

**(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)**

**CIVIL/MOTIONS: Provides relative to civil procedure**

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DIGEST

**Abstract:** Revises and clarifies the procedure for motions of summary judgment.

Present law provides that the plaintiff or defendant in the principal or any incidental action, with or without supporting affidavits, may move for a summary judgment in his favor for all or part of the relief for which he has prayed. Additionally, provides that the plaintiff's motion may be made at any time after the answer has been filed and that the defendant's motion may be made at any time.

Proposed law retains present law and clarifies the language by specifying when a party's motion may be filed.

Proposed law provides that after an opportunity for adequate discovery has been had, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no issue as to material fact and that the mover is entitled to judgment as a matter of law.

Proposed law provides that the only documents that can be filed in support or in opposition to a motion for summary judgment are pleadings, memorandum, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions. The court may permit documents to be filed in any electronically stored format authorized by court rules or approved by the clerk of court.

Proposed law deletes the present law provisions relative to service of the motion for summary judgment and memorandum in support in accordance with Dist. Ct. Rule 9.9, and provides that, unless extended by the court and agreed to by all of the parties, a motion for summary judgment shall be filed, opposed, or replied to in accordance with Article 1313. A motion for summary judgment and all documents in support of the motion shall be filed and served on all parties at least 65 days prior to the trial.

Proposed law provides that any opposition to the motion and documents in support of the opposition shall be filed and served at least 15 days prior to the hearing date, and that any reply memorandum shall be filed and served at least five days prior to the hearing on the motion. No additional documents may be filed with the reply memorandum.

Proposed law provides that the deadline for filing a motion, an opposition, or a reply memorandum falls on a legal holiday, the motion, opposition, or reply is timely if it is filed on the next day which is not a legal holiday.

Present law provides that unless otherwise agreed by all of the parties, a contradictory hearing on the motion for summary judgment shall be set more than 30 days after the filing and at least thirty days prior to the trial date. Additionally, it provides that notice of the hearing date shall be served on all parties at least thirty days prior to the hearing.

Proposed law provides that for good cause shown, the court may order a continuance of the hearing on a motion for summary judgment.

Proposed law provides that the court shall render a judgment at least 20 days prior to the trial.

Proposed law provides that in all cases the court shall state on the record or in writing the reasons for granting or denying the motion. Moreover, it provides that if an appealable

judgment is rendered, a party may request written reasons for judgment as provided in Article 1917.

Proposed law deletes the present law requirement that the court hear and render judgment within a reasonable time, but at least 10 days prior to trial.

Proposed law provides that the burden of proof rests with the mover. However, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the non-mover to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.

Proposed law provides that the court may only consider documents filed in support of or in opposition to the motion for summary judgment, and shall consider any documents to which no objection is made. Any objection to any document shall be raised in a timely-filed opposition or reply memorandum. The court shall consider all objections prior to rendering a judgment. The court shall specifically state on the record or in writing what documents, if any, it held to be inadmissible or declined to consider.

Present law retains the present law provisions relative to a summary judgment being rendered dispositive of a particular issue, theory of recovery, cause of action, or defense.

Proposed law deletes present law provisions relative to evidence cited in or attached to a motion for summary judgment being deemed admitted and that objections to evidence may be raised in memorandum or motion to strike.

Proposed law clarifies present law provisions relative to a party who is found not at fault, who shall not be considered in any subsequent allocation of fault, and submission of the issue to the jury.

Proposed law deletes the present law prohibition of applying present law when a summary judgment is granted solely on the basis of the successful assertion of an affirmative defense in accordance with Article 1005, except for negligence or fault.

Proposed law provides that when the court grants a motion for summary judgment providing that a party or nonparty is not negligent, not at fault, or did not cause, whether in whole or in part, the injury or harm alleged, that party or nonparty shall not be considered in any subsequent allocation of fault. Moreover, it provides that evidence shall not be admitted at trial to establish the fault of that party or nonparty. During the course of the trial, no party or person shall refer directly or indirectly to any such fault nor shall that party or nonparty's fault be submitted to the jury or included on the jury verdict form.

Proposed law provides that, on review, an appellate court shall not reverse and grant a summary judgment that was denied by the trial court dismissing a case or a party without assigning the case for briefing and permitting the parties an opportunity to request oral argument.

Proposed law provides that it shall not apply to any motion for summary judgment pending adjudication or appeal on the effective date of proposed law.

Effective January 1, 2016.

(Amends C.C.P. Art. 966)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Delete authority to file self-authenticating records and properly authenticated records attached to the document authorized to be filed pursuant to present law.
2. Specify that the motion for summary judgment shall be filed, opposed, or replied to, instead of being filed, served, and opposed.
3. Change from "shall" to "may" relative to the court's ability to render or affirm the motion only as to the issues set forth in the motion.
4. Retain present law with respect to the court granting a motion for summary judgment in accordance with the provisions of Article 966.
5. Make technical amendments in order to remove a duplicated sentence.
6. Specify that the parties have an opportunity to request oral argument.

The House Floor Amendments to the engrossed bill:

1. Add technical revisions to the Law Institute comments in order to reflect the previously adopted committee amendments.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the reengrossed bill

1. Added effective date of Jan. 1, 2016.
2. Added that provisions of Act shall not apply to any motion for summary judgment pending adjudication or appeal on effective date of Act.