

Date of Hearing: April 30, 2024

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 2049 (Pacheco) – As Amended April 25, 2024

PROPOSED CONSENT

SUBJECT: MOTIONS FOR SUMMARY JUDGMENT: FILING DEADLINES

KEY ISSUE: SHOULD THE DEADLINES AND RULES REGARDING MOTIONS FOR SUMMARY JUDGMENT BE AMENDED IN ORDER TO ENSURE A MORE EFFICIENT, THOROUGH AND JUST PROCESS?

SYNOPSIS

Summary judgment motions are critical tools for courts to eliminate meritless lawsuits or defenses to lawsuits. Under existing law, a motion for summary judgment must be filed 75 days before the noticed hearing, with the opposition due 14 days before the noticed hearing, and the reply due nine days after that – leaving the court with five days before the hearing date to evaluate the reply. The co-sponsors of this measure, the California Defense Counsel, the Conference of California Bar and the California Judges Association, argue 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. This bill seeks to resolve that concern by adjusting the motion for summary judgment timelines by moving up the notice deadline by six days and adjusting all other deadlines to allow for the judges to have an additional six days to review and consider the defendant's reply. The co-sponsors of this measure have reached consensus with the Consumer Attorneys of California by adding two summary judgment-related amendments to the bill. In addition to the extended timeline discussed above, this measure prohibits the defendant from bringing multiple motions for summary judgment absent good cause and clarifies that a defendant's reply brief must not include any new evidentiary matter, additional material facts, or separate statement not presented in the defendant's moving papers or the plaintiff's opposing papers. With these additional protections in place, there is no known opposition to the measure. The parties have indicated that they intend to continue working together regarding a reservation system for motions for summary judgment hearings.

SUMMARY: Amends the timeline and rules governing motions for summary judgment. Specifically, **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.
- 2) Increases the deadline for filing an opposition to the motion for summary judgment from 14 to 20 days before the noticed date of the summary judgment hearing.
- 3) Increases the deadline for filing a reply to the opposition to the motion for summary judgment from 5 to 11 days before the noticed date of the summary judgment hearing.
- 4) Prohibits a party from bringing more than one motion for summary judgment against an adverse party.

- 5) Establishes that the prohibition in 4) does not apply to summary adjudication.
- 6) Establishes that notwithstanding the prohibition in 5), a court may grant leave for the moving party to file an additional motion for summary judgment upon a showing of good cause.
- 7) Prohibits a reply to the opposition to the motion for summary judgment from including new evidentiary matter, additional material facts, or separate statement submitted with the reply and not presented in the moving papers or opposing papers.

EXISTING LAW:

- 1) Provides that 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, 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 of Civil Procedure Section 437c (a)(1). All further statutory references are to this code unless noted otherwise.)
- 2) Provides that the notice of the motion for summary judgment and supporting papers must be served on all other parties to the action at least 75 days before the time appointed for hearing. If the notice is served by mail, the required 75-day period of notice is increased by 5 days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. (Section 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. (Section 437c (b)(2).)
- 4) Provides that 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. (Section 437c (b)(4).)
- 5) 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. (Section 437c (f)(1).)
- 6) Provides that a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion. (Section 437f (f)(2).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: This measure represents a compromise among judicial professionals, including the Consumer Attorneys of California (CAOC), the California Defense Counsel, and the

California Judges Association to improve the rules regarding summary judgment in state court. The author explains:

AB 2049 addresses a vexing and consequential element in summary judgment motions in civil litigation. When filed by defendants, summary judgment motions argue that a legal action has no merit; when filed by plaintiffs, the motions argue that a legal action has no defense. Summary judgment is critical in civil procedure because the motions help courts weed out non-meritorious claims, thus reducing court backlog. But because summary judgment may dispose of a case without trial, the motions may be momentous to both plaintiff and defense lawyers.

For many years, summary judgment time limitations established in the Code of Civil Procedure have been insufficient for courts to scrutinize the motions before trials. Specifically, current law establishes a deadline for submitting the reply to oppositions to summary judgment, only five calendar days before the hearing on the motion. Three-day weekends impact the time that judges have to review the motions, and judges report that they often do not receive the complete file until the day of the hearing.

AB 2049 will lengthen each deadline in the summary judgment process by six calendar days. Judges will have six additional days to review the often voluminous files relating to summary judgment, a time extension that courts have been seeking for years.

AB 2049, in coordination with the Consumer Attorneys of California, also will resolve other important summary judgment issues. The bill clarifies that each party is allowed to submit only one summary judgment motion per case, unless courts grant permission for additional motions. The bill also clarifies the general rule that replies to summary judgment opposition papers may not raise new material.

AB 2049 will improve the rules and timelines for one of the most problematical motions in civil litigation. The bill balances the interests of judges and lawyers and results from of years of discussion and debate.

This bill makes three changes to the laws governing summary judgment. First, AB 2049 amends the timeline for filing, opposing, and replying to a motion for summary judgment. Second, it prohibits parties from bringing more than one motion for summary judgment in a given case, absent good cause. Finally, it statutorily prohibits reply briefs from including any new evidentiary matter, additional material facts, or separate statement not presented in the defendant's moving papers or the plaintiff's opposing papers.

Amended timelines for summary judgment filings. In 2002, the Legislature drastically amended the timelines for filing notice of a summary judgment motion from 28 days to 75 days. (SB 688, Burton, Chap. 448, Stats. 2002.) CAOC advocated for that change, explaining that this measure was "intended to ensure that the responding party has adequate time to fully respond to a motion, including adequate time to conduct discovery." They argued that the 28-day notice period that was in existing law prior to that point was "insufficient time for a party to respond to the literally hundreds of pages that are filed in support of a motion, and, most importantly, to conduct and complete discovery that is essential to proving up the plaintiff's case." Finally, the extended notice period was meant to discourage gamesmanship by "defendants who file unwieldy motions and then resist or delay in complying with discovery requests, so that plaintiffs are hard pressed to present their response and prove their case in the 28 days permitted for filing a reply." More

than 20 years later, this measure seeks to amend the longstanding timeline for motions for summary judgment as outlined in the table below. The aim of the bill is to adjust the timeline to allow for more time for the judge to review and consider the defense’s reply brief.

	Current Law	Proposed Bill
Notice & Opening Brief	75 days before hearing (CCP 437c(a))	81 days before hearing
Opposition	14 days before hearing (CCP 437c(b)(2))	20 days before hearing
Reply	5 days before hearing (CCP 437c(b)(3))	11 days before hearing
Trial Date	MSJ must be heard 30 days before trial date (CCP 437c(a)) 30 day time limit can be modified by the court for good cause (CCP 437c(a))	No change

Prohibition on filing more than one MSJ. Existing law already limits a party’s ability to renew a motion for summary judgment. (Section 437c (f)(2).) It provides: “[A] party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.”

“Section 1008, the general statute governing motions for reconsideration, allows the trial court to reconsider and modify, amend, or revoke its prior order upon new or different facts, circumstances or law, or when the court determines that there has been a change of law that warrants reconsideration on its own motion. Like section 437c (f)(2), ‘[§] 1008 is designed to conserve the court’s resources by constraining litigants who would attempt to bring the same motion over and over.’ [Citation.]” (*Schachter v. Citigroup* (2005) 126 Cal. App. 4th 726, 735, citing *Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1157.) The California Supreme Court clarified that although parties seeking a second motion for summary judgment must follow the statutory rules established above, the court may still sua sponte order a new motion for summary judgment: “Sections 437c and 1008 limit the parties’ ability to file repetitive motions but do not limit the court’s ability, on its own motion, to reconsider its prior interim orders so it may correct its own errors.” (*Le Francois v. Goel* (2005) 35 Cal. 4th 1094, 1107.)

Consistent with the case law, this measure would clarify that multiple motions for summary judgment brought by the same party in the same case are prohibited, absent good cause.

Prohibition on new evidence in reply. It is generally understood and “solid logic” that new evidence is not ordinarily considered on reply because “such consideration would deprive the respondent of an opportunity to counter the argument.” (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1538; *see, e.g., San Diego Watercrafts v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 313 [on summary judgment, consideration of evidence omitted from separate statement violated opponent’s due process rights] and *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252 [additional separate statement and evidence on reply “not generally allowed”].) Nevertheless, courts have generally retained discretion to consider additional evidence. Where “supplemental” evidence submitted for the first time with a reply brief “raise[s] no new theories or arguments,” “[i]t [is] well within the court’s discretion to consider it.” (*Professional Engineers in California Government v. Brown* (2014) 229 Cal.App.4th 861, 875.)

This measure would clarify that a reply must not include any new evidentiary matter, additional material facts, or separate statement that was not presented in the moving papers or opposing papers. This language strikes the right balance in preventing defendants from surprising plaintiffs with new evidentiary material on reply, to which plaintiffs do not have an opportunity to respond, while allowing defendants to address new evidence raised in opposition.

ARGUMENTS IN SUPPORT: Judicial Council of California explains the need for adjusted summary judgment deadlines:

The fifth of seven goals in the Judicial Branch Strategic Plan is “Quality of Justice and Service to the Public.” AB 2049 furthers this goal because it will support judicial officers in being prepared to act on summary judgment motions in a timely and informed manner. Motions for summary judgment are some of the most time-consuming pretrial matters that civil courts handle. The current five-day timeline for a reply to an opposition brief can cause significant challenges, particularly when it is filed at the end of the week, leaving only two court days to review the reply.

Importantly, AB 2049 would adjust all of these deadlines to ensure that no party has less time to prepare or respond than what is provided under current law. Providing adequate time to support a fully informed bench is not only a benefit unto itself but it will also promote efficiencies for courts and court users by reducing the need for continuances and enhancing the ability to make effective use of the noticed hearings.

The co-sponsors of this measure, the California Defense Counsel, the Conference of California Bar Associations, and the California Judges Association, explain:

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.

The Consumer Attorneys of California have been working with the co-sponsors and have reached a consensus on the items currently in the bill in print. They have indicated that they are continuing to work together regarding reservations of summary judgment hearing dates:

Currently, it is increasingly difficult to obtain a hearing date for a motion for summary judgment. Often the first available hearing date is many months after the currently set trial date, causing the trial to be pushed back many months if not a year or more. We aim to find a solution by modeling the current Los Angeles court rule that states, “motion reservations in all civil matters will be cancelled if motion documents are not submitted within three (3) court days of the date when the reservation was made.” This rule was made effective February 26 with the goal of freeing up court calendars and creating a more efficient hearing reservation system. The stakeholders will continue to discuss how this model can be implemented for summary judgment motions in other courts.

REGISTERED SUPPORT / OPPOSITION:

Support

California Defense Counsel (co-sponsor)
California Judges Association (co-sponsor)
Conference of California Bar Associations (co-sponsor)
Judicial Council of California

Other

Consumer Attorneys of California

Opposition

None on file

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