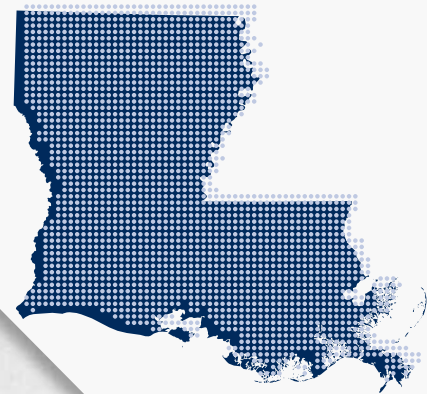


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La. Code Civ. P. art. 966

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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Current La. Code of Civ. P. art. 966

Below is a full text of La. Code of Civ. P. art. 966 as enacted on Aug. 1, 2023.

A. (1) A party may move for a summary judgment for all or part of the relief for which he has prayed. A plaintiff's motion may be filed at any time after the answer has been filed. A defendant's motion may be filed at any time.

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

(3) After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.

(4)(a) The only documents that may be filed or referenced in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, certified copies of public documents or public records, certified copies of insurance policies, authentic acts, private acts duly acknowledged, promissory notes and assignments thereof, 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 the court.

(b) Any document listed in Subsubparagraph (a) of this Subparagraph previously filed into the record of the cause may be specifically referenced and considered in support of or in opposition to a motion for summary judgment by listing with the motion or opposition the document by title and date of filing. The party shall concurrently with the filing of the motion or opposition furnish to the court and the opposing party a copy of the entire document with the pertinent part designated and the filing information.

B. 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 the following provisions:

(1) 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.

(2) Except for any document provided for under Subsubparagraph (A)(4)(b) of this Article, any opposition to the motion and all documents in support of the opposition shall be filed and served in accordance with Article 1313(A)(4) not less than fifteen days prior to the hearing on the motion.

(3) Any reply memorandum shall be filed and served in accordance with Article 1313(A)(4) not less than five days inclusive of legal holidays notwithstanding Article 5059(B)(3) prior to the hearing on the motion. No additional documents may be filed with the reply memorandum.

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

(5) Notwithstanding Article 1915(B)(2), the court shall not reconsider or revise the granting of a motion for partial summary judgment on motion of a party who failed to meet the deadlines imposed by this Paragraph, nor shall the court consider any documents filed after those deadlines.

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

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

(b) Notice of the hearing date shall be served on all parties in accor-

dance with Article 1313(C) or 1314 not less than thirty days prior to the hearing.

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

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

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

D. (1) The burden of proof rests with the mover. Nevertheless, 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 adverse party 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.

(2) The court shall consider only those documents filed or referenced in support of or in opposition to the motion for summary judgment but shall not consider any document that is excluded pursuant to a timely filed objection. Any objection to a document shall be raised in a timely filed opposition or reply memorandum. The court shall consider all objections prior to rendering judgment. The court shall specifically state on the record or in writing whether the court sustains or overrules the objections raised.

(3) If a timely objection is made to an expert's qualifications or methodologies in support of or in opposition to a motion for summary judgment, any motion in accordance with Article 1425(F) to determine whether the expert is qualified or the expert's methodologies are reliable shall be filed, heard, and decided prior to the hearing on the motion for summary judgment.

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

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

G. When the court renders judgment in accordance with the provisions of this Article that a party or nonparty is not negligent, is not at fault, or did not cause in whole or in part the injury or harm alleged, that party or nonparty shall not be considered in any subsequent allocation of fault. Evidence shall not be admitted at trial to establish the fault of that party or nonparty, except that evidence may be admitted to establish the fault of a principal when the party or nonparty acted pursuant to a mandate or procurement. 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 except 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. This Paragraph does not apply if the trial or appellate court's judgment rendered in accordance with this Article is reversed. If the judgment is reversed by an appellate court, the reversal is applicable to all parties.

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