

Chapter 4 PRETRIAL PLEADINGS AND DISCOVERY

SYNOPSIS

PART I: STRATEGY

§ 4.01 Scope

§ 4.02 Objective and Strategy

PART II: PREPARING PLEADINGS

§ 4.03 CHECKLIST: Preparing Pleadings

§ 4.04 Defining the Technical Requirements

[1] Defining the Technical Requirements—In General

[2] Formatting Motions

[3] Signing Pleadings—Effect

[4] Preparing the Certification on Pleadings

[5] Redacting Personal Information

§ 4.05 Serving Motions

§ 4.06 Responding to Material Allegations in Pleadings

§ 4.07 Disposing of Motions

[1] Requiring the Court to Hear and Decide Motions

[2] Timing and Procedural Issues for ~~the Short Calendar~~[Hearing Motions](#)

PART III: PREPARING SPECIFIC PLEADINGS

§ 4.08 CHECKLIST: Preparing Specific Pleadings

§ 4.09 Preparing a Motion to Dismiss

[1] Filing a Special Appearance Is Not Permitted

[2] Timing Deadlines for Filing a Motion to Dismiss and Objections

[3] Asserting Grounds for a Motion to Dismiss

[a] Asserting a Lack of Subject Matter Jurisdiction

[b] Asserting a Lack of Personal Jurisdiction

[c] Asserting an Improper Venue

[d] Asserting an Insufficiency of Process

[e] Asserting an Insufficiency of Service of Process

§ 4.10 Preparing a Motion to Strike

[1] Delineating Grounds for Filing a Motion to Strike

[2] Filing Requirements

[3] Issuing a Memorandum of Decision

[4] Filing a New Pleading When a Motion to Strike Is Granted

§ 4.11 Filing a *Lis Pendens*

[1] Filing a *Lis Pendens* Is Not a Violation of the Automatic Orders

[2] Preparing a *Lis Pendens*

[3] Filing Requirements

[4] Seeking a Discharge of the *Lis Pendens*

§ 4.12 Filing a Motion for Exclusive Possession

§ 4.13 Filing for Temporary Alimony and Support

§ 4.14 Filing a Motion for Counsel Fees, *Pendente Lite*

§ 4.15 Filing for Temporary Custody and Visitation

§ 4.16 Filing a Motion for Modification of Temporary Orders

§ 4.17 Filing a Motion for Contempt, *Pendente Lite*

§ 4.18 Filing a Motion for Order, *Pendente Lite*

§ 4.19 Preparing a Temporary Injunction

[1] Detailing the Scope and Purpose of Temporary Injunctions

[a] Proving No Adequate Remedy at Law

[b] Proving Irreparable Harm

[c] Demonstrating the Likelihood of Prevailing on the Merits

- [d] Balancing the Equities
- [2] Filing Requirements
- § 4.20 Seeking Closure of the Courtroom or Sealing of Records
- PART IV: SEEKING DISCOVERY
- § 4.21 CHECKLIST: Seeking Discovery
- § 4.22 Defining the Permissive Nature of Discovery and Privileges
 - [1] Assessing the Scope of Discovery
 - [2] Asserting the Work Product Privilege
 - [3] Asserting the Attorney-Client Privilege
 - [4] Preparing a Privilege Log
- § 4.23 Seeking Mandatory Discovery
- § 4.24 Propounding Interrogatories
 - [1] Serving Interrogatories
 - [2] Answering Interrogatories
 - [3] Objecting to Interrogatories
- § 4.25 Filing Requests for Production
 - [1] Serving Requests for Production
 - [2] Responding to Requests for Production
 - [3] Objecting to Requests for Production
 - [4] Producing Documents at Trial
 - [5] Continuing Duty to Disclose
- § 4.26 Objecting to Discovery Requests and Seeking Protective Orders
- § 4.27 Taking the Depositions of Parties and Non-Parties
 - [1] Determining the Purpose of a Deposition
 - [2] Taking Depositions—Procedural Considerations
 - [a] Noticing a Deposition
 - [b] Recording of Deposition Testimony by Certain Persons
 - [c] Issuing Subpoenas
 - [d] Taking Depositions—Means of Recording
 - [e] Setting the Location for Parties
 - [f] Examining Witnesses
 - [g] Objecting During a Deposition
 - [h] Reading and Signing the Deposition by the Deponent
 - [i] Marking Documents at Deposition
 - [3] Agreeing to the Usual Stipulations
 - [4] Taking the Deposition of a Party
 - [5] Taking the Deposition of a Non-Party
 - [6] Taking the Deposition for the Preservation of Testimony
 - [7] Producing Documents at a Deposition
 - [8] Filing Protective Orders
 - [9] Seeking to Quash a Subpoena
 - [10] Allocating Costs of the Deposition
 - [11] Using Deposition Testimony
- § 4.28 Utilizing Experts
 - [1] Disclosing the Expert as a Witness
 - [2] Appointing an Expert by the Court
 - [3] Appointing Experts in Custody and Visitation Matters
 - [4] Eliciting Testimony from an Expert Witness
- § 4.29 Taking an Out-of-State Deposition
- § 4.30 Obtaining Physical and Mental Examinations and Associated Privileges
- § 4.31 Filing Requests for Admission
- § 4.32 Complying with Discovery Requests
 - [1] Filing a Motion to Compel or a Motion for Compliance
 - [2] Proving Non-Compliance
- § 4.33 Obtaining Discovery Sanctions
- § 4.34 Appointing a Special Discovery Master

PART V: PREPARING FOR TRIAL

§ 4.35 CHECKLIST: Preparing for Trial

§ 4.36 Filing for a Continuance

§ 4.37 Complying with Trial Management Orders

§ 4.38 Restricting Trial Time

PART I: STRATEGY

PRETRIAL PLEADINGS AND DISCOVERY

§ 4.01 Scope

This chapter covers:

- Pretrial pleadings.
- Discovery requests, responses and objections.
- Deposition related discovery.
- Disclosure of expert witnesses.
- Discovery sanctions.

§ 4.02 Objective and Strategy

The purpose of this chapter is to outline the issues to be considered when crafting and filing pretrial pleadings, creating discovery requests, and deciding when to respond to outstanding discovery requests. In addition, this chapter will discuss deposition related discovery, enabling practitioners to be truly prepared to conduct and defend both lay witness and expert witness depositions. Various practice strategies for the use of interrogatories and requests for admissions, as well as the appropriate defenses to such filings, are detailed in this chapter. Finally, this chapter will discuss seeking and defending discovery related sanctions.

PART II: PREPARING PLEADINGS

PRETRIAL PLEADINGS AND DISCOVERY

§ 4.03 CHECKLIST: Preparing Pleadings

4.03.1 Preparing Pleadings

- Defining the technical requirements of pleading:
 - Motion practice in Connecticut is very liberal.
 - The formatting of motions is very specific and must conform to the following:
 - Pleadings are filed on letter size paper.
 - The page one bottom margin must be at least two inches.
 - All pleadings, except those that are fax filed, should be two-hole

punched at the top.

- The formatting requirements do not apply to the court forms.
- Pleadings must be signed by an attorney of record and his or her signature acts as a certification that the pleading has been read and is not for delay, and that the allegations can be supported.
- A pleading prepared by an attorney to be signed by the party must state that it was prepared with the assistance of counsel.
- Counsel who appears with a pro se litigant must sign pleadings filed by the pro se and if not, the pro se is responsible to prosecute the motion.
- Personal identifying information which must be redacted or omitted from documents includes:
 - Birthdates of the parties and children.
 - The maiden name of the wife or mother.
 - Driver's license number.
 - Party or child's social security number.
 - Governmentally assigned personal identification, except for those publically available.
 - Health insurance policy numbers.
 - Complete financial account numbers.
 - Security codes or personal identification numbers. **Authority:** P.B. §§ 4-1, 4-1(a), 4-1(b), 4-1(d), 4-1(e), 4-2, 4-2(b), 4-2(c), 4-7(a), 4-7(b), 10-14, 11-18, 25-6A, 25-24, 25-24(a), 25-24(b), and 25-59(h). **Discussion:** See § 4.04, *below*. See also, § 4.05, *below*. See also Family Matters Standing Orders, Chapter 20, § 20.38, *below*.

□ Serving motions:

- The party filing a pleading must ensure it is received by all appearing parties and the court.
- Service by electronic means must be done by consent, which can be indicated on the appearance form by the defendant and by other means for the plaintiff.
- There must be a certification as to the method of service and upon whom and where service was made.
- Service by a marshal should be made for modifications of alimony and support, post judgment to allow for retroactivity. **Authority:** Conn. Gen. Stat. §§ 46b-86 and 52-50; *Shedrick v. Shedrick*, 32 Conn. App. 147 (1993); P.B. §§ 4-4, 10-12(a), 10-13, 10-14, and 10-17. **Discussion:** See § 4.05, *below*. See also Chapter 5, § 5.36, *below*. **Forms:** JD-CL-12—Appearance, see Chapter 20, § 20.37, *below*. JD-CL-121—Limited Appearance, see Chapter 20, § 20.40, *below*.

□ Responding to material allegations in pleadings:

- Material allegations of an opposing parties' pleading which is not denied is deemed admitted. **Authority:** *Liberti v. Liberti*, 132 Conn. App. 869 (2012) and P.B. § 10-19. **Discussion:** See § 4.06, *below*.

□ Disposing of motions:

- Courts are required to hear and dispose of motions, which may occur at a case date, motion calendar or other court appearance.
- Failure to proceed with a motion will waive the right of a party to have the motion ruled upon by the court.
- When estimating time for short calendar hearings, counsel may be held to the requested time limitations. Motions outstanding as of a case date will be heard on that case date.

- ~~As a result of COVID-19, the courts are not currently holding a live short calendar, but are conducting case dates virtually. Motions filed for which there are no pending case dates, may be heard at trial.~~
 - ~~For lengthy matters, the court may assign a date certain for a hearing.~~
 - ~~Oral argument or testimony will be permitted if the procedures to mark motions and attend family relations have been met.~~
 - Hearings on discovery matters are within the discretion of the court.
- Authority:** *Ramin v. Ramin*, 281 Conn. 324 (2007), *Millbrook Homeowners Assn., Inc. v. Hamilton Standard*, 257 Conn. 1 (2001), *Ahneman v. Ahneman*, 243 Conn. 471 (1998), *L.K. v. K.K.*, 226 Conn. App. 279 (2024), *Fleischer v. Fleischer*, 192 Conn. App. 540 (2019). *D’Amato v. Hart-D’Amato*, 169 Conn. App. 669 (2016), *Ill v. Manzo-Ill*, 166 Conn. App. 809 (2016), and *Friezo v. Friezo*, 84 Conn. App. 727 (2004); P.B. §§ 11-18, 25-1(b), 25-3, 25-4, 25-34, 25-34(a), 25-34(c), 25-34(d) and 25-34(e), 25-35A(a), 25-35A(b), 25-34A(c), and 25-24A(d). **Forms:** JD-FM-292 – Case Flow Request, § 20.93, below. **Discussion:** See § 4.07, below. **Discussion:** ~~See § 4.07, below.~~

§ 4.04 Defining the Technical Requirements

[1] Defining the Technical Requirements—In General

Liberal filing of motions in family matters is permitted in Connecticut. Connecticut Practice Book (hereinafter “P.B.”) § 25-24. This includes standard motions for temporary alimony and child support, but also includes the “catch all” motion for order permitting other equitable relief. P.B. § 25-24(a). Motion captions must clearly indicate if the motion is *pendente lite* or post judgment. P.B. § 25-24(b).

[2] Formatting Motions

The Practice Book prescribes the technical requirements for all pleadings in family actions. P.B. § 4-1.

1. Format the paper size to 8½ by 11, rather than legal size. The page number should appear on all pages except the first page. Every motion filed after the complaint should have the case title, docket number, name of the court, and the title of the pleading. P.B. § 4-1(a).
2. The bottom margin on page one should be at least two inches. This allows for court notations and a designation on the first page as to whether oral argument and testimony will be required. P.B. §§ 4-1(b) and 11-18.
3. Each pleading should be two-hole punched at the top, so the paper motions can be fastened into the court file. However, if you are fax filing, the court will punch the pleadings when they are printed. P.B. § 4-1(b). This requirement is unnecessary in light of e-filing for new cases.
4. Failure to comply with these requirements may result in the court returning the motion for correction. P.B. § 4-1(d). This will delay the filing of the motion and it being placed on short calendar for adjudication.

5. These formatting requirements do not apply to motions filed on court forms. P.B. § 4-1(e).

[3] Signing Pleadings—Effect

Whether pleadings are filed by mail, e-filing or fax, each pleading must be signed by an attorney of record. P.B. § 4-2. If a client has filed an appearance and an attorney is appearing on his or her behalf as well, any pleading filed must be signed by the attorney of record for the party. P.B. § 25-6A. In the event a party files a pleading without seeking to have his or her attorney of record sign the same, the court may, in its discretion, stay any proceedings on the motion until an attorney of record adopts the motion. P.B. § 25-6A. Opposing counsel is permitted to confer directly with a client for any pleading filed by a party who has filed a pleading on his or her own, despite having an attorney of record. P.B. § 25-6A. The party filing a motion without the signature of counsel of record shall be solely responsible to prosecute the motion. P.B. § 25-6A. An attorney preparing a motion to be signed by the client must note on the motion that it was prepared with the assistance of counsel. P.B. § 4-2(c).

Signing the pleading certifies that the attorney has read the contents of the motion, that the motion is not for purposes of delay, and that the attorney believes there are grounds to support the allegations. P.B. § 4-2(b). Under the signature of the attorney shall be his or her mailing address and telephone number. P.B. § 4-2(b). A pleading must also contain a certification that it was sent to all counsel of record, the address to which it was delivered, and the means in which the pleading was delivered (first-class mail, fax, electronically, by e-mail, or in hand). P.B. § 10-14. For a more thorough discussion on preparing the certification, *see* § 4.04[4], *below*. For a more thorough discussion on serving motions, *see* § 4.05, *below*.

#Comment Begins

Warning: The 2013 Practice Book revision requiring an attorney who authors but does not sign a pleading to include a statement that it was prepared with the assistance of counsel was primarily designed for limited appearance matters. However, it equally applies to matters where no limited appearance is filed, so that an attorney may not ghostwrite pleadings for a client.

#Comment Ends

[4] Preparing the Certification on Pleadings

At the end of the pleading, a certification must be signed indicating that the pleading has been sent to all counsel of record. The certification must “be in substantially the following form”:

“I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on (date) to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.” (Hereafter the name and address of those served.) P.B. § 10-14.

[5] Redacting Personal Information

It is the responsibility of the attorney filing documents with the court, either exhibits or pleadings, to redact personal identifying information from the document. P.B. § 4-7(b). The attorney filing the document must retain the unredacted document through the pendency of the action and any subsequent appeals. P.B. § 4-7(b).

The personal identifying information that should be redacted or omitted from the documents are:

1. Birthdates of the parties and children.
2. The maiden name of the wife or mother.
3. Driver's license number.
4. Party or child's social security number.
5. Any personal identification assigned by the government, except those issued solely for business purposes, such as juris numbers, which are available to the public.
6. Health insurance policy numbers.
7. Complete financial account numbers (a common redaction would have all but the last four digits removed from view).
8. Security codes or personal identification numbers.

P.B. § 4-7(a).

#Comment Begins

Warning: Personal identifying information, which includes the birthdate of children, is to be excluded from documents filed with the court. P.B. § 4-7(a). However, the Family Matters Standing Orders provide that where a court form requires disclosure of personal identifying information, it is considered as a court order to excuse compliance with P.B. § 4-7(a). P.B. § 4-7(b). Thus, since the birthdate of the children and a spouse's maiden name are required to file a complaint, this is an exception to this rule. *See also* Family Matters Standing Orders, Chapter 20, [§ 20.38, below](#).

#Comment Ends#Comment Begins

Warning: Many documents in family cases contain personal identifying information. When preparing for a hearing or trial and considering exhibits to be filed, all personal identifying information must be redacted. This would include the social security numbers of the parties and children on tax returns, being mindful that nearly every page of the tax return contains the social security number of one of the parties. If submitting W-2s, 1099s, K-1s, or paystubs, the social security number and any bank information for direct deposits should be redacted. The account numbers on credit card bills and bank statements should be redacted.

#Comment Ends#Comment Begins

Warning: The practitioner should be mindful to draft financial affidavits in a manner to exclude personal identifying information, as financial affidavits become public and unsealed if there is a contested hearing concerning financial issues. P.B. § 29-59(h). While the health insurance must

be listed on the financial affidavit, do not set forth the insurance policy number. In addition, do not list full bank or brokerage account numbers.

#Comment Ends

§ 4.05 Serving Motions

After filing the complaint, it is the moving party's responsibility, whether counsel or a self-represented party, to ensure that the court and every other appearing party receive a copy of each and every filing. P.B. § 10-12(a).

Appropriate service methods include mailing a copy of the document to the last known address of the person being served, delivering a copy to the attorney's office, electronic delivery, facsimile, or in-hand delivery. P.B. §§ 4-4 and 10-13. When serving motions by electronic delivery, the party being served must consent to the electronic delivery. P.B. § 10-13. However, all attorneys who are not exempt from e-filing must accept documents by electronic delivery. P.B. § 10-13. If there is no consent to electronic delivery, any service by that method will be invalid. The plaintiff may consent to electronic delivery on the summons. A defendant, on the appearance form or limited appearance form, may check the box indicating they will accept service by electronic means.

#Comment Begins

Warning: Service is complete upon placing the motion in the mail for postal service, or by hitting the “send” button for electronic service. However, service must be remade if the moving party learns that the motion did not reach the electronic address of the person being served, such as when the motion is returned to the sender as undeliverable. P.B. § 10-13.

#Comment Ends

It is the responsibility of the moving party to certify, on the motion being filed, on whom, how and where each party was served. P.B. § 10-14. Motions requiring service in-hand or abode, may be made by a marshal, or indifferent person. P.B. § 10-17 and [Conn. Gen. Stat. § 52-50](#). For *pendente lite* motions, it is very rare that a motion will require service by a marshal or indifferent person. The primary post-judgment motion which should be served by a marshal is a motion for modification of alimony or child support so as to ensure the ability to claim retroactivity to the date the motion was served. [Conn. Gen. Stat. § 46b-86\(a\)](#) and *Shedrick v. Shedrick*, 32 Conn. App. 147 (1993). For a more thorough discussion on retroactive modifications, see [Chapter 5, § 5.31, below](#).

#Comment Begins

Forms: JD-CL-12—Appearance, see [Chapter 20, § 20.37, below](#). JD-CL-121—Limited Appearance, see [Chapter 20, § 20.40 below](#).

#Comment Ends

§ 4.06 Responding to Material Allegations in Pleadings

Every material allegation in a pleading that is not denied by the adverse party is deemed to be admitted, unless the adverse party sets forth that he or she does not have sufficient knowledge to form a belief. P.B. § 10-19. As a practical point, it is very difficult to have a court rule that all pleaded “facts” are deemed admitted in a family matter, especially one that is contested.

However, if there are specific facts alleged in a pleading which are wholly or partially inaccurate, an objection should be filed to prevent the court from finding an implied admission. The appellate court often notes when no such objection has been filed, which may be used against the party failing to file an objection to defeat claims on appeal. *Liberti v. Liberti*, 132 Conn. App. 869, n.1 (2012).

§ 4.07 Disposing of Motions

[1] Requiring the Court to Hear and Decide Motions

When a motion is pending before the trial court, the court is required to hear and dispose of the motion, absent “an extreme, compelling situation.” *Ramin v. Ramin*, 281 Conn. 324 (2007) and *Ahneman v. Ahneman*, 243 Conn. 471, 484 (1998). An extreme and compelling situation could include instances such as the prevention of vexatious or harassing litigation. *Ramin*, 281 Conn. at 339. However, a party who chooses not to proceed with a motion waives his or her right to have that motion ruled upon by the court. However, if a motion is filed within a few days of the hearing date, the court is neither required to hear that motion, nor is it error to fail to hear the motion when it is not brought to the court’s attention months later. *L.K. v. K.K.*, 226 Conn. App. 279 (2024). However, this case must be put into the context of the new Practice Book Rules which provide that all outstanding motions shall be heard on the next case date. P.B. § 25-35A(a).

#Comment Begins

Warning: If there are motions pending which should be adjudicated, it is important to prosecute these motions. Acceptance of a court’s suggestion that the issue can wait until trial or need not be decided may constitute waiver of the right to proceed with the motions, thus defeating any claim on appeal regarding this issue.

#Comment Ends

[2] Timing and Procedural Issues for the Short CalendarHearing Motions

Short calendar hearings do not typically permit exhaustive and extensive hearings due to the time constraints and the number of cases on a given short calendar. The new Pathways program has repealed the former short calendar. While the program has been in place, it took 4 years for the Practice Book Rules to change and delete references to short calendar. Instead, where the Rules require hearings to occur on short calendars, such requirement shall be satisfied by scheduling the motion for a case date, on the motion docket, or for another court event. P.B. § 25-1(b).

Pendente lite motions, unless scheduled for the motion docket, will be automatically scheduled for the next case date in the matter. P.B. § 25-34A(a). If there are no future case dates, it shall be heard at trial. P.B. § 25-34A(a). Five business days prior to the case date, the parties shall exchange and file with the court a listing of motions and priority order in which it is requested the motions to be heard at the case date. P.B. § 25-34A(a). A party failing to comply will be precluded from having his or her motions heard absent agreement from the other party or the court determines the interests of justice require it to be heard and it does not substantially prejudice the other party. P.B. § 25-34A(a).

Strategic Point: If opposing counsel has failed to file the list of motions which he or she wants to be heard, and they do have outstanding motions, counsel should immediately file a motion for order requesting that the court be precluded from hearing such motions and further setting forth the prejudice occasioned by the failure to note such motions.

While the Pathways Program is designed to resolve pendente lite motions at case dates, each court has been required to establish a motion docket to occur not less than once per month. P.B. § 25-34A(b). Motions can be placed on the motion docket by oral request or by filing a Case Flow Request. See, Chapter 20, §20.93 JD-FM-292 – Case Flow Request, below. The courts, however, are not required to place each motion on a motion docket, but rather will review certain factors in making such determination: the nature of the motion including the need of the parties regarding child support and alimony, custody, visitation or decision making regarding children, exclusive possession, use of a car, and essential personal property; the length of time until the next court hearing if not placed on the motion docket; whether the motion is duplicative of one already heard or scheduled to be heard; and if a judge has been assigned to the case, the availability of that judge. P.B. § 25-34A(c).

Courts typically want to know how long a matter will take for a hearing. Being realistic when representing to the court the estimated time is important as the court has the ability to hold counsel to the requested time limitations. *Friezo v. Friezo*, 84 Conn. App. 727, 731–732 (2004). Failure to accurately estimate the time needed, or to bring to the court’s attention that additional time will be needed could result in the court terminating a hearing at the end of the requested time or at the end of the court day, and issuing its orders based upon the evidence presented during the time available, regardless of whether both sides have presented their cases. *Friezo*, 84 Conn. App. at 731–732.

If the matter is expected to take an hour or longer, the court may schedule the motion to a non-short-calendar daydate certain. P.B. § 25-34A(ec). ~~However, do not go to court anticipating that the court will give you a “date certain” for a hearing.~~

~~Counsel shall be permitted oral argument or presentation of testimony if the procedures to mark the motion ready and attend family services have occurred. P.B. § 25-34(a). However, oral~~ Oral argument regarding discovery matters under Practice Book Chapter 13 is at the discretion of the court, ~~which shall set a date and time for the hearing. P.B. §§ 25-34(A(ad)-and 25-34(e). The non-moving party has 5 business days, unless additional time provided for the motion filed, to object to the motion. P.B. §25-34A (d). If the discovery motion has not received a date, it may be reclaimed within thirty (30) days of it having appeared on the calendar. P.B. § 25-34(d). The court may rule on the motion or schedule it for oral argument. P.B. §25-34A (d).~~ Failure to argue on the scheduled day shall constitute a waiver, unless a contrary court order is received. P.B. § 25-34A(e).

#Comment Begins

Warning: The Appellate Court in *D’Amato v. Hart-D’Amato*, 169 Conn. App. 669 (2016), invoked P.B. § 11-18 to uphold a trial court decision denying post judgment motions asserting ineffective assistance of counsel, without oral argument, on the basis that the granting of oral argument is at the discretion of the court, with the exception of certain specified motions. However, there are specific Practice Book provisions for the procedures in a family short calendar, i.e. P.B. § 25-34, such that P.B. § 11-18 should not apply to family matters.

#Comment Ends

~~As a result of the new Pathways program the court is not conducting regular short-~~

~~calendars. Certain matters may be claimed to appear on a calendar, but it is at the discretion of the court as to the scheduling of matters on the motion calendar docket. Primarily, the court is conducting Case Dates which is a specified date and time for 45 minutes to hear whatever outstanding matters there are at that time. Parties are receiving JDNO's establishing a date by the court without the input of counsel.~~

~~#Comment Begins~~

~~–**Strategic Point:** The Case Date notices effectively indicate that any outstanding motion as of the date of the hearing is subject to being heard on the Case Date. Counsel should confer prior to the Case Date hearing to determine the motions that will be heard and what motions, if any, may need to have a virtual hearing date established. If counsel cannot agree, seek to have a status conference prior to the Case Date so that this determination can be made.~~

~~#Comment Ends~~#Comment Begins

Strategic Point: With hearings on motions as well as trials, the trial management orders apply. That includes an exchange of exhibits for the hearing. In order to allow the hearing to proceed, counsel should confer well prior to the Case Date with respect to the exhibits planningplanned on being offered and whether there is any objection to those exhibits.

#Comment Ends

To the extent motions may be put on the motion calendar, motions may not be reclaimed after three months, absent good cause. P.B. § 25-34. While there is no specific sanction for seeking to proceed on a motion that is more than three months old, the court has the ability to dismiss such motions if they have not been diligently prosecuted. *Ill v. Manzo-III*, 166 Conn. App. 809 (2016). It must be recognized that the dismissal of such motions is a sanction and therefore must be analyzed pursuant to the 4 part test of evaluate the proportionality of such sanction: the nature and frequency of the misconduct; the notice received of the possibility that a sanction will be entered by the court; the availability of a lesser sanction; and the client's participation and knowledge of the misconduct. *Fleischer v. Fleischer*, 192 Conn. App. 540 (2019), citing *Millbrook Homeowners Assn., Inc. v. Hamilton Standard*, 257 Conn. 1 (2001).

#Comment Begins

Strategic Point: In order to avoid dismissal of the motion, you should keep documentary proof, i.e., letters, e-mails, reclaims, etc., of all efforts made to advance the motion and prepare the matter for a court hearing.

#Comment Ends

In custody and visitation actions, other than in a dissolution proceeding, the hearing date shall be no more than 35 days from the filing of the application. P.B. §§ 25-3 and 25-4.

PART III: PREPARING SPECIFIC PLEADINGS

PRETRIAL PLEADINGS AND DISCOVERY

§ 4.08 CHECKLIST: Preparing Specific Pleadings

4.08.1 Preparing Specific Pleadings

- Preparing a motion to dismiss:
 - There are no special appearances in Connecticut.
 - Limited appearances in family cases may be used to allow an attorney to appear only to contest jurisdiction.
 - Motions to dismiss, together with a memorandum of law and supporting affidavits, must be filed within thirty days of the defendant filing an appearance.
 - Failure to file a timely motion to dismiss will constitute a waiver of the defect.
 - Subject matter may never be waived.
 - Objections to a motion to dismiss must be filed five or more days prior to it being considered on short calendar, together with a memorandum of law and affidavits. **Authority:** *LaBow v. LaBow*, 171 Conn. 433 (1976) and *Foster v. Smith*, 91 Conn. App. 528 (2005); P.B. §§ 3–8, 10-30 to 10-34, 25-12, 25-13, and 25-13(b). **Discussion:** See §§ 4.09[1] and 4.09[2], *below*. See *also*, Chapter 3, § 3.19[3], *above*.
- Asserting grounds for a motion to dismiss:
 - Lack of subject matter jurisdiction.
 - This implicates the court's authority to act.
 - Subject matter jurisdiction can never be waived.
 - Once it is raised, it must be decided by the court.
 - Lack of personal jurisdiction.
 - This implicates the court's ability to make orders binding on a party personally.
 - Notice and residency requirements must be established.
 - Improper venue.
 - If the case is brought to the wrong court, a motion to dismiss may be filed.
 - Typically, the court will transfer the case to the proper venue.
 - Insufficiency of process.
 - If all of the documents are not served on the defendant or there is an improper date, it may be an insufficiency of process.
 - It will be likely that the plaintiff will be permitted to cure the defect.
 - Insufficiency of service of process.
 - If service is not made properly or the defendant does not receive notice, he or she may file a motion to dismiss. **Authority:** Conn. Gen. Stat. §§ 46b-1, 46b-46, 51-251, 51-345, 52-57 and 52-72; *Narayan v. Narayan*, 305 Conn. 394 (2012), *Morgan v. Hartford Hosp.*, 301 Conn. 388 (2011), *Amodio v. Amodio*, 247 Conn. 724 (1999), *Haigh v. Haigh*, 50 Conn. App. 456 (1998), *Cashman v. Cashman*, 41 Conn. App. 382 (1996), *Lasky v. Pivnick*, 46 Conn. Supp. 539 (2000), and *Grayson v. Wofsey, Rosen, Kweskin & Kuriansky*, 40 Conn. Supp. 1 (1984); P.B. §§ 10-30, 25-13(a) and 25-14. **Discussion:** See § 4.09[3]. See *also* Chapter 2, §§ 2.31–2.32, 2.17–2.21, 2.36–2.37, and 2.10–2.15, *above*.
- Preparing a motion to strike:
 - It may be filed where a party is contesting:

- The legal sufficiency of a complaint or cross-complaint.
- The legal sufficiency of a claim for relief.
- The failure to include a necessary party.
- Improper joinder of causes of action under one complaint.
- The legal sufficiency of an answer or cross-complaint.
- It may not be used to test the legal sufficiency of pleadings.
- A memorandum of law must be filed with the motion to strike and any objection.
- An objection must be filed at least five days prior to the hearing date.
- The court must issue a memorandum of decision if the motion to strike has more than one ground.

○ A party has fifteen days to file a new pleading after the ruling on a motion to strike. **Authority:** *Zirinsky v. Zirinsky*, 87 Conn. App. 257 (2005), *Sheiman v. Sheiman*, 72 Conn. App. 193 (2002), *Gaudio v. Gaudio*, 23 Conn. App. 287 (1990), *Hodgdon v. Hodgdon*, 2011 Conn. Super. LEXIS 338 (2011), and *Drajewicz v. Drajewicz*, 2009 Conn. Super. LEXIS 968 (2009); P.B. §§ 10-35 to 10-38, 25-16(a), 25-16(b), 25-17, 25-19(a), 25-19(b), 25-20, 25-21, and 25-22. **Discussion:** See § 4.10, below. See also Chapter 2, § 2.29[2], above.

□ Filing a *lis pendens*:

○ A *lis pendens* may be filed as a prejudgment remedy to secure an interest in property owned by one or both parties, not an entity, and is not a violation of the automatic orders.

○ A *lis pendens* should contain:

- The case caption.
- The nature of the action.
- The court where the action is pending.
- The date and return date of the complaint.
- The legal description of the property.
- Notice that a subsequent encumbrance will be bound by the dissolution proceedings.

○ The *lis pendens* must be filed in the town in which the property is located and then served on the opposing party.

○ A bond must be posted as substitute security to release a *lis pendens*.

Authority: *Grencom, LLC v. Collins*, 2014 Conn. Super. LEXIS 303 (Feb. 7, 2014); Conn. Gen. Stat. §§ 46b-80 and 52-325; *Manaker v. Manaker*, 11 Conn. App. 653 (1987); P.B. § 25-5(b)(3). **Discussion:** See § 4.11, below. **Form:** *Lis Pendens*, see Chapter 20, § 20.45, below.

□ Filing a motion for exclusive possession:

○ The motion for exclusive possession may be filed at any time after filing the complaint.

○ The motion must state:

- The type of property in which the party seeks exclusive possession.
- Whether the property is owned or rented by one or both parties.
- The length of time each party has owned or rented the property.
- The family members residing in the property.
- The grounds upon which exclusive possession is sought. **Authority:**

Conn. Gen. Stat. § 46b-83; *Gil v. Gil*, 94 Conn. App. 306 (2006); P.B. § 25-25.

Discussion: See § 4.12, below. **Forms:** JD-FM-176—Motion for Orders Before Judgment (P.L.) in Family Cases, see Chapter 20, § 20.20, below, Motion for Exclusive Possession, see Chapter 20, § 20.46, below.

□ Filing for temporary alimony and support:

- A temporary alimony and/or support order may be entered after the return date and retroactive to the date the motion is filed, with credit for payments made.
 - A financial affidavit should be filed within five **business** days of the hearing.
 - If a modification is sought when there is an arrearage in the orders, the court will determine if there is good cause for the arrearage. **Authority:** *Conn. Gen. Stat. § 46b-83*; P.B. §§ 25-24, 25-26(a), 25-30(a), and 25-56(a). **Discussion:** See § 4.13, *below*. See also Chapter 5, §§ 5.14–5.20, *below*.
 - Filing a motion for counsel fees:
 - Using assets is permitted for the payment of reasonable counsel fees.
 - A motion may be filed for the payment of counsel fees.
 - Financial affidavits should be filed five **business** days before the hearing. **Authority:** *Conn. Gen. Stat. § 46b-62*; P.B. § 25-5(b)(1), 25-24, and 25-30(a). **Discussion:** See § 4.14, *below*. See also Chapter 15, §§ 15.06–15.10, *below*.
 - Filing for temporary custody and visitation:
 - A motion for temporary custody and visitation may be filed any time after the return date.
 - It is likely that an attorney for the child or a guardian *ad litem* will be appointed. **Authority:** *Conn. Gen. Stat. § 46b-56*; P.B. §§ 25-24, 25-62 and 25-62A. **Discussion:** See § 4.15, *below*. See also Chapter 8, §§ 8.26–8.27, *below*.
 - Filing a motion for modification:
 - The motion for modification must be the basis for the motion and the appropriate standard of proof.
 - If the motion for modification concerns financial issues, financial affidavits must be exchanged five **business** days prior to the hearing.
 - The change in circumstances must be since the rendering of the last order. **Authority:** *Conn. Gen. Stat. § 46b-56(b)*; P.B. § 25-26, 25-26(e), 25-26(f), and 25-30(a). **Discussion:** See § 4.16, *below*. See also Chapter 5, § 5.20, *below*; Chapter 7, §§ 7.55–7.59, *below*; and Chapter 8, §§ 8.40–8.43, *below*.
 - Filing a motion for contempt:
 - The motion must be captioned with the type of order violated and contain the following:
 - The date and specific language of the court order violated.
 - Specific acts constituting the contempt.
 - If the contempt is on a financial order, the amount of the arrearage as of a specified date.
 - Claims for relief.
 - If incarceration is possible, a self-represented party has the right to counsel, which may be waived if:
 - The party has been advised of his or her right to counsel.
 - He or she has the ability to understand the decision to remain self-represented.
 - He or she understands the proceedings and the possibility of incarceration.
 - He or she has been told of the risks of self-representation.
- Authority:** *Gil v. Gil*, 94 Conn. App. 306 (2006); P.B. §§ 25-27(a), 25-27(b), 25-63, and 25-64. **Discussion:** See § 4.17, *below*. See also Chapter 17,

§§ 17.04–17.08, *below*.

□ Filing a motion for order:

- When no other motion is specified, it may be classified as a motion for order.

- If the motion concerns financial issues, a financial affidavit should be filed five **business** days in advance of a hearing. **Authority:** P.B. § 25-30(a). **Discussion:** See § 4.18, *below*.

□ Preparing a temporary injunction:

- A temporary injunction is designed to maintain the status quo.
- To obtain a temporary injunction, it must be proven that:
 - There is no adequate remedy at law.
 - The party filing for the temporary injunction will suffer irreparable harm unless the injunction is granted.

- There is a likelihood of the moving party to prevail on the merits of the underlying action.

- The balancing of the equities favors granting the injunction.

- When filing a temporary injunction, a notification provision must be filed stating one of the following:

- Notice was given to the opposing party within a reasonable time of the filing of the temporary injunction.

- The applicant tried but was unable to give notice.

- Facts to establish good cause as to why notice should not be given to the opposing party. **Authority:** *Moore v. Serafin*, 163 Conn. 1 (1972), *Stocker v. Waterbury*, 154 Conn. 446 (1967), *Parrotta v. Parrotta*, 119 Conn. App. 472 (2010), *International Ass'n of Firefighters, Local 786 v. Serrani*, 26 Conn. App. 610 (1992), *Jarjura v. State Elections Enforcement Comm'n*, 51 Conn. Supp. 483 (2010), *Fleet Nat'l Bank v. Burke*, 45 Conn. Supp. 566 (1998), *Connecticut State Medical Soc. v. Connecticut Medical Service, Inc.*, 29 Conn. Supp. 474 (1971), and *Pagan v. Gonzalez*, 2005 Conn. Super. LEXIS 3218 (2005); P.B. § 4-5(a). **Discussion:** See § 4.19, *below*. **Form:** *Ex parte* injunction, see Chapter 20, § 20.47, *below*.

□ Seeking closure of the courtroom or sealing of records:

- The courtroom or documents may be sealed upon a finding that the interests of justice outweigh the public's right to know.

- The sealing order must be narrowly tailored to the issues individually.

Authority: Conn. Gen. Stat. §§ 46b-11 and 46b-49; *Greenan v. Greenan*, 150 Conn. App. 289 (2014); P.B. §§ 25-59 and 29-59A. **Discussion:** See § 4.20, *below*.

§ 4.09 Preparing a Motion to Dismiss

[1] Filing a Special Appearance Is Not Permitted

Connecticut no longer has a “special” appearance in which counsel appears only to contest jurisdiction by way of a motion to dismiss. However, an attorney may be able to enter a limited appearance for the purpose of contesting a motion to dismiss. P.B. § 3-8. Such a limited appearance will not serve to change any of the time limitations to respond to a motion to dismiss. Therefore, if an appearance is entered, it will trigger timing deadlines for filing a motion to dismiss. For a more detailed discussion on limited appearances, see Chapter 3, § 3.19[3], *above*.
#Comment Begins

Strategic Point: Although special appearances no longer exist, a limited appearance may be used in the same fashion as a special appearance was once used for filing a motion to dismiss. If the limited appearance is only for the motion to dismiss, the limited appearance will be completed upon resolution of that matter.

#Comment Ends

[2] Timing Deadlines for Filing a Motion to Dismiss and Objections

Except for cases in which subject matter is contested, a motion to dismiss on any other ground must be made within thirty days of the filing of the defendant's appearance. P.B. § 25-12. Failure to do so will constitute a waiver of such defects, and the defendant will be forever barred from raising the issues in the future. *Foster v. Smith*, 91 Conn. App. 528, 536 (2005). However, subject matter jurisdiction may never be waived and technically, it may be raised at any time. *LaBow v. LaBow*, 171 Conn. 433 (1976).

Objections to a motion to dismiss must be filed at least five days prior to it being "considered" for short calendar, together with a supporting memorandum of law, and any sworn affidavits of fact. P.B. § 25-13(b). It is, therefore, prudent to immediately draft the response to the motion to dismiss as it will likely appear on the short calendar within two weeks of being filed. There is no specific rule permitting an extension of time to file a response to a motion to dismiss.
#Comment Begins

Warning: The procedures for motions to dismiss regarding family matters are specifically set forth in P.B. § 25-12, whereas motions to dismiss in civil cases are covered by P.B. §§ 10-30 through 10-34. Significantly, P.B. § 25-13 does not incorporate P.B. §§ 10-30 through 10-34, which only apply to civil matters. Accordingly, reliance on civil cases for authority in prosecuting or defending a motion to dismiss should be exercised cautiously, as the rationale in the civil cases may have no applicability in a family case.

#Comment Ends#Comment Begins

Timing: When contemplating filing a motion to dismiss at the outset of the case, be sure to time the filing of the appearance to enable proper preparation of the motion to dismiss, memorandum of law and supporting affidavits. Otherwise, there may be a risk of the thirty-day time period expiring before all of the necessary paperwork is completed. This could result in a waiver of the grounds to file a motion to dismiss in all cases other than claims regarding subject matter jurisdiction.

#Comment Ends

[3] Asserting Grounds for a Motion to Dismiss

A motion to dismiss may be filed based on the following:

1. A lack of subject matter jurisdiction.
2. A lack of personal jurisdiction.
3. Improper venue.

4. Insufficiency of process.

5. Insufficiency of service of process.

P.B. § 25-13(a). The motion to dismiss must be accompanied by a supporting memorandum of law. P.B. § 25-13(a). In addition, to the extent that certain facts must necessarily be brought to the court's attention in support of the motion, the moving party may submit sworn affidavits setting forth those facts, which must be filed with the motion to dismiss. P.B. § 25-13(a).

#Comment Begins

Warning: P.B. § 10-30, addressing motions to dismiss in civil cases, eliminated the basis of improper venue for a motion to dismiss. However, this change was not made to P.B. § 25-13. It may be argued that this was an oversight as most cases challenging venue will result in a transfer of the case, not dismissal.

#Comment Ends

[a] Asserting a Lack of Subject Matter Jurisdiction

Subject matter jurisdiction implies the court's authority to act. *Amodio v. Amodio*, 247 Conn. 724, 727 (1999). The court's authority for family matters is defined primarily by Conn. Gen. Stat. § 46b-1. If the case is within the category of cases the court may hear pursuant to Conn. Gen. Stat. § 46b-1, the court has subject matter jurisdiction. *Amodio*, 247 Conn. at 727–730. If the court lacks subject matter jurisdiction, the action must be dismissed. P.B. § 25-14. A claim of lack of subject matter jurisdiction cannot be waived, and it may be raised by either party or *sua sponte* by the court. *Haigh v. Haigh*, 50 Conn. App. 456, 460 (1998). If the issue of subject matter jurisdiction is raised, it must be resolved prior to the court ruling on substantive issues. P.B. § 25-14. For a more in depth discussion of subject matter jurisdiction, see Chapter 2, §§ 2.31 and 2.32, *above*.

[b] Asserting a Lack of Personal Jurisdiction

Personal jurisdiction is the court's ability to make orders that are binding on the party personally. *Cashman v. Cashman*, 41 Conn. App. 382 (1996). In order to obtain personal jurisdiction, notice and residency requirements must be met. *Cashman*, 41 Conn. App. at 382. Unlike subject matter jurisdiction, personal jurisdiction may be waived. *Narayan v. Narayan*, 305 Conn. 394, 402 (2012). For a more in depth discussion on personal jurisdiction, see Chapter 2, §§ 2.17–2.21, *above*.

[c] Asserting an Improper Venue

The venue of the case is where the matter may be brought for adjudication. Conn. Gen. Stat. § 51-345. While a motion to dismiss can attack an action which is brought in an improper venue, the more practical remedy is to seek to transfer the matter to the proper judicial district as the case will rarely, if ever, be dismissed. *Lasky v. Pivnick*, 46 Conn. Supp. 539, 543 (2000) and Conn. Gen. Stat. § 51-351. For a more in depth discussion on improper venue, see Chapter 2, §§ 2.36 and 2.37, *above*.

[d] Asserting an Insufficiency of Process

Insufficiency of process implies the technical requirements for service of the appropriate

documents. Although an improper return date may give rise to insufficiency of process, it may be cured and, therefore, the action will not be subject to dismissal. *Conn. Gen. Stat. § 52-72* and *Haigh v. Haigh*, 50 Conn. App. 456 (1998). Process could also be insufficient if the complaint was not served with the summons. *See Morgan v. Hartford Hosp.*, 301 Conn. 388 (2011) (insufficient process found where a letter from the health care provider was not attached to the complaint).

[e] Asserting an Insufficiency of Service of Process

Service of process is to be made by prescribed persons in authorized manners. *Conn. Gen. Stat. §§ 46b-46* and *52-57*. When service is not made in accordance with these rules, the action is subject to being dismissed. *Grayson v. Wofsey, Rosen, Kweskin & Kuriansky*, 40 Conn. Supp. 1 (1984). For a more in depth discussion on insufficiency of service of process, *see Chapter 2, §§ 2.10–2.15, above*.

§ 4.10 Preparing a Motion to Strike

[1] Delineating Grounds for Filing a Motion to Strike

A motion to strike is proper where a party is contesting:

1. The legal sufficiency of a complaint or cross-complaint, and where it fails to make a complete and accurate statement upon which relief may be granted by the court.
2. The legal sufficiency of a claim for relief in a complaint or cross-complaint.
3. Where a moving party has failed to include a necessary party.
4. Where the pleading is improperly joining two or more causes of action under one complaint.
5. Challenging the legal sufficiency of an answer or cross-complaint, or any part thereof, as filed by a defendant.

P.B. § 25-16(a).

A motion to strike must be directed at a complaint or cross-complaint. It may not be used to challenge the legal sufficiency of a motion. *Zirinsky v. Zirinsky*, 87 Conn. App. 257, 269 (2005) and *Sheiman v. Sheiman*, 72 Conn. App. 193, 200 (2002).

It will be a very rare circumstance under which a motion to strike may be filed in a family case, based upon the complaint or the claims for relief. Most complaints merely allege those facts giving the court jurisdiction. However, where a complaint is filed alleging an annulment, a motion to strike may be filed claiming that the contents of the complaint are insufficient to support an annulment. *Drajewicz v. Drajewicz*, 2009 Conn. Super. LEXIS 968 (2009). A motion to strike cannot be used to strike a count of the complaint or cross-complaint asserting fault as a ground for the dissolution and which is alleged in addition to irretrievable breakdown. *Hodgdon v. Hodgdon*, 2011 Conn. Super. LEXIS 338 (2011).

If one is alleging a failure to join a necessary party, the party filing the motion to strike is required to provide the name and address of the missing party. P.B. § 25-16(b). Joinder of parties to an action will be necessary where there is a claimed fraudulent conveyance. *Gaudio v. Gaudio*, 23 Conn. App. 287 (1990). For a more thorough discussion on joinder, see Chapter 2, § 2.29[2], *above*.

#Comment Begins

Warning: A common misunderstanding with respect to family law procedure is the application of civil rules that do not have any recognized counterpart in family matters. One example is the request to revise, found in P.B. §§ 10-35 through 10-38, which is *not* incorporated into the family matters rules, and thus not permitted in a family case.

#Comment Ends

[2] Filing Requirements

A party filing a motion to strike must submit a memorandum of law citing the legal authority upon which the motion is based. P.B. § 25-19(a). Further, an objection to a motion to strike must be filed at least five days before the matter is scheduled for a hearing on short calendar, which objection shall also be accompanied by memorandum of law. P.B. § 25-19(b). The motion to strike shall be placed on the calendar no less than fifteen days after it was filed, except as otherwise determined by the court. P.B. § 25-17.

#Comment Begins

Timing: Given how quickly motions come up on the short calendar, when a motion to strike is received, it should be answered immediately to avoid the inadvertent waiver of the time in which to file an objection.

#Comment Ends

Warning: While the Court Rules were overhauled in 2024, primarily to take into account the Pathways Program and the abolishing of short calendar, certain of the Court Rules were not changed. However, the addition of Practice Book §25-1(b) provides that an reference to short calendar can be satisfied by scheduling the motion for a case date, the motion docket or other event.

[3] Issuing a Memorandum of Decision

If a party has filed a motion to strike on more than one ground, the Superior Court is required to issue a memorandum of decision setting forth specifically the grounds upon which its decision is based. P.B. § 25-20. There is no such requirement if it is filed on only one ground.

[4] Filing a New Pleading When a Motion to Strike Is Granted

Upon the granting of a motion to strike, the affected party has fifteen days within which to file a new pleading, correcting the defects upon which the motion to strike was granted. P.B. § 25-21. Failure to file a new pleading when the entire complaint or cross-complaint is stricken, within the fifteen-day time period, will allow the court to enter judgment against the party whose complaint or cross-complaint was stricken. P.B. § 25-21. Failure to file a new pleading when the court strikes a portion of the complaint or cause of action will remove that portion of the complaint stricken and the party may proceed on the balance of the complaint. P.B. § 25-22.

§ 4.11 Filing a *Lis Pendens*

[1] Filing a *Lis Pendens* Is Not a Violation of the Automatic Orders

With the initial complaint or cross-complaint, one of the most common filings at the outset of a dissolution action is the filing of a *lis pendens*. The automatic orders specifically allow for a *lis pendens* to be filed. P.B. § 25-5(b)(3). A *lis pendens* may be filed as a prejudgment remedy to secure a spouse's financial interest in property. [Conn. Gen. Stat. § 46b-80](#). A *lis pendens* may not be filed on property held by a business entity, as the purpose is to secure a spouses' interest in the property, which is not served as the entity and not the spouse own the property. [Grencom, LLC v. Collins, 2014 Conn. Super. LEXIS 303 \(Feb. 7, 2014\)](#).

[2] Preparing a *Lis Pendens*

In order to constitute a valid *lis pendens*, it should contain:

1. The case caption and a designation of the plaintiff and defendant.
2. The nature of the action, i.e., a dissolution of marriage, legal separation or annulment.
3. The name of the court where the action is pending.
4. The date of the complaint and return date.
5. The legal description of the property.
6. Notice that any subsequent conveyance or encumbrance shall be bound by the proceedings which occur after the notice is recorded.

#Comment Begins

Warning: When setting forth the legal description of the property, typically Schedule A in the deed, the description should be copied exactly as it appears in the deed, typographical errors and all. This will prevent any possible claim that there is a defect in the *lis pendens* to justify its discharge.

#Comment Ends#Comment Begins

Form: *Lis Pendens*, see [Chapter 20, § 20.45, below](#).

#Comment Ends

[3] Filing Requirements

A *lis pendens* may be filed where either party claims an interest in real property in which his or her spouse has an interest. [Conn. Gen. Stat. § 46b-80](#). The *lis pendens* must be filed on the land records in the town in which the property is located and served on the opposing party. [Conn. Gen. Stat. § 46b-80](#). Although service of the *lis pendens* prior to filing will not be a fatal defect to invalidate it, the better practice is to file and then serve the *lis pendens*. See [Manaker v. Manaker, 11 Conn. App. 653 \(1987\)](#). Once recorded on the land records, the *lis pendens* serves as notice of

the claim against the property for anyone who later acquires an interest in the property. [Conn. Gen. Stat. § 52-325](#).

#Comment Begins

Warning: Based upon the requirements of filing a *lis pendens*, the claims for relief in the complaint or cross-complaint must request an assignment of the other party's interest in and to the real property on which the *lis pendens* will be filed. Without such a claim, no *lis pendens* may be filed.

#Comment Ends

[4] Seeking a Discharge of the *Lis Pendens*

A party seeking to discharge the *lis pendens* must post a bond in an amount established by the court as substitute security. [Conn. Gen. Stat. § 46b-80](#). There is usually no need to obtain a release of *lis pendens* during the pendency of the action unless the property is going to be sold.

#Comment Begins

Strategic Point: At the end of the case, in the event your client will be taking title to a property subject to a *lis pendens*, the release of the *lis pendens* should be obtained at the time of the final hearing. Otherwise, he or she will be chasing down the lawyer to provide a release when the property sells after the dissolution.

#Comment Ends

§ 4.12 Filing a Motion for Exclusive Possession

A motion for exclusive possession may be filed at any time after the filing of a dissolution or custody complaint. [Conn. Gen. Stat. § 46b-83](#). The motion must specifically state:

1. The type of property, i.e., home, apartment or condominium, of which the moving party seeks exclusive possession.
2. Whether the property is owned by one or both of the parties or rented.
3. The length of time each party has owned or rented the property.
4. The family members currently residing in the premises.
5. The grounds upon which exclusive possession is sought by the moving party.

P.B. § 25-25.

#Comment Begins

Warning: The court form seeking orders *pendente lite* does not set forth the requirements for a motion for exclusive possession. These should be added as an addendum, or the motion should be manuscripted.

#Comment Ends

The most important element when seeking exclusive possession is the grounds upon which the motion is based. The grounds should be specific enough to provide the other party with notice of the claims being made. If it does not, there is a risk that the court will now allow inquiry into those areas which were not pled. *Gil v. Gil*, 94 Conn. App. 306 (2006).

#Comment Begins

Strategic Point: When drafting a motion for exclusive possession, use P.B. § 25-25 as a checklist to ensure each of the factors has been included. If opposing counsel files a motion for exclusive possession that does not meet the requirements set forth in P.B. § 25-25, file an objection to the motion, and seek to have the moving party refile their motion for exclusive possession, so you can appropriately prepare for court.

#Comment Ends#Comment Begins

Forms: JD-FM-176—Motion for Orders Before Judgment in Family Cases, *see* Chapter 20, § 20.20, *below*. Motion for Exclusive Possession, *see* Chapter 20, § 20.46, *below*.

#Comment Ends

§ 4.13 Filing for Temporary Alimony and Support

While the automatic orders are designed to preserve the “status quo,” during a dissolution, there are times when it is necessary to obtain orders for temporary alimony or support. An order may be entered any time after the return date, retroactive to the date the motion was filed and with the payor receiving credit for all sums paid. Conn. Gen. Stat. § 46b-83 and P.B. § 25-24.

Each party should file a sworn financial affidavit five business days in advance of the hearing on temporary alimony or support. P.B. § 25-30(a). However, the court is permitted to make orders in the absence of the opposing party’s financial affidavit. P.B. § 25-30(a). For a more in-depth discussion on temporary alimony and support issues, *see* Chapter 5, §§ 5.14–5.20, *below*.

#Comment Begins

Timing: The moving party should submit to opposing counsel the sworn financial affidavit at least five days business in advance. Failure to do so will allow the opposing party to claim lack of compliance with P.B. § 25-30(a) and to seek a postponement of the hearing.

#Comment Ends

If the payor of temporary alimony or support seeks a modification and there is an arrearage pending, the court shall determine whether good cause exists for the arrearage and if the modification should be ordered prior to the payment of the arrearage. P.B. § 25-26(a).

#Comment Begins

Strategic Point: When temporary alimony and child support orders are sought, typically discovery has not been completed. Counsel should file a request for production of documents at the hearing in order to have the opposing party bring to the court the documents necessary to show earnings and any other relevant facts. P.B. § 25-56(a).

#Comment Ends

§ 4.14 Filing a Motion for Counsel Fees, *Pendente Lite*

The automatic orders permit the use of assets to pay for reasonable counsel fees in connection with the dissolution action. P.B. § 25-5(b)(1). Where one spouse holds all or a disproportionate share of the assets, it may be necessary to file a motion for counsel fees, and the court may order either party to pay the counsel fees of the other. [Conn. Gen. Stat. § 46b-62](#) and P.B. § 25-24. Each party should file a sworn financial affidavit five [business](#) days in advance of a hearing on counsel fees. P.B. § 25-30(a). The court is permitted to make orders in the absence of the opposing party's financial affidavit. P.B. § 25-30(a). For a more in-depth discussion on awarding counsel fees, [see Chapter 15, §§ 15.06–15.10, below](#).

§ 4.15 Filing for Temporary Custody and Visitation

In the event parents are living separate and apart, and in certain rare instances where they are living together, it may be appropriate to have temporary custody and visitation orders entered. At any time after the return date, the court may enter orders for temporary custody and visitation. [Conn. Gen. Stat. § 46b-56](#) and P.B. § 25-24.

#Comment Begins

Strategic Point: If custody and visitation are going to be highly contested, a motion to appoint either a guardian *ad litem* or attorney for the minor child should be filed prior to any hearing for temporary orders. P.B. §§ 25-62 and 25-62A. A court may be unwilling to make orders without a child's representative. For a more detailed discussion on temporary custody and visitation orders, [see Chapter 8, §§ 8.26–8.27, below](#).

#Comment Ends

§ 4.16 Filing a Motion for Modification of Temporary Orders

Once *pendente lite* financial or custodial orders have been entered, either party may file a motion for modification. [Conn. Gen. Stat. § 46b-56\(b\)](#) and P.B. § 25-26. The factual and legal basis supporting the modification, taking into account the appropriate standard of proof, must be set forth in the motion for modification. P.B. § 25-26(e). If the motion for modification concerns financial issues, sworn financial affidavits shall be exchanged five [business](#) days prior to the hearing, although the court may make orders without the financial affidavit of the opposing party. P.B. §§ 25-26(f) and 25-30(a).

A motion for modification must address a change in circumstances from the time the court entered an order to the time the motion is decided. It cannot be used as a “do over” in the event the initial orders are unsatisfactory. For a more detailed discussion on modifications of temporary alimony, [see Chapter 5, § 5.20, below](#); on modification of temporary child support, [see Chapter 7, §§ 7.55–7.59, below](#); and on modification of custody and visitation, [see Chapter 8, §§ 8.40–8.43, below](#).

§ 4.17 Filing a Motion for Contempt, *Pendente Lite*

Where a court order has been entered and has been violated, it is appropriate to file a motion for contempt. This could include violations of financial orders, custodial orders and discovery orders. The motion for contempt must state in the caption the type of order alleged to have been violated. P.B. § 25-27(b). Additionally, the motion for contempt must specifically allege:

1. The date of the court order and the specific language of the order upon which the claimed violation is based.
2. Specific acts which constitute the contempt.
3. If it is a contempt of a financial order, the arrearage amount as of a specified date or the date of the motion must be set forth.
4. The claims for relief on the contempt.

P.B. § 25-27(a).

Detailing the specific claims for relief in the contempt motion is important as the court may be reluctant to grant relief outside the scope of the pleading. Typical claims for relief may include: a finding of contempt; a finding of an arrearage; a finding on the payment of the arrearage; an award of interest; an award of counsel fees; incarceration; sanctions; or the catch-all—such other and further relief.

Especially where financial orders are not being paid, in whole or in part, it is important to include an allegation that it is anticipated that the non-payment or under payment will continue until such time as the matter is adjudicated. *Gil v. Gil*, 94 Conn. App. 306 (2006).

If incarceration is a possible recourse by the court, a self-represented party has the right to have counsel appointed to defend him or her against the motion for contempt. P.B. § 25-63. However, this right may be waived if the court believes the party:

1. Has been advised of the right to have counsel appointed on his or her behalf;
2. Has the ability to understand his or her decision to remain self-represented;
3. Understands the proceedings and the possible outcome, including incarceration; and
4. Has been told of the risks of representing himself or herself.

P.B. § 25-64.

For a more detailed discussion on contempt issues, see Chapter 17, §§ 17.04–17.08, *below*.

§ 4.18 Filing a Motion for Order, *Pendente Lite*

While not a specified motion in the practice book, a motion for order may be filed when circumstances arise in which the issue requiring court intervention does not fit into one of the recognized categories of motions. To the extent any such motion involves financial issues, sworn financial affidavits should be exchanged five business days in advance. P.B. § 25-30(a).

§ 4.19 Preparing a Temporary Injunction

[1] Detailing the Scope and Purpose of Temporary Injunctions

A temporary injunction seeks to maintain the “status quo,” while the case is pending. *Parrotta v. Parrotta*, 119 Conn. App. 472, 482 (2010). Temporary injunctions may be granted in extremely rare circumstances and where the moving party demonstrates, “(1) they have no adequate remedy at law; (2) they will suffer irreparable and imminent harm without an injunction; (3) they are likely to prevail on the merits of their claims; and (4) a balancing of the equities favors the granting of the temporary injunction.” *Jarjura v. State Elections Enforcement Comm’n*, 51 Conn. Supp. 483, 496 (2010). All four requirements must be met when seeking a temporary injunction. Failure to meet even one of the enumerated criteria will result in the denial of the motion.

[a] Proving No Adequate Remedy at Law

An adequate remedy at law is any remedy which the party may seek without hindrance or interference. *Stocker v. Waterbury*, 154 Conn. 446, 449 (1967). Given that an injunction is an extraordinary remedy, it will only be granted in the most extreme of circumstances. If there is an adequate remedy, such as the filing of a motion seeking affirmative relief or preventing an action from occurring, that should defeat a temporary injunction. *Jarjura v. State Elections Enforcement Comm’n*, 51 Conn. Supp. 483 (2010). However, there may be extreme cases which warrant a temporary injunction, such as a party dissipating assets, despite the automatic orders. Such a case must be addressed prior to a short calendar hearing to prevent the total and permanent dissipation of these assets, since the initial filing is done on an *ex parte* basis.

[b] Proving Irreparable Harm

The purpose of granting an injunction is to keep the “status quo,” and thus prevent irreparable harm. *Fleet Nat’l Bank v. Burke*, 45 Conn. Supp. 566, 570 (1998). This standard requires an actual demonstration of the specific harm which will occur should the temporary injunction be denied and that such harm is irreparable. *International Ass’n of Firefighters, Local 786 v. Serrani*, 26 Conn. App. 610, 616 (1992).

#Comment Begins

Strategic Point: Since the application for temporary injunction is *ex parte*, the irreparable harm must be proven through the affidavit. Thus, the affidavit should demonstrate the irreparable harm to be suffered and should specify why it is irreparable.

#Comment Ends

[c] Demonstrating the Likelihood of Prevailing on the Merits

When a temporary injunction is sought, there is an underlying action which ultimately must be decided. The injunction is not the final ruling in the case. This requires the court to look at the underlying cause of action and the possibility for success on the merits. *Connecticut State Medical Soc. v. Connecticut Medical Service, Inc.*, 29 Conn. Supp. 474 (1971). Without the ability to succeed on the merits, no injunction will be granted.

[d] Balancing the Equities

The final requirement for the issuance of a temporary injunction is the balance of the equities by the court. In balancing the equities, the court weighs “the injury complained of with

that which will result from the interference by injunction.” *Moore v. Serafin*, 163 Conn. 1, 6 (1972). Accordingly, the proponent of a temporary injunction should be in a position to demonstrate that the remedy sought is appropriate in light of the circumstances of the case. This requirement is not one of a true legal standard, but one in which a court may exercise discretion.
#Comment Begins

Strategic Point: While the balancing of the equities is incapable of specific definition, the affidavit and application should state other reasons why the injunction should be granted other than those required in the other three criteria.

#Comment Ends

[2] Filing Requirements

When filing the temporary injunction, a representation must be made regarding the efforts to notify the other party as to the filing of the motion. This application must state one of the following: within a reasonable time prior to the application, notice was given as to when and where the application would be submitted; the applicant tried in good faith but was unable to give notice; or facts establishing good cause as to why the petitioner should not be required to give notice to the opposing party. P.B. § 4-5(a). Failure to include any of these factors may result in denial of the motion or a return of the papers until the omission is corrected. *See Pagan v. Gonzalez*, 2005 Conn. Super. LEXIS 3218 (2005).

#Comment Begins

Strategic Point: Failing to plead facts to support the substantive requirements necessary to grant a temporary injunction may result in a denial of the motion on its face. The motion and supporting affidavit should set forth the four requirements for a temporary injunction and why it should be granted in light of the facts of the case.

#Comment Ends#Comment Begins

Form: *Ex parte* injunction, *see* [Chapter 20, § 20.47, below](#).

#Comment Ends

§ 4.20 Seeking Closure of the Courtroom or Sealing of Records

Upon motion filed by a party, the court may close the courtroom if it is determined that the interest of justice outweigh the public’s right to information. [Conn. Gen. Stat. § 46b-49](#). P.B. § 25-59. Any such order must be narrowly drawn and no broader than that necessary to protect the reason for closure. P.B. § 25-59. If there are any other reasonable alternatives to closing the courtroom, those alternatives must be explored. P.B. § 25-59. A motion to seal the courtroom must be filed at least 14 days prior to the scheduled hearing and will be placed on the calendar to be heard. P.B. § 25-59. An agreement by the parties to seal the courtroom will not be binding by the court. P.B. § 25-59.

In general, the same procedures for closing a courtroom will be followed when seeking to seal a document or files in a document. P.B. § 25-59A.

A courtroom or hearing may be sealed and closed based upon the welfare of the children and the nature of the case. [Conn. Gen. Stat. § 46b-11](#), *Greenan v. Greenan*, 150 Conn. App. 289

(2014).

#Comment Begins

Warning: It is extremely difficult to obtain a sealing order. There must be something very glaring that will have an impact on the children or the parties if the proceedings are public. This must be more than the fact that there are child custody proceedings or that embarrassing information will be disclosed.

#Comment Ends

PART IV: SEEKING DISCOVERY

PRETRIAL PLEADINGS AND DISCOVERY

§ 4.21 CHECKLIST: Seeking Discovery

4.21.1 Seeking Discovery

- Defining the permissive nature of discovery and privileges:
 - Discovery is liberal.
 - The discovery rules contain definitions and rules of construction applicable to all discovery requests.
 - To be discoverable the information requested need only lead to the discovery of admissible evidence, not be admissible in and of itself.
 - Discovery is permitted when:
 - The documents involve a claim or defense in the case.
 - The documents are within the knowledge, control or possession of the party from whom they are requested.
 - The documents can be produced by that party with “substantially greater facility.”
 - The documents are not privileged.
 - The work product privilege may be asserted for documents prepared in anticipation of litigation by the attorney.
 - A document subject to the work product privilege may be produced if the other party cannot obtain the same information in any other fashion.
 - The work for which the privilege is claimed must be done in the ordinary course of an attorney in their role as an attorney.
 - The attorney-client privilege may be asserted where a client has shared information with an attorney when seeking legal advice.
 - It does not apply if a client shares information to perpetrate a fraud on the court.
 - It may be waived if a client testifies about communications with his or her attorney.
 - It may be waived if a document is produced inadvertently through discovery.
 - There can be a partial waiver of the attorney-client privilege.
 - A privilege log must be prepared for those documents claimed to be subject to a privilege. **Authority:** P.B. §§ 13-1 to 13-13, 13-1(a), 13-1(c), 13-1(d), 13-2, 13-3, 13-3(a), 13-3(c), 13-3(d), and 25-31; *Stein v. Needle, et.*

al, 2021 WL 423744 (U.S. Dist., 2/21/21), *Harp v. King*, 266 Conn. 747 (2003), *State v. Taft*, 258 Conn. 412 (2001), *Metropolitan Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 249 Conn. 36 (1999), *Shew v. Freedom of Info. Comm'n*, 245 Conn. 149 (1998), *Stanley Works v. New Britain Redevelopment Agency*, 155 Conn. 86 (1967), *Tolman v. Banach*, 82 Conn. App. 263 (2004), *Bersani v. Bersani*, 41 Conn. Supp. 252 (1989), *Adams v. Adams*, 2014 Conn. Super. LEXIS 1079 (May 5, 2014), *Forbes v. Forbes*, 2011 Conn. Super. LEXIS 2405 (2011), *Stamm v. Stamm*, 2003 Conn. Super. LEXIS 993 (2003), *Palomba v. Sullivan*, 1998 Conn. Super. LEXIS 3687 (1998), and *Lindholm v. Lindholm*, 1999 Conn. Super. LEXIS 2784 (1999). **Discussion:** See § 4.22, *below*.

□ Seeking mandatory discovery:

○ When requested by opposing counsel, mandatory discovery must be provided, which includes:

- Federal and state income tax returns.
- W-2s, 1099s and K-1s.
- Paystubs.
- Statements for all financial accounts.
- Retirement and deferred compensation statements.
- The most recent statement concerning life insurance.
- A summary of the medical insurance policy.
- Written appraisals of assets owned by either party. **Authority:** P.B.

§§ 13-9(f), 13-15, 25-32, 25-32(a), and 25-32(b). **Discussion:** See § 4.23, *below*.

□ Propounding interrogatories:

- Interrogatories may be filed after the return date.
- They may only be used to obtain information from parties, not from third-party witnesses or experts.
- Interrogatories must be answered within sixty days unless the court orders or parties stipulate for a longer time.
- Any objection to an interrogatory must be filed within sixty days from service of the interrogatories, unless the parties agree in writing to allow more time for objections.
- Counsel must make bona fide attempts to resolve the dispute on the interrogatories to which there is an objection and file an affidavit detailing the attempts. **Authority:** P.B. §§ 13-6, 13-6(a), 13-7(a), 13-7(a)(1), 13-7(a)(2), 13-7(a)(3), 13-7(b), 13-7(d), 13-8(a), and 13-8(b). **Discussion:** See § 4.24, *below*.

□ Filing requests for production:

- Requests for production may be served at any time after the return date.
- Requests for production must be answered within sixty days or such shorter or longer time as determined by the court.
- Objections must state the request to which there is an objection, the specific reasons for the objection, and whether documents have been withheld due to the objection; the objection will not be placed on the calendar until an affidavit is filed detailing the attempts to resolve the objection.
- The answer to the request for production must detail the documents provided.
- A request to produce at hearing must be served no later than five days prior to the scheduled hearing.

- Once a request for production has been served, the answering party has a continuing duty to disclose additional or new material.
- If the information disclosed was incorrect when made or is no longer true, the party must correct the production compliance. **Authority:** *Weinstein v. Weinstein*, 275 Conn. 671 (2005), *Lederle v. Spivey*, 151 Conn. App. 813 (2014), and *Finan v. Finan*, 107 Conn. App. 369 (2008); P.B. §§ 11-1, 13-9, 13-9(a), 13-9(c), 13-9(d), 13-9(f), 13-9(g), 13-10(a), 13-10(a)(3), 13-10(b), 13-10(f), 13-10(h), 13-10(i), 13-11A, 13-14, 13-15, 25-31, and 25-56. **Discussion:** See § 4.25, below. See also § 4.33, below. **Forms:** Family Matters Standing Orders, Chapter 20, § 20.38, below.
- Objecting to discovery requests and seeking protective orders:
 - Good cause, such as annoyance, embarrassment, oppression or undue burden or expense, must be shown to obtain a protective order.
 - Several remedies may be requested in seeking a protective order:
 - That the requested discovery not be provided.
 - Limiting the time and place where the documents may be reviewed.
 - Restricting or designating the method by which documents are provided.
 - Narrowing the scope of discovery.
 - Conducting discovery only with those designated by the court.
 - Sealing a deposition.
 - Safeguarding trade secrets or confidential information.
 - Simultaneous filings in a sealed manner.
 - Specifying the procedure for the production of electronically stored material.
 - Typically an order for discovery is not a final judgment until it is violated. **Authority:** *Niro v. Niro*, 314 Conn. 62 (2014), *Perricone v. Perricone*, 292 Conn. 187 (2009), *Cunniffe v. Cunniffe*, 150 Conn. App. 419 (2014), *Adams v. Adams*, 2014 Conn. Super. LEXIS 1079 (May 5, 2014), and *Welch v. Welch*, 48 Conn. Supp. 19 (2003); P.B. § 13-5. **Discussion:** See § 4.26, below.
- Taking depositions of parties and non parties:
 - There should be a determined purpose of a deposition before taking it.
 - There are procedural considerations in taking depositions:
 - The deposition must be properly noticed.
 - Depositions may be taken before a notary public, a commissioner of the superior court, a clerk of the court, or a judge.
 - A subpoena may be issued to compel attendance at a deposition.
 - Alternatives to a stenographic recording of the deposition must be approved by the court, unless a written notice is served on the other parties and it is also taken by stenographic means.
 - The deposition must be within the county or thirty miles of the deponent's residence.
 - An out-of-state plaintiff may be compelled to appear in Connecticut for his or her deposition.
 - Testimony proceeds as it would at trial.
 - Objections shall be noticed on the record and all evidence taken subject to the objection.
 - A deponent may read and sign the deposition. **Authority:** Conn. Gen. Stat. §§ 52-148b, 52-148c, and 52-148d; *Ranfone v. Ranfone*, 2007 Conn. Super. LEXIS 3344 (2007); P.B. §§ 13-27 to 13-30, 13-27(a), 13-28, 13-28(a), 13-28(b), 13-28(f), 13-29(a), 13-29(b), 13-29(c), 13-30(a), 13-30(b),

13-30(d), ~~and~~ 13-30(f) and 13-30(g)(1). **Discussion:** See §§ 4.27[1] and 4.27[2], *below*. **Form:** Notice of Deposition, see Chapter 20, § 20.48, *below*.

□ Agreeing to the usual stipulations:

- Stipulations usually agreed upon at a deposition include:
 - Any objections as to the qualification of the officer taking the deposition are waived.
 - Whether the deponent wants to read and sign the deposition.
 - That all evidentiary objections, except as to the form of the question, are waived until the time of trial.
 - That any defects in the notice of the deposition are waived.

Authority: P.B. § 13-30(b), 13-30(d), and 13-30(e). **Discussion:** See § 4.27[3], *below*.

□ Taking the deposition of a party and a non-party:

- The deposition of a party, unless there is an order of the court, may be taken any time after twenty days following the return date.
- A court order is not required if the opposing party has sought discovery or the witness will be leaving the state.
- If there is a concern that the party will not appear for his or her deposition, a subpoena should be issued.
- Permission may be sought to have an expert attend the deposition of a party.
- A non-party may only be compelled to appear at a deposition when served with a subpoena.

○ If the non-party is being requested to bring documents, a subpoena *duces tecum* should be issued. **Authority:** Conn. Gen. Stat. §§ 52-148a, 52-148a(b), 52-148b(b), and 52-148e; P.B. §§ 13-28(b), 13-28(c), and 13-28(d); *Simonson v. Simonson*, 2016 Conn. Super. LEXIS 835 and *Perone v. Shapiro*, 55 Conn. L. Rptr. 609, 2013 Conn. Super. LEXIS 483 (2013). **Discussion:** See §§ 4.27[4] and 4.27[5], *below*.

□ Taking depositions for the preservation of testimony:

- The court must issue an order to show cause for a petition filed by a party to take the deposition for the preservation of testimony.
- It must be demonstrated why the testimony must be preserved.
- If a deposition is taken for the preservation of testimony, all objections must be stated for the record and the witness must answer all questions, even those to which there is an objection. **Authority:** Conn. Gen. Stat. §§ 52-156 and 52-156(a). **Discussion:** See § 4.27[6], *below*. **Form:** Notice of Deposition to Preserve Testimony, see Chapter 20, § 20.49, *below*.

□ Producing documents at a deposition:

- When issuing a subpoena for documents at a deposition, the deposition must be scheduled more than fifteen days after the subpoena is served as the deponent has fifteen days in which to object to the request for production.
- A notice of deposition for a party may contain a Schedule A request for production, with which a party has thirty days to comply. **Authority:** P.B. §§ 13-27(g), 13-28(b), 13-28(c), and 13-28(d). **Discussion:** See § 4.27[7], *below*.

□ Filing protective orders and quashing subpoenas:

- A protective order may be filed when:
 - A deposition is scheduled on a date on which counsel and/or the deponent are unavailable.

- It is needed to prevent the production of a document or the pursuit of a line of questioning.

- The discovery rules on a motion to open on the basis of fraud does not apply to post judgment discovery.

- A motion to quash a subpoena must be filed prior to the time in which compliance with the subpoena is sought.

- If cost to produce documents is advanced as a reason to quash the subpoena, the court may order the party taking the deposition to advance the cost. **Authority:** *Brody v. Brody*, 153 Conn. App. 625 (2014), *Cahn v. Cahn*, 26 Conn. App. 720 (1992), *Oneglia v. Oneglia*, 14 Conn. App. 267 (1988), *Simonson v. Simonson*, 2016 Conn. Super. LEXIS 835, and *Lovelace v. Lovelace*, 2014 Conn. Super. LEXIS 1460 (June 16, 2014); P.B. §§ 13-5, 13-28, 13-28(e), and 13-28(f). **Discussion:** See §§ 4.27[8] and 4.27[9], *below*.

- Allocating the costs of the deposition:

- The party noticing the deposition pays for the appearance fee for the court reporter and the cost of the original transcription or recording.

- Every other party is responsible for paying for his or her copy of the deposition.

- The party taking the deposition of an expert witness is responsible for the costs of the expert to appear at the deposition, including reasonable travel and lodging, but not preparation time. **Authority:** P.B. §§ 13-2, 13-4(c)(2), and 13-30(j). **Discussion:** See § 4.27[10], *below*.

- Using deposition testimony:

- The deposition may be used to refresh a witness's recollection or to impeach the witness.

- The deposition may be submitted in lieu of live testimony at trial.

- A deposition may be used if a witness is unavailable or for a physician whose deposition is permitted to be substituted for live testimony.

Authority: P.B. § 13-31(a)(2); ROE §§ 6-9, 6-10, and 8-6. **Discussion:** See § 4.27[11], *below*.

- Utilizing experts:

- Any expert who will testify at trial must be disclosed and the disclosure must set forth:

- The name, address and employer of the expert witness.

- The field of expertise and the subject matter about which the expert will testify.

- The opinions to which the expert is expected to testify.

- The substance of the grounds on which the expert relies for his opinion.

- A court may appoint its own expert witness, whose opinion will be disclosed to the parties.

- The court appointed expert shall be compensated as determined by the court.

- In contested custody cases, a custody evaluation to be performed by family services, or a licensed mental health professional may be ordered.

- The report is to be sent to the court who will then distribute it to counsel of record and the guardian *ad litem*.

- An expert may give his or her opinion on the ultimate issue if it would assist the court. **Authority:** *Ford v. Ford*, 68 Conn. App. 173 (2002); P.B. §§ 13-4(a), 13-4(b), 25-33, 25-60(a), 25-60(b), 25-60A, 25-60A(c), and 25-61; ROE § 7-3(a). **Discussion:** See § 4.28, *below*. **Forms:** Disclosure of

Expert Witness, see Chapter 20, § 20.50, *below*.

□ Taking an out-of-state deposition:

- A commission to take the out-of-state deposition must be obtained by the court.
- An attorney in the jurisdiction in which the deposition is to be taken shall serve as the commission.
- If the out-of-state deposition is taken to perpetuate testimony, the rules to perpetuate testimony must be followed. **Authority:** P.B. § 13-28(a). **Discussion:** See § 4.29, *below*. See also § 4.26[7], *below*. **Form:** Motion for Commission to Take an Out-of-State Deposition, see Chapter 20, § 20.51, *below*.

□ Obtaining physical and mental examinations:

- Provided it is probable that a mental or physical exam is required for the determination of the underlying issues in the case, the court may order such exam.
- A party may assert the doctor-patient privilege providing there is a finding that the relationship was for purposes of treatment and not the pending litigation.
- To assert the psychologist-patient privilege, the consultation must be for diagnosis or treatment.
 - The patient or his or her authorized representative, which may include a guardian *ad litem*, may waive the privilege.
- The consent to disclosing privileged communications to a psychologist may be withdrawn except:
 - When the disclosure is to a psychologist in a court-ordered evaluation after being told that communications are not privileged.
 - If the psychological condition of that person has been placed as an element of the case and the interests of justice outweighs the privileged communications.
 - If the psychologist has good faith belief there is a risk of imminent injury to the patient, others, or property of others.
 - If the psychologist believes in good faith there will or has been abuse of a child, an incompetent, disabled or elderly person. **Authority:** Conn. Gen. Stat. §§ 52-146c, 52-146c(a), 52-146c(b), 42-146c(c), 52-146d, and 52-146e(a); *Bieluch v. Bieluch*, 190 Conn. 813 (1983); P.B. § 13-11. **Discussion:** See § 4.30, *below*.

□ Filing requests for admission:

- The only answers to a request to admit are admit, deny, or the inability to admit or deny the statement.
- The questions should be simple and contain only one thought.
- The responses and objections must be made within thirty days.
- Failure to respond in thirty days will result in the request being deemed admitted.
- A motion and not a request for extension of time should be filed if more than thirty days to answer is needed.
- The issuing party may seek to determine the sufficiency of the answers.
- Any request which is admitted is conclusively established, unless the court permits it to be withdrawn or amended. **Authority:** *Baranowski v. Safeco Ins. Co. of Am.*, 2006 Conn. Super. LEXIS 3247 (2006); P.B. §§ 13-10(a), 13-22, 13-22(a), 13-23, 13-23(a), 13-23(b), 13-24(a), 13-24(b), and 13-25.

Discussion: See § 4.31, below.

- Complying with discovery requests.
 - To compel compliance with discovery requests, the request must be clear.
 - A motion for compliance must set forth the ways in which the compliance is deficient.
 - After the court-ordered date for compliance has lapsed, a motion for contempt should be filed.
 - Any sanction for non-compliance should be in proportion to the non-compliance. **Authority:** *Millbrook Owners Ass'n v. Hamilton Std.*, 257 Conn. 1 (2001); P.B. §§ 13-14, 25-34(a), 25-34(b), and 25-34(c). **Discussion:** See § 4.32, below.
- Obtaining discovery sanctions:
 - Discovery sanctions may include:
 - The entry of nonsuit or default against the offending party.
 - Costs to the party seeking discovery, including counsel fees.
 - The issues for which discovery is sought is taken to be established for the case.
 - The offending party may be prevented from introducing certain documents or evidence at a trial or hearing.
 - The action could be dismissed.
 - The motion should contain the specific sanctions sought. **Authority:** Conn. Gen. Stat. §§ 46b-62 and 46b-87; *Ramin v. Ramin*, 281 Conn. 324 (2007), *Smith v. Snyder*, 267 Conn. 456 (2004), *Valentine v. Valentine*, 164 Conn. App. 354 (2016), *Allen v. Allen*, 134 Conn. App. 486 (2012), and *Osborne v. Osborne*, 2 Conn. App. 635 (1984); P.B. §§ 13-14, 13-14(b), and 25-32A. **Discussion:** See § 4.33, below.
- Appointing a special discovery master:
 - The court may appoint a special discovery master to resolve discovery disputes.
 - The court will determine the compensation and its allocation between the parties for the special discovery master. **Authority:** P.B. § 25-32B. **Discussion:** See § 4.34, below.

§ 4.22 Defining the Permissive Nature of Discovery and Privileges

[1] Assessing the Scope of Discovery

Discovery in Connecticut is very liberal. The discovery provisions of P.B. §§ 13-1 through 13-13 are specifically applicable to family matters. P.B. § 25-31. The discovery rules provide definitions applicable to all means of discovery under Chapter 13 of the Practice Book. P.B. § 13-1. Those definitions include:

“(1) ‘statement’ means (A) a written statement in the handwriting of the person making it, or signed, or initialed, or otherwise in writing adopted and approved by the person making it; or (B) a stenographic, mechanical, electrical or other recording or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and which is contemporaneously recorded;

- (2) ‘party’ means (A) a person named as a party in the action, or (B) an agent, employee, officer, or director of a public or private corporation, partnership, association, or governmental agency, named as a party in the action;
- (3) ‘representative’ includes agent, attorney, consultant indemnitor, insurer, and surety;
- (4) ‘electronic’ means relating to technology having electrical, digital, magnetic, wireless. Optical, electromagnetic, or similar capabilities;
- (5) ‘electronically stored information’ means information that is stored in an electronic medium and is retrievable in perceivable form.”

P.B. § 13-1(a).

In addition, certain additional terms are defined and deemed incorporated into all discovery requests served under Chapter [13 of the Practice Book](#). P.B. § 13-1(b). The specific definitions include:

“(1) Communication. The term ‘communication’ means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

(2) Document. The term ‘document’ means any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term. A request for production of ‘documents’ shall encompass, and the response shall include, electronically stored information, as defined in subsection (a) above, unless otherwise specified by the requesting party.

(3) Identify (With Respect to Persons). When referring to a person, to ‘identify’ means to provide, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subdivision, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(4) Identify (With Respect to Documents or Electronically Stored Information). When referring to documents or electronically stored information, to ‘identify’ means to provide, to the extent known, information about the: (i) type of document or electronically stored information; (ii) its general subject matter; (iii) the date of the document or electronically stored information; and (iv) author(s), addressee(s) and recipient(s).

(5) Identify (With Respect to Oral Communications). When referring to an oral communication, to ‘identify’ means: (i) to state the date and place of the oral

communication; (ii) to identify all persons hearing, present or participating in the communication; (iii) to state whether the communication was in person, by telephone, or by some other means or medium; and (iv) to summarize what was said by each such person, or provide a transcript if one is available.

(6) Identify (With Respect to an Act or Event). When referring to an act or event, to 'identify' means: (i) to describe the act or event, including its location and its date; (ii) to identify the persons participating, present or involved in the act or event; (iii) to identify all oral communications which were made at the act or event identified; and (iv) to identify all documents concerning the act or event identified.

(7) Person. The term 'person' is defined as any natural person or any business, legal or governmental entity or association.

(8) Concerning. The term 'concerning' means relation to, referring to, describing, evidencing or constituting.

(9) You. The term 'you' means the party or person to whom a discovery request is directed, except that: (i) if the party is the representative of the estate of a decedent, ward or incapable person, 'you' shall also refer to the party's decedent, ward, or incapable person, unless the context of the discovery request clearly indicates otherwise; and (ii) notwithstanding section (b) above, the propounding party may specify a different definition of the term 'you'.

P.B. § 13-1(c).

There are rules for construction of terms which apply to all requests for production:

“(1) All/Each. The terms 'all' and 'each' shall both be construed as all and each.

(2) And/Or. The connectives 'and' and 'or' shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

(3) Number. The use of the singular form of any word includes the plural and vice versa.

(4) Gender. Unless the context clearly requires otherwise, the use of any pronoun or gender-identified form of any word includes both the male and female gender.”

P.B. § 13-1(d).

The scope of discovery is not the same as evidentiary relevance for admissibility purposes at a hearing or trial, but rather is broader. P.B. § 13-2. To obtain discovery, the document must be one which, although it may not be relevant under the code of evidence, is likely to lead to the discovery of admissible evidence. P.B. § 13-2. Discovery is permitted in the following instances:

1. The documents requested involve a claim or defense in the case. For example, a solely financial dispute would require the production of financial documents but not documents pertaining exclusively to custody issues.
2. The document is within the knowledge, control or possession of the party from whom it is requested. This could include documents which were sealed from a prior case, with the appropriate safeguards to maintain the integrity of the sealing from the prior action. *Forbes v. Forbes*, 2011 Conn. Super. LEXIS 2405 (2011).
3. The document can be produced by the requested party with “substantially greater facility” than the party requesting disclosure. As an example, jointly titled documents located in the husband’s office, to which the wife does not have access, can be provided by the husband more easily than the wife, despite the fact that the documents are in joint names. However, the substantially greater facility showing is not required when seeking a video or audio recording prepared in anticipation of litigation or trial or for another party or his or her representative. P.B. § 13-3(c).
4. The documents are not privileged. Privileged documents are not discoverable, except in specific circumstances.

P.B. § 13-2.

#Comment Begins

Strategic Point: When objecting to discovery requests, attention must be paid to the scope of discovery outlined in P.B. § 13-2. If an objection is made and the item seeking to be discovered comes within the purview of P.B. § 13-2, such objection will not reflect well on the objecting party, who may be viewed as playing games with discovery.

#Comment Ends

Because of the liberal nature of discovery in Connecticut, counsel should take caution about downloading the contents of a spouse’s computer, or receiving the same from his client, as it may expose the attorney or client to claims by the spouse about the unauthorized access to the computer. *Stein v. Needle, et. al*, 2021 WL 423744 (U.S. Dist., 2/21/21). Additionally, the computer could contain records which violate federal law, i.e. HIPAA or possession of child pornography, that could result in legal jeopardy.

A party will be permitted to review trust documents, despite a representation as to the other parties’ interest in such trust, to allow the party to make the determination regarding the applicability of the trust herself. *Adams v. Adams*, 2014 Conn. Super. LEXIS 1079 (May 5, 2014).

[2] Asserting the Work Product Privilege

Documents prepared in anticipation of litigation by an attorney are considered the work product of the attorney and are only discoverable in limited instances. *Stanley Works v. New Britain Redevelopment Agency*, 155 Conn. 86 (1967) and P.B. § 13-3. A party may obtain an attorney’s work product if a substantial need for the materials is demonstrateddemonstrated, and the information cannot be obtained in any other fashion without hardship. P.B. § 13-3(a).

Notwithstanding, the mental impressions, strategy, legal opinions or theories of the attorney shall not be disclosed. P.B. § 13-3(a). To claim work product privilege, the material must be a result of the activities of the attorney, done in the normal course of his or her role as an attorney, and in connection with the pending or potential litigation. *Stanley Works*, 155 Conn. at 95, *Tolman v. Banach*, 82 Conn. App. 263 (2004), and *Lindholm v. Lindholm*, 1999 Conn. Super. LEXIS 2784 (1999).

#Comment Begins

Warning: Many practitioners attempt to shield private investigator reports from disclosure by claiming it is work product. However, as can be seen by the definition of work product, a private investigator's report is not a result of the work of the attorney, but rather is the work of the investigator. See P.B. § 13-3(c).

#Comment Ends

[3] Asserting the Attorney-Client Privilege

Communications between an attorney and his or her client are privileged, primarily to encourage full and frank disclosure from the client to the attorney to enable the attorney to provide informed advice to the client. *Metropolitan Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 249 Conn. 36, 52 (1999). This privilege is created when a client or potential client shares information with an attorney. It is not the actual giving of the legal advice from the attorney to the client that establishes the attorney-client relationship. It is the client's seeking of the legal advice and divulging information to the attorney that establishes the attorney-client relationship for purposes of the privilege. *Palomba v. Sullivan*, 1998 Conn. Super. LEXIS 3687 (1998).

The attorney-client privilege protects both the advice given by the attorney acting in the capacity as counsel and legal advisor as well as the information provided by the client to the attorney. *Shew v. Freedom of Info. Comm'n*, 245 Conn. 149 (1998).

However, the attorney-client privilege is not an absolute shield for all communications between an attorney and client. Where breaching the privilege is sought, the "chilling effect" of disclosing such communications must be weighed against the necessity for disclosure. *Metropolitan Life Ins. Co.*, 249 Conn. at 60. It cannot be used as a defense where the client shares information with an attorney, under the guise of attorney-client privilege, in order to perpetrate a fraud on the court. *Bersani v. Bersani*, 41 Conn. Supp. 252 (1989).

Connecticut treats the attorney-client privilege very seriously, ~~so as to~~ encourage the complete disclosure of information between the attorney and client. However, the voluntary disclosure of information subject to the attorney-client privilege will constitute a waiver of the privilege, such as when a client testifies as to communication with his or her attorney. *State v. Taft*, 258 Conn. 412 (2001). The privilege may be impliedly waived where the advice from the attorney is integral to the action or places the attorney-client relationship at issue. *Metropolitan Life Ins. Co.*, 249 Conn. at 60.

There are times through discovery when a document subject to the attorney-client privilege is produced inadvertently. ~~In order to~~ determine if there is a waiver of the attorney-client privilege, Connecticut has adopted a moderate five-step analysis of the following factors:

1. The magnitude of the discovery request and the precautions taken to prevent disclosure of privileged materials in light thereof.

2. The number of inadvertent disclosures that were made.
3. The extent of the inadvertent disclosures.
4. The promptness by the parties making the inadvertent disclosures to rectify the situation.
5. Whether the interests of justice would be served by retaining the privilege over the document inadvertently produced.

Harp v. King, 266 Conn. 747, 768–769 (2003).

#Comment Begins

Warning: Because of inadvertent disclosure, care must be taken when providing documents to opposing counsel as there is no guarantee that the court will cause the privilege to be retained.

#Comment Ends

The attorney-client privilege can also be claimed even after an attorney, or former attorney, has provided testimony as a witness on a specific issue before the court. While the issue discussed in open court would not be subject to the attorney-client privilege, other issues, not brought up in the court, would still maintain the expectation of privileged communications.

Stamm v. Stamm, 2003 Conn. Super. LEXIS 993 (2003).

#Comment Begins

Strategic Point: It is important that the client understandunderstands the attorney-client privilege, especially before he or she is testifying at a deposition or in court. The client should not testify as to any discussions he or she has had with counsel. If the client testifies to or discloses communications with his or her attorney, it could be found that the attorney-client privilege is waived at least to that issue.

#Comment Ends

[4] Preparing a Privilege Log

Where a party asserts privilege in responding to discovery, he or she must prepare, within 45 days of the discovery request, a privilege log. P.B. § 13-3(d). The privilege log must contain:

- “(1) The type of document or electronically stored information;
- (2) The general subject matter of the document or electronically stored information;
- (3) The date of the document or electronically stored information;
- (4) The author of the document or electronically stored information;
- (5) Each recipient of the document or electronically stored information; and

(6) The nature of the privilege or protection asserted.”

P.B. § 13-3(d).

Disclosure of information for the privilege log will not be required where the information itself is privileged, but all other non-privileged information must be disclosed. P.B. § 13-3(d). The existence of a document is not privileged. P.B. § 13-3(d). The privilege log does not apply to communications between the client and his or her attorney appearing in the action. P.B. § 13-3(d). The privilege log shall initially be served on all parties but not filed in court. P.B. § 13-3(d).

§ 4.23 Seeking Mandatory Discovery

A party can seek, in an action for a dissolution of marriage, legal separation, annulment, support, or in a post-judgment motion seeking to modify or enforce an existing order of support, mandatory production from the other party. P.B. § 25-32. The documents under the mandatory disclosure rule must be produced within 60 days upon request by opposing counsel. Typically, such request will take the form of a formal request for production.

The mandatory documents to be produced include:

1. Federal and state income tax returns.
2. Forms W-2, 1099 and K-1.
3. Paystubs.
4. Statements for all financial accounts.
5. IRA profit sharing and deferred compensation plan, pension plan or retirement accounts.
6. The most recent statement concerning life insurance.
7. A summary of the medical insurance policy.
8. Written appraisals for any asset owned by either party.

P.B. § 25-32(a). The party upon whom the mandatory disclosure was served has a continuing duty to disclose during the pendency of the action. P.B. §§ 13-15 and 25-32(b).

#Comment Begins

Strategic Point: Due to the mandatory nature of the documents under this section, any attempt to object to producing these documents will likely be denied by the court.

#Comment Ends

When filing any request for production, a notice of the filing of the request for production

should be filed with the court, so as to have a docket entry in the court file showing the request for production. The actual request for production should not be filed with the court. P.B. § 13-9(f).

#Comment Begins

Strategic Point: It is beneficial to serve the mandatory request for disclosure early in the case. This will allow the receipt of discovery, which may be needed for temporary motions.

#Comment Ends

§ 4.24 Propounding Interrogatories

[1] Serving Interrogatories

Interrogatories may be filed by either party after the return date. P.B. § 13-6. Generally, interrogatories consist of several pages of very specific questions, often with each question having multiple sub-parts. The interrogatories may only be served on a party and cannot be used as a means to seek information from non-party witnesses or experts. P.B. § 13-6(a). After each question, the filing party must leave space for the other party to insert its answer, unless the interrogatories are served electronically. P.B. § 13-6(a). If an electronic version of the interrogatories is served, sufficient space is not required as the party will be permitted to create as much space as is needed in the document to insert their answer.

#Comment Begins

Strategic Point: In the event the interrogatories are not served electronically, request opposing counsel to submit an electronic version of the interrogatories to allow ease in answering them.

#Comment Ends

[2] Answering Interrogatories

Interrogatories must be answered in writing under oath, within sixty days from the date they are served, or a shorter or longer time allowed by a judicial authority unless the parties file a stipulation extending the time to serve answers or objections, or the court, upon motion, allows for a longer time. P.B. § 13-7(a). For additional extensions or an initial extension request in excess of the thirty days, court approval is needed. P.B. § 13-7(a)(2).

#Comment Begins

Warning: Effective January 1, 2017, the rules have changed to allow sixty days for the filing of responses and objections to interrogatories. The purpose is to hopefully reduce the number of extensions of time for compliance.

#Comment Ends

The interrogatory answers shall follow the question being answered and shall be signed by the person answering. P.B. § 13-7(b).

A cover sheet shall be attached to the interrogatory answers, setting forth either the fact that all interrogatories have been answered or that there are objections to certain interrogatories. P.B. § 13-7(b). The interrogatories objected to and the reason for the objection shall be set forth in the cover sheet, which shall be filed with the court. P.B. § 13-7(b). If there are no objections,

the cover sheet need not be filed with the court and the interrogatory answers are never filed with the court. P.B. § 13-7(b).

#Comment Begins

Warning: Oftentimes, counsel will file objections to interrogatories, erroneously believing it relieves them from the obligation of following up on the objections and/or complying with the remaining interrogatories. Objecting to interrogatories does not relieve the party from the obligation of answering the remaining interrogatories. P.B. § 13-7(d).

#Comment Ends

[3] Objecting to Interrogatories

If an interrogatory is worthy of objection, the objection must be filed within sixty days of service of the original interrogatories. P.B. §§ 13-7(a)(1) and 13-7(a)(3). The objectionable interrogatory must be set forth, followed by the specific basis for the objection and filed with the court. P.B. § 13-8(a). Before the objections can be heard by the court or placed on the short calendar, counsel must file an affidavit that bona fide attempts were made to resolve the objection without success. P.B. § 13-8(b). The affidavit shall state the date of the objection, the party filing the objection, the party to whom the objection is addressed, the date, time, names of all persons attending the conference, and the place of the conference to resolve the differences, or the reason that no conference was held. P.B. § 13-8(b). Once this step is complete, the court may rule on the objections. If an objection is overruled, the answer must be submitted twenty days after the court's ruling or longer if permitted by the court. P.B. § 13-8(b).

#Comment Begins

Strategic Point: The required conference to resolve outstanding objections can be a very useful practice tool, in that counsel must submit a sworn statement that a good faith effort to resolve the outstanding objections has been made. In doing so, both counsel can note the reasons for the objection, as well as why the inquiring party does not feel the interrogatory is objectionable. Therefore, if counsel are unable to resolve their differences at the objection conference, they will each have a better understanding as to the argument that will be made before the court at the time the objections are heard.

#Comment Ends

The objections must be filed within sixty days of the receipt of the interrogatories. P.B. §§ 13-7(a)(3) and 13-8(a). Failure to do so will preclude the later ability to object to the interrogatories. The objection may be granted by agreement or order of the court. P.B. §§ 13-7(a)(1) and 13-7(a)(2).

§ 4.25 Filing Requests for Production

[1] Serving Requests for Production

In addition to the mandatory disclosure production request, a party is not precluded from seeking more comprehensive discovery. Quite often, counsel will file the request for mandatory discovery, and thereafter file a more comprehensive and thorough discovery request, based upon the facts of the case. The factors that will determine what types of discovery are sought will include the complexity of the finances; whether one or both of the parties are self-employed, a partner or stockholder in a business or corporation; the existence of trusts, inheritances, the

beneficiary of other family-owned assets, as well as the nature and amounts of investments and investment vehicles by the parties, such as traditional stocks and bonds, hedge funds, or other private investments.

In addition, complex custody issues, issues specific to the children's or either party's health, could lead to the necessity for additional discovery requests. The court can order, upon a motion by either party, and upon good cause demonstrated to the court, either or both parties to sign a Health Insurance Portability and Accountability Act (hereinafter "HIPAA") compliant release of medical records. P.B. § 13-11A. The manner by which to seek these records is through the filing of a motion and not through a request for production. P.B. § 13-9(g). The party to whom the production request is directed may object to the request, typically on the basis of relevance and doctor-patient privilege.

#Comment Begins

Warning: Although P.B. § 13-11A is not specifically incorporated into the Family Practice Book Rules, when seeking medical information through a request for production, the practitioner is directed to file a motion pursuant to P.B. § 13-11A. P.B. §§ 13-9(f) and 25-31. Accordingly, it may be argued that since P.B. § 13-9 is incorporated by the Family Practice Book Rules, then so is P.B. § 13-11A by virtue of its reference in P.B. § 13-9(f).

#Comment Ends

The production of this medical information waives the doctor-patient privilege, in that the information provided through discovery will be available for further inquiry via documentation, depositions and testimony.

Either party may serve the other with a request for production of documents at any time after the return day. P.B. §§ 13-9(a) and 13-9(c). A party is not limited in the number of discovery requests he or she serves.

[2] Responding to Requests for Production

The party upon whom a request for production was served has sixty days within which to reply and respond to the request, or such shorter or longer time as allowed by the court. P.B. § 13-10(a). Such request must also state the date of the service of the original document for which extension is sought. P.B. § 11-1.

#Comment Begins

Warning: Effective January 1, 2017, the time to respond and object to a request for production extends to sixty days from thirty days.

#Comment Ends

When filing for additional time to respond, it is best to be proactive and have as much information for the court as possible to support the additional time needed to respond. Such factors may include: the complexity and volume of the information sought, the potential confidential nature of the information, the necessity for obtaining documentation from various institutions, and the cost of obtaining these documents. The amount of time requested should also include the time needed to review these documents, to ensure that the documentation being turned over complies with the request for production and can be produced in an organized manner.

#Comment Begins

Strategic Point: A “request for extension of time,” as opposed to a “motion for extension of time,” is automatically granted by the clerk, unless it is objected to within ten days of filing.

#Comment Ends

When responding to a request for production, the answering party must submit a detailed list of the documents they are providing after each paragraph in the request for production. P.B. § 13-10(b).

If documents are discoverable but stored electronically, the court may order disclosure in another format for good cause shown. P.B. § 13-9(d). This could include items such as the books and records of a business which are kept in a program such as Quicken or Quickbooks.

#Comment Begins

Strategic Point: Especially where there are several categories in the document request, it is good practice to keep an inventory, following the format of the production request, as to the exact documents produced and the date on which production was made. That will provide easy reference whenever there is a dispute regarding document production.

#Comment Ends

[3] Objecting to Requests for Production

A party receiving a request for production has sixty days in which to file an objection to any request. P.B. § 13-10(a)(3). The objection must state: (1) the request to which there is an objection; (2) the reasons for the objection with specificity; and (3) whether any documents are being withheld due to the objection. P.B. § 13-10(f). The objections must be signed and filed in court. P.B. § 13-10(f).

An objection will not be placed on a short calendar until an affidavit is filed by counsel that states: (1) the date of the objection; (2) to whom the objection was addressed and by whom it was filed; (3) the date, time and place of the conference which attempted to resolve the discovery issues; and (4) the names of those who participated in the conference. P.B. § 13-10(h). If an objection is overruled, the materials will be produced in the time set forth by the court. P.B. § 13-10(i).

[4] Producing Documents at Trial

Either party may file a request for production of documents at the hearing or trial. P.B. § 25-56. The request to produce must be served no later than five days before the scheduled hearing date. P.B. § 25-56. The five-day limitation applies to calendar days not business days. *Finan v. Finan*, 107 Conn. App. 369 (2008).

#Comment Begins

Warning: The standing orders for family cases provide that all trial management compliance, which includes an exhibit list, shall be filed and exchanged ten days prior to trial. If you want to obtain additional discovery, at the last minute, and have not included such documents in the exhibit list, the documents may be precluded. To potentially avoid this, at the end of the exhibit list include a statement as follows: “any other documents produced in compliance with the request to produce at hearing” and indicate the date such request was made.

#Comment Ends#Comment Begins

Forms: Family Matters Standing Orders, *see* [Chapter 20, § 20.38, below](#).

#Comment Ends

A party receiving a request for production pursuant to P.B. § 25-56 must diligently address the request by preparing any necessary objections and obtaining the documents requested. Failure to do so could allow the opposing party to enter in copies of documents they may have in their possession, without the necessity of authenticating the copies being offered. P.B. § 25-56(b). Where the opposing party does not have copies, the court may impose any of the remedies as set forth in P.B. § 13-14. For a more thorough discussion of the remedies, *see* [§ 4.32, below](#).

#Comment Begins

Strategic Point: It is best to be proactive in producing documents to opposing counsel since there is a continuing duty to disclose. Periodic updates of the production on a voluntary basis will alleviate last minute requests which must be complied within a very short period of time.

#Comment Ends

[5] Continuing Duty to Disclose

Regardless of the nature of the original request for production, the party to whom it is directed is under a continuing duty to disclose. P.B. §§ 13-15 and 25-31. This continuing duty to disclose applies to additional or new material which comes under the purview of previously requested information. P.B. § 13-15. In other words, if a party opens up a bank account after complying with a production request, he or she must provide the bank account records for the new account. Additionally, if it is later determined that the compliance was at all incorrect when made or is now no longer true, that party must then disclose all information to correct the compliance. P.B. § 13-15. This includes disclosure until a judgment is final, and providing compliance through the time period of any post-judgment motions that delay or toll the appeal period. *Weinstein v. Weinstein*, 275 Conn. 671 (2005). The continuing duty to disclose pertains to financial information, not to any material change in circumstances. *Lederle v. Spivey*, 151 Conn. App. 813 (2014).

#Comment Begins

Strategic Point: It is a good practice to calendar at regular intervals, a schedule to update production so it is consistently current or can be brought current with relative ease. Waiting to update discovery in response to the request of opposing counsel should be avoided, so as to prevent a burdensome task immediately prior to trial or a hearing. In addition, having the discovery current will prevent any unnecessary delay in the prosecution of any motions or trial.

#Comment Ends

§ 4.26 Objecting to Discovery Requests and Seeking Protective Orders

In order to properly object to a discovery request or seek a protective order, there must be good cause shown. P.B. § 13-5. Reasons which may provide good cause include “protecting a party from annoyance, embarrassment, oppression or undue burden or expense.” P.B. § 13-5.

Good cause cannot be a conclusory statement, but rather should be a specific factual explanation in support of the allegations. *Welch v. Welch*, 48 Conn. Supp. 19, 20 (2003).

#Comment Begins

Strategic Point: When formulating an objection, it is important to think through how this will be explained both to opposing counsel, which is a requirement prior to obtaining a judicial ruling, as well as to the court. It must be demonstrated exactly how the discovery is annoying, embarrassing, oppressive, presents undue burden or an undue expense on the client, rather than just blindly listing the practice book objections.

#Comment Ends

When filing a protective order there are several remedies which may be requested:

1. That the discovery not be provided. This would be the simplest and most draconian remedy, in that the information requested need not be produced to opposing counsel.
2. Limiting the time and place where discovery is to be provided and/or reviewed. This remedy may be appropriate where opposing counsel is seeking voluminous business records that should not be removed from the business premises. An example order would state “the discovery shall be available for review at plaintiff’s business upon reasonable notice.”
3. Restricting or designating the method by which certain documents are provided (video, electronic, written, review of original documents, photocopy, etc.). This could include Bates stamped copies of documents, scanned copies of documents to be provided electronically, with original documents available for comparison to copied production (such as with historic documents) or the medium in which a video recording is produced (online streaming, downloadable, disc, etc.).
4. Limiting or narrowing the scope of the discovery. Examples include shortening the time period of documents provided, i.e., five years instead of the requested ten years, or only providing documents that reference a specific issue.
5. Conducting discovery with only those designated by the court. The court can limit those people accessing the discovery to counsel, parties, or experts based upon the nature of the information being provided. Remedies include executing a confidentiality order, which is a separate written and executed contract and can include any number of procedural and practical provisions with respect to how certain items of discovery are to be shared. A confidentiality order may include limitations on the ability to discuss or otherwise divulge information concerning the discovery, or even concerning the divorce in general, to parties not designated by the agreement.
6. The sealing of a deposition which may be opened only by court order. The deposition would be conducted, but the transcript sealed and delivered to the clerk of the court, to be opened by only court order.

7. Safeguarding trade secrets or other confidential information. This can be done by the implementation of any confidentiality orders binding counsel, the parties, their experts or other persons accessing the information.

8. Filing information simultaneously in a sealed manner, and only opened pursuant to a court order and process. This includes either documents being filed under seal with the court and then released pursuant to a court order, or having sealed packets of information delivered at a designated time and place, and subsequently released and opened.

9. With respect to electronically stored information, establishing specific procedures and conditions, including the distribution of costs and expense for providing and obtaining such information (E-discovery and Electronically Stored Information).

P.B. § 13-5.

One possible remedy for a protective order claiming documents should not be produced is to have the court conduct an *in camera* inspection of the documents. This has occurred where one party had trust interests but claimed no vested right in the trust which the other party did not believe. By doing an *in camera* inspection, the court was able to determine whether or not the trust interests were vested or purely speculative and contingent. *Cunniffe v. Cunniffe*, 150 Conn. App. 419 (2014). Other courts find that a party is entitled to see the trusts and make a determination of whether it constitutes property. *Adams v. Adams*, 2014 Conn. Super. LEXIS 1079 (May 5, 2014).

#Comment Begins

Warning: Care should be taken in requesting a court to do an *in camera* inspection of documents. The test for determining whether a document can be produced is that it may lead to the discovery of admissible evidence, but does not necessarily have to be admissible itself. A litigant should be permitted to review the document to make his or her own determination as to the language and interpretation of any trust document, rather than relying solely on the court's reading of the document.

#Comment Ends

When a trial court orders the production of documents over the objection of a party or third party, such an order is typically not a final judgment for purposes of appeal. *Niro v. Niro*, 314 Conn. 62 (2014). Upon failure to produce the documents and a subsequent contempt finding, the Appellate Court will then have a final judgment for purposes of appeal. *Niro*, 314 Conn. at 73.

Care must be taken in preparing confidentiality orders. If a confidentiality order is too broad, a court may not approve it. Confidentiality orders, which include the voluntary waiver of a first amendment right to free speech, have been found to be valid and enforceable orders. *Perricone v. Perricone*, 292 Conn. 187, 196–199 (2009). Therefore, it is necessary to carefully tailor a confidentiality agreement with a mindset for not only how the confidentiality agreement will be applied during litigation, but also for the duration of time for which the confidentiality agreement will extend beyond the final judgment. If the intent is to have a *pendente lite* confidentiality order enforceable post judgment, the better practice would be to have it incorporated in the judgment. *Perricone*, 292 Conn. at 196–199.

#Comment Begins

Strategic Point: When working with experts, get input as to their requirements or willingness to sign onto a court-ordered confidentiality agreement, before the confidentiality agreement becomes an order of the court. The experts are not parties to the action against whom orders may be made. In addition, when a non-party entity is involved, it is important to get input from their legal counsel as to any requirements they may have with respect to specific language, restrictions, and duration of the order, so as not to negotiate and have a confidentiality agreement ordered in family court, only to have the required signatories unwilling to sign the agreement.

#Comment Ends#Comment Begins

Strategic Point: A provision to consider in a confidentiality agreement is the procedure for seeking to seal a portion of a file and/or close a courtroom, consistent with Practice Book Rules, during which time the subject matter of the confidentiality agreement will be discussed. Putting this procedure in place, in writing, and subject to a court order, gives notice of the procedure that is to be followed if it becomes necessary to seek either to seal a portion of the file, or to close the courtroom during the proceedings. This could also apply where a non-party entity is involved and may want to invoke independent rights with respect to claims of confidentiality and/or protection of confidential information or trade secrets.

#Comment Ends

§ 4.27 Taking the Depositions of Parties and Non-Parties

[1] Determining the Purpose of a Deposition

Depositions of parties and other witnesses are a common trial preparation tool. Depositions are conducted for several reasons, including obtaining information under oath from the opposing party so as to “lock in” specific testimony, allowing counsel to “size up” the opposing party as a potential witness, and probing an expert’s report or underlying testing methodology. Depositions can expose hot button issues and demonstrate whether he or she will be a credible witness. In addition, the deposition of a party is an effective way to authenticate documents which may be used at a hearing or trial.

#Comment Begins

Strategic Point: Depositions should not be taken on a whim. There should be a purpose and a strategy to the deposition that is set out prior to the deposition.

#Comment Ends

[2] Taking Depositions—Procedural Considerations

In addition to the statutory authority, the rules of court, at P.B. §§ 13-27 through 13-30, set forth the requirements and procedural regularities with respect to taking a deposition.

These requirements include:

[a] Noticing a Deposition

The deposition must be noticed, setting forth the date, time and place of the deposition.

P.B. § 13-27(a). Noticing a deposition requires reasonable written notice to the party being deposed, or his agent or attorney, setting forth the time and the place of the deposition and the name and address of the person to be examined. [Conn. Gen. Stat. § 52-148b](#) and P.B. § 13-27.
#Comment Begins

Form: Notice of Deposition, *see* [Chapter 20, § 20.48, below](#).

#Comment Ends

[b] Recording of Deposition Testimony by Certain Persons

Depositions must be taken before a notary public, commissioner of the superior court, clerk of the court, or a judge. [Conn. Gen. Stat. § 52-148c](#) and P.B. § 13-28(a). Typically, the depositions are taken before a court reporter who is a notary. Witnesses take an oath to tell the truth before the deposition begins. [Conn. Gen. Stat. § 52-148d](#). Where the deposition is taken remotely, the oath is administered using an audiovisual device which allows the person administering the oath to clearly identify the deponent. P.B. §13-30(g)(1).

[c] Issuing Subpoenas

A subpoena may be issued to require a witness to appear at a deposition. Subpoenas may be issued by a judge, a clerk of the court, a commissioner of the superior court, or a notary public. P.B. § 13-28(b).

[d] Taking Depositions—Means of Recording

While depositions are typically taken by stenographic means, a court order may be obtained to take a deposition by videotape or other means. P.B. § 13-28(f). The court order for such alternative means for a deposition shall include how the deposition will be recorded, preserved and filed, as well as the means by which to ensure that it will be accurate. P.B. § 13-28(f)(1). A court order to videotape a deposition will not be required if a written notice is served on the parties and the deposition is also taken by stenographic means. P.B. § 13-28(f)(2).

[e] Setting the Location for Parties

Depositions may take place within the county of the deponent's residence, or within thirty miles of their residence, unless otherwise ordered by the court or agreed upon by the parties. P.B. § 13-29(a). If the plaintiff resides out of state, he or she may be compelled to appear in Connecticut for a deposition. P.B. § 13-29(b). Such deposition will occur either in the county where the action commenced or is pending, within thirty miles of the plaintiff's residence or county of residence, or at any other location determined by the court or agreed upon by the parties. P.B. § 13-29(b). A non-resident defendant may be compelled to appear for his or her deposition in any county in Connecticut where he or she is personally served, within thirty miles of his or her residence or county of residence, or at any location determined by the court or agreed upon by the parties. P.B. § 13-29(c).

Depositions most often take place in an attorney's office, commonly in the office of the party who noticed the deposition. However, in some circumstances, where the issues are contentious, a court may order that the deposition take place at the courthouse, to allow the court to immediately rule on objections or to even monitor the manner in which the deposition is conducted. P.B. § 13-28.

[f] Examining Witnesses

The direct and cross-examination of the deponent proceeds as it would at trial. The witness is sworn in under oath, and the testimony is recorded. P.B. § 13-30(a).

[g] Objecting During a Deposition

All objections shall be noted, and evidence shall be taken subject to the objection. Objections shall not suggest an answer to a deponent. P.B. § 13-30(b). A court may order sanctions where objections made at the deposition suggested answers, and counsel repeatedly instructed a client not to answer questions, without ever having filed a motion for protective order. *Ranfone v. Ranfone*, 2007 Conn. Super. LEXIS 3344 (2007).

Any instruction for a deponent not to answer a question must be either to protect privileged information, in accordance with an existing court order, or to present a motion for protective order to the court on the pending question or line of questions. P.B. § 13-30(b).

[h] Reading and Signing the Deposition by the Deponent

The deponent may read the transcript and make any necessary changes, and must include the reason for making the changes. P.B. § 13-30(d). While this is most often used to correct transcription errors, it may also be used to correct the testimony of the witness. However, the reason for any changes must be given. P.B. § 13-30(f).

[i] Marking Documents at Deposition

Documents and other items produced at the deposition may be marked for ~~identification~~, and identification and attached to the deposition transcript. P.B. § 13-30(f).

[3] Agreeing to the Usual Stipulations

There are four topics addressing the issues for which parties may stipulate at a deposition:

1. That the deponent and their counsel are waiving the objections of the qualification of the officer taking the deposition. If this is not waived, the court reporter will need to show his or her credentials, thus meeting this requirement. P.B. § 13-30(b).
2. That the deponent is waiving their right to read and sign the deposition. This stipulation is usually reserved ~~in order to~~ give the party being deposed the opportunity to review the transcript of their testimony and make any necessary corrections, both as to substance and form, and provide a signed errata sheet. P.B. § 13-30(d).
3. That the deponent or their counsel is waiving evidentiary objections, except as to the form of a question asked, until the time of trial. P.B. § 13-30(b). This allows for a more streamlined deposition process.
4. That the deponent and their counsel are waiving any defect in the notice of the deposition. P.B. § 13-30(e). This is usually the case as everyone is at the deposition. Defects in the notice of deposition could be with respect to the time, place or date contained within the notice of deposition. Once these stipulations are addressed, the deponent is then sworn in and the deposition can commence.

#Comment Begins

Strategic Point: Whether this is your first deposition or your hundredth deposition, it is probably the witness's first deposition. Therefore, it is a good practice to explain, on the record and after the deponent is sworn in, the exact procedural expectations. This includes the fact that the court reporter is transcribing the entirety of what is going on, and it is necessary that only one person speak at a time. Another common ground rule to explain is that all answers must be audible, as the court reporter cannot note grunts, noises and physical gestures. Setting these ground rules each and every time will allow for an orderly and organized deposition.

#Comment Ends

[4] Taking the Deposition of a Party

The deposition of a party may take place provided it is more than twenty days past the return date. [Conn. Gen. Stat. § 52-148a\(b\)](#). In addition, if a deposition needs to be taken earlier, it can be done by order of the court. [Conn. Gen. Stat. § 52-148a\(b\)](#). However, a court order will not be required if the opposing party has served a notice of deposition or otherwise sought discovery or where a witness will be leaving the state. [Conn. Gen. Stat. §§ 52-148a and 52-148b\(b\)](#).

If a subpoena is required, a judge, clerk of the court, justice of the peace, notary public, or commissioner of the superior court can issue a subpoena for a deposition. [Conn. Gen. Stat. § 52-148e](#). It may be necessary to subpoena the opposing party to a deposition if there is a concern that they will not show up. A non-party must be subpoenaed to attend the deposition.

In this day and age of electronic, video and audio communications, such means may be used in a deposition to confront or attempt to impeach a party. If the means by which the communication was obtained is illegal, such evidence will be inadmissible to use, even in a deposition. [Simonson v. Simonson, 2016 Conn. Super. LEXIS 835](#).

When it would be beneficial for an expert to be present at the deposition, such as a business evaluator, permission may be sought for them to attend. P.B. § 13-5. Such a request may be granted where it is likely to aid in completing discovery. [Perone v. Shapiro, 2013 Conn. Super. LEXIS 483 \(2013\)](#).

[5] Taking the Deposition of a Non-Party

Serving a subpoena is the only means by which a non-party may be compelled to appear at a deposition. P.B. § 13-28(b). To the extent that documents are required from a third-party witness, those documents should be listed in a Schedule A to the subpoena *duces tecum*, in exactly the same manner as they are listed in the notice of deposition. P.B. § 13-28(c). Without a court order, any documents requested pursuant to subpoena need not be produced within fifteen days of being served with the subpoena so as to give the deponent sufficient time to object to the documents. P.B. §§ 13-28(c) and 13-28(d).

[6] Taking the Deposition for the Preservation of Testimony

If a deposition is being taken for the purpose of preserving testimony for the time of trial, a petition is filed with the court, which will issue an order to show cause. [Conn. Gen. Stat. § 52-156\(a\)](#). The petition filed with the court shall state: the reason the testimony needs to be preserved, the name of the witness, the subject matter of the action for which the testimony needs to be preserved, and the names of all interested parties. [Conn. Gen. Stat. § 52-156](#). At the hearing,

the respondent must demonstrate why the testimony should not be preserved. [Conn. Gen. Stat. § 52-156](#). Common reasons for taking a deposition to preserve testimony of a witness include witnesses who are of advanced age or infirmity, who reside outside of the state, or will otherwise be unavailable for trial or hearing.

If a deposition will be taken for the preservation of testimony, it is necessary that the deposition be treated in the same manner as trial testimony. Since the witness will not be at trial, the only testimony will be through the transcript. It will be necessary to state all objections on the record and then have the witness answer the questions. The objections will be ruled upon by the court at the time of the hearing or trial. Unlike most depositions in which there is no cross-examination of the witnesses, the witnesses must be cross-examined if the deposition is to preserve his or her testimony.

#Comment Begins

Form: Notice of Deposition to Preserve Testimony, *see* [Chapter 20, § 20.49, below](#).

#Comment Ends

[7] Producing Documents at a Deposition

The notice of deposition will typically contain a Schedule A request for documents to be produced at the time of deposition. P.B. § 13-27(g). A subpoena may be issued to require a witness to appear at a deposition. Subpoenas may be issued by a judge, clerk of the court, commissioner of the superior court, or notary public. P.B. § 13-28(b).

A subpoena may include a document request, which requires the production of documents at a deposition. However, a subpoena must allow for fifteen days to comply with the requested documents (i.e., if the subpoena with document request is served on the 1st of the month, the deposition should not take place prior to the 16th of that month) P.B. §§ 13-28(c) and 13-28(d). If the subpoena is served within fifteen days of the deposition, the witness will not be required to produce the documents requested.

In addition, while a traditional request for production allows sixty days for compliance, an overlapping subpoena may create an ambiguity as to the timing of the compliance with these “competing” requests for production, so carefully map out the timing of your requests on opposing parties and witnesses.

[8] Filing Protective Orders

Protective orders may be filed in a number of instances. Firstly, if a deposition is scheduled at a time wherein the deponent or his or her counsel is unable to attend, it may be necessary to file a protective order. P.B. § 13-5. The purpose of the protective order would be to prevent the taking of the deposition as it is in the notice to which there is objection, and have it taken at a time and place that is mutually agreeable to both parties and counsel. Secondly, a protective order may be filed to prevent the annoyance, embarrassment, undue burden, undue expense, or oppression of the deponent. P.B. § 13-5. Typically, this type of protective order will be directed at the requests for production. However, it may also be directed at a line of questioning that may arise out of the deposition and which would be unduly embarrassing or oppressive. In addition, a protective order may be filed during a deposition to protect a privilege of the deponent or to seek a court determination as to the appropriateness of a particular line of questioning. P.B. § 13-28. Protective orders may also be sought where illegally obtained evidence is sought to be used in a deposition. [Simonson v. Simonson, 2016 Conn. Super. LEXIS 835](#).

If a motion for a protective order is filed, do not simply ignore it and go forward with a scheduled deposition, without first having the underlying motion for protective order heard. A deposition that takes place while a pending motion for protective order has not been ruled upon is potentially invalid. *Cahn v. Cahn*, 26 Conn. App. 720 (1992). Additionally, if you have filed the protective order, file it sufficiently in advance to allow it to be heard by the court prior to the scheduled deposition date. *Lovelace v. Lovelace*, 2014 Conn. Super. LEXIS 1460 (June 16, 2014).

A witness, whether a party or third party, cannot seek a protective order for post judgment discovery, to enforce the court orders, relying upon the language in *Oneglia v. Oneglia*, 14 Conn. App. 267 (1988). *Brody v. Brody*, 153 Conn. App. 625 (2014). *Oneglia* concerned the ability of seeking a post judgment discovery on the basis of fraud, whereas *Brody* concerned the effectuation and enforcement of the orders of the trial court. The former has a stricter standard as it is seeking to open a judgment versus the enforcement of a judgment.

[9] Seeking to Quash a Subpoena

A party who is subpoenaed may file a motion to quash the subpoena, provided it is done prior to the time in which compliance is sought in the subpoena. P.B. § 13-28(e). The reasons for seeking to quash a subpoena are the same as for protective orders. The court may quash or modify the subpoena. P.B. § 13-28(e). Additionally, if cost is cited as a reason to quash the subpoena, the court may order the proponent of the subpoena to advance the reasonable costs. P.B. § 13-28(e). A person who has been subpoenaed and fails to appear may have a capias, or civil arrest warrant, issued against him or her. P.B. § 13-28(f). For a more thorough discussion on protective orders, see § 4.27[8], above.

[10] Allocating Costs of the Deposition

One of the benefits of taking a deposition is having a written transcript of the testimony given by the deponent. The party requesting the deposition bears the cost for the appearance fee of the court reporter and of the original transcript as well as any electronic, audio or video recording of the deposition. However, additional copies of transcripts are paid for by opposing counsel, attorneys for the minor children, or guardian *ad litem*. P.B. § 13-30(j).

The party taking a deposition shall pay the reasonable expense for an expert witness to appear at a deposition, unless otherwise ordered or agreed upon by the parties. P.B. § 13-2. The expenses allowed include travel time to and from the deposition as well as expenses for travel and lodging, but excluding the preparation time of the witness for the deposition. P.B. § 13-4(c)(2).

[11] Using Deposition Testimony

Once the transcript is available, it is important to know how and when to use the deposition during a hearing or at trial. One of the main uses of a deposition at trial is either to refresh the witnesses' recollection or to impeach the witness based upon prior inconsistent testimony. Connecticut Rules of Evidence (hereinafter "ROE") §§ 6-9 and 6-10. A second common use of a deposition is to submit a deposition in lieu of live testimony of a witness at trial. This could be the case if the witness is unavailable, ROE § 8-6, or in a case of a physician, psychologist, or other specified medical practitioner, for whom the submission of the deposition transcript is permitted in lieu of live testimony. P.B. § 13-31(a)(2).

§ 4.28 Utilizing Experts

[1] Disclosing the Expert as a Witness

A party who seeks to use an expert to testify at trial must file with the court and serve on counsel a disclosure of expert witness. P.B. § 13-4(a). The disclosure of expert witness shall set forth:

1. The name, address, and employer of the expert witness. P.B. § 13-4(b).
2. The expert witness's field of expertise and the subject matter on which he or she will offer testimony. P.B. § 13-4(b)(1).
3. The opinions to which the expert is expected to testify, which may include reference to his or her written report, must be produced with the disclosure, but not filed in court. P.B. § 13-4(b)(1). This is one of the most important requirements for the disclosure. If the disclosure fails to include a topic on which the expert is to testify, the court can preclude the testimony not disclosed.

#Comment Begins

Warning: Failure to fully set forth the opinions of the expert, where a report is not provided, may lead a court to disallow or limit the testimony in any area not specifically delineated in the disclosure. Counsel should err on the side of over disclosure.

#Comment Ends

4. The substance of the grounds on which the expert relies for arriving at his or her opinion. P.B. § 13-4(b)(1). Typically, this will include the expert's educational and employment background which has made him or her an expert in this field.

Upon request from the opposing party, it is necessary to produce all of the "materials obtained, created and/or relied upon by the expert in connection with his or her opinions in the case within the fourteen days prior to that expert's deposition or within such other time frame determined in accordance with the schedule for expert discovery." P.B. § 13-4(b)(3).

#Comment Begins

Forms: Disclosure of Expert Witness, see [Chapter 20, § 20.50, below](#).

#Comment Ends

[2] Appointing an Expert by the Court

The court, *sua sponte*, may appoint an expert witness of its own selection. P.B. § 25-33. In doing so, the court must give the parties an opportunity to be heard with respect to the appointment. P.B. § 25-33. Upon acceptance of the appointment by the court, the expert should report his or her findings to the parties and is subject to examination and cross-examination in court. P.B. § 25-33.

A court-appointed expert witness will have their remuneration determined by the court. P.B. § 25-33. The court determines the amount and sources of payment, including payment from the parties. P.B. § 25-33. It is noteworthy that if the court appoints their own expert witness, it does not prevent the parties, either or both of them, from obtaining their own expert witness on the same subject area, either to bolster the court-appointed expert witness's position, or to provide a contrasting viewpoint. P.B. § 25-33.

[3] Appointing Experts in Custody and Visitation Matters

In contested custody cases, the court will order a custody evaluation to be performed, either through family services or by a licensed mental health professional. P.B. §§ 25-60A and 25-61. The report is to be filed in court and then mailed by the court to the guardian *ad litem* and counsel of record. P.B. § 25-60(b). Counsel for the parties may not initiate contact with the evaluator until the evaluation is filed in court. P.B. § 25-60A(c).

[4] Eliciting Testimony from an Expert Witness

Experts are permitted to give an opinion on the ultimate issue in a case, where it would be of assistance to the trier of fact. ROE § 7-3(a). It is ultimately up to the judge trying the case as to whether he or she wants an expert to opine on the ultimate issue. Typically, if you have an appraiser or business valuator, the court will want to hear the opinion of the expert as to value. However, many courts differ as to whether they want a custody evaluator to opine on the parenting plan or legal custody. A trial court is not required to accept the opinion of an expert; they are free to rely on whichever part of the opinion is of help to the court. *Ford v. Ford*, 68 Conn. App. 173 (2002).

A family relations evaluation is admissible if the officer conducting the evaluation is available to be cross-examined. P.B. § 25-60(a).

§ 4.29 Taking an Out-of-State Deposition

If the deposition of a person who resides out of state is needed, a commission to take the deposition must be approved by the court. P.B. § 13-28(a). In preparing the commission, counsel from the state in which the deposition is to be taken should be hired. This attorney can provide the required information which is needed to effectuate the commission in the state in which the deposition is to occur. In addition, counsel from the state in which the deposition is to occur should be prepared to actually take the deposition unless Connecticut counsel is also admitted to practice in the other state. Otherwise, it may be considered practicing law in a state in which an attorney is not licensed.

If the out-of-state deposition is taken to perpetuate testimony, the rules for perpetuating testimony should be followed. For a more thorough discussion on taking depositions for the perpetuation of testimony, see § 4.27[6], *above*.

#Comment Begins

Form: Motion for Commission to Take an Out-of-State Deposition, see Chapter 20, § 20.51, *below*.

#Comment Ends

§ 4.30 Obtaining Physical and Mental Examinations and Associated Privileges

Where custody and/or parenting is being contested, it is likely that the parties will be required to undergo a psychological or psychiatric evaluation. If a party claims the inability to work due to physical illness, the court could order the physical examination of that party. The court may order the parties to submit to a physical and mental examination so long as it is reasonably probable that evidence outside of the record will be required with respect to underlying issues. P.B. § 13-11.

#Comment Begins

Strategic Point: Many times, the motion seeking a psychological evaluation will only request that the opposing party undergo such an evaluation. While it is equally common that the court will order both parties to submit to the testing, it is important that both parties undergo an evaluation to provide the court with a basis of comparison and not just an evaluation of one party. Psychological evaluations will typically arrive at a diagnosis for the party undergoing the evaluation. If only one party is evaluated and diagnosed, these results will seem skewed in comparison with no evaluation and, therefore, no diagnosis for the other party. Therefore, it may be proactively prudent to file a motion for the opposing party to undergo a similar evaluation or to file a motion that both parties undergo the evaluation simultaneously.

#Comment Ends

If one of the parties is seeking to claim doctor-patient privilege, the party claiming such privilege must prove the doctor-patient relationship. This requires a finding that the nature of the relationship was for diagnosis or treatment and not for the purposes of the pending litigation. [Conn. Gen. Stat. § 52-146d](#) and *Bieluch v. Bieluch*, 190 Conn. 813 (1983). Only the patient may waive the privilege. [Conn. Gen. Stat. § 52-146e\(a\)](#).

The psychologist-patient privilege has a distinct set of rules which govern privileged communication. [Conn. Gen. Stat. § 52-146c](#). The patient must consult with the psychologist for either diagnosis or treatment. [Conn. Gen. Stat. § 52-146c\(a\)\(1\)](#). The patient or their authorized representative must give written consent for the waiver. [Conn. Gen. Stat. § 52-146c\(a\)\(4\)](#). An “authorized representative” includes a guardian *ad litem*. [Conn. Gen. Stat. § 52-146c\(a\)\(5\)](#). Consent to the disclosure of privileged communications may be withdrawn, in writing, except in certain circumstances, [Conn. Gen. Stat. § 52-146c\(b\)](#). These circumstances are:

1. When a person makes the communication to a psychologist in a court-ordered evaluation, after being informed that the communications are not privileged, provided the statements are used only as to the person’s psychological condition. [Conn. Gen. Stat. § 52-146c\(c\)\(1\)](#).
2. If a person has placed their psychological condition as an element of the case and the interest of justice outweighs the privileged communication. [Conn. Gen. Stat. § 52-146c\(c\)\(2\)](#).
3. If the psychologist has a good faith belief that there is a risk of imminent injury to the patient, others, or the property of other people. [Conn. Gen. Stat. § 52-146c\(c\)\(3\)](#).

4. If there is known or a good faith belief of the abuse of a child, an elderly person, or a person who is incompetent or disabled. [Conn. Gen. Stat. § 52-146c\(c\)\(4\)](#).

§ 4.31 Filing Requests for Admission

A request for admission is a discovery tool in which the proponent requests the respondent to either admit, deny, or indicate they are unable to admit or deny the statement.

A request to admit is served on the opposing party, and a notice is filed with the court. P.B. § 13-22. When filing a request for admission, the only available answers for the responding party are either “admitted,” “denied,” or some form of “the question is unclear or there is not enough information for a simple admission or denial.” P.B. § 13-23(a). When crafting a request for admission, the questions should be asked in a simple format, with clear purpose. It is often necessary to ask very similar forms of questions in succession so as to hone in or funnel the anticipated answers from the opposing party. For example, if you are asking a question as to how often a party would eat out at restaurants over the course of a month, the series of questions could include the following:

1. You dine at restaurants.
2. In the month of August 2012, you dined at restaurants.
3. In the month of August 2012, you dined at a restaurant on more than one occasion.
4. In the month of August 2012, you dined at restaurants on more than five occasions.
5. In the month of August 2012, you dined at restaurants on more than ten occasions.
6. In the month of August 2012, you dined at restaurants on more than fifteen occasions.
7. In the month of August 2012, you dined at restaurants on more than twenty occasions.

While tedious and lengthy, the answers provided by the recipient will allow you to hone, under oath, a specific range of answers for which you are seeking.

The respondent must answer or object to the request to admit within thirty days of it being filed. P.B. § 13-22(a). Failure to answer within the thirty days will result in the request being deemed admitted. P.B. § 13-22(a). A party must make a reasonable inquiry to obtain or verify the information requested before stating that they do not have the knowledge to be able to admit or deny the request to admit. P.B. § 13-23(a).

In addition, as the request for admission is not deemed a “discovery motion,” it may not be sufficient to simply file a request for extension of time pursuant to P.B. § 13-10(a)(2). A motion for extension of time should be filed. The court may extend the amount of time within which to respond and/or object to requests for admission. However, the automatic extension of time in P.B. § 13-10(a)(2) is not specifically incorporated in the rules on requests to admit. P.B. § 13-23. Accordingly, if the request is filed for an automatic extension of time, any objection should be filed within ten days. P.B. § 13-10(a)(2).

#Comment Begins

Warning: Requests for admissions should not be drafted to create conflicting admissions and denials as anticipated responses. If the recipient party fails to respond and all items are deemed “admitted,” these requests which conflict will not allow the court to make a meaningful finding.

#Comment Ends

Once the admissions are completed, the issuing party may seek to determine the sufficiency of the answers or objections. P.B. § 13-23(b). Similar to objections filed pursuant to interrogatories and other discovery requests, the motion shall not be placed on the calendar until a good faith attempt has been made by counsel to resolve the issues, as evidenced by an affidavit filed by counsel detailing such attempts. P.B. § 13-23(b). The court has the authority to overrule any objection to an admission, requiring an answer to be made, and to determine if the answers provided are sufficient. P.B. § 13-23(b). Any answer deemed insufficient could either be deemed “admitted” or the party could be ordered to amend the answer. P.B. § 13-23(b).

Any issue “admitted” in a request for admission is deemed conclusively established, unless a court allows for either the withdrawal of the admission or amendment of the admission by motion. P.B. § 13-24(a). The party who sought the admission bears the burden of showing his or her claim will be prejudiced by the withdrawal or amendment of the admission, such that it will interfere with the action on the merits. P.B. § 13-24(a). In addition, any admissions are exclusive to the pending action and are not to be used in any other proceeding. P.B. § 13-24(a) and *Baranowski v. Safeco Ins. Co. of Am.*, 2006 Conn. Super. LEXIS 3247 (2006).

As a matter of evidence, the admissions are still subject to evidentiary objections of relevancy and competency. P.B. § 13-24(b). However, if a party admits to the existence of a document, or the due execution of a document, both the delivery of the document and the fact that it has not been altered are also deemed admitted, unless specifically expressed in the admission. P.B. § 13-24(b).

If a party fails to make an admission of a fact, or fails to admit to the genuineness of a document, and if that fact or the genuineness of the document are proven by the serving party, the serving party may seek reasonable costs, including counsel fees, for having to prove the admission of fact or genuineness of the document in question. P.B. § 13-25.

§ 4.32 Complying with Discovery Requests

[1] Filing a Motion to Compel or a Motion for Compliance

Discovery compliance is one of the most time-consuming tasks family lawyers face. Maintaining discovery logs for both incoming and outgoing production is one way to ensure that discovery compliance is being met by both parties. However, it is often necessary to file motions to compel or for compliance in order to obtain complete responses to outstanding discovery requests. P.B. § 13-14.

The motion for compliance should be very specific in detailing the production request and the manner in which the discovery was deficient. In addition, the motion should include any timing constraints regarding discovery, the date the discovery request was filed, whether there were any extensions sought and granted, and the date the discovery was due. The timing of scheduled court events, such as a pretrial, hearing or trial for which the information you are

seeking is necessary, should also be included in the motion.

[2] Proving Non-Compliance

To succeed on a motion for order of compliance or contempt, there are several items that should be established.

Firstly, the underlying discovery request and order to be complied with was reasonably clear. Noncompliance is first established with a motion to compel, which will result in a court ordered date of compliance. Once the court-ordered date of compliance has lapsed, a motion for contempt should be filed. During this time, it will be necessary that any objections to the discovery being sought be resolved either by agreement or through judicial intervention. It is only after all of these exercises that there will be a clear court order for compliance regarding the outstanding discovery requests. This is necessary both to establish the actual documents or information that have been ordered, as well as to have a definite order in the event of noncompliance and the seeking of a finding of contempt.

Secondly, once a clear court order is established, it must be determined that the order was violated. The noncompliant party will have the opportunity to explain his or her efforts to obtain the outstanding discovery and comply with the court order. It will likely be necessary to hold an evidentiary hearing and not simply have the issue decided “on the papers,” which is dictated by the rules of practice. P.B. § 25-34(a). Discovery motions filed pursuant to Chapter 13 of the Practice Book are allowed oral argument at the discretion of the court. P.B. § 25-34(a). If a court determines that oral argument is necessary, the matter shall be set down for a short calendar date, and if the court does not schedule the matter for a hearing, the moving party may reclaim the motion within thirty days of the time it appeared on the calendar. P.B. §§ 25-34(b) and 25-34(c).
#Comment Begins

Strategic Point: Typically, at the short calendar in which the discovery order appears, the court will hear the matter at that time and not reschedule it for a later date.

#Comment Ends

Thirdly, if the existence of a clear court order and the violation of that order are established, the sanction sought and imposed by the court must be proportional to the violation. Therefore, if the offending party has only a minor offense in the discovery process it would be disproportional to seek and for a court to order a sanction precluding that party from presenting any evidence on an entire issue. However, where one party refuses to comply with a substantial discovery order, precluding them from presenting contrary evidence at the time of trial could be an appropriate sanction.

Additional factors that a court may take into consideration include whether the failure to comply was willful, in bad faith, or due to some inability by the offending party, to what extent the noncompliance causes prejudice to the party seeking information, the importance of the information sought in relation to the issues in the case, and which sanctions from the available remedies would be appropriate under the circumstances of the case. *Millbrook Owners Ass’n v. Hamilton Std.*, 257 Conn. 1 (2001).

#Comment Begins

Strategic Point: The court will often, even when crafting sanctions for discovery violations, provide the offending party an opportunity to comply and provide the information that is being

sought. In addition, there should be a rational reason for the requested sanctions, including its severity, when arguing before the court. If there have been ongoing discovery problems in the case, reciting the history of these problems will highlight them to the judge without his or her having to review the entire file for this information. While this will result in lengthy and detailed motions, it will also provide a roadmap for the court as to the unresolved issues related to discovery, and will increase the likelihood of the court granting some form of sanction against the offending party.

#Comment Ends

§ 4.33 Obtaining Discovery Sanctions

When the discovery is not provided, the court has a multitude of sanctions available in order to enforce orders. P.B. § 13-14. Failure of a party to comply with a discovery order could result in any one or more of the following:

1. The entry of nonsuit or default against the offending party. P.B. § 13-14(b)(1). If the plaintiff is the noncompliant party, the court could enter a nonsuit, and if the defendant is the offending party, the court could enter an order of default. In a family law case both of those remedies are impractical and could be highly prejudicial. However, if the plaintiff is noncompliant, seeking a nonsuit may be beneficial to enable the defendant to proceed on a properly filed cross-complaint, turning the defendant into the plaintiff. *Osborne v. Osborne*, 2 Conn. App. 635 (1984).
2. The court may award the discovering party the costs, including reasonable attorney fees, of having to file and proceed on the motion for compliance or contempt. P.B. § 13-14(b)(2). If you are seeking fees and costs, be sure to provide an affidavit of fees and to have the documentation to justify the time and costs involved available for opposing counsel and the court. *Smith v. Snyder*, 267 Conn. 456 (2004) and Conn. Gen. Stat. §§ 46b-62 and 46b-87. The fees must be related only to the issue of discovery compliance, not other issues in the case. *Allen v. Allen*, 134 Conn. App. 486 (2012).
3. The court may order that the issues for which the discovery were sought, or other designated facts, are deemed established for the purposes in the case. P.B. § 13-14(b)(3). Examples of this sanction could include the existence and amount of non-disclosed financial accounts or the establishment of non-disclosed financial transactions.
4. The court could bar the offending party from introducing certain documents into evidence. P.B. § 13-14(b)(4). This could include forbidding the offending party from producing mitigating evidence contained in the documentation that has not been disclosed.
5. The court could dismiss the action if the plaintiff is the noncompliant party. P.B. § 13-14(b)(5). This is more practical in a civil case, where a dismissal could end the pursuit of an action, and not in a family case, where a new action could be filed on the same grounds.

When filing a motion for discovery sanctions against a noncompliant party, be sure to specify the remedy and reasons therefore in a memorandum to the court. P.B. § 25-32A. The responding party likewise must set forth the reasons for non-compliance or that the discovery has been provided. P.B. § 25-32A.

When seeking discovery sanctions, take special care in the crafting of the relief sought, overbroad discovery sanctions or orders can have the unwanted effect of punishing the non-offending party. Thus, it would be inappropriate for a court to order the trial to proceed in the absence of discovery without any other additional sanctions, as that serves only to punish the party seeking discovery. *Ramin v. Ramin*, 281 Conn. 324 (2007). A court may assess a sanction in the form of a daily fine for each day that discovery is not produced, which must be determined so as not to encourage recalcitrance in abiding by court orders for discovery. *Valentine v. Valentine*, 164 Conn. App. 354 (2016).

#Comment Begins

Strategic Point: Should a court order sanction for a period of time, *i.e.*, daily, that a litigant fails to comply with a production request, make sure that you have the evidence to submit to a court as to the date on which there was compliance. Otherwise, the court will be unable to make a determination as to the proper amount of the sanction.

#Comment Ends

§ 4.34 Appointing a Special Discovery Master

Where discovery is complex or one party is being especially difficult, a discovery special master may be appointed by the court. P.B. § 25-32B. The role of the special discovery master is to try to resolve discovery disputes. P.B. § 25-32B. If he or she is unable to do so, the matter will come back before the court for resolution, at which time the discovery special master will likely make a report to court. The court will determine the discovery special masters duties, compensation and allocation of the compensation between the parties. P.B. § 25-32B.

PART V: PREPARING FOR TRIAL

PRETRIAL PLEADINGS AND DISCOVERY

§ 4.35 CHECKLIST: Preparing for Trial

Preparing Pleadings

- Filing for a continuance
 - Continuances may be granted at the discretion of the court;
 - There are several issues which may be considered in granting or denying a continuance, including due process and constitutional considerations. **Authority:** *McNamara v. McNamara*, 207 Conn. App. 849 (2021), *Bevilacqua v. Bevilacqua*, 201 Conn. App. 261 (2021), and *Kelly v. Kelly*, 85 Conn. App. 794 (2004). **Discussion:** See, § 4.36, below.
- Complying with Trial Management Orders
 - Trial management orders require documents to be exchanged 5 days prior to trial;
 - Failure to comply may result in sanctions, exclusion of evidence, or

dismissal.

□ Restricting Trial Time:

- Trial judges have the inherent authority to manage their docket;
- A court cannot unduly restrict time to present a parties' case that results in a denial of due process. **Authority:** *Daily v. New Britain Machine Co.*, 200 Conn. 562 (1986), *Ill v. Manzo-Ill*, 210 Conn. App. 364, cert. denied, 343 Conn. 909 (2022), *Sowell v. DiCara*, 161 Conn App. 102, cert. denied, 320 Conn. 909 (2015), and *Szot v. Szot*, 41 Conn. App. 238 (1996). **Discussion:** See, § 4.36, *below*.

§ 4.36 Filing for a Continuance

Filing a motion for a continuance of a hearing date, case date or trial will not automatically be granted. Whether to grant such motions are within the discretion of the court. *Kelly v. Kelly*, 85 Conn. App. 794 (2004). “Although resistant to precise cataloguing, such factors [in denying a continuance] revolve around the circumstances before the trial court at the time it rendered its decision, including: the timeliness of the request for continuance; the likely length of the delay; the age and complexity of the case; the granting of other continuances in the past; the impact of delay on the litigants, witnesses, opposing counsel and the court; the perceived legitimacy of the reasons proffered in support of the request; [and] the defendant’s personal responsibility for the timing of the request. *Id.* At 800. Where a case has been pending for a significant period of time, that factor may be considered in denying a continuance. *Bevilacqua v. Bevilacqua*, 201 Conn. App. 261 (2021).

#Comment Begins

Strategic Point: While the standing order allows counsel to require other counsel to download each exhibit from the judicial website, common courtesy amongst counsel would be to exchange the documents electronically as well. Just as you do not want to spend an inordinate amount of time downloading exhibits, don’t make opposing counsel do it either.

#Comment Ends

A denial of the granting of a continuance may be appealed on constitutional claims, but must be associated with the deprivation of a constitutionally protected right. *McNamara v. McNamara*, 207 Conn. App. 849 (2021). Such constitutional protections can include the deprivation of parental rights, but regarding a hearing where both parents had joint legal and shared physical custody. *Id.*

§ 4.37 Complying with Trial Management Orders

The State has issued standing orders for trials, hearings, case dates and resolution plan dates. Pursuant to the standing orders, several documents must be filed no less than five calendar days before the trial, which include: the financial affidavit; a list of pending motions; child support guidelines, if applicable; proposed orders; a witness list; an exhibit list; and copies of the exhibits.

For purposes of the exhibits, if it is an e-file case, those exhibits may be submitted electronically, by filing the same through the judicial website. The party filing the exhibits will fulfill the duty to exchange with opposing counsel, who has access to download documents on the judicial website, by notifying them that the documents have been uploaded.

#Comment Begins

Strategic Point: Counsel should not wait until the last minute to file a continuance request. In light of the new Pathway's program where case dates and trial dates are being set well in advance, absent some extraordinary circumstance a continuance is not likely to be granted. Thinking about the issues presented in the case as the trial dates are assigned and bringing those to the court's attention immediately, either for a continuance at that time or perhaps in the future, made be the better practice.

#Comment Ends

Failure to follow the trial management orders may result in the court imposing sanctions, excluding evidence or dismissal of the case or claim.

§ 4.38 Restricting Trial Time

Trial court judges have the inherent authority to control their cases and do provide for the efficient and orderly movement of cases. *Sowell v. DiCara*, 161 Conn App. 102, cert. denied, 320 Conn. 909 (2015) and *Daily v. New Britain Machine Co.*, 200 Conn. 562 (1986). However, in the exercise of any such authority, the court may not prejudice a parties' right to a fair trial. *See, Sowell*. A court will prejudice a party and undermine his due process right to a fair trial by arbitrarily allotting time to present the case after having given the opposing side unlimited time to present her case. *Ill v. Manzo-Ill*, 210 Conn. app. 364, cert. denied, 343 Conn. 909 (2022). Due process requires the parties to be given reasonable opportunity to be heard regarding the issues before the court. *Szot v. Szot*, 41 Conn. App. 238 (1996).

#Comment Begins

Strategic Point: The husband's success in *Ill* was predicated upon the repeated objections of his counsel that he was being denied due process when the court restricted him to 1 day to put on evidence to defend against a motion for contempt. Counsel cannot sit back and wait for the decision to be rendered and then try to indicate that they were unduly restricted in presenting their case.

#Comment Ends#Comment Begins

Strategic Point: In the event the court, either in trial management orders or during the trial, seeks to unduly restrict time to present evidence, counsel should file a brief with the court objecting to such restrictions and cite both *Ill* and *Szot*.

#Comment Ends