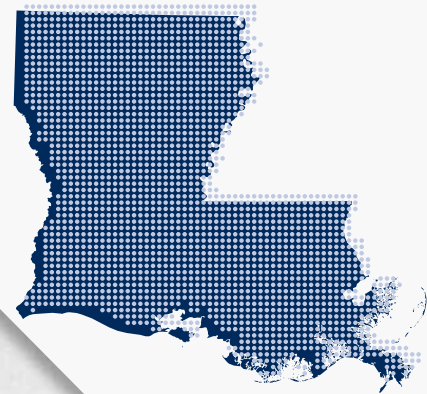


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La. Code Civ. P. art. 966

TL,DR:¹ A Mini Review of the Motion for Summary Judgment



By Ashley M. Caruso, Bianca N. Moore, Joseph R. Dronet and Tricia R. Pierre

The Leadership LSBA program, created in 2002 by then-Louisiana State Bar Association (LSBA) President Larry Feldman, Jr., provides exposure for young lawyers on how the LSBA functions and on the pressing issues facing the association and the legal profession. It also provides participants with general information on the responsibilities of association leaders.

As its major project, the 2022-23 Leadership LSBA Class presented a mock Motion for Summary Judgment (MSJ) hearing. The MSJ mock hearing provided law students with a realistic, but abbreviated, demonstration of the specific motion practice. The mock hearing focused on guiding law students through the stages of litigation and discovery. The Leadership Class members provided practical advice to the law students, including a perspective on navigating the practice of law as a young lawyer. A mock fact pattern, a visual aid and supporting case materials were prepared by the Class.

The video of the MSJ mock hearing is available online at: www.lsba.org/goto/leadershiplsba.

Motion for Summary Judgment: Tips and Pitfalls

There are some tips to follow and pitfalls to avoid in relation to motions for summary judgment. Below, they are identified with specificity to the La. Code Civ. P. art. 966 (La. C.C.P. art. 966) but generally could be applied to most motion practice in civil litigation.

Understand Specific Rules of MSJ Time Computation

Time computation is one of the most basic, yet intricate, facets of civil procedure. La. C.C.P. art. 5059, along with Louisiana District Court Rule 1.5, governs the standard rules for computation that typically apply in civil motion practice. However, as it often occurs in the law, La. C.C.P. art. 966 throws a curveball to the unsuspecting attorney. In looking at the deadlines for filing the motion, opposition and reply, note that “not less than x days prior to” is the operative language relating to the filing dates. Typically, when the “not less than x days prior to” language is used, Louisiana District Court Rule 1.5 mandates that, if the last day of the period for filing falls on a legal holiday, then the immediately preceding non-legal holiday is the deadline for filing. However, with the motion for summary judgment and related filings, the opposite is true. Specifically, if the deadline to file the motion, opposition or reply falls on a legal holiday, La. C.C.P. art. 966(B)(4) dictates that the filer’s new deadline will be the next subsequent day that is not a legal holiday. This extra day (or more) could prove to be beneficial if the filer of the motion or opposition was awaiting receipt of an expert’s affidavit and would not have otherwise been able to file it had the deadline shifted to the non-legal holiday preceding the original deadline.

Properly Object to MSJ Exhibits

In the recent past, motions to strike were commonly filed in summary judgment practice to object to a particular document’s admission as evidence, such as an expert’s opinion contained in an affidavit. However, pursuant to La. C.C.P. art. 966(D)(2), comment (a) of HB196 and comment (k) (2015), the mechanism to raise a valid objection to a document attached to a summary judgment motion

or opposition is to raise said objection in either the opposition or reply, respectively. It is not wise to attempt to circumvent this requirement by filing a motion to strike within an opposition or reply either, as it would be a futile attempt to jettison the spirit of the law. See, *Adolph v. Lighthouse Prop. Ins. Corp.*, 16-1275, p. 6 (La. App. 1 Cir. 2017), 227 So.3d 316, 320, (“[f]iling a ‘Motion to Strike’ in a reply memorandum is not proper.” See La. C.C.P. art. 966, comment (k). The filing of such a motion in a reply memorandum would necessarily allow a party an opportunity to have a contradictory hearing and introduce evidence even though La. C.C.P. art. 966(B)(3) specifically states that “[n]o additional documents may be filed with [a] reply memorandum”). Therefore, if an attorney contemplates the need to object to a document, the objection must be made either in the opposition or reply. It should also be noted that no oral objection in court at the summary judgment hearing will work to properly put the objection before the court. Any competent summary judgment evidence attached to the motion or opposition will be admitted if the opponent fails to properly object.

Practical Considerations Related to the Deadline to File La. C.C.P. art. 1425(F) Motion under New La. C.C.P. art. 966(D)(3)

As noted in the above, expert opinions relied upon in MSJ practice must now be challenged via a La. C.C.P. art. 1425(F) motion. However, the statutory language concerning the timing of filing the La. C.C.P. art. 1425(F) motion poses additional considerations for counsel to account for when filing a motion for summary judgment or opposition thereto. Suppose counsel waits until the last day to timely file and serve a motion for summary judgment containing an expert report:

Except for any document provided for under Subsubparagraph (A) (4)(b) of this Article, a motion for summary judgment and all documents in support of the motion shall be filed and served on all parties in accordance with Article 1313(A)(4) not less than sixty-five days prior to the trial.
La. C.C.P. art. 966(B)(1).

Now, assume two things: (1) Opposing counsel will seek to challenge the movant’s expert’s report; and (2) Opposing counsel will attach an expert report that the movant will seek to challenge. In order for a La. C.C.P. art. 1425(F) motion to be considered timely, it “shall be filed not later than sixty days prior to trial and shall set forth sufficient allegations showing the necessity for these determinations by the court.” La. C.C.P. art. 1425. However, given the movant’s decision to file the motion for summary judgment 65 days before trial, if counsel’s respective 1425(F) motions are filed alongside an opposition submitted 15 days before the hearing and the reply five days before the hearing, both motions would be untimely when reading La. C.C.P. art. 1425(F) and La. C.C.P. art. 966C(1)(a) together as they would be filed less than 60 days prior to the trial.

Based on this potential result, it is imperative that counsel pay attention not only to the MSJ filing deadlines, but also to the deadlines to file the La. C.C.P. art. 1425(F) motion, or else counsel could run the risk of forgoing any objection to the qualifications or methodologies of an expert utilized in summary judgment proceedings. Additionally, the courts should now play a crucial role in establishing pretrial deadlines that account for the interaction of these codal articles to avoid all situations where counsel can be compliant with the deadlines in art. 966 but not 1425(F). See La. HB 196, comment (g).

New Legislation

La. C.C.P. art. 966 was significantly and substantively overhauled in 2016. However, in 2023, two new House Bills, HB 196 and HB 339, proposed additional changes to La. C.C.P. art. 966.

HB 196, sponsored by District 60 House Rep. Chad Brown, sought and succeeded to alter the substance and procedure for motions for summary judgment. The bill was signed by Gov. John Bel Edwards into law on June 9, 2023, with an effective date of Aug. 1, 2023.

HB 196 made several procedural changes to La. C.C.P. art. 966(A)(4), (B)(1), (2) and (3), (D)(2) and (G) and sought to enact (B)(5) and (D)(3) of La. C.C.P. art. 966. These changes were

relative to motions for summary judgment, certain procedures at the hearing on a motion for summary judgment, the filing deadlines and methods of service, and the court's consideration of certain documents. Here are the three major changes or additions imposed by the law.

Changes in Documents That May Be Filed

The prior iteration of La. C.C.P. art. 966(A)(4) limited the documents a party could file in support of or in opposition to his/her respective motion for summary judgment to pleadings, memoranda, affidavits, depositions, answers to interrogatories, written stipulations and admissions. However, the act has expanded the list in La. C.C.P. art. 966(A)(4) to include certified copies of public documents or public records and certified copies of insurance policies. The act also explicitly limited parties reference of documents to the exclusive list contained in La. C.C.P. art. 966(A)(4), now codified as La. C.C.P. art. 966(A)(4)(a), but provided in subsection b, that any document previously filed into the record in support of or in opposition to the motion for summary judgment may be referenced in the motion or opposition if the party referencing the document furnishes to the court and the opposing party a copy of the document with the pertinent part designated and with the filing information.

Changes in the Timeliness and Methods of Filing

The prior iterations of La. C.C.P. art. 966(B)(1)-(3) required a motion for summary judgment and all documents in support of the motion to be filed and served on all parties not less than 65 days prior to the trial, all opposition to the motion and all documents in support of the opposition filed and served not less than 15 days prior to the hearing on the motion, and any reply memorandum filed and served in accordance not less than five days prior to the hearing on the motion. These motions and responsive

pleadings could be served in accordance with La. C.C.P. art. 1313 and were subject to the normal time computations — namely, exclusive of holidays. However, the act now requires all motions, responsive pleadings and documents in support to be filed and served electronically and in accordance La. C.C.P. art. 1313(A)(4), and requires reply memorandums be filed and served, still, no less than five days prior to the hearing on the motion — but inclusive of holidays.

Clarifying the Impact of a Reversal on Appeal — Codification of Louisiana Supreme Court Case *Amedee v. Aimbridge Hospitality, LLC*

The prior iteration of La. C.C.P. art. 966(G)) provided that, when the court grants a motion for summary judgment, a party or nonparty that is not negligent, at fault or causally responsible in whole or in part for the injury or harm alleged shall not be considered in any subsequent allocation of fault. The act merely codifies the holding of the Louisiana Supreme Court in *Amedee v. Aimbridge Hospitality, LLC*, 351 So.3d 321 (La. 2022), by retaining the language above yet adding that the provision does not apply if the court's judgment is reversed. It further specifies that, if the judgment is reversed by an appellate court, the reversal is applicable to all parties.

HB 399 sought to further clarify La. C.C.P. art. 966(G). It added that evidence at the trial on the matter (1) "may be admitted to establish the fault of a principal when the party or nonparty acted pursuant to a mandate or procurator," and (2) that fault could be referred to or submitted to the jury "where evidence is admitted of the acts of the party or nonparty for purposes of establishing the fault of the party or nonparty's principal."

HB 399 was signed by Gov. John Bel Edwards and went into effect on Aug. 1, 2023, alongside HB 196. (See page 381.)

Conclusion

Summary judgment is one of the best procedurally and judicially efficient tools every attorney has and should consider as discovery progresses in civil litigation. However, a review of the article before any motion for summary judgment is drafted, filed, opposed or heard at hearing would always be beneficial to ensure the pitfalls are avoided and that you are abiding by the current provision.

FOOTNOTE

1. Note from the authors about TL,DR: TL,DR is a common abbreviation used on long social media posts that stands for "too long, didn't read." Essentially, at the top of these posts, there is a TL,DR segment that gives the two or three versions of a much longer story, much of what this article is attempting to do for MSJ 966 information. The authors know 966 could have its own *Journal* because of how heavy and specific it is. To interest readers, the authors presented the information in TL,DR fashion, aka, the low down and skinny on 966.



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