

RESOLUTION 04-10-05

DIGEST

Summary Judgment: Filing Deadlines for Opposition and Reply Papers

Amends Code of Civil Procedure section 437c to change the filing deadlines for opposition and reply papers in a motion for summary judgment.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

Similar to Resolution 11-03-03, which was approved in principle.

Reasons:

This resolution amends Code of Civil Procedure section 437c to change the filing deadlines for opposition and reply papers in a motion for summary judgment. The resolution should be disapproved because it unduly shortens the time for the moving party to prepare its reply.

Summary judgment is often described as a drastic remedy because it disposes of a case without a trial. (See, e.g., *Molko v. Holy Spirit Ass'n* (1988) 46 Cal.3d 1092, 1107.) The switch from 14 calendar days to 10 court days to file an opposition has no real practical effect. The change from five calendar days to five court days, however, potentially reduces the time to reply by two days in an already tight briefing schedule. The 75 day notice period for the motion along with the opposition notice of 14 calendar days and 5 calendar days for the reply before the hearing give the parties and the court adequate time for the filing and consideration of the motion. The court always has the discretion to continue the motion if necessary.

In addition, the resolution seeks to make Section 437c of the Code of Civil Procedure consistent with Section 1005 of the Code of Civil Procedure. However, the legislature devoted a separate code section to summary judgments because of their importance to the litigation process.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 437c, to read as follows:

- 1 § 437c
- 2 [No changes to subsection (a)]
- 3 (b)(1) The motion shall be supported by affidavits, declarations, admissions, answers to
- 4 interrogatories, depositions, and matters of which judicial notice shall or may be taken. The
- 5 supporting papers shall include a separate statement setting forth plainly and concisely all material
- 6 facts which the moving party contends are undisputed. Each of the material facts stated shall be
- 7 followed by a reference to the supporting evidence. The failure to comply with this requirement of a
- 8 separate statement may in the court's discretion constitute a sufficient ground for denial of the
- 9 motion.
- 10 (2) Any opposition to the motion shall be served and filed not less than ~~44~~ 10 court days
- 11 preceding the noticed or continued date of hearing, unless the court for good cause orders
- 12 otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions,
- 13 answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken.
- 14 (3) The opposition papers shall include a separate statement which responds to each of the
- 15 material facts contended by the moving party to be undisputed, indicating whether the opposing
- 16 party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly
- 17 and concisely any other material facts which the opposing party contends are disputed. Each
- 18 material fact contended by the opposing party to be disputed shall be followed by a reference to the

19 supporting evidence. Failure to comply with this requirement of a separate statement may constitute
20 a sufficient ground, in the court's discretion, for granting the motion.
21 (4) Any reply to the opposition shall be served and filed by the moving party not less than
22 five-court days preceding the noticed or continued date of hearing, unless the court for good cause
23 orders otherwise.
24 (5) Evidentiary objections not made at the hearing shall be deemed waived.
25 (6) Sections 1005 and 1013, extending the time within which a right may be exercised or an
26 act may be done, do not apply to this section.
27 (7) Any incorporation by reference of matter in the court's file shall set forth with specificity
28 the exact matter to which reference is being made and shall not incorporate the entire file.
29 [No changes made to subsections (c)- (s)]

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS:

Existing Law: As amended effective 2003, C.C.P. section 437c provides that a motion for summary judgment shall be filed on 75 calendar days notice, the opposition shall be filed on 14 calendar days notice and the reply brief shall be filed on five calendar days' notice. By contrast, effective January 1, 2005, an ordinary motion is heard on 16 court days notice, with nine (9) court days for the opposition and five (5) court days for the reply. C.C.P. section 1005 (Eff. Jan 1, 2005.). Although more days are currently required for filing the motion for summary judgment or adjudication and the opposition papers, the time for filing and service of a reply brief to a motion for summary judgment (five calendar days before hearing) is now shorter than the time for filing and service of reply on any other motion (five court days).

This Resolution: This resolution will increase the time the court has to read and consider the contents of the moving party's reply brief on motion for summary judgment or adjudication from five calendar days to five court days. The opposition papers are now due 10 court days, instead of 14 calendar days before the hearing. This change from calendar to court days parallels the similar change in Code of Civil Procedure section 1005, from calendar to court days, for oppositions and replies. This modification will result in the real legal issues in contention being given greater consideration by the court, as it will have five court days in which to read all the moving, position and reply papers, and thus benefiting counsel for both moving and opposing parties.

The Problem: The trial courts allocate more time to read and prepare their opinions on motions for summary judgment and adjudication than on most other motions. Frequently, the reply brief will contain (or noticeably omit) material of significance in the formation of the court's opinion. With the current filing deadline of only five calendar days prior to the motion, taking into consideration that counsel usually file their reply briefs at the end of the last possible working day, and intervening weekend days and holidays reduce the available time for court review, the court is given insufficient time to adequately read and consider the reply brief. Five court days would be a more reasonable amount of time to review the merits of the entire motion.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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