Practice Book 101

April 2, 2019

6:00 p.m. – 8:00 p.m.

CBA Law Center

New Britain, CT

CT Bar Institute Inc.

CT: 2.0 CLE Credits (General)
NY: 2.0 CLE Credits (AOP)

Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging I acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

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April 2, 2019
6:00 p.m. - 8:00 p.m.

Moderator

- Vianca T. Diaz, Esq., Diana, Conti & Tunila LLP, Manchester, Connecticut

Speakers

- Richard E. Fennelly, III, Esq., McGivney Kluger & Cook, PC, Hartford, Connecticut
- Johanna S. Katz, Esq., Pullman & Comley, Hartford, Connecticut
- Cody N. Guarnieri, Brown Paindiris & Scott, LLP, Hartford, Connecticut

Program Agenda

6:00 p.m. Introduction of Speakers & Topic – Vianca T. Diaz

6:15 p.m. Procedure in Civil Matters – Richard E. Fennelly

6:45 p.m. Procedure in Family Matters – Johanna S. Katz

7:15 p.m. Procedure in Criminal Matters – Cody N. Guarnieri

7:45 p.m. Q & A

Faculty Biographies

Richard E. Fennelly, III is an Associate in the Hartford office of McGivney, Kulger & Cook, PC, practicing in the areas of general liability defense and municipal litigation. Prior to joining the firm, he worked as an associate at a prominent Connecticut law firm in the areas of land use, administrative law, and appellate practice.

Attorney Fennelly received his Juris Doctor from Quinnipiac University School of Law in 2010, magna cum laude, and earned a Bachelor of Arts from Marist College in 2006, magna cum laude. While in law school, Attorney Fennelly served as the Supervising Editor of the Quinnipiac Probate Law Journal and was a Sappern Fellow. In addition, Attorney Fennelly served as a temporary assistant clerk for judges in the New Haven Superior Court.

Cody N. Guarnieri is a trial attorney at Brown, Paindiris & Scott. His litigation practice focuses on criminal defense and personal injury litigation. In his criminal defense practice, Attorney Guarnieri defends both adults and juveniles who are being investigated by law enforcement or prosecuted by the state of Connecticut or the United States of America. He has handled matters in nearly every criminal courthouse in Connecticut ranging in seriousness from lesser misdemeanors to serious felonies, including sexual assault, bank robbery and murder.

In his personal injury and civil litigation practice, Attorney Guarnieri aggressively pursues claims and lawsuits for individuals and has brought class action lawsuits on behalf of consumers, employees and others, including one of the first nationwide class action lawsuits against Volkswagen based on the defective clean diesel "TDI" line of automobiles.

Attorney Guarnieri has been listed as a Super Lawyers Rising Star in criminal defense since 2015 and was named a "New Leader in the Law" by the Connecticut Law Tribune in 2016. He was a Presidential Fellow of the Connecticut Bar Association from 2015-2017, a Presidential Fellow Emeritus of the Connecticut Bar Association from 2017-2018, and was also recently nominated and elected as a fellow of the Connecticut Bar Foundation.

Johanna S. Katz is an associate in the Litigation Department at Pullman & Comley. She received a Bachelor of Arts in 2008 from the University of Connecticut and her Juris Doctor from the University of Connecticut School of Law in 2014. During law school, Attorney Katz was a Senior Associate Editor for the Connecticut Public Interest Law Journal and served as a legal intern to the Connecticut State's Attorney's Office in Hartford where she performed legal research and assisted in trial preparation. Her experience also includes working at two Hartford-area law firms as a paralegal and a legal assistant.

In August 2015, the Connecticut Supreme Court cited an article written by Attorney Katz regarding its decision that the death penalty is unconstitutional in Connecticut (State of Connecticut v. Eduardo Santiago).

PRACTICE BOOK 101: PROCEDURE IN CIVIL MATTERS

PRESENTED BY: Richard E. Fennelly, III
McGivney, Kluger & Cook, PC
20 Church Street
Hartford, CT 06108

PRACTICE BOOK 101:

INTRODUCTION

This seminar shall (endeavor to) provide:

- A general overview of certain, foundational rules of civil procedure.
- Practice tips concerning what you may want to do.
- Practice tips concerning what you may not want to do.
- Recent (ish) Connecticut cases which illustrate practice tips.
- And much more.

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SUPERIOR COURT – PROCEDURE IN CIVIL MATTERS

- Chapter 8……. Commencement of Action
- Chapter 9……. Parties
- Chapter 10……. Pleadings
- Chapter 11……. Motions, Requests, Orders of Notice and Short Calendar
- Chapter 12……. Transfer of Actions
- Chapter 13……. Discovery and Depositions
- Chapter 14……. Dockets, Trial Lists, Pretrials, and Assignment Lists
- Chapter 15……. Trials in General; Argument by Counsel
- Chapter 16……. Jury Trials
- Chapter 17……. Judgments
- Chapter 18……. Fees and Costs
- Chapter 19……. References
- Chapter 20……. Hearings in Chambers
- Chapter 21……. Receivers
- Chapter 22……. Unemployment Compensation
- Chapter 23……. Miscellaneous Remedies and Procedures
- Chapter 24……. Small Claims

SUPERIOR COURT- PROCEDURE IN CIVIL MATTERS:

CHAPTERS REVIEWED

- Chapter 10 …… Pleadings

  (Complaint, Motion to Dismiss, Motion to Strike, and Answer and Special Defense, etc.)

- Chapter 11 …… Motions, Requests, Orders of Notice and Short Calendar

  (Motion v. Request, Short Calendar, Motion to Reargue, Motion for Clarification, etc.)

- Chapter 13 …… Discovery and Depositions

  (Experts, Interrogatories, Requests for Production, Requests for Admission, Depositions, etc.)

- Chapter 17 …… Judgments

  (Offer of Compromise, Motion for Default, Motions for Summary Judgment, etc.)

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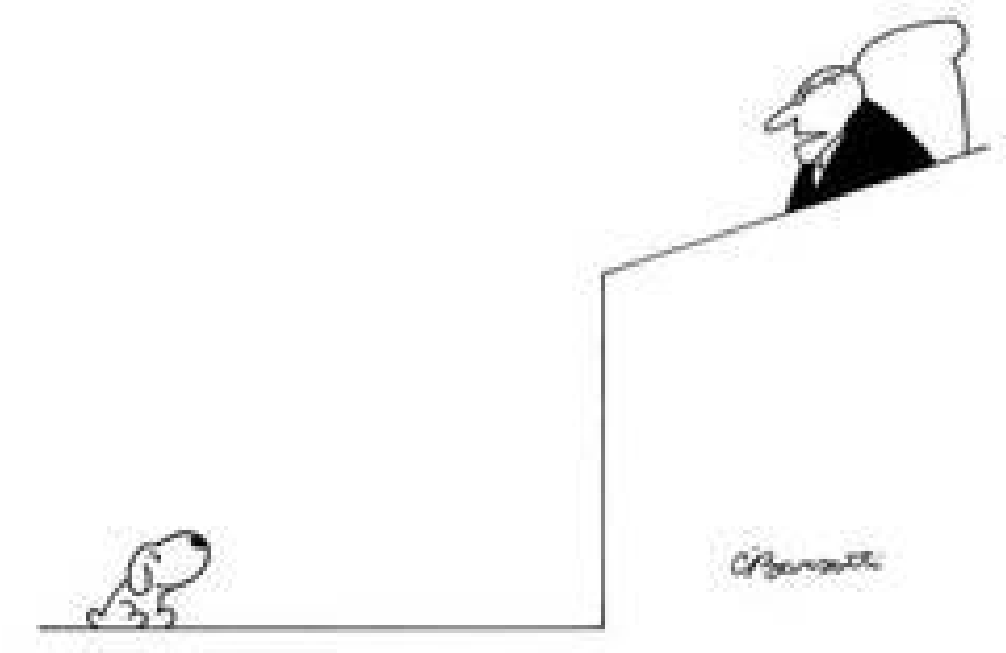
P.B. CHAPTER 10. PLEADINGS



"You can't plead cute."

P.B. CHAPTER 10:
Pleadings

- Sec. 10-6……. Pleadings Allowed and Their Order
- Sec. 10-7……. Waiving the Right to Plead
- Sec. 10-8 ……. Time to Plead
- Sec. 10-20……. Contents of the Complaint
- Sec. 10-30……. Motion to Dismiss; Grounds
- Sec. 10-35……. Request to Revise
- Sec. 10-39……. Motion to Strike; Grounds
- Sec. 10-46……. Answer; General and Special Defense

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SEC. 10-6. PLEADINGS ALLOWED AND THEIR ORDER

"The ***order of pleadings*** shall be as follows:

(1) The plaintiff's complaint.

(2) The defendant's motion to dismiss the complaint.

(3) The defendant's request to revise the complaint.

(4) The defendant's motion to strike the complaint.

(5) The defendant's answer (including any special defenses) to the complaint.

(6) The plaintiff's request to revise the defendant's answer.

(7) The plaintiff's motion to strike the defendant's answer.

(8) The plaintiff's reply to any special defenses."

SEC. 10.7. WAIVING THE RIGHT TO PLEAD

Sec. 10-7. Waiving the Right to Plead

"In all cases, ***when the judicial authority does not otherwise order***, the filing of any pleading provided by the preceding section will ***waive the right*** to file any pleading which might have been filed in due order and which precedes it in the order of pleading provided in that section."

PRACTICE TIP: The court may allow a pleading out of order. See Sabino v. Ruffolo, 19 Conn.App. 402, 404 ("***The Court has discretion to allow the filing of pleadings out of order***. [The rules of the practice book][support] this view by allowing for the ***liberal interpretation of the rules where strict adherence to them will work surprise or injustice*** because the very design of the rules is to facilitate business and advance justice.").

SEC. 10-8. TIME TO PLEAD

Sec. 10-8. Time to Plead

"Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, ***shall advance within thirty days from the return day***, and any subsequent pleadings, motions and requests ***shall advance at least one step within each successive period of thirty days*** from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required…"

SEC. 10-20. CONTENTS OF COMPLAINT

Sec. 10-20. Contents of Complaint

"The first pleading on the part of the plaintiff shall be known as the complaint. It shall contain a ***concise statement of the facts*** constituting the cause of action and, ***on a separate page of the complaint***, a demand for relief which shall be a statement of the remedy or remedies sought. When money damages are sought in the demand for relief, the demand for relief shall include the information required by ***General Statues § 52-91***."

PRACTICE TIPS:

- Remember that P.B. Sec. 10-1 applies to the contents of the complaint, i.e., Fact pleading. Required to plead ***material facts but not evidence*** in support thereof.

- Consult Conn. Gen. Stat. Sec. 52-91 concerning requirements for complaint and demand for relief.

SEC. 10-30. MOTION TO DISMISS

Sec. 10-30. Motion to Dismiss

"(a) A 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.

(b) 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***.

(c) 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."

MOTION TO DISMISS (CONT'D)

Practice Tips:

❖There is a ***split of authority*** whether the court may consider a motion to dismiss filed after the 30-day deadline. See Lake v. Catarious, 2014 Conn.Super. LEXIS 648 (2014)(Holding that the court cannot consider motion to dismiss filed after expiration of 30-day deadline); See also Arnold v. FYC Entm't, LLC, 2016 Conn.Super. LEXIS 2559 (2016)(Holding that the court may consider motion to dismiss filed after expiration of 30-day deadline).

❖30-day deadline does not apply to motions to dismiss based on ***lack of subject matter jurisdiction***. See Missionary Society of Connecticut v. Board of Pardons & Paroles, 278 Conn. 197, 201 (2006)("The requirement of subject matter jurisdiction cannot be waived by any party and ***can be raised at any state in the proceedings."***).

❖Opposing party has ***30-days to respond***. Sec. 10-31.

❖ Failure to file motion to dismiss within 30-days ***waives*** claims of lack jurisdiction over the person, insufficiency of process, and insufficiency of service process. Sec. 10-32.

SEC. 10-35. REQUEST TO REVISE

Sec. 10-35. Request to Revise

Reasons to file a request to revise include:

(1) ***a more complete or particular statement*** of the allegations of an adverse party's pleading,

(2) ***the deletion*** of any unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading,

(3) ***the separation of causes of action*** or the separation of two or more grounds of defense improperly combined, and,

(4) ***any other appropriate correction*** in an adverse party's pleading.

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SEC. 10-35. REQUEST TO REVISE (CONT'D)

PRACTICE TIPS:

- Request to revise useful when you are considering filing a motion to strike. **Example**: The complaint contains a count which improperly combines two causes of action. There is a ***split of authority*** whether the court can strike only a part of a count, i.e., a paragraph or paragraphs. See Ledger v. Plunkett, Conn. Super. 2016 LEXIS 607.

- Pursuant to Sec. 10-37, must file an objection ***within 30-days*** of the filing of a request to revise. Otherwise, ***may be forced*** to revise pleading in accordance with the request.

- For an example of "any other appropriate correction," consider Opin v. Ohio Cas. Ins. Co., 2011 Conn. Super. LEXIS 2111.

- If objection is overruled, a party has ***fifteen days*** to file a substituted pleading.

SEC. 10-39. MOTION TO STRIKE; GROUNDS

"The purpose of a motion to strike is to contest…the legal sufficiency of the allegations of any complaint…to state a claim upon which relief can be granted."

Fort Trumbull Conservancy, LLC v. Alves, 262 Conn. 480, 498 (2003).

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10-39. MOTION TO STRIKE; GROUNDS

Sec. 10-39. Motion to Strike; Grounds

A party may move to strike when she "wishes to contest":

(1) the legal sufficiency of the allegations of any complaint, cross claim or any one or more counts thereof, to state a claim upon which relief may be granted*;*

(2) the legal sufficiency of any prayer for relief;

(3) the legal sufficiency of any complaint, counterclaim or cross complaint because of the absence of a necessary party;

(4) the joining of two or more causes of action which cannot properly be united in one complaint; and,

(5) the legal sufficiency of any answer or any part of that answer including any special defense contained therein.

10-44. SUBSTITUTE PLEADING; JUDGMENT

- Pursuant to Sec. 10-44, a party whose pleading has been stricken has ***fifteen days*** to file a substitute pleading.

- If a party fails to file a substituted pleading within fifteen days, then the moving party may file a ***motion for judgment***.

- The option of filing a substituted pleading ***does not*** give you permission to revise the complaint any way you wish. GMAC Mortgage, LLC v. Ford, 144 Conn.App. 165 (2013).

- If you replead, you ***lose your right to appeal*** on the stricken pleading. Lund v. Milford Hospital, Inc. 326 Conn. 846, 850-51 (2017)("After a court has granted a motion to strike, [a party] may either amend his pleading [pursuant to Practice Book Sec. 10-44] or, on the rendering of judgment, file an appeal…").

SEC. 10-46. THE ANSWER; GENERAL AND SPECIAL DENIAL

Sec. 10-46. The Answer; General and Special Denial

> **"**The defendant in the answer shall specially deny such allegations of the complaint as the defendant intends to controvert, admitting the truth of the other allegations, unless the defendant intends in good faith to controvert all the allegations, in which case he or she may deny them generally."

PRACTICE TIP: Remember Sec. 10-19, "Implied Admissions" which provides that "Every material allegation in any pleading which is not denied by the adverse party ***shall be deemed to be admitted***, ***unless such party avers that he or she has not any knowledge or information thereof sufficient to form a belief***."

10-48. EXPRESS ADMISSIONS AND DENIALS TO BE DIRECT AND SPECIFIC

10-48. Express Admissions and Denials to Be Direct and Specific

"Express admissions and denials ***must be direct, precise and specific, and not argumentative, hypothetical or in the alternative***. Accordingly, any pleading wishing expressly to admit or deny a portion only of a paragraph must recite that portion; except that where a recited portion of a paragraph has been either admitted or denied, the remainder of the paragraph may be denied or admitted without recital."

Example:

So much of Paragraph 1 that provides "due to the negligence of the defendant" is denied. As to the remaining allegations, the defendant has insufficient knowledge and information upon which to form a belief and therefore leaves the plaintiff to his proof.

10-48. EXPRESS ADMISSIONS AND DENIALS TO BE DIRECT AND SPECIFIC (CONT'D)

PRACTICE TIPS:

- Remember that an answer in the defendant's answer is a ***judicial admission*** and is ***conclusive on that issue***.

- The plaintiff may file a ***motion for summary judgment*** on the ground that the answers in the complaint ***conclusively establish liability***. See Resha v. Hawkins, 2014 Conn. Super. LEXIS 1881.

- May file a ***motion for sanctions*** for a "bad faith" pleading pursuant to Sec. 10-5, "Untrue Allegations or Denials" ("Any allegation or denial made without reasonable cause and found untrue shall subject the party pleading the same to the payment of such reasonable expenses…as may have been necessarily incurred by the other party by reason of such untrue pleading…").

SEC. 10-60. AMENDMENT BY CONSENT, ORDER OF JUDICIAL AUTHORITY, OR FAILURE TO OBJECT

- In general, a party may amend her pleading or other parts of the record or proceeding in the following manner: "(1) By order of the judicial authority; or (2) By written consent of the adverse party; or (3) By filing a request for leave to amend together with: (A) the ***amended pleading*** or other parts of the record or proceedings, and (B) an ***additional document*** showing the portion or portions of the original pleading or other parts of the record or proceedings with the added language underlined and the deleted language stricken through or bracketed."

- The request is deemed ***filed by consent*** if no party files an objection ***within fifteen days***.

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P.B. CHAPTER 11:
MOTIONS, REQUESTS, ORDERS OF NOTICE AND SHORT CALENDAR

- Sec. 11-2…… Definition of "Motion" and "Request"
- Sec. 11-10……. Requirement that Memorandum of Law Be Filed with Certain Motions
- Sec. 11-12……. Motion to Reargue
- Sec. 11-13……. Short Calendar
- Sec. 11-19……. Time Limit for Deciding Short Calendar Matters

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SEC. 11-2. DEFINITION OF "MOTION" AND "REQUEST"

- As set forth in Sec. 11-2 a ***"motion"*** is "any application to the court for an order which application is to be ***acted upon by the court or judge thereof***".

- The term ***"request"*** means "any application to the court which ***shall be granted by the clerk*** by operation of these rules ***unless timely objection is filed***". **Examples**: Request to Revise (P.B. Sec. 10-35); Request to Amend Pleading (P.B. Sec. 10-60); Request for Physical/Mental Examination (P.B. Sec. 13-11)("Any such request ***shall be complied*** with by the plaintiff unless, ***within ten days from the filing of the request***, the plaintiff files in writing ***an objection***…").

SEC. 11-10. REQUIREMENT THAT MEMORANDUM OF LAW BE FILED WITH CERTAIN MOTIONS

Pursuant to Sec. 11-10, a memorandum of law ***must be filed*** with the following motions:

- Motion concerning parties filed pursuant to Sections 9-18 through 9-22, e.g., Motion to Add Parties (P.B. Sec. 9-18), Motion to Substitute Plaintiff (P.B. Sec. 9-20), Motion to Cite in New Parties (P.B. Sec. 9-22);
- Motion to implead third-party defendants pursuant to Section 10-11;
- Motion to dismiss (except filed pursuant to 14-3);
- Motion to strike;
- Motions to set aside the judgment pursuant to 17-4; and,
- Motion for summary judgment.

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SEC. 11-10. REQUIREMENT THAT MEMORANDUM OF LAW BE FILED WITH CERTAIN MOTIONS (CONT'D)

Sec. 11-10(b) provides that "a ***reply memorandum*** is not required and the absence of such memorandum will not prejudice any party. A reply memorandum shall be ***strictly confined*** to a discussion of matters raised by the responsive memorandum and shall be filed ***within fourteen days*** of the filing of the responsive memorandum to which such reply memoranda is being made."

PRACTICE TIP: Cannot raise arguments for ***the first time*** in a reply memorandum. Reardon v. Zoning Board of Appeal, 311 Conn. 356 (2014).

SEC. 11-10. REQUIREMENT THAT MEMORANDUM OF LAW BE FILED WITH CERTAIN MOTIONS (CONT'D)

Sec. 11-10(c) provides that "***surreply memorandum*** cannot be filed ***without the permission of the judicial authority.***"

PRACTICE TIP: If you do not have enough time to seek permission before oral argument/short calendar, consider filing the motion for permission and attaching your surreply to it.

SEC. 11-12. MOTIONS TO REARGUE

❖A party may file a ***motion to reargue*** in situations when:

-The court has overlooked a decision or controlling principle of law;

- The court has misapprehended certain facts; and,

- The court did not address "claims of law".

PRACTICE TIP: Cannot file a motion to reargue in order to have a ***"second bite of the apple"*** which means it is "not a device to…present additional cases or briefs which could have been presented at the time of the original argument". C.R. Klewin Northeast, LLC v. Bridgeport, 282 Conn. 54, 101 n. 39 (2007).

SEC. 11-12. MOTION TO REARGUE (CONT'D)

- Sec. 11-12 sets forth the ***requirements*** for filing a motion to reargue:

  -Must file ***within twenty days*** from the issuance of notice of the rendition or order;

  -Must identify decision or order;

  -Must identify the judge who rendered it; and,

  -Must identify the specific grounds for reargument.

PRACTICE TIPS:

- The Superior Court historically has ***strictly enforced*** the twenty day filing requirement.

- Consider filing a ***motion for extension*** of time pursuant to Sec. 11-12(b) immediately after receiving notice of the decision.

MOTIONS FOR CLARIFICATION

"Motions for interpretation or clarification, although not specifically described in the rules of practice, are commonly considered by trial courts and are ***procedurally proper***." Holcombe v. Holcombe, 22 Conn.App. 363, 366 (1990). "***There is no time restriction*** imposed on the filing of a motion for clarification." Barnard v. Barnard, 214 Conn. 99, 100 (1990)(Motion for clarification filed sixteen months after judgment).

P.B. CHAPTER 11: SHORT CALENDAR

- If a party desires oral argument at short calendar on a non-arguable matter, must file ***"Request for Argument", JD-CV-128*** during the short calendar marking period.

- Any party may reclaim a motion that has gone off the short calendar. Sec. 11-13(c).

- The court has ***120-days*** to decide a short calendar matter. 120-days measured from the date the matter has been submitted for decision or 120-days from the date of oral argument, or 120-days from briefs ordered by the court submitted. Sec. 11-19(a).

- The parties ***may waive*** the 120-day deadline. Sec. 11-19(a).

- If 120-day deadline elapses, a party may file a ***motion for reassignment within fourteen days of its expiration***. Failure to file such a motion acts as a ***waiver of the deadline***. Sec. 11-19(b).

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P.B. CHAPTER 13:
DISCOVERY AND DEPOSITIONS

Warned that the deponent would get in her face with his angry sock puppet, Sandra came prepared to retaliate.

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P.B. CHAPTER 13:
DISCOVERY AND DEPOSITIONS

- Sec. 13-2…….. Scope of Discovery; In General
- Sec. 13-4…….. Experts
- Sec. 13-6…….. Interrogatories; In general
- Sec. 13-7…….. Answers to Interrogatories
- Sec. 13-8…….. Objections to Interrogatories
- Sec. 13-9…….. Request for Production; In general
- Sec. 13-10…….. Responses to Request for Production
- Sec. 13-14…….. Order of Compliance
- Sec. 13-22…….. Admission of Facts and Execution of Writings
- Sec. 13-26…….. Depositions; In general
- Sec. 13-30…….. Deposition Procedure

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13.2 – Scope of Discovery; In General

- Generally, discovery is allowed in situations where it "***would be of assistance in the prosecution or defense of the action***" and "***if it can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure***."

- Improper to object on the ground that discovery sought would be inadmissible at trial if "***reasonably calculated to lead to the discovery of admissible evidence***."

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SEC. 13-4. EXPERTS

- Must disclose ***each person*** who may be called to testify as an expert at trial. Sec. 13-4(a).

- Must file an expert disclosure with court which states (1) ***the name, address and employer*** of each person who may be called to testify as an expert, (2) the ***field of expertise and subject matter*** of the expert testimony; (3) the ***expert opinion*** to which the witness is expected to testify, and; (4) the ***substance of the grounds*** for each expert opinion. Sec. 13-4(b)-(b)(1).

- If expert witness creates a report, the report is ***not filed with the court***. Also, disclosure requirements concerning expert opinions satisfied by making reference to the report in the disclosure and providing it to opposing counsel. Sec. 13-4(b)(1).

- Different disclosure requirements for treating health care provider. 13-4(b)(2). Also, a properly disclosed treating health care provider may testify as to ***any opinion in which fair notice is provided*** in her disclosed medical records and reports.

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SEC. 13-4(H): PRECLUSION OF EXPERTS

Sec. 13-4(h) sets forth the procedure for expert preclusion:

"A judicial authority may, ***after a hearing*** impose sanctions on a party for failure to comply with the requirements of this section. An order precluding the testimony of an expert witness may be entered ***only upon a finding that***: (1) the sanction of preclusion, including any consequence thereof on the sanctioned party's ability to prosecute or to defend the case, ***is proportional to the noncompliance at issue***, and (2) the noncompliance at issue ***cannot adequately be addressed by a less severe sanction or combination of sanctions.*** "

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SEC. 13-4(H): EXPERT PRECLUSION (CONT'D)

PRACTICE TIP: In Davis v. Property Owner's Association, 183 Conn. App. 690 (2018), the Connecticut Appellate Court reaffirmed that ***moving for a continuance*** of trial is the proper procedure for dealing with a late disclosure. "A continuance is ordinarily the proper method for dealing with a late disclosure…to minimize the possibly prejudicial effect of a late disclosure and absent such a request by the party claiming to have been thus prejudiced, ***appellate review of the late disclosure claim is not warranted***." Rullo v. General Motors Corp., 208 Conn. 74, 79 (1988).

In addition, the Davis court concluded that the party moving to preclude the expert testimony had ***sufficient time to mitigate any prejudice*** caused by the late disclosure.

SEC. 13-6:
INTERROGATORIES; IN GENERAL

- May be served upon any party at any time after the return date. Sec. 13-6(a).

- May be used at trial subject to the rules of evidence. Sec. 13-6(b).

- ***Standard interrogatories***: Interrogatories for personal injury actions involving motor vehicle accident, premises liability, loss of consortium, uninsured/underinsured motorist coverage limited to Forms 201, 202, 203, 208, 210, 212, 213, and 214. Sec. 13-6(b).

- May serve a ***notice of interrogatories*** in lieu of Forms 201, 202, 203, 208, 210, 212, 213, and 214. Sec. 13-6(d).

- **Nonstandard interrogatories**: May seek permission to file ***nonstandard interrogatories*** in addition to standard interrogatories. Sec. 13-6(c). Parisi v. Lakeview Ctr. Associates, 2016 Conn.Super. LEXIS 1888 ("The court, in order to grant such a motion, must determine that such [standard] interrogatories [or requests for production] ***are inappropriate or inadequate in the particular action***. Clearly, the court must first make a determination as to the adequacy and appropriateness of the standard discovery requests as they pertain to the instant case.").

SEC. 13-7. ANSWERS TO INTERROGATORIES

- Must answer or object ***within sixty days*** unless the period is ***extended or shortened*** by the judicial authority. Sec. 13-7(a).

- Must be answered ***under oath***. Sec. 13-7(a).

- If a party files an objection to one or more interrogatories, ***must still answer*** the remaining interrogatories within sixty days. Sec. 13-7(d).

- The party serving interrogatories may file a ***motion for compliance*** pursuant to Sec. 13-14 if the party fails to respond. Sec. 13-7(e).

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SEC. 13-8. OBJECTIONS TO INTERROGATORIES

- Objections ***must include*** (1) the interrogatory, (2) specifically state the reason for the objection, and (3) state whether responsive information is being withheld on the basis of the stated objection. Sec. 13-8(a).

- Objections filed with the court. Sec. 13-8(a).

- ***Cannot object*** to interrogatories in Forms 201, 202, 203, 208, 210, 212, 213 and/or 214. Sec.13-8(a).

- ***Cannot place the objection*** on the short calendar until counsel files affidavit "certifying that bona fide attempts" were made to resolve the objection. Sec.13-8(c).

- A party has ***twenty days*** to answer an interrogatory if the court overrules the objection ***unless otherwise ordered by the judicial authority***. Sec. 13-8(c).

SEC. 13-9:
REQUESTS FOR PRODUCTION; IN GENERAL

- May request the following pursuant to Sec. 13-9(a): (1) request documents and photographs, (2) opportunity to inspect, test or sample "tangible things", (3) request entry upon land to inspect, measure, survey, photograph, test or sample "property or any designated object or operation thereon".

- ***Standard RFPs:*** Interrogatories for personal injury actions involving motor vehicle accident, premises liability, loss of consortium, uninsured/underinsured motorist coverage limited to Forms 204, 205, 206, 209, 211, 215 and/or 216. P.B. Sec. 13-9(a).

- **Nonstandard RFPS**: May move for permission to file nonstandard RFP. Sec. 13-9(b).

- May serve RFPs ***at any time*** after the return date. Sec. 13-9(c).

- May serve ***notice of RFPs*** in lieu of Forms 204, 205, 206, 209, 211, 215 and/or 216. Sec. 13-9(c).

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SEC. 13-10. RESPONSES TO REQUESTS FOR PRODUCTION; OBJECTIONS

- Must serve written responses to RFPs ***within sixty days*** after the date of certification of service unless the court allows ***longer or shorter time***. Sec. 13-10(a).

- Objection by a party of some RFPs does not "relieve" party of responding to remaining RFPs. Sec. 13-10(d).

- Objections must be filed with the court. Sec. 13-10(e) and (f).

- Cannot object to RFPs set forth in Forms 204, 205, 206, 209, 211, 215 and/or 216.

- No objection to any RFP may appear on the short calendar until affidavit filed certifying that parties have made ***"good faith" efforts*** to resolve objection. Sec. 13-10(i).

- Party may move for an order for failure to comply with RFPs pursuant Sec. 13-14. Sec. 13-10(k).

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P.B. Standard Forms for Interrogatories and RFPs

- Form 201 — Plaintiff's Interrogatories (Motor Vehicle)
- Form 202 — Defendant's Interrogatories (Motor Vehicle)
- Form 203 — Plaintiff's Interrogatories (Premises Liability)
- Form 204 — Plaintiff's RFPs (Motor Vehicle)
- Form 205 — Defendant's RFPs (Motor Vehicle)
- Form 206 — Plaintiff's RFPs (Premises Liability)
- Form 208 — Defendant's Supplemental Interrogatories – Worker's Compensation Benefits – No Intervening Plaintiff
- Form 209 — Defendant's Supplemental RFPs
- Form 210 — Defendant's Interrogatories – Workers' Compensation Benefits – Intervening Plaintiff
- Form 211 — Defendant's RFPs – Workers' Compensation Benefits – Intervening Plaintiff
- Form 212 — Defendant's Interrogatories – Loss of Consortium
- Form 213 — Plaintiff's Interrogatories – Uninsured/Underinsured Motorist Cases
- Form 214 — Defendant's Interrogatories – Uninsured/Underinsured Motorist Cases
- Form 215 — Plaintiff's RFPs – Uninsured/Underinsured Motorist Cases
- Form 216 — Defendant's RFPs – Uninsured/Underinsured Motorist Cases

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SEC. 13-14. ORDER FOR COMPLIANCE; FAILURE TO ANSWER OR COMPLY WITH ORDER

Pursuant to Sec. 13-14(a), a party may file a ***motion for compliance/ motion for nonsuit*** if:

- A party has failed to answer interrogatories/requests for production;
- A party has failed to answer them "fairly";
- A party has "intentionally answered them falsely or in a manner calculated to mislead".
- A party has failed to submit for an independent physical/mental examination; and,
- A party has failed to appear and testify at a duly noticed deposition.

SEC. 13-14. ORDER FOR COMPLIANCE (CONT'D)

Pursuant to Sec. 13-14(b), the moving party may ask the court for the following relief:

- The entry of a ***nonsuit or default***. Sec. 13-14(b)(1);
- The ***award of costs*** for preparing the motion and a ***reasonable attorney's fee***. Sec. 13-14(b)(2);
- An order that "the matters regarding which the discovery was sought or other designated facts ***shall be taken to be established*** for the purposes of the action in accordance with the claim of the party obtaining the order". Sec. 13-14(b)(3);
- An order ***prohibiting a party from "introducing designated matters in evidence***". Sec. 13-14(b)(4); and,
- An ***entry of a judgment of dismissal*** against the plaintiff. Sec. 13-14(b)(5)

SEC. 13-22. REQUESTS FOR ADMISSION OF FACTS AND EXECUTION OF WRITINGS

- May file ***request for admission*** asking that a party admit the truth of statements or opinions of fact, or the application of law to fact, as well as "the existence, due execution and genuineness of any documents." Sec. 13-22(a).

- May file requests for admission ***at any time after the return date*** without leave of the judicial authority.

- ***No limit*** on "frequency of use" of requests for admission unless court orders otherwise.

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SEC. 13-23 AND SEC. 13-24.
REQUESTS FOR ADMISSION (CONT'D)

- Must answer in ***30-days of service*** unless time period extended by the court. Otherwise, ***statement is admitted and conclusively established***. Sec. 13-23(a).

- ***Withdrawal/Amendment***: "Judicial authority may permit withdrawal or amendment when the presentation of the merits of the action ***will be subserved*** thereby and the party who obtained the admission fails to satisfy the judicial authority that withdrawal or amendment will prejudice such party in maintaining his or her action or defense on the merits." Sec. 13-24(a).

- In some cases, the court has relied on requests for admission which were admitted on account of a party's failure to respond within 30-days in granting a motion for summary judgment. **Examples**: Bank of Am., N.A. v. Kydes, 183 Conn. App. 479 (2018); JP Morgan Chase Bank, N.A. v. Eldon, 144 Conn.App. 260 (2013).

CHAPTER 13: DEPOSITIONS

- In general, any party who ***has appeared*** in a civil action may after the commencement of the action take the testimony of any party by deposition. Sec. 13-26.

- Must provide ***reasonable notice*** in writing to each party to the action. Sec. 13-27(a).

- May take the ***videotape deposition*** without court approval provided that (1) deposition notice indicates that deposition will be videotaped, and (2) deposition is also recorded stenographically. Sec. 13-17(f)(2).

- May ***subpoena a witness*** to appear at his deposition. If subpoena lawfully served, and party fails to appear at his deposition without ***just excuse***, the court can issue a ***capias***. The court can order that the person subpoenaed be "***committed to jail*** until he or she signifies a willingness to comply with it." Sec. 13-28(f).

- Any party who is a ***Connecticut resident*** may be compelled by notice provided in 13-27(a) to give a deposition at any place within the county of such party' residence, or within thirty miles of such residence, or at such other place as ordered by the court. Sec. 13-29(a).

CHAPTER 13: EXPERT DEPOSITIONS

- In general, the party disclosing an expert witness must, upon the request of an opposing party, produce to all other parties ***all materials obtained, created and/or relied upon*** by the expert in connection with his or her opinions in the case ***within fourteen days prior to the expert's deposition*** or within the time frame in the Schedule for Expert Discovery. This rule does not apply to treating health care providers. Sec. 13-4(3).

- In general, the party taking the expert deposition must pay for the fees and expenses of the deposition. Sec. 13-4(c)(2).

- Party must pay for (1) a ***reasonable fee*** for the time of the witness to attend the deposition itself and the witness' travel time to and from the place of the deposition; and (2) the ***reasonable expenses*** actually incurred for travel to and from the place of deposition and lodging, if necessary. Sec. 13-4(c)(2).

- Party taking the deposition is not responsible for paying for the ***expert's preparation time***. 13-4(c)(2).

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SEC. 13-32. STIPULATIONS REGARDING DISCOVERY AND DEPOSITIONS

Sec. 13-32. Stipulations regarding Discovery and Deposition Procedure

"Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used as other depositions, and (2) ***modify the procedure provided by this chapter for other methods of discovery***."

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CHAPTER 17: JUDGMENTS

CHAPTER 17:
JUDGMENTS

- Sec. 17-11……. Offer of Compromise by Defendant
- Sec. 17-12……. Acceptance of Defendant's Offer
- Sec. 17-13……. Defendant's Offer Not Accepted
- Sec. 17-14……. Offer of Compromise by Plaintiff
- Sec. 17-15……. Acceptance of Plaintiff's Offer
- Sec. 17-18……. Judgment where Plaintiff Recovers an Amount Equal to or Greater than Offer
- Sec. 17-25……. Motion for Default and Judgment
- Sec. 17-44……. Summary Judgments; Scope of Remedy
- Sec. 17-45……. Proceedings upon Motion for Summary Judgment
- Sec. 17-47……. When Appropriate Documents are Unavailable
- Sec. 17-49……. Judgment

SEC. 17-11, SEC. 17-12 AND SEC. 17-13: OFFER OF COMPROMISE BY DEFENDANT

- ***Offer to settle*** the claim for a sum certain filed with the court. Sec. 17-11.

- May file ***not later than thirty days*** before the commencement of jury selection in a jury trial or before the commencement of evidence in a court trial. Sec. 17-11.

- **Offer Accepted**: The plaintiff may accept the offer of compromise ***within sixty days*** after being notified by the defendant of the filing. The plaintiff accepts the offer of compromise by filing a written acceptance with the court. Must also file a ***withdrawal of action***. Sec. 17-12.

- **Offer Not Accepted**: "…unless recovering more than the sum specified in the offer, with interest from its date, [the plaintiff] shall recover no costs accruing after the plaintiff received notice of the filing of such offer, but shall pay the defendant's costs accruing after said time. Such costs may include reasonable attorney's fees in an amount not to exceed $350." Sect 17-13.

SEC. 17-14, SEC. 17-15 AND SEC. 17-18.
OFFER OF COMPROMISE BY PLAINTIFF

- The plaintiff may file an offer of compromise ***not earlier than one hundred and eighty days after service of process is made on the defendant but not later than thirty days*** before the commencement of jury selection or the commencement of evidence in a court trial. Sec. 17-14.

- **Offer Accepted**: The defendant may accept the offer of compromise ***within thirty days*** of being notified of the filing of the offer of compromise and prior to the rendering of a verdict by the jury or an award by the judicial authority. Sec. 17-15.

- **Offer Not Accepted**: If OC not accepted, and the plaintiff recovers an ***amount equal to or greater*** than the OC, the plaintiff may recover 8 percent annual interest on the OC. Sec. 17-18.

CHAPTER 17: MOTIONS FOR DEFAULT/NONSUIT

- May file motion for default/nonsuit if a party ***fails to comply with a court order***. Sec. 17-19.

- May file motion for default/nonsuit if a party fails to file an appearance ***on or before the second day following the return date***. Sec. 17-20.

- Where a defendant ***fails to plead pursuant to Sec. 10-8***, the plaintiff may file a motion for default. Clerk cannot act on the motion ***less than seven days from the filing***. Sec. 17-32.

- A defaulted party may file a motion to set aside the default prior to the entry of a judgment. The judicial authority may grant the motion for ***good cause shown***. Sec. 17-42.

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SEC. 17-43. OPENING JUDGMENT UPON DEFAULT OR NONSUIT

- Must file motion to open the judgment ***within four months*** succeeding the date that notice of the judgment was sent. Sec. 17-43(a).

- Motion must state that a "***good cause of action or defense*** in whole or in part existed at the time of the rendition of such judgment and the ***party was prevented by mistake, accident, or other reasonable cause from prosecuting or appearing to make the same***." Sec. 17-43(a).

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SEC. 17-49. JUDGMENT

Sec. 17-49. Judgment

"The judgment sought shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is ***no genuine issue as to any material fact*** and that the ***moving party is entitled to judgment as a matter of law***."

17-44. SUMMARY JUDGMENTS; SCOPE OF REMEDY

- Any party may file motion for summary judgment in any action ***as a matter of right*** at any time ***if no scheduling order exists*** and the ***case has not been assigned for trial***.

- If no scheduling order exists but the case is assigned for trial, a party ***must move for permission***.

- May move for summary judgment as to ***counterclaims, cross complaints***, ***and defenses***.

- Pending motion for summary judgment "shall delay trial only at the ***discretion of the trial judge***."

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17-45. PROCEEDINGS UPON MOTION FOR SUMMARY JUDGMENT

- A motion for summary judgment shall be supported by appropriate documents, including, but not limited to ***affidavits, certified transcripts of testimony under oath, disclosures, written admissions and other supporting documents***. Sec. 17-45(a).

- Nonmoving party ***must file response within forty-five days*** unless the judicial authority extends the deadline. Sec. 17-45(b).

- Moving party cannot claim motion for summary judgment to the short calendar ***less than forty-five days*** from the date of filing. Sec. 17-45(c).

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17-45. PROCEEDINGS UPON MOTION FOR SUMMARY JUDGMENT (CONT'D)

PRACTICE TIPS: In Teodoro v. City of Bristol, 184 Conn. App. 363 (2018), the Connecticut Appellate Court clarified Sec. 17-45 as to the proper procedure for submitting "certified transcripts of testimony under oath" in support of a motion for summary judgment. ("We hold that the ***certification page from the original certified deposition transcript*** from which an excerpt was taken is sufficient to authenticate the excerpt as an accurate transcription of testimony given under oath, and thus to establish its admissibility for summary judgment purposes, ***at least where***, as here, ***it is accompanied by other portions of the original deposition transcript tending to establish that the testimony set forth in it was given under oath and that it was accurately transcribed***.").

17-45. PROCEEDINGS UPON MOTION FOR SUMMARY JUDGMENT (CONT'D)

PRACTICE TIP: In Meadowbrook Center, Inc. v. Robert Buchman, 328 Conn. 586 (2018), the Connecticut Supreme Court adopted the federal "excusable neglect" standard for determining whether to consider an untimely filing. ("Factors to be considered in evaluating excusable neglect include (1) the danger of prejudice to the [nonmovant], (2) the length of the delay and its potential impact on judicial proceedings (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith.").

SEC. 17-47. WHEN APPROPRIATE DOCUMENTS ARE UNAVAILABLE

Sec. 17-47. – When Appropriate Documents Are Unavailable

"Should it appear from the affidavits of a party opposing the motion that such party cannot, for reasons stated, present facts essential to justify opposition, the judicial authority may ***deny the motion for judgment*** or ***may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other orders as is just***."

SEC. 17-47. WHEN APPROPRIATE DOCUMENTS UNAVAILABLE (CONT'D)

"A party opposing a summary judgment motion pursuant to [Practice Book Sec. 17-47] on the ground that more time is needed to conduct discovery bears the burden of establishing a valid reason why the motion should be denied or its resolution postponed, ***including some indication as to what steps that party has taken to secure facts necessary to defeat the motion***....The trial court has wide discretion under [Practice book Sec. 17-47] to determine whether the party seeking additional time to conduct discovery ***already has had a sufficient opportunity to establish facts in opposition to the summary judgment motion***, and we will not disturb its exercise of that discretion absent a clear showing of abuse."

Weismann v. Koskoff, Koskoff & Bieder, PC, 136 Conn.App. 557, 559-60 (2012).

WRIT OF AUDITA QUERELA

- Latin for "the complaint having been heard".

- "…the ***writ of audita querela*** was found to be for use in civil matters when enforcement of a judgment ***would be contrary to the ends of justice due to matters that have arisen since its rendition***." State v. Cotto, 111 Conn.App. 818, 820 (2008).

- "Audita querela is a remedy granted in favor of one against whom execution has issued on a judgment, the enforcement of which would be contrary to justice because of (1) matters arising subsequent to its rendition, or (2) prior existing defenses that were not available to the judgment debtor in the original action, or (3) the judgment creditor engaged in fraudulent conduct or circumstances over which the judgment debtor had no control." Oakland Heights Mobile Park, Inc. v. Simon, 40 Conn. App. 30, 32 (1995).

- "There is no Practice Book rule regarding Writs of Audita Querela. There is no statute authorizing Writs of Audita Querela. Writs of Audita Querela are common law." Housing Authority v. Melanson, 23 Conn.App. 519 (1990).

- Considered an ***extraordinary remedy***.

P.B. CIVIL PROCEDURE: MISCELLANEOUS SECTIONS

Chapter 1: Scope of Rules

- Sec. 1-8 (Rules To Be Liberally Interpreted). "The design of these rules being to facilitate business and advance justice, ***they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice***".

Chapter 14 – Dockets, Trial Lists, Pretrials and Assignments Lists

- Sec. 14-3 (Dismissal for Lack of Diligence). "If a party shall fail to prosecute an action with ***reasonable diligence***, the judicial authority may, after a hearing, on motion by any party to the action…***or on its own motion***, render a judgment dismissing the action with costs."

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PRACTICE BOOK 101:
PROCEDURE IN CIVIL MATTERS

PULLMAN & COMLEY 100 YEARS

PRACTICE BOOK 101 CLE

FAMILY LAW

BY: JOHANNA S. KATZ

APRIL 2, 2019

FAMILY LAW PRACTICE BOOK SECTIONS

- Chapter 25 governs Procedure in Family Matters
- Other Practice Book sections commonly referred to:
  - Chapter 10: Pleadings
  - Chapter 11: Motions, Requests, Orders of Notice, and Short Calendar
    - See Practice Book 25-23
  - Chapter 13: Discovery and Depositions
  - Rules of Appellate Procedure: Chapter 60, *et. seq*.

ORDER OF PLEADINGS

- Practice Book § 25-11:
  - (1) the plaintiff's complaint;
  - (2) the defendant's motion to dismiss the complaint;
  - (3) the defendant's motion to strike the complaint or claims for relief;
  - (4) the defendant's answer, cross complaint and claims for relief;
  - (5) the plaintiff's motion to strike the defendant's answer, cross complaint, or claims for relief;
  - (6) the plaintiff's answer.

COMPLAINT

- Practice Book § 25-2 governs the drafting of the Complaint in a dissolution of marriage or civil union, legal separation or annulment
- (a) Must state the **date** and **place**, including the city or town, of the marriage and the facts necessary to give the court jurisdiction.
  - General Statutes § 46b-42 provides that the Superior Court shall have exclusive jurisdiction of all complaints seeking a decree of annulment, dissolution of a marriage or legal separation.
  - General Statutes § 46b-1 specifically enumerates several other types of matters deemed to be family relations matters which are within the jurisdiction of the superior court.
  - General Statutes § 46b-44 sets forth the residency requirements.
- (b) Must also state whether there are minor children, the name and date of birth of each, and the name of any individual or agency presently responsible by virtue of judicial award for the custody or support of any child.

COMPLAINT

- (c) The complaint shall also set forth the plaintiff's demand for relief and the automatic orders as required by Section § 25-5.
  - This claim should indicate first whether the party is seeking a dissolution of marriage or civil union, legal separation or annulment.
  - It should then list any of the following additional items which are being requested: custody of the minor child or children; support of the minor child or children; alimony; an assignment of all or part of the estate of the defendant; and/or counsel fees.
  - Either party may also request that their name be changed back to his or her birth name or former name.

AUTOMATIC ORDERS

- The purpose of the Automatic Orders is "to assist families in transition in maintaining, to the greatest extent possible, the status quo at the commencement of an action for dissolution of marriage…." Strich v. Strich, 47 Conn. Supp. 530, 532-533 (Winslow, J.) (Oct. 22, 2002).
- Apply to both parties
  - Are effective with regard to the plaintiff upon signing the complaint and effective with regard to the defendant upon service of the complaint
  - Shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties

AUTOMATIC ORDERS
Practice Book 25-5

PULLMAN & COMLEY 100 YEARS

- **(a)** In all cases **involving a child or children**, **whether or not the parties are married** or in a civil union:
  - (1) Neither party shall permanently remove the minor child or children from the state of Connecticut, without written consent of the other or order of a judicial authority.
  - (2) A party vacating the family residence shall notify the other party or the other party's attorney, in writing, within forty-eight hours of such move, of an address where the relocated party can receive communication. This provision shall not apply if and to the extent there is a prior, contradictory order of a judicial authority.
  - (3) If the parents of minor children live apart during this proceeding, they shall assist their children in having contact with both parties, which is consistent with the habits of the family, personally, by telephone, and in writing. This provision shall not apply if and to the extent there is a prior, contradictory order of a judicial authority.
  - (4) Neither party shall cause the children of the marriage or the civil union to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.
  - (5) The parties shall participate in the parenting education program within sixty days of the return day or within sixty days from the filing of the application.
  - (6) These orders do not change or replace any existing court orders, including criminal protective and civil restraining orders.

AUTOMATIC ORDERS

- **(b)** In **all cases involving a marriage** or civil union, **whether or not there are children**:
  - (1) Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.
  - (2) Neither party shall conceal any property.
  - (3) Neither party shall encumber (except for the filing of a lis pendens) without the consent of the other party, in writing, or an order of a judicial authority, any property except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.
  - (4) Neither party shall cause any asset, or portion thereof, co-owned or held in joint name, to become held in his or her name solely without the consent of the other party, in writing, or an order of the judicial authority.
  - (5) Neither party shall incur unreasonable debts hereafter, including, but not limited to, further borrowing against any credit line secured by the family residence, further encumbrancing any assets, or unreasonably using credit cards or cash advances against credit cards.
  - (6) Neither party shall cause the other party to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.
  - (7) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners or renters insurance policies in full force and effect.
  - (8) If the parties are living together on the date of service of these orders, neither party may deny the other party use of the current primary residence of the parties, whether it be owned or rented property, without order of a judicial authority. This provision shall not apply if there is a prior, contradictory order of a judicial authority.

AUTOMATIC ORDERS

- **(c) In all cases**:
  - (1) The parties shall each complete and exchange sworn financial statements substantially in accordance with a form prescribed by the chief court administrator **within thirty days of the return day**. The parties may thereafter enter and submit to the court a stipulated interim order allocating income and expenses, including, if applicable, proposed orders in accordance with the uniform child support guidelines.
  - (2) The case management date for this case is _____. The parties shall comply with Section 25-50 to determine if their actual presence at the court is required on that date.

AUTOMATIC ORDERS

- **(d)** The automatic orders of a judicial authority as enumerated above shall be set forth immediately following the party's requested relief in any complaint for dissolution of marriage or civil union, legal separation, or annulment, or in any application for custody or visitation, and shall set forth the following language in bold letters:
- **Failure to obey these orders may be punishable by contempt of court. If you object to or seek modification of these orders during the pendency of the action, you have the right to a hearing before a judge within a reasonable time**.
- The clerk shall not accept for filing any complaint for dissolution of marriage or civil union, legal separation, or annulment, or any application for custody or visitation, that does not comply with this subsection.

MOTION TO DISMISS

- Practice Book § 25-12: must be filed within 30 days within filing the appearance
- Practice Book § 25-13 (a): The 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.
- 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.
- Practice Book § 25-13(b): If an adverse party objects, he or she must file an objection at least five days before the motion is to be considered on the short calendar

MOTION TO STRIKE

- Practice Book § 25-16
  - (a) Whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint or cross complaint, or of any one or more counts thereof, to state a claim upon which relief can be granted, or (2) the legal sufficiency of any claim for relief in any such complaint or cross complaint, or (3) the legal sufficiency of any such complaint or cross complaint, or any count thereof, because of the absence of any necessary party, or (4) the joining of two or more causes of action which cannot properly be united in one complaint or cross complaint, whether the same be stated in one or more counts, or (5) the legal sufficiency of any answer to any complaint or cross complaint, or any part of that answer contained therein, that party may do so by filing a motion to strike the contested pleading or part thereof.
  - (b) A motion to strike on the ground of the non-joinder of a necessary party must give the name and residence of the missing party or such information as the moving party has as to his or her identity and residence and must state his or her interest in the cause of action.

MOTION FOR MODIFICATION

- Practice Book § 25-26
  - (a) if the moving party is arrears of his or her alimony or child support obligation, court shall determine whether that party is in contempt of court and determine whether an arrearage is owed
  - (d) motion for modification shall state clearly in the caption whether it is *pendente lite* or post judgment
  - (e) motion for modification must state the factual and legal basis for the claimed modification and shall include the outstanding order and date thereof to which the motion for modification is addressed

  - See also Connecticut General Statutes § 46b-86

PRENUPS AND POSTNUPS

- Practice Book § 25-2A
- Connecticut Premarital Agreement Act, General Statutes § 46b-36

"How romantic!
A handwritten prenuptial!"

PRENUPS AND POSTNUPS

PULLMAN & COMLEY 100 YEARS

- Practice Book § 25-2A
  - (a) If a party seeks enforcement of a premarital agreement or postnuptial agreement,
    - Must specifically demand enforcement of that agreement, including its date, within the party's claim for relief.
    - within sixty days of the return date.
  - (b) If a party seeks to avoid the premarital agreement or postnuptial agreement claimed by the other party,
    - Must file a reply specifically demanding avoidance of the agreement and stating the grounds thereof.
    - within sixty days of the claim seeking enforcement of the agreement

DISCOVERY

- Practice Book § 25-31 makes Practice Book §§ 13-1 to 13-11, 13-13 to 13-16 and 13-17 to 13-32 applicable to family matters.

MD&P – Practice Book § 25-32

- **Mandatory** Disclosure and Production

- Applies to any
  - dissolution,
  - legal separation,
  - annulment,
  - support proceeding,
  - postjudgment proceeding for modification of alimony or support.

- Must provide responsive documents within 30 days

MD&P – Practice Book § 25-32

- (1) all federal and state income-tax returns filed within the last three years, including personal returns and returns filed on behalf of any partnership or closely held corporation of which a party is a partner or shareholder;
- (2) IRS forms W-2, 1099 and K-1 within the last three years including those for the past year if the income-tax returns for that year have not been prepared;
- (3) copies of all pay stubs or other evidence of income for the current year and the last pay stub from the past year;
- (4) statements for all accounts maintained with any financial institution, including banks, brokers and financial managers, for the past 24 months;
- (5) the most recent statement showing any interest in any Keogh, IRA, profit-sharing plan, deferred-compensation plan, pension plan, or retirement account;
- (6) the most recent statement regarding any insurance on the life of any party;
- (7) a summary furnished by the employer of the party's medical insurance policy, coverage, cost of coverage, spousal benefits, and COBRA costs following dissolution;
- (8) any written appraisal concerning any asset owned by either party.

MD&P – Practice Book § 25-32

- Not all the items listed will be relevant to every case and logic dictates that it might be advisable to tailor the list to suit the circumstances of the particular case.
- The court is authorized to vary the foregoing disclosure requirements "upon good cause shown."
- In addition, the duty to disclose continues during the pendency of the action. See also Practice Book § 13-15
- The use of this mandatory disclosure provision does not preclude discovery under any other provisions of the rules. One may obtain the mandatory materials and then decide whether depositions, interrogatories or other discovery is also necessary.

Practice Book § 25-56 RFP

- (a) At the trial management conference prior to the commencement of an evidentiary hearing or trial, **but in no event later than five days before the scheduled hearing date**, either party may serve on the other a request for production of documents and tangible things.
- (b) If a party fails to produce the requested documents and items, the party filing the request shall be permitted to introduce into evidence such copies as that party might have, without having to authenticate the copies offered.

Practice Book § 25-56 RFP

- Requires that the request be served 5 days before the hearing.
- As the Appellate Court made clear in Finan v. Finan, 107 Conn. App. 369 (2008), 5 days means 5 calendar days and not 5 business days.
- Pursuant to (c) of 25-56, If a party fails to produce the requested documents and items and the requesting party does not have copies to offer into evidence, the judicial authority may impose such sanctions on the non-producing party as the judicial authority deems appropriate pursuant to Section 13-14
  - Award of costs and attorney's fees
  - Order that the matter be taken to be established for the purposes of the action in accordance with the requesting party's claims
  - Order prohibiting the party who failed to comply from introducing designated matters into evidence

Trial Compliance § 25-30

- (a) At least **five days before the hearing date** each party must file a sworn financial affidavit.

- (b) At least **ten days before the scheduled family special masters session, alternative dispute resolution session, or judicial pretrial**, the parties shall serve on each appearing party, but not file with the court, written proposed orders, and,
- **at least ten days prior to the date of the final limited contested or contested hearing**, the parties shall file with the court and serve on each appearing party written proposed orders.

Trial Compliance § 25-30

- (c) The written proposed orders shall be comprehensive and shall set forth the party's requested relief including, where applicable, the following:
  - (1) a parenting plan; (2) alimony; (3) child support; (4) property division; (5) counsel fees; (6) life insurance; (7) medical insurance; and (8) division of liabilities.
- (d) The proposed orders shall be neither factual nor argumentative but shall, instead, only set forth the party's claims.
- (e) Where there is a minor child who requires support, the parties shall file a completed child support and arrearage guidelines worksheet
- (f) At the time of any hearing, including pendente lite and postjudgment proceedings, in which a moving party seeks a determination, modification, or enforcement of any alimony or child support order, a party shall submit an Advisement of Rights Re: Wage Withholding Form (JD-FM-71).

Trial Compliance § 25-30

- A party who has failed to submit a child support guidelines worksheet cannot complain of the court's alleged failure to comply with the guidelines. See Gentile v. Carneiro, 107 Conn. App. 630 (2008).
- Proposed Orders are not an opportunity to advance factual or legal arguments.
- While Proposed Orders are required, it is not necessary that a party set forth all the possible orders that he or she would prefer. Fitzsimons v. Fitzsimons, 116 Conn. App. 449 (2009).
- The court has the discretion to enter orders which differ from the terms sought by either party.

Appointment of GAL/AMC

- Guardian Ad Litem:
  - Practice Book § 25-62
  - the court has the discretion to appoint a GAL for a minor involved in any family matter.
  - Unless the court orders that another person be appointed guardian ad litem, a family-relations counselor or family-relations case worker shall be designated.
  - the court may order compensation for services rendered.
- Attorney for the Minor Child:
  - Practice Book § 25-62A
  - The court may appoint an attorney for a minor child in any family matter.
  - no person shall be appointed as an attorney for a minor child until he or she has completed the comprehensive training program for all family division attorneys for minor children sponsored by the Judicial Branch.

Experts

- Whenever the judicial authority deems it necessary, it may appoint any expert witnesses of its own selection.
  - Practice Book § 25-33 sets forth the procedure for the court's appointment of an expert.
  - This Section contains only very limited provisions for the advance disclosure of the conclusions of a court appointed expert. Pursuant to that rule, the expert "shall advise the parties of his or her findings, if any."
  - There is no time period for that disclosure fixed in the rule; however, it is clear from the language used that such an expert may not be called to testify until after the parties have been advised of his or her findings.

Evaluations – Practice Book § § 25-60; 25-60A; 25-61

- Where a court orders an evaluation/study/mediation, the case shall not be disposed of until the report has been filed, and counsel and the parties have had a reasonable opportunity to examine it prior to the time the case is to be heard, unless the judicial authority orders that the case be heard before the report is filed.
- The evaluation/report will be sealed and shall be available for inspection to counsel of record, guardians ad litem, and the parties to the action, unless otherwise ordered by the judicial authority.
- The evaluation or report shall be admissible in evidence provided the author of the report is available for cross-examination.
- The file compiled by family services in the course of preparing any mediation report or conflict resolution conference report **shall not be available for inspection or copying** unless otherwise ordered by the judicial authority.
- The file compiled by family services in the course of preparing an evaluation or study shall be available for **inspection only** to counsel of record, guardians ad litem, and the parties to the action to the extent permitted by any applicable authorization for release of information

PULLMAN & COMLEY 100 YEARS

These slides are intended for educational and informational purposes only. Readers are advised to seek appropriate professional consultation before acting on any matters in this update. These slides may be considered attorney advertising. Prior results do not guarantee a similar outcome.

PRACTICE BOOK 101

PROCEDURE IN CRIMINAL LAW MATERIALS

Submitted by:

Cody N. Guarnieri
Brown Paindiris & Scott, LLP

OLR RESEARCH REPORT

November 12, 2013 2013-R-0433

CRIMINAL DISCOVERY RULES

By: Christopher Reinhart, Chief Attorney

You asked for a summary of the discovery rules governing the sharing of information between prosecutors and defendants in state criminal proceedings.

SUMMARY

Discovery is the process by which opposing parties in a lawsuit obtain documents, information, and other evidence from each other prior to trial. In criminal cases, the opposing parties are prosecutors and defense attorneys (or the defendants themselves if they are not represented by counsel). Court rules generally govern the discovery process. A few statutes also apply, such as those governing privileged communications between certain people (for example, communications between attorneys and their clients and psychiatrists and their patients). Constitutional rights may also affect the disclosure of information during discovery. This report focuses on disclosures in criminal cases required during discovery under court rules. References to the “defendant” include defense counsel.

Under court rules, if the defendant requests it, the prosecutor must disclose to the defendant the existence of a number of items, provide copies of them, or allow the defendant to inspect and copy them. This includes (1) exculpatory (favorable to the defendant) information and certain reports and statements; (2) names and addresses of witness for trial; and (3) law enforcement reports, affidavits, and statements. Certain information is not subject to disclosure, such as internal prosecutorial or law enforcement documents, legal research, and records identifying the prosecutor's opinions or theories.

If the prosecutor requests it, the rules require the defendant to disclose to the prosecutor the existence of certain items in writing and make them available for examination and copying. This includes (1) items the defendant intends to offer as evidence and (2) expert reports or statements that will be used as evidence or are related to a witness' testimony. On request, defendants must also disclose whether they will raise certain defenses or alibis and provide witness' names, addresses, and statements.

On a motion by the prosecutor, the court can order a defendant to undergo a psychiatric examination or provide nontestimonial evidence. Nontestimonial evidence includes asking the defendant to move or speak in a lineup or submit to fingerprinting. The prosecutor or defendant can also seek a court subpoena to depose certain witnesses.

The rules require the prosecutor and defendant to make good faith efforts to secure documents or objects that are the subject of discovery orders (Conn. Practice Book (CPB) §§ 40-2 and -5). They must notify the other party and the court if additional material that must be disclosed is discovered (CPB § 40-3). But a prosecutor or defendant can object to, and a court can deny, disclosure of an item. The court can also grant a protective order to deny or restrict disclosure.

DISCLOSURE BY PROSECUTORS AND DEFENSE ATTORNEYS

Table 1 compares the information, documents, and items that the prosecutor and defense attorneys must disclose to each other under the criminal discovery rules. Generally, one party must make a request in writing and the opposing party must respond by disclosing the existence of the relevant information or items in writing and provide an opportunity for inspection and copying.

Table 1: Disclosures under the Criminal Discovery Rules

Type of Disclosure	*From Prosecutors to Defendants*	*From Defendants to Prosecutors*
Required Disclosures (CPB § 40-11)	● Information or materials favorable to the defendant (exculpatory) ● Books, tangible objects, papers, photographs, or documents within a government agency's possession, custody, or control that (1) the prosecutor intends to offer as evidence, (2) are material to the preparation of the defense, or (3) were obtained from or purportedly belong to the defendant ● Copies of the defendant's prior criminal record, if any, which are known or could be known by the prosecutor and are within the prosecutor's possession, custody, or control ● Experts' reports or statements related to the charged offense including results of physical and mental examinations and scientific tests, experiments, or comparisons which are material to the preparation of the defense or the prosecution intends to use at trial ● Arrest or search and seizure warrants related to the charged offense ● Written, recorded, or oral statements concerning the offense made by the defendant or a codefendant, before or after arrest, to a law enforcement officer or person directed by or cooperating with an officer	● Books, papers, documents, photographs, or tangible objects the defendant intends to offer as evidence at trial except for any communications from the defendant ● Experts' reports or statements made in connection with the case, including results of physical or mental examinations and scientific tests, experiments, or comparisons (1) the defendant intends to offer as evidence at trial or (2) relating to the anticipated testimony of a person the defendant intends to call as a witness

	● Relevant statements of coconspirators the prosecutor intends to offer in evidence at any trial or hearing	
Witnesses (CPB §§ 40-10 and -13)	● Names and addresses of people the prosecutor intends to call as witnesses ● Records of their felony convictions or pending criminal charges known to the prosecutor (The rules limit disclosures (1) to non-represented defendants and (2) of police or correction officer's personal residential addresses and other addresses under certain circumstances)	● Names and addresses of people the defendant intends to call as witnesses ● Any witness statements, other than the defendant's, the defense or their agents possess if the statements relate to the witness' testimony
Law Enforcement Reports, Affidavits, and Statements (CPB §§ 40-10 and -13A)	● Copies of all statements, law enforcement reports, and affidavits regarding the charged offense within the possession of the prosecutor and his or her agents (including law enforcement officers) (The rules limit the use and further disclosure of this information)	No obligation
Derivative Evidence (CPB § 40-28)	Copies of experts' reports derived from or based on the prosecution's examination of materials the defendant provided the prosecution during discovery	No obligation
Discretionary Disclosure (CPB §§ 40-12 and -27)	Other relevant material and information required to be disclosed by the court for good cause	Same
Information Not Subject to Disclosure (CPB §§ 40-14 and -31)	● Reports, memoranda, or other internal documents made by a prosecutor or law enforcement officer in connection with the investigation or prosecution of the case ● Legal research ● Records, correspondence, reports, or memoranda to the extent they contain a prosecutor's opinions, theories, or conclusions (These provisions do not shield exculpatory material, witness identities, or law enforcement records that must be disclosed)	● Reports, memoranda, or other internal defense documents made by the defendant, the defendant's counsel, or any person employed by the defendant in connection with the investigation or defense of the case ● Legal research ● Records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the defendant, the defendant's counsel, or any other person employed by the defendant in

		connection with the investigation or defense of the case (These provisions do not shield the required disclosures about witnesses and scientific and medical reports)
Certain Defenses and Related Documents (CPB §§ 40-17 and -18)	No obligation	● Notice of intent to raise an affirmative defense of mental disease or defect or of extreme emotional disturbance at the time of the alleged offense ● Notice of intent to introduce expert testimony related to one of these defenses or another condition related to whether the defendant had the mental state required for the charged offense ● Copies of reports of physical or mental examinations of the defendant prepared by an expert that the defendant intends to call as a witness
Alibi Disclosures (CPB §§ 40-21 to -24)	If the defendant files a notice of alibi defense, the prosecutor must file a notice stating the names and addresses of the witnesses it will use to (1) establish the defendant's presence at the scene of the offense and (2) rebut the defendant's witnesses	Notice regarding an alibi defense, where the defendant claims to have been at the time of the alleged offense, and the names and addresses of the witnesses the defendant will use to establish the alibi

OTHER TYPES OF EVIDENCE AND DISCLOSURE

Requested Psychiatric Examinations

The rules allow the court, on a prosecutor's motion, to order the defendant to submit to a psychiatric examination by a psychiatrist designated by the prosecutor. Statements made by the defendant during such an examination cannot be used as evidence of his or her guilt. The defendant must receive a copy of the psychiatric examination report (CPB § 40-19).

Nontestimonial Evidence

On a motion by the prosecutor, the court can order a defendant to participate in a reasonably conducted procedure to obtain nontestimonial evidence if there is probable cause to believe the evidence sought (1) may be of material aid in determining whether the defendant committed the offense charged and (2) cannot practicably be obtained from other sources. Nontestimonial evidence includes asking the defendant to move or speak in a lineup, wear particular clothing, provide handwriting samples, submit to photographs or fingerprinting, submit hair or blood samples, or have a physical exam. Any evidence obtained by the prosecutor from the defendant may be used only with respect to the charged or a related offense. The prosecutor must give the defendant a report of the procedure's results (CPB §§ 40-32 to -38).

On a motion by the defendant and if the results could contribute to an adequate defense, the court can order the prosecutor to:

1. arrange for the defendant's participation in one the above-described procedures or

2. have a scientific comparison made between two similar items of nontestimonial evidence the prosecutor possesses or controls (CPB §§ 40-38 and -39).

Depositions

In felony cases, on request of a party, the court can issue a subpoena requiring a person to appear for a deposition if the person's testimony may be required at trial and it appears the person:

1. will, because of physical or mental illness or infirmity, be unable to be present to testify at any trial or hearing;

2. resides outside of Connecticut, and his or her presence cannot be compelled;

3. will otherwise be unable to be present to testify at any trial or hearing; or

4. is an expert who examined a defendant regarding a defense of mental disease or defect or extreme emotional disturbance and has failed to file a written report as required by the rules.

Any statement by a potential deponent in the possession of the prosecutor or defendant must be disclosed at the deposition if disclosure would be required at trial (CPB § 40-44 et seq.).

CGS § 54-86 also addresses depositions but the court rule applies more broadly.

OBJECTION TO DISCLOSURE AND PROTECTIVE ORDERS

Objections

The prosecutor or defendant can object in writing to disclosure of any information or item if the objecting party (1) believes there is good cause an item or information should not be disclosed or (2) reasonably believes a protective order is warranted. The court, after a hearing, determines whether the information or items are disclosed (CPB § 40-8).

Protective Orders

After a hearing on a motion for a protective order, the court can deny or restrict disclosure or inspection; defer disclosure; or place reasonable conditions on inspecting, photographing, copying, or testing the items to protect their evidentiary value.

In deciding on the motion, the court can consider:

1. the motion's timeliness;

2. protecting witnesses and others from physical harm, threats, bribes, economic reprisals, and intimidation;

3. maintaining informants' secrecy for the effective investigation of criminal activity;

4. protecting confidential relationships, privileges, and communications recognized by law; and

5. any other relevant facts or factors (CPB §§ 40-29 and -40 et seq.).

CR:ro

DOCKET NUMBER	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	G.A. NO.
V.	:	AT
DEFENDANT	:	DATE

MOTION IN LIMINE RE:
SEQUESTRATION OF WITNESSES

Pursuant to Connecticut General Statutes § 54-85a, the Defendant herein, [name of defendant], respectfully moves that the court for an order sequestering any anticipated or likely witness in this matter from being present for pre-trials in which anticipated trial evidence is discussed, as well as from trial itself. Moreover, it is respectfully requested that the court order, as part of this sequestration, that witnesses not discuss their testimony with any other anticipated or likely witness in this matter.

"The right to have witnesses sequestered is an important right that facilitates the truth-seeking and fact-finding functions of a trial.... Sequestration serves a broad purpose. It is a procedural device that serves to prevent witnesses from tailoring their testimony to that of earlier witnesses; it aids in detecting testimony that is less than candid and assures that witnesses testify on the basis of their own knowledge.... In essence, it helps to ensure that the trial is fair." State v. Nguyen, 253 Conn. 639, 649–50, 756 A.2d 833 (2000) (Citations omitted; internal quotation marks omitted.)

WHEREFORE, the Defendant, [name of defendant], respectfully requests this Court to issue an order sequestering the witnesses as further described herein.

THE DEFENDANT

By _____
Cody N. Guarnieri, Esquire
Brown, Paindiris & Scott, LLP
100 Pearl Street, 2nd Floor
Hartford, CT 06103
Tel. No. (860) 522-3343
Fax No. (860) 522-2490
Firm Juris No. 020767
Individual Juris No. 434005
cody@bpslawyers.com

O R D E R

The within and foregoing having been presented to the Court, it is hereby ORDERED:

GRANTED / DENIED

BY THE COURT

_____
Judge/Assistant Clerk

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed this 4th day of February, 2019 to all pro se parties and counsel of record:

Clerk
Superior Court – GA No. 15
20 Franklin Square
New Britain, CT 06051
***Sent via facsimile to* (860) 515-5103**

State's Attorney's Office
Attn:
Superior Court – GA No. 15
20 Franklin Square
New Britain, CT 06051
***Sent via facsimile to* (860) 515-5266**

_____
Cody N. Guarnieri
Commissioner of the Superior Court

DOCKET NUMBER	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	G.A. NO.
V.	:	AT
DEFENDANT	:	DATE

MOTION FOR BILL OF PARTICULARS

Pursuant to Amendments Fifth, Sixth and Fourteenth of the United States Constitution, Article I, Sections 8 and 9 of the Connecticut Constitution, and the Connecticut Practice Book § 41-20 *et seq.*, and representing that the same is essential to understand the charges herein, to prepare for trial, to insure against present and future double jeopardy, and to enable the Court to ascertain whether the jury should be charged respecting lesser included offenses, the Defendant moves that the State be required to provide defense counsel with written answers to the following questions, stating the answers separately as to each Count of Information:

1. As to the First Count charging **Risk of Injury to a Minor**:

    a. State with specificity the **date, time and place** where the State claims the specific criminal actions occurred;

    b. State with specificity the exact statute and **subsection of the statute**, which the defendant is accused of violating; and

    c. State with specificity the **actions and the conduct**, which comprise the crime of Intentional Cruelty to a child.

2. As to the Second Count charging **Sexual Assault in the Second Degree**:

    a. State with specificity the **date, time and place** where the State claims the specific criminal actions occurred;

    b. State with specificity the exact statute and **subsection of the statute**, which the defendant is accused of violating; and

c. State with specificity the **actions and the conduct**, which comprise the crime of Intentional Cruelty to a child.

Neither this Motion nor one similar to it has previously been filed and ruled upon in this case. The relief herein requested is just and reasonable.

WHEREFORE, the Defendant, [name of defendant], respectfully requests this Court to Order the State to answer the Defendant's Bill of Particulars.

THE DEFENDANT

By _____

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Tel. No. (860) 522-3343
Fax No. (860) 522-2490
Firm Juris No. 020767
Individual Juris No. 434005
cody@bpslawyers.com

O R D E R

The within and foregoing having been presented to the Court, it is hereby ORDERED:

GRANTED / DENIED

BY THE COURT

_____

Judge/Assistant Clerk

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed this 18th day of September, 2018 to all pro se parties and counsel of record:

Clerk
Superior Court – GA No. 15
20 Franklin Square
New Britain, CT 06051
***Sent via facsimile to* (860) 515-5103**

State's Attorney's Office
Attn:
Superior Court – GA No. 17
131 N. Main Street
Bristol, CT 06010
***Sent via facsimile to* (860) 584-1369**

_____
Cody N. Guarnieri
Commissioner of the Superior Court

DOCKET NUMBER	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	G.A. NO.
V.	:	AT
DEFENDANT	:	DATE

DEFENDANT'S OBJECTION TO STATE'S REQUEST FOR DISCLOSURE AND PRODUCTION DATED FEBRUARY 4, 2019

The Defendant herein, [name of defendant], respectfully objects to the State's Request for Disclosure and Production dated February 4, 2019, specifically request No. 7, which is overly broad and untethered to any legal authority requiring the disclosure sought therein.

On February 4, 2019, the State filed a Request for Disclosure and Production in this matter. Pursuant to Practice Book § 40-13, the defendant is required to "promptly, but no later than forty five (45) days from the filing" of this request, provide a number of disclosures or production of documents. The specific materials sought are generally tied to Practice Book and statutory disclosure and production requirements. For example, the defendant's anticipated witness list, pursuant to Practice Book § 40-13(b), statements made by the defendant's anticipated witnesses, but for the Defendant, pursuant to Practice Book § 40-13(b) and whether the defendant intends to rely upon certain affirmative defenses, pursuant to Practice Book § 40-17.

Following these specific requests, each with an appropriate Practice Book reference, the State in Request No. 7 seeks "[a]ny and all documents, images, statements, items, reports, or any other object or information in any form not referenced above that the defendant intends to admit into evidence, use as a basis for cross-examination, or utilize in any other fashion during trial." Needless to say, there is no Practice Book or statutory reference following this request.

Without acknowledging that the defendant actually has or possesses any "documents, images, statements, items, reports, or any other object or information in any form" that is otherwise responsive to this request, the defendant objects on the broad, vague and improper nature of this request. The rules of practice related to a defendant's disclosure obligations are well-defined and laid out in Practice Book Sections 40-13, 40-17 through 18, and 40-21 through 24. Nowhere in those provisions is the State permitted to request the disclosure of information for documentation that the defense may "use as a basis for cross-examination, or utilize in any other fashion during trial."

In furtherance of the Defendant's disclosure requirements under the Practice Book, a number of possible trial exhibits have been disclosed to the State to date. Moreover, the defendant will continue to meet his obligation to provide further disclosures to the State as is required by the Practice Book.

WHEREFORE, the Defendant, [name of defendant], respectfully objects in part to the State's Request for Disclosure and Production dated February 4, 2019.

THE DEFENDANT

By _____

Cody N. Guarnieri, Esquire
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100 Pearl Street, 2nd Floor
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Fax No. (860) 522-2490
Firm Juris No. 020767
Individual Juris No. 434005
cody@bpslawyers.com

O R D E R

The within and foregoing having been presented to the Court, it is hereby ORDERED:

GRANTED / DENIED

BY THE COURT

_____

Judge/Assistant Clerk

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed this 5th day of February, 2019 to all pro se parties and counsel of record:

Clerk
Superior Court – GA No. 15
20 Franklin Square
New Britain, CT 06051
***Sent via facsimile to* (860) 515-5103**

State's Attorney's Office
Attn:
Superior Court – GA No. 15
20 Franklin Square
New Britain, CT 06051
***Sent via facsimile to* (860) 515-5266**

_____
Cody N. Guarnieri
Commissioner of the Superior Court

DOCKET NUMBER	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	G.A. NO.
V.	:	AT
DEFENDANT	:	DATE

MOTION FOR DISCOVERY

The defendant in the above captioned matter, [name of defendant], respectfully moves this Court, pursuant to Section 40-11, *et seq.* of the Connecticut Practice Book, the Sixth and Fourteenth Amendments to the Federal Constitution, Section 54-86c of the Connecticut General Statutes and the doctrine of *Brady v. Maryland,* 373 U.S. 83 (1963) to order the State's Attorney or his Assistant to disclose in writing the existence of and to permit the defendant to inspect and copy or photograph the materials stated below. In support of this motion, the defendant asserts the following:

1. The defendant, [name of defendant], was arrested by warrant dated February 8, 2017, returnable to the Superior Court, Geographical Area #17, located in Bristol, charging him with Risk of Injury to a Minor, in violation of C.G.S. § 52-21(a), as well as Sexual Assault in the Second Degree, in violation § 53a-71.

2. On or about March 9, 2017, in conformance with the office policy of the State's Attorney in G.A. #17, the defendant filed an informal discovery request on that office, asking for the production of a full copy of the State's file in this matter.

3. The State duly provided the defense with the arrest warrant affidavits, police reports, and written statements of witnesses then in the state's file.

4. On or about April 24, 2017, the defense made a further discovery request on the S.A.S.A then handling this matter, specifically requesting:

a. Any and all medical records associated with the alleged victim's sexual assault kit/intervention or subsequent care and treatment;

b. Documentation and any audio/visual recordings of any forensic interview of the alleged victim;

c. Copies of any audio/video recordings of the interviews of the alleged victim, the defendant, and other individuals who gave statements in this matter;

d. The school records acquired by investigators regarding the alleged victim;

5. In the summer or fall of 2017, the state did provide defense supplemental discovery in this matter which included the audio/video recordings of interviews with the victim, defendant and other individuals who provided statements in this matter.

6. In light of the procedural posture of this case, as well as the in follow-up with the informal requests previously made on the State, **by way of production,** the defense respectfully requests that the following materials and/or groups of materials be disclosed the defense:

a. Any and all medical records associated with the alleged victim's sexual assault kit/intervention or subsequent care and treatment;

b. The school records acquired by investigators regarding the alleged victim;

c. The results or reports, or copies thereof, of any physical or mental examinations, scientific tests, or experiments made in connection with this case, including but not limited to:

    i. the results of any fingerprint analyses;
    ii. the results of any chemical analyses;
    iii. the results of any identification proceedings; and
    iv. any hospital or medical records or reports related to this case.

d. Any reports or statements of experts made in connection with the offense charged including results of physical and mental examinations and of scientific tests, experiments or comparisons which are material to the preparation of the defense or are intended for use by the prosecuting authority as evidence in chief at the trial.

e. The following tangible objects, books, papers, documents or other physical evidence:

    i. any property taken from or belonging to the defendant or any alleged co-perpetrator;

    ii. any tangible object, paper, document or photograph the attorney for the State intends to offer into evidence at trial, including but not limited to any allegedly illegal drug allegedly possessed by the defendant;

    iii. any photograph taken or utilized in connection with this case; and

    iv. any items seized from the defendant's premises or automobile.

f. Records, if any, or copies thereof, of any prior convictions or arrests of the defendant, of any alleged co-perpetrator and of any witness the attorney for the State intends to call at trial, the record of such witnesses to be provided at the time disclosure of such witnesses' names is directed.

7. Additionally, **by way of discovery**, the defense respectfully requests that the following information be disclose by the State of Connecticut:

a. The name and address of any witness the attorney for the State intends to call at trial, such information to be provided thirty days in advance of trial.

b. The name and address of any individual who conducted any scientific tests, experiments or examinations in connection with this case as specified in 6(c) above.

c. A list of all property taken from the defendant or any alleged co-perpetrator.

d. A list of all exhibits that the attorney for the State intends to introduce into evidence at trial.

e. The dates and times the defendant was identified by any person, the manner in which such identifications were made, the name, address and position of the person making the identifications, and the name, address and position of the person conducting the identification proceedings.

f. The name and address of any witness to the alleged crime, including but not limited to the name and address of any informant or state employee involved in this case before, during or after the alleged crime transpired.

g. Any exculpatory information or material concerning the defendant's innocence of the offenses alleged against him, including but not limited to:

i. any information as to whether any individual involved in any respect in the investigation of this case was or is a drug addict or user, whether any such individual was or is now under indictment or information or waiting sentence on criminal charges, whether any formal or informal agreements have been entered into by any state or federal law enforcement agent with any such individual and whether any such person had or has indicated a willingness to cooperate with law enforcement authorities in the investigation of drug-related crimes;

ii. any information as to whether any individual involved in this case was or is now a State or Federal employee or agent; and

iii. any information bearing on the veracity of any witness called by the State, including information that any witness may have previously been engaged in fraudulent activities.

h. Any information as to the lawful use of electronic surveillance and the results thereof with respect to the defendant, any alleged co-perpetrator, and the investigation of this case.

8. The defendant respectfully asserts that the documents/materials and information sought to be disclosed and/or produced herein are relevant and necessary to the preparation of the defendant's defense and within the possession, custody or control of the State, or are subject to acquisition by the State of Connecticut.

THE DEFENDANT

By _____

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100 Pearl Street, 2nd Floor
Hartford, CT 06103
Tel. No. (860) 522-3343
Fax No. (860) 522-2490
Firm Juris No. 020767
Individual Juris No. 434005
cody@bpslawyers.com

O R D E R

The within and foregoing having been presented to the Court, it is hereby ORDERED:

GRANTED / DENIED

BY THE COURT

_____

Judge/Assistant Clerk

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed this 18th day of September, 2018 to all pro se parties and counsel of record:

Clerk
Superior Court – GA No. 15
20 Franklin Square
New Britain, CT 06051
***Sent via facsimile to* (860) 515-5103**

State's Attorney's Office
Attn:
Superior Court – GA No. 17
131 N. Main Street
Bristol, CT 06010
***Sent via facsimile to* (860) 584-1369**

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Cody N. Guarnieri
Commissioner of the Superior Court

STATE v. [DEFENDANT]

VOIR DIRE QUESTIONS

Introductions: [list members of your firm]

A. Background	
Employment **Education** **Family** **Hobbies** **Reading** **T.V.** **Relations**	• What do you do? Tell me about our job? ➢ What do you like about your job? What drew you to that kind of work? What do you like least about your job? What is a typical day for you like? • Describe your educational background. What drew you to study X in college? ➢ What kind of activities do you do in college? Enjoy college? • Tell me about your family. Children, grandchildren? ➢ If no kids/grandkids, do you have any close relationships with kids/teens? Describe. ➢ What kinds of activities do you enjoy with your family? • What do you like to do in your free time? What are your interests? What kind of hobbies do you have? ➢ How did you get into that/those things? What do you find most enjoyable about that? ➢ Do you volunteer with any organizations (especially children-related, and religious)? • What are you reading right now? Where do you get your news? Do you read any papers or magazines regularly? • What kinds of movies or T.V. do you watch? ➢ Do you watch Law & Order (SVU)? CSI? If so, what do you enjoy about those shows? • Do you have any family or close friends in law enforcement? Police, federal agents? ➢ What about experience (self, friends, family) in the legal field? Describe. ➢ Have you, a family member or close friend served on a jury? Tell me about that.
B. Legal Principles	
Arrested **Charged** **Innocent**	• We're sitting before you today because [Defendant] was arrested. ➢ What is the first thing that you think of when you read in the news or hear that someone was arrested for something? ➢ What does the fact that he was arrested say to you about [Defendant]? ➢ Doe the fact that [Defendant] was arrested influence how you feel about whether he is guilty in this case? ➢ Put another way, do you think that the fact that [Defendant] was arrested means he must have done something wrong? ▪ What about, that he likely did something wrong? • The fact that [Defendant] was arrested means that the State is accusing him of committing a crime, you understand that right? ➢ Do you feel that the fact that [Defendant] is accused of committing a crime doesn't actually mean he did it? ➢ Put another way, do you think the fact that he is accused of committing a crime it means he probably did? • The judge will tell you that, regardless of his having been arrested, [Defendant] is innocent under the law as he sits here before you. How do you feel about that? ➢ Do you think it would be a challenge to be on this jury and not feel that [Defendant] has a couple of strikes against him because he was arrested and now has to be tried by the State? • Do you believe that someone can be charged with a crime that he did not commit? • ***Can you promise us that if you are chosen for this jury that you can accept the judge's instruction that [Defendant] is presumed innocent unless and until, after hearing all the evidence, a jury deliberates and finds differently beyond a reasonable doubt?***

State's BOP	• The fact that the State charged [Defendant] with a crime means nothing about whether he did. You know that the State is the one that has to prove the allegations it makes, right? ➢ Do you feel that it is fair, for the state to have to provide evidence to prove its case? ➢ Put another way, do you think it is fair that [Defendant] doesn't have to prove or disprove anything? ➢ Can you accept that in a criminal case, it is not whether the state proves its case or the defendant disproves it? If the state doesn't prove it, in the way the judge will describe, that it loses? Do you accept that? • ***Do you think that if you were a juror in this case you could hold the state accountable to bring the evidence to prove its case and, if it does not, find the defendant not guilty?***
Beyond a Reasonable Doubt	• The Judge will tell you that the state must prove beyond a reasonable doubt each and every element necessary to constitute the crime charged. ➢ Would you be comfortable making this kind of determination? ➢ Do you have any religious, philosophical or other reasons you would struggle to sit in judgment of another person? • Let me ask you this way, if you heard all the evidence in this case, and you believed that, applying your reason, you did have a doubt about [Defendant]'s guilt, could you come out here and say "not guilty"? ➢ Do you think one person could find a reasonable doubt where others may not? ➢ What if you were the only juror in the room that had a reasonable doubt? Do you think that would impact your decision? Could you maintain your independent judgment about [Defendant]'s guilt or innocence? You would vote your conscience regardless of pressure from other jurors one way or the other? • Let's make it harder: What would you do if you felt that it was more likely that not that the defendant did the thing he is accused of, but that the evidence was not enough to make you believe him guilt was beyond a reasonable doubt. ➢ What would you do? How would you come to that decision? ➢ If the state's evidence is not enough to make you believe the defendant guilty beyond a reasonable doubt, could you ignore any *gut feelings or speculations* you have and find him not guilty? • ***Can you promise us that if you are chosen for this jury you can accept the Judge' instructions and vote not guilty if you're not convinced that the State has proven its case beyond a reasonable doubt?***
Right to not Testify	• The Judge will tell you that [Defendant] doesn't have to testify in this case if he chooses not to, and that the Constitution protects his decision, meaning you cannot read any meaning into it. Can you accept that? • A lot of people believe that if they don't hear both sides of the story, because the defendant doesn't testify, they cannot make a fair assessment and decision. Do you feel that way? ➢ Do you feel like you would need to hear from both sides, including the defendant, that they would have to accept what the state offers as evidence and find a defendant guilty. Do you feel that way? ➢ Put another way, people want to follow the judge's instructions, but think that they would struggle in their heart to not accept that the state has met its burden of proof because the defendant didn't present any witnesses and didn't testify. Do you think that could be how you would feel? • People can feel that if a defendant is innocent and didn't do anything wrong and has nothing to hide should take the stand and say that. Do you feel that way? ➢ Can you think of reasons why someone accused of a crime may choose not to testify? ➢ Do you think that the defendant has to bring some proof that he didn't do what he is accused of?

	• ***If you're chosen for the jury and [Defendant] chose not to testify, do you promise that you could evaluate the case without reading into [Defendant]'s decision, but purely on whether the State's evidence is sufficient, as the judge will instruct you?***
Credibility	• Ever been in a position of having to decide between two opposite stories? How did you decide? ➢ Ever fire or discipline employee? Investigate someone's work or conduct? Evaluate what people told you to make a decision? What factors did you consider? ➢ Do people have different bias, motives, perceptions when describing an event? Would you take those kinds of factors into consideration? • This case is going to involve people saying different things about what happened one night a few years ago. There will be conflicts in what people are saying. What kind of things will you consider in deciding whether you believe a witness? ➢ Do you think if someone comes into court and swears to tell the truth that you can be assured that they will tell the truth? ➢ Do you think that someone could come in, swear to tell the truth, and lie to you anyway? ➢ Why can you think of someone doing that? • Do you think that if someone testifies before you that they are a police officer, that you should believe them to be more trustworthy or believable because of their job? Why or why not? ➢ Do you think that someone who is in the medical field, such as a family therapist or social worker, should be given greater consideration because of their education or background? Why or why not? • ***If you are chosen for this jury, can you promise to keep an open mind about what you're being told until you've heard everything?***
C. Theme Relation	• Do you have any experience(s) dealing with teenage girls? Describe. ➢ Have you ever found a teenage girl you know to be: ▪ Self-centered? ▪ Too worried about what others think of them? ▪ Resistant to authority figures in their life? ▪ Manipulative? ▪ Believe themselves to always be right? ▪ Unable to foresee the consequences of their actions? ➢ Can you describe a situation you've been involved in with a teenager acting in one or more of these ways? Do you think it is characteristic of the age? • What kinds of reasons do you think teenage girls could lie about something, or make something up? • Have you been involved in any situation where a teenage girl has lied, or made up a story, in order to get herself out of trouble in some way? Describe. ➢ What about being untruthful to get someone else in trouble? Describe. ➢ Familiar with that kind of situation in the news? Social media? • How feel about being asked to judge if a teenager is telling the truth? ➢ What kinds of things will you look for in assessing her credibility?
D. Embracing the Suck	• Case involves uncomfortable topics and terms. The state alleges that on one occasion, in 2012 or 2013, [Defendant] performed oral sex on Z.N. • Has anyone close to you, a family member or close family friend, been the victim of a sexual assault or sexual abuse? ➢ If so, how will that affect your comfort to hear a case like this? • Can you recall a case from the news or media of a teenager accusing a step-parent or parent's boyfriend sexually abusing them? Local, national, etc. ➢ How closely followed? Why interested?

	➢ When you see someone in the paper accused of sexual assault of a child or tweenager, what are your first impressions? • How common do you feel sexual abuse is in our society? What makes you feel that way? ➢ How common do you feel that sexual abuse allegations are false? ▪ Do you think there are reasons why someone would make up an allegation of being the victim of sexual assault or sexual abuse? ➢ With all of the news coverage these days about sexual assaults or harassment, do you think you can rise above all that noise in applying your individual judgment solely on whatever evidence the state puts before you in this case alone? • In this case I will have to question a teenager girl about her allegations against [Defendant]. ➢ How do you think you will react to that? ➢ Would you be uncomfortable or angry with me for asking her difficult questions about her allegations? About challenging her motives for accusing him? ➢ Do you think it important that I ask her hard questions about her accusation? • Would you be able to put aside any sympathy you may have for her in assessing her testimony?

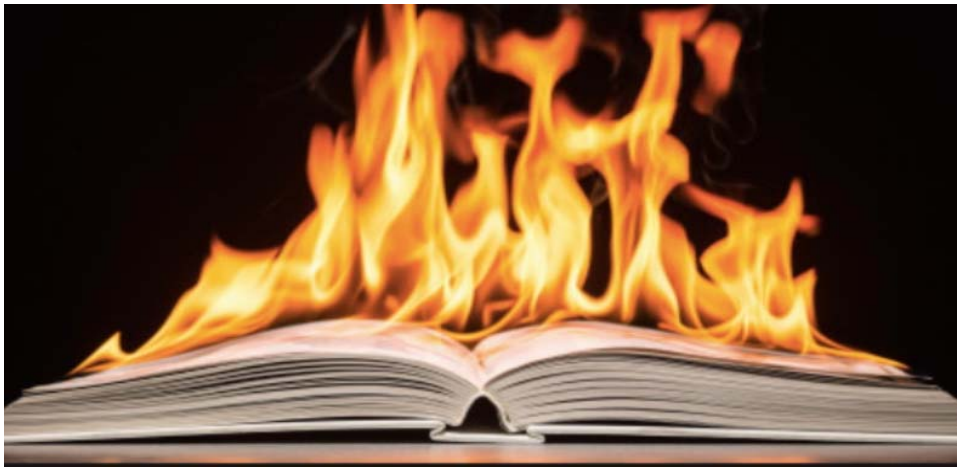
Basics of the Connecticut Practice Book: Criminal Section

CODY N. GUARNIERI, ESQ.

BROWN, PAINDIRIS & SCOTT, LLP

General Principles

- Not strictly followed or enforced.
- Underpinned by statutory and Constitutional law.



Procedure Prior to Appearance §§ 36-1 through 36-22

- Arrest by warrant, issued by judge on showing of probable cause, with attached affidavit in support of warrant.
- Contents of the warrant: name, offense, district, conditions of release.
- Issuance of summons in lieu of warrant (never happens)
- Information is formal charging document (plain, concise, definite written statement, with defendant, crime, district and general timing).
  - Part B informations – convictions on prior informations.
- Amendments, additional counts, substitutions by State before trial.
  - After trial starts, only if not substantially affecting defendant's rights.
- Request of essential facts (i.e. bill of particulars)

Arraignment
§§ 37-1 through 37-12

- In custody: first court date following arrest. Released, per the summons and conditions of release. PC determination within 48 hours.
  - Documents supporting PC become public records unless sealed/limited.
- Defense entitled to document by which probable cause for arrest sought to be established.
- *Miranda* warnings prior to arraignment. Collective warnings.
- If no risk of incarceration, no PD. Otherwise, PD appointment, private counsel or self-rep.
- Entrance of plea (but generally doesn't happen at arraignment).
  - Court/Jury trial election.

Pretrial Release
§§ 38-1 through 38-23

- Interview by officers re: terms of release.
- Law enforcement set PTA, bond with or without surety, 10% cash (lowest capable of ensuring appearance in court); to be reconsidered by the court at arraignment (unless judicial authority set in the warrant).
  - Family violence conditions: no contact, restrictions, no firearms.
- CSSD interview if bond not made by defendant.
- Court consideration of bond: (1) The nature and circumstances of the offense; (2) The defendant's record of previous convictions; (3) The defendant's past record of appearance in court; (4) The defendant's family ties; (5) The defendant's employment record; (6) The defendant's financial resources, character and mental condition; and (7) The defendant's community ties.
  - Serious felonies and Family violence added considerations: (8) The number and seriousness of the charges pending against the defendant; (9) The weight of evidence against the defendant; (10) The defendant's history of violence; (11) Whether the defendant has previously been convicted of similar offenses while released on bond; and (12) The likelihood based upon the expressed intention of the defendant that he or she will commit another crime while released.

Pretrial Release Continued

- Misdemeanor charges: the court shall not impose financial conditions of release on such person unless:
  - (1) The defendant is charged with a family violence crime;
  - (2) The defendant requests such financial conditions;
  - Or (3) The judicial authority makes a finding on the record that there is a likely risk that:
    - (A) The defendant will fail to appear in court, as required;
    - (B) The defendant will obstruct or attempt to obstruct justice, or threaten, injure or intimidate, or attempt to threaten, injure or intimidate a prospective witness or juror; or
    - (C) The defendant will engage in conduct that threatens the safety of himself or herself or another person.
- Wide latitude in setting conditions for any form of pretrial release.

Pretrial Release Continued

- Violation of conditions of release;
- Bond modifications
- Review of Detention (30/45 days)
- FTA – Forfeiture and Rebate within one year, decreasing in amounts.

Disposition without Trial §§ 39-1 through 39-33

- Plea discussions; intention to plea, Judicial acceptance/rejection
- Disposition conferences (JPT)
- Plea canvassing by Judge:
  - Knowing, voluntary, intelligent, factual basis for the plea.
  - No withdrawal but for very limited reasons.
- Nolle Prosequi; Dismissal
- Miscellaneous Dispositions: Pretrial Diversion, referral to family, YO

Discovery and Depositions §§ 40-1 through 40-58

- Know the State's and Defendant's duties of disclosure and what triggers them (generally a request). Need to paper the file, make the motions, send correspondence.
- See materials, OLR report.
  - Custody of materials: cannot share copies (even with client)
- Disclosure of certain defenses (Alibi, Insanity
- Obtaining non-testimonial evidence from the Defendant (lineup, handwriting, DNA, prints, etc.)
- Protective Orders; *Esposito* materials, in camera reviews.
- Depositions by permission of the court for trial witnesses too ill, remote or otherwise unavailable at the time of trial.

Pretrial Motions
§§ 41-1 through 41-25

- (1) Motions to dismiss; (2) Motions and requests for discovery and depositions; (3) Motions to suppress evidence; (4) Motions for joinder or severance; (5) Motions for a bill of particulars; (6) Motions for transfer of prosecution.
- Made within ten days of first pretrial conference.
- Bases for motions described in detail.

Trial Procedure
§§ 42-1 through 42-56

- Six person jury trial; individual voir dire.
- Motions in limine; Requests to charge; Charge conference.
- Jury deliberations, what the jury receives, jury requests for testimony.
  - Chip Smith; Verdict; Polling the jury
- State, Defense, State
- Sequestration of witnesses by right.
- Motions for a Mistrial; MJA
- Closing court and/or limiting/sealing of documents.
- Convicted: MJA, MNT, Mot. Arrest of Judgment

Sentencing, Judgment and Appeal §§ 43-1 through 43-43

- Bond pending appeal.
- PSI: right to be present; continued to complete, *Garvin*, non-disclosure
  - Corrections if necessary
- Sentencing Hearings: Parties and victims. Wide discretion.
- Sentence Review (file within 30 days)
- Revocation of Probation
- Notice of Right to Appeal.
  - Motion for Stay
  - Request to withdraw from frivolous appeal
- Speedy trial; violations and dismissal

General Provisions
§§ 44-1 through 44-37

- Right to counsel; waiver, standby counsel
- Presence of Defendant
- Docketing and Scheduling
- GALs