

**RESOLUTION 02-09-2017**

**DIGEST**

Unlawful Detainer: Summary Judgment Procedures

Amends California Rules of Court, rule 3.1351, to clarify procedures on summary judgment or summary adjudication in unlawful detainer proceedings.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

Related to Resolution 04-01-2016, which was approved in principle.

Reasons:

This resolution amends California Rules of Court, rule 3.1351, to clarify procedures on summary judgment or summary adjudication in unlawful detainer proceedings. This resolution should be approved in principle because it recommends conforming changes consistent with Resolution 04-01-2016, which was approved in principle.

Current summary judgment motion practice in unlawful detainer proceedings is governed by Code of Civil Procedure sections 1010.6 or 1013 and 1170.7, along with California Rules of Court, rule 3.1351. Current procedure requires a minimum of five days of notice for the motion. (Code Civ. Proc., § 1170.7.) Under California Rules of Court, rule 3.1351, opposition and reply may be made orally at the hearing, or written opposition may be submitted if filed and served one court day before the hearing.

In 2016, the Conference voted to approve in principle Resolution 04-01-2016, which would expand the notice for summary judgment motions in unlawful detainers to 16 calendar days, require written opposition filed seven days before the hearing and written reply filed the day before the hearing. At present Resolution 04-01-2016 has not yet been introduced as pending legislation nor has it been enacted. If Resolution 04-01-2016 were passed into law, conforming changes to California Rules of Court, rule 3.1351 would be required and this resolution addresses those needed conforming changes. Accordingly, this resolution should be approved in principle and placed with the CCBA legislative advocate for coordination with Resolution 04-01-2016.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Association recommends that the Judicial Council amend California Rules of Court, rule 3.1351, to read as follows:

- 1 Rule 3.1351
- 2 Motions for summary judgment in a summary proceeding involving possession of real property
- 3 (a) Notice
- 4 In an unlawful detainer action or other action brought under chapter 4 of title 3 of part 3 of the
- 5 Code of Civil Procedure (commencing with section 1159), notice of a motion for summary

6 judgment must be given in compliance with Code of Civil Procedure sections 1010.6 or 1013  
7 and 1170.7.

8 (b) Notice to Parties

9 The Notice of Motion for Summary Judgment or Summary Adjudication must include the  
10 following in 14 point font as the first section:

11 NOTICE! This Motion for Summary Judgment or Summary Adjudication  
12 may determine your case without a trial. The court may decide against you  
13 without your being heard unless you file a written Opposition to this  
14 Motion at least 7 calendar days before the hearing. A letter or phone call  
15 will not protect you. Your written Opposition must be in proper legal form  
16 if you want the court to hear your case. There may be a court form that  
17 you can use for your Opposition. You can find these court forms and more  
18 information at the California Courts Online Self-Help Center  
19 (www.courtinfo.ca.gov/selfhelp), your county law library, or the  
20 courthouse nearest you.

21 If you do not file your Opposition on time, you may lose the case, and you  
22 may be evicted from your domicile and your wages, money, and property  
23 may be taken without further warning from the court.

24 You may want to call an attorney right away. If you do not know an  
25 attorney, you may want to call an attorney referral service. If you cannot  
26 afford an attorney, you may be eligible for free legal services from a  
27 nonprofit legal services program. You can locate these nonprofit groups at  
28 the California Legal Services Web site (www.lawhelpcalifornia.org), the  
29 California Courts Online Self-Help Center  
30 (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or  
31 county bar association.

32 (b) Opposition and Reply at hearing

33 Any opposition to the motion must be in writing and filed at least 7 calendar days before the  
34 hearing date. and Any reply to an opposition must be in writing and filed at least 1 court day  
35 before the hearing date. may be made orally at the time of hearing or in writing as set forth in

36 (c). Written opposition in advance of hearing

37 If a party seeks to have a written opposition considered in advance of the hearing, the written  
38 opposition must be filed and served on or before the court day before the hearing. Failure to  
39 comply with this requirement to file a written opposition may constitute a sufficient ground, in  
40 the court's discretion, for granting the motion for summary judgment or adjudication.

41 (d) Service of Opposition and Reply to Opposition on Other Parties

42 Service of the Opposition and Reply to Opposition must be by personal delivery, facsimile  
43 transmission, express mail, or other means consistent with Code of Civil Procedure sections  
44 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or  
45 parties no later than the close of business on the court day before the hearing of the next business  
46 day after the time the opposing papers or reply papers, as applicable, are filed. The court, in its  
47 discretion, may consider written opposition filed later.

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

**PROPONENT:** Bar Association of Northern San Diego County.

## **STATEMENT OF REASONS**

The Problem: Resolution 04-01-2016, passed by the conference last year, modified the dates for motions for summary judgment or adjudication in unlawful detainer actions. However, there is a rule of court that contains the old language.

The Solution: This would update the Rule of Court to be consistent with the revised Code of Civil Procedure §1170.7 (if passed by the legislature). The proposed changes include a new notice requirement for the notice of motion to warn the party against whom the motion is directed of the serious nature of the motion. The new time for filing and serving the motion for summary judgment and filing the opposition will allow the opposing party to consult and retain legal counsel.

## **IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

## **CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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