

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2049 (Pacheco)
Version: April 25, 2024
Hearing Date: June 11, 2024
Fiscal: No
Urgency: No
CK

SUBJECT

Motions for summary judgment: filing deadlines

DIGEST

This bill increases the deadlines for filing motions for summary judgment and responsive pleadings by six days. The bill limits parties to only one such motion unless there is good cause. The bill prohibits the reply brief from including any new evidentiary matter, additional material facts, or separate statements, not previously presented in the motion or opposition briefs.

EXECUTIVE SUMMARY

Currently, a party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the party's first appearance and the notice of motion and supporting papers must be served at least 75 days before the hearing on the motion, with some bases for extensions. Any opposition to the motion must be served at least 14 days before the hearing date. The moving party's reply brief must be served and filed at least five days before the hearing.

In order to allow more time to consider these important, potentially dispositive motions, this bill extends the timeline within which the motion, opposition, and reply must be filed by six days, providing additional time before the hearing date for the court to consider them. The bill also codifies best practices by limiting parties to only one motion for summary judgment absent good cause and preventing a party from introducing new evidence or facts for the first time in the reply brief.

This bill is co-sponsored by California Defense Counsel, the California Judges Association, and the Conference of California Bar Associations. The Committee received no timely opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes a party to move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding, so long as the motion is made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct. (Code Civ. Proc. § 437c(a)(1).)¹
- 2) Requires the notice of the motion for summary judgment and supporting papers to be served on all other parties to the action at least 75 days before the time appointed for hearing, except as specified. (§437c(a)(2).)
- 3) Provides that an opposition to a motion for summary judgment must be served and filed not less than 14 days preceding the noticed or continued date of the summary judgment hearing, barring a good cause finding by the court. A reply to the opposition to the motion for summary judgment must be served and filed by the moving party not less than five days preceding the noticed or continued date of the summary judgment hearing, barring a good cause finding by the court. (§ 437c(b).)
- 4) Provides that a party may move for summary adjudication as to one or more causes of action within an action, if the party contends that the cause of action has no merit. Establishes that a motion for summary adjudication is granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (§ 437c(f)(1).)

This bill:

- 1) Increases the deadline to notice a motion for summary judgment from 75 to 81 days before the time appointed for the summary judgment hearing. The deadline for filing the opposition and reply briefs are similarly lengthened by six days.
- 2) Prohibits a party from bringing more than one motion for summary judgment against an adverse party except upon a showing of good cause. This does not apply to summary adjudication.
- 3) Prohibits a reply to the opposition to the motion for summary judgment from including new evidentiary matter, additional material facts, or separate

¹ All further statutory references are to the Code of Civil Procedure unless otherwise stated.

statement submitted with the reply and not presented in the moving papers or opposing papers.

COMMENTS

1. Motions for summary judgment

After the filing of a lawsuit, either party to an action may move for summary judgment by contending that the action has no merit or that there is no defense thereto.

Essentially, the party filing the motion is claiming that all necessary factual issues are resolved and need not be tried by the court because they are so one-sided. A motion for summary judgment must be supported or opposed by admissible evidence such as affidavits, declarations, admissions, answers to interrogatories, depositions, and requests for judicial notice, as appropriate. In determining whether the papers show that there is no triable issue as to any material fact, the court must consider all of the evidence set forth in the papers, except evidence to which objections have been made and sustained by the court. If the court finds that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, then the motion must be granted (which generally disposes of the whole case). If an issue of fact is presented the court must permit trial thereof, though it may also find that certain other issues “are without substantial controversy” and grant summary adjudication as to those issues. (*See* Code Civ. Proc. § 437c.) In short, the purpose of the summary procedure is to provide a method for prompt disposition of actions in which there is no triable, material issue of fact on which evidence shall be taken.

The law sets out specific timelines for filing and responding to such motions. Currently, the motion may be filed anytime after 60 days have elapsed since the general appearance of the responding party. The motion must be served with supporting papers at least 75 days before the hearing. Opposition to the motion must be filed within 61 days thereafter, or 14 days preceding the hearing date on the motion. The reply brief must be filed not less than five days prior to the hearing.

2. Providing more time to consider motions for summary judgment

According to the author:

Summary judgment motions are critical tools for courts to eliminate meritless lawsuits or defenses to lawsuits. The problem is that the timeframes for filing oppositions to summary judgment motions, and for filing replies to those oppositions, is so close to the hearings on the motions that judges simply do not have the time to give the pleadings the evaluation they deserve. Modest amendments to those timeframes can give judges the time they need and allow summary judgment motions to

fulfill their intended purpose. AB 2049 adds 6 calendar days to the timelines for filing and replying to summary judgment motions.

We have worked with stakeholders on amendments to codify existing case law and best practices by limiting summary judgment motions to one motion per party, per case unless permission by the court is granted for additional motions, and by clarifying that replies to summary judgment oppositions cannot raise new evidence or material facts not presented in the motion or opposition.

As stated, the bill provides the court an additional six days to consider the motion for summary judgment and its supporting papers. To ensure there is no gamesmanship or abuse of the process, the bill also codifies what amount to best practices by prohibiting multiple motions for summary judgment by a party and prohibiting the introduction of new evidentiary matters or facts not previously presented.

The co-sponsors of the bill, California Defense Counsel, the California Judges Association, and the Conference of California Bar Associations, write:

AB 2049 makes the first structural change to CCP Section 437c in 20 years. Most importantly, the bill modifies the timeline for noticing a motion for summary judgment from 75 to 81 calendar days before the hearing on the motion; the timeline for submitting an opposition to the motion from 14 calendar days to 20 calendar days before the hearing, and the timeline for submitting a reply to an opposition from 5 to 11 calendar days before the hearing. This simple change is designed to address a problem with current law, which “backloads” the deadlines to submit replies too close to summary judgment hearings, leaving judges with insufficient time to thoughtfully evaluate these important motions.

Working with the Consumer Attorneys of California, we have agreed on language to address two other important summary judgment issues. First, the bill limits the number of summary judgment motions which can be filed to one per party, per case, with an allowance for additional motions upon leave of the court based upon good cause. This is designed to prevent repetitive or unnecessary motions and merely codifies the understanding and practice of most courts and attorneys.

Second, AB 2049 clarifies that replies to summary judgment oppositions should not raise new evidence or new material facts not presented in the motion itself or in oppositions. This provision balances the interests of plaintiffs and defense by preventing replies from surprising opponents with new material never before included in motion papers, but also permitting replies to address any new material raised in oppositions.

SUPPORT

California Defense Counsel (sponsor)
California Judges Association (sponsor)
Conference of California Bar Associations (sponsor)

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 470 (Jackson, Ch. 161, Stats. 2015) provided that, in granting or denying a motion for summary judgment or summary adjudication, the court need rule only on objections made to evidence that the court deems material to the disposition of the motion. It also provided that objections to evidence not ruled on for purposes of the motion shall be preserved for appellate review.

AB 1141 (Chau, Ch. 345, Stats. 2015) reenacted a provision allowing parties to stipulate to summary adjudication of an issue that does not dispose of a cause of action, upon approval of the court, as specified, that had sunset.

PRIOR VOTES:

Assembly Floor (Ayes 65, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
