

RESOLUTION 09-07-08

DIGEST

Summary Judgment: Reducing Notice Period

Amends Code of Civil Procedure section 437c to shorten the notice period for a motion for summary judgment from 75 to 45 days.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Same as Resolution 04-08-05, which was approved; and similar to Resolution 11-02-03, which was approved.

Reasons:

This resolution amends Code of Civil Procedure section 437c to shorten the notice period for a motion for summary judgment from 75 to 45 days. This resolution should be approved in principle because it strikes a proper balance between the prior, unduly short, 28-day notice period and the present, unduly long, 75-day notice period for the bringing of a motion for summary judgment or summary adjudication of issues.

Under the current fast track rules, the 75-day notice period makes it extremely difficult to bring a meritorious, well-substantiated summary judgment motion, which typically requires that the majority of discovery has been completed. It encourages the bringing of such motions too early in the litigation, forcing expedited discovery on the part of the opposing party, and causing increased expense and difficulties for all parties. In the majority of cases, a 75-day notice period is not needed. When it is, the court retains the discretion to order it.

This Conference previously approved Resolution 04-08-05, which provided for a 45-day notice period; and approved as amended Resolution 11-02-03, which provided for application to a court to shorten the notice period.

TEXT OF RESOLUTION

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

- 1 § 437c.
- 2 (a) Any party may move for summary judgment in any action or proceeding if it is
- 3 contended that the action has no merit or that there is no defense to the action or
- 4 proceeding. The motion may be made at any time after 60 days have elapsed since the
- 5 general appearance in the action or proceeding of each party against whom the motion is
- 6 directed or at any earlier time after the general appearance that the court, with or without
- 7 notice and upon good cause shown, may direct. Notice of the motion and supporting
- 8 papers shall be served on all other parties to the action at least 75 45 days before the time

9 appointed for hearing. However, if the notice is served by mail, the required 75~~45~~-day
10 period of notice shall be increased by five days if the place of address is within the State of
11 California, 10 days if the place of address is outside the State of California but within the
12 United States, and 20 days if the place of address is outside the United States, and if the
13 notice is served by facsimile transmission, Express Mail, or another method of delivery
14 providing for overnight delivery, the required 75~~45~~-day period of notice shall be increased
15 by two court days. The motion shall be heard no later than 30 days before the date of trial,
16 unless the court for good cause orders otherwise. The filing of the motion shall not extend
17 the time within which a party must otherwise file a responsive pleading.
18 [Subdivisions (b) through (s) remain unchanged.]

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

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS:

Existing law: Requires 75 days notice to set a motion for summary judgment (MSJ), or summary adjudication.

This Resolution: Reduces the “notice” period for MSJs or summary adjudication from 75 days to 45 days.

The Problem: The philosophy behind an MSJ is to provide a method for the prompt disposition of actions which have no merit and in which there is no triable material issue of fact. *Pettus v. Standard Cabinet Works* (1967, Cal App 5th Dist) 249 Cal App 2d 64, 57 Cal Rptr 207. It is not uncommon for cases that are suitable for decision by summary judgment, to be unnecessarily delayed or forced to trial because of litigants’ inability to file motions in conformity with the long, 75-day notice period. This inability to meet the notice requirements is sometimes a function of litigants being brought late into litigation because of delays in service of complaints or delays in identifying litigants. Unfortunately, when this occurs, the maxim “justice delayed is justice denied” becomes a reality.

The proposed 45-day time period provides sufficient time for oppositions in most instances. If more time is needed, Cal. Code. Proc. § 437c(h) provides a mechanism for continuing an MSJ hearing to take additional discovery. Reducing the time for hearing motions will further the policies underlying MSJs and summary adjudication of issues: to promote and protect the administration of justice, and expedite litigation by eliminating needless trials. *Campanano v. California Medical Center* (1995, Cal App 2d Dist) 38 Cal App 4th 1322, 45 Cal Rptr 2d 606. Summary judgment procedure is designed to clear courts’ calendars of unjustified cases and relieve parties of expensive trials that have no foundation in fact. *Estate of Kelly* (1960, Cal App 4th Dist) 178 Cal App 2d 24, 2 Cal Rptr 634.

Instituting a 45-day notice period for Motions is consistent with the intent of the Trial Court Delay Reduction Act (Government Code §§68600 et seq. known as the “Fast Track Rules”) which states that when establishing standards of timely disposition, the “Judicial Council shall be guided by the principles that litigation, from commencement to resolution, should require only that time reasonably necessary for pleadings, discovery, preparation, and court

events, and that any additional elapsed time is delay and should be eliminated.” Government Code §68603(a).

Under the current notice period, all papers in support of a MSJ are due at least 105 days before the date of trial. Once the motion is filed, the time between the filing of a motion and any opposition is 61 days. Often, the 61 days between the initial notice of an MSJ and the filing of an opposition is unnecessary.

A similar resolution was submitted by the Los Angeles County Bar Association in 2003 and disapproved because the statutory change from 28 days to 75 days notice had only been effect for eight (8) months.

IMPACT STATEMENT:

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

AUTHOR AND/OR PERMANENT CONTACT: Jose Sandoval, 20 Civic Center Plaza, 7th Floor; P.O. Box 1988, M-29, Santa Ana, CA 92702, Telephone (714)647-5201; Fax (714) 647-6515; email address: jsandoval@santa-ana.org

RESPONSIBLE FLOOR DELEGATE: Jose Sandoval