

RESOLUTION 04-01-2016

DIGEST

Unlawful Detainer: Enlargement of Notice and Opposition Times for Summary Judgment
Amends Code of Civil Procedure section 1170.7 to clarify and lengthen time frames for summary judgment or adjudication motions in unlawful detainer actions.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1170.7 to read as follows:

§1170.7

- 1 (a) A motion for summary judgment or summary adjudication may be made at any time
2 after the answer is filed upon giving ~~five~~ at least 16 calendar days notice. Summary judgment or
3 summary adjudication shall be granted or denied on the same basis as a motion under Section
4 437c.
5 (b) Any opposition to the motion must be in writing and filed at least 7 calendar days
6 before the hearing date. Any reply to an opposition must be in writing and filed at least 1 court
7 day before the hearing date.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County.

STATEMENT OF REASONS

The Problem: Currently, a summary judgment or summary adjudication motion in unlawful detainer matters can be heard on 5 days' notice. A party opposing a summary judgment or summary adjudication in such matters is not required to provide a written opposition. If a party wants to file a written opposition or reply, it may be served on the court day before the hearing. Consequently, if a party does oppose the summary motion or summary adjudication, the court may not see or hear evidence opposing the motion until the day before or the day of the hearing.

Summary judgment motions in unlawful detainer actions involve substantial judicial resources to review, analyze and decide. Under the current law, the court may not have any notice of opposition to the motion until the time of the hearing and then be faced with extensive documents and legal argument. If such documents and argument materialize, the court would likely be required to take the matter under submission in a second review and analysis resulting in further use of judicial resources.

The Solution: This resolution would require the parties to fully and timely notify the court of their respective positions before the hearing to help the court make better decisions and effectively use the limited resources available. The additional notice time will allow the opposing party more time to consult and retain legal counsel if desired, or at least to have the opportunity to frame a meaningful position in opposition to the motion.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESPONSIBLE FLOOR DELEGATE: Mary V.J. Cataldo

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 1170.7 to clarify and lengthen time frames for summary judgment or adjudication motions in unlawful detainer actions. This resolution should be approved in principle because it provides clarity to the process, and gives the court somewhat more time to fully consider the merits of the motion, so that oral argument, if any, would be most meaningful.

Under current law, a summary judgment motion can be brought on five days notice, with opposition, if any, due at the hearing. This resolution would lengthen the current five calendar day notice with opposition due at the hearing, to 16 calendar days, with opposition and reply due seven calendar days and one day before the hearing, respectively. Assuming for purposes of discussion a hearing date can be obtained that allows such short notice, the court has virtually no time to review and consider the matter, resulting, in effect, in “trial by ambush.” This resolution would take the parties closer to due process on both sides, while comporting with the general principle that unlawful detainer is to be a summary process involving shorter time frames than regular civil litigation.

The resolution also clarifies that the alternative of summary adjudication would be available to a party when appropriate, which could be useful, for example, to eliminate an inappropriate affirmative defense.