Chapter 3 DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

SYNOPSIS

PART I: STRATEGY

DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

§ 3.01 Overview

This chapter covers:

• Determining the grounds and defenses for a dissolution of marriage.

• Preparing the complaint and cross complaint for a dissolution of marriage and custody and visitation orders.

• Understanding the automatic orders.

• Determining the appropriateness of a legal separation.

• Entering into conciliation proceedings.

§ 3.02 Objective and Strategy

This chapter discusses the appropriate grounds for filing a dissolution or legal separation action. The chapter sets forth the contents necessary for the complaint and cross complaint. It examines the timing of filing appearances, the propriety of filing answers and amendments to the complaint, and the withdrawing of the complaint or counterclaim. The automatic orders are discussed in depth. The distinction between legal separations and dissolutions is discussed in this chapter. The chapter addresses converting legal separations into dissolutions. Finally, the chapter concludes with a discussion on conciliation proceedings.

PART II: ASSERTING GROUNDS FOR A DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

§ 3.03 CHECKLIST: Asserting Grounds for a Dissolution of Marriage and Legal Separation

3.03.1 Asserting Grounds for a Dissolution of Marriage and Legal Separation

□ Determining the grounds for dissolution of marriage and the need for proof of the grounds alleged:
  ○ There are nine fault grounds and the no-fault ground of irretrievable breakdown.
  ○ Each of the fault grounds requires proof of the elements of the ground.
  ○ Dissolutions of marriage have been denied based upon fault grounds, but rarely if ever based upon irretrievable breakdown. **Authority:** Conn. Gen. Stat. § 46b-40; *Mercer v. Mercer*, 131 Conn. 352 (1944) and *McCurry v. McCurry*, 126 Conn. 175 (1939). **Discussion:** *See* § 3.04, *below.*
□ Alleging irretrievable breakdown:
  ○ Testimony of either party is sufficient to dissolve a marriage on irretrievable breakdown.
  ○ The parties may submit a stipulation that their marriage has broken down irretrievably, and there is no restraining order.
  ○ Expert testimony is not required.
  ○ The ability to obtain a dissolution on irretrievable breakdown is not a violation of religious freedom.
  ○ If alleging a fault ground for the dissolution, the complaint should be in

two counts, one of which claims irretrievable breakdown. **Authority:** Conn. Gen. Stat. §§ 46b-40(c)(1) 46b-51(a) and 46b-51(b); *Grimm v. Grimm*, 82 Conn. App. 41 (2004), *Evans v. Taylor*, 67 Conn. App. 108 (2001), and *Eversman v. Eversman*, 4 Conn. App. 611 (1985). **Discussion:** *See* § 3.05, *below.*

□ Separation for 18 months:

○ Parties must be separated for 18 months due to incompatibility. **Authority:** Conn. Gen. Stat. § 46b-40(c)(2). **Discussion:** *See* § 3.06, *below.*

□ Proving Adultery:

○ Proof that the other spouse has engaged in sexual relations with someone other than his or her spouse.

○ Corroborating evidence of adultery is usually required.

○ Adultery may be proven by circumstantial evidence. **Authority:** Conn. Gen. Stat. §§ 46b-40(c)(3) and 46b-40(f); *Turgeon v. Turgeon*, 190 Conn. 269 (1983), *Cross v. Huttenlocher*, 185 Conn. 390 (1981), *Brodsky v. Brodsky*, 153 Conn. 299 (1966), *Senderoff v. Senderoff*, 133 Conn. 300 (1946), *Zeiner v. Zeiner*, 120 Conn. 161 (1935), and *Wilhelm v. Wilhelm*, 13 Conn. Supp. 270 (1945). **Discussion:** *See* § 3.07, *below.*

□ Proving fraudulent contract:

○ The fraud must go to the essence of the marriage contract.

○ The party perpetrating the fraud must have knowledge of the fraud at the time the representation was made.

○ The party relying on the fraud must have been justified in doing so. **Authority:** Conn. Gen. Stat. § 46b-40(c)(4); *Murphy v. Murphy*, 112 Conn. 417 (1930), *Lyman v. Lyman*, 90 Conn. 399 (1916), *Barbee v. Barbee*, 15 Conn. Supp. 284 (1948), and *Horowitz v. Horowitz*, 6 Conn. Supp. 14 (1938). **Discussion:** *See* § 3.08, *below*.

□ Obtaining a dissolution on the basis of willful desertion for one year with total neglect of duty:

○ There must be a cessation of cohabitation, intent by the party who ceased the cohabitation not to resume cohabitation, lack of consent by the deserted spouse, and lack of justification.

○ Financial support alone will not defeat a claim of willful desertion.

○ Total neglect of duty requires complete separation of the parties and no intent to resume cohabitation.

○ The party being deserted must not explicitly or implicitly consent to the cessation of cohabitation.

○ The cessation of cohabitation was not justified.

○ Constructive desertion is permitted where a spouse must leave the home because the other has made it so unbearable. **Authority:** Conn. Gen. Stat. §§ 46b-40(c)(5) and 46b-40(e); *Pempek v. Pempek*, 141 Conn. 602 (1954), *Lindquist v. Lindquist*, 137 Conn. 165 (1950), *Gannon v. Gannon*, 130 Conn. 449 (1943), *McCurry v. McCurry*, 126 Conn. 175 (1939), *Campbell v. Campbell*, 110 Conn. 277 (1929), *Toth v. Toth*, 23 Conn. Supp. 161 (1962), and *Muscatello v. Muscatello*, 14 Conn. Supp. 498 (1947). **Discussion:** *See* § 3.09, *below*.

□ Proving seven years' absence:

○ Unlike willful desertion, there is no need to prove intent for a dissolution based upon seven years' absence, only that the defendant has been absent for seven years. **Authority:** Conn. Gen. Stat. § 46b-40(c)(6). **Discussion:** *See* § 3.10, *below*. *See also* § 3.09, *below*.

□ Proving habitual intemperance:

○ Proof of more than just drunkenness is needed.

○ It must be shown that the drunkenness produced substantial suffering and materially harmed the marriage relationship. **Authority:** Conn. Gen. Stat. §§ 46b-40(c)(7) and 46b-40(d); *Wilhelm v. Wilhelm*, 13 Conn. Supp. 270 (1945) and *Hickey v. Hickey*, 8 Conn. Supp. 445 (1940). **Discussion:** *See* § 3.11, *below*.

□ Proving intolerable cruelty:

○ The cruelty must be such as to render the continuing of the marriage unbearable.

○ Baseless allegations of adultery may entitle the accused spouse to dissolution on the ground of intolerable cruelty.

○ Refusal to have sexual relations is not sufficient for a dissolution of marriage on intolerable cruelty.

○ If both parties have been cruel to each other, neither will be entitled to a dissolution on the basis of intolerable cruelty, as one spouse must be innocent. **Authority:** Conn. Gen. Stat. § 46b-40(c)(8); *Mercer v. Mercer*, 131 Conn. 352 (1944), *McCurry v. McCurry*, 126 Conn. 175 (1939), *O'Brien v. O'Brien*, 101 Conn. 80 (1924), *Evans v. Taylor*, 67 Conn. App. 108 (2001), *Sarafin v. Sarafin*, 28 Conn. Supp. 24 (1968), *Nowak v. Nowak*, 23 Conn. Supp. 495 (1962), and *De Lucia v. De Lucia*, 14 Conn. Supp. 513 (1947). **Discussion:** *See* § 3.12, *below*.

□ Proving life imprisonment or the commission of an infamous crime:

○ The sentencing of a spouse to life in prison will entitle the other party to a dissolution of marriage.

○ The infamous crime must be one in which there is a violation of conjugal duty.

○ An infamous crime is one involving a violation of moral turpitude punishable by imprisonment in state prison or six months or more in a county jail.

○ Moral turpitude involves crimes such as rape, intent to commit rape, or risk of injury to a child.

○ The violation of conjugal duty requires that the crime committed would be considered a violation of the marital state.

○ There must be proof of conviction of the infamous crime, not just charges brought. **Authority:** Conn. Gen. Stat. § 46b-10(c)(9); *Swanson v. Swanson*, 128 Conn. 128 (1941), *Sweet v. Sweet*, 21 Conn. Supp. 198 (1957), and *Donovan v. Donovan*, 14 Conn. Supp. 429 (1947). **Discussion:** *See* § 3.13, *below*.

□ Proving legal confinement in a hospital due to mental illness:

○ The spouse against whom the dissolution of marriage is sought must be confined in a hospital due to mental illness.

○ The confinement must be for a period of five out of the six years prior to bringing the dissolution action. **Authority:** Conn. Gen. Stat. §§ 46b-40(c)(10), 46b-47, 46b-47(b), and 46b-47(c). **Discussion:** *See* § 3.14, *below*.

□ Asserting defenses to grounds for a dissolution of marriage:

○ Condonation and recrimination are no longer available as defenses.

○ If the plaintiff provoked the grounds upon which he or she rely for the dissolution of the marriage, he or she will not be entitled to a dissolution.

○ Justification is a defense which will defeat a claim of willful desertion. **Authority:** Conn. Gen. Stat. § 46b-52; *Silva v. Silva*, 28 Conn. Supp. 336 (1969) and *Baccash v. Baccash*, 11 Conn. Supp. 387 (1942). **Discussion:** *See* § 3.15, *below*.

§ 3.04 Asserting Grounds—In General

Although Connecticut is generally referred to as a no-fault state, there are nine fault related grounds in addition to the no-fault ground of irretrievable breakdown. Conn. Gen. Stat. § 46b-40. Typically, grounds have been required because although divorce is not favored, circumstances exist in which society would be better served by allowing the marriage to be dissolved. *Mercer v. Mercer*, 131 Conn. 352, 354 (1944).

Since the advent of irretrievable breakdown as a ground for the dissolution of marriage in Connecticut in 1973, nearly every action for dissolution of marriage and legal separation has been filed based upon irretrievable breakdown. Proving that the marriage has broken down irretrievably, without having to find fault by one party, is much simpler than proving one of the traditional fault grounds.

Whatever the ground for the dissolution or legal separation, it must be proven, irrespective of whether there is a trial or the case proceeds as an uncontested dissolution. From a practical standpoint the court will rarely, if ever, deny a dissolution on the basis of irretrievable breakdown, whereas a dissolution of marriage has been denied based upon traditional fault grounds. *McCurry v. McCurry*, 126 Conn. 175 (1939).

§ 3.05 Pleading Irretrievable Breakdown

To obtain a dissolution of marriage or legal separation on the ground of irretrievable breakdown, typically one party need only allege in the complaint and assert at the final hearing that the marriage has broken down irretrievably, and the court will grant the dissolution or legal separation. Conn. Gen. Stat. § 46b-40(c)(1). At the time of the final hearing, the parties may execute a stipulation that the marriage has broken down irretrievably, which will alleviate the need to submit evidence regarding the breakdown of the marriage. Conn. Gen. Stat. § 46b-51(a). The court may make a finding of irretrievable breakdown based upon the affidavit of a party, which affidavit must state that there is no restraining or protective order between the parties which is in effect. Conn. Gen. Stat. § 46b-51(b).

Expert testimony is not required to prove that the marriage has broken down irretrievably. *Grimm v. Grimm*, 82 Conn. App. 41 (2004). The trial court is given deference in making this factual determination. Both parties need not agree that the marriage has broken down irretrievably to obtain a dissolution of marriage. The fact that one party hopes for reconciliation does not preclude a finding of irretrievable breakdown. *Grimm*, 82 Conn. App. at 47. *See also Eversman v. Eversman*, 4 Conn. App. 611 (1985) (a party claiming the marriage has not broken down irretrievably and who holds out hope for reconciliation, despite her husband living with and intending to marry another woman, could not prevent a dissolution entering on the basis of irretrievable breakdown).

No fault divorce has survived attack claiming that it is a violation of one's freedom of religion. *Grimm v. Grimm*, 82 Conn. App. at 45. The fact that one's faith opposes divorce does not rise to the level of a violation of religious freedom. *Grimm*, 82 Conn. App. at 45.

Occasionally, a complaint will be pled in two counts, one alleging irretrievable breakdown, and the other alleging a fault ground. By doing so, a party alleging grounds for a dissolution or legal separation which are not proven, still permits a court to dissolve the marriage on the alternate ground of irretrievable breakdown. *Evans v. Taylor*, 67 Conn. App. 108 (2001).
#Comment Begins

Strategic Point: If a client insists on filing a complaint alleging a fault ground, it is wise to plead in two counts, one alleging the fault ground and the other irretrievable breakdown. This prevents the need for refiling the divorce action if the fault ground is not proven.

#Comment Ends

§ 3.06 Pleading Separation for 18 Months

If the court finds the parties have been separated for 18 months due to incompatibility, a dissolution may be granted. Conn. Gen. Stat. § 46b-40(c)(2). The separation must be due to incompatibility, not a separation by reason of service in the military or relocation for employment. There are no cases discussing this ground for dissolution.

§ 3.07 Defining Adultery

A dissolution of marriage on the grounds of adultery may be granted pursuant to Conn. Gen. Stat. § 46b-40(c)(3). To prove adultery, the court must find that a spouse has engaged in a sexual relationship with someone other than his or her spouse. Conn. Gen. Stat. § 46b-40(f) and *Brodsky v. Brodsky*, 153 Conn. 299, 300 (1966). Proof of adultery is established by a fair preponderance of the evidence, i.e., "the better evidence, the evidence having the greater weight, the more convincing force in your mind." *Cross v. Huttenlocher*, 185 Conn. 390, 394 (1981) and *Brodsky*, 153 Conn. at 301. To prove adultery and prevent the routine granting of divorces, corroborating evidence was usually required. *Senderoff v. Senderoff*, 133 Conn. 300 (1946). *See also Wilhelm v. Wilhelm*, 13 Conn. Supp. 270, 272 (1945) (corroborating evidence could include the pregnancy of the wife despite the parties not having had sexual relations for 18 months).

Adultery is not typically proven directly, but by circumstantial evidence leading the reasonable person to believe that adultery has occurred. *Zeiner v. Zeiner*, 120 Conn. 161, 165 (1935). Adultery proven by circumstantial evidence or inference, must show both the opportunity and a disposition to have an adulterous relationship. *Turgeon v. Turgeon*, 190 Conn. 269, 279 (1983). Proof of both criteria, however, does not compel the trial court to conclude that adultery occurred. *Turgeon*, 190 Conn. at 279.

#Comment Begins

Strategic Point: Until 1991, adultery was a misdemeanor, leading litigants to assert the Fifth Amendment right against self-incrimination and refuse to answer questions about extramarital sexual relationships. Since it is no longer a crime, there is no reason for anyone to refuse to answer these questions in a deposition, unless such acts constituted a crime in the state in which they occurred.

#Comment Ends

§ 3.08 Defining Fraudulent Contract

To use fraudulent contract as a ground to dissolve the marriage, the fraud "must relate to the very essence of the marriage contract." Conn. Gen. Stat. § 46b-40(c)(4) and *Barbee v. Barbee*, 15 Conn. Supp. 284, 285 (1948) (the fact that the husband had been imprisoned prior to the marriage, which he did not disclose to his wife, was insufficient to prove fraudulent contract).

In order to constitute fraudulent contract, it is necessary that the party have knowledge at the time the fraudulent allegations are made that they are fraudulent. *See Murphy v. Murphy*, 112 Conn. 417 (1930) (a deformity rendering the wife unable to have sexual relations, about which

she was unaware, could not form the basis of a fraudulent contract). A later determination that the representation was untrue is insufficient to sustain a dissolution action on the ground of fraudulent contract. *See* *Horowitz v. Horowitz*, 6 Conn. Supp. 14 (1938) (where it was not proven that the wife knew she was pregnant by another man, when asserting the child was the husband's to induce him to marry her, the husband could not obtain a dissolution on the ground of a fraudulent contract).

In proving fraudulent contract, the moving party must demonstrate that he or she was justified in relying on the misrepresentations and acted as a reasonably prudent person under the circumstances. *See* *Lyman v. Lyman*, 90 Conn. 399 (1916) (where the parties had engaged in premarital sexual relations and the wife untruthfully stated that she was pregnant with his child, inducing him to marry her, the husband, upon finding that the children were not his, was justified in obtaining a dissolution based upon fraudulent contract).
#Comment Begins

Warning: The cases under which a dissolution was granted for fraudulent contract were done at a time when social mores were much different than today. It would take something extraordinary to have a fraudulent contract allegation, which goes to the essence of the marital contract, sustained today.

#Comment Ends

§ 3.09 Defining Willful Desertion for One Year with Total Neglect of Duty

[1] Defining the Requirements of Willful Desertion

A dissolution is permitted on the ground of willful desertion for one year with total neglect of duty. Conn. Gen. Stat. § 46b-40(c)(5). Financially supporting a spouse, absent other evidence, does not disprove total neglect of duty. Conn. Gen. Stat. § 46b-40(e). "The elements of a cause of action on the ground of desertion … [are]: (1) cessation from cohabitation; (2) an intention on the part of the absenting party not to resume it; (3) the absence of the other party's consent; and (4) the absence of justification." *McCurry v. McCurry*, 126 Conn. 175, 178 (1939).

[2] Defining Total Neglect of Duty

Total neglect of duty requires the complete separation of the parties and an intent not to resume cohabiting by the party who left the residence. *McCurry v. McCurry*, 126 Conn. 175, 178–179 (1939). The mere refusal to have sexual relations without other evidence is not sufficient to satisfy the requirement for willful desertion. *McCurry*, 126 Conn. at 178.

[3] Asserting Lack of Consent

The lack of consent by the party who does not initiate the cessation of cohabitation, can defeat a claim for a dissolution on the basis of willful desertion. *See* *Gannon v. Gannon*, 130 Conn. 449 (1943) (a husband, whose wife who was justified in leaving him and moving in with her parents due to an illness, was entitled to a dissolution on the ground of willful desertion because he did not consent to the separation). In order to constitute consent that will defeat an action on the ground of willful desertion, the deserted spouse must evidence a willingness for the cohabitation ceasing. *Pempek v. Pempek*, 141 Conn. 602, 605 (1954) (a husband who did not try to stop the wife from moving out of the home and who expressed no interest in reconciliation attempts, consented to the cessation of cohabitation and could not obtain a dissolution on the

basis of willful desertion).

[4] Defining Justification

The primary area litigated in seeking a dissolution under willful desertion is justification. To constitute justification, the conduct of the deserted spouse must be so improper to the essence of the marital relationship that the deserting spouse cannot, due to health, safety, or intolerable conditions, continue to cohabit. *Campbell v. Campbell*, 110 Conn. 277 (1929). Conversely, the cessation of cohabitation which is not within the control of the deserting spouse constitutes justification. *See Muscatello v. Muscatello*, 14 Conn. Supp. 498 (1947) (a husband, whose wife was an Italian citizen and denied entry into the United States on several occasions because of health reasons, could not obtain a divorce on the ground of willful desertion, because the wife's inability to come to the United States was justified).

[5] Defining Constructive Desertion

Willful desertion typically focuses on the conduct of the deserting party. However, constructive desertion occurs where one spouse, by their own misconduct, renders continuation of the marriage so unbearable that the other party leaves the home, and entitles the deserting party to a dissolution. *Lindquist v. Lindquist*, 137 Conn. 165, 168 (1950). *See Toth v. Toth*, 23 Conn. Supp. 161 (1962) (a wife who refused to move to the United States from revolutionary Hungary, where the husband had a home for her, was found to have constructively deserted the husband entitling him to a dissolution).

§ 3.10 Pleading Seven Years' Absence During All of Which the Absent Party Has Not Been Heard From

A dissolution on the ground of seven years' absence is not the same as willful desertion, which requires the four elements to be proven. Conn. Gen. Stat. § 46b-40(c)(6). This ground merely requires a party to be absent, for whatever reason, for seven years without the need to prove intent. There are no cases discussing this ground. For a more thorough discussion on willful desertion, *see* § 3.09, *above*.

§ 3.11 Pleading Habitual Intemperance

Where a party proves the habitual intemperance of his or her spouse, existing at the time of the separation, he or she is entitled to a dissolution of marriage. Conn. Gen. Stat. §§ 46b-40(c)(7) and 46b-40(d). In order to constitute habitual intemperance it "must be such that it produces at least some substantial suffering and does material harm to the marital relationship." *Hickey v. Hickey*, 8 Conn. Supp. 445, 446 (1940). Accordingly, evidence of drunkenness alone does not entitle one to a marriage dissolution on the basis of habitual intemperance absent evidence that it had an effect on the marital relationship. *Wilhelm v. Wilhelm*, 13 Conn. Supp. 270, 271 (1945).

§ 3.12 Defining Intolerable Cruelty

A dissolution of marriage is permitted on the ground of intolerable cruelty. Conn. Gen. Stat. § 46b-40(c)(8). There must be acts of cruelty and proof that such acts make continuing the marriage unbearable. *Evans v. Taylor*, 67 Conn. App. 108, 114 (2001) and *Sarafin v. Sarafin*, 28 Conn. Supp. 24, 25 (1968).

Cruelty is a willful or intentional and deliberate act, to cause "unnecessary pain" to the other spouse. *De Lucia v. De Lucia*, 14 Conn. Supp. 513 (1947). The allegation by one spouse that there were one or two instances of "cruel" conduct during the marriage will not suffice to

grant a dissolution, since marriages are not conflict free. *Mercer v. Mercer*, 131 Conn. 352, 355 (1944). Mere incompatibility will not constitute intolerable cruelty. *Sarafin*, 28 Conn. Supp. at 25.

The granting of a dissolution of marriage on the ground of intolerable cruelty is a fact sensitive determination. Baseless accusations that a spouse has engaged in extramarital relations entitles the spouse accused, not the one making the accusations, to obtain a dissolution. *O'Brien v. O'Brien*, 101 Conn. 80 (1924). Claims that a spouse refuses to have sexual relations will not rise to the level of intolerable cruelty sufficient to grant a divorce. *McCurry v. McCurry*, 126 Conn. 175 (1939).

The court will not grant a dissolution where the ground alleged by both parties is intolerable cruelty, each having at times behaved inappropriately towards the other. *Nowak v. Nowak*, 23 Conn. Supp. 495 (1962). To grant a dissolution one party must be guilty and the other innocent of the charges alleged. *Nowak*, 23 Conn. Supp. at 499.

§ 3.13 Defining Life Imprisonment or Commission of an Infamous Crime

[1] Defining Life Imprisonment

A marriage dissolution may be granted where one party has been sentenced to life in prison or has committed an infamous crime involving a violation of conjugal duty. Conn. Gen. Stat. § 46b-40(c)(9). Clearly the ability to obtain a dissolution on the basis that a party has been sentenced to life imprisonment is an easy factual determination by the trial court.

[2] Determining What Constitutes an Infamous Crime Involving a Violation of Conjugal Duty—Factors

Conversely, commission of an infamous crime involving a violation of conjugal duty is a fact sensitive determination. To obtain a dissolution on the ground of commission of an infamous crime, three elements must be proven: the commission of an infamous crime, the crime committed is one involving a violation of conjugal duty, and the crime is punishable by imprisonment. *Swanson v. Swanson*, 128 Conn. 128, 129 (1941). Based upon this definition, two factual issues must be determined, namely whether an infamous crime was committed and whether such crime was a violation of conjugal duty.

[3] Defining Infamous Crime

An infamous crime is: a crime punishable by imprisonment, a crime involving moral turpitude punishable either by imprisonment in the state prison or for six months or more in county jail. *Sweet v. Sweet*, 21 Conn. Supp. 198, 200 (1957). "[M]oral turpitude … [is] an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted rule or right and duty between man and man … ." *Sweet*, 21 Conn. Supp. at 200–201. Dissolutions typically granted under this section occur where the crimes involve rape, intent to commit rape, or risk of injury to a child, provided it involves a violation of conjugal duty. Since many different actions can result in a charge of risk of injury to a child, not all of which would constitute a violation of conjugal duty, the mere fact that a spouse was charged with that crime will not be sufficient for the other spouse to obtain a dissolution on this ground. *Sweet*, 21 Conn. Supp. at 200.

[4] Defining Violation of Conjugal Duty

The second issue is defining what constitutes a violation of conjugal duty. "Conjugal means '[o]f or belonging to the marriage or the married state; suitable or appropriate to the marriage state or to married persons; matrimonial; connubial.' " *Swanson v. Swanson*, 128 Conn. 128, 130 (1941). A conviction of assault with the intent to commit rape would be a violation of conjugal duty as the crime committed showed an intent to have sexual relations by force. *Swanson*, 128 Conn. at 130. In addition, indecent assault on a minor female has been found to be a violation of conjugal duty. *Donovan v. Donovan*, 14 Conn. Supp. 429 (1947).

[5] Providing Proof of Conviction

The statute, while speaking only of the commission and not conviction of the crime, has been interpreted to require proof of conviction. *Sweet v. Sweet*, 21 Conn. Supp. 198, 203 (1957). It is the province of the criminal courts to establish guilt or innocence of a crime, not the civil court deciding the dissolution of the parties' marriage. *Sweet*, 21 Conn. Supp. at 203. Accordingly, no dissolution on the ground of an infamous crime will be granted without proof of conviction.

§ 3.14 Pleading Legal Confinement in a Hospital Because of Mental Illness, for at Least Five Years

There are two requirements for obtaining a dissolution on the ground of mental illness: confinement in a hospital due to mental illness, and confinement for a total of five years out of the six years prior to filing the complaint. Conn. Gen. Stat. § 46b-40(c)(10).

Any complaint filed under this ground must be served on the hospitalized party, their conservator, if any, and the Commissioner of Administrative Services. Conn. Gen. Stat. § 46b-47. In the event there is a conservator who does not appear, or there is no conservator, the court shall appoint a guardian *ad litem* for the hospitalized party. Conn. Gen. Stat. § 46b-47(b). Either party may file a motion for the court to appoint two or more psychiatrists to evaluate the hospitalized party, to investigate his or her mental status. Conn. Gen. Stat. § 46b-47(c). Only the testimony of the court appointed psychiatrists will be permitted at the trial. Conn. Gen. Stat. § 46b-47(c).
#Comment Begins

Warning: While the court may grant a dissolution on the basis of fault grounds, as can be seen by the discussion on fault, each of these grounds requires significant proof, when compared to irretrievable breakdown. *See* §§ 3.06–3.13, *above*.

#Comment Ends#Comment Begins

Strategic Point: With the advent of "no-fault" divorce, there is really no reason why a dissolution action should be brought under any of the traditional fault grounds. By doing so, the client could be viewed by the court as being more interested in retribution than an orderly resolution of the dissolution.

#Comment Ends

§ 3.15 Asserting Defenses to Ground for Dissolution

[1] Asserting Condonation and Recrimination

In 1978 the legislature abolished the defenses of condonation and recrimination. Conn. Gen. Stat. § 46b-52.

[2] Asserting Provocation

Where the plaintiff is found to have provoked the facts and circumstances which form the basis of the grounds alleged for a dissolution of marriage, the dissolution will not be granted. *Silva v. Silva*, 28 Conn. Supp. 336, 339 (1969) (a wife, who bought another man a trailer to live in and where she would visit him, provided sufficient provocation to defeat her claim of intolerable cruelty). Provocation as a defense is available for fault grounds, not irretrievable breakdown.

[3] Asserting Justification

Justification as a defense is commonly used in claims regarding desertion. In fact, one of the requirements to prove willful desertion is that there is no justification for it. Accordingly, a spouse being told to leave, physical or mental abuse, or other improper conduct, provides an adequate defense to desertion under the theory of justification. *Baccash v. Baccash*, 11 Conn. Supp. 387 (1942).

PART III: PREPARING THE COMPLAINT AND CROSS COMPLAINT

DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

§ 3.16 CHECKLIST: Preparing the Complaint and Cross Complaint

3.16.1 Preparing the Complaint and Cross Complaint

□ Determining the allegations necessary to file a complaint:

○ Must set forth the following in the complaint to establish jurisdiction:

• The date and place of the marriage.

• The birth name of the wife.

• The grounds for the dissolution of marriage or legal separation.

• In the case of an annulment, that the marriage is void or voidable under the laws of Connecticut or where the marriage was performed.

• A statement which demonstrates that one of the parties satisfies the residency requirements.

• Whether either party or a child is receiving assistance from Connecticut or any municipality, and if so the complaint must be served on the attorney general and/or town clerk.

• The names and birth dates of children under the age of 23.

• An appearance form must be served with each complaint.

Authority: Conn. Gen. Stat. §§ 46b-38rr, 46b-40(b), 46b-40(c), 46b-44, 46b-45(a), 46b-45(b), 46b-54a, 46b-55(a), 46b-56c(b)(1), 46b-115k, 46b-115k(a)(1), 46b-115k(a)(2), and 46b-115k(a)(3); P.B. §§ 4-7(a), 4-7(b), 25-2, 25-2(b), and 25-57. **Discussion:** *See* §§ 3.17[1] and 3.17[2], *below*. *See also* Chapter 1 § 1.10, *above*. *See also* Chapter 2, § 2.05, *above*. *See also* Chapter 2,

§§ 2.39–2.50, *above*. **Forms:** JD-FM-159—Divorce Complaint. *See* Chapter 20, § 20.10, *below*, JD-FM-237—Legal Separation Complaint, *see*. Chapter 20, § 20.10[2], *below*. JD-FM-240—Annulment Complaint, *see*. Chapter 20, § 20.10[3], *below*, JD-CL-12—Appearance, *see* Chapter 20, § 20.37, *below*; and JD-FM-249—Certification of Waiver of Service of Process, *see* Chapter 20, § 20.80, *below*.

□ Alleging enforcement of prenuptial or postnuptial agreements:

○ The plaintiff must allege enforcement of the prenuptial or postnuptial agreement in the complaint.

○ The defendant has sixty days from the return date to allege enforcement of the prenuptial or postnuptial agreement.

○ A party disputing the enforcement of a prenuptial or postnuptial agreement must do so within sixty days of the filing of the claim seeking enforcement together with the grounds upon which such a dispute is based. **Authority:** *Ostapowicz v. Wisniewski*, 210 Conn. App. 401(2022); P.B. §§ 25-2A, 25-2A(a), and 25-2A(b). **Discussion:** *See* § 3.17[3], *below*.

□ Preparing claims for relief:

○ The claims for relief in a complaint or cross complaint should request the following:

• A dissolution of marriage, annulment or legal separation.
• Temporary and permanent custody of the minor children.
• Temporary and permanent child support.
• Temporary and permanent alimony.
• An assignment of property.
• An educational support order.
• Counsel and expert fees.
• An assignment of title to certain real property.
• Such other and further relief. **Authority:** Conn. Gen. Stat. §§ 46b-40, 46b-56, 46b-56c, 46b-62, 46b-45(a), 46b-81, 46b-82, 46b-83, 46b-84, and 52-235; *Tsopanides v. Tsopanides*, 181 Conn. 248 (1980), and *Ferrucci v. Ferrucci*, 11 Conn. App. 369 (1987); P.B. § 25-2(c). **Discussion:** *See* § 3.17[4], *below*. **Forms:** JD-CL-12–Appearance, *see* Chapter 20, § 20.37, *below*. JD-FM-159—Divorce Complaint, *see* Chapter 20, § 20.10[1], *below*. JD-FM-237—Legal Separation Complaint, *see*. Chapter 20, § 20.10[2], *below*. JD-FM-240—Annulment Complaint, *see*. Chapter 20, § 20.10[3], *below*. JD-FM-160—Dissolution Answer, *see* Chapter 20, § 20.11, *below*. JD-FM-158—Notice of Automatic Orders, *see* Chapter 20, § 20.09, *below*.

□ Filing Requirements for Non-Adversarial Divorces:

○ Very specific requirements for a streamlined dissolution process.

• Requires parties to meet 12 requirements including a marriage of less than 8 years, no children, and less than $35,000 in assets.

○ The parties file a joint petition with executed financial affidavits and, if applicable, a separation agreement.

• Court establishes a disposition date within 30 days of the petition being filed.

• The dissolution will be granted within 5 days of the disposition date.

• If the statutory requirements to file the non-adversarial dissolution are in question or the court cannot approve the separation agreement on its face, the court will establish a hearing within 30 days of the disposition date.

• If after the hearing the court finds the statutory requirements to be

met, it will grant the dissolution.

• If after the hearing the court finds that the statutory requirements were not met, it will transfer the case to the regular docket.

• Prior to the dissolution being granted, either party may revoke the non-adversarial dissolution filing with notice to the court and the other side.

Authority: Conn. Gen. Stat. §§ 46b-44a, 46b-44a(b), 46b-44a(d), 46b-44a(e), 46b-44a(g), 46b-44b(a), 46b-44c(a), 46b-44c(b), 46b-44d(a), and 46b-44d(b). **Forms**: JD-FM-242—Joint Petition, *see* Chapter 20, § 20.73, *below*, JD-FM-243—Agreement, *see* Chapter 20, § 20.74, *below*, JD-FM-244—Notice of Changed Condition, *see* Chapter 20, § 20.75, *below*, JD-FM-245—Notice of Revocation, *see* Chapter 20, § 20.76, *below*, JD-FM-262—Divorce Decree, *see* Chapter 20, § 20.77, *below*, ~~JD-FM-247—Motion to Waive Statutory Time Period, *see* Chapter 20, § 20.78, *below*, JD-FM-248—Information Sheet, *see* Chapter 20, § 20.79, *below*,~~ JD-FM-249—Certification of Waiver of Service of Process, *see* Chapter 20, § 20.80, *below*, and JD-FM-260—Automatic Orders —Non Adversarial Divorce, *see* Chapter 20, § 20.81, *below*. **Discussion:** *See* § 3.17[5], *below*.

□ Ascertaining the Time for the Decree of Dissolution to Enter.

○ The court may enter a decree dissolving the parties marriage 2 days after the filing of the complaint or 20 days after the filing of the cross complaint..

○ A default judgment may enter if the defendant was personally served and does not appear.

~~The plaintiff shall prepare an affidavit showing:~~

~~• How service was made on the defendant.~~

~~• Whether there are children of the marriage or if a party is pregnant.~~

~~• Whether a restraining order or protective order has entered.~~

~~• Whether there are joint assets or liabilities.~~

~~○ If service is properly made and the other questions are answered in the negative, the parties may seek a waiver of the 90-day waiting period and obtain a dissolution without hearing.~~

~~○ If service is properly made, but any of the other questions are answered in the affirmative, the parties may seek a waiver of the 90-day waiting period and the court will hold a hearing. If the court approves the request, it may enter the dissolution judgment at the time of hearing~~.

Authority: Conn. Gen. Stat § 46b-67. ~~**Forms:** JD-FM-247 Motion to Waive Statutory Time Period—Divorce or Legal Separation, see Chapter 20, § 20.78, *below*.~~ **Discussion:** *See* § 3.17[6] *below*.

□ Assessing Resolution Plan Dates

○ The resolution plan date is to determine the court needs of individual cases to bring the matter to resolution.

○ After the resolution plan date, the case will be assigned a track, case dates established and scheduling orders.

○ The court may establish a judicial pretrial with the necessary documents being submitted five business days prior.

Authority: P.B. § 25-50A. **Discussion**: See §3.17[7], *below.*

□ Preparing an application for custody or visitation:

○ The application for custody or visitation shall set forth the following:

• The name and date of birth of the minor children.

• The parents or legal guardian of the minor children.

• Where a non-parent brings the action, there must be allegations and supporting facts showing that there is a parent-like relationship with the child and denial of visitation will cause real and significant harm.

• Whether the child is receiving support from Connecticut or any municipality. If so, the Attorney General and/or town clerk must be served to the application. **Authority:** Conn. Gen. Stat. § 46b-55; *Fish v. Fish*, 285 Conn. 24 (2008) and *Roth v. Weston*, 259 Conn. 202 (2002); P.B. §§ 25-3, 25-4. **Discussion:** *See* § 3.18[1], *below*. *See also* § 3.17[1], *below*. *See* Chapter 2, §§ 2.39–2.50, *above*. *See also* Chapter 8, § 8.10, *below*. **Forms:** JD-FM-161—Custody/Visitation Application-Parent. *See* Chapter 20 § 20.12, *below*.

□ Preparing claims for relief for a custody and visitation application:

○ The custody and visitation application should set forth the claims for relief, which may include:

• Sole custody.

• Joint legal custody.

• Designation of the child's primary residence.

• Visitation.

• Child support.

• An educational support order.

• Such other and further relief. **Authority:** Conn. Gen. Stat. §§ 46b-56, 46b-56c, 46b-83, and 46b-84. **Discussion:** *See* § 3.18[2], *below*.

□ Commencing an action for custody and visitation:

○ Action must be commenced by order to show cause.

○ The automatic orders and affidavit regarding custody must be appended to the application. **Authority:** P.B. §§ 25-3, 25-4, and 25-5. **Discussion:** *See* § 3.18[3], *below*. **Forms:** JD-FM-161—Custody/Visitation Application-Parent, *see* Chapter 20, § 20.12, *below*. JD-FM-158—Notice of Automatic Orders, *see* Chapter 20, § 20.09, *below*. JD-FM-164, 164A—Affidavit Concerning Children and Addendum to Affidavit Concerning Children, *see* Chapter 20, § 20.15, *below*, and JD-FM-221—Verified Petition for Visitation—Grandparents and Third Parties, *see* Chapter 20, § 20.31, *below*.

□ Filing appearances:

○ The plaintiff's appearance is done when the writ is signed.

○ A party has dual representation when filing an appearance in addition to his or her attorney of record.

○ A party with dual representation may file a pleading and have his or her attorney sign the same, or the proceedings on the motion may be stayed pending order of the court or the adoption of the pleading by the attorney.

○ The defendant should file an appearance two days after the return date.

○ A plaintiff who files a post judgment motion should file an appearance since there is no writ.

○ The opposing attorney may contact the client directly for all matters outside of the scope of the limited appearance. **Authority:** P.B. §§ 3-1, 3-2, 3-7, 3-8, and 25-6A. **Discussion:** *See* § 3.19[1], *below, see also* § 3.19[3], *below*. **Forms:** JD-CL-12—Appearance, *see* Chapter 20, § 20.37, *below*. JD-CL-121—Limited Appearance, *see* Chapter 20, § 20.40, *below*. JD-CL-122—Certificate of Completion of Limited Appearance, *see* Chapter 20,

§ 20.41, *below*.

□ Replacing counsel:

○ Filing an in lieu of appearance is a withdrawal of prior counsel's appearance if there is no objection within ten days of filing. **Authority:** P.B. § 3-8. **Discussion:** *See* § 3.19[2], *below*.

□ Filing a Limited Appearance:

○ Attorneys may now file an appearance for a limited scope in a case.

○ The limited scope may include a hearing on a specific motion, a status conference, a pretrial, or a trial.

○ After the representation under the scope of the limited appearance has been completed, a certificate of completion must be filed with the court. **Authority:** P.B. §§ 3-8, 3-8(b), 3-9(a), and 25a-3; R.P.C. Rule 4.2. **Discussion:** *See* § 3.19[3], *below*. **Forms:** JD-CL-121—Limited Appearance, *see* Chapter 20, § 20.40, *below*. JD-CL-122—Certificate of Completion of Limited Appearance, *see* Chapter 20, § 20.41, *below*.

□ Withdrawing appearances:

○ If an in lieu of appearance is not filed, prior counsel may file a motion to withdraw based on the appearance of new counsel.

○ If there has been no motion to open or appeal filed within 180 days after a final judgment, the appearance is automatically withdrawn.

○ If there has been a motion to open or appeal filed within 180 days after a final judgment, the appearance is automatically withdrawn 180 days after the resolution of the motion to open or appeal.

○ Court approval to withdraw an appearance is necessary if there is either no in lieu of appearance or automatic withdrawal.

○ The motion to withdraw must allege that there is no longer a viable attorney-client relationship.

○ The substantive grounds of the motion to withdraw should not be stated in the motion itself.

○ The motion must be served with an order to show cause, with a notice to the client stating the following:

• The attorney is seeking to withdraw his or her appearance.

• Setting forth the date and time the motion is to be heard.

• Alerting the party that he or she may appear in court and be heard regarding the motion.

• If the motion is granted, he or she should hire another attorney or file their own appearance.

• If an appearance is not filed, he or she will not receive notice of future court proceedings.

○ A limited appearance is deemed withdrawn upon the filing of a certificate of completion. **Authority:** P.B. §§ 3-9(b), 3-9(c), 3-9(d), 3-10(a), 3-10(b), and 3-10(d). **Discussion:** *See* § 3.19[4], *below*. **Forms:** Motion to Withdraw Appearance. *See* Chapter 20, § 20.44, *below*. JD-CL-122—Certificate of Completion of Limited Appearance, *see* Chapter 20, § 20.41, *below*.

□ Hearing on a motion to withdraw:

○ Any hearing on a contested motion to withdraw should be a closed hearing without opposing counsel present.

○ In the hearing, counsel seeking to withdraw may detail the reasons why he or she is seeking to withdraw. **Authority:** *Matza v. Matza*, 226 Conn. 166 (1993). **Discussion:** *See* § 3.19[5], *below*.

□ Withdrawing appearances in accordance with the Rules of Professional Conduct:
○ Mandatory withdrawal of appearances occur in the following instances:
• The attorney will violate a Rule of Professional Conduct as a result of the representation.
• The physical or mental condition of the attorney prevents him or her from continuing with the representation.
• The attorney has been discharged by the client.
○ Permissive withdrawal of appearances may occur with court approval in the following instances:
• The withdrawal will not materially affect the client.
• The lawyer believes the client is engaged in fraudulent or criminal conduct.
• The client has used the lawyer to perpetrate a crime or fraud.
• The client is requesting the lawyer do something with which he or she has a fundamental disagreement or which he or she finds repugnant.
• The client, despite being told to fulfill an obligation or face the attorney withdrawing, has not fulfilled the obligation.
• Representation will result in an unreasonable financial burden.
• Other good cause exists. **Authority:** Rules of Professional Conduct §§ 1.16(a) and 1.16(b). **Discussion:** *See* § 3.19[6], *below*.
□ Filing the answer and cross-complaint:
○ The defendant may file a cross-complaint, the contents of which are the same as the complaint.
○ The defendant may answer the allegations of the plaintiff's complaint by admitting or denying the allegations made. **Authority:** P.B. §§ 25-9, 25-9(1), and 25-10. **Forms:** JD-FM-159—Divorce Complaint, *see* Chapter 20, § 20.10, *below*. JD-FM-160—Dissolution Answer, *see* Chapter 20, § 20.11, *below*. **Discussion:** *See* § 3.20, *below*.
□ Amendments to the complaint or cross complaint:
○ A defect or mistake in the complaint may be made within thirty days after the return date.
○ Amendments sought more than thirty days after the return date may only be had with the written consent of the adverse party, or court approval after filing leave to amend the complaint, together with a redline copy of the pleading being amended.
○ Failure of the defendant to object to the filing of the leave to amend the complaint within fifteen days of filing is deemed to be granted by consent.
○ An objection to the amended complaint must set forth the paragraphs to which there is an objection and the reasons therefore. **Authority:** P.B. §§ 10-59, 10-60(a), and 10-60(a)(3). **Discussion:** *See* § 3.21, *below*.
□ Withdrawal of actions:
○ Once a hearing on an issue of proof has commenced, even if not concluded, the action may not be withdrawn without court approval. **Authority:** Conn. Gen. Stat. § 52-80 and *Grimm v. Grimm*, 74 Conn. App. 406 (2002). **Discussion:** *See* § 3.22, *below*.
□ Waiting period:
○ A dissolution may not be granted until ninety days after the return date.
○ The parties may waive the ninety-day time period by attesting they have an agreement and file a motion to waive the time period.
○ If conciliation is granted and one party does not attend the sessions,

the dissolution may not be granted until six months from the return date.

○ Absent waiver, a dissolution may not be granted within twenty days of filing a cross complaint. **Authority:** Conn. Gen. Stat. §§ 46b-44c(a), 46b-53, 46b-53(b), 46b-67, and 46b-67(b). **Discussion:** *See* § 3.23, *below*. *See also* § 3.32, *below*. **Forms:** JD-FM 247—Motion to Waive Statutory Time Period *See*, Chapter 20, § 20.78, *below*.

§ 3.17 Preparing the Complaint

[1] Asserting Allegations Necessary to Provide the Court with Jurisdiction

To institute an action for dissolution, annulment, or legal separation, the summons and complaint must be served on the defendant. The judicial branch has separate forms to file for a dissolution, annulment, and legal separation. A complaint must be accompanied by a blank appearance form to be served on the defendant. Conn. Gen. Stat. § 46b-45(a). Service of process may be waived by the defendant upon executing the form for waiver of service of process and filing an appearance with the court. Only if both of these have happened, will service be waived. Conn. Gen. Stat., § 46b-45(b). The complaint shall state the date and place, including the city or town, of the marriage or civil union, and all other factors necessary to give the court jurisdiction. Connecticut Practice Book (hereinafter "P.B.") § 25-2. For a more thorough discussion on service, *see* Chapter 2, § 2.05, *above*.

#Comment Begins

Strategic Point: When preparing a complaint for a same-sex dissolution where there was a civil union or other recognized relationship, the better practice is to allege both the date of the civil union or other recognized relationship and the date of the marriage. Since civil unions merged by law in Connecticut into marriages on October 1, 2010, if there was not a marriage subsequent to the civil union, the marriage date alleged should be October 1, 2010. Conn. Gen. Stat. § 46b-38rr.

#Comment Ends#Comment Begins

Forms: JD-FM-159—Divorce Complaint, *see* Chapter 20, § 20.10[1], *below*; JD-FM-237—Legal Separation Complaint, *see* Chapter 20, § 20.10[2], *below*; JD-FM-237—Annulment Complaint, *see* Chapter 20, § 20.10[3], *below*; JD-CL-12—Appearance, *see* Chapter 20, § 20.37, *below*; and JD-FM-249—Certification of Waiver of Service of Process, *see* Chapter 20, § 20.80, *below*.

#Comment Ends

[2] Preparing the Contents of the Complaint

The following facts, in addition to the date and place of the marriage, should be included within the complaint:

1. The birth name of the wife.

2. The cause for the dissolution of marriage or legal separation. Conn. Gen. Stat. § 46b-40(c).

3. In the case of an annulment, the complaint must state that the marriage is void or voidable under the laws of Connecticut or the state in which the marriage was performed. Conn. Gen. Stat. § 46b-40(b). For a more thorough discussion on annulments, *see* Chapter 1, § 1.10, *above*.

4. A statement satisfying the residency requirements of Conn. Gen. Stat. § 46b-44. One of the parties must have been a resident of Connecticut for at least 12 months prior to bringing the dissolution action, will be a resident of Connecticut for at least twelve months prior to the dissolution decree entering, was domiciled in Connecticut when the parties were married and he or she has returned to Connecticut with the intention of permanently remaining, or the cause for the dissolution of the marriage arose after either party moved to Connecticut. Conn. Gen. Stat. § 46b-44. Typically, a party will allege either that he or she had been a resident for twelve months prior to bringing the dissolution action or will be a resident for the twelve months preceding the entering of the decree. Very few dissolutions are brought alleging either of the other two residency requirements. For a more thorough discussion on residency requirements, *see* Chapter 2, § 2.05, *above*.

#Comment Begins

Warning: At the time of the initial interview with a prospective client, the duration of his or her residence in Connecticut should be ascertained. If the proper residency requirement is not alleged, the complaint could be subject to dismissal.

#Comment Ends

5. It must be alleged as to whether any party to the action or one of their children is receiving municipal or state assistance, which includes HUSKY health insurance. The Attorney General must be made a party where state assistance is being received and the town or city clerk must be made a party where municipal assistance is being received. Conn. Gen. Stat. § 46b-55(a) and P.B. § 25-2(b).

6. The names and ages of biological and adopted children under the age of 23 must be specified in the complaint. In order for the court to issue valid and binding custodial orders, Connecticut must have jurisdiction over the children pursuant to the factors set forth in Conn. Gen. Stat. § 46b-115k. The court should have home state jurisdiction, meaning the child has lived in the state of Connecticut for 6 months prior to the commencement of any custody proceeding. Conn. Gen. Stat. § 46b-115k(a)(1). Alternatively, the court could exercise jurisdiction if Connecticut was the home state of the child within 6 months of the commencement of the child custody proceeding, provided one parent is still living in Connecticut. Conn. Gen. Stat. § 46b-115k(a)(2). Where there is no home state jurisdiction, the court may exercise jurisdiction where there is a significant connection between Connecticut and the child and at least one parent. Conn. Gen. Stat. § 46b-115k(a)(3). *See also* P.B. § 25-57. For a more thorough discussion on the jurisdictional requirements to enter custodial orders, *see* Chapter 2, §§ 2.39–2.50.

#Comment Begins

Warning: Personal identifying information, which includes the birthdate of children, are 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~~ excusing compliance with P.B. § 4-7(a). P.B. § 4-7(b). *See also* Family Matters Standing Orders, Chapter 20, § 20.38, *below*.

#Comment Ends

Since the court is permitted to make an educational support orders for a child under the age of 23, this necessitates listing the children under the age of 23 in the complaint. Conn. Gen. Stat. § 46b-56c(b)(1).

The parties' status regarding any current pregnancy, as well as whether the other party is a parent, must be alleged in the complaint or cross-complaint. Conn. Gen. Stat. § 46b-45a. This is important in that any child born to a parent during the marriage is presumed to be issue of the marriage. If there is a disagreement over whether the husband is the father, a hearing shall be held within a reasonable time after the birth of the child to determine paternity. Conn. Gen. Stat. § 46b-45a. The failure to address this issue at the time of the dissolution could preclude raising parentage in a future proceeding.

[3] Alleging Enforcement of Prenuptial or Postnuptial Agreements

If the parties executed a prenuptial or postnuptial agreement, which either party seeks to have enforced, it must be affirmatively pled in the complaint or cross complaint. P.B. § 25-2A. The plaintiff must specifically demand enforcement of the agreement in the complaint, while the defendant has sixty days from the return date to file the claims for relief with the court seeking enforcement of the prenuptial or postnuptial agreement. P.B. § 25-2A(a). Notwithstanding the mandatory nature of this Practice Book Section, the court has permitted a party to seek enforcement of the agreement not by a specific claim for relief, but by filing a notice. *Ostapowicz v. Wisniewski*, 210 Conn. App. 401(2022). A party seeking to contest the enforcement of the prenuptial or postnuptial agreement, within sixty days of the claim for enforcement, must file a reply stating that enforcement is not sought and the grounds under which that claim is made. P.B. § 25-2A(b).

#Comment Begins

Timing: Based upon the language of the practice book rule and its purpose of providing notice to the opposing party, if the plaintiff seeks enforcement of a prenuptial or postnuptial agreement, it is wise to do so in the initial complaint. Any amendment to the complaint, other than for a defect or mistake, requires court approval, and having a court deny the request should not be risked.

#Comment Ends#Comment Begins

Warning: While the trial court permitted the husband in *Ostapowicz* to seek enforcement of the prenuptial agreement through a notice, filed 9 months after the complaint, no practitioner should ever do that and hope to circumvent the mandates of the Practice Book. In that case, it was not until six months after receiving the notice that the wife sought to preclude the prenuptial agreement, which was denied. However, the court gave her time for additional discovery as a result.

#Comment Ends

[4] Preparing Claims for Relief in the Complaint

The complaint must set forth the plaintiff's claims for relief. Typically, it is done in a broad and general request. For example, there is no need to state specifically the amount of alimony being requested. The following are the types of claims for relief which may be included in the complaint:

1. A dissolution of marriage, annulment, or legal separation pursuant to Conn. Gen. Stat. § 46b-40.

2. Temporary and permanent custody of the minor children pursuant to Conn. Gen. Stat. § 46b-56.

3. Temporary and permanent child support pursuant to Conn. Gen. Stat. §§ 46b-83 and 46b-84.

4. Temporary and permanent alimony pursuant to Conn. Gen. Stat. §§ 46b-83 and 46b-82.

5. An assignment of property pursuant to Conn. Gen. Stat. § 46b-81.

6. An educational support order pursuant to Conn. Gen. Stat. § 46b-56c.

7. Counsel and expert fees pursuant to Conn. Gen. Stat. § 46b-62.

8. An assignment of the defendant's right, title, and interest in and to the real property located at _____, Connecticut. This language will enable you to file a *lis pendens*. Conn. Gen. Stat. § 52-235.

9. Such other and further relief, legal or equitable, as the court deems just and proper.

The necessity of including the requested relief is that a court may only grant the relief requested by a party in a complaint or cross complaint. *Tsopanides v. Tsopanides*, 181 Conn. 248, 249–250 (1980). The use of "such other and further relief" enables a court to make orders which may not have been specifically requested but which the court deems appropriate. *Ferrucci v. Ferrucci*, 11 Conn. App. 369, 374 (1987).

#Comment Begins

Strategic Point: It is better to err on the side of caution and include all of the requests for relief in the complaint so that you will not encounter a problem at the final hearing when seeking relief that is not in the complaint.

#Comment Ends

The complaint must be served with the automatic orders. P.B. § 25-2(c). Additionally, an appearance form must be served with the complaint for all actions commencing on or after October 1, 2018. Conn. Gen. Stat. § 46b-45 (a).
#Comment Begins

Forms: JD-CL-12–Appearance, *see*. Chapter 20, § 20.37, *below*; JD-FM-159—Divorce Complaint, *see* Chapter 20, § 20.10[1], *below*; JD-FM-237—Legal Separation Complaint, *see* Chapter 20, § 20.10[2], *below*; JD-FM-237—Annulment Complaint, *see* Chapter 20, § 20.10[3], *below*; JD-FM-160—Dissolution Answer, *see* Chapter 20, § 20.11, *below*; and JD-FM-158—Notice of Automatic Orders, *see* Chapter 20, § 20.09, *below*.

#Comment Ends

[5] Filing Requirements for a Non-Adversarial Divorce

In order to address dissolutions in which the parties have been in a brief, childless marriage, with little assets, the concept of a non-adversarial dissolution was instituted. Parties may jointly file for a non-adversarial divorce only if they satisfy the following:

1. An irretrievable breakdown of the marriage;

2. The marriage is 9 years or less in duration;

3. Neither party is pregnant;

4. There are no children born or adopted by the parties before or during the marriage;

5. Neither party owns real estate;

6. The fair market value of all property owned, less any debt owed on such property, is less than $80,000;

7. Neither party has a defined benefit pension plan, defined as being a promise by an employer to pay a specified monthly amount predicated upon the employee's earning history and employment tenure;

8. Neither party has a pending bankruptcy petition;

9. There is no other dissolution action pending, except for an existing action in Connecticut which qualifies to be converted to a non-adversarial dissolution;

10. There are no restraining or protective orders in effect; and

11. The parties satisfy the Conn. Gen. Stat. § 46b-44 residency requirements.

Conn. Gen. Stat. § 46b-44a(b).

Any change in these requirements prior to the dissolution must be conveyed to the court through the appropriate court filing. Conn. Gen. Stat. § 46b-44a(b). The joint petition shall be filed with the parties' financial affidavit and a separation agreement, if applicable. Conn. Gen. Stat. §§ 46b-44a(d) and 46b-44a(e). Additionally, the parties must state under oath that they consent to or waive service; neither is acting under coercion or duress; and they waive a trial, appeal, and alimony or spousal support. Conn. Gen. Stat. § 46b-44a(d). The court has prepared an information sheet which is a checklist of the items to be completed for a case to be completed as a non-adversarial dissolution.

If, after filing for a dissolution action on the regular docket, the parties meet all of the conditions for a non-adversarial dissolution, they may convert the action to a non-adversarial dissolution without incurring an additional filing fee. Conn. Gen. Stat. § 46b-44a(g).

The automatic orders apply to non-adversarial dissolutions, the only distinction being that the financial affidavits are filed with the complaint; there is not a 30-day delay in filing. P.B. § 25-25B.

If the parties file a separation agreement, they must state under oath that the terms are fair and equitable. Conn. Gen. Stat. § 46b-44a(e).

A party may revoke the non-adversarial dissolution by filing the notice of revocation with the court and the other party prior to the court granting the dissolution. Conn. Gen. Stat. § 46b-44b(a).

The non-adversarial dissolution will be assigned a disposition date within thirty (30) days of the joint petition being filed. Conn. Gen. Stat. § 46b-44c(a). Upon the court finding the requirements of Conn. Gen. Stat. § 46b-44a having been met, the marriage will be dissolved no later than 5 days from the disposition date. Conn. Gen. Stat. § 46b-44c(b). If the court cannot find that the requirements of Conn. Gen. Stat. § 46b-44a were met or that the separation agreement is fair and equitable, then a hearing will be set down within thirty (30) days of the disposition date. Conn. Gen. Stat. §§ 46b-44d(a) and 46b-44d(b). If, after this hearing, the court cannot grant the non-adversarial dissolution because the requirements of Conn. Gen. Stat. § 46b-44a were not met, the matter will be transferred to the regular docket, but no new filing fee shall be imposed by the court. Conn. Gen. Stat. §§ 46b-44d(b) and 46b-44d(c).
#Comment Begins

Forms: JD-FM-242—Joint Petition, *see* Chapter 20, § 20.73, *below*, JD-FM-243—Agreement, *see* Chapter 20, § 20.74, *below*, JD-FM-244—Notice of Changed Condition, *see* Chapter 20, § 20.75, *below*, JD-FM-245—Notice of Revocation, *see* Chapter 20, § 20.76, *below*, JD-FM-262—Divorce Decree, *see* Chapter 20, § 20.77, *below*~~, JD-FM-247—Motion to Waive Statutory Time Period, *see* Chapter 20, § 20.78, *below*, JD-FM-248—Information Sheet, *see* Chapter 20, § 20.79, *below*,~~ and JD-FM-249—Certification of Waiver of Service of Process, *see* Chapter 20, § 20.80, *below*, ~~and JD-FM-260—Automatic Orders—Non-Adversarial Divorce, *see* Chapter 20, § 20.81, *below*.~~

#Comment Ends

[6] Ascertaining the Timing For a Decree of Dissolution to Enter

~~In most instances, parties must wait 90 days from the return date to obtain a dissolution of marriage. However, in certain instances, the parties may seek a waiver and obtain a dissolution~~

~~earlier. To successfully obtain such a waiver, the plaintiff must submit an affidavit which includes:~~
~~1. How service was made on the defendant. If abode service, the affidavit must assert: that the address at which the defendant was served was his or her actual abode; the plaintiff did not know of an address where the defendant resided other than the abode at which he or she was served; and the most recent date that the plaintiff has personal knowledge of the defendant residing at such residence;~~
~~2. Whether there are children of the marriage or if either party is pregnant;~~
3. Whether a restraining or protective, under ~~Conn. Gen. Stat. §§ 46b-15 or 46b-38c, is in effect;~~
~~4. Whether the plaintiff is requesting alimony; and~~
5. Whether the parties have joint property or debt. ~~Conn. Gen. Stat. § 46b-67 (c)(1).~~

~~A court may waive the 90-day time period if, pursuant to the affidavit of the plaintiff, the defendant was properly served; there are no children and neither party is pregnant; there is no restraining or protective order, the plaintiff is not requesting alimony; and there is no joint property or debt. Conn. Gen. Stat. § 46b-67 (c)(3). In waiving the time period, the court may enter a dissolution decree and restore the birth name of either party without a hearing. Conn. Gen. Stat. § 46b-67 (c)(3).~~

~~However, if any of the information in the plaintiff's affidavit is answered to the contrary, the court shall hold a hearing to determine whether it is appropriate to waive the 90-day waiting period. Conn. Gen. Stat. § 46b-67 (b). At the time of such hearing the court may enter a decree of dissolution. Conn. Gen. Stat. § 46b-67 (b).~~
~~#Comment Begins~~
~~Strategic Point: For parties engaging in mediation, the statutory revision permitting a waiver of the 90-day waiting period may be especially beneficial. Instead of filing the action upon the commencement of mediation, there can be a delay until an agreement is reached and then a waiver sought. In this fashion, if mediation is unsuccessful, the divorce action will not be viewed "old" in the eyes of the court and fast-tracked when little has been done by way of discovery.~~

~~#Comment Ends#Comment Begins~~

~~**Forms:** JD-FM-247, Motion to Waive Statutory Time Period – Divorce or Legal Separation, *see* Chapter 20, § 20.78, *below*.~~

~~#Comment Ends~~

Parties are no longer required to wait 90 days after the return date to have their marriage dissolved. The court may proceed on the complaint as early as two days after the return date or 20 days after the filing of a cross complaint or amended complaint. Conn. Gen. Stat. § 46b-67. However, the 20 period will not apply where the other party consents to the filing of the cross complaint or amended complaint or the defendant has not appeared. Conn. Gen. Stat. § 46b-67. If the defendant was served personally or by abode, a default judgment may enter 30 days after the return date. If the defendant was served by any other means, a default judgment may enter 60 days after the return date. Conn. Gen. Stat. § 46b-67. To obtain the default judgment, the plaintiff may submit a motion for entry of judgment with an affidavit stating: the manner of service, the place of service being the residence of the defendant and the date on which the plaintiff last knew that to be the residence of the defendant; whether there are any children or if a party is pregnant; if there is a restraining order; whether there is a request for alimony; and if there is any jointly owned property or debt. Conn. Gen. Stat. § 46b-67.

[7] Assessing Resolution Plan Dates

With the advent of the Pathways program, case management dates have yielded to resolution plan dates. Between 30 and 60 days from the return date, the court will assign the matter for a resolution plan date with a family relations counselor. P.B. § 25-50A. The purpose of the resolution plan date is to ascertain the status of the case, the disputed issues, and the court resources required for the matter to reach a conclusion. The family relations office will then assign a Track based upon these considerations. P.B. § 25-50A. The court receives the Track assignment from the family relations office and then shall enter a scheduling order. P.B. § 25-50A.

The scheduling order issued by the court on Track B and Track C cases may include: one or more case dates; assignment to the motion docket; a pretrial date; a trial date; and a discovery schedule. P.B. § 25-50A. Five business days prior to a pretrial the parties shall submit: a non-argumentative memorandum regarding the alimony and property division statutory criteria; proposed orders; current sworn financial affidavits; and, if applicable, child support guidelines.

§ 3.18 Filing Custody and Visitation Actions

[1] Preparing the Application

Where there is a custody action arising other than in a dissolution of marriage, civil union, legal separation, or annulment action, an application for custody or visitation must be filed containing facts as set forth more fully below. If the application is being brought by a person who has not yet been adjudicated a parent, the requirements to establish standing must be included. The application must allege, with supporting facts, that the individual is a presumptive or de facto parent.

1. The name and date of birth of the minor children and of the parents or legal guardian of the minor children. P.B. §§ 25-3 and 25-4.

2. The facts necessary to give the court jurisdiction over the children. *See* § 3.17[1], *above*. For a more thorough discussion of jurisdiction over the children, *see* Chapter 2, §§ 2.39–2.50, *above*.

3. If the application is being brought by a non-parent, the requirements to establish standing to seek custody or visitation. The application must allege, with supporting facts, that there is a parent-like relationship and denial of visitation would cause real and significant harm. *See Roth v. Weston*, 259 Conn. 202 (2002), and *Fish v. Fish*, 285 Conn. 24 (2008). For a more thorough discussion of third-party custody and visitation, *see* Chapter 8, § 8.10, *below*.

4. The application must state whether either party or a child has received support from the state of Connecticut or any municipality. If so, the Attorney General in the case of state assistance, or the city or town clerk for municipal assistance, must be served with the application. Conn. Gen. Stat. § 46b-55.

#Comment Begins

Forms: JD-FM-161—Custody/Visitation Application - Parent, *see* Chapter 20, § 20.12, *below*.

#Comment Ends

[2] Preparing the Claims for Relief

As with a complaint for a dissolution of marriage, the application for custody and visitation must have claims for relief, which may include:

1. Sole custody pursuant to Conn. Gen. Stat. § 46b-56.

2. Joint legal custody pursuant to Conn. Gen. Stat. § 46b-56.

3. A designation of the child's primary residence pursuant to Conn. Gen. Stat. § 46b-56.

4. Visitation pursuant to Conn. Gen. Stat. § 46b-56.

5. Child support, temporary and permanent, pursuant to Conn. Gen. Stat. §§ 46b-83 and 46b-84.

6. An educational support order pursuant to Conn. Gen. Stat. § 46b-56c.

7. Such other and further relief, legal or equitable, as the court deems just and proper.

[3] Commencing an Action for Custody or Visitation

Custody and visitation actions are commenced with an order to show cause. P.B. §§ 25-3 and 25-4. The automatic orders and an affidavit re: custody must be appended to the application. P.B. §§ 25-3, 25-4, and 25-5. The application must then be served on all parties to whom notice must be provided, specifically any legal, adoptive, adjudicated or presumptive parent.
#Comment Begins

Forms: JD-FM-161—Custody/Visitation Application - Parent, *see* Chapter 20, § 20.12, *below*. JD-FM-158—Notice of Automatic Orders, *see* Chapter 20, § 20.09, *below*. JD-FM-164 and 164A—Affidavit Concerning Children and Addendum to Affidavit Concerning Children, *see* Chapter 20, § 20.20, *below*. JD-FM-221—Verified Petition for Visitation—Grandparents and Third Parties, *see* Chapter 15, § 20.31, *below*.

#Comment Ends#Comment Begins

Warning: Because of the parentage act and the changes made therein, there will be new forms coming out. However, since the act is not effective until January 1, 2022, the forms have not yet been completed and released.

#Comment Ends

§ 3.19 Filing Appearances and Limited Appearances

[1] Overview

When the attorney or self-represented party signs the writ, that shall constitute an appearance on behalf of the plaintiff. P.B. § 3-1. The defendant should file an appearance on or before two days after the return date, which shall be sent to opposing counsel. P.B. § 3-2. Filing an appearance ensures that the party will receive notification of court scheduled events. P.B. § 3-7. Counsel may file a limited appearance for a particular issue or motion. P.B. § 3-8. For a more thorough discussion of limited appearances, *see* § 3.19[3], *below*.

#Comment Begins

Warning: When filing a post judgment motion, since it is not commenced by a writ, counsel for the plaintiff must file a separate appearance.

#Comment Ends

An attorney is not permitted to appear in court until he or she has filed an appearance. P.B. § 3-7.

When filing the appearance, counsel must indicate whether he or she will accept service of pleadings by electronic means. If counsel does not consent to service by electronic means, then any service made in that fashion will be invalid. In the event no box is checked, confirm with counsel in writing as to whether he or she consents to electronic delivery of pleadings.

A party may file an appearance in addition to counsel, which is considered a party with dual representation. P.B. § 25-6A. In such instances, if a party seeks to file a pleading, it must be signed by the attorney of record as well. P.B. § 25-6A. If a party with dual representation files a motion without his or her attorney signing the same, the court may stay any proceedings on the motion until it is adopted by the attorney of record or the party files an appearance in lieu of the attorneys of record. P.B. § 25-6A.

#Comment Begins

Forms: JD-CL-12—Appearance, *see* Chapter 20, § 20.37, *below*. JD-CL-121—Limited Appearance, *see* Chapter 20, § 20.40, *below*. JD-CL-122—Certificate of Completion of Limited Appearance, *see* Chapter 20, § 20.41, *below*.

#Comment Ends

[2] Replacing Counsel

In the event a party is already represented by counsel, when new counsel appears on his or her behalf, it shall either be in addition to or in lieu of counsel of record. P.B. § 3-8. The in lieu of appearance will be deemed as an automatic withdrawal of the appearance of prior counsel unless prior counsel files a limited appearance to object to the in lieu of appearance. P.B. § 3-9(a).

[3] Filing a Limited Appearance

Generally, when an appearance is filed, it applies to all aspects of the action. P.B. § 3-8. An appearance in a child support matter is not imputed into the dissolution matter. P.B. § 25a-3. However, in 2013, the Court Rules were amended to permit limited appearances or limited scope representation. P.B. § 3-8(b). A limited appearance may not address a specific issue or limit

representation for a portion of a hearing without court approval. P.B. § 3-8(b). The limited appearance may not refer to a time limitation or fee limit for the appearance. P.B. § 3-8(b). The limited appearance is filed in addition to the appearance of the self-represented party, who may not then represent himself or herself in the matters subject to the limited appearance. P.B. § 3-8(b). An attorney with a general appearance in the matter may only file a limited appearance if the party files an appearance in addition to and at the same time the limited appearance is filed. P.B. § 3-8(b).

The limited appearance must state the event or proceeding for which the attorney is appearing and that he or she is available to be served only on those matters described by the limited appearance. P.B. § 3-8(b). The limited appearance form enables counsel to specifically delineate the motion, pretrial, status conference, or hearing. Upon completion of the limited appearance, counsel must file a certificate of completion which must exactly match the proceeding to which the limited appearance applied.

The opposing attorney may contact the party directly on all matters outside the scope of the limited appearance. R.P.C. Rule 4.2.
#Comment Begins

Forms: JD-CL-121—Limited Appearance, *see* Chapter 20, § 20.40, *below*. JD-CL-122—Certificate of Completion of Limited Appearance, *see* Chapter 20, § 20.41, *below*.

#Comment Ends

[4] Withdrawing Appearances

If another attorney has filed an appearance for a party, which is not in lieu of the first attorney, he or she may file a motion to withdraw indicating that replacement counsel has filed an appearance. P.B. § 3-9(b). The appearance of an attorney is deemed automatically withdrawn 180 days after a final judgment in a dissolution, annulment, or legal separation action, where there has been no appeal. P.B. § 3-9(c). If there is an appeal or motion to open the judgment filed within the initial 180-day period, the appearance will not be deemed withdrawn until 180 days after final judgment on the appeal or motion to open. P.B. § 3-9(c).

For all other withdrawals of appearance, the attorney must receive court approval. P.B. § 3-9(d). In filing a motion to withdraw an appearance, counsel must set forth in the motion that there is good cause, typically by stating that there is no longer a viable attorney-client relationship. P.B. § 3-10(a). Counsel should not, within the motion, set forth with specificity what the reasons are for the withdrawal, but should wait for a hearing, if one is required. The motion must state whether and when the case is set down for pretrial or trial. P.B. § 3-10(d). The motion must be sent to all counsel of record and served on the client. P.B. § 3-10(a).

The notice to the client, to be served with the motion, must state the following:

1. That the attorney is seeking to withdraw his or her appearance.

2. The date and time the motion will be heard. Since the motion must be served by order to show cause, the papers will have been submitted to the court for a hearing date. It must be stated whether the hearing will be in person or remote. Counsel seeking to withdraw shall provide the party with the information necessary to access the remote

hearing. If this hearing venue (remote or in person) is determined after the motion is scheduled, the attorney seeking to withdraw shall provide an amended notice to the party to provide this information.

3. A statement that the party may appear in court on the date and time established to be heard regarding the motion.

4. If the motion is granted, the party should obtain new counsel or file their own appearance.

5. If an appearance is not filed, he or she will not receive notice of future court dates.

P.B. § 3-10(b).

An attorney filing a limited appearance may, after the completion of the scope of the representation as defined in the limited appearance, file a certification of completion which will act as a withdrawal. P.B. § 3-9(c).
#Comment Begins

Forms: JD-CL-122—Certificate of Completion of Limited Appearance—*see* Chapter 20, § 20.41, *below*. Motion to Withdraw Appearance, *see* Chapter 20, § 20.44, *below*.

#Comment Ends

[5] Hearing on a Motion to Withdraw

If a client does not consent to the withdrawal, a hearing must be held. The hearing should be a closed hearing, with the court room sealed, and opposing counsel not present. *Matza v. Matza*, 226 Conn. 166 (1993). While counsel should not detail in the motion the specific reasons for seeking withdrawal, as that will prejudice the client and constitute a breach of the attorney-client privilege, these reasons may be disclosed in the closed hearing. *Matza*, 226 Conn. at 166.

[6] Withdrawing Appearance in Accordance with the Rules of Professional Conduct

Frequently the reason counsel seeks a withdrawal from representation is due to a client insisting on a course of action which the attorney believes to be a violation of the Rules of Professional Conduct. An attorney may withdraw his or her appearance if:

1. A violation of a law or the Rules of Professional Conduct will result from the representation.

2. A physical or mental condition of the lawyer prevents or impairs his or her ability to continue the representation.

3. He or she has been discharged by the client.

Rules of Professional Conduct § 1.16(a).

The lawyer may seek permission from a court to withdraw if:

1. Such withdrawal may be done without materially affecting the client.

2. The lawyer believes that the client is persisting in conduct that is fraudulent or criminal.

3. The lawyer's services have been used by the client to perpetrate a fraud or crime.

4. The actions the client requests the lawyer to take are ones with which he or she has a fundamental disagreement or which he or she finds repugnant.

5. The lawyer has warned the client that failure to fulfill an obligation will result in withdrawal and the client does not fulfill the obligation.

6. An unreasonable financial burden will result from the representation.

7. The existence of other good cause.

Rules of Professional Conduct § 1.16(b).

§ 3.20 Filing the Answer and Cross Complaint

The defendant may file an answer that admits or denies the allegations of the complaint. P.B. § 25-9(1). The defendant may also file a cross complaint at the same time as the answer. The contents for the cross complaint are the same as the complaint. P.B. §§ 25-9 and 25-10.
#Comment Begins

Strategic Point: The benefit to filing an answer and cross complaint is that the defendant may still proceed with the action if the plaintiff withdraws his or her complaint.

#Comment Ends#Comment Begins

Forms: JD-FM-159—Divorce Complaint, *see* Chapter 20, § 20.10, *below*. JD-FM-160—Dissolution Answer, *see* Chapter 20, § 20.11, *below*.

#Comment Ends

§ 3.21 Amending the Complaint or Cross Complaint

Within the first thirty days after the return date, the plaintiff may amend a defect or mistake in the writ or complaint, without seeking approval from the court or adverse party. P.B. § 10-59. However, if an amendment to the complaint is sought more than thirty days after the return date, the amendment must be made pursuant to court order, with the written consent of the adverse party, or by filing a leave to amend the complaint. P.B. § 10-60(a). The amendment must be accompanied by a redline copy of the document being amended so that the court may see the changes. P. B. § 10-60(a)(3). If a request for leave to amend the complaint is filed and the

defendant does not file an objection within fifteen days, the amendment is deemed to have been filed by consent of the adverse party. P.B. § 10-60(a)(3). An objection must set forth, in writing, the specific paragraphs to which there is an objection and the reasons therefore. P.B. § 10-60(a)(3).

§ 3.22 Withdrawing Actions

Once there has been a hearing on an issue of proof, the action may not be withdrawn without court approval. Conn. Gen. Stat. § 52-80. This statute has been interpreted to preclude withdrawal after evidence has commenced without the hearing being concluded. *Grimm v. Grimm*, 74 Conn. App. 406, 410 (2002).

§ 3.23 Waiting Period

The parties may not obtain a dissolution or legal separation until 90 days after the return date. Conn. Gen. Stat. § 46b-67. However, in the event a request for conciliation is granted pursuant to Conn. Gen. Stat. § 46b-53, and one party refuses to attend the conciliation sessions, the dissolution may not occur until after the expiration of 6 months from the return date. Conn. Gen. Stat. § 46b-53(b). For a more thorough discussion on conciliation, *see* § 3.32, *below*.

Typically, a dissolution may not be granted within twenty days of the filing of a cross complaint. However, if the plaintiff consents to the filing of the cross complaint, the twenty-day period will be waived. Conn. Gen. Stat. § 46b-67. Typically, this is only an issue when a cross complaint is filed on the eve of trial.

These waiting periods do not apply to non-adversarial dissolutions, which may be granted no more than 30 days after filing the joint petition. Conn. Gen. Stat. § 46b-44c(a). Additionally, the parties may seek a waiver of the 90-day waiting period. Conn. Gen. Stat. § 46b-67(b).
#Comment Begins

Forms: JD-FM 247—Motion to Waive Statutory Time Period *See*, Chapter 20, § 20.78, *below*.

#Comment Ends

PART IV: APPLYING THE AUTOMATIC ORDERS

DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

§ 3.24 CHECKLIST: Applying the Automatic Orders

3.24.1 Applying the Automatic Orders

□ Automatic orders in general:
- ○ The automatic orders are enforceable against the plaintiff when the complaint is signed, and the defendant when he or she is served with the complaint.
- ○ The automatic orders for dissolution actions and custody and visitation applications are divided into two subsections, one which applies to cases where there are children and the other which applies in all cases.
- ○ The automatic orders apply unless there is a valid contradictory order.

○ The automatic orders apply during the pendency of the action unless terminated, modified, or amended. **Authority:** P.B. § 25-5. **Discussion:** *See* § 3.25[1], *below*. **Forms:** JD-FM-158—Notice of Automatic Orders, *see* Chapter 20, § 20.09, *below*.

□ Automatic orders in cases involving children or where there are no children:

○ The following automatic orders apply in dissolution of marriage actions in which there are children and custody and visitation applications:

• Neither party shall remove any of the children permanently from Connecticut without approval of the other party or court.

• A party who vacates the home must notify the other party or their attorney of their new address within 48 hours.

• Where the parents are living apart, the children shall have contact with the other parent consistent with the habits and past practices of the family.

• The existing medical, hospital, and dental insurance shall be maintained and the children shall not be removed.

• Within sixty days from the return date, the parties shall participate in parenting education.

• Prior court orders which are contrary to the automatic orders will not be replaced by the automatic orders.

○ The following automatic orders apply irrespective of whether there are children:

• Neither party shall dispose of property without the written consent of the other or court order, except to pay reasonable and usual household expenses, reasonable attorney fees, and transactions in the usual course of business.

○ Securities may be sold if: it is intended to preserve the estate; is on the open market or at an arms-length transaction; and the proceeds are placed in the account from which they were sold and continue to be subject to the automatic orders.

○ If investments decisions were made jointly, they will continue to be done jointly unless there is an urgent situation requiring immediate action, for which a party may act unilaterally, but must immediately inform the other party.

• Property shall not be concealed by either party. This includes property in which the concealment began prior to the action and continued after filing the action.

• Neither party shall encumber an asset without the consent of the other or court order, except for customary and usual household expenses, reasonable attorney fees, or transactions in the usual course of business.

• Neither party shall convert a joint asset to a sole asset without the consent of the other party or court order.

• Neither party shall incur unreasonable debts.

• Each party shall maintain existing medical, hospital, and dental insurance and not cause the other to be removed from coverage.

• All existing insurance policies shall be maintained and neither shall be removed from coverage or as a beneficiary.

• If the parties are living together, neither can deny the other use of the home. Either party may file a motion for exclusive possession. **Authority:** Conn. Gen. Stat. §§ 46b-69b(a) and 46b-69b(d); *Powell-Ferri v.*

Ferri, 326 Conn. 457 (2017), *O'Brien v. O'Brien*, 326 Conn. 81 (2017), *Dutkiewicz v. Dutkiewicz*, 289 Conn. 362 (2008), *Wald v. Courtland-Wald*, 226 Conn. App. 752 (2024), *Grant v. Grant*, 171 Conn. App. 851 (2017), *Parlato v. Parlato*, 134 Conn. App. 848 (2012), *Parrotta v. Parrotta*, 119 Conn. App. 472 (2010), *Quasius v. Quasius*, 87 Conn. App. 206 (2005), and *Strich v. Strich*, 47 Conn. Supp. 530 (2002); P.B. §§ 25-5(a), 25-5(b) and 25-5A(a). **Discussion:** *See* §§ 3.25[2] and 3.25[3], *below*. **Forms:** JD-FM-149—Parenting Education Program, *see* Chapter 20, § 20.08, *below*. JD-FM-158—Notice of Automatic Orders, *see* Chapter 20, § 20.09, *below*.

□ Automatic orders which are applicable in all cases include the following:

○ The sworn financial affidavits of the parties shall be exchanged thirty days after the return date.

○ The ~~case management~~resolution plan date is included in the automatic orders.

• By the ~~case management~~resolution plan date, the court shall determine which track each case shall take, including scheduling.

~~○ The case management agreement must state the dates by which the parties will exchange financial affidavits, submit and answer interrogatories and requests for production, and the completion dates for appraisals, disclosure of experts, and depositions~~. **Authority:** P.B. §§ 25-5(c), 25-30(a), 25-50, 25-50(a), 25-50(c), and 25-50(d). **Discussion:** *See* § 3.25[4], *below*. **Forms:** JD-FM-163—Case Management Agreement/Order, *see* Chapter 20, § 20.14, *below*. JD-FM-199—Proposed Parental Responsibility Plan, *see* Chapter 20, § 20.25, *below*. Family Matters Standing Orders, *see* Chapter 20, § 20.38, *below*.

□ Applying the Automatic Orders to Non-Adversarial Dissolutions:

○ The same automatic orders which apply to all cases apply in non-adversarial dissolutions.

○ The parties must exchange financial affidavits.

Authority: P.B. § 25-25B

Discussion: *See* § 3.25[5], *below*. *See also* § 3.25[3], *below*.

□ Enforcing Violations of the Automatic Orders:

○ A violation of the automatic orders should be raised in a motion for contempt.

○ It is within the discretion of the court to grant or deny the motion.

○ The court may defer the motion until a final hearing. **Authority:** *Powell-Ferri v. Ferri*, 326 Conn. 457 (2017), *O'Brien v. O'Brien*, 326 Conn. 81 (2017), *Ferri v. Powell-Ferri*, 317 Conn. 223 (2015), *Sunbury v. Sunbury*, 216 Conn. 673 (1990), Leonova v. Leonova, 201 Conn. App. 285 (2020) and *Greenan v. Greenan*, 150 Conn. App. 289 (2014). **Discussion:** *See* § 3.25[6], *below*.

□ Automatic order for child support actions:

○ Neither party will remove a child from medical, dental, and hospital insurance and will maintain existing coverage. **Authority:** P.B. §§ 25-5A and 25-5A(a). **Discussion:** *See* § 3.26, *below*. **Forms:** JD-FM-210—Notice of Automatic Orders—Petition for Child Support, *see* Chapter 20, § 20.28, *below*.

§ 3.25 Applying Automatic Orders in Dissolution of Marriage and Custody and Visitation Actions

[1] Applying Automatic Orders—In General

The automatic orders are enforceable against the plaintiff when the complaint or application for custody and visitation is signed. P.B. § 25-5. The defendant is bound by the automatic orders upon being served with the complaint or application for custody and visitation. P.B. § 25-5. There are two sections for the automatic orders. The first section applies only to cases involving children, while the second section applies to all cases. The automatic orders will apply unless there is a contrary prior order, such as a restraining or protective order. P.B. § 25-5. Unless terminated, modified, or amended, the automatic orders remain in place during the pendency of the action. P.B. § 25-5.

#Comment Begins

Forms: JD-FM-158—Notice of Automatic Orders, *see* Chapter 20, § 20.09, *below*.

#Comment Ends

[2] Applying to Cases Involving Children

The following automatic orders apply to cases involving children:

1. Without the written consent of the other party or court approval, neither party shall permanently remove the children from Connecticut. P.B. § 25-5(a)(1). This provision is often misconstrued where one parent believes he or she can prevent the other parent from taking a trip out of state. However, this only applies when a party is seeking to *permanently* remove or relocate with the child.

2. If a party vacates the family home, he or she will notify the other party or the other party's attorney of their new address within 48 hours. P.B. § 25-5(a)(2). This provision does not apply in the event there is a contradictory court order, such as a restraining order specifically precluding one party from learning where the other is residing.

3. Parents who are living apart during the proceedings shall assist the children in having contact with the other parent, consistent with the habits of the family. P.B. § 25-5(a)(3). This includes personal, telephone and written contact. In the event of a prior contradictory order, this section will not apply.

4. The existing medical, hospital, and dental insurance will be maintained and neither party will remove the children from any insurance. P.B. § 25-5(a)(4). In an action solely for child support, this is the only applicable automatic order. P.B. § 25-5A(a).

5. The parties are to participate in the parenting education program within sixty days from the return date or the filing of the custody or visitation application. Conn. Gen. Stat. § 46b-69b(a) and P.B. § 25-5(a)(5). The parenting education program is a six-hour course. There is a fee charged for taking the course, which must be paid unless a fee waiver is obtained. Conn. Gen. Stat. § 46b-69b(d). The parties may be excused from the

parenting education program if the court approves their agreement not to participate, the court determines the participation by a parent is unnecessary, or a comparable program is selected. Conn. Gen. Stat. § 46b-69b(a).

The requirement that the parties attend parenting education has survived a due process constitutional attack. *Dutkiewicz v. Dutkiewicz*, 289 Conn. 362 (2008).
#Comment Begins

Strategic Point: While the court often sends the parenting education order to counsel after the commencement of the case, it is advisable at the start of the dissolution action to send the client a blank parenting education order so that he or she may sign up and attend the course within the mandated sixty days from the return date. Having the parenting education course completed early on may avoid delays in obtaining the dissolution, as some judges will not proceed with an uncontested hearing until the course has been completed.

#Comment Ends#Comment Begins

Warning: While the statute permits a party to be excused from attending parenting education, in practice that rarely occurs.

#Comment Ends#Comment Begins

Strategic Point: If a party resides out of state, investigate substitute programs for the client to attend so as to ensure this requirement will be fulfilled.

#Comment Ends

6. Prior court orders, which include civil or criminal restraining orders, will not be changed or replaced by the automatic orders. P.B. § 25-5(a)(6). Accordingly, an amendment, modification, or termination of a restraining order may not be made through the automatic orders, but must be made by the court that rendered the original restraining order.

#Comment Begins

Forms: JD-FM-149—Parenting Education Program, *see* Chapter 20, § 20.08, *below*. JD-FM-158—Notice of Automatic Orders, *see* Chapter 20, § 20.09, *below*.

#Comment Ends

[3] Applying to All Cases Irrespective of Whether There Are Children Involved

In all cases, irrespective of whether there are children, the following automatic orders apply:

1. Except for customary and usual household expenses, reasonable attorney's fees, or transactions in the usual course of business, neither party is permitted to sell, transfer,

exchange, assign, remove or in any way dispose of any property without the written consent of the other party or court order. P.B. § 25-5(b)(1). The loss of assets due to market decline is not considered a violation of the automatic orders. *Quasius v. Quasius*, 87 Conn. App. 206 (2005). A finding of dissipation requires proof of financial misconduct, intentional waste or selfish financial impropriety. *O'Brien v. O'Brien*, 161 Conn. App. 575 (2015). Use of assets to pay customary and usual household expenses is not a violation of the automatic orders and cannot justify a contempt finding for violation of the automatic orders. *Grant v. Grant*, 171 Conn. App. 851 (2017). However, the courts are split as to whether a request for counsel fees, to retain criminal counsel, is permitted under the automatic orders. *See Parrotta v. Parrotta*, 119 Conn. App. 472 (2010), and *Strich v. Strich*, 47 Conn. Supp. 530 (2002).

A trust, with independent trustees and for which a party was beneficiary, which is then decanted into a new trust cannot be considered a violation of the automatic orders by the party who was a beneficiary of the trust as the automatic orders preclude actions but do not require affirmative actions to be taken. *Powell-Ferri v. Ferri*, 326 Conn. 457 (2017). Specifically, the beneficiary could not be required under the guise of the automatic orders to have the assets transferred back to the trust.

#Comment Begins

Strategic Point: Permission should be obtained for a client who proposes a transaction which either will or may be contrary to this automatic order.

#Comment Ends

The exercise of stock options without permission of the court or the opposing party is a violation of the automatic orders, the remedy for which can be the inclusion of the value of what the options would be worth on the date of the dissolution had they not been sold. *O'Brien v. O'Brien*, 326 Conn. 81 (2017).

#Comment Begins

Warning: The broad reading of *O'Brien* is that stocks cannot be traded by either party in the usual course of business during the dissolution action. In order to prevent such issues from occurring or a contempt action being filed, permission should be proactively sought to make such financial decisions during the dissolution action. The court did indicate that it was not making a bright line rule, and for example, a party whose business is buying and selling securities would not be treated in the same fashion as the husband in *O'Brien*.

#Comment Ends

To address the issue raised on *O'Brien*, regarding the sale assets, the automatic orders were further clarified. Provided the following criteria are met, a sale of securities are not considered a violation of the automatic orders: (1) the intent of the sale is to preserve the parties' estate; (2) the transaction is either on the open market or an arms-length private transaction; and (3) the proceeds from the sale of the transaction remain subject to the automatic orders in the

account they were in prior to the sale or transaction being consummated. These exceptions do not apply to the purchase or sale of an interest in an entity on the private market in which a party is or will become an active participant i.e. the sale of an entity from which a party derives his or her primary income.

If the parties historically jointly decided on issues pertaining to the sale of securities, they should do so during the pendency of the action. However, in the event the sale is of an urgent nature regarding timing and there is a good faith belief that there would be loss to the estate to delay the sale of the asset in having the discussion, then the party proposing the sale may proceed with it, immediately notifying the party of the transaction.

A party who, through the course of the marriage, bought and sold motorcycles and continued to do so while the action was pending did not violate the automatic orders even though the other party did not approve of the purchases. *Wald v. Courtland-Wald*, 226 Conn. App. 752 (2024).

2. Property shall not be concealed by either party. P.B. § 25-5(b)(2). Typically, the automatic orders apply to prospective actions. However, in the case of concealment, it can apply to efforts made by one party to hide assets prior to the dissolution action being brought, which concealment continues after the commencement of the action. *See Parlato v. Parlato*, 134 Conn. App. 848 (2012) (a husband who withdrew funds from a home equity line of credit one month before commencing the dissolution action and refused to return the funds after ordered to do so by a court, was found to have violated the automatic orders by continuing to conceal assets).

#Comment Begins

Strategic Point: Some litigants engage in "divorce planning" knowing that the automatic orders apply upon the signing of or being served with a complaint. Such "divorce planning" may include moving assets out of their name prior to the dissolution action. To the extent that the spouse refuses to have the assets returned to the marital estate, *Parlato* can be cited to establish a violation of the automatic orders and seek a return of the assets.

#Comment Ends

#Comment Begins

Warning: Where a party has concealed assets, it is wise to put that issue before a court as soon as possible, to avoid the permanent disposition of the assets. Additionally, the court may be unable to safeguard assets which were dissipated, but may be able to make orders protecting any remaining assets from dissipation.

#Comment Ends

3. Except for customary and usual household expenses, reasonable attorney's fees, or transactions in the usual course of business, neither party will encumber any asset without

the written consent of the other party or court order. P.B. § 25-5(b)(3). This automatic order does not apply to the filing of a *lis pendens*.

4. Neither party will cause a joint asset to be transferred into the name of one party without the consent of the other party or court order. P.B. § 25-5(b)(4).

5. Neither party will incur unreasonable debts including borrowing on a credit line secured by the family residence, encumbering assets, or unreasonably using credit cards and obtaining cash advances. P.B. § 25-5(b)(5).

6. Each party will maintain existing medical, hospital, and dental insurance and not cause the other to be removed from any such coverage. P.B. § 25-5(b)(6).

7. All existing insurance policies, including life insurance, automobile insurance, homeowner's insurance and renter's insurance, will be maintained. Neither party shall be removed from coverage, nor the beneficiaries of the life insurance changed. P.B. § 25-5(b)(7).

8. If, at the time of service, the parties are living together, neither may deny the other the use of the home. P.B. § 25-5(b)(8). This automatic order does not apply if there is a prior contradictory court order, such as a restraining order in which one party is precluded from being in the home. Additionally, this provision does not preclude a party from seeking exclusive possession of the family residence.

[4] Applying the Automatic Orders in All Cases

In all cases, the following automatic orders apply:

1. Within thirty days after the return date, the parties will complete and exchange sworn financial affidavits. Thereafter, he or she may enter and submit to a court a stipulated interim order allocating income and expenses. P.B. § 25-5(c)(1).

#Comment Begins

Strategic Point: From a practical standpoint, the parties rarely have a completed financial affidavit within thirty days from the return date. It is better to have an accurate financial affidavit rather than one prepared in haste. However, it should be the first document the client works on, especially if *pendente lite* orders are needed.

#Comment Ends

#Comment Begins

Warning: Despite this automatic order indicating that after the submission of the financial affidavits, temporary orders may be entered, the court is permitted to make orders in the absence of a financial affidavit being filed by one party. *See* P.B. § 25-30(a).

#Comment Ends

The prior iteration of the Court Rules provided for case management dates. Such dates were rendered unnecessary because of the change to the Pathways Program. The Court Rules have now caught up with Pathways program and the automatic orders no longer reference the case management date.

~~2. The automatic orders set forth the case management date. P.B. § 25-5(c)(2). The case management date is 90 days after the return date, at which time the case management agreement must be filed in court. P.B. § 25-50. Under the new Pathways Program, courts do not require the filing of a case management agreement, despite the Practice Book rules to the contrary. However, the court is to assign the track of the case and dates for hearings, pretrial and trial on or before the case management date. P.B. § 25-50. The track is assigned by the court after a resolution plan date which requires a conference with family relations to discuss the case and status. In the event custody is contested, the parties and their counsel are required to appear in court on the case management date. P.B. § 25-50(d). Conversely, if the case has only financial disputes, the parties are not required to appear in court on the case management date, provided the case management agreement, executed financial affidavits, and a custody or visitation agreement, if applicable, have been previously submitted. P.B. § 25-50(c). If the case is uncontested, after receipt of the case management agreement, the court will schedule the matter for a final hearing. P.B. § 25-50(a).~~

~~#Comment Begins~~

~~**Warning:** The Pathways Program essentially did away with the requirements of case management agreements. However, the Rules of Practice have not changed as a result. Thus, P.B. § 25-50, is somewhat contradictory by requiring a track to be assigned by the case management date and also requiring the filing of a case management agreement. Practically speaking, case management agreements are no longer being filed.~~

#Comment Ends

~~For either cases with financial disputes or custody disputes cases, the parties must select dates by which the financial affidavits will be exchanged, interrogatories and requests for production submitted and answered, appraisals of assets completed, depositions completed, and disclosure made of expert witnesses. The parties must indicate whether they will be attending private mediation or a court provided pretrial.~~

Where custody is contested, the court may, at the case management ~~conference~~date, appoint an attorney or guardian *ad litem* for the minor child and order a custody evaluation, if this has not already occurred. P.B. § 25-50(d).

#Comment Begins

Strategic Point: Many times, when motions for contempt are brought with respect to a violation of the automatic orders, the courts may defer the issue to the time of trial. Notwithstanding and especially when there are egregious violations of the automatic orders, the motion for contempt

should be filed and pursued in a timely fashion with a showing as to why it would be detrimental to postpone the issue until trial.

#Comment Ends#Comment Begins

Forms: JD-FM-163—Case Management Agreement, *see* Chapter 20, § 20.14, *below*. JD-FM-199—Proposed Parental Responsibility Plan, *see* Chapter 20, § 20.25, *below*. Family Matters Standing Orders, *see* Chapter 20, § 20.38, *below*.

#Comment Ends

[5] Applying Automatic Orders in Non Adversarial Dissolutions

The automatic orders which apply to all cases are applicable to a non-adversarial dissolution. P.B. § 25-25B. In addition, each party must exchange financial affidavits at the time the joint petition for dissolution is filed. For a more detailed discussion of automatic orders applicable in all cases, *See* § 3.25[3], *above*.

[6] Enforcing Violations of the Automatic Orders

Depending upon the court, the issue of whether there has been a violation of the automatic orders may be deferred until a final hearing. Ultimately, any decision finding a violation of the automatic orders rests within the sound discretion of the trial court. *Greenan v. Greenan*, 150 Conn. App. 289 (2014). However, in order to find a party in contempt regarding the automatic orders, there must be a specific motion for contempt. It cannot be brought up at the time of trial along with the other evidence. *Leonova v. Leonova*, 201 Conn. App. 285 (2020). Since the automatic orders apply during the pendency of an appeal, any violations of the automatic orders may be heard in the case on remand or a motion for contempt filed while the appeal is pending. *O'Brien v. O'Brien*, 161 Conn. App. 575 (2015).
#Comment Begins

Strategic Point: Where a party is spending assets in excess of that which is usual, customary or reasonable, it is wise to bring a motion for contempt for violation of the automatic orders as soon as practicable to get the matter in front of a court. Failure to do so could result in the total dissipation of assets, leaving nothing remaining to divide.

#Comment Ends

The Connecticut Supreme Court has indicated that the sale of stock options is not in the usual course of business for a company executive and his failure to seek the permission of the court or his spouse rendered such transactions a violation of the automatic orders. *O'Brien v. O'Brien*, 326 Conn. 81 (2017). However, there have been changes made to the automatic orders since *O'Brien* which permits the sale of stock and presumably stock options under certain circumstances.
#Comment Begins

Warning: *O'Brien* must be read somewhat narrowly given the particular circumstances of the case and given the amendments to the automatic orders since the rendering of that decision. The court would not issue a blanket ruling drawing a bright line when a party seeks to divest himself of an asset, indicating that it would be determined on a case by case basis. As an example, the court indicated that its ruling may have been different had Mr. O'Brien been in the business of

buying and selling stocks, i.e., a stockbroker.

#Comment Ends#Comment Begins

Strategic Point: Whenever you have a client with a stock portfolio, make sure that the other side gives written permission for the management of that account. Without such permission, any trades that are made could be subject to "Monday morning quarterbacking" by the opposing side in the event such trades appear less than ideal in hindsight.

#Comment Ends

The primary question regarding a violation of the automatic orders is the penalty to be imposed for such violation. In *O'Brien*, the court allowed evidence of the value of the stock options at the time of the retrial, and using the difference between that value and the proceeds, made property division orders. Such an order was not considered contrary to *Sunbury v. Sunbury*, 216 Conn. 673 (1990), which requires assets to be valued on the date of dissolution for a retrial absent exceptional intervening circumstances. The valuation of the stock options as of the retrial is permissible to quantify the issue due to the violation of the automatic orders. *O'Brien v. O'Brien*, 326 Conn. 81 (2017).
#Comment Begins

Warning: It should be noted that the motion for contempt in *O'Brien* was not brought until after the first appeal was remanded for retrial, because the stock had decreased in value by the time of the original trial. By the time of the second trial, the stock rebounded, increasing in value over that for which the Husband sold the stock, thus resulting in the filing of the motion for contempt for the violation of the automatic orders.

#Comment Ends

The automatic orders are couched in terms of what a party may **not** do, but not the actions a party must take with respect to retrieving or restoring an asset. The distinction being that the automatic orders address a prohibition from dissipating assets, without requiring action to be taken to obtain or maintain an asset. Accordingly, a court did not find a violation of the automatic orders because one party failed to initiate a civil action to recover the assets of his trust which were decanted. *Powell-Ferri v. Ferri*, 326 Conn. 457 (2017). Likewise, the court would not recognize a new cause of action to impose upon a party to a dissolution action the duty to act to preserve marital assets during a dissolution. *Ferri v. Powell-Ferri*, 317 Conn. 223 (2015).

§ 3.26 Applying the Automatic Order for Child Support Actions

Practice Book § 25-5A applies exclusively to stand alone child support actions. The automatic order is effective on the petitioner when the application is signed, and on the respondent when the application is served. The automatic order will not apply if there are prior contradictory orders. The only operative automatic order is that neither party will remove a child from any medical, hospital, or dental insurance coverage and shall maintain existing coverage in full force and effect. P.B. § 25-5A(a).
#Comment Begins

Forms: JD-FM-210—Notice of Automatic Orders—Petition for Child Support, *see* Chapter 20, § 20.28, *below*.

#Comment Ends

PART V: DEFINING A LEGAL SEPARATION

DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

§ 3.27 CHECKLIST: Defining a Legal Separation

3.27.1 Defining a Legal Separation

□ Distinguishing a legal separation from a dissolution of marriage:

○ The procedures for a dissolution of marriage and legal separation are exactly the same, except that at the conclusion of the case the parties are declared legally separated and cannot remarry until the legal separation is converted into a dissolution.

○ Legally separated spouses may inherit from each other.

○ Legally separated spouses are treated as single for tax purposes.

Authority: I.R.C. § 7703(a)(2); Conn. Gen. Stat. § 46b-67(b); *Viglione v. Viglione*, 22 Conn. Supp. 65 (1960). **Discussion:** *See* § 3.28, *below*. *See also* §§ 3.05 through 3.14, *above*.

□ Determining residency:

○ One of the parties must have resided in Connecticut 12 months prior to the bringing of the legal separation; will reside in Connecticut for more than 12 months prior to the decree entering; or was married in Connecticut and has moved back intending to remain.

○ It cannot be alleged that the cause for the breakdown of the marriage arose after moving back to Connecticut because a dissolution is not being sought. **Authority:** Conn. Gen. Stat. § 46b-44(c). **Discussion:** *See* § 3.29, *below*.

□ Changing the status of being legally separated:

○ In order to resume a married status, the parties should file a declaration with the court that they have resumed marital relations and the complaint will be dismissed. **Authority:** Conn. Gen. Stat. §§ 46b-65(a) and 46b-65(b). **Discussion:** *See* § 3.30[1], *below*.

□ Converting a legal separation into a dissolution:

○ Summary proceedings:

• File a petition to convert the legal separation into a dissolution.

• The petition should state that there has been no resumption of marital relations.

• The petition should state the docket number of the legal separation action and the date of the decree.

• There is no need to allege grounds for the dissolution.

○ Filing for a dissolution of marriage:

• If the parties have resumed marital relations, a new dissolution of marriage action must be filed to convert the legal separation to a dissolution. **Authority:** Conn. Gen. Stat. §§ 46b-40, 46b-65, and 46b-65(b); *Mitchell v. Mitchell*, 194 Conn. 312 (1984), *Hatch v. Hatch*, 157 Conn. 85 (1968), and *Mignosa v. Mignosa*, 25 Conn. App. 210 (1991); P.B. §§ 25-36 and 25-37.

Discussion: *See* §§ 3.30[2] and 3.30[3], *below*.
□ Consideration of financial orders when the legal separation is converted into a dissolution:
○ At the time of a dissolution, the court is to review any agreement to make sure that it is fair and equitable at that time.
○ It is unclear as to whether the court may change the property order or a non-modifiable alimony order as the matter has never been litigated.
○ The court may change a modifiable alimony order. **Authority:** Conn. Gen. Stat. §§ 46b-81, 46b-82, and 46b-86; *Mignosa v. Mignosa*, 25 Conn. App. 210 (1991). **Discussion:** *See* § 3.30[4], *below*.

§ 3.28 Distinguishing a Legal Separation from a Dissolution of Marriage

When a party seeks a legal separation, all of the procedures for a dissolution of marriage are applicable. A legal separation must have grounds, which are the same as the grounds for the dissolution of marriage. At the final hearing, however, a court declares that they are legally separated and not divorced. *See Viglione v. Viglione*, 22 Conn. Supp. 65 (1960). Parties to a legal separation cannot remarry until the legal separation is converted to a dissolution. Conn. Gen. Stat. § 46b-67(b). For a more thorough discussion of the grounds for a dissolution or legal separation, *see* §§ 3.05–3.14, *above*.
#Comment Begins

Strategic Point: There are typically two instances where a party will seek a legal separation instead of a divorce. The first is religious, where a party does not want a dissolution of their marriage. Second, there are some employers who have benefits, such as health insurance, on which a legally separated spouse may remain because the plan considers legally separated spouses to still be married. In this fashion, the legally separated spouse would not be subject to COBRA coverage limitations as it would not be considered a dissolution to trigger COBRA.

#Comment Ends

In addition, absent contrary provisions in the dissolution decree, legally separated spouses remain able to inherit from each other. *Viglione*, 22 Conn. Supp. at 65. For tax purposes, however, the parties are considered single. I.R.C. § 7703(a)(2).
#Comment Begins

Warning: Many litigants are under the impression that when he or she physically separate from their spouse at the commencement of the action, he or she is legally separated and derive some form of legal recognition of that status. However, since that is not the case, this issue should be addressed with a client at the first meeting to prevent any misunderstanding as to the requirements for an actual legal separation.

#Comment Ends

§ 3.29 Determining Residency

For a legal separation, the plaintiff must allege: that one of the parties has been a resident of Connecticut for the preceding 12 months; will have been a resident for the 12 months preceding the decree of legal separation; or married in Connecticut and has returned with the intent of permanently remaining. Conn. Gen. Stat. § 46b-44(c). However, the fourth basis to

establish residency, i.e., the cause for the dissolution of marriage arose after the parties moved to Connecticut, will not apply to a legal separation since this jurisdictional requirement does not state that the cause for the legal separation arose since the parties moved to the state of Connecticut, only the cause for the dissolution of marriage. Conn. Gen. Stat. § 46b-44(c).

§ 3.30 Converting a Legal Separation into a Dissolution

[1] Changing the Status of Being Legally Separated

After a decree of legal separation has entered, the parties can thereafter change their status in one of two ways. They can resume a married status, without the need of a ceremony, by filing a declaration with the court that they have resumed marital relations, and the court will dismiss the original complaint. Conn. Gen. Stat. § 46b-65(a). Alternatively, they can convert the legal separation into a dissolution, if no declaration of the resumption of marital relations has been filed. Conn. Gen. Stat. § 46b-65(b).

[2] Converting a Legal Separation to a Dissolution Where There Has Been No Resumption of Marital Relations

If no declaration of resumption of marital relations has been filed, either party may petition the court to have the marriage dissolved. Conn. Gen. Stat. § 46b-65(b). The proceedings under Conn. Gen. Stat. § 46b-65(b) have been referred to as "summary proceedings" to convert a legal separation into a dissolution. *Mitchell v. Mitchell*, 194 Conn. 312, 325 (1984). The party filing to convert the legal separation into a dissolution must state in their petition whether or not the parties have resumed marital relations. P.B. § 25-37.

If a party files a petition to convert a legal separation into a dissolution stating that there has been no resumption of marital relations, which is uncontested by the other party, the dissolution may be granted. Conn. Gen. Stat. § 46b-65(b) and *Mitchell*, 194 Conn. at 325. If there is no allegation in the petition denying the resumption of marital relations, the court may, after an evidentiary hearing, determine there was no resumption of marital relations and permit the dissolution. *See Mignosa v. Mignosa*, 25 Conn. App. 210 (1991). However, the wiser course is to affirmatively plead that marital relations have not resumed.

The motion filed to convert a legal separation into a dissolution, in addition to including a statement that the parties have not resumed marital relations, shall also set forth the docket number of the legal separation case and the date of decree. P.B. § 25-36. The summary proceedings to convert a legal separation does not require allegation and proof of grounds for the dissolution. *Hatch v. Hatch*, 157 Conn. 85, 91 (1968).

[3] Converting a Legal Separation by a Dissolution of Marriage Action

Conversely, in the event the parties have resumed marital relations or there is a disagreement as to whether or not they have resumed marital relations, they are unable to pursue a dissolution in accordance with the summary proceedings under Conn. Gen. Stat. § 46b-65, but must file for a dissolution pursuant to Conn. Gen. Stat. § 46b-40. *Mitchell v. Mitchell*, 194 Conn. 312 (1984).

[4] Considering Financial Orders When the Legal Separation Is Converted to a Dissolution

The court must make a finding, when converting a legal separation to a dissolution, that

the orders made at the time of the legal separation are fair and equitable at the time of the dissolution, if incorporating those orders into the dissolution decree. *Mignosa v. Mignosa*, 25 Conn. App. 210, 215–216 (1991). The court cannot just blindly approve the prior separation agreement without inquiring into the parties' present circumstances.

The ability of the court to enter different orders at the time of the conversion of a legal separation to a dissolution is unclear. A property division may be ordered at the time of a legal separation or when the marriage is dissolved, and property divisions are not modifiable. Conn. Gen. Stat. §§ 46b-81 and 46b-86. It could be argued that any change in the property division at the time of the conversion to a dissolution would be an impermissible modification of the property division. However, this issue has not been litigated. Alimony and support awards, which do not preclude modification, could clearly be changed at the time of the dissolution. Conn. Gen. Stat. § 46b-82. However, it is unclear as to whether the court would have the ability to modify a non-modifiable alimony order at the time the legal separation is converted into a dissolution.
#Comment Begins

Warning: Accordingly, unless there is a compelling reason for a legal separation, your client is probably better off with a dissolution so that there is no potential second "bite at the apple" with respect to financial orders.

#Comment Ends

PART VI: PROVIDING FOR CONCILIATION

DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

§ 3.31 CHECKLIST: Providing for Conciliation

3.31.1 Providing for Conciliation

□ Assessing conciliation procedures:
- ○ Either party may request conciliation within the first ninety days from the return date.
- ○ Such a conciliation request will be automatically granted.
- ○ The parties must attend the two sessions prior to the return date, unless the request is filed within thirty days of the return date, in which case the sessions must occur within thirty days from the request.
- ○ The parties must attend two sessions with the conciliator, and if either party does not attend, the dissolution may not be granted until six months from the return date.
- ○ Communications in conciliation sessions are privileged.
- ○ Requests for conciliation filed more than 90 days after the return date must be granted by the court. The parties should specify the period of time that the case will be in reconciliation status. **Authority:** Conn. Gen. Stat. §§ 46b-10, 46b-53(a), 46b-53(b), and 46b-53(c). **Discussion:** *See* § 3.32, *below*.

§ 3.32 Assessing Conciliation Procedures

Within the first 90 days from the return date, either party or counsel for the minor children may submit a request for conciliation to the court. Conn. Gen. Stat. § 46b-53(a). An order will then enter that the parties meet with a conciliator who can be a clergyperson, physician, a person experienced with marriage counseling, or a domestic relations officer. Conn. Gen. Stat. § 46b-53(a). The parties shall attend two mandatory meetings with the conciliator by the return date, unless the request was filed less than thirty days prior to the return date, in which case it will be from thirty days of the request. Conn. Gen. Stat. § 46b-53(b). The purpose of the conciliation is to determine the possibility of reconciliation or to utilize therapy to alleviate difficulties in the dissolution action and after. If either party fails to attend the sessions, unless good cause is shown, no further action on the complaint can be taken within six months from the return date. Conn. Gen. Stat. § 46b-53(b).

All communications during the conciliation sessions are privileged. Conn. Gen. Stat. § 46b-53(c).

If the request for conciliation is not filed within 90 days from the return date, a motion for conciliation may be filed and must be granted by the court. Conn. Gen. Stat. § 46b-10. Unlike the conciliation procedures in Conn. Gen. Stat. § 46b-53(b), there is no time limitation in which the parties must attend the conciliation sessions. Accordingly, it is typical when filing the request to have the case put into reconciliation status for a stated period of time.

PART VII: PREPARING DOCUMENTATION FOR THE FINAL HEARING

DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

§ 3.33 CHECKLIST: Preparing Documentation for the Final Hearing

3.33.1 Preparing Documentation for the Final Hearing

□ Preparing the documentation which will be required for the final hearing which either goes to trial, or proceeds uncontested:

○ An advisement of rights form indicating whether a mandatory or contingent ~~wage~~ income execution will enter.

• The obligor must be advised as to the maximum amount that may be withheld from his pay.

• If it is a contingent ~~wage~~ income execution, both parties must sign the form agreeing to the contingent ~~wage~~ income execution.

• The obligor must continue to pay the order directly until payments are withheld from his or her paycheck.

○ An affidavit regarding the children must be filed, setting forth the following:

• The wife is not pregnant or is not believed to be pregnant.

• The names of any children born to the wife since the filing of the action or petition.

• Allege facts to provide the court with jurisdiction over the child, such as home state jurisdiction.

• A statement as to whether or not there is any action in which either party is participating, other than the current action, which concerns custody or visitation over the child.

• A statement as to whether or not there is any other person who claims custodial or visitation right to the child.

○ Preparing a statement of irretrievably breakdown.

○ If the defendant does not appear, the plaintiff must complete an affidavit indicating that the defendant is not in the military service.

○ A spouse may seek a restoration of his or her birthname at the time of the dissolution or subsequently.

○ The parties can waive an educational support order via affidavit provided there is no existing or pending restraining or protective order.

○ A dissolution may be granted on the papers provided there is no existing or pending restraining or protective order. **Authority:** 15 U.S.C. § 1673; Conn. Gen. Stat. §§ 46b-56c(b), 46b-56(d), 46b-63, 46b-66(b), 46b-81, 52-362(a)(2), and 52-362(b); P.B. §§ 17.21 and 25–57. **Forms:** JD-FM-1—Income Withholding for Support, *see* Chapter 20, § 20.01, *below*. JD-FM-68—Notice and Claim Form—Support Income Withholding, *see* Chapter 20, § 20.04, *below*. JD-FM-70—Notice to Nonappearing Obligor of Incoming Withholding Order, *see* Chapter 20, § 20.05, *below*. JD-FM-71—Advisement of Rights, *see* Chapter 20, § 20.06, *below*. JD-FM-164 and 164A—Affidavit Concerning Children and Addendum to Affidavit Concerning Children, *see* Chapter 20, § 20.15, *below*. JD-FM-178—Affidavit Concerning Military Service, *see* Chapter 20, § 20.22, *below*. JD-FM-263—Request for Approval of Temporary Agreement Without Court Approval, *see* Chapter 20, § 20.82, *below*. JD-FM-281—Affidavit in Support of Request for Entry of Judgment of Dissolution of Marriage or Legal Separation, *see* Chapter 20, § 20.90, *below*. JD-FM-282—Request for Approval of Final Agreement Without Court Appearance, *see* Chapter 20, § 20.91, *below*. **Discussion:** *See* § 3.34, *below*. *See also* § 5.25, *below*.

§ 3.34 Assembling the Documents Required for a Final Hearing

Whether the case proceeds as an uncontested dissolution or a contested trial, the plaintiff will be required to file several documents in court at the time of that final hearing.

[1] Filing the Advisement of Rights Form

In cases where orders are being entered concerning alimony or support, ~~a wage~~an income withholding order shall enter. Conn. Gen. Stat. § 52-362(b). An automatic wage withholding order will then enter. The ~~wage~~ income withholding order will be based upon the disposable income of the payor, which is equal to his or her gross ~~wages~~income, less federal and state income tax, social security and medicare taxes, normal retirement contributions, union dues, and life and health insurance deductions. Conn. Gen. Stat. § 52-262(a)(2). If the parties agree, or if there is good cause shown, a contingent ~~wage~~ income withholding may enter. Conn. Gen. Stat. § 52-362(b). Good cause for a contingent ~~wage~~ income withholding may include proof as to why ~~a wage~~an income withholding order would not be in a child's best interest, or demonstrating past timely payments by the obligor. Conn. Gen. Stat. § 52-362(b).

If ~~a wage~~an income withholding order is issued, it cannot be more than 50% of the obligors disposable income if he or she is supporting a dependent spouse or child and no more than 60% of the obligors disposable income where he or she is not supporting a dependent spouse

or child. 15 U.S.C. § 1673.

The obligor must sign the advisement of rights on the first page indicating that he or she has been advised of the maximum withholding amounts. If the ~~wage~~ income withholding is contingent, both parties must sign the second page of the advisement of rights form. Should a contingent order enter at the time of the dissolution, the court may later order a mandatory ~~wage~~ income execution.

Should ~~a wage~~an income execution be entered, the income withholding for support form must be completed and submitted to the court to be signed. There will be a delay between the commencement of the support order and when the ~~wage~~ income withholding goes into effect. The payor must be advised to make payments on the support order until the order is being withheld from his or her paycheck.
#Comment Begins

Strategic Point: In the event there are automatic step downs in the amount of support being paid, the ~~wage~~ income execution should be limited to the time period covered by the order prior to such decrease. A new order may be submitted thereafter.

#Comment Ends#Comment Begins

Forms: JD-FM-71—Advisement of Rights, *see* Chapter 20, § 20.06, *below*. JD-FM-1—Income Withholding for Support, *see* Chapter 20, § 20.01, *below*. JD-FM-68—Notice and Claim Form—Support Income Withholding, *see* Chapter 20, § 20.04, *below*. JD-FM-70—Notice to Non-Appearing Obligor of Income Withholding Order, *see* Chapter 20, § 20.05.

#Comment Ends

[2] Filing the Affidavit Concerning Children

Prior to entering any order concerning the custody or support of a child, the Affidavit Concerning Children must be submitted. P.B. § 25-57. In the form the following information must be provided:

1. Whether the wife is pregnant or believed to be pregnant.

2. Any minor children who have been born since the complaint or application was filed.

3. Information demonstrating that the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act. The primary way this is demonstrated is by showing that the child has lived in Connecticut for more than 6 months, thus making Connecticut his or her home state.

4. Whether there are any other proceedings concerning custody of the child in any state in which either party has participated.

5. That no one other than the parties to the action claims custodial or visitation rights of the child.

Typically, this document has not been provided earlier in the case and must be provided at the time of dissolution.
#Comment Begins

Forms: JD-FM-164 and 164A—Affidavit Concerning Children and Addendum to Affidavit Concerning Children, *see* Chapter 20, § 20.15, *below*.

#Comment Ends

[3] Preparing a Stipulation of Irretrievable Breakdown

The parties may execute a signed stipulation which states that their marriage has broken down irretrievably and the court will be permitted to dissolve the marriage on that ground with no further proof. Conn. Gen. Stat. § 46b-51. In the event the parties do not submit a signed stipulation, one of the parties must testify that the marriage has broken down irretrievably, or in support of another fault ground if alleged, to obtain the dissolution.

[4] Preparing an Affidavit Concerning Military Service

If the defendant does not appear in the case, at the final dissolution the plaintiff must complete the affidavit regarding military service. P.B. § 17-21. If the defendant is not in the military, the court may proceed with the action. If the defendant is in the military service, the court may appoint counsel for the defendant and will stay the proceedings for ninety days. P.B. § 17-21.
#Comment Begins

Forms: JD-FM-178—Affidavit Concerning Military Service, *see* Chapter 20, § 20.22, *below*.

#Comment Ends

[5] Restoring a Spouse's Birth Name

A spouse may, at the time of the dissolution of the parties' marriage may restore his or her birthname. Conn. Gen. Stat. § 46b-63(a). Restoration of one's birthname may also occur after the dissolution judgment has entered, upon the filing of a motion. Conn. Gen. Stat. § 46b-63(b). Effective July 1, 2018, such a request shall be ruled upon by the court without hearing. Conn. Gen. Stat. § 46b-63(b).
#Comment Begins

Strategic Point: It is much easier to restore one's birthname at the time of the dissolution as it does not require a separation motion or follow through with the court. However, if a spouse seeks his or her birthname after the dissolution judgment has entered, once the motion prints on the short calendar, it should be marked ready and a request that the court approve an agreement without appearance by the parties should be submitted together with form JD-FM-263. While technically this form applies to temporary, *i.e.,* pendente lite agreements, it may provide the proper vehicle to ensure the motion will be granted after it is filed.

#Comment Ends **Forms:** JD-FM-263, Request for Approval of Temporary Agreement Without Court Appearance, *See* Chapter 20, § 20.82, *below*.

[6] Providing Final Documents for Approval Without a Court Appearance

As ~~a result of the COVID-19 pandemic~~a leftover from COVID-19 ~~and to allow the approval of dissolution and legal separation agreements to occur, the Judicial Branch adopted rules and forms permitting the granting of such agreements without a court appearance~~the court permits the parties to submit final agreements on the papers for approval. All of the documents that are typically brought to court at the time of an uncontested dissolution must be filed for a dissolution without a court appearance. Additionally, each party must sign an Affidavit supporting the request for the entry of a dissolution or legal separation judgment. The court form affidavit sets forth those areas of inquiry which are typically covered in the canvass of the parties in court and is intended to be a substitute for such canvass.

#Comment Begins

Strategic Point: There may be certain cases in which the rationale behind the resolution of the case is not readily apparent from the documents filed with the court. Such rationale may include health issues, the receipt of an inheritance, or assets which a party brought to the marriage, all of which may impact the property division or alimony award. In these instances, the affidavit in support of the request for entry of a dissolution or legal separation judgment should be supplemented to set forth these facts.

#Comment Ends#Comment Begins

Strategic Point: In cases in which alimony is ordered, parties should set forth in a supplemental affidavit the rationale for the duration of the alimony, be it time limited or permanent. This will allow compliance with Conn. Gen. Stat. § 46b-81 (specifying the basis for an alimony order which only terminates upon death or remarriage) and case law requiring a basis for time limited alimony awards. For a more thorough discussion regarding the duration of alimony awards, *see* Chapter 5, § 5.25, *below*.

#Comment Ends

In addition, the parties and counsel must submit a request for approval of final agreement without court appearance.

#Comment Begins

Forms: JD-FM-281—Affidavit in Support of Request for Entry of Judgment of Dissolution of Marriage or Legal Separation, *see* Chapter 20, § 20.90, *below*. JD-FM-282—Request for Approval of Final Agreement Without Court Appearance, *see* Chapter 20, § 20.91, *below*.

#Comment Ends

[7] Waiving an Educational Support Order

At the time of a final dissolution, the parties may waive the right in the future to seek an educational support order. In order to do so, the parties must acknowledge that he or she understands the ramifications of such waiver. Conn. Gen. Stat. § 46b-56c(b)(2). In the event the dissolution occurs on the submission of papers, the parties must additionally acknowledge that there is no restraining or protective order in effect or pending before a court. Conn. Gen. Stat. § 46b-56c(b)(2). The court has the ability of requiring the parties to appear before the court to testify regarding the waiver. Conn. Gen. Stat. § 46b-56c(b)(2).

[8] Seeking a Dissolution on the Papers

~~A result of the COVID-19 pandemic was the ability of the~~ Pparties may~~to~~ obtain a dissolution of marriage by submitting all of the final papers and related affidavits to the court. Our statutes have been amended to permit such uncontested dissolutions to be approved on the papers, providing that the parties attest there has been no restraining or protective orders issued or pending before the court. Conn. Gen. Stat. § 46b-66(b).