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2025 Edition

Vexatious Litigation in Connecticut

A Guide to Resources in the Law Library

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Prepared by Connecticut Judicial Branch, Superior Court Operations, Judge Support Services, Law Library Services Unit

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This guide links to advance release opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar and Harvard's Case Law Access Project.
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References to online legal research databases refer to in-library use of these databases. Remote access is not available.

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Introduction

A Guide to Resources in the Law Library

- '"In Connecticut, the cause of action for vexatious litigation exists both at common law and pursuant to statute. Both the common law and statutory causes of action [require] proof that a civil action has been prosecuted.... Additionally, to establish a claim for vexatious litigation at common law, one must prove want of probable cause, malice and a termination of suit in the plaintiff's favor.... The statutory cause of action for vexatious litigation exists under §52-568, and differs from a common-law action only in that a finding of malice is not an essential element, but will serve as a basis for higher damages.' (Internal quotation marks omitted.) *Rockwell* v. *Rockwell*, 196 Conn. App. 763, 769-70, 230 A.3d 889 (2020)." Rozbicki v Sconyers, 198 Conn. App. 767, 773, 234 A.3d 1061 (2020).

- "We begin our discussion by setting forth the elements of the common-law tort of vexatious litigation. Our Supreme Court has stated: 'In a malicious prosecution or vexatious litigation action, it is necessary to prove want of probable cause, malice and a termination of [the] suit in the plaintiffs' favor.... [Establishing] a cause of action for vexatious suit requires proof that a civil action has been prosecuted not only without probable cause but also with malice.... It must also appear that the litigation claimed to be vexatious terminated in some way favorable to the defendant therein.' (Citations omitted; emphasis added; internal quotation marks omitted.) *QSP, Inc. v. Aetna Casualty & Surety Co.*, 256 Conn. 343, 361, 773 A.2d 906 (2001); see also *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cole*, 189 Conn. 518, 538, 457 A.2d 656 (1983); *Vandersluis v. Weil*, 176 Conn. 353, 356, 407 A.2d 982 (1978); D. Wright, J. Fitzgerald & W. Ankerman, Connecticut Law of Torts (3d Ed. 1991) § 162, p. 432.

  We now identify the elements of statutory vexatious litigation. Section 52-568 provides: 'Any person who commences and prosecutes any civil action or complaint against another, in his own name or the name of others, or asserts a defense to any civil action or complaint commenced and prosecuted by another (1) without probable cause, shall pay such other person double damages, or (2) without probable cause, and with a malicious intent unjustly to vex and trouble such other person, shall pay him treble damages.' This court has stated that '[t]he elements of a common-law or statutory cause of action for vexatious litigation are identical.' *Norse Systems, Inc. v. Tingley Systems, Inc.*, 49 Conn. App. 582, 596, 715 A.2d 807 (1998); see also *Frisbie v. Morris*, 75 Conn. 637, 639, 55 A. 9 (1903); *Hebrew Home & Hospital, Inc. v. Brewer*, 92 Conn. App. 762, 766-67, 886 A.2d 1248 (2005); *Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP*, 89 Conn. App. 459, 467, 874 A.2d 266 (2005), aff'd, 281 Conn. 84, 912 A.2d 1019 (2007); *Shurman v. Duncan*, 14 Conn. Supp. 293, 294 (1946)." Bernhard-Thomas Building Systems, LLC v. Dunican, 100 Conn. App. 63, 68-69, 918 A.2d 889, 893-894 (2007), aff'd, 296 Conn. 548 (2008).

- "The torts of malicious prosecution and vexatious litigation are similar because in both types of action 'the claimed impropriety arises out of previous litigation.' *Blake* v. *Levy*, 191 Conn. 257, 262, 464 A.2d 52. The principles governing both torts are based on the 'competing policies of deterrence of groundless litigation and protection of good faith access to the courts.' *Blake* v. *Levy*, supra, 263, 464 A.2d 52." Colli v. Kamins, 39 Conn. Supp. 75, 76, 468 A.2d 295 (1983).

Section 1: Vexatious Suits in Connecticut

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the tort of vexatious lawsuits in Connecticut.

SEE ALSO:

- Frivolous Lawsuits in Connecticut
- Malicious Prosecution in Connecticut (Section 2)
- Abuse of Process in Connecticut (Section 3)

DEFINITIONS:

- '"…[t]he purpose of [an] action [for vexatious litigation] is to compensate a wronged individual for damage to his reputation and to reimburse him for the expense of defending against the unwarranted action.' (Internal quotation marks omitted.) *Bernhard-Thomas Building Systems, LLC v Dunican,* 286 Conn. 548, 554, 944 A.2d 329 (2008)." Kazemi v. Allen, 214 Conn. App. 86, 104, 279 A.3d 742 (2022).

- "[T]he probable cause standard applied to a vexatious litigation action against a litigant is a purely objective one.' *Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP*, supra, 281 Conn. at 95, 912 A.2d 1019. That standard is defined as 'a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it.... Probable cause is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that he has lawful grounds for prosecuting the defendant in the manner complained of.... Thus, in the context of a vexatious suit action, the defendant lacks probable cause if he lacks a reasonable, good faith belief in the facts alleged and the validity of the claim asserted.' (Internal quotation marks omitted.) Id., at 94-95, 912 A.2d 1019. Our Supreme Court has described that standard as a 'lower threshold of probable cause' that permits 'attorneys and litigants to present issues that are arguably correct, even if it is extremely unlikely that they will win....' (Internal quotation marks omitted.) Id., at 103-104, 912 A.2d 1019. As the court emphasized, '[p]robable cause may be present even where a suit lacks merit.' (Internal quotation marks omitted.) Id., at 103, 912 A.2d 1019." Rockwell v. Rockwell, 178 Conn. App. 373, 390, 175 A.3d 1249 (2017).

- "A vexatious suit is a type of malicious prosecution action, differing principally in that it is based upon a prior civil action, whereas a malicious prosecution suit ordinarily implies a prior criminal complaint. To establish either cause of action, it is necessary to prove want of probable cause, malice and a termination of suit in the plaintiff's favor." Vandersluis v. Weil, 176 Conn. 353, 356, 407 A.2d 982 (1978).

- "In suits for vexatious litigation, it is recognized to be sound policy to require the plaintiff to allege that prior litigation terminated in his favor. This requirement serves to discourage unfounded litigation without impairing the presentation of honest but uncertain causes of action to the courts." Zeller v. Consolini, 235 Conn. 417, 424, 666 A.2d 64 (1995).

- "[I]t is well settled that equity may enjoin vexatious litigation . . . This power of equity exists independently of its power to prevent a multiplicity of actions. It is based on the fact that it is inequitable for a litigant to harass an opponent not for the attainment of justice, but out of malice . . . To be vexatious, litigation must be prosecuted not only without probable cause but also with malice." (Citations omitted.) Bridgeport Hydraulic Co. v. Pearson, 139 Conn. 186, 194, 91 A.2d 778 (1952).

STATUTES:

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

- Conn. Gen. Stat. (2025)
  - Chapter 900. Court Practice and Procedure
    - § 52-226a. Special finding that action or defense without merit and not in good faith.
  - Chapter 925. Statutory Rights of Actions and Defenses
    - § 52-568. Damages for groundless or vexatious suit or defense.
    - § 52-568a. Damages for groundless or vexatious suit against the owner or operator of a "pick or cut your own agricultural operation."

LEGISLATIVE:

Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- Christopher Reinhart, *Vexatious Litigation and Sanctions Against Attorney*. Office of Legislative Research Report, 2008-R-0101. (January 30, 2008).

FORMS:

- 3 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 5th ed., by Daniel A. Morris, Thomson West, 2025 (also available on Westlaw).
  - § 64:9. Vexatious Suit
- 16A Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2025 ed., Thomson West (also available on Westlaw).
  - Chapter 15. Malicious Prosecution/Vexatious Litigation
    - § 15:10. Sample trial court documents—Sample complaint
    - § 15:11. —Sample answer containing affirmative defense

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2024.
  Chapter 12. Bringing Intentional Tort Claims
  § 12.03. Bringing a claim for misuse of the legal system
  [17] Checklist for malicious prosecution/vexatious litigation claims
  [19] Forms for malicious prosecution/vexatious litigation claims
  Form 12.03.1 Complaint—malicious prosecution and vexatious litigation

- 17 *Am Jur Pleading and Practice Forms,* Malicious Prosecution, Thomson West, 2025 (Also available on Westlaw).
  I. In general
  II. Civil proceedings §§ 2-39
  IV. Special proceedings §§ 96-106

JURY INSTRUCTIONS:

- Connecticut Judicial Branch Civil Jury Instructions
  Part 3: Torts
  3.13. Intentional Torts
  3.13-5. Vexatious Suit - Claim under General Statutes § 52-568
  3.13-6. Vexatious Suit - Claim at Common Law
  3.13-9. Defense of Good Faith Reliance Upon Advice of Counsel

- 16A *Connecticut Practice Series: Connecticut Elements of an Action*, Thomas B. Merritt, 2025, Thomson West (Also available on Westlaw).
  Chapter 15. Malicious Prosecution/Vexatious Litigation
  § 15:12 —Plaintiff's proposed jury instructions
  § 15:13 —Defendant's proposed jury instructions

- 17 *Am Jur Pleading and Practice Forms,* Malicious Prosecution, Thomson West, 2025 (Also available on Westlaw).
  V. Instructions to jury
  §§ 107-142

CASES:

Once you have identified useful cases, it is important to update them to ensure they are still good law. You can contact your local law librarian to learn about updating cases.

- Kazemi v. Allen, 214 Conn. App. 86, 91, 279 A.3d 742 (2022). "Following a trial to the court, Hon. Edward T. Krumeich II, judge trial referee, the court found that the plaintiffs successfully had demonstrated that the defendants lacked probable cause to bring the counterclaim alleging adverse possession and trespass and that the defendants had failed to prove their advice of counsel defense. In its memorandum of decision, the court found the following facts: '[The] defendants have demonstrated that they consulted with impartial counsel who advised them they had viable claims. . . . The credible evidence established there was not full and fair disclosure of material facts to counsel. Allen withheld and misrepresented material facts to counsel, limited counsel's

preparation and acted to prevent counsel from learning adverse material facts by preventing counsel from independently investigating the defense and claims to corroborate his version of events. Allen did not rely on counsel's advice but, rather, manipulated counsel to accept his false version of events and acted in bad faith in prosecuting the limitations defense and [both counts of] the [counterclaim]'."

'Allen's false and deceptive misconduct in the prior action provides graphic evidence of his lack of probable cause, bad faith and malice. . . . Allen's false testimony in this case, and in the prior action, confirms his willingness to dissemble if he believes perjury and false pleading would advance what he perceives to be his interests. [The] defendants' defense and [counterclaim] in the prior action were grounded in the fiction that there were encroachments on 33 Maple . . . that existed when Allen purchased 43 Maple . . . in 1996. The trespass claim was based on an alleged event that did not happen and fictional possessory rights. Allen did not have probable cause to assert the defense and [both counts of the counterclaim] and did so maliciously to obtain leverage over [the] plaintiffs, who he believed planned to flip the property for sale and would be amenable to settlement on Allen's terms.' (Citations omitted; footnotes in original; footnotes omitted.) (p. 101)

After finding that the plaintiffs had 'proven their vexatious litigation claim by a fair preponderance of the evidence,' the court awarded them compensatory damages, which included 'demolition costs of $304.69,' 'surveying costs of $505,' and 'attorney's fees in the prior action of $58,680.50 . . . .' Because the court found both a lack of probable cause and that the defendants acted with malice, the court awarded the plaintiffs treble damages under General Statues § 52-568, for a total damages award of $178,470.57."

- Rosseau v. Weinstein, 204 Conn. App. 833, 840, 254 A. 3d 984 (2021). "The plaintiffs first claim that 'the trial court improperly held that the [dissolution action] was not a prior pending action, and, thus, the civil [action] was not vexatious, even though Perricone made the same claims against the same parties in the two suits.' We disagree with the plaintiffs' contention that an action subject to dismissal under the prior pending action doctrine is necessarily vexatious and that the defendants were not entitled to summary judgment as a matter of law."

- Greene v. Keating, 197 Conn. App. 447, 449, 231 A.3d 1178 (2020). "On appeal, Greene claims that the court improperly concluded that, although she had established one of her vexatious litigation claims against the defendant, the defendant was entitled to judgment in its

favor because Greene failed to prove the amount of her damages. Specifically, Greene claims that the court improperly concluded that she failed to present evidence that would allow the court reasonably to calculate damages in the form of attorney's fees. We affirm the judgment of the trial court.

- Tatoian v. Tyler, 194 Conn. App. 1, fn.21, 220 A.3d 802 (2019). "We do not reverse the court's judgment in favor of the defendants with respect to count one of the plaintiff's complaint in the present action, in which he brought a claim of common-law vexatious litigation, and count three of the plaintiff's complaint in the present action, in which he stated a claim under § 52-568 (2), pursuant to which the plaintiff would have been entitled to treble damages. To prevail in these causes of action, a plaintiff must prove that a defendant acted with a malicious intent."

- Metcalf v. Fitzgerald, 333 Conn. 1, 30, 214 A.3d 361 (2019). "In this appeal, we are asked to determine whether the United States Bankruptcy Code provisions permitting bankruptcy courts to assess penalties and sanctions preempt state law claims for vexatious litigation and violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. The plaintiff, Jonathan S. Metcalf, brought state law claims against the defendants, Michael Fitzgerald, Ion Bank (bank), Myles H. Alderman, Jr., and Alderman & Alderman, LLC (law firm), for alleged vexatious litigation and for unfair and deceptive business acts or practices during the plaintiff's underlying bankruptcy proceeding. The plaintiff appeals from the trial court's granting of the motion to dismiss filed by Alderman and the law firm, for lack of subject matter jurisdiction on the ground that federal bankruptcy law preempts the claims. The trial court determined that the outcome of the motion was controlled by the Appellate Court's decision in *Lewis* v. *Chelsea G.C.A. Realty Partnership, L.P.,* 86 Conn. App. 596, 862 A.2d 368 (2004), cert. denied, 273 Conn. 909, 870 A.2d 1079 (2005). The court in *Lewis* held that the Bankruptcy Code preempted CUTPA and vexatious litigation claims for alleged abuse of the bankruptcy process. Id., at 605-607, 862 A.2d 368. The plaintiff contends that the court in *Lewis* did not properly evaluate each of the three types of preemption by which Congress manifests its intent to preempt state law and failed to consider the relevant Bankruptcy Code provisions. See 11 U.S.C. § 105 (2012); Fed. R. Bankr. P. 9011. We disagree and affirm the judgment of the trial court."

- Rockwell v. Rockwell, 178 Conn. App. 373, 390, 175 A.3d 1249, 1259 (2017). "The remaining question, then, is whether undisputed facts exist in the record on which the court could conclude that the defendant possessed probable cause to prosecute the 2009 action for breach of

contract. At the outset, we note that, in an action for vexatious litigation, the burden rests with the plaintiff to prove that the defendant lacked probable cause to prosecute a prior action. Harris v. Bradley Memorial Hospital & Health Center, Inc., 296 Conn. 315, 330, 994 A.2d 153 (2010); see also Zenik v. O'Brien, 137 Conn. 592, 597, 79 A.2d 769 (1951) (`[a]lthough want of probable cause is negative in character, the burden is upon the plaintiff to prove affirmatively ... that the defendant had no reasonable ground' for commencing action)."

- Rogan v. Rungee, 165 Conn. App. 209, 225, 2016 WL 1637725 (2016). "Finally, the plaintiff claims that the court improperly held that, with regard to statutory and common-law vexatious litigation, the plaintiff failed to prove his affirmative defense that he relied on the advice of counsel. Specifically, he argues that the court improperly found that he did not give a full and fair statement of all the facts within his knowledge to his attorney, a necessary element of the defense. The defendant responds that the record supports the court's factual finding, especially in light of the adverse inference that the court reasonably drew against the plaintiff, pursuant to § 52-216c, because he did not testify at trial. We agree with the defendant."

- Johnston v. Morgester, Superior Court, Judicial District of Hartford at Hartford, No. HHD-CV-14-6051117-S (March 5, 2015) (2015 WL 1427207) (2015 Conn. Super. Lexis 480). "…On the other hand, the plaintiff has presented compelling evidence to support probable cause for the essential elements of his claims of malicious prosecution, vexatious litigation and emotional distress…. Vexatious litigation and malicious prosecution have 'three identical elements—want of probable cause, malice and termination of action in the plaintiff's favor . . .' Id., 405. As for vexatious litigation, the plaintiff has established probable cause that there was an underlying action initiated by the defendant against the plaintiff in the family court seeking a restraining order; the action resulted in a favorable outcome to the plaintiff herein when that action was dismissed by the court on February 7, 2014; the defendant acted without probable cause under circumstances that support the plaintiff's claim that she acted with malice. See *Rioux v. Barry,* 283 Conn. 338, 347 927 A2d 304 (2007). Further, the statutory cause of action for vexatious suit, General Statutes §52-568, provides for treble damages in the event that a person 'commences and prosecutes any civil action or complaint against another . . . without probable cause, and with a malicious intent.' As noted, the court finds that the evidence presented by the plaintiff establishes that both the criminal prosecution and action for a restraining order in family court were commenced with malicious intent, and therefore, the plaintiff is entitled to a PJR that reflects

treble damages under the statute. Finally, the plaintiff has presented evidence establishing probable cause that he has suffered extreme emotional distress as a result of the defendant's actions."

- Charlotte Hungerford Hospital v. Creed, 144 Conn. App. 100, 115, 72 A.3d 1175, 1184 (2013). "The Supreme Court adopted the traditional standard of probable cause applicable to both litigants and their attorneys: '[C]ivil probable cause constitutes a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it.... Although the reasonable attorney is substituted for the reasonable person in actions against attorneys, there is no reason to craft a different standard that essentially would immunize attorneys from vexatious litigation claims by requiring a claimant to prove that 100 out of 100 attorneys would have agreed that the underlying claim was without merit.' (Citations omitted; internal quotation marks omitted.)."

- Byrne v. Burke, 112 Conn. App. 262, 275-276, 962 A.2d 825, 834-835 (2009). "'[I]f it appears in the action for ... a vexatious suit, that the prosecution properly ended in a judgment of conviction, or that in the civil suit judgment was properly rendered against the defendant therein, such outstanding judgment is, as a general rule, conclusive evidence of the existence of probable cause for instituting the prosecution, or the suit.' *Frisbie v. Morris*, 75 Conn. 637, 639–40, 55 A. 9 (1903). '[I]f the trial court determines that the prior action was objectively reasonable, the plaintiff has failed to meet the threshold requirement of demonstrating an absence of probable cause and the defendant is entitled to prevail.' (Internal quotation marks omitted.) *Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP*, supra, 281 Conn. [84] at 99, 912 A.2d 1019. 'This is true although it is reversed upon appeal and finally terminated in favor of the person against whom the proceedings were brought.... Likewise, a termination of civil proceedings ... by a competent tribunal adverse to the person initiating them is not evidence that they were brought without probable cause.' 3 Restatement (Second), Torts § 675, comment (b) (1977)."

- Bernhard-Thomas Building Systems, LLC v. Dunican, 286 Conn. 548, 944 A.2d 329 (2008). "We conclude that an application for a prejudgment remedy does not commence a civil action for purposes of a subsequent claim for vexatious litigation. First, there is no service of the requisite signed writ of summons. Additionally, the language of the prejudgment remedy statutes, § 52-278a et seq., in several instances previously set forth herein, makes it clear that proceedings for prejudgment remedy applications and civil actions are separate and distinct,

with a prejudgment remedy application generally preceding the filing of the civil action. Finally, in addition to the differences regarding the process for initiating these two legal proceedings, the purpose of filing a civil action is fundamentally different from the purpose of obtaining a prejudgment remedy. A prejudgment remedy application is brought as a prelude to the filing of a civil action, and is meant to determine whether security should be provided for any judgment ultimately recovered by the plaintiff if he or she is successful on the merits of the civil action. A civil action, in contrast, resolves the merits of the parties' claims, and can be filed irrespective of whether the plaintiff was successful in his or her prior pursuit of a prejudgment remedy. Accordingly, we conclude that the plaintiff cannot base its claim for vexatious litigation on the defendant's filing of an unsuccessful prejudgment remedy application. We therefore affirm the judgment of the Appellate Court."

- Bernhard-Thomas Building Systems, LLC v. Dunican, 100 Conn. App. 63, 65, 918 A.2d 889 (2007). "…the defendant, an attorney licensed to practice in Connecticut, filed an application for a prejudgment remedy on behalf of Dunican against the plaintiff in the amount of $3.5 million. The court…denied the application. Dunican withdrew his claims against the plaintiff.

  The plaintiff commenced the present action and alleged that it had expended substantial attorney's fees in response to Dunican's application."

  "Specifically, the plaintiff argues that the court improperly concluded that the application filed by the defendant on behalf of Dunican for a prejudgment remedy did not constitute a 'prior civil action,' which is an element of vexatious litigation. We disagree." (p. 68)

- DeLaurentis v. New Haven, 220 Conn. 225, 249, 597 A.2d 807, 819 (1991). "On the facts of this case, we conclude that DeLaurentis was not barred from bringing a vexatious suit action against the mayor simply because it is based upon a proceeding that did not take place in a courtroom. The removal proceedings prescribed by the New Haven city charter might have resulted in depriving DeLaurentis of his position as a parking authority commissioner. Whether or not his interest in retaining that unpaid position is of constitutional magnitude, a claim rejected by the federal district court, it is a "legally protected interest" in the sense that the city charter restricts the mayor's right to deprive him of it. Compare *Sansone v. Clifford*, 219 Conn. 217, 230-31, 592 A.2d 931 (1991)."

WEST KEY NUMBERS:

- *13 Action*
  I. Grounds and conditions precedent, 1-15
  9. Unnecessary or vexatious actions.

- *212 Injunction*
  IV. Particular subjects of relief, 1151-1500
  (A) Courts and actions in general, k1151-k1180
  1168. Abusive, vexatious, or harassing litigation.
  1169. —In general.
  1170. —Particular cases.
- *249 Malicious Prosecution*
  25. Civil actions and proceedings.
  (1). In general.

DIGESTS:

- West's Connecticut Digest
  Injunction
  1168. Abusive, vexatious, or harassing litigation.
  1169. —In general.
  1170. —Particular cases.

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 45 *ALR 6th* 493, *Validity, Construction, and Application of State Vexatious Litigant Statutes*, by Robin Miller, J.D., Thomson West, 2009 (Also available on Westlaw).

- 42 *Am Jur 2d* Infants to Inspection Law, Thomson West, 2020 (Also available on Westlaw).
  INJUCTIONS
  III. Rights Protected and Matters Controllable by Injunctive Relief
  C. Personal Rights
  1. In general
  b. Particular Rights and Injuries
  H. Injunction Against Institution or Maintenance of Judicial Proceedings
  1. In general
  b. Grounds and Occasions for Relief
  § 182. Vexatious, frivolous, or oppressive litigation

- 52 *Am Jur 2d* Malicious Prosecution, Thomson West, 2021 (Also available on Westlaw).
  I. In General
  II. Elements of the Cause of Action
  III. Parties
  IV. Defenses
  V. Damages
  VI. Practice and Procedure

- 26 *Am Jur POF 2d* 275, *Malicious Prosecution: Good Faith Reliance on Advice of Counsel in Bringing Suit*, by Jimmie E. Tinsley, J.D., Thomson West, 1981 (Also available on Westlaw).

- 30 *Am Jur POF 2d* 197, *Attorney's Malicious Prosecution of Client's Action*, by Russell L. Wald, LL.B., Thomson West, 1982 (Also available on Westlaw).

- 32 *COA 2d* 131, *Cause of Action for the Malicious Prosecution of Civil Actions*, by Megan K. Dorritie, Esq., Thomson West, 2006 (Also available on Westlaw).

- 1A *CJS* Actions, Thomson West, 2016 (Also available on Westlaw).
  II. Cause or Right of Action
  A. General Considerations
  4. Other Actions and Considerations
  § 72. Unnecessary, vexatious, or frivolous actions

TREATISES:

You can contact us or visit our catalog to determine which of our law libraries own the treatises cited.

References to online databases refer to in-library use of these databases.

- *Connecticut Law of Torts, 4th ed*., by Douglass B. Wright et al., 2018, Atlantic Law Book Company, with 2023 supplement.
  Chapter XVIII. Vexatious Litigation
  § 161. Introduction
  § 163. Vexatious suit

- 12 *Connecticut Practice Series: Connecticut Unfair Trade Practices, Business Torts and Antitrust*, Robert M. Langer et al., 2024-2025 ed., Thomson West, (Also available on Westlaw).
  Chapter 4. CUTPA and Related Business Torts
  § 4.15. Malicious prosecution, vexatious litigation, and abuse of process

- 16A *Connecticut Practice Series: Connecticut Elements of an Action*, Thomas B. Merritt, 2025, Thomson West (Also available on Westlaw).
  Chapter 15. Malicious Prosecution/Vexatious Litigation
  § 15:1. Elements of action
  § 15:2. Authority
  § 15:3. Remedies—Compensatory damages
  § 15:4. —Punitive or exemplary damages
  § 15:5. Limitations of actions: Statute of limitations
  § 15:6. Defenses—Limitations
  § 15:7. —Existence of probably cause
  § 15:8. —Advice of counsel
  § 15:9. Checklist

- *Connecticut Legal Ethics & Malpractice,* 3d ed. by Mark A. Dubois and James F. Sullivan, ALM Media Properties, LLC, 2016.
  Chapter 9. Statutes of Limitation
  § 9-4:2. Other Statute of Limitations
  Chapter 10. Vexatious Litigation, Ause of Process and Miscellaneous Attorney Exposures
  § 10-1 Introduction
  § 10-2 Vexatious Litigation
  § 10-2:1 Initiating the Action, and What Constitutes an Action or Complaint
  § 10-2:2 Prior Litigation Terminating in Party's Favor

§ 10-2:3 Lack of Probable Cause
§ 10-2:4 Advice of Counsel

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2024.
  Chapter 12. Bringing Intentional Tort Claims
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  [9] Recovering damages in a malicious prosecution/vexatious litigation suit
  [10] Defending a malicious prosecution or vexatious litigation suit
  [17] Checklist for malicious prosecution/vexatious litigation claims

- *Encyclopedia of Connecticut Causes of Action*, Daniel J. Krisch and Michael Taylor, 2024 edition, Connecticut Law Tribune.
  Part 1. Common Law Causes of Action
  1V-2. Vexatious Litigation (Common-Law)
  Part 2. Statutory Causes of Action (Traditional)
  2V-1. Vexatious Litigation (CGS § 52-568)

- 1 *Harper, James, & Gray on Torts 3d*, by Fowler V. Harper, et al., 2006, with 2025 supplement, Aspen Publishers, Inc. (also available on VitalLaw).
  Chapter 4. Malicious Prosecution and Abuse of Process
  § 4.8. Malicious civil litigation

- *The Law of Torts, Second Ed.*, by Dan B. Dobbs, et al., 2011, with 2025 supplement, Thomson West (Also available on Westlaw).
  Chapter 46. Process rights: misusing and denying judicial Process
  § 585. Tortious use of the legal process: policies and immunities
  § 592. Wrongful civil litigation and tactics
  § 593. Special-injury or special-grievance requirement
  § 596. Damages

- 3 *Restatement of the Law Second: Torts*, American Law Institute, 1979, with 2025 supplement (Also available on Westlaw).
  - Chapter 30. Wrongful Use of Civil Proceedings
    - § 674. General principle
    - § 675. Existence of probable cause
    - § 676. Propriety of purpose
    - § 677. Civil proceedings causing an arrest or a deprivation of property
    - § 678. Proceedings alleging insanity or insolvency
    - § 679. Repetition of civil proceedings
    - § 680. Proceedings before an administrative board
    - § 681. Damages
    - § 681A. Burden of proof
    - § 681B. Functions of court and jury

- *Tort Remedies in Connecticut*, by Richard L. Newman and Jeffrey S. Wildstein, Michie, 1996, with 2014 supplement.
  - Chapter 12. Intentional torts
    - § 12-3. Malicious prosecution and vexatious suit
      - (a). Introduction
      - (b). History
      - (c). Elements
      - (d). Damages
      - (e). Conn. Gen. Stat. § 52-226a
      - (f). Defenses

LAW REVIEWS:

Public access to law review databases is available on-site at each of our law libraries.

- Sarah Gruber, *A Lawyer's Guide to Vexatious Litigation in Connecticut*, 88 Connecticut Bar Journal 184 (2015).

- Kenneth Rosenthal, *Vexatious Litigation in Connecticut: Malicious Prosecution of Civil Actions, Probable Cause, and Lawyer Liability*, 84 Connecticut Bar Journal 255 (2010).

Figure 1: Vexatious Suit

Vexatious Suit

1. On (*date*) the defendant in this action commenced a civil suit against the plaintiff in this action claiming (*state claim*) which was returnable to the superior court for the judicial district of (*name*) on (*return date*).

2. On (date), judgment in that action was rendered in favor of the plaintiff in this action to recover of the defendant in this action $ costs of suit.

3. That action was commenced and prosecuted by the defendant in this action without probable cause, and with a malicious intent unjustly to vex and trouble him.

4. The plaintiff in this action necessarily expended in the defense of that action a much larger sum than the costs in that suit; to wit: $.

The plaintiff claims, by force of statute in such case provided, to recover treble

damages.

(P.B. 1963, Form 205; see Gen. Stat., § 52-568)

[**NOTE:** This form, 804.11 Vexatious Suit, appears on page 5406 of the Connecticut Practice Book, Revison of 1978, Volume 2.]

Table 1: Determining Existence of Probable Cause in Vexatious Litigation Action against an Attorney

Determining Existence of Probable Cause in Vexatious Litigation Action against an Attorney in Connecticut
"We agree with the supreme courts of California and Michigan that an attorney's subjective belief in the tenability of a claim and the extent of an attorney's investigation and research have no place in determining the existence of probable cause in a vexatious litigation action against an attorney and that the presence or absence of probable cause should be judged by an objective standard. That said, we nevertheless agree with — and, therefore, adopt — the Indiana Court of Appeals' articulation of an *objective* standard[8] of probable cause: '[T]he objective standard which should govern the reasonableness of an attorney's action in instituting litigation for a client is whether the claim merits litigation against the defendant in question on the basis of the facts known to the attorney when suit is commenced. The question is answered by determining that *no* competent and reasonable attorney familiar with the law of the forum would consider that the claim was worthy of litigation on the basis of the facts known by the attorney who instituted suit.' (Emphasis added.) *Wong v. Tabor*, supra, 422 N.E.2d [1279,] 1288 [(Ind. App. 1981)]. We are mindful that '[r]easonable lawyers can differ, some seeing as meritless suits which others believe have merit, and some seeing as totally and completely without merit suits which others see as only marginally meritless**.** Suits which all reasonable lawyers agree totally lack merit — that is, those which lack probable cause — are the least meritorious of all meritless suits. Only this subgroup of meritless suits present no probable cause.' (Emphasis in original; internal quotation marks omitted.) *Roberts v. Sentry Life Ins*., 76 Cal. App. 4th 375, 382, 90 Cal. Rptr. 2d 408 (1999), review denied, 2000 Cal. LEXIS 1059 (February 16, 2000). 'This lenient standard for bringing a civil action reflects the important public policy of avoiding the chilling of novel or debatable legal claims and allows attorneys and litigants to present issues that are arguably correct, even if it is extremely unlikely that they will win. . . .' (Internal quotation marks omitted.) *Padres L.P. v. Henderson*, 114 Cal. App. 4th 495, 517, 8 Cal. Rptr. 3d 584 (2003), review denied, 2004 Cal. LEXIS 3174 (April 14, 2004)." Falls Church Group v. Tyler, Cooper and Alcorn, 89 Conn. App. 459, 473-474, 874 A.2d 266 (2005), aff'd Falls Church Group, Ltd. v. Tyler, Cooper and Alcorn, LLP, 281 Conn. 84, 912 A.2d 1019 (2007). [8] "We caution that although we adopt the Indiana Court of Appeals' formulation of an *objective* standard of probable cause, we *do not* adopt its "subjective belief" component. The presence or absence of probable cause, we reiterate, should be judged by an objective inquiry."

Table 2: Legal Principles of Advice of Counsel Defense

Legal Principles of Advice of Counsel Defense
"We begin by setting forth the legal principles related to this claim. '[T]he defense [of advice of counsel] has five essential elements. First, the defendant must actually have consulted with legal counsel about his decision to institute a civil action . . . . Second, the consultation with legal counsel must be based on a full and fair disclosure by the defendant of all facts he knew or was charged with knowing concerning the basis for his contemplated . . . action . . . . Third, the lawyer to whom the defendant turns for advice must be one from whom the defendant can reasonably expect to receive an accurate, impartial opinion as to the viability of his claim . . . . The fourth element . . . is, of course, that the defendant, having sought such advice, actually did rely upon it . . . . Fifth and finally, if all other elements of the defense are satisfactorily established, the defendant must show that his reliance on counsel's advice was made in good faith.' (Internal quotation marks omitted.) *Rieffel v. Johnston-Foote*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-13-6019381-S (February 19, 2015) (reprinted at 165 Conn. App. 391, 406–407, 139 A.3d 729), aff'd, 165 Conn. App. 391, 139 A.3d 729), cert. denied, 322 Conn. 904, 138 A.3d 289 (2016)." Kazemi v. Allen, 214 Conn. App. 86, 91, 279 A.3d 742 (2022).

Section 2: Malicious Prosecution in Connecticut

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the tort of malicious prosecution in Connecticut.

SEE ALSO:

- Frivolous Lawsuits in Connecticut
- Vexatious Litigation in Connecticut (Section 1)
- Abuse of Process in Connecticut (Section 3)

DEFINITIONS:

- "'An action for malicious prosecution against a private person requires a plaintiff to prove that: (1) the defendant initiated or procured the institution of criminal proceedings against the plaintiff; (2) the criminal proceedings have terminated in favor of the plaintiff; (3) the defendant acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice.' *McHale v. W.B.S. Corp.*, 187 Conn. 444, 447, 446 A.2d 815 (1982) . . . the requirement that the plaintiff establish that the defendant initiated or procured the institution of criminal proceedings against him, is the only element that distinguishes the tort of malicious prosecution from the tort of vexatious litigation . . . Although the required showing for both torts essentially is the same, there is a slight difference in that a plaintiff in a malicious prosecution action must show initiation of the proceedings by the defendant." Bhatia v. Debek, 287 Conn. 397, 404-405, 948 A.2d 1009, 1017 (2008).

STATUTES:

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

- Conn. Gen. Stat. (2025)
  Chapter 926. Statute of Limitations
  § 52-577f. Limitation of action for damages caused by malicious prosecution.

- Conn. Gen. Stat. (2025)
  Chapter 900. Court Practice and Procedure
  § 52-226a. Special finding that action or defense without merit and not in good faith.

  Chapter 939. Offenses Against the Person
  § 53-39. Malicious prosecution.

LEGISLATIVE:

Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- Duke Chen, Acts Affecting Criminal Justice and Public Safety, Connecticut General Assembly, Office of Legislative Research, OLR Research Report, 2021-R-0131 (August 13. 2021). *See* Malicious Prosecution, p. 10.

FORMS:

- 3 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 5th ed., by Daniel A. Morris et al., 2024 ed., Thomson West (also available on Westlaw).
  - Chapter 64
    - § 64:6. Malicious prosecution: Legal action initiated or maintained in bad faith or unlawfully—Commentary
    - § 64:7. Malicious prosecution—Complaint

- 16A *Connecticut Practice Series: Connecticut Elements of an Action*, Thomas B. Merritt, 2025, Thomson West (Also available on Westlaw).
  - Chapter 15. Malicious Prosecution/Vexatious Litigation
    - § 15:10. —Sample trial court documents—Sample complaint
    - § 15:11. —Sample answer containing affirmative defense
    - § 15:12 —Plaintiff's proposed jury instructions
    - § 15:13 —Defendant's proposed jury instructions

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2024.
  - Chapter 12. Bringing Intentional Tort Claims
    - § 12.03. Bringing a claim for misuse of the legal system
      - [17] Checklist for malicious prosecution/vexatious litigation claims
      - [19] Forms for malicious prosecution/vexatious litigation claims
    - Form 12.03.1 Complaint—malicious prosecution and vexatious litigation

- 17 *Am Jur Pleading & Practice Forms*, Malicious Prosecution, Thomson West, 2022 (Also available on Westlaw).
  - III. Criminal Proceedings
    - A. In general §§ 40-58
    - B. On preliminary hearing §§ 59-69
    - C. For failure to continue prosecution §§ 58-66
    - D. After trial §§ 70-78
    - E. After Appeal §§ 93-95

JURY INSTRUCTIONS:

- 16A *Connecticut Practice Series: Connecticut Elements of an Action*, Thomas B. Merritt, 2025, Thomson West (Also available on Westlaw).
  - Chapter 15. Malicious Prosecution/Vexatious Litigation
    - § 15:12 —Plaintiff's proposed jury instructions
    - § 15:13 —Defendant's proposed jury instructions

- 17 *Am Jur Pleading & Practice Forms*, Malicious Prosecution, Thomson West, 2022 (Also available on Westlaw).
  - V. Instructions to jury
    - §§ 107-142

CASES:

Once you have identified useful cases, it is important to update them to ensure they are still good law. You can contact your local law librarian to learn about updating cases.

- Thompson v. Clark, 596 U.S. ___, 142 S.Ct. 1332, 1335, (2022). "Larry Thompson was charged and detained in state criminal proceedings, but the charges were dismissed before trial without any explanation by the prosecutor or judge. After the dismissal, Thompson alleged that the police officers who initiated the criminal proceedings had "maliciously prosecuted" him without probable cause. App. 33-34. Thompson sued and sought money damages from those officers in federal court. As relevant here, he advanced a Fourth Amendment claim under 42 U. S. C. § 1983 for malicious prosecution.

  To maintain that Fourth Amendment claim under § 1983, a plaintiff such as Thompson must demonstrate, among other things, that he obtained a *favorable termination* of the underlying criminal prosecution. Cf. Heck v. Humphrey, 512 U.S. 477, 484, and n. 4 (1994). This case requires us to flesh out what a favorable termination entails. Does it suffice for a plaintiff to show that his criminal prosecution ended without a conviction? Or must the plaintiff also demonstrate that the prosecution ended with some affirmative indication of his innocence, such as an acquittal or a dismissal accompanied by a statement from the judge that the evidence was insufficient?

  We conclude as follows: To demonstrate a favorable termination of a criminal prosecution for purposes of the Fourth Amendment claim under § 1983 for malicious prosecution, a plaintiff need only show that his prosecution ended without a conviction. Thompson satisfied that requirement in this case. We therefore reverse the judgment of the U. S. Court of Appeals for the Second Circuit and remand for further proceedings consistent with this opinion."

- Idlibi v. Ollennu, 205 Conn. App. 660, 667, 258 A.3d 121 (2021). "In the third count of his complaint, Idlibi alleges that Ollennu engaged in malicious prosecution. Specifically, he claims that Ollennu 'counseled his client to mislead [a] police detective for the purpose of procuring the institution of criminal proceedings against [Idlibi],' and that '[b]y counseling his client to continue asserting an accusation of assault against [Idlibi], Ollennu procured the institution of criminal proceedings against [him].' The court dismissed this claim after finding that it was barred by the doctrine of litigation privilege.

  As discussed previously, the coverage afforded by the litigation privilege is not limitless. In addressing the limits of the litigation privilege, our Supreme Court has specifically held 'that absolute immunity does not bar

claims against attorneys for... malicious prosecution.' Simms v. Seaman, supra, 308 Conn. at 541, 69 A.3d 880. 'Both [malicious prosecution and abuse of process] deal with the same problem—the perversion of the legal system.' 1 F. Harper et al., Harper, James and Gray on Torts (3d Ed. 2006) § 4.9, p. 561. The policy considerations that counsel in favor of extending absolute immunity to attorneys for claims of defamation or fraud do not support extending such immunity to abuse of process or malicious prosecution.

In the present case, taking the alleged facts as true and construing them in favor of the pleader, we conclude that Idlibi has alleged a claim of malicious prosecution against Ollennu. Because a claim of malicious prosecution is not within the scope of the litigation privilege, the court erred in dismissing the malicious prosecution claim in count three on this ground. Accordingly, we reverse the judgment of the court in this regard."

- Liu v. Tangney, U.S. District Court, D. Connecticut, Case No. 3:19-cv-894, 2021 WL 2688797, 2021 U.S. Dist. LEXIS 121967 (June 30, 2021). "Unaddressed by either party, however, is the fact that the Court previously has concluded—as a matter of law—that Liu's Complaint sufficiently pleaded facts bearing on the two elements of malicious prosecution that Zhou attempts to litigate here. In this Court's ruling on Zhou's first motion to dismiss, the Court concluded that Liu had pleaded facts that were sufficient to make out three of the four elements of a claim of malicious prosecution under Connecticut common law, when those facts were construed in the light most favorable to him as the Plaintiff and the opponent of Zhou's motion. See 2020 WL 3036017, at *5–*8. Specifically, the Court found that Liu adequately had alleged that Zhou 'initiated or procured the institution of criminal proceedings against [Liu] by knowingly providing false information to a law enforcement official,' that there was no dispute that the subsequent criminal proceedings had terminated in favor of Liu, and that Liu adequately had alleged that probable cause for his arrest was lacking because 'the Complaint appears to allege that Zhou knowingly provided false information to a government official.' Id. at *5–*7. However, the Court concluded that Liu's Complaint did not allege sufficient facts with respect to the fourth element required to state a claim for common law malicious prosecution—*i.e.*, that Zhou had acted with 'malice.' Id. at *8. Accordingly, the Court dismissed the malicious prosecution claim against Zhou, but this dismissal was without prejudice and with leave to replead as to the element of 'malice.' *Id.* at *9.2 [Quinghe Liu v. Tangney, 2020 WL 3036017, 2020 U.S. Dist. LEXIS 99004 (June 5, 2020)]

The Court's own review of Liu's Amended Complaint reveals that it contains new allegations only with respect

to the malice element, and otherwise does not materially differ from his original Complaint. Compare Compl. ¶¶ 6–9 with Am. Compl. ¶¶ 6–9. In particular, the Amended Complaint recites not only that Zhou made false allegations to Tangney concerning an assault by Liu, but that she did so 'for the specific purpose of causing [Liu] to be arrested and prosecuted' and that she was motivated to do so 'to sever her longstanding relationship with [Liu], to prevent [Liu] from having a relationship with their minor daughter, and to obtain money from [Liu].' Am. Compl. ¶ 6. Zhou appears not to take issue with the sufficiency these additional factual allegations, since she makes no argument that 'malice' remains inadequately pleaded in the Amended Complaint. The Court, for its part, concludes that these are factual allegations that, if true, would tend to support the conclusion that Zhou acted 'primarily for a purpose other than that of bringing an offender to justice.' Bhatia v. Debek, 287 Conn. 397, 411 (2008) (quoting McHale v. W.B.S. Corp., 187 Conn. 444, 447 (1982)). The Court therefore is satisfied that Liu now has pleaded the malice element of his malicious prosecution claim.

In sum, the Court has no reason to depart from its prior ruling, and there is no argument that Liu's Amended Complaint does not sufficiently allege the requisite malice by Zhou. Liu's Amended Complaint, like the original Complaint, may be brief in relating its factual bases and claims, but having found those factual allegations sufficient, the proper way to dispose of the claims raised thereby is either by summary judgment or by trial on the merits. Therefore, Zhou's second motion to dismiss is DENIED."

- State v. Kallberg, 326 Conn. 1, 13, 160 A.3d 1034 (2017). "A nolle may, however, be bargained for as part of a plea agreement; see *State* v. *Daly,* 111 Conn.App. 397, 400 n.2, 960 A.2d 1040 (2008), cert. denied, 292 Conn. 909, 973 A.2d 108 (2009); Practice Book § 39-5 (2); see also *Mason* v. *State,* 302 Md. 434, 440, 488 A.2d 955 (1985) (nolle as part of plea agreement tantamount to dismissal of nolled charge); or as part of an agreement whereby the defendant provides something else of benefit to the state or the victim in exchange for entry of a nolle. See, e.g., *People* v. *Reagan,* 395 Mich. 306, 317-18, 235 N.W.2d 581 (1975) (enforcing agreement in which prosecution would enter nolle if defendant passed polygraph examination); see also *Holman* v. *Cascio,* 390 F.Supp.2d 120, 123-24 (D. Conn. 2005) ('a nolle will preclude a subsequent case for malicious prosecution [due to lack of a favorable termination of the prior criminal case] when it was made as part of a plea bargain or under other circumstances that indicate that the defendant received the nolle in exchange for providing something of benefit to the state or victim').[7]"

Footnote 7. "In the context of malicious prosecution claims, which require, among other things, that the plaintiff prove that the prior criminal action was terminated in his or her favor, courts have recognized that a unilateral nolle is 'really just an abandonment of prosecution that is not conditioned on the defendant "giving up" anything,' which would be a favorable disposition. By contrast, a bargained for nolle, where the defendant provides consideration for something of benefit to the state or the victim, would not constitute a favorable disposition and thus precludes a malicious prosecution claim. *Lupinacci* v. *Pizighelli,* 588 F.Supp.2d 242, 249 (D. Conn. 2008); see also *DeLaurentis* v. *New Haven,* 220 Conn. 225, 251, 597 A.2d 807 (1991)."

- Tice v. Bish, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FST-CV14-6023210-S (July 14, 2016) (2016 WL 4253519) (2016 Conn. Super. LEXIS 1981). "Unlike Giannamore, here there was no evidence of persistence in seeking a prosecution, prior to the plaintiff's arrest (In Giannamore, '[t]he defendant went to [the state trooper], then the prosecutor and then back to [the state trooper] seeking the prosecution of the plaintiff,' 108 Conn. App. at 317). If the defendant (and defendant Allen) had been successful in reinstating the prosecution, then there might have been no question as to the defendant's role in procuring the arrest/prosecution, but that is in the realm of hypotheticals, not reality. The actual initiation of the prosecution was based on a call to the police, immediately after a second interaction/confrontation, without material distortion of the facts and without any additional conduct encouraging or pressing for an arrest.

  Accordingly, the court finds that the verdict in favor of the plaintiff on the claim of malicious prosecution must be set aside; there was no active procurement of the prosecution, there was no lack of probable cause associated with the report to the police, there were no material omissions or fabrications in connection with the report to the police, and in the context of this case and its undisputed facts it would be contrary to strong public policy to allow such a verdict to stand."

- Johnston v. Morgester, Superior Court, Judicial District of Hartford at Hartford, No. HHD-CV-14-6051117-S (March 5, 2015) (2015 WL 1427207) (2015 Conn. Super. Lexis 480). "Based on all the evidence presented, the court finds that the defendant did not make a full and truthful disclosure to the police or in her affidavit in support of her 'application for relief from abuse,' and that her testimony lacks credibility in significant detail. On the other hand, the plaintiff has presented compelling evidence to support probable cause for the essential elements of his claims of malicious

prosecution, vexatious litigation and emotional distress. Specifically, in support of his claim of malicious prosecution, the plaintiff has established probable cause that the defendant initiated a criminal proceeding against him when she called the police to report an assault; the defendant did not make a full and truthful disclosure to the police when she reported the incident; the criminal prosecution was dismissed on February 14, 2014; the defendant acted out of anger and/or malice and not for the purpose of bringing 'an offender to justice.' *Bhatia v. Debek*, 287 Conn. 397, 405-07, 948 A.2d 1009 (2008). Vexatious litigation and malicious prosecution have 'three identical elements—want of probable cause, malice and termination of action in the plaintiff's favor . . .' Id., 405….As noted, the court finds that the evidence presented by the plaintiff establishes that both the criminal prosecution and action for a restraining order in family court were commenced with malicious intent, and therefore, the plaintiff is entitled to a PJR that reflects treble damages under the statute. Finally, the plaintiff has presented evidence establishing probable cause that he has suffered extreme emotional distress as a result of the defendant's actions."

- Giannamore v. Shevchuk, 108 Conn. App. 303, 318-319, 947 A.2d 1012, 1021 (2008). "Our Supreme Court has stated: 'In a malicious prosecution action, the defendant is said to have acted with malice if he [or she] acted primarily for an improper purpose; that is, for a purpose other than that of securing the proper adjudication of the claim on which [the proceedings] are based....' (Citation omitted; internal quotation marks omitted.) *Mulligan v. Rioux*, supra, 229 Conn. at 732, 643 A.2d 1226; see also 3 Restatement (Second), Torts, Malicious Prosecution § 668, p. 438 (1977). Furthermore, we note that '[m]alice may be inferred from lack of probable cause.' *Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP*, supra, 281 Conn. at 94, 912 A.2d 1019. If the evidence supports a finding of a lack of probable cause, then the fact finder reasonably may conclude that the defendant acted with malice. See *Mulligan v. Rioux*, supra, at 746, 643 A.2d 1226."

- Lopes v. Farmer, 286 Conn. 384, 385, 944 A.2d 921 (2008). "In this action for malicious prosecution brought pursuant to 42 U.S.C. § 1983, the plaintiff, Y'Isiah Lopes, appeals from the grant of summary judgment rendered in favor of the defendants Shawn Farmer and Melissa Niemiec, both police officers employed by the town of Stratford. On appeal, the plaintiff claims that the trial court improperly concluded that his claims against the defendants were barred by the statute of limitations. We agree, and, accordingly, reverse the judgment of the trial court.

The parties do not dispute that the three year limitation period pursuant to § 52-577 applies to the plaintiff's action. Instead, the dispute centers on the date on which the limitations period commenced. The plaintiff claims that the statute of limitations began to run upon the termination of the underlying criminal action in his favor. The defendants respond that the limitations period properly was measured from the time that the plaintiff was arrested. We agree with the plaintiff. (p. 387)

'There is no limitation provision contained in 42 U.S.C. § 1983 setting forth a time period within which the right must be enforced. See *Wilson v. Garcia*, 471 U.S. 261, 266-267, 105 S. Ct. 1938, 85 L. Ed. 2d 254 (1985). Where Congress has not established a time limitation for a federal cause of action, the settled practice has been to adopt a local limitation if it is not inconsistent with federal law or policy to do so.' *Orticelli v. Powers*, 197 Conn. 9, 16, 495 A.2d 1023 (1985); see also *Williams v. Walsh*, 558 F.2d 667, 670 (2d Cir. 1977) ('[i]n the absence of a federal statute of limitations federal courts borrow the state statute of limitations applicable to the *most similar state cause of action*' [emphasis in original; internal quotation marks omitted]). In the case of an action for malicious prosecution brought pursuant to § 1983, the appropriate limit is the three year limitations period applicable to tort actions, set forth in § 52-577. See *Orticelli v. Powers*, supra, 16 n.3 (noting that United States Supreme Court indicated in *Wilson v. Garcia,* supra, at 276, 105 S.Ct. 1938, that actions under 42 U.S.C. § 1983 are best characterized as personal injury actions for purpose of determining applicable limitations period). (p. 388)

Although the length of the limitations period for actions brought pursuant to 42 U.S.C. § 1983 is governed by state law, 'the accrual date of a § 1983 cause of action is a question of federal law that is *not* resolved by reference to state law.' (Emphasis in original.) *Wallace v. Kato,* 549 U.S. 384, 127 S.Ct. 1091, 1095, 166 L. Ed. 2d 973 (2007). 'Aspects of § 1983 which are not governed by reference to state law are governed by federal rules conforming in general to common law tort principles.... Under those principles, it is the standard rule that [accrual occurs] when the plaintiff has a complete and present cause of action.... [T]hat is, when the plaintiff can file suit and obtain relief....' (Citations omitted; internal quotation marks omitted.) Id.

Because one of the elements of the tort of malicious prosecution is favorable termination of the underlying action, a cause of action for malicious prosecution accrues only when the underlying action terminates in the plaintiff's favor. *Heck v. Humphrey,* 512 U.S. 477, 489, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994). The requirement of favorable termination is well established in our case

law. 'An action for malicious prosecution against a private person requires a plaintiff to prove that: (1) the defendant initiated or procured the institution of criminal proceedings against the plaintiff; (2) *the criminal proceedings have terminated in favor of the plaintiff;* (3) the defendant acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice.' (Emphasis added.) *McHale v. W.B.S. Corp.,* 187 Conn. 444, 447, 446 A.2d 815 (1982).

In the present case, the prosecution against the plaintiff terminated in his favor when the charges were dismissed on July 22, 2002. When the plaintiff instituted the present action on May 15, 2005, he was within the three year limit set by § 52-577. His action, therefore, was not time barred."

- DeLaurentis v. New Haven, 220 Conn. 225, 250, 597 A.2d 807, 820 (1991). "Courts have taken three approaches to the 'termination' requirement. The first, and most rigid, requires that the action have gone to judgment resulting in a verdict of acquittal, in the criminal context, or no liability, in the civil context . . . The third approach, while nominally adhering to the 'favorable termination' requirement, in the sense that any outcome other than a finding of guilt or liability is favorable to the accused party, permits a malicious prosecution or vexatious suit action whenever the underlying proceeding was abandoned or withdrawn without consideration, that is, withdrawn without either a plea bargain or a settlement favoring the party originating the action."

- Colli v. Kamins, 39 Conn. Supp. 75, 77, 468 A.2d 295 (1983). "An abandonment of a criminal proceeding, so far as the plaintiff's right to prevail is concerned, is the equivalent of its successful termination. *Shaw v. Moon*, 117 Or. 558, 562, 245 P. 318 (1926). The rule governing the kindred tort of malicious prosecution is that it is sufficient if the defendant in the underlying prosecution was 'discharged without a trial under circumstances amounting to an abandonment of the prosecution without request from or by arrangement with him.' *See* v. *Gosselin*, 133 Conn. 158, 160, 48 A.2d 560 (1946)."

- McHale v. W.B.S. Corporation, 187 Conn. 444, 447, 446 A.2d 815 (1982). "…The law governing malicious prosecution seeks to accommodate two competing and ultimately irreconcilable interests. It acknowledges that a person wrongly charged with criminal conduct has an important stake in his bodily freedom and his reputation, but that the community as a whole has an even more important stake in encouraging private citizens to assist public officers in the enforcement of the criminal law. 1 F. Harper & F. James, Torts (1956) § 4.11.

The policy of encouraging private citizens to assist in law enforcement is vindicated, in the law of malicious prosecution, by providing a limited immunity in the form of the first element that the plaintiff must prove to maintain his cause of action. A private person can be said to have initiated a criminal proceeding if he has insisted that the plaintiff should be prosecuted, that is, if he has brought pressure of any kind to bear upon the public officer's decision to commence the prosecution. *Fatone* v. *DeDomenico,* 161 Conn. 576, 577, 290 A.2d 324 (1971); *Zenik* v. *O'Brien,* supra, 596. But a private person has not initiated a criminal proceeding if he has undertaken no more than to provide potentially incriminating information to a public officer. In such a case, if the defendant has made a full and truthful disclosure and has left the decision to prosecute entirely in the hands of the public officer, he cannot be held liable for malicious prosecution….

The narrow issue in the case before us is to determine the extent to which falsity of the information provided to the public officer diminishes the private person's immunity. It is conceded that a private person cannot escape liability if he knowingly presents information that is false; false information necessarily interferes with the intelligent exercise of official discretion. The problem arises when the information proves to be false, although the informer in good faith believed it to be true. The defendants requested that the trial court instruct the jury that 'the informer is not liable though the information proves to be false and his belief was one that a reasonable man would not entertain.' This request to charge was taken verbatim from 3 Restatement (Second), Torts (1977) §653, comment g. The trial court charged instead that the test was whether the informer 'had reasonable grounds to believe [that the information] was true....' That language is found, in dictum, in *Zenik* v. *O'Brien,* supra, 596, although, earlier, in *Brodrib* v. *Doberstein,* supra, 298, we had adopted a standard closer to that of the Restatement when we held that no action would lie against a person who 'fully and fairly states all the material facts within his knowledge to the prosecuting attorney and in good faith abides by his decision as to whether they constitute probable cause for believing that a crime has been committed....' We now affirm that the proper standard is that of *Brodrib* v. *Doberstein* and the Restatement….

The trial court was therefore in error in refusing to instruct the jury in accordance with the defendants' request to charge. In our judgment, a proper concern for private assistance to public law enforcement officers requires immunity from liability for malicious prosecution for the citizen who, in good faith, volunteers false incriminating information. To impose upon such a citizen the burden of having his conduct measured, retrospectively, by the standard of a reasonable person, would necessarily have a

chilling effect on the willingness of a private person to undertake any involvement in the enforcement of the criminal laws.

In reaching this decision, we emphasize that we are addressing only one element of the cause of action for malicious prosecution. Our adoption of a good faith standard is limited to the issue of the defendants' initiation of criminal proceedings. We recognize that a person who has taken a more vigorous role, who has insisted that criminal proceedings go forward, has automatically 'initiated' criminal proceedings. Once the initiation threshold is crossed, greater involvement signals greater risks. The liability of any person who has initiated criminal proceedings depends upon whether he has acted with probable cause, with 'the knowledge of facts sufficient to justify a reasonable person in the belief that there are reasonable grounds for prosecuting an action.' *Vandersluis* v. *Weil,* 176 Conn. 353, 356, 407 A.2d 982 (1978); *Zenik* v. *O'Brien,* supra, 597. Today's decision does not alter this well-settled law of probable cause."

WEST KEY NUMBERS:

- *249 Malicious Prosecution*
  - 0.5-14. Nature and commencement of prosecution
  - 25. Civil actions and proceedings.
  - 26-33. Malice.
  - 34-37. Termination of prosecution.
  - 38-77. Actions.

DIGESTS:

- West's Connecticut Digest
  Malicious Prosecution
  - I. Nature and Commencement of Prosecution, 0.5-14
  - II. Want of Probable Cause, 15-25
  - III. Malice, 26-33
  - IV. Termination of Prosecution, 34-37
  - V. Actions, 38-77
  - VI. Criminal Responsibility, 78-79

ENCYCLOPEDIAS:

- Malicious Prosecution, American Law Reports Index.

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- 52 *Am Jur* 2d Malicious Prosecution, Thomson West, 2021 (Also available on Westlaw).
  - I. In General
  - II. Elements of the Cause of Action
  - III. Parties
  - IV. Defenses
  - V. Damages
  - VI. Practice and Procedure
- 188 *Am Jur POF 3d* 267, *Proof of Malicious Prosecution*, by Eric J. Handelman, J.D., Thomson West, 2021 (Also available on Westlaw).
- 54 *CJS* Malicious Prosecution or Wrongful Litigation, Thomson West, 2014 (Also available on Westlaw).

I. In General
II. Elements of the Cause of Action for Malicious Prosecution
III. Defenses to Cause of Action for Malicious Prosecution
IV. Persons Entitled to Sue and Persons Liable
V. Actions

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Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- *Connecticut Law of Torts, 4th ed.*, by Douglass B. Wright et al., 2018, Atlantic Law Book Company, with 2023 supplement.
  Chapter XVIII. Vexatious Litigation
  § 161. Introduction
  § 162. Malicious prosecution

- 3A *Connecticut Practice Series: Civil Practice Forms 4th*, by Joel M. Kaye and Wayne D. Effron, 2004, with 2022 supplement, Thomson West (Also available on Westlaw).
  Authors' Commentary for Form 804.10

- 12 *Connecticut Practice Series: Connecticut Unfair Trade Practices, Business Torts and Antitrust*, Robert M. Langer et al., 2024-2054 ed., Thomson West, (Also available on Westlaw).
  Chapter 4. CUTPA and Related Business Torts
  § 4.15. Malicious prosecution, vexatious litigation, and abuse of process

- 16A *Connecticut Practice Series: Connecticut Elements of an Action*, Thomas B. Merritt, 2025, Thomson West (Also available on Westlaw).
  Chapter 15. Malicious Prosecution/Vexatious Litigation
  § 15:1. Elements of action
  § 15:2. Authority
  § 15:3. Remedies—Compensatory damages
  § 15:4. —Punitive or exemplary damages
  § 15:5. Limitations of actions: Statute of limitations
  § 15:6. Defenses—Limitations
  § 15:7. —Existence of probably cause
  § 15:8. —Advice of counsel
  § 15:9. Checklist

- *Connecticut Legal Ethics & Malpractice,* 3d ed. by Mark A. Dubois and James F. Sullivan, ALM Media Properties, LLC, 2016.
  Chapter 9. Statutes of Limitation
  § 9-4:2. Other Statute of Limitations

  Chapter 10. Vexatious Litigation, Abuse of Process and Miscellaneous Attorney Exposures
  § 10-1. Introduction
  § 10-2. Vexatious Litigation
  § 10-2:1. Initiating the Action, and What Constitutes an Action or Complaint
  § 10-2:2 Prior Litigation Terminating in Party's Favor

§ 10-2:3 Lack of Probable Cause
§ 10-2:4 Advice of Counsel

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2024.
  Chapter 12. Bringing Intentional Tort Claims
  § 12.03. Bringing a claim for misuse of the legal system
  [1] Distinguishing among malicious prosecution, vexatious suits, and abuse of process
  [2] Historical perspective of cause of action relating to misuse of the legal system
  [3] Proving the required elements of malicious prosecution and vexatious suits
  [4] Establishing the lack of probable cause in the underlying action
  [5] Effect of a criminal conviction on a malicious prosecution action
  [6] How does a private person "initiate criminal proceedings" for purposes of malicious prosecution?
  [7] Establishing that the defendant acted with "malice" in the underlying action
  [8] Establishing that the underlying action terminated in the malicious prosecution/vexatious litigation plaintiff's favor
  [9] Recovering damages in a malicious prosecution/vexatious litigation suit
  [10] Defending a malicious prosecution or vexatious litigation suit
  [17] Checklist for malicious prosecution/vexatious litigation claims

- *Encyclopedia of Connecticut Causes of Action*, Daniel J. Krisch and Michael Taylor, 2024 edition, Connecticut Law Tribune.
  Part 1. Common Law Causes of Action
  1M-1. Malicious Prosecution

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  A. Introduction
  § 7:01. Overview
  B. Essential elements
  § 7:02. Essential elements
  § 7:03. Initiation of prior criminal proceeding
  § 7:04. Initiation of prior civil proceeding
  § 7:05. Lack of probable cause
  § 7:06. Malice
  § 7:07. Favorable termination
  C. Remedies and damages
  § 7:08. In general

D. Defenses
§ 7:09. In general
E. Pleading and practice
§ 7:10. In general
F. Research aids
§ 7:11. Bibliography

- 1 *Harper, James, & Gray on Torts 3d*, by Fowler V. Harper, et al., 2006, with 2025 supplement, Aspen Publishers, Inc. (also available on VitalLaw).
  Chapter 4. Malicious Prosecution and Abuse of Process
  § 4.1. General principles involved; What constitutes malicious prosecution
  § 4.2. The interests involved
  § 4.3. Initiation of criminal proceedings
  § 4.4. Favorable termination of proceedings
  § 4.5. Probable cause
  § 4.6. Malice
  § 4.7. Damages
  § 4.10. Other malicious and wrongful exposure to government action
  § 4.11. Policy factor in false arrest, malicious prosecution, defamation: Their relationship to each other
  § 4.12. Policy factor in false arrest, malicious prosecution, defamation: The absolute defense in all three

- 1 The Law of Lawyering, 4th ed., by Geoffrey C. Hazard, Jr.,Wolters Kluwer, 2023 (also available on VitalLaw)
  § 5.22 Abuse of Process and Malicious Prosecution

- *The Law of Torts 2d*, by Dan B. Dobbs, et al., 2011, with 2023 supplement, Thomson West (Also available on Westlaw).
  Chapter 46. Process rights: misusing and denying judicial process
  § 585. Tortious use of the legal process: policies and immunities
  § 586. Elements of malicious prosecution
  § 587. Malicious prosecution—Instigating or continuing the prosecution or proceeding
  § 588. —Want of probable cause
  § 589. Improper purpose or "malice"
  § 590. Termination of the prosecution
  § 591. Special defenses
  § 593. Special-injury or special-grievance requirement
  § 596. Damages

- 3 *Restatement of the Law Second: Torts*, American Law Institute, 1979, with 2025 supplement (Also available on Westlaw).
  Chapter 29. Wrongful Prosecution of Criminal Proceedings (Malicious Prosecution)
  §§ 653-657. General principles

§§ 658-661. Termination of proceedings
§§ 662-667. Probable cause
§§ 668-669A. Purpose
§§ 670-671. Damages
§§ 672-673. Burden of proof and function of court and jury

- *Restatement of the Law Third, Torts, Liability for Economic Harm*, American Law Institute, 2020 (Also available on Westlaw).
  Chapter 4. Misuse of Legal Procedure
  § 21. Malicious prosecution
  § 22. Probable cause to initiate criminal proceedings
  § 23.Favorable termination of criminal proceedings
  § 24. Wrongful use of civil proceedings
  § 25. Probable cause to initiate civil proceedings
  § 26. Abuse of process

- *Tort Remedies in Connecticut*, by Richard L. Newman and Jeffrey S. Wildstein, Michie, 1996, with 2014 supplement.
  Chapter 12. Intentional Torts
  § 12-3. Malicious prosecution and vexatious suit
  (a). Introduction
  (b). History
  (c). Elements
  (d). Damages
  (e). Conn. Gen. Stat. § 52-226a
  (f). Defenses

Figure 2: Malicious Prosecution

Malicious Prosecution

1. On or about (*date*) the defendant complained and stated to (*name*) a Prosecuting Attorney for Geographical Area No. of the Superior Cort that the plaintiff had committed the crime of (*crime charged*) in that the plaintiff had (*state facts of alleged crime*).

2. As a result of the complaint and statements, the Prosecuting Attorney prepared an information charging the plaintiff with the crime and secured a warrant for the plaintiff's arrest from the court.

3. The plaintiff was arrested by virtue of the warrand and brough before the court.

4. The information was subsequently nolled.

or

4. The charges against the plaintiff were dismissed by the court.

or

4. Upon trial, the defendant was acquitted of the charges and discharged.

5. The complaint and charges were in fact false, and there was no reasonable or probable cause for the prosecution.

6. The defendant made the complaint and charges from malice.

7. The arrest caused the plaintiff great humiliation, disgrace, mental anguish and physical discomfort, and he was required to employ a lawyer to defend him against the charges.

8. (*State other special damage*)

The plaintiff claims damages.

(P.B. 1963, Form 204.)

[**NOTE:** This form, 804.10 Malicious Prosecution, appears on page 5405 of the Connecticut Practice Book, Revison of 1978, Volume 2.]

Section 3: Abuse of Process in Connecticut

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating the tort of abuse of process in Connecticut.

SEE ALSO:

- Frivolous Lawsuits in Connecticut
- Vexatious Litigation in Connecticut (Section 1)
- Malicious Prosecution in Connecticut (Section 2)

DEFINITIONS:

- "Abuse of process is the misuse of process regularly issued to accomplish an unlawful ulterior purpose. The gravamen of the complaint is the use of process for a purpose not justified by law. The distinction between malicious prosecution or vexatious suit and abuse of process as tort actions is that in the former the wrongful act is the commencement of an action without legal justification, and in the latter it is in the subsequent proceedings, not in the issue of process but in its abuse. The distinction in the elements essential for recovery in each tort is that in the action for abuse of process the plaintiff is not bound to allege or prove the termination of the original proceeding nor, in most jurisdictions, the want of probable cause, while both of those must be proven in an action for malicious prosecution or vexatious suit." Schaefer v. O. K. Tool Co., Inc., 110 Conn. 528, 532-533, 148 A. 330, 332-333 (1930).

PRACTICE BOOK:

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

- Conn. Practice Book (2025).
  - Chapter 4. Pleadings
    - § 4-2. Signing of pleadings
  - Chapter 10. Pleadings
    - § 10-5. Untrue allegations or denials
  - Chapter 24. Small Claims
    - § 24-33. Costs in small claims
  - Chapter 85. Sanctions
    - § 85-2. Other actions subject to sanctions
      - (5). Presentation of a frivolous appeal or frivolous issue on appeal
      - (6) Presentation of a frivolous defense or defenses on appeal.
    - § 85-3. Procedure on sanctions

FORMS:

- 1 Pt. 1 *Am Jur Pleading and Practice Forms,* Abuse of Process, 2018, Thomson West (Also available on Westlaw).
  - I. Process in civil proceedings
    - A. In general §§ 1-33
      - § 3. Checklist—Drafting a complaint, petition, or declaration in an action for abuse of process
    - B. Attachment and garnishment §§ 34-45
    - C. Execution §§ 46-53
  - II. Criminal and civil arrest §§ 54-76

- 16 Connecticut Practice Series: Connecticut Elements of an Action, Thomas B. Merritt, 2025, Thomson West, (Also available on Westlaw).
  Chapter 7. Abuse of Process
  § 7:9. Sample trial court documents—Sample complaint
  § 7:10. —Sample answer containing affirmative defense

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2024.
  Chapter 12. Bringing Intentional Tort Claims
  § 12.03. Bringing a claim for misuse of the legal system
  [18] Checklist for abuse of process claims
  [20] Forms for abuse of process claims
  Form 12.03.2 Complaint— abuse of process

JURY INSTRUCTIONS:

- Connecticut Judicial Branch Civil Jury Instructions
  Part 3: Torts
  3.13. Intentional Torts
  3.13-8. Abuse of Process (rev. to January 1, 2008)
- 1 Pt. 1 *Am Jur Pleading and Practice Forms,* Abuse of Process, Thomson West, 2018 (Also available on Westlaw).
  III. Instructions to jury
  §§ 91-120

CASES:

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

- Idlibi v. Ollennu, 205 Conn. App. 660, 664, 258 A.3d 121 (2021). "In the first count of his complaint, Idlibi alleges that Ollennu 'misused the legal process ... to accomplish the unlawful ulterior purpose of misleading the [trial] court and winning the [dissolution] case.' Specifically, Idlibi claims that Ollennu 'abus[ed] the legal process of sworn [i]nterrogatories ... in an improper manner for the ulterior purpose of presenting false evidence [to] the court.' The court dismissed this claim, finding that it was 'barred by the doctrine of absolute immunity/litigation privilege.'

  The coverage afforded by the litigation privilege, however, is not without its limits. Our Supreme Court has held that in 'an abuse of process case ... attorneys are not protected by absolute immunity against claims alleging the pursuit of litigation for the unlawful, ulterior purpose of inflicting injury on the plaintiff and enriching themselves and their client, despite knowledge that their client's claim lacked merit, because such conduct constituted the use of legal process in an improper manner or primarily to accomplish a purpose for which it was not designed.' Id. at 540-41, 69 A.3d 880. In an abuse of process action, 'the exigencies of the adversary system have not been deemed to require absolute immunity for attorneys.' Mozzochi v. Beck, 204 Conn. 490, 495, 529 A.2d 171 (1987). Accordingly, 'an attorney

may be sued for misconduct by those who have sustained a special injury because of an unauthorized use of legal process.' Id.

In the present case, taking the facts as alleged in the first count of the complaint as true and construing them in a manner favorable to the pleader, we conclude that Idlibi alleges a claim of abuse of process against Ollennu. Because such a claim is not within the scope of the litigation privilege, we conclude that the court erred in dismissing the claim on this ground. Accordingly, we reverse the judgment of the court as to the abuse of process claim in count one."

- Metcalf v. Fitzgerald, 333 Conn. 1, 30, 214 A.3d 361 (2019). "Accordingly, the plaintiff's state law CUTPA and vexatious litigation claims are in conflict with the Bankruptcy Code provisions regarding sanctions for abuse of process and, thus, are preempted. The trial court properly dismissed these claims for lack of subject matter jurisdiction."

- Williams v. Bean, United States District Court, Docket No. 16-cv-1633 (VAB), (D. Conn. November 8, 2017), 2017 WL 5179231, 2017 U.S. Dist. LEXIS 184829. "The Williamses argue that the Beans' counterclaim for abuse of process is premature absent disposition of the underlying litigation. Pls.' Br. 5. The Beans argue that prior resolution of the underlying litigation is not an element of abuse of process at common law. Defs.' Resp. 4-5. The Court agrees with the Williamses. The Williams' motion to dismiss the claim is granted.

  Under Connecticut law, `[a]n action for abuse of process lies against any person using a legal process against another in an improper manner or to accomplish a purpose for which it was not designed.' *Passaro-Henry v. Allstate Ins. Co*., No. 3:10-CV-450 JCH, 2010 WL 5174405, at *3 (D. Conn. Dec. 15, 2010) (quoting *Larobina v. McDonald*, 274 Conn. 394, 403 (2005)); *Rogan v. Rungee*, 165 Conn. App. 209, 220 (2016). Central to an action for abuse of process is the use of legal process `against another [party] *primarily* to accomplish a purpose for which it is not designed. Abuse of process requires conduct (1) occurring after the issuance of process and (2) intended *primarily* to accomplish a purpose for which the process is not designed.' *Passaro-Henry*, 2010 WL 5174405, at *3 (internal citations omitted and quotation marks omitted); see also *Doctor's Assocs., Inc. v. Weible*, 92 F.3d 108, 114 (2d Cir. 1996) (`[L]iability for abuse of process lies only when the offending party overtly misuses the process once the proceeding has begun.').
  `Although abuse of process claims do not include favorable termination as an essential element, the cause of action is still considered premature until the underlying

litigation has been completed.' *MacDermid v. Leonetti*, 158 Conn. App. 176, 184 (2015) (citing *Larobina v. McDonald*, 274 Conn. 394, 407–08 (2005))."

- Rogan v. Rungee, 165 Conn. App. 209, 2016 WL 1637725 (2016). "'Damages suffered through an abuse of legal process not malicious must be compensatory, that is compensation for the natural consequences resulting, which would include injury to the feelings because of the humiliation, disgrace or indignity suffered, together with injury to the person and physical suffering....' *McGann v. Allen*, 105 Conn. 177, 184, 134 A. 810 (1926). Thus, for the court to properly award emotional distress damages for abuse of process, the abuse of process must have caused the defendant's emotional distress. Whether such causation exists is a question of fact. See *Burton v. Stamford*, 115 Conn.App. 47, 87, 971 A.2d 739, cert. denied, 293 Conn. 912, 978 A.2d 1108 (2009)." (p. 217)

  "The record, nonetheless, supports the court's factual finding. On the basis of the evidence in the record and the reasonable inferences drawn therefrom, the court reasonably could have found that the lights in question were LED strobe lights and that the plaintiff had not informed Williams of this fact. This omitted fact concerned the subject matter at the very heart of the plaintiff's malicious prosecution action, namely, whether the defendant falsely accused the plaintiff of creating a public disturbance. Whether the lights in question were Christmas lights or LED strobe lights would have affected significantly a court's determination of whether the defendant falsely accused the plaintiff of making a public disturbance. Thus, the court reasonably could have concluded that this omitted fact was material to the malicious prosecution action. (p. 229)

  The evidence in the record supports the court's factual finding that the plaintiff did not make a full and fair statement of all facts within his knowledge or which he was charged with knowing when he related to Williams that the defendant falsely and maliciously accused him of creating a public disturbance. Accordingly, we conclude that the court properly held that the plaintiff failed to prove his special defense of reliance on the advice of counsel."

- Stone et al. v. Pattis et al., 144 Conn. App. 79, 91, 72 A.3d 1138 (2013). "In Connecticut 'an attorney may be sued for misconduct by those who have sustained a special injury because of an unauthorized use of legal process. In permitting such a cause of action, we must, however, take care not to adopt rules which will have a chilling and inhibitory effect on would-be litigants of justiciable issues.' (Internal quotation marks omitted.) Mozzochi v. Beck, 204 Conn. 490, 495, 529 A.2d 171 (1987). 'An action for abuse of process lies

against any person using a legal process against another in an improper manner or to accomplish a purpose for which it was not designed.... Because the tort arises out of the accomplishment of a result that could not be achieved by the proper and successful use of process, the Restatement Second (1977) of Torts, § 682, emphasizes that the gravamen of the action for abuse of process is the use of a legal process ... against another primarily to accomplish a purpose for which it is not designed....' (Citations omitted; emphasis omitted; internal quotation marks omitted.) Id., at 494, 529 A.2d 171. '[T]he addition of [the word] primarily is meant to exclude liability when the process is used for the purpose for which it is intended, but there is an incidental motive of spite or an ulterior purpose of benefit to the defendant.' (Internal quotation marks omitted.) *Bernhard-Thomas Building Systems, LLC v. Dunican*, 100 Conn.App. 63, 77, 918 A.2d 889 (2007), aff'd, 286 Conn. 548, 944 A.2d 329 (2008).

The plaintiffs allege that the Howd defendants conspired with the Pattis defendants regarding subpoenaed witnesses and notices of depositions and mail receipts. They do not, however, plead any specific conduct by the Howd defendants sufficient to support a cause of action for abuse of process. '[A]lthough attorneys have a duty to their clients and to the judicial system not to pursue litigation that is utterly groundless, that duty does not give rise to a third party action for abuse of process unless the third party can point to *specific misconduct intended to cause specific injury outside of the normal contemplation of private litigation.*' (Emphasis added; internal quotation marks omitted.) *Bernhard-Thomas Building Systems, LLC v. Dunican,* supra, 100 Conn.App. at 78, 918 A.2d 889. Although the plaintiffs generally allege fraudulent behavior, they do not allege specific injury or how the conduct by the Howd defendants was intended to cause them specific injury necessary for setting forth a claim of abuse of process.[9] The court therefore did not err in striking the count alleging abuse of process."

- Larobina v. McDonald, 274 Conn. 394, 406-407, 876 A.2d 522, 530 (2005). "…although the definition of process may be broad enough to cover a wide range of judicial procedures, to prevail on an abuse of process claim, the plaintiff must establish that the defendant used a judicial process for an improper purpose."

- Varga v. Pareles, 137 Conn. 663, 667, 81 A.2d 112, 115 (1951). "One who uses a legal process against another in an improper manner or to accomplish a purpose for which it was not designed is liable to the other for the injury caused thereby. See Restatement, 3 Torts 682. In the former instance, the action lies, for example, against anyone who uses oppression or unreasonable force in the

service of process, or causes it to be used, irrespective of his motive in so doing."

WEST KEY NUMBERS:

- *Process*
  - IV. Abuse of Process
    - (A) In General, 172-199
    - (B) Actions and Proceedings, 200-213

DIGESTS:

- West's Connecticut Digest
  - Process
    - IV. Abuse of Process
      - (A) In general, 172-213
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  - I. Nature and Elements of Action
    - A. In General
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    - B. Elements
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  - III. Persons Liable
  - IV. Actions

- 52 *Am Jur 2d* Malicious Prosecution, Thomson West, 2021 (Also available on Westlaw).
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    - § 3. Distinction Between Malicious Prosecution and Other Actions

- Abuse of Process, American Law Reports Index.

- 33 *COA 2d* 465, *Cause of Action for Abuse of Process*, by Beth Bates Holliday, J.D., (2007) (Also available on Westlaw).

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    - § 7:4. —Punitive or exemplary damages
    - § 7:5. Limitations of actions: Statute of limitations
    - § 7:6. Defenses—Limitations
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    - § 9-4:2. Other Statute of Limitations
  - Chapter 10. Vexatious Litigation, Ause of Process and Miscellaneous Attorney Exposures
    - § 10-1. Introduction
    - § 10-3. Abuse of Process

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  - Chapter 12. Bringing Intentional Tort Claims
    - § 12.03. Bringing a claim for misuse of the legal system
      - [1] Distinguishing among malicious prosecution, vexatious suits, and abuse of process
      - [11] Distinguishing abuse of process from vexatious suit and malicious prosecution
      - [12] Proving the required elements of an abuse of process claim
      - [13] Holding attorneys liable for abuse of process
      - [14] Recovering damages in abuse of process cases
      - [15] Pleading an abuse of process count
      - [16] Defending an abuse of process suit
      - [18] Checklist for abuse of process claims

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- 1 *Connecticut Actions and Remedies: Tort Law*, Daniel C. Pope, 1993, with 1996 supplement, Butterworth Legal Publishers.
  - Chapter 8. Abuse of Process
    - A. Introduction

§ 8:01. Overview
B. Essential elements
§ 8:02. Elements
§ 8:03. Justifiable initiation or issuance
§ 8:04. Perversion of lawful process
C. Remedies and damages
§ 8:05. In general
D. Defenses
§ 8:06. In general
E. Pleading and practice
§ 8:07. In general
F. Research aids

- 1 *Harper, James, & Gray on Torts 3d*, by Fowler V. Harper, et al., 2006, with 2025 supplement, Aspen Publishers, Inc. (Also available on VitalLaw).
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  § 4.9. Abuse of process

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  § 5.22 Abuse of Process and Malicious Prosecution

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  Chapter 46. Process rights: Misusing and denying judicial process
  § 585. Tortious use of the legal process: policies and immunities
  § 594. Abuse of process
  § 596. Damages

- 3 *Restatement of the Law Second: Torts*, American Law Institute, 1979, with 2025 supplement (Also available on Westlaw).
  Chapter 31. Abuse of Process
  § 682. General principle

- *Tort Remedies in Connecticut*, by Richard L. Newman and Jeffrey S. Wildstein, Michie, 1996, with 2014 supplement.
  Chapter 12. Intentional torts
  § 12-4. Abuse of process
  (a). Elements
  (b). Damages
  (c). Pleading
  (d). Defenses

LAW REVIEWS:

Public access to law review databases is available on-site at each of our law libraries.

- Francis J. Mootz III, *Holding Liability Insurers Accountable for Bad Faith Litigation Tactics with the Tort of Abuse of Process*, 9 Connecticut Insurance Law Journal 467 (2002-2003)