Compelling and Staying Arbitration in Connecticut

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A Practice Note explaining how to request judicial assistance in Connecticut state court to stay court proceedings and compel arbitration or to enjoin arbitration. This Note describes what issues counsel must consider before seeking judicial assistance and explains the steps counsel must take to obtain a court order staying litigation and compelling or enjoining arbitration in Connecticut.

SCOPE OF THIS NOTE

When a party commences a lawsuit in defiance of an arbitration agreement, the opposing party may want to seek a court order to stay the litigation and compel arbitration. Conversely, when a party refuses to arbitrate a dispute, a party may need to seek a court order compelling them to arbitrate. Finally, when a party starts an arbitration proceeding in the absence of an arbitration agreement, the opposing party may need to seek a court order enjoining the other party from proceeding with the arbitration. This Note describes the key issues counsel should consider when asking a court to stay court proceedings, compel arbitration, or enjoin arbitration in state court in Connecticut. It does not consider court-ordered arbitrations or other special statutory forms of arbitration.

PRELIMINARY CONSIDERATIONS WHEN COMPELLING OR STAYING ARBITRATION

Before seeking judicial assistance to compel or enjoin arbitration, parties should determine whether the Federal Arbitration Act (FAA) or Connecticut state law applies to the arbitration agreement (see Determine the Applicable Law). Parties must also consider:

- The threshold issues courts decide when evaluating a request to compel or stay arbitration (see Threshold Issues for the Court to Decide).
- The issues specific to requests to compel arbitration (see Considerations When Seeking to Compel Arbitration).
- The issues specific to requests to stay arbitration (see Considerations When Seeking to Stay Arbitration).
- Whether to make an application for a provisional remedy when seeking to compel or stay arbitration (see Considerations When Seeking Provisional Remedies).

DETERMINE THE APPLICABLE LAW

When evaluating a request for judicial assistance in arbitration proceedings, the court must determine whether the arbitration agreement is enforceable under the FAA or Connecticut arbitration law.

The FAA

An arbitration agreement falls under the FAA if the agreement:

- Is in writing.
- Relates to interstate commerce or a maritime matter.
- States the parties' agreement to arbitrate a dispute.

(9 U.S.C. § 2.)

The FAA applies to all arbitrations arising from maritime transactions or to any other contract involving "commerce", a term the courts interpret broadly as an exercise of Congress's interstate commerce powers to their fullest extent (see *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 281 (1995); *Hottle v. BDO Seidman, LLP*, 846 A.2d 862, 868 (2004)). Parties may, however, contemplate enforcement of their arbitration agreement under state arbitration law (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 590 (2008); *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476 (1989) (noting there is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability of private arbitration agreements)).

For more information on compelling arbitration when an arbitration agreement falls under the FAA, see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Agreement Must Fall Under Federal Arbitration Act (6-574-8707).

Connecticut State Law

Connecticut public policy strongly favors the arbitration of disputes (see *Nussbaum v. Kimberly Timbers, Ltd.*, 856 A.2d 364, 368 (Conn. 2004)). Chapter 909 of the Connecticut General Statutes codifies Connecticut's general arbitration law (Conn. Gen. Stat. Ann. §§ 52-408 to 52-424). Unless the FAA preempts it (see Intersection of the FAA and Connecticut Law), the statute applies to any written agreement to arbitrate, including:

- An arbitration provision in a contract requiring the parties to arbitrate future disputes (Conn. Gen. Stat. Ann. § 52-408).
- An agreement to submit a pending court action to arbitration (Conn. Gen. Stat. Ann. § 52-424).

Other Connecticut statutes provide for:

- The arbitration of labor disputes (Conn. Gen. Stat. Ann. §§ 31-91 to 31-100 and 31-112 to 31-118).
- Judicial referrals to arbitration (Conn. Gen. Stat. Ann. § 52-235f; see also Conn. Gen. Stat. Ann. § 52-549u to 52-549aa).

This Note does not discuss labor arbitration or judicial referrals.

In early 2018, the Connecticut House Judiciary Committee considered HB 5258, a bill to adopt the Revised Uniform Arbitration Act (RUAA). To date the legislature has not voted to approve the bill.

For information about the RUAA and a list of the states that have adopted it, see Practice Note, Revised Uniform Arbitration Act: Overview (w-004-5167).

INTERSECTION OF THE FAA AND CONNECTICUT LAW

Because the Connecticut arbitration law largely mirrors the FAA, Connecticut courts often consult FAA cases for guidance on construing the state's arbitration statutes (see *Nussbaum*, 856 A.2d at 369 n.6; *Ungerland v. Morgan Stanley & Co., Inc.*, 35 A.3d 1095, 1101-02 (Conn. Super. Ct. 2010)).

The FAA preempts Connecticut arbitration laws that stand as an obstacle to the Congressional intent that courts enforce arbitration agreements (see *Volt Info. Scis v. Bd. of Tr. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476-77 (1989); *Levine v. Advest, Inc.*, 714 A.2d 649, 657 (Conn. 1998)). If both the FAA and state law govern an arbitration agreement, for example because the parties' arbitration agreement contains a Connecticut choice of law provision but also relates to interstate commerce, state and federal courts in Connecticut apply the FAA to the extent state law is inconsistent with the federal policy favoring arbitration (see *Volt Info. Scis.*, 489 U.S. at 476-77 (1989); *Hottle v. BDO Seidman, LLP*, 846 A.2d 862, 868-69 (Conn. 2004); *Levine*, 714 A.2d at 657).

Even where the FAA applies to the parties' arbitration agreement, the FAA does not supersede Connecticut procedural law in Connecticut courts (see *Hartford Steam Boiler Inspection & Ins. Co. v. Underwriters at Lloyd's & Cos. Collective*, 857 A.2d 893, 905-06 (Conn. 2004)). Therefore, the Connecticut courts apply Connecticut's procedural arbitration laws in arbitration-related cases (see *Ungerland*, 35 A.3d at 1102).

If an agreement falls under the FAA, Connecticut state courts apply the federal standard for arbitrability when determining whether to compel or stay arbitration, rather than evaluating these threshold questions under Connecticut state law (see *Southland Corp. v. Keating*, 465 U.S. 1, 12-13 (1984); see also Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Arbitrability) (6-574-8707).

THRESHOLD ISSUES FOR THE COURT TO DECIDE

Under Connecticut arbitration law, the language of the contract determines whether an arbitrator or the court determines issues of arbitrability (see *White v. Kampner*, 641 A.2d 1381, 1385 n. 10 (Conn. 1994); *East Hartford v. East Hartford Municipal Employees Union, Inc.*, 539 A.2d 125, 131-32 (Conn. 1988)). Unless parties clearly and unmistakably delegate arbitrability issues to the arbitrator (see Issues for the Arbitrator to Decide), courts presume the parties intended the court to determine these issues (see *City of New Britain v. AFSCME, Council 4, Local 1186*, 43 A.3d 143, 150-51 (Conn. 2012); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944-45 (1995)). The threshold arbitrability issues include determining whether:

- There is valid arbitration agreement (see Valid Arbitration Agreement).
- The scope of the agreement covers the parties' dispute (see Scope of Arbitration Agreement).

(See *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68-70 (2010); *Middlesex Mut. Assurance Co. v. Clinton*, 662 A.2d 1319, 1325 (Conn. App. Ct. 1995).)

The court may also decide whether any party waived its right to arbitrate, unless the parties clearly and unmistakably agree the arbitrator decides this issue (see *Mattie & O'Brien Contracting Co. v. Rizzo Constr. Pool Co.*, 17 A.3d 1083, 1087 (Conn. App. Ct. 2011); see Waiver).

A party may raise issues of arbitrability as a basis for the application to compel or stay arbitration or as a defense in an opposition to an application. Once the court rules that a dispute is arbitrable or that the issue of arbitrability is for the arbitrator, all remaining questions in the dispute are for the arbitrator to decide (see *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444-46 (2006)).

VALID ARBITRATION AGREEMENT

The court determines the validity of the parties' arbitration clause, while the arbitrator decides the validity of the contract containing it (see *Buckeye Check Cashing*, 546 U.S. at 449; *C.R. Klewin N, LLC v. City of Bridgeport*, 919 A.2d 1002, 1010 (Conn. 2007); *Nussbaum v. Kimberly Timbers, Ltd.*, 856 A.2d 364, 369 (Conn. 2004)).

Connecticut courts apply traditional state law contract principles to determine the existence and validity of an arbitration agreement. Under Connecticut law, a valid contract requires:

- A voluntary offer.
- Voluntary acceptance.
- Support by mutual consideration.

(See *Stewart v. Cendant Mobility Servs. Corp.*, 837 A.2d 736, 742 (Conn. 2003); *Geary v. Wentworth Labs., Inc.*, 760 A.2d 969, 972-93 (Conn. App. Ct. 2000).)

In applying general principles of Connecticut contract law, the court also rules on contract defenses that may invalidate an arbitration agreement, including:

- Fraud.
- Duress.
- Unconscionability.

(See *Hottle*, 846 A.2d at 869-70; see also *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 686-87 (1996).)

A party may also challenge the enforcement of an arbitration clause in a contract on the grounds that it violates Connecticut public policy. A Connecticut court may void any contract that violates public policy (see *Hanks v. Powder Ridge Rest. Corp.*, 885 A.2d 734, 742 (Conn. 2005)). Therefore, the court may invalidate and refuse to enforce an arbitration agreement that violates public policy, such as an arbitration provision that is unconscionable (see *Van Voorhies v. Land/Home Fin. Servs.*, 2010 WL 3961297, at *7 (Conn. Super. Ct. Sep. 3, 2010); see generally *C.R. Klewin*, 919 A.2d at 1029 n. 34).

SCOPE OF ARBITRATION AGREEMENT

The Connecticut arbitration statute requires the court to determine if the parties' dispute is covered by their arbitration agreement (Conn. Gen. Stat. Ann. § 52-409). The court makes this determination unless the parties clearly and unmistakably agree the arbitrator decides the issue (see *White*, 641 A.2d at 1385; *Welch Grp., Inc.*, 576 A.2d at 155; see Issues for the Arbitrator to Decide).

Connecticut courts apply the US Supreme Court's "positive assurance" test to determine the scope of the arbitration clause and order arbitration of a dispute if there is no reading of the parties' arbitration agreement that covers the dispute (see *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960); *State v. Phillip Morris, Inc.*, 905 A.2d 42, 48 n.10 (Conn. 2006)). The parties' intentions regarding the scope of the arbitration clause is a matter of law for the court to decide if the contract language is clear and definitive (see *Levine*, 714 A.2d at 746-47; *Phillip Morris*, 905 A.2d at 48-49).

WAIVER

The court may decide the threshold question of whether a party waived the right to arbitration, unless the parties clearly and unmistakably agree the arbitrator decides the issue (see *AFSCME, Council 4, Local 704 v. Dep't of Pub. Health*, 866 A.2d 582, 585 (Conn. 2005)).

Under Connecticut law, waiver is the intentional relinquishment of a known right (see *Advest, Inc. v. Wachtel*, 668 A.2d 367, 372 (Conn. 1995)). A court may find waiver of the right to arbitrate where:

- The party seeking arbitration:
  - delays in asserting the right to arbitrate; or
  - engages in litigation conduct, including discovery and motion practice.
- The party asserting waiver suffers prejudice because of the waiving party's conduct.

(See *MSO, LLC v. DeSimone*, 94 A.3d 1189, 1197-98 & n.14 (Conn. 2014); see also *Mattie & O'Brien Contracting Co. v. Rizzo Const. Pool Co.*, 17 A.3d 1083, 1087 (Conn. App. Ct. 2011).)

ISSUES FOR THE ARBITRATOR TO DECIDE

Although the court presumptively decides issues of arbitrability (see Threshold Issues for the Court to Decide), the arbitrator decides these issues if the parties' arbitration agreement clearly and unmistakably evidences their agreement to submit these issues to the arbitrator (see *City of New Britain*, 43 A.3d at 150-51; *First Options of Chicago*, 514 U.S. at 944-45).

The parties may clearly and unmistakably delegate substantive arbitrability issues to the arbitrator by:

- Including broad language in their arbitration agreement providing that the arbitrator resolves "any" or "all" disputes (see *Emcon Corp. v. Pegnataro*, 562 A.2d 521, 523-24 (Conn. 1989); *Gary Excavating, Inc. v. Town of N. Haven*, 318 A.2d 84, 86 (Conn. 1972)).
- Incorporating in their agreement arbitration rules that empower the arbitrator to determine arbitrability, such as the rules of the American Arbitration Association (see *Contec Corp. v. Remote Solution, Co., Ltd.*, 398 F.3d 205, 208 (2d Cir. 2005); *Considine v. Brookdale Senior Living, Inc.*, 124 F. Supp. 3d 83, 90-91 (D. Conn. 2015)).

The arbitrator also decides challenges to the parties' contract as a whole, as distinct from the contract's arbitration clause, such as:

- Termination.
- Modification.
- Enforceability.

(See *ACE Capital Re Overseas Ltd. v. Cent. United Life Ins. Co.*, 307 F.3d 24, 34 (2d Cir. 2002); *Nussbaum*, 856 A.2d at 369.)

For more information on who decides arbitrability issues, see Practice Note, Arbitrability Issues in US Arbitration: Determination by a Court or Arbitrator (w-005-0556).

CONSIDERATIONS WHEN PREPARING TO COMPEL OR STAY ARBITRATION

Before seeking to compel or stay arbitration in Connecticut state court, counsel should consider several factors.

CONSIDERATIONS WHEN SEEKING TO COMPEL ARBITRATION

A party may ask the court to compel arbitration when the opposing party commences a lawsuit or otherwise expresses the intention to avoid arbitration of a dispute (Conn. Gen. Stat. Ann. § 52-410). If there is no court action already pending between the parties, the party seeking an order compelling arbitration makes an application to the superior court by serving and filing a writ of summons and complaint (Conn. Gen. Stat. Ann. § 52-410(a)).

If there is a court action pending between the parties, for example, because the other party filed a lawsuit over claims subject to arbitration, the party seeking an order compelling arbitration files a motion in that action to stay the court proceedings pending arbitration of the dispute. The movant attaches the agreement and affirmatively states its readiness and willingness to proceed with the arbitration. (Conn. Gen. Stat. Ann. § 52-409.)

CONSIDERATIONS WHEN SEEKING TO STAY ARBITRATION

The Connecticut arbitration statute contains no specific provision for stopping a party from proceeding with an arbitration. A party

that believes a pending arbitration should not proceed may seek an injunction enjoining the arbitration (see generally *Policemen's & Firemen's Ret. Bd. v. Sullivan*, 376 A.2d 399, 405 (Conn. 1977)).

A party seeking injunctive relief in Connecticut has the burden of alleging and proving irreparable harm and lack of an adequate remedy at law (see *Town of Berlin v. Nobel Ins. Co.*, 758 A.2d 436, 440 (Conn. App. Ct. 2000)). A party may satisfy these elements by demonstrating there is no valid arbitration agreement covering the dispute, because absent an injunction the party would be subject to the unauthorized acts of an arbitrator (see *Sullivan*, 376 A.3d at 405).

CONSIDERATIONS WHEN SEEKING PROVISIONAL REMEDIES

Under the Connecticut arbitration statute, a party may seek an order *pendente lite* from the court any time before the arbitrator issues the award (Conn. Gen. Stat. Ann. § 52-422). The moving party must show that it needs the order to protect that party's rights pending the arbitrator's award and secure the opposing party's satisfaction of the award (Conn. Gen. Stat. Ann. § 52-422; see *Lyons Hollis Assocs., Inc. v. New Tech. Partners, Inc.*, 278 F. Supp. 2d 236, 245 (D. Conn. 2003)).

Both state and federal courts in Connecticut may provide provisional relief under the Connecticut arbitration statute, such as:

- A preliminary injunction (see *New England Pipe Corp. v. Ne. Corridor Found.*, 857 A.2d 348, 353 (Conn. 2004)).
- An attachment (see *Lyons Hollis*, 278 F. Supp. 2d at 245).
- An order directing a party to disclose assets (see *Insurity, Inc. v. Mut. Grp., Ltd.*, 260 F. Supp. 2d 486, 491 (D. Conn. 2003)).

The Connecticut arbitration statute's provision for an order *pendente lite* supplements the general statute on prejudgment relief in civil actions, which requires the applicant to show probable cause that it is likely to receive a judgment in the requested amount (Conn. Gen. Stat. Ann. § 52-278c). Under the arbitration statute, a party seeking an order pendente lite must also show that, unless the court grants the requested provisional relief, it may irretrievably lose its rights (see *Stack v. Hartford Distrib., Inc.*, 2017 WL 3176028, at *1-2 (Conn. Super. Ct. June 20, 2017); *New England Pipe*, 857 A.2d at 352-54).

ADDITIONAL PROCEDURAL CONSIDERATIONS

Before commencing a litigation related to an arbitrable dispute in a Connecticut court, counsel should also consider other factors that may affect the contents of the request for judicial assistance, the manner in which to bring it, and the likelihood of obtaining the desired relief. These factors include:

- Whether the court has subject matter jurisdiction over the case and a basis to exercise personal jurisdiction over the other party (see Court Jurisdiction).
- The proper venue in which to bring the request (see Venue).
- Whether to seek discovery (see Discovery When Seeking to Compel or Stay Arbitration).

Court Jurisdiction

The Connecticut arbitration statute vests the Superior Court with subject matter jurisdiction to consider an application:

- To compel arbitration (Conn. Gen. Stat. Ann. § 52-410(a)).
- For an order pendente lite (Conn. Gen. Stat. Ann. § 52-422).

Proper bases of personal jurisdiction over non-residents in Connecticut include:

- General jurisdiction, which applies when the non-resident's extensive business in Connecticut subjects the party to the jurisdiction of the state's courts for any purpose.
- Specific jurisdiction, which applies when the non-resident's minimal contacts in Connecticut give rise to the claim.

(See *Thomason v. Chem. Bank*, 661 A.2d 595, 599-600 (Conn. 1995).)

Venue

A party seeking an order compelling arbitration in Connecticut state court files an application in the Connecticut Superior Court, which is Connecticut's trial court of general jurisdiction (Conn. Gen. Stat. Ann. §§ 52-417 and 51-164s). The applicant files the application in the judicial district where either:

- One of the parties resides.
- Land that is the subject of the dispute is located.

(Conn. Gen. Stat. Ann. § 52-410(a).)

If the court is not in session, the party may make the application to any judge of the Superior Court for the appropriate judicial district (Conn. Gen. Stat. Ann. § 52-410(a)).

Discovery When Seeking to Compel or Stay Arbitration

The Connecticut statutes and court rules are silent on the availability of discovery pending an application to stay or compel arbitration. The Connecticut Appellate Court has held, however, that an action to compel arbitration under the Connecticut arbitration statutes is not a civil action for purposes of discovery, and that the parties may not conduct discovery before the court adjudicates the plaintiff's claim (see *Bobbin v. Sail the Sounds, LLC*, 107 A.3d 414, 418-19 (Conn. App. Ct. 2014); *Fishman v. Middlesex Mut. Assurance Co.*, 494 A.2d 606, 613-14 (Conn. App. Ct. 1985)).

Although not directly addressed in the FAA or federal court rules, a party moving to compel arbitration under the FAA may be permitted to conduct limited discovery on the gateway issues the court decides when considering a motion to compel arbitration (see *Hudson v. Babilonia*, 2015 WL 1780879, at *1 (D. Conn. Apr. 20, 2015)). A party considering whether to seek discovery regarding an application to compel arbitration should refrain from requesting discovery about issues other than arbitrability or risk waiving its right to arbitrate (see Waiver).

APPLICATION TO COMPEL OR STAY ARBITRATION

Under the Connecticut arbitration statute, a party files and serves a writ of summons and complaint to ask a Connecticut state court to compel or stay arbitration (Conn. Gen. Stat. Ann. § 52-410). If there is a lawsuit between the parties already pending, for example because the other party started a lawsuit over the parties' dispute, the party seeking arbitration files a motion in that action to:

- Stay the court action.
- Compel arbitration.

(Conn. Gen. Stat. Ann. § 52-409.)

The Connecticut arbitration statute does not provide for a stay of arbitration. Parties seeking to stay arbitration should:

- Start a civil action in the Superior Court over the arbitrable dispute.
- Move in that civil action for an injunction to enjoin the arbitration.

(See generally *Policemen's & Firemen's Retirement Board*, 376 A.2d at 405.)

When bringing an application to compel or stay arbitration, counsel should be familiar with:

- The procedural and formatting rules relevant to case-initiating documents (see Procedural and Formatting Rules for Application).
- The documents necessary to bring the application to compel or stay arbitration (see Documents Required for Application).
- How to file and serve the documents (see Filing the Application and Serving the Application).

PROCEDURAL AND FORMATTING RULES FOR APPLICATION

Counsel should be familiar with applicable procedure and formatting rules for serving and filing process, including initial pleadings, in the Connecticut Superior Court. Counsel also should check the Connecticut Judicial Branch website for additional information and guidance on the Superior Court's procedural and formatting rules.

Procedural Rules

Connecticut's procedural rules governing a request to compel or stay arbitration include:

- The Connecticut arbitration statutes (Conn. Gen. Stat. Ann. §§ 52-408 to 52-424).
- The Connecticut General Statutes governing the commencement of civil actions (Conn. Gen. Stat. Ann. §§ 52-45a to 52-72).
- The Connecticut General Statutes governing actions for injunctive relief generally (Conn. Gen. Stat. Ann. §§ 52-471 to 52-479).
- The Rules of the Superior Court (Connecticut Practice Book), especially:
  - Sections 8-1 to 8-12 (commencing an action);
  - Sections 10-1- to 10-79 (pleadings);
  - Sections 11-1 to 11-12 (motions generally); and
  - Sections 11-13 to 11-19 (short calendar).

A party intending to start a proceeding to compel arbitration may download a Form JD-CV-1 (summons form for civil cases) from the Connecticut Judicial Branch website.

The Connecticut arbitration statute requires an expedited proceeding for an application to compel arbitration. The other party has only five days to answer the complaint (Conn. Gen. Stat. Ann. § 52-410(b)). The judge has the discretion to grant oral argument (Connecticut Practice Book § 11-18(a)).

Formatting Rules

Chapter 4 of the Connecticut Practice Book sets out the technical formatting requirements for initial and responsive pleadings, motions, and objections in the Connecticut Superior Court. Whether the party files hard copy papers or e-files the papers (see Electronic Filing), the papers generally must:

- Be printed or typewritten double spaced, on one side of the 8-1/2 by 11-inch paper.
- Have a caption.
- Not have a back or cover page.
- Contain a page number on each page other than the first page.
- Leave a two-inch space at the bottom of the first page for the clerk to note receipt or the date and time of filing.
- Contain the signature of either:
  - counsel for a party; or
  - a self-represented party.
- Have the signer's name typed under the signature.

(Connecticut Practice Book §§ 4-1 and 4-2.)

If a party files documents in paper format, as opposed to electronically, the party must punch the papers with two holes centered at the top, 7/16-inch from the top and 2-12/16-inches apart (Connecticut Practice Book § 4-1(b)). Counsel should also comply with any additional requirements the assigned judge imposes in a judicial notice issued after the action commences.

DOCUMENTS REQUIRED FOR THE APPLICATION

The party seeking to compel arbitration serves and files a writ of summons and complaint (Conn. Gen. Stat. Ann. § 52-410(a)). The complaint to compel arbitration is a short, simple document. The statute suggests a two-paragraph pleading that:

- Attaches and alleges the parties have a written arbitration agreement.
- States the defendant is refusing to arbitrate and the plaintiff is ready, willing, and able to proceed with arbitration.

(Conn. Gen. Stat. Ann. § 52-410(b).)

The party seeking to stay arbitration should:

- Start a civil action over the dispute.
- Make a motion in that action to enjoin the arbitration.

(See generally *Policemen's & Firemen's Retirement Board*, 376 A.2d at 405.)

If the movant submits a brief with the motion, the brief may not exceed 35 pages without the court's permission (Connecticut Practice Book § 4-6(a)).

FILING THE APPLICATION

Electronic Filing

All attorneys and self-represented parties must register for e-filing access, unless the court approves a Request for Exclusion from Electronic Services Requirements (JD-CL-92). When an attorney e-files a document, the entry of the attorney's individual juris number in the e-filing system constitutes the attorney's signature (E-Services Procedures and Technical Standards, I.E.1.a).

If there is no lawsuit pending between the parties, the party seeking to compel arbitration may file the complaint electronically if either:

- The filer has a juris number.
- The filer is a self-represented party enrolled to use E-Services.

The judicial branch provides an online tutorial on commencing an action electronically.

If a party seeks to compel or stay arbitration while there is a court action already pending between the parties, the party files the motion in the pending action. If the court accepts e-filing, the moving party should e-file the motion.

E-filed papers must be in PDF format (E-Services Procedures and Technical Standards, I.B.1).

Traditional Paper Filing

Although the courts prefer electronic filing, a party may commence a lawsuit in paper form. After the party serves the summons and complaint and receives the return of service from the marshal, the party may file the summons, complaint, and return of service with the clerk of the Superior Court at least six days before the designated return day (Conn. Gen. Stat. § 52-46a).

When filing these case-initiating hard copy documents in the clerk's office, the party should bring a second set of the documents for the clerk to stamp. The party may retain these file-stamped copies.

SERVING THE APPLICATION

If there is no lawsuit pending, the party seeking to compel arbitration must satisfy the service of process requirements applicable to initiating any other action under Connecticut law. The plaintiff must first serve the writ of summons and complaint using a marshal or, where applicable, an indifferent person (Conn. Gen. Stat. § 52-50). In most instances, the marshal makes service by

- Handing the summons and complaint to the defendant.
- Leaving a copy at the defendant's usual place of abode.
- Any other method prescribed by statute.

(Conn. Gen. Stat. §§ 52-54, 52-57, 52-57a, 52-59b, 52-59c, 52-59d, 52-60, 52-61, 52-62, 52-63, 52-64, and 52-67).

After serving process, the party files the summons and complaint with the superior court.

If there is a lawsuit between the parties already pending, the party moving to compel or stay arbitration serves the motion in that case as it serves any other document in the case. A party may serve the motion by:

- Personally handing the papers to the party or its attorney.
- Delivering or mailing the papers to the party's or attorney's last known office address.
- Leaving the papers at the party's or attorney's office either:
  - with a person in charge of the office; or
  - in a conspicuous place in the office.
- Leaving the papers at the party's usual place of abode.
- If the party has consented in writing to receiving documents electronically, delivering the papers to the last known electronic address of the party.

(Connecticut Practice Book § 10-13.)

An attorney or self-represented party filing a document electronically must serve it electronically on any attorney or self-represented party consenting in writing to electronic delivery (Connecticut Practice Book § 10-13).

APPEALING AN ORDER TO COMPEL OR STAY ARBITRATION

In federal court, federal law, such as the prohibition on interlocutory appeals (28 U.S.C. § 1291), the final judgment rule (28 U.S.C. § 1292), and the FAA (see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Appealing an Order to Compel or Enjoin Arbitration (6-574-8707)) limit appeals of orders compelling FAA governed arbitration. An order granting or denying a request to compel arbitration is not considered a final judgment. Under the FAA, however, litigants may immediately appeal federal court orders denying arbitration, but not orders favorable to arbitration. US appellate courts therefore have jurisdiction over orders:

- Denying requests to compel and stay litigation pending arbitration (9 U.S.C. § 16(a)(1)).
- Granting, continuing, or modifying an injunction against an arbitration (9 U.S.C. § 16(a)(2)).

In Connecticut state court, a party may only appeal a final judgment (Conn. Gen. Stat. Ann. § 52-263). Because an application to compel arbitration commences a new action, an order resulting from that proceeding is final and immediately appealable. However, because a party moves to stay pending arbitration in an existing action (Conn. Gen. Stat. § 52-409), an order granting or denying a motion to stay court proceedings pending arbitration is interlocutory and not appealable until after the arbitration. (See *Success Ctrs., Inc. v. Huntington Learning Ctrs., Inc.*, 613 A.2d 1320, 1324-25 (Conn. 1992); *Travelers Ins. Co. v. Gen. Elec. Co.*, 644 A.2d 346, 347 (Conn. 1994).)

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