

Connecticut Judicial Branch Self-Represented Parties Information Series

Motion to Dismiss

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Welcome to the Connecticut Judicial Branch Law Libraries Self-Represented Parties Information Series

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Connecticut Civil Lawsuit: Motion to Dismiss

In this overview, we will discuss the grounds, or reasons, and general procedures for filing a Motion to Dismiss in a Connecticut civil lawsuit. Getting in touch with a lawyer to help you is a good idea. But, if you decide to act as your own lawyer, the following is information to think about regarding this motion.

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Some words to know

A Motion means a pleading or paper filed in a case, usually written, asking or requesting the court to make a decision or judgment on something. It is filed in the Clerk's Office. The word Dismiss means to end the lawsuit or case. Jurisdiction refers to the power and authority of the court to hear and make a decision or judgment in a lawsuit or case. Venue means the physical location of the court, the specific Judicial District courthouse. Standing means that a person, business, or governmental entity has a legal right to sue in the court. An example of a legal right is when there is a real controversy between the parties that the court can hear and provide relief to a party or parties. There can be many factors that determine if a person, business, or governmental entity has standing.

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Some more words to know

The word Process refers to all the legally required paperwork to begin a lawsuit, including the complaint and the writ of summons, which is an official legal document requiring a person to appear in court to answer a complaint. These papers must be properly filled out, completed, and signed to be legally valid. A Writ of Summons is a document that must accompany the Complaint, and notifies the Defendant that he or she is being sued, and that he or she needs to file an Appearance by the Return Date. The defendant must also file a response to the Complaint. Service of Process refers to the legally required manner in which the papers are served, or delivered, to the other party or parties in the lawsuit. These papers must be properly served or delivered to be legally valid. Insufficiency means that something was not done in an adequate manner. For example, papers were not filled in correctly or papers were not delivered correctly. A

Memorandum of Law is a document that gives the legal reason for what you are asking the court to do. Short Calendar refers to a court session in which a judge holds a hearing, or listens to, motions or pleadings and issues a ruling. A hearing is required for some motions; other motions may not require a hearing but a party can request one.

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Connecticut Practice Book

Before starting to plan your response to a civil complaint, you should read the court rules in the Connecticut Practice Book. The court rules tell you what you and the other parties must do to move a case through the court. If you do not follow the court rules you may hurt, or even lose, your case. The Connecticut Practice Book can be found on the Judicial Branch website or at any Judicial Branch Law Library.

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Order of Pleadings

Connecticut Practice Book section 10-6 talks about the responsive pleadings, motions, or papers, a defendant can file, and the order in which the pleadings must be filed. For more information on the responsive pleadings and their order, please view our video on First Steps as a Defendant.

The Motion to Dismiss is listed as the first responsive pleading a defendant can file. According to Connecticut Practice Book section 10-7, filing any of the other responsive pleadings further down on the list first waives, or gives up, your right to file a Motion to Dismiss. You will want to carefully consider if you want to file a Motion to Dismiss before you file any other responsive pleading.

Connecticut Practice Book section 10-8 talks about the time in which the first responsive pleading, and most later pleadings, must be filed.

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Grounds for a Motion to Dismiss

Connecticut Practice Book section 10-30 lists the legal grounds, or reasons, for which a Motion to Dismiss can be filed. You must state one of the listed legal grounds in your motion. Feeling that the lawsuit is unfair or wrong is not a legal ground for a dismissal. The reasons allowed are:

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Lack of Jurisdiction over the subject matter

This means that the court does not have the authority to hear or decide the lawsuit or the issues being claimed. An example of when this can happen is when another court has jurisdiction over the matter or claims. Some matters or claims must be brought before a specified administrative agency, such as the Connecticut Workers' Compensation Commission or the Commission on Human Rights and Opportunities.

For standing there must be a real controversy between the parties that the court can hear and provide relief to a party or parties.

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Lack of Jurisdiction over the person

This means that the court does not have the authority to make a judgment against a person, business, or governmental entity. Some examples of when the court can have jurisdiction over a party include; a party lives in Connecticut, a party does business in Connecticut, or the event or injury that the lawsuit is about occurred in Connecticut. There are some statutes that can give the court jurisdiction over a party which is not physically located in the state.

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Insufficiency of Process

Process refers to all the legally required paperwork, which is necessary to begin a lawsuit. These papers can include the writ of summons, the complaint, and any other documents that may be required for a specific claim. These papers must be properly filled out, completed, and signed to be legally valid. Insufficiency is when these papers are not properly filled out, completed, or signed.

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Insufficiency of Service of Process

Service of Process means the steps taken to legally deliver the writ of summons and complaint, and any other legally required documents, to a defendant. Insufficiency of service of process is when these steps were not done correctly. There can be different required steps for different parties or types of claims. The steps are found in the Connecticut General Statutes sections 52-46 to 52-72.

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Other grounds

There may be other grounds on which a party can ask for a dismissal. These grounds can include, but are not limited to: forum non conveniens, meaning it is more appropriate for another court to hear the case; prior pending action, meaning a case between the parties on the same matter is already happening; or in a medical malpractice case the Certificate of Good Faith not being properly filed as required by Connecticut General Statutes section 52-190a. There may be other grounds for which you can ask for a dismissal in your situation. If you think you have a ground, you will want to research the statutes, court rules, and case law to make sure it is reasonable.

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Time to file Motion to Dismiss

According to Connecticut Practice Book section 10-30, any defendant, wishing to question the court's personal jurisdiction or insufficiency of process or service, shall file a motion to dismiss within thirty days of the filing of his or her appearance.

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Claim for Motion to Dismiss waived

Connecticut Practice Book section 10-32 says that a defendant waives, or gives up, the right to file a Motion to Dismiss for the grounds of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process if the motion is not filed in the correct order listed in the order of pleadings in Connecticut Practice Book section 10-6, and within the thirty days indicated in Connecticut Practice Book section 10-30. You need to decide early in your case if you want to file a Motion to Dismiss and get it done in the time allowed.

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Claim for Motion to Dismiss not waived

Connecticut Practice Book section 10-33 says that the right to file a Motion to Dismiss on the ground of lack of jurisdiction over the subject matter cannot be waived, or given up. If it is discovered at any time during the case that the court does not have, or lacks, subject matter jurisdiction, a defendant may file a Motion to Dismiss. A Motion to Dismiss on this ground is not limited to the thirty days after filing an Appearance as described in Connecticut Practice Book section 10-30, or to the order of pleadings described in section 10-6.

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Memorandum of Law

A Memorandum of Law must be filed along with a Motion to Dismiss. A Memorandum of Law is a written document that must be filed with some motions or pleadings. It explains to the court the legal reason why the court should do what you are asking the court to do.

A Memorandum of Law must include the facts of the case, the legal reason or argument for the motion, and include the laws, legal rules, or other court cases that explain why the motion is correct.

Connecticut Practice Book section 11-10 talks about the Memorandum of Law.

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Objection

Any opposing party can file an Objection to a defendant's Motion to Dismiss. Like the motion itself, the Objection must include a Memorandum of Law explaining to the court the legal reasons why the court should not grant the Motion to Dismiss. A party has

thirty days from the filing of the Motion to Dismiss to file an Objection. Connecticut Practice Book section 10-31 talks about objecting to a Motion to Dismiss.

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Oral Argument

Connecticut Practice Book section 11-18 says that for a Motion to Dismiss, “oral argument shall be a matter of right,” meaning that oral argument does not have to be requested, as with some motions, but rather should be automatically scheduled. Oral argument is when you and the other party, or parties, come to court and each side presents the reasons why the judge should rule in his or her favor and not in favor of the other side. The judge may ask questions to make sure he or she understands your argument. The judge can make a ruling from the bench at that time, or may issue a written ruling later.

The oral argument will take place during a short calendar session. The court will assign the date for the short calendar session and the parties will need to follow the procedures for short calendar and mark the motion as required.

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Plaintiff’s right to amend pleadings

According to Connecticut Practice Book section 10-59, the plaintiff has the right to amend any defect, mistake, or error in the writ of summons and complaint within the first thirty days after the return day. The Plaintiff does not need the consent of any other party or the court to make an amendment during this time.

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Connecticut Practice Book section 10-60 states that the Plaintiff or any other party, after the first thirty days after the return day, may amend a pleading by order of the Court, by written consent of the adverse, or opposing, party, or by filing a request asking permission to file an amendment. Section 10-60 gives specific instructions on what to include in a request to amend a pleading.

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According to Connecticut General Statutes section 52-119 and Connecticut Practice Book section 10-18, any Defendant who does not follow the court rules for pleading can have a ruling entered against him or her for not following the specified rules. This is called being “defaulted.”

According to the same statute and court rule, a Plaintiff who does not follow the court rules for pleading can have the case ended because he or she did not follow the specified rules. This is called being “nonsuited,” and the case is treated as if it never happened.

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If the Motion to Dismiss for any jurisdictional claim is denied, according to Connecticut Practice Book section 10-34, the case will proceed. The defendant will want to review the order of pleadings found in Connecticut Practice Book section 10-6, to determine what pleading he or she will file next. You may want to review our video First Steps as a Defendant. The Defendant keeps the right to challenge the court's jurisdiction if new information or evidence makes the court's jurisdiction once again questionable.

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If the Motion to Dismiss is granted, the case will end.

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Once a dismissal is granted, the Plaintiff may be able to file a new lawsuit depending on the reason for the dismissal and any controlling statutes of limitations.

Connecticut General Statute section 52-592, called "Accidental failure of suit; allowance of new action" statute, also allows for a lawsuit to be filed in some circumstances even if the statute of limitations has passed. You will want to review this statute to see if it might apply to your situation.

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For more information regarding the Motion to Dismiss, please review the Law Libraries' Motion to Dismiss Research Guide. From the Law Libraries' homepage at jud.ct.gov/lawlib. Click on the blue button on the right labeled Research Guides. Under Civil Research Guides, click on Motion to Dismiss. Here you will find references to statutes, court rules, cases, and publications with sample language for drafting a Motion to Dismiss.

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This is the end of our overview. For more information please visit a Judicial Branch Law Library, a Court Service Center, or the Judicial Branch website.