judicial District of Middlesex, No. CV15-6013197-S (Jan. 12, 2016) (2016 WL 550673) (61 Conn. L. Rptr. 667). “In light of the Connecticut Supreme Court’s adoption of this interpretation, it is apparent that *Hartley* is best read as requiring a plaintiff to mail notice to the defendant’s actual address absent evidence that the defendant has disappeared. See also G. Gibbons, ‘A Survey of the Modern Nonresident Motorist Statutes,’ 13 U. Fla. L.Rev. 257, 266–67 (1960) (citing cases, including *Hartley* and *State ex rel. Cronkhite*, and observing that ‘in the early cases decided under the [nonresident motorist] statutes containing the “last known address” phraseology ... some courts interpreted the term to mean virtually the defendant’s actual address’). Although the modern trend may be moving away from such an extreme interpretation; see G. Gibbons, *supra*, at 13 U. Fla. L.Rev. 267 (citing cases and noting that ‘[m]ore recent decisions ... take a more moderate position and tend to uphold the sufficiency of the service’); our Supreme Court has neither expressly nor impliedly overruled *Hartley*, and the Appellate Court, in its only decision on the subject, appears to acknowledge the continued vitality of *Hartley*’s strict stance.”

- [Grant-Cook v. La Fitness, LLC](#), Superior Court, Judicial District of Fairfield, No. FBTCV146047474 (Oct. 5, 2015). (2015 WL 6499599). "The plaintiff cannot avail herself of General Statutes § 52-72 to amend her process. 'Despite the remedial nature of § 52-72 and the fact that the statute is to be liberally construed, our Supreme Court has established boundaries to the statute's reach.' *Ribeiro v. Fasano, Ippolito and Lee, P.C.*, 157 Conn.App. 617, 621-22 (2015). '[T]he requirement of § 52-46a to return process in civil actions to the clerk of the Superior Court at least six days before the return date is mandatory and failure to comply with its requirements renders the proceeding voidable, rather than void, and subject to abatement.' (Footnote omitted.) *Coppola v. Coppola*, 243 Conn. 657, 661-62, 707 A.2d 281 (1998). 'A return date may be amended but it still must comply with the time limitations set forth in § 52-48(b). Section 52-48(b) requires that [a]ll process shall be made returnable not later than two months after the date of the process ... Section 52-48(b), therefore, with its two-month time limit, circumscribes the extent to which a return date may be amended.'"
- [Birkhamshaw v. Socha](#), 156 Conn. App. 453, 466, 115 A.3d 1 (2015). "Our Supreme Court in *Hillman* clearly opined that the trial court should have granted the defendant's motion to dismiss for *lack of personal jurisdiction* in that case, the defendant having filed a *timely* motion to dismiss when he received no summons or the equivalent thereto from the plaintiff. See *Hillman v. Greenwich*, supra, 217 Conn. at 526, 587 A.2d 99. In the present case, the defendants did not file a timely motion to dismiss for lack of personal jurisdiction. They had notice of Birkhamshaw's motion to cite in Upton as a plaintiff and to amend the complaint, they offered no objection thereto, and they then filed an answer to the amended complaint and to subsequently amended complaints. The defendants then waited nearly two years after the court granted the motion to cite in Upton as a plaintiff before filing a motion to dismiss, and, along the way, they filed responsive pleadings."
- [Weinstein & Wisser, P.C. v. Cornelius](#), 151 Conn. App. 174, 182-83, 94 A.3d 700 (2014). "In the present case, there were disputed facts regarding the defendant's place of residence. The plaintiff submitted an affidavit from a marshal, who attested to hearsay evidence that the defendant resided at 127 Sunset Farm Road in West Hartford, and submitted an affidavit from a legal assistant stating that during the duration of the action several court documents had been sent to 127 Sunset Farm Road, and none had been returned as undeliverable. The defendant, as noted previously, averred that he did not live at 127

Sunset Farm Road. The affidavits present a factual dispute regarding the defendant's place of abode at the time of service. Accordingly, the case must be remanded for an evidentiary hearing to comport with due process."

- [New England Road, Inc. v. Planning and Zoning Commission of Town of Clinton](#), 308 Conn. 180, 191-192, 61 A.3d 505 (2013). "We therefore conclude, for the same reasons as this court announced in *Hillman and Village Creek Homeowners Assn.*, that the failure to serve a summons or citation is a substantive defect that is not amendable pursuant to § 52-72. As this court stated in *Hillman*, 'a writ of summons is a statutory prerequisite to the commencement of a civil action.... [I]t is an essential element to the validity of the jurisdiction of the court.' (Citations omitted.) *Hillman v. Greenwich*, supra, 217 Conn. at 526, 587 A.2d 99."
- [Pitchell v. Hartford](#), 247 Conn. 422, 433, 722 A.2d 797 (1999). "The rule specifically and unambiguously provides that any claim of lack of jurisdiction over the person as a result of an insufficiency of service of process is waived unless it is raised by a motion to dismiss filed within thirty days in the sequence required by Practice Book § 10-6, formerly § 112. Thus, thirty-one days after the filing of an appearance or the failure to adhere to the requisite sequence, a party is deemed to have submitted to the jurisdiction of the court. Any claim of insufficiency of process is waived if not sooner raised."
- [Coppola v. Coppola](#), 243 Conn. 657, 666, 707 A.2d 281 (1998). "The plaintiff's motion to amend would not deprive the defendant of any substantive rights and would simply correct the return date so that the return of process met the statutory six day period required by § 52-46a. It is undisputed that the defendant received actual notice of the cause of action within the statutory time frame, suffered no prejudice as a result of the late return of process, and already had filed an appearance and had served the plaintiff with interrogatories. We '[refuse] to permit the recurrence of the inequities inherent in eighteenth century common law that denied a plaintiff's cause of action if the pleadings were technically imperfect.' *Andover Ltd. Partnership I v. Board of Tax Review*, 232 Conn. 392, 399, 655 A.2d 759 (1995)."
- [Concept Associates, Ltd. v. Board of Tax Review](#), 229 Conn. 618, 625, 642 A. 2d 1186 (1994). "As a practical matter, a motion to dismiss is never brought before the return date has passed. Therefore, under the defendants' proposed construction of the statute, a defendant could avoid the operation of § 52-72 simply by failing to call the plaintiff's attention to the defective return date until after the return

date. Only plaintiffs who discover their technical (and sometimes typographical) mistakes early and file motions to amend before the return date passes could benefit from the statute. We decline to adopt such a narrow interpretation of this remedial statute.”

WEST KEY NUMBERS:

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.

- *Pretrial Procedure*, Key Numbers 531-710
- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 10. Pleadings: Defendant’s Motion to Dismiss and Plaintiff’s Response.
- Margaret Penny Mason, [Connecticut Civil Pretrial Practice](#) (2017).
 - Chapter 6. Serving Summons and Complaint. Sec. 6.02[2]. Importance of Proper Service of Process
 - Chapter 7. Pleadings. Sec. 7.18. Motion to Dismiss
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998 ed.).
 - Chapter VIII. Motion to Dismiss.
- Renee Bevacqua Bollier, [Stephenson’s Connecticut Civil Procedure](#) (1997).
 - Sec. 30. Challenging Defective Service
 - Sec. 62. Defective Writ or Service
 - Chapter 9. Disposition Short of Trial Sec. 92. Motion to Dismiss
- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2017).
 - Chapter 4. Dismissal Motions.
 - III. Dismissal Based on Insufficient Process or Service of Process.
- Corey M. Dennis, *Roadmap to Connecticut Procedure*, 83 Connecticut Bar Journal 271 (2009).

LAW REVIEWS:

Section 4: Other Grounds

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion to dismiss filed based on non-jurisdictional challenges, such as forum non conveniens, prior pending action doctrine, or failure to include a written opinion of a health care provider in a medical malpractice action.

DEFINITIONS:

- **Forum non conveniens:** "Emphasis on the trial court's discretion does not, however, overshadow the central principle of the **forum non conveniens** doctrine that *'unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.'*" [Picketts v. International Playtex, Inc.](#), 215 Conn. 490, 500, 576 A.2d 518 (1990).
- **Prior pending action doctrine:** "Under the **prior pending action doctrine**, the pendency of a prior suit between the same parties brought to obtain the same end will generally render the latter suit amenable to dismissal." [Gaudio v. Gaudio](#), 23 Conn. App. 287, 295, 580 A.2d 1212 (1990).

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 900 – Court Practice and Procedure
 - § [52-190a](#). Prior reasonable inquiry and certificate of good faith required in negligence action against a health care provider. Ninety-day extension of statute of limitations.
 - Chapter 922b – Fact-finding
 - § [52-549t](#). Failure to appear. Payment of fees of fact-finder. Dismissal of action.

COURT RULES:

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

- Connecticut Practice Book (2018)
 - § [10-6](#). Pleadings Allowed and Their Order.
 - § [10-30](#). Motion to Dismiss; Grounds.
 - § [10-31](#). Opposition; Date for Hearing Motion to Dismiss.
 - § [14-3](#). Dismissal for Lack of Diligence.

FORMS:

- [Figure 1](#): Motion to Dismiss
- 3 Joel M. Kaye, Connecticut Practice Series, [Connecticut Civil Practice Forms](#) (2004).
 - 106.1 Motion to Dismiss
- Margaret Penny Mason, [Connecticut Civil Pretrial Practice](#) (2017).
 - § 5.16 Motion to Dismiss Based on Forum Selection

Clause or Forum Non Conveniens
§ 5.17 Affidavit in Support of Motion for Dismissal Based on Forum Selection Clause or Forum Non Conveniens
§ 7.29 Motion to Dismiss
§ 17.9 Motion to Dismiss for Lack of Diligence

- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2017).
 - § 4:163 Sample supporting and opposition briefs — Motion to dismiss action [forum non conveniens] — Memorandum of points and authorities in opposition to motion to dismiss action
 - § 4:164 Sample supporting and opposition briefs — Motion to dismiss action [forum non conveniens] — Declaration of plaintiff in opposition to motion to dismiss action
 - § 4:165 Sample supporting and opposition briefs — Motion to dismiss action [delay in prosecution] — Memorandum of points and authorities in opposition to motion to dismiss action
 - § 4:166 Sample supporting and opposition briefs — Motion to dismiss action [delay in prosecution] — Declaration of plaintiff in opposition to motion to dismiss action
 - § 4:167 Sample supporting and opposition briefs — Motion to dismiss action [delay in prosecution] — Order to dismiss action
 - § 4:169 Sample supporting and opposition briefs — Motion to dismiss plaintiff's action [failure to make reasonable inquiry regarding negligence by health care provider] — Memorandum of points and authorities in support of motion to dismiss
- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2017-2018).
 - F.10-31(2) Motion to Dismiss (Inconvenient Forum)
- [JD-CV-71](#). Request for Exemption from Dormancy Docket Dismissal

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.

- [Ann Taylor Retail, Inc. v. Kleban Holding Co.](#), Superior Court, Judicial District of Bridgeport, No. CV16-6055385-S (December 21, 2016) (2016 WL 8467043) (63 Conn. L. Rptr. 616). "In addition to the concern for judicial economy, the court is guided by the policy of comity between the state and federal courts which exercise concurrent jurisdiction in many matters. All of the issues before this court were presented to the federal court and remain pending therein awaiting submission of the evidence needed for determination. The prior action was initially filed in the state court system by Kleban. Ann Taylor exercised

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its right to remove the action to federal district court. There the larger issues of contract interpretation were resolved, the court determined Ann Taylor was entitled to an award of costs and attorneys fees and was set to determine the appropriate amount. The federal court has not only determined the issue of entitlement to recovery of costs under the contract, but is also familiar with the time and labor expended by counsel in the case, the novelty and difficulty of the legal issues involved and the results obtained, all important considerations in the determination of a reasonable fee under the Rules of Professional Conduct. To allow one party to fully submit issues in one forum and then initiate a second action where the same issues are presented to a different court, raises concerns of forum shopping.

"The pendency of this second case may ultimately result in this court and the federal court conducting competing proceedings on the very same issues and even coming to different conclusions on the same or similar issues, issues which have been pending before the federal court for some time and on which this court claims no greater expertise or insight in deciding."

- [Harger v. Odlum](#), 153 Conn. App. 764, 772, 107 A.3d 430, 434 (2014). "Indeed, our Supreme Court repeatedly has stated that the failure to attach a proper opinion letter pursuant to § 52-190a is akin to insufficient service of process, implicating personal jurisdiction over the defendant. *Santorso v. Bristol Hospital*, 308 Conn. 338, 351-52, 63 A.3d 940 (2013); *Morgan v. Hartford Hospital*, 301 Conn. 388, 400-401, 21 A.3d 451 (2011). We are aware of no appellate authority in Connecticut that has held that the denial of a motion to dismiss on the basis of a claimed lack of personal jurisdiction over the defendant is an appealable final judgment."
- [Bobbin v. Sail the Sounds, LLC](#), 153 Conn. App. 716, 726, 107 A.3d 414 (2014). "Practice Book § 14-3(a) permits a trial court to dismiss an action with costs if a party fails to prosecute the action with reasonable diligence. 'The ultimate determination regarding a motion to dismiss for lack of diligence is within the sound discretion of the court.' *Nickerson v. Gachim*, 183 Conn. 413, 415, 439 A.2d 379 (1981), overruled in part on other grounds by *Morelli v. Manpower, Inc.*, 226 Conn. 831, 834, 628 A.2d 1311 (1993). 'Under [§ 14-3], the trial court is confronted with endless gradations of diligence, and in its sound discretion, the court must determine whether the party's diligence falls within the "reasonable" section of the diligence spectrum.' *Jaconski v. AMF, Inc.*, 208 Conn. 230, 234, 543 A.2d 728 (1988)."

- [Bennett v. New Milford Hospital, Inc.](#), 300 Conn. 1, 29, 12 A.3d 865 (2011). “Inasmuch as the legislative history indicates that a motion to dismiss pursuant to § 52-190a (c) is the only proper procedural vehicle for challenging deficiencies with the opinion letter, and that dismissal of a letter that does not comply with § 52-190a (c) is mandatory, we agree with the Appellate Court's reasoning in its recent decisions in *Votre v. County Obstetrics & Gynecology Group, P.C.*, supra, 113 Conn. App. at 582-83, 966 A.2d 813, and *Rios v. CCMC Corp.*, supra, 106 Conn. App. at 820-21, 943 A.2d 544, both of which concluded that the grant of a motion to dismiss, rather than a motion to strike, is the proper statutory remedy for deficiencies under § 52-190a, notwithstanding the lack of any indication that P.A. 05-275 has rendered the certificate and opinion letter subject matter jurisdictional in nature.”
- [Bayer v. Showmotion, Inc.](#), 292 Conn. 381, 397, 973 A.2d 1229, 1240-41 (2009). “On the basis of this language, we conclude that the trial court must determine in the first instance whether the two actions are: (1) exactly alike, i.e., for the same matter, cause and thing, or seeking the same remedy, and in the same jurisdiction; (2) virtually alike, i.e., brought to adjudicate the same underlying rights of the parties, but perhaps seeking different remedies; or (3) insufficiently similar to warrant the doctrine's application. In order to determine whether the actions are virtually alike, we must examine the pleadings—in this case, both complaints and the defendant's answer and special defenses in the summary process action—to ascertain whether the actions are brought to adjudicate “the same underlying rights” of the parties. (Internal quotation marks omitted.) *Cumberland Farms, Inc. v. Groton*, supra, 247 Conn. at 217, 719 A.2d 465.”
- [Votre v. County Obstetrics and Gynecology Group, P.C.](#), 113 Conn. App. 569, 582, 966 A.2d 813 (2009). “As we noted in *Rios*, however, motions to dismiss are not limited to jurisdictional challenges. *Rios v. CCMC Corp.*, supra, 106 Conn. App. at 821 n. 8, 943 A.2d 544. For example, under General Statutes § 52-549t(b) a court may dismiss an action when parties have failed to appear before a fact finder. The dismissal in § 52-549t(b) is discretionary and in no way implicates the jurisdiction or the power of the court to hear the case. Similarly, Practice Book § 14-3 provides for dismissal due to lack of diligence in prosecution of an action. Again, the power of the court to hear the case is not implicated by virtue of a dismissal for lack of diligent prosecution under this provision.”
- [Rios v. CCMC Corporation](#), 106 Conn. App. 810, 822, 943 A.2d 544 (2008). “Unlike the preceding revisions of the statute, the current revision of § 52-190a includes an

additional subsection, (c), which was added by P.A. 05-275, and states that '[t]he failure to obtain and file the written opinion as required by subsection (a) of this section shall be grounds for the *dismissal* of the action.' (Emphasis added.) General Statutes § 52-190a(c). The plain language of this new statutory subsection, which was not in effect at the time of *LeConche* and *Gabrielle*, expressly provides for dismissal of an action when a plaintiff fails to attach a written opinion of a similar health care provider to the complaint, as required by § 52-190a(a)."

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.

- [Durkin v. Intevac, Inc.](#), 258 Conn. 454, 466, 782 A. 2d 103 (2001). "With these principles in mind, we turn to the four step process for examining forum non conveniens claims outlined in *Gulf Oil Corp. v. Gilbert*, supra, 330 U.S. 508-509, and clearly set forth in *Pain v. United Technologies Corp.*, 637 F.2d 775, 784-85 (D.C. Cir. 1980), cert. denied, 454 U.S. 1128, 102 S. Ct. 980, 71 L. Ed.2d 116 (1981), which we have stated is a 'useful frame of reference for the law of Connecticut.' *Picketts v. International Playtex, Inc.*, supra, 215 Conn. 497; see *Union Carbide Corp. v. Aetna Casualty & Surety Co.*, supra, 212 Conn. 319. First, the court should determine whether an adequate alternative forum exists that possesses jurisdiction over the whole case. *Pain v. United Technologies Corp.*, supra, 784. Second, the court should consider all relevant private interest factors with a strong presumption in favor of—or, in the present case, a weakened presumption against disturbing—the plaintiffs' initial choice of forum. *Id.* Third, if the balance of private interest factors is equal, the court should consider whether any public interest factors tip the balance in favor of trying the case in the foreign forum. *Id.* Finally, if the public interest factors tip the balance in favor of trying the case in the foreign forum, 'the court must ... ensure that [the] plaintiffs can reinstate their [action] in the alternative forum without undue inconvenience or prejudice.' *Id.*, 784-85."
- [Picketts v. International Playtex, Inc.](#), 215 Conn. 490, 501, 576 A.2d 518 (1990). "'[T]he overriding inquiry in a forum non conveniens motion is not whether some other forum might be a good one, or even a better one than the plaintiff's chosen forum. The question to be answered is whether [the] plaintiff's chosen forum is itself inappropriate or unfair because of the various private and public interest considerations involved.' *Carlenstolpe v. Merck & Co.*, 638 F. Sup. 901, 909 (S.D.N.Y. 1986), appeal dismissed, 819 F.2d 33 (2d Cir. 1987). Accordingly, the trial court, in exercising its structured discretion, should place its thumb firmly on the plaintiff's side of the scale, as a representation of the strong presumption in favor of the plaintiff's chosen forum, before attempting to balance the private and public interest factors relevant to a forum non conveniens

motion.”

- [Gaudio v. Gaudio](#), 23 Conn. App. 287, 294, 580 A.2d 1212 (1990). “Although a motion to dismiss is the proper vehicle to raise the issue of a prior pending action, the doctrine does not truly implicate subject matter jurisdiction. *Halpern v. Board of Education*, 196 Conn. 647, 652 n.4, 495 A.2d 264 (1985). It may not, therefore, as is true in the case of classic subject matter jurisdiction, always be raised at any time. See *Bridgeport v. Debek*, 22 Conn. App. 517, 578 A.2d 150 (1990).”

WEST KEY NUMBERS:

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.

- *Pretrial Procedure*, Key Numbers 531-710
- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 10. Pleadings: Defendant’s Motion to Dismiss and Plaintiff’s Response.
- Margaret Penny Mason, [Connecticut Civil Pretrial Practice](#) (2017).
 - Chapter 5. Forum and Venue.
Sec. 5.03. Convenience of Foreign Courts and Forum Non Conveniens.
 - Chapter 7. Pleadings.
Sec. 7.18. Motion to Dismiss.
 - Chapter 17. Dismissal.
Sec. 17.04. Involuntary Dismissal.
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998 ed.).
 - Chapter VIII. Motion to Dismiss.
- Renee Bevacqua Bollier, [Stephenson’s Connecticut Civil Procedure](#) (1997).
 - Sec. 60 Pendency of Another Action.
 - Chapter 9. Disposition Short of Trial.
Sec. 92. Motion to Dismiss.
- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2017).
 - Chapter 4. Dismissal Motions.
II. Dismissal Based on Forum Non Conveniens.
V. Dismissal Based on Failure to Make Reasonable Inquiry Regarding Negligence by Health Care Provider.
- Corey M. Dennis, [Roadmap to Connecticut Procedure](#), 83 Connecticut Bar Journal 271 (2009).

LAW REVIEWS:

Figure 1: Motion to Dismiss (Form)

Form 105.1, Heading and Form 106.1, Motion to Dismiss, 2 Conn. Practice Book (1997)

No. _____ Superior Court

(First Named Plaintiff)

v. _____
at _____

(First Named Defendant)

(Date)

Motion to Dismiss

The defendant moves that the court dismiss this action because:

The defendant is not and at the time of the institution of this action was not a resident of the state of Connecticut and he was not properly served with a copy of the process instituting this action in this state.

or

The defendant is not and at the time of the institution of this action was not a resident of the state of Connecticut and was served with a copy of the process instituting said action while in the state of Connecticut in obedience to a summons directing him to attend and testify in said state and was therefore not subject to the service of civil process in connection with said action, as the matters concerning the same arose before his entrance into said state under such summons.

or

At the commencement of this action, there was and now is another action pending in the (*name and location of court*), between the same parties and for the same cause as that set forth in the complaint in this action.

or

The officer serving the writ and complaint in this action attached certain property as belonging to the defendant, but the defendant, at the time of the commencement of this action, had no interest in said property and he was not a resident of the state of Connecticut.

or

A copy of the writ, summons and complaint in the above entitled action was served on the defendant only three days before the return day thereof, as appears by the officer's return on file.

or

The writ, summons and complaint was not returned to the clerk until the return day thereof, as of record appears.

or

Set forth any other reason why there is lack of jurisdiction over the subject matter, lack of jurisdiction over any party to the action, improper venue, insufficiency of process or insufficiency in the service of process.

Wherefore the defendant prays judgment dismissing this action.

Support all facts alleged by affidavit, unless such facts are apparent on the record. Supporting memorandum of law is also required. See Rules, Sec. 143. Annex Order, See Rules, Sec. 196 (1978)

Section 5: Motion to Dismiss - Appellate

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion to dismiss filed regarding an appeal or a writ of error.

DEFINITIONS:

- "Any claim that an appeal or writ of error should be dismissed, whether based on lack of jurisdiction, failure to file papers within the time allowed or other defect, shall be made by a **motion to dismiss** the appeal or writ. Any such motion must be filed in accordance with Sections 66-2 and 66-3. A motion to dismiss an appeal or writ of error that claims a lack of jurisdiction may be filed at any time...." Conn. Practice Book [§ 66-8](#) (2016).
- **Waiver:** "Because the plaintiff failed to appeal from the April 11, 2006 judgment within twenty days as required by Practice Book § 63-1, the defendants claim that the appeal from that judgment is untimely. The defendants, however, failed to file a motion to dismiss within ten days of the filing of the plaintiff's appeal, as required by Practice Book § 66-8. Consequently, they waived their right to seek dismissal of the appeal as untimely." [Connecticut Commercial Lenders, LLC v. Teague](#), 105 Conn. App. 806, 809, 940 A.2d 831, 833 (2008).

COURT RULES:

- Connecticut Practice Book (2018)
 - § [60-2](#)(5). Supervision of Procedure.
 - § [66-8](#). **Motion to Dismiss**.

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.

- [Just Restaurants v. Thames Rest. Grp., LLC](#), 172 Conn. App. 103, 106, 158 A.3d 845, 847 (2017). "As an initial matter, we address the substitute plaintiff's motion to dismiss the appeal, and his claim that this court lacks jurisdiction over the appeal. The substitute plaintiff appears to argue that because the trial court lacked jurisdiction, this court also is without jurisdiction. Established law does not support this proposition. This court has jurisdiction to determine whether the trial court lacked jurisdiction. *State v. Johnson*, 301 Conn. 630, 641-42, 26 A.3d 59 (2011); *State v. Martin M.*, 143 Conn.App. 140, 143-44 n.1, 70 A.3d 135, cert. denied, 309 Conn. 919, 70 A.3d 41 (2013); *Gemmell v. Lee*, 42 Conn.App. 682, 684 n.3, 680 A.2d 346 (1996); see also *Belden, Trustee v. Sedgwick*, 68 Conn. 560, 567, 37 A. 417 (1897) ('[t]his court has jurisdiction to review any judgment of the Superior Court from which an appeal is taken on the ground that it was void for want of jurisdiction'). Accordingly, the substitute plaintiff's motion to dismiss the appeal is denied."
- [State v. Charlotte Hungerford Hosp.](#), 308 Conn. 140, 143, 60 A.3d 946, 948 (2013). "When, during the pendency of

an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot.’ (Internal quotation marks omitted.) *Connecticut Coalition Against Millstone v. Rocque*, 267 Conn. 116, 126, 836 A.2d 414 (2003). Because mootness implicates this court’s subject matter jurisdiction, it may be raised at any time, including by this court sua sponte. See, e.g., *Lyon v. Jones*, 291 Conn. 384, 391, 968 A.2d 416 (2009); see also Practice Book § 66–8. Because both parties agree that this certified appeal is moot, we dismiss the appeal sua sponte.”

- [TD Banknorth, N.A. v. White Water Mountain Resorts of Connecticut, Inc.](#), 133 Conn. App. 536, 542-43, 37 A.3d 766, 770-71 (2012). “Although the defendant’s preliminary statement of the issues, filed on September 2, 2010, does not raise arguments relating to the denial of the motion to open, the defendant’s statement of the issues in his brief, filed on March 18, 2011, lists as the first issue the trial court’s error in denying the motion to open. The plaintiff was required to challenge that ground for appeal within ten days after the filing of the appeal pursuant to Practice Book § 66–8. See *Connecticut Commercial Lenders, LLC v. Teague*, 105 Conn. App. 806, 808–809, 940 A.2d 831 (2008); *Chase Manhattan Mortgage Corp. v. Machado*, 83 Conn. App. 183, 185 n. 3, 850 A.2d 260 (2004); *Savage v. Savage*, 25 Conn. App. 693, 694 n. 1, 596 A.2d 23 (1991). Consequently, the plaintiff has waived its right to seek dismissal of the defendant’s arguments relating to his motion to open as an untimely appeal.”
- [Alliance Partners, Inc. v. Voltarc Technologies, Inc.](#), 263 Conn. 204, 213, 820 A.2d 224, 229-30 (2003). “Indeed, the Appellate Court explicitly has articulated its rationale for this policy and its awareness of when it would be appropriate to relax it. ‘[W]hen a motion to dismiss that raises untimeliness is, itself, timely filed pursuant to Practice Book § 4056 [now § 66–8], it is ordinarily our practice to dismiss the appeal if it is in fact late, and if no reason readily appears on the record to warrant an exception to our general rule.

“This practice is based in part on the fact that if the untimely appeal is entertained, a delinquent appellant would obtain the benefit of the appellate process after contributing to its delay, to the detriment of others with appeals pending who have complied with the rules and have a right to have their appeals determined expeditiously. Appellees are given the right under our rules to object to the filing of a late appeal and should be given the benefit of that rule, barring unusual circumstances or unless they waive the benefit of that rule. See *Federal Deposit Ins. Corp. v. Hillcrest Associates*, 233 Conn. 153,

173, 659 A.2d 138 (1995). We ordinarily dismiss late appeals that are the subject of timely motions to dismiss, knowing also that our discretion can be tempered by Practice Book § 4183(6) [now § 60-2(6)], which provides for the filing of late appeals for good cause shown.' *Nicoll v. State*, supra, 38 Conn. App. at 335-36, 661 A.2d 101."

- [Kelley v. Bonney](#), 221 Conn. 549, 558-59, 606 A.2d 693, 699 (1992). "The defendants now assert that this court should review the Appellate Court's denial of their motions to dismiss the plaintiff's appeal. In addition to the underlying substantive question of timeliness, this claim raises the question of whether this court may review an Appellate Court ruling denying a motion to dismiss an appeal as untimely, made prior to transfer pursuant to Practice Book § 4023. We decline to answer either of those questions, however, because we conclude that, pursuant to Practice Book § 4056, the Appellate Court had broad discretion to hear the appeal, whether timely filed or not. See *Connelly v. Doe*, 213 Conn. 66, 69-70 n. 5, 566 A.2d 426 (1989). Even if a party to an appeal timely moves to dismiss an untimely appeal, the Appellate Court, and this court, continue to have discretion to hear the appeal."

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.

- Colin C. Tait, [Connecticut Appellate Practice & Procedure](#) 4th ed (2014).
 - Chapter 6. Motions and Other Procedures.
 - 6-2:8. Motion to Dismiss-Law of Jurisdiction
 - 6-2:9. Motion to Dismiss-Other Defects

Table 2: Special Motion to Dismiss (Anti-SLAPP)

Special Motion to Dismiss Anti-SLAPP	
Public Act 17-71	<i>An Act Concerning Strategic Litigation Against Public Participation And A Special Motion To Dismiss.</i>
Office of Legislative Research Summary	“This act enables a party in a civil action to file a special motion to dismiss a claim, counterclaim, or cross claim that is based on the party, in connection with a matter of public concern, exercising the party's right (1) of free speech, (2) to petition the government, or (3) of association. With limited exceptions, the court must stay discovery upon receiving such a motion and provide an expedited hearing on it. The court must also issue a ruling as soon as practicable.”
Conn. Gen. Stat. sec. 52-196a	“(b) In any civil action in which a party files a complaint, counterclaim or cross claim against an opposing party that is based on the opposing party’s exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, such opposing party may file a special motion to dismiss the complaint, counterclaim or cross claim.
Time to file	(c) Any party filing a special motion to dismiss shall file such motion not later than thirty days after the date of return of the complaint, or the filing of a counterclaim or cross claim described in subsection (b) of this section. The court, upon a showing of good cause by a party seeking to file a special motion to dismiss, may extend the time to file a special motion to dismiss.
Stay of Discovery	(d) The court shall stay all discovery upon the filing of a special motion to dismiss. The stay of discovery shall remain in effect until the court grants or denies the special motion to dismiss and any interlocutory appeal thereof. Notwithstanding the entry of an order to stay discovery, the court, upon motion of a party and a showing of good cause, or upon its own motion, may order specified and limited discovery relevant to the special motion to dismiss.
Expedited Hearing	(e) (1) The court shall conduct an expedited hearing on a special motion to dismiss. The expedited hearing shall be held not later than sixty days after the date of filing of such special motion to dismiss, unless, (A) the court orders specified and limited discovery pursuant to subsection (d) of this section, in which case, the expedited hearing shall be held not later than sixty days after the date on which such specified and limited discovery must be completed, (B) the parties agree to a hearing

<p>Affidavits</p>	<p>date that is beyond the sixty-day period, or (C) the court, for good cause shown, is unable to schedule the hearing during the sixty-day period.</p> <p>(2) When ruling on a special motion to dismiss, the court shall consider pleadings and supporting and opposing affidavits of the parties attesting to the facts upon which liability or a defense, as the case may be, is based.</p>
<p>Court's Findings</p>	<p>(3) The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint, counterclaim or cross claim is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, unless the party that brought the complaint, counterclaim or cross claim sets forth with particularity the circumstances giving rise to the complaint, counterclaim or cross claim and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint, counterclaim or cross claim.</p>
<p>Time for Decision</p>	<p>(4) The court shall rule on a special motion to dismiss as soon as practicable.</p>
<p>Attorney's Fees</p>	<p>(f) (1) If the court grants a special motion to dismiss under this section, the court shall award the moving party costs and reasonable attorney's fees, including such costs and fees incurred in connection with the filing of the special motion to dismiss.</p> <p>(2) If the court denies a special motion to dismiss under this section and finds that such special motion to dismiss is frivolous and solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to the party opposing such special motion to dismiss.</p>
<p>Findings not admissible</p>	<p>(g) The findings or determinations made pursuant to subsections (e) and (f) of this section shall not be admitted into evidence at any later stage of the proceeding or in any subsequent action.</p>
<p>When not applicable</p>	<p>(h) The provisions of this section shall not: (1) Apply to an enforcement action that is brought in the name of the state or a political subdivision of the state by the Attorney General; (2) affect or limit the authority of a court to award sanctions, costs, attorney's fees or any other relief available under any statute, court rule or other authority; (3) affect, limit or preclude the right of a party filing a special motion to dismiss to any defense, remedy, immunity or privilege otherwise authorized by law; (4) affect the substantive law governing any asserted claim; (5) create a private right of action; or (6) apply to a common law or</p>

	<p>statutory claim for bodily injury or wrongful death, except the exclusion provided in this subdivision shall not apply to claims for (A) emotional distress unrelated to bodily injury or wrongful death or conjoined with a cause of action other than for bodily injury or wrongful death, or (B) defamation, libel or slander. The provisions of this subdivision shall not prohibit a plaintiff who brings a claim for bodily injury or wrongful death from filing a special motion to dismiss a counterclaim under the provisions of this section.”</p>
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