

RESOLUTION 01-02-2006

DIGEST

Summary Judgment: Change to Format of Moving Party's Separate Statement

Amends California Rules of Court, rule 342 to change the format for separate statements.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends California Rules of Court, rule 342 to change the format for separate statements. This resolution should be approved because it would ease the burden on parties opposing a motion for summary judgment.

Rule 342 currently requires that parties filing motions for summary judgment file separate statements in a particular format. The moving party must separately state each material fact claimed by the party to be undisputed on the left side of the page and, in a column on the right side, must state the evidence supporting that fact. Parties opposing motions for summary judgment must place the moving parties' statements of material facts and evidence in columns on the left side and then place, on the right side of the page, their evidence disputing moving parties' facts.

“Separate statements are required not to satisfy a sadistic urge to torment lawyers, but rather to afford due process to opposing parties and to permit trial courts to expeditiously review complex motions for . . . summary judgment to determine quickly and efficiently whether material facts are disputed[.]” (*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 335.) “Both the court and the opposing party are entitled to have all the facts upon which the moving party bases its motion plainly set forth in the separate statement.” (*Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1282.) In what has been referred to as the “golden rule,” “if it is not set forth in the separate statement, *it does not exist.*” (*United Community Church, supra*, 231 Cal.App.3d at p. 337 (emphasis added).)

Amending Rule 342 as proposed would preserve both of these purposes while alleviating the procedural burdens on parties opposing motions for summary judgment. Parties would still have clear notice of the opposing parties' evidence, and courts could still readily ascertain the facts. The responding party would not be required to move the moving party's evidence from the right column to the left column when replicating the moving party's separate statement. This simple change would greatly reduce the unnecessary amount of attorney time spent on summary judgment motions while maintaining the utility of the separate statement.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that the Judicial Council amends California Rule of Court, Rule 342 to read as follows:

1 Rule 342

2 (a) As used in this rule, "motion" refers to either a motion for summary judgment or a
3 motion for summary adjudication.

4 (b) If made in the alternative, a motion for summary adjudication may make reference to
5 and depend upon the same evidence submitted in support of the summary judgment motion. If
6 summary adjudication is sought, whether separately or as an alternative to the motion for
7 summary judgment, the specific cause of action, affirmative defense, claims for damages, or
8 issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in
9 the separate statement of undisputed material facts.

10 (c) The motion must contain and be supported by the following documents:

11 (1) Notice of motion by [*moving party*] for summary judgment or summary adjudication
12 or both;

13 (2) Separate statement of undisputed material facts in support of [*moving party's*] motion
14 for summary judgment or summary adjudication or both;

15 (3) Memorandum of points and authorities in support of [*moving party's*] motion for
16 summary judgment or summary adjudication or both;

17 (4) Evidence in support of [*moving party's*] motion for summary judgment or summary
18 adjudication or both; and

19 (5) Request for judicial notice in support of [*moving party's*] motion for summary
20 judgment or summary adjudication or both (if appropriate).

21 (d) The Separate Statement of Undisputed Material Facts in support of a motion must
22 separately identify each cause of action, claim, issue of duty or affirmative defense, and each
23 supporting material fact claimed to be without dispute with respect to the cause of action, claim
24 issue of duty or affirmative defense. In a two-column format, the statement must state in
25 numerical sequence the undisputed material facts in the first column ~~and the~~ followed by the
26 evidence that establishes those undisputed facts in ~~the second~~ that same column. Citation to the
27 evidence in support of each material fact must include reference to the exhibit, title, page, and
28 line numbers.

29 (e) The opposition to a motion must consist of the following documents, separately
30 stapled and titled as shown:

31 (1) [*Opposing party's*] memorandum of points and authorities in opposition to [*moving*
32 *party's*] motion for summary judgment or summary adjudication or both;

33 (2) [*Opposing party's*] separate statement of undisputed material facts in opposition to
34 [*moving party's*] motion for summary judgment or summary adjudication or both;

35 (3) [*Opposing party's*] evidence in opposition to [*moving party's*] motion for summary
36 judgment or summary adjudication or both (if appropriate); and

37 (4) [*Opposing party's*] request for judicial notice in opposition to [*moving party's*] motion
38 for summary judgment or summary adjudication or both (if appropriate).

39 (f) Each material fact claimed by the moving party to be undisputed must be set out
40 verbatim on the left side of the page, below which must be set out the evidence said by the
41 moving party to establish that fact, complete with the moving party's references to exhibits. On
42 the right side of the page, directly opposite the recitation of the moving party's statement of

43 material facts and supporting evidence, the response must unequivocally state whether that fact
44 is "disputed" or "undisputed." An opposing party who contends that a fact is disputed must state,
45 on the right side of the page directly opposite the fact in dispute, the nature of the dispute and
46 describe the evidence that supports the position that the fact is controverted. That evidence must
47 be supported by citation to exhibit, title, page, and line numbers in the evidence submitted.

48 (g) If evidence in support of or in opposition to a motion exceeds 25 pages, the evidence
49 must be in a separately bound volume and must include a table of contents.

50 (h) Supporting and opposing separate statements in a motion for summary judgment
51 must follow this format:

52 Supporting statement:

53 Moving Party's Undisputed Material
54 Facts and Supporting Evidence:

~~Supporting Evidence~~ Opposing Party's
Response and Supporting Evidence:

56 1. Plaintiff and defendant entered
57 into a written contract for the sale of
58 widgets. Jackson declaration: 2:17-21;
59 contract, Ex. A to Jackson declaration.

~~Jackson declaration: 2:17-21; contract, Ex.~~
~~A to Jackson declaration.~~

60 2. No widgets were ever received.
61 Jackson declaration, 3:7-21.

~~Jackson declaration, 3:7-21.~~

62
63 Opposing statement:

64 Moving Party's Undisputed Material
65 Facts and Alleged Supporting Evidence:

Opposing Party's Response and Evidence:

66 1. Plaintiff and defendant entered
67 into a written contract for the sale of
68 widgets. Jackson declaration, 2:17-21;
69 contract, Ex. A to Jackson declaration.

Undisputed.

70
71 2. No widgets were ever received.
72 Jackson declaration, 3:7-21.

Disputed. The widgets were received in
New Zealand on August 31, 2001. Baygi
73 declaration, 7:2-5.

74
75 Supporting and opposing separate statements in a motion for summary adjudication must
76 follow this format:

77
78 Supporting statement:

79
80 ISSUE 1 - THE FIRST CAUSE OF ACTION FOR
81 NEGLIGENCE IS BARRED BECAUSE PLAINTIFF
82 EXPRESSLY ASSUMED THE RISK OF INJURY

83
84
85 Moving Party's Undisputed Material
86 Facts and Supporting Evidence:

Opposing Party's Response and Supporting
Evidence:

88 1. Plaintiff was injured while
89 mountain climbing on a trip with Any
90 Company USA. Plaintiff's deposition, 12:3-
91 4.

~~Plaintiff's deposition, 12:3-4.~~

92 2. Before leaving on the mountain-
93 climbing trip, plaintiff signed a complete
94 waiver of liability. Smith declaration, 5:4-5;
95 waiver of liability, Ex. A to Smith
96 declaration.

~~Smith declaration, 5:4-5; waiver of liability,
Ex. A to Smith declaration.~~

97
98
99 Opposing statement:

100
101 ISSUE 1 - THE FIRST CAUSE OF ACTION FOR
102 NEGLIGENCE IS BARRED BECAUSE PLAINTIFF
103 EXPRESSLY ASSUMED THE RISK OF INJURY
104

105 Moving Party's Undisputed Material
106 Facts and Alleged Supporting Evidence:

Opposing Party's Response and Evidence:

107 1. Plaintiff was injured while
108 mountain climbing on a trip with Any
109 Company USA. Plaintiff's deposition, 12:3-
110 4.

Undisputed.

111 2. Before leaving on the mountain-
112 climbing trip, plaintiff signed a complete
113 waiver of liability. Smith declaration, 5:4-5;
114 waiver of liability, Ex. A to Smith
115 declaration.

Disputed. Plaintiff did not sign the waiver
of liability; the signature on the waiver is
forged. Jones declaration, 3:6-7.

116 (i) [Request for electronic version of separate statement] Upon request, a party must
117 within 3 days provide to any other party or the court an electronic version of its separate
118 statement. The electronic version may be provided in any form upon which the parties agree. If
119 the parties are unable to agree on the form, the responding party must provide to the requesting
120 party the electronic version of the separate statement which it used to prepare the document filed
121 with the court. Under this provision, a party is not required to create an electronic version or any
122 new version of any document for the purpose of transmission to the requesting party.

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

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

Existing law: States that a moving party's motion for summary judgment shall be accompanied
by a Separate Statement listing in the left-hand column all facts claimed to be undisputed and in

the right-hand column the supporting evidence.

This Resolution: Would require the moving party to put both the undisputed facts and the supporting evidence into the left-hand column.

The Problem: Currently, a party opposing a motion for summary judgment has an unnecessary burden, paragraph by paragraph, of retyping or cutting and pasting the moving party's citation to the supporting evidence from the right-hand into the left-hand column. Given that they are always going to have to be moved, there is no reason for the moving party's citations to supporting evidence to be typed in the right-hand column. The court will rarely, if ever, be looking at the moving party's separate statement. Rather it will look at the opposing party's separate statement, because that is the statement which will show whether there are disputed issues of material fact. It is difficult enough to oppose motions for summary judgment as it is, without having to add unnecessary burdens for attorneys.

IMPACT STATEMENT

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

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RESPONSIBLE FLOOR DELEGATE: