

Motion for Summary Judgment: How to Tackle the "BIG" Motion

Summary Judgment Motion Deadlines

- Latest Date to Request Hearing Date
 - Make a request to set a hearing date at least 105 days before the trial date (75 days notice plus 30 days before trial date).
- Latest Date to Request Hearing Date and Hear Motion
 - Motion must be heard no later than 30 days before trial date.
- Filing Moving Papers
 - First day to file:
 - Any time after 60 days have elapsed from the general appearance of the party against whom the motion is directed; or
 - At an earlier time after the party's general appearance if the court orders, for good cause shown.
 - Last day to file: 75 days before hearing date.
 - Last day to serve:
 - 75 days before the hearing date if personally served;
 - 77 days before the hearing date if served by fax, express mail, or another overnight delivery service.

- 80 days before the hearing date if served by mail within California;
 - 85 days before the hearing date if served by mail to address outside of California but within the United States;
 - 95 days before the hearing date if served by mail to address outside of the United States; or
- Filing Opposition Papers
 - Must be filed and served 14 calendar days before hearing.
 - Filing Reply Papers
 - Must be filed and served 5 calendar days before the hearing.
 - Requesting a Continuance
 - Must be requested no later than 14 days before hearing, but better practice is to request continuance as soon as practicable.
 - Latest Date to Hear Motion
 - Motion must be heard no later than 30 days before trial date.

Summary Judgment Motion Formatting Requirements - Paper Filing

- **One-sided paper.**
- **Quality, color, and size of paper.**
- **Printing; font size.**
- **Font style.**
- **Font Color.**
- **Margins.**
- **Line spacing.**
- **Line numbering ("pleading paper").**
- **Page numbering.**
- **Footer.**
- **Binding.**
- **Hole punching.**
- **Changes on face of page.**
- **Conformed copies of papers.**
- **Redactions.**

Summary Judgment Motion Formatting Requirements - E-Filed Documents

- **PDF.**
- **Text searchable.**
- **Size limit.**
- **Signatures.**
- **Sworn documents.**
- **Documents requiring opposing party's signature.**
- **Local rules.** Specific courts may have additional e-filing rules.

Caption

- **Attorney and party information.** For each attorney presenting a document for filing, the following information must appear single-spaced beginning on line one on the left side of the front page, one inch from the top margin:
 - attorney's name;
 - attorney's State Bar membership number (typically placed next to the attorney's name);
 - attorney's office address (or residence or mailing address if no office is maintained);
 - attorney's telephone number;
 - attorney's fax number;
 - attorney's email address; and
 - identity of the party whom the attorney represents (for example, "Attorneys for Defendant John Doe"), typically placed two lines below the above information.
- **Blank space.**
- **Court's name.** Include:
 - the type of court ("Superior Court of the State of California");
 - the name of the county where the court is located; and
 - the name of the division, judicial district, or courthouse, if helpful or applicable.
- **Parties' names.**
- **Case number.**
- **Document title.**
- **Notation of fax filing.**

- **Judge's name and department.**
- **Date of hearing and other information.**

SIGNATURES

- **Signature required.** Every written notice of motion or other similar paper must be signed by at least one attorney of record in the attorney's individual name or the party herself, if unrepresented (Cal. Civ. Proc. Code § 128.7(a)).
- **Original signature.** Generally, only papers containing the signer's original ink signature (preferably in blue ink) will be accepted for filing (Cal. Rules of Court, rule 2.113 ("Each paper not filed electronically must consist entirely of original pages ..."); Cal. Rules of Court, rule 2.305(d) (fax signature deemed "original"))).
- **Signature block.** A signature block must appear beneath the attorney's (or party's) signature. While the rules suggest that the signature block should include the signer's name, address, and telephone number, typically the address and telephone number are only contained on the caption page (Cal. Civ. Proc. Code § 128.7(a)).

Summary Judgment - General Motion Requirements

- **Documents to prepare.** The moving party generally prepares the following documents:
 - **motion**
 - **memorandum of points and authorities**
 - **separate statement of undisputed material facts**
 - **declarations**
 - **request for judicial notice**
 - **proposed order or judgment**
 - **proof of service**
- **Combined or separate.** Counsel may combine the various papers that constitute the “motion” or file them separately.
- **Combined motion papers.** Identify each combined paper separately in the caption. Documents must be consecutively paginated (Cal. Rules of Court, rule 3.1110(c)). For combined motion papers, the numbering system should begin with the anchor document (such as the notice of motion and motion) and run consecutively through the last document of the package (such as a declaration or exhibits).
- **Separate motion papers.** If papers are filed separately, at the bottom of the right column of the caption page attorneys commonly list all the other documents “filed concurrently” with the motion. Documents filed separately should be paginated separately.

Motion

- **Contents.** The motion must:
 - identify the party or parties bringing the motion;
 - name the parties to whom it is addressed; and
 - briefly state the basis for the motion and the relief sought.

Notice of Motion

- **Contents.** The opening paragraph of the notice of motion must state:
 - when the motion will be made;
 - the grounds for issuance of the order or judgment;
 - the nature of the order or judgment being sought; and
 - the papers on which the motion is based.
- **Relief sought.** State whether the motion is for summary judgment, summary adjudication, or both.
- **Summary adjudication.** When seeking summary adjudication:
 - specifically state the contested causes of action, affirmative defenses, claims for damages, or issues of duty in the notice of motion.
 - on a legal issue or claim for damages (other than punitive damages) that does not completely dispose of a cause of action, affirmative defense, or issue of duty, include the following notice after receiving court permission to file the motion: “This motion is

made pursuant to subdivision (t) of Section 437c of the Code of Civil Procedure. The parties to this motion stipulate that the court shall hear this motion and that the resolution of this motion will further the interest of judicial economy by decreasing trial time or significantly increasing the likelihood of settlement.” (Cal. Civ. Proc. Code § 437c(t)(4).)

- **Hearing date.** Reserve a hearing date with the court in advance of filing the notice of motion.
 - Check scheduling orders in a particular case that might dictate the hearing and scheduling of motions for summary judgment or summary adjudication.

Memorandum of Points and Authorities

- **General requirement.** A memorandum of points and authorities must accompany every notice of motion except those listed in California
- **Contents.** The memorandum must include:
 - a statement of facts;
 - a concise statement of the law, evidence, and arguments relied on; and
 - a discussion of statutes, cases, and textbooks cited.
- **Page limits.**
 - The memorandum in support of a motion for summary judgment or summary adjudication, or both, may not exceed 20 pages in length without leave of court.
 - No reply or closing memorandum may exceed ten pages.

- The page limit does not include the caption page, notice of motion and motion, exhibits, declarations, attachments, table of contents, table of authorities, or proof of service .
- **Tables of contents and authorities.**
 - A memorandum exceeding ten pages must include a table of contents and a table of authorities .
- **Summary of argument.**
 - A memorandum that exceeds 15 pages must include an opening summary of argument.
- **Page numbering.**
 - A memorandum must be paginated consecutively, beginning with the first page and using only Arabic numerals (for example, 1, 2, 3).
- **Case citations.**
 - The memorandum must follow consistently either the “California Style Manual” or “The Bluebook”.
 - Case citations must be to the Official Reports .
 - Special rules apply to citing unpublished decisions.
- **Exhibit and declaration citations.** The memorandum must cite exhibits and declarations by:
 - number or letter;
 - page number; and
 - specific paragraph or line number, if applicable.

- **Copies of authorities.**
 - See local rules and the individual judge’s rules regarding any requirement to prepare an Appendix of Other Authorities identifying and attaching full copies of any referenced out-of-state cases cited within the moving papers.

- **Attachment.**
 - If possible, attach the memorandum to the notice of motion.

Separate Statement of Undisputed Material Facts

- **Requirement.** A party filing a motion for summary judgment or summary adjudication must file a separate statement of undisputed material facts in support of the motion.

- **Title.** The document should be captioned: “Separate Statement of Undisputed Material Facts in Support of [NAME’S] Motion for Summary Judgment [or, in the Alternative, for Summary Adjudication]” or similar..

- **Format.** The separate statement should be formatted as a two-column chart.

Note that:

- the left-side column should be entitled “Moving Party’s Undisputed Material Facts and Supporting Evidence”;

- the right-side column should be entitled “Opposing Party’s Response and Supporting Evidence” (leave the right-side column blank for the opposing party to complete);

- the moving party should list, in numerical sequence in the left-side column, each material fact it claims is undisputed; and
 - directly following each material fact, in the same column, the moving party should cite to the supporting evidence establishing the undisputed fact (citations to evidence in support of each material fact must include a reference to the exhibit, title, page, and line numbers).
- **Summary adjudication.** If moving for summary adjudication, the specific cause of action, affirmative defense, claim for damages, or issue of duty that was stated in the notice of motion must be repeated, verbatim, in the separate statement of undisputed material facts. Include:
 - a title above the two columns, identifying as a separate issue each cause of action, claim for damages, issue of duty, or affirmative defense that is the basis for the motion (for example, “ISSUE 1: The First Cause of Action for Negligence Is Barred Because Plaintiff Expressly Assumed the Risk of Injury”); and
 - for each additional issue on which the motion is based, another title and chart with two columns. Do not incorporate by reference the facts from the prior issue; instead, restate them in each chart for each issue.
 - **Electronic version.** If requested by the opposing party, the movant must, within three days, provide an electronic version of the separate statement of undisputed material facts to use in preparing the opposing party’s separate statement of undisputed material facts.

Declarations

- **Caption.** The caption must:
 - include the name of the declarant; and
 - indicate the motion that the declaration supports.
- **Certification.** A declaration must contain the certification set out in Section 2015.5 of the California Code of Civil Procedure.
- **Signature.** The declaration must be signed and dated by the declarant.
- **Attachment.** If possible, attach the declaration to the notice of motion.

Evidence

- **Requirement.** A party moving for summary judgment or summary adjudication must serve and file evidence, such as affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken.
- **Authentication.** Evidence submitted in support of summary judgment or summary adjudication typically is authenticated by a declaration or affidavit that is filed with the motion papers certifying that each exhibit is a true and correct copy of what it purports to be.

An authenticating declaration or affidavit generally must:

- be made on personal knowledge;
- state admissible evidence;
- show the affiant or declarant is competent to testify on the matters stated; and

- contain only evidentiary facts, not conclusions.
- **Binding.** For motions filed on paper, bind all pages of the exhibits at the top by a method that permits pages to be easily turned and the entire content of each page to be read. Remember to attach the exhibits to the associated declaration or other anchor document.
- **Tabs.** Each paper exhibit must be separated by an 8.5 by 11 inch hard sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation.
- **Index.** Provide an index (a list of exhibits in numerical or alphabetical order) to the exhibits. The index must briefly describe the exhibit and identify the exhibit number or letter and page number.
- **Separately bound volume.** If evidence in support of a motion for summary judgment or summary adjudication exceeds 25 pages, it must:
 - be separately bound; and
 - include a table of contents.
- **Page numbering.** Counsel should consecutively paginate all exhibits Counsel should continue the pagination in sequential order from the preceding document.
- **Deposition transcripts.** Designate as a single exhibit any pages from a deposition and exhibits associated with the deposition. Exhibits with deposition testimony must contain:
 - the title page of the deposition that states the name of the deponent and the date of the deposition;
 - only the relevant pages of the transcript, with the original deposition page numbers visible; and

- the relevant parts of the testimony highlighted, bracketed or marked in some other manner.
- **Translation of exhibits.** Exhibits written in a foreign language must be accompanied by an English translation, certified under oath by a qualified interpreter.

Request for Judicial Notice

- **Permitted.** A motion for summary judgment or summary adjudication may be supported by judicially noticed matters.
- **Format.** A request for judicial notice must be a separate document identifying the specific items for which judicial notice is requested. A party requesting judicial notice must provide the court and each party with a copy of the material.
- **Local rules.** Check local court rules that may have requirements regarding attaching copies of documents to be judicially noticed as exhibits to the request or lodging copies of the court file with the court before the hearing.

Proposed Order or Judgment

- **Permissive.** California permits, but does not require, counsel to submit a proposed order or judgment with the motion papers. Check local court rules that may have specific requirements for the filing of proposed orders or proposed judgments.
- **Attachment.** Do not attach the proposed order or judgment to the motion papers. If submitted, the proposed order or judgment must be separately lodged and served with the motion papers.

- **Filing with reply papers.** If local rules do not require otherwise, counsel should consider filing a proposed order or judgment with the reply papers so that it addresses all evidence, including evidence submitted by the opposing party.
- **Contents of proposed order or judgment.** The order or judgment granting a motion for summary judgment or summary adjudication on the ground that there is no triable issue of material fact must comply with the requirements of California Civil Procedure Code Section 437c(g). The moving party's proposed order or judgment typically contains:
 - a caption;
 - a title, such as “[Proposed] Order [or Judgment] Granting [PARTY NAME’S] Motion for Summary Judgment”;
 - an introductory paragraph stating the date, time, department where the hearing took place, the presiding judge’s name, and the names of all attorneys present and whom they represented;
 - language granting the relief sought;
 - the reasons for determining there is no triable issue of material fact and specific references to the evidence in support of and in opposition to (if applicable) the motion which indicate that no triable issue exists;
 - language that judgment shall be awarded in favor of the moving party and against the opposing party (if a proposed judgment); and
 - a blank signature line for the judge.

Proof of Service

- **Requirement.** It is typical to file the proof of service with the motion papers, but this is not a requirement. Counsel must file the proof of service at least five court days before the hearing date.
- **Attachment.** The proof of service can be filed as a separate document, attached at the end of the motion package (if combined together), or behind each document (if filing the motion and supporting papers separately).