

2015 Regular Session

HOUSE BILL NO. 696

BY REPRESENTATIVE ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/MOTIONS: Provides relative to civil procedure

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 966, relative to motions for summary
3 judgment; to provide for certain procedures at the hearing on a motion for summary
4 judgment; to provide for the filing and consideration of certain documents; to
5 provide for the burden of proof; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Civil Procedure Article 966 is hereby amended and reenacted to
8 read as follows:

9 Art. 966. Motion for summary judgment; procedure

10 A.(1) ~~The plaintiff or defendant in the principal or any incidental action, with~~
11 ~~or without supporting affidavits, A party~~ may move for a summary judgment ~~in his~~
12 ~~favor~~ for all or part of the relief for which he has prayed. ~~The A~~ plaintiff's motion
13 may be ~~made~~ filed at any time after the answer has been filed. ~~The A~~ defendant's
14 motion may be ~~made~~ filed at any time.

15 (2) The summary judgment procedure is designed to secure the just, speedy,
16 and inexpensive determination of every action, except those disallowed by Article
17 969. The procedure is favored and shall be construed to accomplish these ends.

18 (3) After an opportunity for adequate discovery, a motion for summary
19 judgment shall be granted if the motion, memorandum, and supporting documents

1 show that there is no genuine issue as to material fact and that the mover is entitled
2 to judgment as a matter of law.

3 (4) The only documents that may be filed in support of or in opposition to
4 the motion are pleadings, memoranda, affidavits, depositions, answers to
5 interrogatories, certified medical records, written stipulations, and admissions. The
6 court may permit documents to be filed in any electronically stored format
7 authorized by court rules or approved by the clerk of the court.

8 ~~B.(1) The motion for summary judgment, memorandum in support thereof,~~
9 ~~and supporting affidavits shall be served within the time limits provided in District~~
10 ~~Court Rule 9.9. For good cause, the court shall give the adverse party additional~~
11 ~~time to file a response, including opposing affidavits or depositions. The adverse~~
12 ~~party may serve opposing affidavits, and if such opposing affidavits are served, the~~
13 ~~opposing affidavits and any memorandum in support thereof shall be served pursuant~~
14 ~~to Article 1313 within the time limits provided in District Court Rule 9.9.~~

15 ~~(2) The judgment sought shall be rendered forthwith if the pleadings,~~
16 ~~depositions, answers to interrogatories, and admissions, together with the affidavits,~~
17 ~~if any, admitted for purposes of the motion for summary judgment, show that there~~
18 ~~is no genuine issue as to material fact, and that mover is entitled to judgment as a~~
19 ~~matter of law. If the motion for summary judgment is denied, the court should~~
20 ~~provide reasons for the denial on the record, either orally upon rendition or in writing~~
21 ~~sua sponte or upon request of a party within ten days of rendition. Unless extended~~
22 ~~by the court and agreed to by all of the parties, a motion for summary judgment shall~~
23 ~~be filed, opposed, or replied to in accordance with the following provisions:~~

24 (1) A motion for summary judgment and all documents in support of the
25 motion shall be filed and served on all parties in accordance with Article 1313 not
26 less than sixty-five days prior to the trial.

27 (2) Any opposition to the motion and all documents in support of the
28 opposition shall be filed and served in accordance with Article 1313 not less than
29 fifteen days prior to the hearing on the motion.

1 (3) Any reply memorandum shall be filed and served in accordance with
2 Article 1313 not less than five days prior to the hearing on the motion. No additional
3 documents may be filed with the reply memorandum.

4 (4) If the deadline for filing and serving a motion, an opposition, or a reply
5 memorandum falls on a legal holiday, the motion, opposition, or reply is timely if it
6 is filed and served no later than the next day that is not a legal holiday.

7 ~~C.(1) After adequate discovery or after a case is set for trial, a motion which~~
8 ~~shows that there is no genuine issue as to material fact and that the mover is entitled~~
9 ~~to judgment as a matter of law shall be granted.~~

10 ~~(2) The burden of proof remains with the movant. However, if the movant~~
11 ~~will not bear the burden of proof at trial on the matter that is before the court on the~~
12 ~~motion for summary judgment, the movant's burden on the motion does not require~~
13 ~~him to negate all essential elements of the adverse party's claim, action, or defense,~~
14 ~~but rather to point out to the court that there is an absence of factual support for one~~
15 ~~or more elements essential to the adverse party's claim, action, or defense.~~
16 ~~Thereafter, if the adverse party fails to produce factual support sufficient to establish~~
17 ~~that he will be able to satisfy his evidentiary burden of proof at trial, there is no~~
18 ~~genuine issue of material fact.~~

19 (1) Unless otherwise agreed to by all of the parties and the court:

20 (a) A contradictory hearing on the motion for summary judgment shall be
21 set not less than thirty days after the filing and not less than thirty days prior to the
22 trial date; and

23 (b) Notice of the hearing date shall be served on all parties in accordance
24 with Article 1313(C) or 1314 not less than thirty days prior to the hearing.

25 (2) For good cause shown, the court may order a continuance of the hearing.

26 (3) The court shall render a judgment on the motion not less than twenty
27 days prior to the trial.

1 (4) In all cases, the court shall state on the record or in writing the reasons
2 for granting or denying the motion. If an appealable judgment is rendered, a party
3 may request written reasons for judgment as provided in Article 1917.

4 ~~D. The court shall hear and render judgment on the motion for summary~~
5 ~~judgment within a reasonable time, but in any event judgment on the motion shall~~
6 ~~be rendered at least ten days prior to trial.~~

7 (1) The burden of proof rests with the mover. Nevertheless, if the mover
8 will not bear the burden of proof at trial on the issue that is before the court on the
9 motion for summary judgment, the mover's burden on the motion does not require
10 him to negate all essential elements of the adverse party's claim, action, or defense,
11 but rather to point out to the court the absence of factual support for one or more
12 elements essential to the adverse party's claim, action, or defense. The burden is on
13 the adverse party to produce factual support sufficient to establish the existence of
14 a genuine issue of material fact or that the mover is not entitled to judgment as a
15 matter of law.

16 (2) The court may consider only those documents filed in support of or in
17 opposition to the motion for summary judgment and shall consider any documents
18 to which no objection is made. Any objection to a document shall be raised in a
19 timely filed opposition or reply memorandum. The court shall consider all
20 objections prior to rendering judgment. The court shall specifically state on the
21 record or in writing which documents, if any, it held to be inadmissible or declined
22 to consider.

23 E. A summary judgment may be rendered dispositive of a particular issue,
24 theory of recovery, cause of action, or defense, in favor of one or more parties, even
25 though the granting of the summary judgment does not dispose of the entire case as
26 to that party or parties.

27 F.~~(H)~~ A summary judgment may be rendered or affirmed only as to those
28 issues set forth in the motion under consideration by the court at that time.

1 ~~(2) Evidence cited in and attached to the motion for summary judgment or~~
2 ~~memorandum filed by an adverse party is deemed admitted for purposes of the~~
3 ~~motion for summary judgment unless excluded in response to an objection made in~~
4 ~~accordance with Subparagraph (3) of this Paragraph. Only evidence admitted for~~
5 ~~purposes of the motion for summary judgment may be considered by the court in its~~
6 ~~ruling on the motion. The court may permit documentary evidence to be filed in the~~
7 ~~record with the motion or opposition in any electronically stored format authorized~~
8 ~~by the local court rules of the district court or approved by the clerk of the district~~
9 ~~court for receipt of evidence.~~

10 ~~(3) Objections to evidence in support of or in opposition to a motion for~~
11 ~~summary judgment may be raised in memorandum or written motion to strike stating~~
12 ~~the specific grounds therefor. Any such memorandum or written motion to strike~~
13 ~~shall be served pursuant to Article 1313 within the time limits provided in District~~
14 ~~Court Rule 9.9.~~

15 G.~~(1)~~ When the court grants a motion for summary judgment in accordance
16 with the provisions of this Article, that a party or ~~nonparty~~ non-party is not negligent,
17 is not at fault, or did not cause, ~~whether~~ in whole or in part; the injury or harm
18 alleged, that party or ~~nonparty~~ non-party shall not be considered in any subsequent
19 allocation of fault. Evidence shall not be admitted at trial to establish the fault of that
20 party or ~~nonparty~~ non-party nor shall the issue be submitted to the jury nor included
21 on the jury verdict form. This Paragraph shall not apply when a summary judgment
22 is granted solely on the basis of the successful assertion of an affirmative defense in
23 accordance with Article 1005, except for negligence or fault. During the course of
24 the trial, no party or person shall refer directly or indirectly to any such fault, nor
25 shall that party or non-party's fault be submitted to the jury or included on the jury
26 verdict form.

27 ~~(2) If the provisions of this Paragraph are applicable to the summary~~
28 ~~judgment, the court shall so specify in the judgment. If the court fails to specify that~~

1 ~~the provisions of this Paragraph are applicable, then the provisions of this Paragraph~~
2 ~~shall not apply to the judgment.~~

3 H. On review, an appellate court shall not reverse a trial court's denial of a
4 motion for summary judgment and grant a summary judgment dismissing a case or
5 a party without assigning the case for briefing and permitting the parties an
6 opportunity to request oral argument.

7 Comments - 2015

8 (a) Subparagraphs (A)(1) and (2) do not change the law.

9 (b) Subparagraph (A)(3) does not change the law. It makes clear that a
10 motion for summary judgment should be heard and granted only after there has been
11 an opportunity for adequate discovery. See *Broussard v. Winters*, 123 So.3d 902 (La.
12 App. 3d Cir. 2013). A continuance should be granted to a party who has not had
13 adequate time to conduct discovery relating to the issues in the motion. The legal
14 standard to be used by the court in granting a motion for summary judgment remains
15 unchanged.

16 (c) Subparagraph (A)(4), which is new, contains the exclusive list of
17 documents that may be filed in support of or in opposition to a motion for summary
18 judgment. This Subparagraph intentionally does not allow the filing of documents
19 that are not included in the exclusive list, such as photographs, pictures, video
20 images, or contracts, unless they are properly authenticated by an affidavit or
21 deposition to which they are attached. Although a memorandum is not a pleading
22 or evidence, it is a proper document that can be used by a party to advance his
23 arguments in support of or in opposition to the motion. See, e.g., *Meaux v. Galtier*,
24 972 So.2d 1137 (La. 2008). An opinion of the medical review panel cannot be filed
25 in support of or in opposition to the motion unless it is properly authenticated and
26 attached to the affidavit or deposition. Article 1458 requires that interrogatories be
27 answered under oath, and only answers that are made under oath may be filed in
28 support of or in opposition to a motion for summary judgment. This Subparagraph
29 continues the rule that no oral testimony shall be allowed at a hearing on a motion
30 for summary judgment, even if all parties agree. See *Mapp Construction, LLC v.*
31 *Amerisure Mutual Insurance Co.*, 143 So.3d 520 (La. App. 1st Cir. 2014). All
32 supporting documents may be filed electronically if provided for by local rules or the
33 clerk of court.

34 (d) Subparagraphs (B)(1), (B)(2) and (B)(3) are new. They establish the
35 time periods for filing or opposing motions for summary judgment. These
36 provisions supersede Rule 9.9 of the District Court Rules but at the same time
37 recognize the ability of the trial court and all of the parties to enter in to a case
38 management or scheduling order or other order to establish deadlines different from
39 those provided by this Article. Nevertheless, these orders may not shorten the period
40 of time allowed for a party to file or oppose a motion for summary judgment under
41 this Article. The Article makes clear that all motions, memoranda, and supporting
42 documents shall be served on all parties and filed with the clerk of court. This
43 Article continues the rule that no new documents may be filed with a reply
44 memorandum. Unless provided otherwise by an order agreed upon by all of the
45 parties and the court, the motion, any opposition, and any reply shall be served by
46 the methods provided for in Article 1313 (e.g., mailing, delivering a copy, or by
47 electronic means).

1 (e) Subparagraph (B)(4) is new. This Subparagraph follows Article 5059 and
2 its interpretation in *Becnel v. Northrop Grumman Ship Sys., Inc.*, 18 So.3d 1269 (La.
3 2009). It establishes the rule that, if the date for filing the motion, opposition, or
4 reply memorandum falls on a legal holiday, the party has until the next day that is
5 not a legal holiday to file the pleading and supporting documents. This is significant
6 because the trial court has vast discretion whether to consider late-filed affidavits or
7 documents in support of an opposition. See, e.g., *Buggage v. Volks Constructors*,
8 928 So.2d 536 (La. 2006).

9 (f) Subparagraphs (C)(1) and (2) are new. A motion for summary judgment
10 shall be set for hearing more than thirty days after filing. The notice of the date of
11 the hearing shall be served in accordance with Article 1313(C) (i.e., by certified mail
12 or commercial courier) or 1314 (i.e., by the sheriff) to ensure that a party receives
13 timely notice of the hearing date. The hearing on the motion shall be set at least
14 thirty days prior to the trial date.

15 (g) Subparagraph (C)(2) establishes the rule that if a party has a good cause
16 for failing to meet this deadline, the court may order a continuance of the hearing on
17 the motion so that the parties and the court can comply with the applicable deadlines.

18 (h) Subparagraph (C)(3), which is new, changes the law. This time period
19 requires the court to decide a motion for summary judgment sufficiently in advance
20 of the trial to allow a party to apply for supervisory writs without interrupting the
21 trial setting.

22 (i) Subparagraph (C)(4) is new. The court shall state either on the record or
23 in writing the reasons for granting or denying the motion. Nevertheless, the court
24 does not have to address every reason or argument, and the form and detail of the
25 reasons are left to the discretion of the court. Cf. Federal Rules of Civil Procedure,
26 Rule 56(a).

27 (j) Subparagraph (D)(1) does not change the law. It is consistent with
28 Section 4 of Acts 1997, No. 483, which declares that "all cases inconsistent with"
29 *Hayes v. Autin*, 685 So.2d 691 (La. App. 3d Cir. 1996) are legislatively overruled.
30 *Hayes* holds that *Celotex v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265
31 (1986), correctly states the law for our summary judgment procedure. In accordance
32 with *Celotex* and *Babin v. Winn-Dixie Louisiana Inc.* 764 So.2d 37 (La. 2000), once
33 the motion for summary judgment has been properly supported by the moving party,
34 the non-moving party must produce evidence of the existence of a material factual
35 dispute or demonstrate that the mover is not entitled to judgment as a matter of law.

36 (k) Subparagraph (D)(2) maintains most of the recent legislative changes to
37 this Article, which change the law. Subparagraph (D)(2) makes clear that the court
38 can consider only those documents filed in support of or in opposition to the motion.
39 This rule differs from Federal Rules of Civil Procedure, Rule 56(c)(3), which allows
40 the court to consider other materials in the record. This Subparagraph also maintains
41 the requirement that any objection to any supporting document must be raised in a
42 timely-filed opposition or reply memorandum. The provision changes prior law by
43 specifically removing the motion to strike as a means of raising an objection to a
44 document offered by an adverse party in support of or in opposition to a motion for
45 summary judgment and does not allow a party to file that motion. This
46 Subparagraph also makes explicit that an oral objection to any document cannot be
47 raised at the hearing on the motion for summary judgment and that a court must
48 consider all documents to which there is no objection. This Subparagraph adds the
49 provision that the court shall specifically state either on the record or in writing what
50 evidence it deems to be inadmissible or declines to consider. The court may, in
51 accordance with Code of Judicial Conduct Canon 3, make a reasonable effort for a
52 self-represented litigant to be fairly heard, attempt to make the legal concepts

1 understandable, and provide information about the proceeding and the evidentiary
2 and foundational requirements.

3 (l) Paragraphs E and F do not change the law, except that Paragraph F makes
4 clear that, in deciding a motion for summary judgment, a court can consider only the
5 issues raised in the motion or opposition filed by the parties. The court cannot rule
6 on issues not raised by the parties.

7 (m) Paragraph G, which is new, adopts the rule from prior Article 966(G)(1)
8 that if a person is found in a summary judgment not to be negligent, not at fault, not
9 to have caused the injury or harm, that person cannot be considered in any allocation
10 of fault. The requirement of former Article 966(G)(2) is removed. The trial judge
11 does not have to specifically provide in the judgment on the motion that the person
12 is not to be part of any allocation of fault at trial for this rule to apply. The
13 Paragraph also establishes the rule that, at trial, evidence of that person's fault shall
14 not be admitted, nor shall that person's fault be referred to by any person or be
15 submitted to the jury on the jury verdict form.

16 (n) Paragraph H is new. This provision requires the appellate court to assign
17 the matter for briefing and to permit the parties an opportunity to request oral
18 argument if the court intends to reverse a lower court decision that denied a motion
19 for summary judgment. If a summary judgment is granted at the trial level
20 dismissing a party or a case, the losing party is entitled to an appeal. See Article
21 1915(A). However, under prior law, if the appellate court, on a supervisory writ,
22 reversed the lower court and granted the motion for summary judgment dismissing
23 a party or the case, the losing party was denied an appeal. This Paragraph changes
24 the law and provides a party against whom summary judgment may be rendered at
25 the appellate level an opportunity to brief his case and to request oral argument on
26 his case.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 696 Reengrossed 2015 Regular Session Abramson

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.

(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.