ROADMAP TO CONNECTICUT PROCEDURE

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I recently completed a judicial clerkship for the Judges of the Connecticut Superior Court. As a Superior Court law clerk, I had the opportunity to research a variety of sophisticated and challenging issues, many of which were procedural in nature. Through wrestling with these issues, I was able to develop a solid understanding of Connecticut procedure.

The following article presents an overview of Connecticut procedure, highlighting some of the issues that arise most frequently and focusing on the three primary dispositive pretrial motions: the motion to dismiss, the motion to strike, and the motion for summary judgment. Given that those who are unfamiliar with Connecticut procedure typically have at least a basic understanding of federal procedure, this article also explains the most significant distinctions between Connecticut and federal procedure. Finally, the article points out several practical tips for those practicing in the Connecticut Superior Court.

This article should prove to be useful to both Connecticut practitioners and out-of-state practitioners litigating in Connecticut. It is, however, likely to be most helpful to those with a minimal understanding of Connecticut procedure, such as out-of-state practitioners and recent law graduates litigating in Connecticut.

I. THE PRACTICE BOOK

Although the majority of jurisdictions have adopted the Federal Rules of Civil Procedure, Connecticut has not done so.[1] Practitioners must comply with procedural rules set

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[1] *See* Z.W. Julius Chen, *Note, Following the Leader: Twombly, Pleading Standards, and Procedural Uniformity,* 108 COLUM. L. REV. 1431, 1432 (2008) ("[T]he majority of states have patterned their entire systems of civil procedure after the Federal Rules, to varying degrees."); Laurie Kratky Dore, *Secrecy by Consent: The Use and Limitations of Confidentiality in the Pursuit of Settlement,* 74 NOTRE DAME L. REV. 283, 286 n.6 (1999) ("a majority of states have adopted the Federal Rules of Civil Procedure"). "The advent of the Federal Rules of Civil Procedure in 1938 over time changed how civil litigation is conducted in both federal and state

forth in the Connecticut Practice Book when practicing in the Connecticut Superior Court.[2]

II. Fact Pleading

The Federal Rules of Civil Procedure and the procedural rules of the vast majority of states have long required that pleadings need only comply with the liberal standard known as "notice pleading,"[3] under which "[a] pleading . . . must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief."[4] Despite this, Connecticut has been a "code pleading" state since 1879.[5] "Code pleading," which is synonymous with "fact plead-

courts both because of the rule changes themselves (e.g. making interrogatories and depositions available) and because of attitudinal changes (law students were taught the Federal Rules regime and the alleged glories of liberal pleading, joinder, and discovery)." Stephen N. Subrin, *Reflections on the Twin Dreams of Simplified Procedure and Useful Empiricism,* 35 W. St. U. L. Rev. 173, 187 (2007).

2 The Practice Book rules are promulgated by the judges of the Superior, Appellate, and Supreme courts. *See* Conn. Gen. Stat. § 51-14. *See generally* James F. Sullivan, *The Scope of Procedural Rule-Making in Connecticut: Further Confusion in State v. James and Bartholomew v. Schweizer,* 65 Conn. B.J. 411 (1991) (discussing judicial and legislative rule-making authority in Connecticut). The Practice Book contains the "Rules of Professional Conduct," the "Code of Judicial Conduct," the "Rules of the Superior Court," the "Rules of Appellate Procedure," and an "Appendix of Forms." Practice Book § 1-1 provides that "[t]he rules for the superior court govern the practice and procedure in the superior court in all civil and family actions whether cognizable as cases at law, in equity or otherwise, in all criminal proceedings and in all proceedings on juvenile matters."

3 *See* Thomson v. Washington, 362 F.3d 969, 970 (7th Cir. 2004) ("[t]he Federal Rules replaced fact pleading with notice pleading"); Jan Armon, *A Method for Writing Factual Complaints,* 1998 Det. C.L. Rev. 109, 174 (1998) ("a majority of states [have] adopted notice pleading"). The "non-notice-pleading jurisdictions" are "Arkansas, California, Connecticut, Delaware, Florida, Illinois, Louisiana, Maryland, Missouri, Nebraska, New Jersey, New York, Oregon, Pennsylvania, South Carolina, Texas, and Virginia." Saritha Komatireddy Tice, *Recent Developments: A "Plausible" Explanation of Pleading Standards:* Bell Atlantic Corp. v. Twombly, *127 S. Ct. 1955 (2007)*, 31 Harv. J.L. & Pub. Pol'y 827, 838 & n. 90 (2008) ("The vast majority of jurisdictions have adopted notice pleading as the applicable standard.").

4 Fed. R. Civ. Pro. 8(a)(2).

5 John B. Oakley and Arthur F. Coon, *The Federal Rules in State Courts: A Survey of State Court Systems of Civil Procedure*, 61 Wash. L. Rev. 1367, 1385 (1986); *see also* Renée Bevacqua Bollier et al., Stephenson's Connecticut Civil Procedure § 31(a), at 95 (3rd ed. 1997). Several decades ago, Justice Bogdanski of the Connecticut Supreme Court described "the transition from 'common-law' to 'code' pleading," which "abolished the procedural differences between law and equity, instituted the unitary form of civil action and approved the simplified system of fact pleading," as "[t]he single most important procedural reform in [Connecticut's] history." State v. Clemente, 166 Conn. 501, 541, 353 A.2d 723, 742 (1974) (Bogdanski, J., dissenting).

ing,"[6] has traditionally required "a more specific statement of facts" than "notice pleading" under the Federal Rules.[7] The Practice Book provides that pleadings must "contain a plain and concise statement of the material facts on which the pleader relies."[8] A recent United States Supreme Court decision (discussed below), however, has raised the pleading requirements under the Federal Rules, bringing the standards closer together.

III. Motion to Dismiss

A motion to dismiss in Connecticut "essentially assert[s] that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court."[9] In most states and under the Federal Rules, a preanswer motion to dismiss may be based upon the following seven grounds: (1) lack of subject-matter jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) insufficient process; (5) insufficient service of process; (6) failure to state a claim

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6 *See* Flint & Walling Mfg. Co. v. Beckett, 79 N.E. 503, 507 (Ind. 1906) ("code pleading . . . was designed preeminently to be a system of fact pleading"); Ostling v. Loring, 33 Cal. Rptr. 2d 391, 402 (Cal. Ct. App. 1994) ("Our system of code pleading requires only fact pleading.").

7 Emily Sherwin, *The Jurisprudence of Pleading: Rights, Rules, and Conley v. Gibson*, 52 How. L.J. 73, 85-86 (2008). "The Federal practitioner relies on discovery to develop the material facts in respect of the cause of action, whereas the Connecticut lawyer expects to find these facts in the pleading." 1 Ralph P. Dupont, Dupont on Connecticut Civil Practice § 10-1.2 (2008-2009 ed.). "Beginning in the late 1840s with New York's adoption of the Field Code, U.S. procedure began a gradual move away from common law pleading toward 'code pleading' or 'fact pleading.' Designed to be simpler and more just than common law pleading was believed to be, fact pleading required that the plaintiff plead facts in support of each of the elements of her claim. That is, fact pleading required the plaintiff to plead facts that tended to make each element of her claim plausible." Paul Stancil, *Balancing the Pleading Equation*, 61 Baylor L. Rev. 90, 110 (2009); *see also* ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 377 (Mo. 1993) ("In 1849, Missouri became the second state in the union to adopt a comprehensive civil code [which was] based on New York's Field Code . . . [and] eliminated archaic forms of 'common law pleading,' substituting instead a system of code pleading, or 'fact pleading.'"). Interestingly, "California . . . continues to have Field Code pleading rules, requiring fact pleading." Richard L. Marcus, *Modes of Procedural Reform,* 31 Hastings Int'l & Comp. L. Rev. 157, 167 (2008). "Yet the actual decisions of California state courts embody more relaxed pleading than the 'notice pleading' decisions of federal courts." *Id*.

8 Practice Book § 10-1.

9 Beecher v. Mohegan Tribe of Indians of Connecticut, 282 Conn. 130, 134, 918 A.2d 880, 884 (2007) (internal quotation marks omitted).

upon which relief can be granted; and (7) failure to join a party under Rule 19.[10]

In Connecticut, however, a "motion to dismiss" may only be based upon five of the seven grounds mentioned above: "(1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue,[11] (4) insufficiency of process, and (5) insufficiency of service of process."[12] The grounds of insufficient process and insufficient service of process are said to implicate the personal jurisdiction of the court.[13] The motion may also be based upon several other grounds that are said to implicate the subject matter jurisdiction of the court: standing,[14] sovereign immunity,[15] failure to exhaust administrative remedies,[16] and mootness.[17]

Although a motion to dismiss generally "attacks the juris-

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[10] FED. R. CIV. PRO. 12(b).

[11] "Venue does not involve a jurisdictional question but rather a procedural one, and thus is a matter that goes to process rather than substantive rights." Fort Trumbull Conservancy, LLC v. New London, 282 Conn. 791, 814, 925 A.2d 292, 308 (2007). However, it also seems clear that, where venue is improper, the "proper remedy" is transfer, rather than dismissal of the case. *Id*. at 820; *see also* Mark III Co. v. Dimonda, 2006 Conn. Super. LEXIS 1152, at *1 (Apr. 18, 2006) (Moran, J.T.R.) ("improper venue would only be grounds to transfer the matter, and not grounds for dismissal").

[12] PRACTICE BOOK § 10-31; *see also* Zizka v. Water Pollution Control Auth., 195 Conn. 682, 687, 490 A.2d 509, 512 (1985). As explained below, the Connecticut analogue of the Rule 12(b)(6) motion is the motion to strike challenging the legal sufficiency of the plaintiff's complaint. *See* PRACTICE BOOK § 10-39(a)(1). Additionally, in Connecticut, the failure to join a necessary party is a proper ground on which to file a motion to strike. *See* PRACTICE BOOK § 10-39(a)(3).

[13] *See* Lostritto v. Cmty. Action Agency of New Haven, 269 Conn. 10, 31, 848 A.2d 418, 431 (2004) ("A defect in process . . . such as an improperly executed writ, implicates personal jurisdiction, rather than subject matter jurisdiction."); Argent Mortg. Co., LLC v. Huertas, 288 Conn. 568, 576, 953 A.2d 868, 873 (2008) (explaining where service of process was not proper, the court lacks jurisdiction over the person).

[14] *See* May v. Coffey, 291 Conn. 106, 113, 967 A.2d 495, 501 (2009) ("[t]he issue of standing implicates subject matter jurisdiction" (internal quotation marks omitted)).

[15] *See* Kelly v. Univ. of Conn. Health Ctr., 290 Conn. 245, 252, 963 A.2d 1, 6 (2009) ("This doctrine of sovereign immunity 'implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss.'")

[16] *See* D'Eramo v. Smith, 273 Conn. 610, 616, 872 A.2d 408, 413 (2005).

[17] *See* Gerlt v. Town of S. Windsor, 284 Conn. 178, 189-90, 931 A.2d 907, 913-14 (2007); *see also* State v. Boyle, 287 Conn. 478, 485, 949 A.2d 460, 465 (2008) ("mootness implicates the subject matter jurisdiction of this court"). Additionally, when "the constitutionality of a statute implicates the jurisdiction of the court," such as where sovereign immunity is at issue, "a motion to dismiss may properly serve as a vehicle for presenting such an issue." Chotkowski v. State, 213 Conn. 13, 19 n.8, 566 A.2d 419, 422 n.8 (1989).

diction of the court,"[18] the Connecticut Appellate Court explained in a recent decision that "motions to dismiss are not limited to jurisdictional challenges."[19] Other permissible grounds, which do not implicate the court's jurisdiction, include forum non conveniens,[20] a prior pending action between the same parties,[21] and failure to file a written opinion of a health care provider in medical malpractice action.[22]

In *Conboy v. State*,[23] a recent Connecticut Supreme Court decision, Chief Justice Rogers prudently clarified the standards courts must employ when faced with a jurisdictional issue raised by a motion to dismiss.[24] First, "[w]hen a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must . . . take the facts to be those alleged in the complaint, includ-

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[18] Caruso v. City of Bridgeport, 285 Conn. 618, 627, 941 A.2d 266, 274 (2008) (internal quotation marks omitted); *see also* Beecher v. Mohegan Tribe of Indians of Connecticut, 282 Conn. 130, 134, 918 A.2d 880, 884 (2007) ("[a] motion to dismiss . . . properly attacks the jurisdiction of the court" (internal quotation marks omitted)); Russell v. Yale Univ., 54 Conn. App. 573, 577, 737 A.2d 941, 945 (1999) ("[a] motion to dismiss raises the question of whether a jurisdictional flaw is apparent on the record." (internal quotation marks omitted)).

[19] Votre v. County Obstetrics & Gynecology Grp., 113 Conn. App. 569, 582-83, 966 A.2d 813, 821, *cert. denied,* 292 Conn. 911, 973 A.2d 661 (2009) (noting actions may be dismissed under General Statutes § 52-549t (b) for failure to appear, under Practice Book § 14-3 for "lack of diligence in prosecution of an action," and under General Statutes § 52-190a for failure to attach a good faith certificate of a similar health care provider); *see also* Rios v. CCMC Corp., 106 Conn. App. 810, 821 n.8, 943 A.2d 544, 550 (2008) ("Both statutory and Practice Book provisions provide for dismissals on the basis of nonjurisdictional grounds.").

[20] *See* Durkin v. Intevac, 258 Conn. 454, 480, 782 A.2d 103, 120 (2001) (explaining forum non conveniens "does not contest the court's jurisdiction").

[21] *See* Bayer v. Showmotion, Inc., 292 Conn. 381, 403, 973 A.2d 1229, 1244 (2009) (explaining the prior pending action doctrine "does not truly implicate subject matter jurisdiction" (citation and internal quotation marks omitted)).

[22] *See* Rios v. CCMC Corp., 106 Conn. App. at 822, 943 A.2d at 550-51; *see also Votre*, 113 Conn. App. at 583, 966 A.2d 813, 821 ("[a] plaintiff's failure to comply with the requirements of § 52-190a (a) does not destroy the court's subject matter jurisdiction over the claim").

[23] 292 Conn. 642, 974 A.2d 669 (2009).

[24] *Conboy*, 292 Conn. at 650-54, 974 A.2d at 675-77. Chief Justice Rogers was wise to do so; in fact, the Court has already indicated the importance of *Conboy* by quoting it for its clarification of these standards. *See* Columbia Air Servs. v. DOT, 293 Conn. 342, 347-48, 977 A.2d 636, 641-42 (2009); *see also* Landelius v. Rinehart, 2009 Conn. Super. LEXIS 3153, at *1 (Nov. 23, 2009) (Licari, J.); McGhee-Fichtner v. Kusek, 2009 Conn. Super. LEXIS 3078, at *11 n. 4 (Nov. 12, 2009) (Martin, J.); Pasquariello Elec. Corp. v. Nyberg, 2009 Conn. Super. LEXIS 2788, at *13 (Oct. 7, 2009) (Zoarski, J.T.R.); Powell v. Spruce Peak Realty, 2009 Conn. Super. LEXIS 2518, at *5 (Sept. 17, 2009) (Jones, J.); McMahon v. Unilever United States, 2009 Conn. Super. LEXIS 2283, at *6 (Aug. 18, 2009) (Holzberg, J.).

ing those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader."[25] Second, "if the complaint is supplemented by *undisputed facts* established by affidavits submitted in support of the motion to dismiss . . . other types of undisputed evidence . . . and/or public records of which judicial notice may be taken," the "allegations are tempered by the light shed on them by the [supplementary undisputed facts]."[26]

Third, "where a jurisdictional determination is dependent on the resolution of a critical factual dispute, it cannot be decided on a motion to dismiss in the absence of an evidentiary hearing to establish jurisdictional facts."[27] Although *Conboy* involved an issue of subject matter jurisdiction, it seems clear that its principles apply equally to cases involving the other grounds upon which a motion to dismiss may be based, including personal jurisdiction,[28]

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[25] *Conboy*, 292 Conn. at 651, 974 A.2d at 676 (citation and internal quotation marks omitted).

[26] *Id*. at 651-52, 974 A.2d at 676 (citation and internal quotation marks omitted). "If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits . . . or other evidence, the trial court may dismiss the action without further proceedings." *Id*. at 652, 974 A.2d at 676-77. "If, however, the defendant submits either no proof to rebut the plaintiff's jurisdictional allegations . . . or only evidence that fails to call those allegations into question," "the plaintiff need not supply counteraffidavits or other evidence to support the complaint, but may rest on the jurisdictional allegations therein." *Id*.

[27] *Id*. at 652-53, 974 A.2d at 677. "Likewise, if the question of jurisdiction is intertwined with the merits of the case, a court cannot resolve the jurisdictional question without a hearing to evaluate those merits." *Id*. at 653, 974 A.2d at 677. "An evidentiary hearing is necessary because a court cannot make a critical factual [jurisdictional] finding based on memoranda and documents submitted by the parties." *Id*. (internal quotation marks omitted). Additionally, where a motion to dismiss has been filed and there are disputed issues of fact, the parties are entitled to discovery. *See* Standard Tallow Corp. v. Jowdy, 190 Conn. 48, 60, 459 A.2d 503, 511 (1983) (holding trial court improperly denied "the plaintiff any opportunity for discovery" on the issue of subject matter jurisdiction before dismissing the action); *see also* Cadlerock Joint Venture II, L.P. v. Milazzo, 287 Conn. 379, 386, 949 A.2d 450, 454 (2008) ("the court granted the plaintiff's request for a ninety day stay of the proceedings so that the parties could conduct additional discovery on the jurisdictional issue"); RJM Aviation Assocs. v. London Aircraft Serv. Ctr,. Inc., 2008 Conn. Super. LEXIS 1560, at *1 (June 17, 2008) (Gilligan, J.) ("the court . . . in the exercise of its discretion, concluded that jurisdictional discovery was warranted").

[28] *See* PRACTICE BOOK § 10-31 (explaining motions to dismiss and oppositions may be filed with "supporting affidavits as to facts not apparent on the record"); Pasquariello Elec. Corp. v. Nyberg, 2009 Conn. Super. LEXIS 2788, at *13 (Oct. 7, 2009) (Zoarski, J.T.R.) (applying *Conboy* standard to issue of personal jurisdiction);

venue,[29] and exhaustion of administrative remedies.[30]

Both federal and state rules provide that a defect in subject matter jurisdiction can be raised at any time.[31] By contrast, other proper subjects of a motion to dismiss in state or federal court may be waived if not timely or properly raised.[32]

IV. MOTION TO STRIKE

Under the Federal Rules, a defendant may file a Rule 12(b)(6) motion to dismiss for "failure to state a claim upon which relief can be granted," which "test[s] the legal sufficiency of the complaint."[33] The Connecticut analogue of a Rule 12(b)(6) motion to dismiss is the "motion to strike," which "challenges the legal sufficiency of a pleading."[34]

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see also Kenny v. Banks, 289 Conn. 529, 533, 490 A.2d 509, 512 (2008) (explaining evidentiary hearing may be required to determine whether court has personal jurisdiction over the defendant); Standard Tallow Corp. v. Jowdy, 190 Conn. 48, 56, 958 A.2d 750, 753 (1983) (same); Cogswell v. Am. Transit Ins. Co., 282 Conn. 505, 516, 923 A.2d 638, 647 (2007) (explaining court may look to the content of affidavits submitted in support of a motion to dismiss to determine issues of personal jurisdiction).

[29] Powell v. Spruce Peak Realty, 2009 Conn. Super. LEXIS 2518, at *5, 26 (Sept. 17, 2009) (Jones, J.) (applying *Conboy* to issue of venue).

[30] McMahon v. Unilever United States, 2009 Conn. Super. LEXIS 2283, at *6, 16 (Aug. 18, 2009) (Holzberg, J.) (applying *Conboy* to exhaustion of administrative remedies issue). The *Conboy* court relied upon federal law, which applies the same standards, in its decision. *See* State v. Conboy, 292 Conn. 642, 650-51, 974 A.2d 669, 676 (2009); *see also* Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001) (explaining court may examine "the complaint alone," "the complaint supplemented by undisputed facts evidence in the record," or "the complaint supplemented by undisputed facts plus the court's resolution of disputed facts").

[31] *See* FED. R. CIV. PRO. 12(h)(3); PRACTICE BOOK § 10-33.

[32] Challenges based on improper venue or a ground relating to personal jurisdiction are waived if not raised in a motion to dismiss that is (1) filed within 30 days of the filing of an appearance; or (2) the first pleading filed in response to the complaint. *See* PRACTICE BOOK § 10-32; Manifold v. Ragaglia, 94 Conn. App. 103, 116, 891 A.2d 106 (2006); *see also* Fort Trumbull Conservancy, LLC v. City of New London, 282 Conn. 791, 814, 925 A.2d 292, 308 (2007) ("improper venue may be waived and may be changed by the consent of the parties"); *cf*. FED. R. CIV. PRO. 12(h)(1) (providing that the defenses of personal jurisdiction, improper venue, insufficient process, and insufficient service of process are waived if not raised in a Rule 12 motion or a responsive pleading).

[33] Senture, LLC v. Dietrich, 575 F. Supp. 2d 724, 725 (E.D. Va. 2008). The Rule 12(b)(6) motion to dismiss is the "lineal descendant of the common law general demurrer"; Podell v. Citicorp Diners Club, Inc., 859 F. Supp. 701, 704 (S.D.N.Y. 1994); as is the motion to strike; RK Constructors v. Fusco Corp., 231 Conn. 381, 384, 650 A.2d 153, 155 (1994).

[34] Batte-Holmgren v. Comm'r of Public Health, 281 Conn. 277, 294, 914 A.2d 996, 1007 (2007) (internal quotation marks omitted); *see also* PRACTICE BOOK § 10-39(a)(1); Vertex v. Waterbury, 278 Conn. 557, 564, 898 A.2d 178, 185 (2006) ("[A]

This should not be confused with a Rule 12(f) "motion to strike," a "disfavored and infrequently granted" motion in the federal courts.[35]

In Connecticut, "[f]or the purpose of ruling upon a motion to strike, the facts alleged in a complaint, though not the legal conclusions it may contain, are deemed to be admitted,"[36] and the court must "construe the complaint in the manner most favorable to sustaining its legal sufficiency."[37] Accordingly, "[i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied."[38] The federal standard is similar, but the terminology used is different. Under the Federal Rules, "a judge ruling on a defendant's motion to dismiss a complaint must accept as true all of the factual allegations contained in the complaint"; the motion to dismiss will be denied if the plaintiff has pled "enough facts to state a claim to relief that is plausible on its face."[39]

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party may challenge the legal sufficiency of an adverse party's claim by filing a motion to strike."). Typically, a party filing a motion to strike challenges "the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted." PRACTICE BOOK § 10-39(a)(1). A party filing a motion to strike, however, may also challenge (1) "the legal sufficiency of any prayer for relief in any such" pleading; (2) "the legal sufficiency of any such [pleading], or any count thereof, because of the absence of any necessary party or . . . the failure to join or give notice to any interested person"; (3) "the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts"; and (4) "the legal sufficiency of any answer to any complaint, counterclaim or cross complaint, or any part of that answer including any special defense contained therein." PRACTICE BOOK § 10-39(a).

35 Fraher v. Surydevara, 2009 U.S. Dist. LEXIS 41340, at *3 (E.D. Cal. May 15, 2009); *see also* Tonka Corp. v. Rose Art Indus., 836 F. Supp. 200, 217 (D.N.J. 1993) ("Motions to strike . . . are 'not favored and usually will be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties, or if the allegations confuse the issues.'"). Under Rule 12(f), "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." FED. R. CIV. PRO. 12(f).

36 Murillo v. Seymour Ambulance Ass'n, 264 Conn. 474, 476, 823 A.2d 1202, 1203 (2003) (internal quotation marks omitted).

37 Sullivan v. Lake Compounce Theme Park, 277 Conn. 113, 117, 889 A.2d 810, 814 (2006) (internal quotation marks omitted).

38 *Batte-Holmgren*, 281 Conn. at 294, 914 A.2d 996 at 1007 (internal quotation marks omitted).

39 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 572 (2007) (internal quotation marks omitted); *see also* Schaaf v. Residential Funding Corp., 517 F.3d 544, 549 (8th Cir.), *cert. denied,* 129 S. Ct. 222 (2008) (explaining the plaintiff "must include sufficient factual information to provide the 'grounds' on which the claim rests, and to raise a right to relief above a speculative level").

Until recently, federal courts embraced the well-established and liberal standard of *Conley v. Gibson*,[40] where the U.S. Supreme Court held that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[41] In *Bell Atlantic Corp. v. Twombly*,[42] however, "the U.S. Supreme Court retired *Conley v. Gibson*'s once 'accepted rule' . . . and "established a 'plausibility standard' that requires plaintiffs to 'nudge their claims across the line from conceivable to plausible' in order to survive."[43]

Following *Twombly*, which was an antitrust case involving the Sherman Act, scholars debated whether its holding applied outside the antitrust context.[44] In *Ashcroft v. Iqbal*,[45] however, a more recent U.S. Supreme Court decision, the Court "made clear that *Twombly*'s 'plausibility standard' applies to pleadings in civil actions generally, rejecting the . . . suggestion that the holding [is] limited to the antitrust context."[46] Nevertheless, federal courts have held that the federal stan-

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40 355 U.S. 41 (1957).

41 *Id*. at 46.

42 550 U.S. 544 (2007).

43 Chen, *supra*, note 1, at 1431 (quoting *Twombly*, 550 U.S. at 560-61, 570).

44 *See* A. Benjamin Spencer, *Plausibility Pleading*, 49 B.C. L. REV. 431, 457 & n.147 (2008).

45 129 S. Ct. 1937 (May 18, 2009).

46 Moss v. United States Secret Serv., 572 F.3d 962, 969 n.7 (9th Cir. 2009); *see also* Robert L. Rothman, *Twombly and Iqbal: A License to Dismiss*, 35 LITIG. 1, 2 (Spring 2009) ("*Iqbal* drastically changed the landscape for Rule 12(b)(6) motions"). Some have argued that *Iqbal* imposes an "insurmountable" pleading standard that "demands specificity that plaintiffs can't often show until they've been permitted discovery." Alison Frankel, *Two More 'Iqbal' Dismissals Emerge in Product Liability Cases*, THE AMERICAN LAWYER, August 4, 2009, at http://www.law.com/jsp/article.jsp?id=1202432738346&src= EMC-Email&et= editorial&bu=Law.com&pt=LAWCOM%20Newswire&cn=NW_20090804&kw=Two%20More%20%27Iqbal%27%20Dismissals%20Emerge%20in%20Product%20Liability%20Cases; *see also* Ibrahim v. Dep't of Homeland Sec., 2009 U.S. Dist. LEXIS 64619, at *33 (N.D. Cal. July 27, 2009) (explaining that while "[a] good argument can be made that the *Iqbal* standard is too demanding" and that "[v]ictims of discrimination and profiling will often not have specific facts to plead without the benefit of discovery," "[d]istrict judges . . . must follow the law as laid down by the Supreme Court"). Additionally, in response to *Twombly* and *Iqbal*, Senator Arlen Specter (D-Pa.) has introduced the "Notice Pleading Restoration Act of 2009," which "would require courts to revert to the "notice pleading" standard of Conley v. Gibson." Peter Vieth, Specter Seeks Relief From Strict Pleading Standard, The Virginia Lawyers Weekly Blog (July 23, 2009), at http://www.valawyersweekly.com/vlwblog/2009/07/23/specter-seeks-relief-from-

dard continues to require less specificity than fact pleading.[47]

A Connecticut state court motion to strike a portion of a pleading will generally be denied unless that portion purports to state a distinct cause of action.[48] A request to revise pursuant to Practice Book §10-35 may be used to try to separate claims, to obtain a more complete or particular statement of allegations, or to delete impertinent allegations in order to properly challenge the legal sufficiency of the adverse party's claims by motion to strike.[49]

It should be noted that, in Connecticut, "[w]ithin fifteen days after the granting of any motion to strike, the party whose pleading has been stricken may" replead.[50] In addi-

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strict-pleading-standard/; *Senator Introduces Bill To Address High Court Decisions on Civil Lawsuits,* AMERICAN CONSTITUTION SOCIETY BLOG (July 24, 2009), at http://www.acslaw.org/node/13821. A copy of the bill can be found at http://legal-times.typepad.com/ files/coe09974_xml.pdf. One commentator has noted that "*Twombly*, of course, controls only federal litigation, but its influence will likely come to be felt in state civil litigation as well." Andree S. Blumstein, *Twombly Gets Iqbal-ed: An Update on the New Federal—and Tennessee?—Pleading Standard,* 45 TENN. B.J. 23, 23 (July 2009).

47 Chaussinand v. Guttman Oil Co., 2009 U.S. Dist. LEXIS 60830, at *2 (W.D. Pa. July 16, 2009) ("In considering a Rule 12(b)(6) motion, we must be mindful that Federal courts require notice pleading, as opposed to the heightened standard of fact pleading."); *see also* Bryson v. Gonzales, 534 F.3d 1282, 1286 (10th Cir. 2008) ("Technical fact pleading is not required, but the complaint must still provide enough factual allegations for a court to infer potential victory.").

48 "Although there is a split of authority, most trial courts follow the rule that a single paragraph of a pleading is subject to a motion to strike only when it attempts to set forth all of the essential allegations of a cause of action or defense." Wright v. 860 Main, LLC, 43 Conn. L. Rptr. 458, 2007 Conn. Super. LEXIS 1354, at *2 (May 21, 2007) (Tanzer, J.); *see also* Piontkowski v. Agan, 48 Conn. L. Rptr. 209, 2009 Conn. Super. LEXIS 1927, at *4-5 (July 7, 2009) (Riley, J.); Vansteen-Holland, PPA v. LaVigne, 2009 Conn. Super. LEXIS 2359, at *9-10 (Sept. 2, 2009) (Martin, J.).

49 PRACTICE BOOK § 10-35. "A primary purpose of the request to revise is often to set up the complaint for a motion to strike." Sypher v. Getty Granite Co., 2002 Conn. Super. LEXIS 3414, *5 (October 22, 2002) (Hurley, J.T.R.).

50 PRACTICE BOOK § 10-44; *see also* Larobina v. McDonald, 274 Conn. 394, 401, 876 A.2d 522, 527 (2005) ("the granting of a . . . motion to strike allows the plaintiff to replead his or her case"); Anderson v. Schieffer, 35 Conn. App. 31, 37, 35 Conn. App. 31, 37 (1994) ("if a motion to strike is granted, the party whose pleading is stricken is given an opportunity to replead in order to avoid a harsh result"). The granting of a motion to strike presents the pleading party with a choice: "After a court has granted a motion to strike, the plaintiff may either amend his pleading or, on the rendering of judgment, file an appeal. . . . The choices are mutually exclusive [as] [t]he filing of an amended pleading operates as a waiver of the right to claim that there was error in the sustaining of the [motion to strike] the original pleading." Ziotas v. Reardon Law Firm, P.C., 111 Conn. App. 287, 308, 959 A.2d 1013, 1028 (2008).

tion, practitioners should be aware that the court will rule only on the grounds raised in the motion to strike and that such grounds should be specified on the face of the motion.[51]

V. Motion for Summary Judgment

In Connecticut, a court will grant summary judgment in favor of the moving party "when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."[52] "[T]he moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . [and] the evidence must be viewed in the light most favorable to the opponent."[53] "Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue."[54]

The United States Supreme Court's ruling in *Celotex Corp. v. Catrett*,[55] established that, in the federal courts, "[w]hen the burden of proof at trial would fall on the nonmoving party, it ordinarily is sufficient for the movant [on a

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[51] *See* Stuart v. Freiberg, 102 Conn. App. 857, 861, 927 A.2d 343, 345 (2007) ("a motion to strike that does not specify the grounds of insufficiency is fatally defective [and Connecticut Practice Book § 10-41 requires] that the reasons for the claimed pleading deficiency be specified in the motion itself"); Fresa v. Wal-Mart Stores, 2004 Conn. Super. LEXIS 1840, at *5 n.2 (July 15, 2004) (Skolnick, J.) ("This ground does not appear on the face of its motion to strike and, consequently, should not be considered by the court."); Practice Book § 10-41 ("Each motion to strike . . . shall separately set forth each . . . claim of insufficiency and shall distinctly specify the reason or reasons for each such claimed insufficiency."). The Connecticut Appellate Court has reasoned that "if that procedure is not followed, it puts the party opposing the motion and the court to the task of trying to locate in the accompanying memorandum of law the various claims of insufficiency that are being made." *Stuart*, 102 Conn. App. at 862 n.2, 927 A.2d at 346.

[52] Wilson v. New Haven, 213 Conn. 277, 279. 567 A.2d 829, 830 (1989); *see also* Practice Book § 17-49. Parties less frequently file motions for summary judgment challenging "the legal sufficiency of a complaint"; such a motion will be granted "when the complaint fails to set forth a cause of action and the defendant can establish that the defect could not be cured by repleading." *Larobina*, 274 Conn. at 401, 876 A.2d at 527.

[53] Zielinski v. Kotsoris, 279 Conn. 312, 318, 901 A.2d 1207, 1212 (2006) (internal quotation marks omitted).

[54] *Id*. at 319, 901 A.2d at 1212.

[55] 477 U.S. 317 (1986).

motion for summary judgment] to point to a lack of evidence to go to the trier of fact on an essential element of the nonmovant's claim."[56] The *Celotex* court sensibly reasoned that where "after adequate time for discovery . . . a party . . . fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial . . . there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial."[57]

"Although Connecticut's summary judgment rules were originally based on the federal rule, *Celotex* is not the law of Connecticut."[58] In Connecticut, the party moving for summary judgment (most commonly, the defendant) bears a heavy burden: "The courts hold the movant to a strict stan-

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[56] Jaramillo v. Weyerhaeuser Co., 536 F.3d 140, 145 (2d Cir. 2008) (citing *Celotex Corp.*, 477 U.S. at 322-23). However, "a conclusory assertion that the nonmoving party has no evidence is insufficient. . . . Rather, . . . [the moving party] must affirmatively show the absence of evidence in the record . . . . This may require the moving party to depose the nonmoving party's witnesses or to establish the inadequacy of documentary evidence." Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 84 n.2 (3d Cir. 1987) (quoting *Celotex Corp.*, 477 U.S. at 332 (Brennan, J., dissenting)); *see also* Foutz v. City of W. Valley City, 345 F. Supp. 2d 1272, 1274 n.3 (D. Utah 2004) (same); Cooper v. Hoover, 2008 U.S. Dist. LEXIS 8691, at *3 (M.D. Pa. Feb. 6, 2008) (holding defendants' assertion that plaintiff had "no affirmative evidence to support his claims" was "not enough"); Doe v. Nat'l R.R. Passenger Corp., 1996 U.S. Dist. LEXIS 2373, at *5 (E.D. Pa. Feb. 28, 1996) (holding defendant's conclusory assertion that the plaintiff had no evidence was insufficient to meet its burden).

[57] *Celotex Corp.*, 477 U.S. at 322-23 (quoting FED. R. CIV. PRO. 56(c)). Accordingly, the court held that "[t]he moving party is 'entitled to a judgment as a matter of law' because the nonmoving party . . . failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." *Id.* at 323. The court also explained that problems arising due to the premature filing of a motion for summary judgment "can be adequately dealt with under Rule 56(f), which allows a summary judgment motion to be denied, or the hearing on the motion to be continued, if the nonmoving party has not had an opportunity to make full discovery." *Id.* at 326.

[58] Waste Conversation Techs., Inc v. Midstate Recovery, 2008 Conn. Super. LEXIS 3130, at *78 (Dec. 3, 2008) (Levin, J.). "Modern summary judgment procedure was adopted in Connecticut in 1963 and was modeled on the Federal Rules of [Civil] Procedure. . . . As recently as twenty years ago, the Connecticut Supreme Court repeatedly noted the substantial similarity between the federal and Connecticut summary judgment procedures and has often relied upon Federal Rules and case law for guidance. . . . At about that time, however, Connecticut law and federal practice diverged on the issue of what burden a plaintiff opposing summary judgment had to bear." Crowley v. Dudek, 2007 Conn. Super. LEXIS 3209, at *27-28 n.5 (Nov. 29, 2007) (Levin, J.) (citations omitted) (internal quotation marks omitted).

dard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact."[59] As a result, "to the misfortune of some litigants and taxpayers, the party moving for summary judgment bears the burden of proving the absence of a dispute as to any material fact even where the burden as to that material fact would be on the nonmovant at trial, and even though the nonmovant is unable to adduce any evidence of that fact."[60]

It is nonsensical to require a party moving for summary judgment to overcome the procedural hurdle of producing evidence "proving the negative of matters as to which the non-moving party would have the burden of proof at trial."[61]

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[59] Zielinski v. Kotsoris, 279 Conn. 312, 318, 901 A.2d 1207, 1212 (2006). However, in some instances, such as insurance coverage cases, the Connecticut Supreme Court has established the parties' burdens as a matter of substantive law. *See* Wentland v. Am. Equity Ins. Co., 267 Conn. 592, 599-600 & n.7, 840 A.2d 1158, 1163 (2004) (explaining insurer's duty to defend is determined by comparing allegations of complaint in underlying action with terms of insurance policy, and insurer must defend if allegations fall "even possibly within the coverage"). In such cases, it appears that these burdens, as a matter of substantive law, trump the rules of procedure. *See* Nationwide Mut. Ins. Co. v. Pools by Design, 2009 Conn. Super. LEXIS 1416, at *13 & 18 n.8 (May 22, 2009) (Brunetti, J.) (granting insured's motion for summary judgment on issue of duty to defend "because a review of the allegations of the underlying complaint indicate[d] that the . . . exclusions d[id] not apply" and declining to consider evidence outside the four corners of the complaint); *see also* Schilberg Integrated Metals Corp. v. Cont'l Cas. Co., 263 Conn. 245, 819 A.2d 773, 784 (2003) (affirming entry of summary judgment in favor of defendant insureds on duty to defend because, after they met their burden of establishing the applicability of the pollution exclusion clauses, the plaintiff "failed to meet its burden of proving the applicability of the sudden and accidental discharge exception to the pollution exclusion clauses"); Buell Indus. v. Greater N.Y. Mut. Ins. Co., 259 Conn. 527, 552-53, 791 A.2d 489, 505 (2002) (same, except issue was duty to indemnify).

[60] *Waste Conversation,* 2008 Conn. Super. LEXIS 3130 at *78-79. "Notably, *Celotex* has been adopted by rule or court decision in a majority of states," but it "has never been cited by a Connecticut appellate court." *Id.* at *78, 79 n.19 (citing numerous decisions). Additionally, *Celotex* is the second most frequently cited U.S. Supreme Court case, with "over 72,000 citations by federal and state courts," as of 2006. Adam N. Steinman, *The Irrepressible Myth of Celotex: Reconsidering Summary Judgment Burdens Twenty Years After the Trilogy,* 63 WASH & LEE L. REV. 81, 86-87 (2006). Frequency of citation is an indication of "a decision's impact and influence." *Id.* at 86.

[61] Emigra Grp., v. Fragomen, Del Rey, Bernsen & Loewy, LLP, 612 F. Supp. 2d 330, 344 (S.D.N.Y. 2009); *see also* Amy M. Pepke, *Prove It: Finding the Middle Ground in Tennessee's Evolving Summary Judgment Standard,* 43 TENN. B.J. 12, 14 (July 2007) ("Tennessee defendants may well find themselves in the position of proving the negative—providing evidence of a fact that it would not have to establish at trial! Amazingly, if defendant cannot provide actual affirmative evidence contradicting an element of plaintiff's claim, plaintiff can withstand the motion for sum-

Moreover, adopting the federal *Celotex* standard in Connecticut would comport with the goals of the Practice Book rules, which were "design[ed] . . . to facilitate business and advance justice,"[62] and "adopt[ed] . . . for the purpose of simplifying proceedings in the courts and of promoting the speedy and efficient determination of litigation upon its merits."[63]

Additionally, Connecticut should adopt U.S. District Court of Connecticut Local Rule 56(a), which requires the moving party on a motion for summary judgment to annex to its motion a "Local Rule 56(a)1 Statement" setting forth in separately numbered paragraphs a "concise statement of material fact as to which the moving party contends there is no genuine issue to be tried" and requires the opposing party to include a "Local Rule 56(a)2 Statement" stating in separately numbered paragraphs (corresponding to the paragraphs contained in the moving party's statement) "whether each of the facts asserted by the moving party is admitted or denied."[64] Each statement

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mary judgment despite the utter lack of evidence in support of his case."). "In appropriate circumstances summary judgment can filter out groundless accusations by disgruntled or terminated employees tempted to misuse the claim of discrimination as an excuse for deficiency or as an instrument of revenge. Summary disposition can relieve the innocent employer of the continuing burdens of litigation and cut short the stigmatizing imputation of workplace discrimination." Poon v. Mass. Inst. of Tech., 74 Mass. App. Ct. 185, 195 (2009).

62 PRACTICE BOOK § 1-8.

63 CONN. GEN. STAT. § 51-14(a). "The summary judgment procedure is designed to eliminate the delay and expense incident to a trial where there is no real issue to be tried." Mac's Car City, v. Am. Nat'l Bank, 205 Conn. 255, 261, 532 A.2d 1302, 1305 (1987) (internal quotation marks omitted); *see also* Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. Pro. 1) ("[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole"); Fernandez v. Estate of Ayers, 56 Conn. App. 332, 334-35, 742 A.2d 836, 837 (2000) ("the desire for judicial efficiency inherent in the summary judgment procedure would be frustrated if parties were forced to try a case where there was no real issue to be tried"); Thomas Logue & Javier A. Soto, *Florida Should Adopt the Celotex Standard for Summary Judgments,* 76 FLA. BAR J. 20, 26 (February 2002) ("[a] restrictive [summary judgment] standard . . . serves only to skew the analysis in a manner that unnecessarily prolongs litigation, increases costs, and wastes limited judicial resources"); Stephen J. Fortunato, Jr., *Summary Judgment in Rhode Island: Is It Time to Wrap the Mantra in Celotex?,* 2 ROGER WILLIAMS U. L. REV. 153, 158, 167 (1997) (explaining incorporating federal summary judgment principles "into Rhode Island practice, would serve both the bench and bar, not to mention litigants, by removing from the trial track those cases that should not be there. . . [and this would] save litigants, lawyers and the court from wasting time and resources trying unfounded claims and defenses").

64 D. Conn. Civ. R. 56(a)(1) & (2); *see also* Vaden v. Connecticut, 557 F. Supp. 2d 279, 284-85 (D. Conn. 2008).

of material fact by a movant or nonmovant and each denial by a nonmovant "must be followed by a specific citation to (1) the affidavit of a witness competent to testify as to the facts at trial and/or (2) evidence that would be admissible at trial."[65] This "anti-ferreting rule" assists a trial judge "in the all-too typical situation in which the parties throw a foot-high mass of undifferentiated material at the judge."[66]

It should be noted that, in Connecticut state court, "[o]nly evidence that would be admissible at trial may be used to support or oppose a motion for summary judgment."[67] Accordingly, the court may decline to consider unauthenticated affidavits or deposition transcripts. Where there is no objection to the admission of such evidence, however, the court may, in its discretion, choose to consider it.[68]

Practitioners should take care to brief their arguments adequately. Although Connecticut trial judges may be more willing to address inadequately briefed issues than the Connecticut appellate courts, where counsel fails to cite any authority or provide any analysis in support of an argument, the court will probably decline to consider it.[69]

VI. Conclusion

To achieve simplicity and uniformity,[70] Connecticut

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65 D. Conn. Civ. R. 56(a)(3).

66 Dziamba v. Warner & Stackpole LLP, 56 Mass. App. Ct. 397, 399 (2002). All material facts set forth in the moving party's statement are admitted unless specifically controverted in a statement filed by the opposing party in accordance with the rules. D. Conn. Civ. R. 56(a)(3). The anti-ferreting rule is "a pragmatic and reasonable response to the propensity of lawyers to file literally mounds of affidavits, depositions, interrogatories, and depositions in support of, or in opposition to, summary judgment." *Dziamba*, 56 Mass. App. Ct. at 401.

67 Rockwell v. Quinter, 96 Conn. App. 221, 233 n.10, 899 A.2d 738, 746 (2006) (internal quotation marks omitted).

68 *See* Barlow v. Palmer, 96 Conn. App. 88, 92, 898 A.2d 835, 838 (2006).

69 *See* State v. Colon, 272 Conn. 106, 153 n.19, 864 A.2d 666, 703 (2004), (holding a court is "not required to review issues that have been improperly presented to [it] through an inadequate brief . . . [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly (internal quotation marks omitted)); *see also* Ranger v. Gianmarco, 2009 Conn. Super. LEXIS 993, at *3 (Apr. 14, 2009) (Jones, J.) (declining to review claim that "the failure to perform services in a workmanlike manner gives rise to an independent breach of warranty cause of action" where "the plaintiff provide[d] no authority" supporting this proposition).

70 Uniformity is desirable primarily because it would allow "lawyers practic-

should consider joining the majority of states and adopting the Federal Rules of Civil Procedure, which were enacted to "secure the just, speedy, and inexpensive determination of every action."[71] Connecticut, however, has yet to adopt the Federal Rules, and until such time, those practicing in Connecticut must continue to grapple with its archaic, esoteric system of procedure.[72] It is my hope that this article will assist practitioners in doing so.

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ing before the state courts [to] be governed by the same rules and, when practicing before any . . . court in the United States they could walk into the courtroom and feel at home." Stephen S. Subrin, *Federal Rules, Local Rules, and State Rules: Uniformity, Divergence, and Emerging Procedural Patterns,* 137 U. PA. L. REV. 1999, 2027 (1989) (internal quotation marks omitted).

[71] FED. R. CIV PRO. 1; *see also* Keller-Dorian Colorfilm Corp. v. Eastman Kodak Co., 10 F.R.D. 39, 40-41 (S.D.N.Y. 1950) ("[t]he purpose of the Federal Rules was to bring about simplicity in pleadings"); Alexander Holtzoff, *Two Years' Experience Under the Federal Rules of Civil Procedure,* 21 B.U. L. REV. 33, 33 (1941) (praising Rules for attaining uniformity, simplifying procedure, and expediting determination of controversies).

[72] "Connecticut makes it arguably more difficult to come to an understanding of its procedure by failing to provide a comprehensive set of rules. Reference must be made to the statutes, to the Practice Book and to the cases. Even such reference is inadequate, for these sources reveal glosses and changes upon a system inherited from the past, an understanding of which is essential to an appreciation of the present." RENÉE BEVACQUA BOLLIER ET AL., STEPHENSON'S CONNECTICUT CIVIL PROCEDURE § 31(c), at 99 (3rd ed. 1997).

MAJOR CONNECTICUT PROCEDURE DISTINCTIONS

	CONNECTICUT PROCEDURE	FEDERAL PROCEDURE
PLEADING	**Fact pleading:** "Each pleading shall contain a plain and concise statement of the material facts on which the pleader relies." Practice Book § 10-1.	**Notice pleading:** "A pleading . . . must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. Pro. 8(a)(2).
MOTION TO DISMISS	**Grounds:** In Connecticut, a "motion to dismiss" may be based upon: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; and (5) insufficiency of service of process. Practice Book § 10-31.	**Grounds:** Under the Federal Rules, a "motion to dismiss" may be based upon: (1) lack of subject-matter jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) insufficient process; (5) insufficient service of process; (6) failure to state a claim upon which relief can be granted; and (7) failure to join a party under Rule 19. Fed. R. Civ. Pro. 12(b).
MOTION TO STRIKE	**Terminology:** Motion to strike. Practice Book § 10-39(a)(1). **Standard:** A motion to strike "challenges the legal sufficiency of a pleading." *Batte-Holmgren v. Comm'r of Public Health*, 281 Conn. 277, 294, 914 A.2d 996, 1007 (2007). "If facts provable in the complaint would support a cause of action, the motion to strike must be denied." *Id*.	**Terminology:** Motion to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. Pro. 12(b)(6). **Standard**: A Rule 12(b)(6) motion "test[s] the legal sufficiency of the complaint." *Senture, LLC v. Dietrich,* 575 F. Supp. 2d 724, 725 (E.D. Va. 2008). The motion to dismiss will be denied if the plaintiff has pled "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 572 (2007).

MAJOR CONNECTICUT PROCEDURE DISTINCTIONS (CONT.)

	CONNECTICUT PROCEDURE	FEDERAL PROCEDURE
MOTION FOR SUMMARY JUDGMENT	**Standard:** "The courts hold the movant to a strict standard . . . [t]o satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact." *Zielinski v. Kotsoris*, 279 Conn. 312, 318, 901 A.2d 1207, 1212 (2006).	**Standard:** Summary judgment may be granted in favor of the movant where the movant points to a lack of evidence on an essential element of the nonmovant's claim and the nonmovant fails to produce evidence on this element. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).