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**2016 Edition**

# Post-Judgment Proceedings in Connecticut Family Matters

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A Guide to Resources in the Law Library

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Treated Elsewhere:

- [Motion for Articulation](#)
- [Motion for Clarification](#)
- [Motion to Reargue](#)

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# Introduction

A Guide to Resources in the Law Library

- **Motion for Clarification.** "Motions for interpretation or clarification, although not specifically described in the rules of practice, are commonly considered by trial courts and are procedurally proper." [Holcombe v. Holcombe](#), 22 Conn. App. 363, 366, 576 A.2d 1317 (1990).
- **Motion to Reargue:** "'[T]he purpose of a reargument is . . . to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts.' (Internal quotation marks omitted.) *Jaser v. Jaser*, 37 Conn. App. 194, 202, 655 A.2d 790 (1995). It also may be used 'to address alleged inconsistencies in the trial court's memorandum of decision as well as claims of law that the [movant] claimed were not addressed by the court.' *K. A. Thompson Electric Co. v. Wesco, Inc.*, 24 Conn. App. 758, 760, 591 A.2d 822 (1991). '[A] motion to reargue [however] is not to be used as an opportunity to have a second bite of the apple or to present additional cases or briefs which could have been presented at the time of the original argument.' (Internal quotation marks omitted.) *Northwestern Mutual Life Ins. Co. v. Greathouse*, supra, Superior Court, Docket No. 164835." [Opoku v. Grant](#), 63 Conn. App. 686, 692-693, 778 A.2d 981 (2001).
- **New Trial:** "The Superior Court may grant a new trial of any action that may come before it, for mispleading, the discovery of new evidence or want of actual notice of the action to any defendant or of a reasonable opportunity to appear and defend, when a just defense in whole or part existed, or the want of actual notice to any plaintiff of the entry of a nonsuit for failure to appear at trial or dismissal for failure to prosecute with reasonable diligence, or for other reasonable cause, according to the usual rules in such cases. The judges of the Superior Court may in addition provide by rule for the granting of new trials upon prompt request in cases where the parties or their counsel have not adequately protected their rights during the original trial of an action." Conn. Gen. Stats. [§ 52-270\(a\)](#) (2015).
- **Setting Aside or opening judgments:** "(a) Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed **within four months** succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court." Conn. Practice Book [§ 17-4](#) (2016). [Emphasis added].
- **Modifying Judgment:** "When presented with a motion for modification, a court must first determine whether there has been a substantial change in the financial circumstances of one or both of the parties . . . . Second, if the court finds a substantial change in circumstances, it may properly consider the motion and, on the basis of the § 46b-82 criteria, make an order for modification . . . . The court has the authority to issue a modification only if it conforms the order to the distinct and definite changes in the circumstances of the parties." [Crowley v. Crowley](#), 46 Conn. App. 87, 92, 699 A.2d 1029 (1997).

# Section 1: Request for New Trial

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to request for new trial

## **TREATED ELSEWHERE:**

- [Motion for Articulation](#)
- [Motion for Clarification](#)
- [Motion to Reargue](#)

## **DEFINITIONS:**

- **Petition for a New Trial:** "The Superior Court may grant a new trial of any action that may come before it, for mispleading, the discovery of new evidence or want of actual notice of the action to any defendant or of a reasonable opportunity to appear and defend, when a just defense in whole or part existed, or the want of actual notice to any plaintiff of the entry of a nonsuit for failure to appear at trial or dismissal for failure to prosecute with reasonable diligence, or for other reasonable cause, according to the usual rules in such cases. The judges of the Superior Court may in addition provide by rule for the granting of new trials upon prompt request in cases where the parties or their counsel have not adequately protected their rights during the original trial of an action." Conn. Gen. Stats. [§ 52-270\(a\)](#) (2015).
- **Motion for New Trial:** "Motions. . . for new trials, unless brought by petition served on the adverse party or parties, and motions pursuant to General Statutes 52-225a for reduction of the verdict due to collateral source payments must be filed with the clerk within ten days after the day the verdict is accepted; provided that for good cause the judicial authority may extend this time. The clerk shall notify the trial judge of such filing. Such motions shall state the specific grounds upon which counsel relies." Conn. Practice Book [§ 16-35](#) (2016).
- **Motion vs. Petition:** "So far as the right of appeal is concerned, there is a distinction between an order granting a **motion for a new trial** and a judgment entered upon a **petition for a new trial**, which may be instituted at any time within three years after a judgment is rendered . . . . The latter is appealable." *Hoberman v. Lake of Isles, Inc.*, 138 Conn. 573, 576, 87 A.2d 137 (1952). [Emphasis added].

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2015)  
Chapter 903. New trials and writs of error  
[§ 52-270](#). Causes for which new trials may be granted

## **COURT RULES:**

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

- Connecticut Practice Book (2016)

Chapter 16. Jury Trials

[§ 16-35.](#) Motions after Verdict: Motions in Arrest of Judgment, to Set Aside Verdict, for Additur or Remittitur, for **New Trial**, or for Collateral Source Reduction [Emphasis added.]

## **FORMS:**

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- Form 604.14. Complaint for New Trial, 3 [Connecticut Practice Book Civil Practice Forms](#) (4<sup>th</sup> ed., 2004).

- 1A Hon. Douglass B. Wright, [Connecticut Legal Forms](#) (1983).

602.20. Petition for new trial  
602.27. Motion for New Trial

- [Baker v. Whitnum-Baker](#), 161 Conn. App. 227, 230, 127 A.

3d 330 (2015), cert denied 321 Conn. 922 (2016). "A petition will never be granted except upon substantial grounds. It does not furnish a substitute for, or an alternative to, an ordinary appeal but applies only when no other remedy is adequate and when in equity and good conscience relief against a judgment should be granted.... In considering a petition, trial judges must give first consideration to the proposition that there must be an end to litigation." (Internal quotation marks omitted.) [Murphy v. Zoning Board of Appeals](#), 86 Conn.App. 147, 152, 860 A.2d 764 (2004), cert. denied, 273 Conn. 910, 870 A.2d 1080 (2005)."

- [Marshall v. Marshall](#), 119 Conn. App. 120, 988 A. 2d 314 (2010). "**The plaintiff does not contend that the defendant** cannot satisfy the reasonable cause test for a new trial on the basis of the underlying facts. Instead, she maintains that the petition itself is technically deficient in that it fails to set forth adequately the claim that a new trial is warranted for '**other reasonable cause.**' **Consequently, the defendant's** petition for a new trial, according to the plaintiff, fails to state a cause of action on which relief can be granted. . . .

"Upon our careful examination of the petition, construing it in the light most favorable to the defendant, we conclude that a claim for a new trial on the basis of 'other reasonable cause' was sufficiently pleaded."

- [Bleidner v. Searles](#), 19 Conn. App. 76, 78, 561 A.2d 954 (1989). "A petition for a new trial is a statutory remedy that is essentially equitable in nature. [State v. Grimes](#), 154 Conn. 314, 325, 228 A.2d 141 (1966). General Statutes 52-270 sets forth the limited circumstances in which a new trial will be granted. The petitioner has the burden of proving by a preponderance of the evidence that he is entitled to a new trial on the grounds claimed. [Johnson v. Henry](#), 38 Conn. Sup. 718, 719-20, 461 A.2d 1001, cert. denied, 464 U.S.

1011, 104 S.Ct. 533, 78 L.Ed.2d 714 (1983). The petition is addressed to the sound discretion of the trial court. *Rizzo v. Pack*, 15 Conn. App. 312, 315, 544 A.2d 252 (1988)."

- [Burr v. Lichtenheim](#), 190 Conn. 351, 355, 460 A.2d 1290 (1983). "Any motion for a new trial is addressed to the sound discretion of the trial court and will not be granted except on substantial grounds."
- [Corbin v. Corbin](#), 179 Conn. 622, 626, 427 A.2d 432 (1980). "Whether the plaintiff's motion is treated as a motion to open judgment or as a petition for a new trial is immaterial. The granting or denial of such motions rests in the sound discretion of the trial court, reviewable only in the case of abuse . . . . One of the essential requirements for the granting of either motion is that the evidence which the party seeks to offer could not have been known and with reasonable diligence produced at trial . . . . Since it is undisputed that the evidence the plaintiff sought to introduce was known to him at the time of the trial, the court did not err in denying the plaintiff's motion."
- [Pass v. Pass](#), 152 Conn. 508, 511-512, 208 A.2d 753 (1965). "The rules for granting a new trial on the ground of newly discovered evidence are well established. The evidence must, in fact, be newly discovered, material to the issue on a new trial, such that it could not have been discovered and produced on the former trial by the exercise of due diligence, not merely cumulative and likely to produce a different result."
- [Jaser v. Jaser](#), 37 Conn. App. 194, 198 fn.3, 655 A.2d 790 (1988). "We understand and appreciate the reasons which might conflict with a rule mandating that minor children be represented at every stage of the proceedings in every matrimonial case. Matrimonial actions, although brought to a public arena because of the inability of persons to resolve their conflicts, are extraordinarily private in nature and should continue to be so viewed."
- [Miner v. Miner](#), 137 Conn. 642, 645-646, 80 A.2d 512 (1951). "One of the burdens assumed by a petitioner for a new trial is that of proving the substance of the new evidence proposed to be offered. No such proof was furnished. The situation was similar to that in *Luth v. Butwill*, 119 Conn. 697, 176 A. 552, where we said (p. 698): 'When the motion came on for hearing, no witnesses were produced and the case was argued upon the allegations of the motion. The production of witnesses in support of the newly discovered evidence was necessary unless their testimony was formally admitted. . . . Under these circumstances there was no basis upon which the trial court could properly make a finding. No issue of law was made as to the sufficiency of

the allegations and the record affords no basis upon which we can review the denial of the motion.' When the adverse party elects to file a demurrer, the allegations of the petition are admitted for the purpose of ruling on the demurrer. *Krooner v. State*, 137 Conn. 58, 62, 75 A.2d 51. No such procedure was adopted in the case at bar."

**WEST KEY NUMBERS:**

- West Key Numbers: Divorce # 151. New Trial

**SUBJECT HEADINGS:**

- [Connecticut Family Law Citations](#): New Trial

**ENCYCLOPEDIAS:**

- 58 [Am. Jur. 2d](#). New trial (2012).  
    §§ 7-12. Power to order  
    §§ 13-36. Right to new trial  
    §§ 37-321. Grounds for granting new trial  
    §§ 322-352. Procedure  
    §§ 353-398. Hearing and determination of application  
    §§ 399-411. Conditions to granting or denying of new trial  
    §§ 412-415. Proceedings at new trial
- 66 [C. J.S.](#). New Trial (2009).  
    §§ 1-38. In general  
    §§ 39-180. Grounds  
    §§ 183-326. Proceedings to procure new trial  
    §§ 327-333. Proceedings at new trial

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 8A Arnold H. Rutkin et al. [Connecticut Practice Series, Family Law and Practice with Forms](#) (3d ed. 2010).  
    Chapter 52. Post-Judgment Motions  
    § 52.12 Request for new trial
- Wesley Horton, et al. [1 Connecticut Superior Court Civil Rules, Authors' Comments following § 16-35](#) (2015-2016).
- 2 [Family Law Practice in Connecticut](#) (1996).  
    Chapter 15 by Ronald T. Scott  
    III. Request for new trial  
        [15.6]. General  
        [15.7] Time for filing  
        [15.8] Grounds for a new trial
- 6 Robert B. Yules, [Connecticut Practice Series, Connecticut Trial Practice](#) (2d ed. 2000).  
    Chapter 11. Verdict and motions after verdict  
    § 11.33. Motion for New Trial  
    § 11.34. Motion for New Trial—Mispleading  
    § 11.35. Motion for New Trial—Want of Notice or Opportunity to Defend

§ 11.36. Motion for New Trial—Newly Discovered Evidence

§ 11.37. Motion for New Trial—Other Reasonable Cause

§ 11.38. Motion for New Trial—Procedure

Figure 1: Complaint for New Trial

604.14

Complaint for New Trial

1. The defendant brought an action against the plaintiff for breach of contract to this court, in which action a trial was thereafter had to the jury, upon issue joined on the answer of this plaintiff, and a verdict was rendered against this plaintiff for \$ damages, which verdict was accepted by the court, and judgment rendered thereon on
2. At the trial it became and was a material question whether (*here state the particular point in dispute to which the newly discovered evidence relates*).
3. Exhibit A, annexed, is a correct statement of all the evidence relevant to the issue produced by the defendant at the trial.
4. Exhibit B, annexed, is a correct statement of all the evidence relevant to the issue produced by this plaintiff at the trial.
5. Since the trial, this plaintiff has discovered material evidence in his favor, which evidence he failed to discover, and was unable to discover, before or during the trial, although he used all reasonable diligence in endeavoring to find testimony in his favor.
6. Said newly discovered evidence is the following, to wit:  
*(set out the names and residences of witnesses, and the substance of what they will testify; also any newly discovered documentary evidence).*
7. The verdict and judgment against the plaintiff are unjust.

The plaintiff claims, that the former verdict and judgment be set aside, and that he be allowed a new trial of the cause.

(P.B. 1963, Form 398; see Gen. Stat., [§ 52-270.](#))

# Section 2: Motion to Open or Set Aside Judgment

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to setting aside or opening judgments
- SEE ALSO:**
- [Motion Practice In Family Matters](#) (**Section 4: Motion to Open Judgment in a Family Matter**)
  - [Discovery \(Financial\) in Family Matters](#) (**Section 2: Postjudgment Discovery — Motion to Open Based on Fraud**)
- DEFINITION:**
- **Setting Aside or opening judgments:** "(a) Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed **within four months** succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or **otherwise submit to the jurisdiction of the court.**" Conn. Practice Book [§ 17-4](#) (2016). [Emphasis added]
  - The **purpose of a motion to open** is to permit the granting of a new trial when a party had a meritorious defense but did not have an opportunity to present it. It is not a substitute for an appeal of a claimed error which the party knew or should have known at the time the appeal could have been taken. [Clapper v. Clapper](#), 3 Conn. App. 637, 638, 490 A.2d 1030 (1985). [Emphasis added]
  - **What it is not:** "The claims in the motion to open were merely a repeat of the claims before the trial court. If the defendant disagreed with that court, he should have appealed its **decision.**" [Clapper v. Clapper](#), 3 Conn. App. 637, 490 A.2d 1030 (1985).
  - "It is a **well-established general rule** that . . . a judgment rendered by the court . . . can subsequently be opened [after the four month limitation set forth in General Statutes § 52-212a and Practice Book § 17-43] . . . if it is shown that . . . the judgment, was obtained by **fraud** . . . or because of **mutual mistake.**" [Terry v. Terry](#), 102 Conn. App. 215, 222, 925 A.2d 375, (2007). [Emphasis added]
- STATUTES:**
- Conn. Gen. Stat. (2015)  
[§ 52-212a. Civil judgment or decree opened or set aside within four months only.](#) Unless otherwise provided by law and except in such cases in which the

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

court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. The continuing jurisdiction conferred on the court in preadoptive proceedings pursuant to subsection (o) of section 17a-112 does not confer continuing jurisdiction on the court for purposes of reopening a judgment terminating parental rights. The parties may waive the provisions of this section or otherwise submit to the jurisdiction of the court, provided the filing of an amended petition for termination of parental rights does not constitute a waiver of the provisions of this section or a submission to the jurisdiction of the court to reopen a judgment terminating parental rights.

#### **COURT RULES:**

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

- Connecticut Practice Book (2016)  
[\*\*§ 17-4. Setting Aside or Opening Judgment.\*\*](#)
  - (a) Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed within **four months** succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court. [Emphasis added].
  - (b) Upon the filing of a motion to open or set aside a civil judgment, except a judgment in a juvenile matter, the moving party shall pay to the clerk the filing fee prescribed by statute such fee has been waived by the judicial authority. . .

#### **FORMS:**

- Motion to Open Judgment, [JD-FM-206](#). Motion to Open Judgment (Family Matters) (4/15)
- Thomas D. Colin, Ed. [Library of Connecticut Family Law Forms](#) (2014).  
Form 16-002. Motion to Open Judgment, Post Judgment

#### **COURT CASES:**

- [Reinke v. Sing](#), 162 Conn. App. 674, 133 A.3d 501 (2016). "The court found that the defendant's income actually had been twice the amount that the defendant disclosed at the time of the original dissolution, and the lesser amount had been relied on in formulating the terms of the initial stipulation and judgment. The court also found that the defendant had underreported the values of his investment accounts, retirement accounts, life insurance, and anticipated tax refund; he also underreported the value of the plaintiff's share of a condominium in New Jersey. The court, therefore,

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ordered the amount and term of the alimony altered, the amounts the defendant owed to the plaintiff with respect to various marital assets and retirement accounts altered, and **awarded the plaintiff attorney's fees.**"

- [Forgione v. Forgione](#), 162 Conn. App 1, 129 A.3d 766 (2015). "We conclude that the trial court was without subject matter jurisdiction to open the judgment as to the division of the parties' assets in the absence of a finding or concession of fraud. Accordingly, we vacate the judgment and remand the matter with direction to restore to the docket the motion to open filed by the plaintiff, Beatrice Forgione."
- [Dougan v. Dougan](#), 114 Conn. App. 379, 387, 970 A.2d 131 (2009). "When the court approves of a stipulated judgment, it cannot later be set aside 'unless the parties agree to do so or it is shown that the judgment was obtained by fraud, accident or mistake. *Bernet v. Bernet*, 56 Conn. App. 661, 666, 745 A.2d 827, cert. denied, 252 Conn. 953, 749 A.2d 1202 (2000)."
- [Gallagher v. Gallagher](#), 29 Conn. App. 482, 616 A.2d 281 (1992). "By a motion dated June 28, 1991, more than eleven months after the granting of the motion regarding allocation, the plaintiff filed a motion 'to reopen judgment based upon **fraud and lack of subject matter jurisdiction.**' After a hearing, the trial court found that it had jurisdiction to grant the motion to allocate. No evidence of fraud was offered at this hearing, and the trial court made no finding of fraud. Nevertheless, the trial court opened the judgment on the basis that '[i]t may be that the parties were not fully heard with respect to the issue of the amount of allocation.'" [Emphasis added]
- [Billington v. Billington](#), 220 Conn. 212, 218, 595 A.2d 1377 (1991). "In *Varley v. Varley*, supra,[180 Conn. 1,428 A.2d 317 (1980) we imposed **four limitations on the granting of relief from a marital judgment secured by fraud:** '(1) There must have been no laches or unreasonable delay by the injured party after the fraud was discovered. (2) There must have been diligence in the original action, that is, diligence in trying to discover and expose the fraud. (3) There must be clear proof of the perjury or fraud. (4) There must be a substantial likelihood that the result of the new trial will be different' . . . . but see *Greger v. Greger*, [22 Conn. App. 596, 578 A.2d 162, cert. den., 216 Conn. 820, 581 A.2d 1055(1990)] . . . (express finding of fraud on court required that judgment be opened without regard to four limitations). In this case, we, are concerned only with the second of these limitations, namely, that the party seeking to open the judgment exercised diligence in the original action in order to discover and expose the fraud. We are persuaded that the time has come to abandon that limitation." [Emphasis added]

- [DiSimone v. Vitello](#), 6 Conn. App. 390, 505 A.2d 745 (1986). "At the most, where a defendant does not otherwise have notice of a default judgment, such a delay would merely extend the time in which the defendant could move to set aside the judgment . . . . Since the defendants' motion was filed more than four months after they received actual notice of the judgment, the court lacked jurisdiction to set the judgment aside."
- [Clapper v. Clapper](#), 3 Conn. App. 637, 638, 490 A.2d 1030 (1985). "The purpose of a motion to open is to permit the granting of a new trial when a party had a meritorious defense but did not have an opportunity to present it. It is not a substitute for an appeal of a claimed error which the party knew or should have known at the time the appeal could have been taken."
- [Van Mecklenburg v. Pan American World Airways, Inc.](#), 196 Conn. 517, 519, **494 A.2d 549 (1985)**. "...payment of such fee is mandatory upon the filing of a motion to open. It therefore follows that an otherwise properly filed motion to open will not be accepted by the court unless accompanied by the filing fee. Since the plaintiff did not pay the required fee until October 15, the motion was not filed until that date, and as such, is untimely under the four month rule."
- [Robertson v. Robertson](#), 164 Conn. 140, 143-144, 318 A.2d 106 (1972). "From these it is clear that the court acquired **no jurisdiction to render a judgment** on June 24, 1966, binding the defendant personally, since he was a nonresident on whom personal service had not been made, although it did have jurisdiction in rem over the attached realty. An order directing the payment of alimony or support is a judgment in personam. *Beardsley v. Beardsley*, 144 Conn. 725, 726-27, 137 A.2d 752. Without personal service on the defendant, the court on June 24, 1966, had no jurisdiction to render a judgment in personam unless the defendant appeared voluntarily." [Emphasis added]

**DIGESTS:**

- West Key Numbers  
Divorce #165(3). Opening or vacating, Grounds; Defenses in general

**SUBJECT HEADINGS:**

- [Connecticut Family Law Citations](#)  
Mistake  
Judgments And Orders

**ENCYCLOPEDIAS:**

- 47 [Am. Jur. 2d](#). Judgments (2006).  
IX. Relief From Judgments  
A. Opening, Modifying, and Vacating Judgments  
    § 655. Generally

- 49 [C.J.S.](#) Judgments (2009).  
XII. Alteration of and relief from Judgment
- 8A Arnold H. Rutkin et al. [Connecticut Practice Series, Family Law And Practice With Forms](#) (3d ed. 2010).  
Chapter 52. Post-Judgment Motions
  - § 52.4. Motion to reopen or vacate judgment
  - § 52.5. Time for setting aside or opening judgments
  - § 52.6. Grounds for opening or setting aside judgment
  - § 52.7. Motion to reopen or set aside judgment on the basis of fraud
  - § 52.11. Lack of jurisdiction
- 2 [Family Law Practice in Connecticut](#) (1996).  
Chapter 15. Post-Judgment Proceedings  
IV. Motion to Set Aside or Open Judgment
  - A. [15.9] General
  - B. [15.10] Time and Filing
  - C. [15.11] Opening Judgments After 4 Months
    - 1. [15.12] Fraud
    - 2. [15.13] Lack of jurisdiction
    - 3. [15.14] Agreement of parties
    - 4. [15.15] Mutual mistake
- Wesley Horton et al. 1 [Connecticut Superior Court Civil Rules, Authors' Comments](#) following § 17-4 (2015-2016).

## **TEXTS & TREATISES:**

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### Chapter 52. Post-Judgment Motions

- § 52.4. Motion to reopen or vacate judgment
- § 52.5. Time for setting aside or opening judgments
- § 52.6. Grounds for opening or setting aside judgment
- § 52.7. Motion to reopen or set aside judgment on the basis of fraud
- § 52.11. Lack of jurisdiction

### Chapter 15. Post-Judgment Proceedings

#### IV. Motion to Set Aside or Open Judgment

- A. [15.9] General
- B. [15.10] Time and Filing
- C. [15.11] Opening Judgments After 4 Months
  - 1. [15.12] Fraud
  - 2. [15.13] Lack of jurisdiction
  - 3. [15.14] Agreement of parties
  - 4. [15.15] Mutual mistake

Postjudgment Proceedings - 14

# Section 3: Modification of Judgments

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to modifications

## **SEE ALSO:**

- [Alimony](#) (Section 3 – Modifying Alimony)
- [Antenuptial Agreements](#) (Section 5 – Modification)
- [Child Custody](#) (Section 5 – Modification of Child Custody)
- [Child Support](#) (Section 4 - Modifying Child Support)
- [Child Visitation](#) (Section 5 – Modification of Visitation Orders)

## **DEFINITIONS:**

- **Modification:** “A modification is ‘[a] change; an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact’” [Rosato v. Rosato](#), 40 Conn. App. 533, 535-536, 671 A.2d 838 (1996).
- **Substantial change in circumstances:** “When presented with a motion for modification, a court must first determine whether there has been a substantial change in the financial circumstances of one or both of the parties . . . . Second, if the court finds a substantial change in circumstances, it may properly consider the motion and, on the basis of the § 46b-82 criteria, make an order for modification . . . . The court has the authority to issue a modification only if it conforms the order to the distinct and definite changes in the circumstances of the parties.” [Crowley v. Crowley](#), 46 Conn. App. 87, 92, 699 A.2d 1029 (1997).
- **Limitations:** “When determining whether there is a substantial change in circumstances, the court is limited in its consideration to conditions arising subsequent to the entry of the dissolution decree.” [Spencer v. Spencer](#), 71 Conn. App. 475, 481, 802 A.2d 215 (2002).
- **Decree or order of the court required:** “Thus, even if the parties had agreed that the defendant would not be obligated to comply with the alimony order, that agreement would not be effective to modify the defendant's obligation because, as previously stated, '[d]ecrees in a dissolution action cannot be modified by acts of the parties without further decree or order by the court.' [Albrecht v. Albrecht](#), 19 Conn. App. 146, 151, 562 A.2d 528, cert. denied, 212 Conn. 813, 565 A.2d 534 (1989).” [Ford v. Ford](#), 72 Conn. App. 137, 141, 804 A.2d 215 (2002).
- **Modification:** “means a child custody determination that changes, replaces, supercedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination.” Conn. Gen. Stat. [§ 46b-115a\(11\)](#) (2015).

- **Modification of child support:** “any final order for the periodic payment of permanent alimony or support, an order for alimony or support pendente lite or an order requiring either party to maintain life insurance for the other party or a minor child of the parties may, at any time thereafter, be continued, set aside, altered or modified by the court upon a showing of a substantial change in the circumstances of either party or upon a showing that the final order for child support substantially deviates from the child support guidelines....” Conn. Gen. Stat. [§ 46b-86\(a\)](#) (2015).
- **Amending or revoking premarital agreement:** “After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation shall be enforceable without consideration.” Conn. Gen. Stat. [§ 46b-36f](#) (2013) [effective October 1, 1995 and applicable to premarital agreements executed on or after that date].
- **Appellate Standard of Review:** “An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action.” (Internal quotation marks omitted.) [Aley v. Aley](#), 101 Conn. App. 220, 223, 922 A.2d 184 (2007). [Rosier v. Rosier](#), 103 Conn. App. 338, 928 A.2d 1228 (2007).

#### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stats. (2015) [§ 46b-115a\(11\)](#). “Modification means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination”

#### **COURT RULES:**

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

- Connecticut Practice Book (2016)  
Chapter 25. Procedure in Family Matters  
[§ 25-26](#). Modification of custody, alimony or support

#### **CASES:**

- [Cervizzi v. Cervizzi](#), No. FA 02 007 9710S (Ct.Sup. August 29, 2007. J.D. Rockville at Rockville), 2007 WL 2597615. “The husband claims that as the result of his voluntarily retiring from his principle employment, there has been a substantial change in circumstances justifying a downward modification of his child support order . . . . For the foregoing reasons, the motion to modify is denied.”

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

- [\*Wasson v Wasson\*](#), 91 Conn App 149, 161, 881 A.2d 356 (2005)  
“While a modification hearing entails the presentation of evidence of a substantial change in circumstances, a reconsideration hearing involves consideration of the trial evidence in light of outside factors such as new law, a miscalculation or a misapplication of the law.” (Citations omitted; internal quotation marks omitted.) *Jaser v. Jaser*, 37 Conn. App. 194, 202-203, 655 A.2d 790 (1995).”

## **FORMS:**

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

### Official Forms

- [File for a Motion for Modification](#) (CT Judicial Branch)
- 5 Arnold H. Rutkin et al. [Family Law and Practice](#) (2016). Chapter 52. Modification of Matrimonial Determinations  
    § 52.07. Checklist  
    § 52.08. Sample Forms for Modification

## **DIGESTS:**

Divorce # 164 Modification

## **SUBJECT HEADINGS:**

- [Connecticut Family Law Citations](#)  
Modification

- American Law Reports  
Change or modification

## **ENCYCLOPEDIAS:**

- 24 [Am. Jur. 2d](#) Divorce and Separation (2008)  
§ 369-373. Modification of Judgment

- 27A [C.J.S.](#) Divorce (2005)  
Modification, Vacation, or Setting Aside  
    § 385. General consideration  
    § 386. Requirement of substantial change in circumstances  
    § 387. Time within which court must act  
    § 388-396. Grounds for relief  
    § 397-398. Persons entitled to relief  
    § 399-404. Objections and defenses  
    § 405-417. Procedure

## **TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Louise Truax, Editor, [Connecticut Family Law](#), LexisNexis Practice Guide (2016).  
Chapter 5. Alimony  
    Part V – Seeking a Modification of Alimony Orders  
        § 5.29 Checklist  
        § 5.30 Analyzing Statutory Provisions for Modification  
        § 5.31 Construing Provisions Prohibiting or Limiting Modification  
        § 5.32 Determining the Underlying Alimony Order to be Modified  
        § 5.33 Proving a Substantial Change in Circumstances

§ 5.34 Determining the Criteria to be Considered for a Modified Award

§ 5.35 Preparing a Motion for Modification

§ 5.36 Seeking a Retroactive Modification

§ 5.37 **Interpreting "Second Look" Provisions**

§ 5.38 Modifying Alimony Based Upon Cohabitation of the Recipient

## Chapter 7. Child Support

### Part IX – Preparing Motions for Modifications

§ 7.54 Checklist: Preparing Motions for Modification

§ 7.55 Determining Statutory Basis for Modification

§ 7.56 Modifying Child Support Where There is a Prior Deviation from the Child Support Guidelines

§ 7.57 Modifying the Dependency Exemption Allocation

§ 7.58 Modifying the Security for Child Support

§ 7.59 Retiring as a Basis for Modifying Child Support

## Chapter 8. Custody and Visitation

### Part VI – Filing Actions Post Judgments

§ 8.38 Checklist: Filing Custody or Visitation Actions Post Judgment

§ 8.39 Filing Custody or Visitation Actions Post Judgment - In General

§ 8.40 Finding a Material Change in Circumstances for Custody Determinations

§ 8.41 Seeking a Modification

§ 8.42 Assessing Changed Behavior of a Parent in a Modification

§ 8.43 Restricting the Ability of a Parent Filing a Motion for Modification

§ 8.44 Making Orders Regarding Relocation Post Judgment

5 Arnold H. Rutkin et al. [Family Law And Practice](#) (2016).

## Chapter 52. Modification of Matrimonial Determinations

### § 52.01. Introduction

[1] Nature of Modification Proceeding

[2] Modification Procedure—In General

[a] Form of Pleadings

[b] Type of Service

[c] Venue

[d] Availability of Temporary Orders

[3] Limitations on Modification Proceedings

[a] Non-modifiable Orders

[i] Termination of Marital Status

[ii] Property Awards

[b] Foreign Decrees

[c] Contractual Limitation on Modification

[d] Statutory Limitation on Modification

[i] Post-Judgment Change of Circumstances

[ii] Prospective Effect

[iii] Burden of Proof

[iv] Modification of Termination Date

§ 52.02. Modification of Maintenance or Alimony  
§ 52.03. Modification of Child Support  
§ 52.04. Modification of Custody and Visitation  
§ 52.05. Modification of Orders Affecting Use or Possession of Marital Home  
    [1] Effect of Remarriage or Cohabitation  
    [2] Changes Related to Children  
§ 52.06. Discovery in Modification Proceedings  
    [1] Support Actions  
    [2] Custody Actions

- Wesley Horton et al. 1 [Connecticut Superior Court Civil Rules, Authors' Comments](#) following § 25-26 (2015-2016).