

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee  
Hon. Lee Smalley Edmon, Chair  
Small Claims and Limited Cases Subcommittee  
Hon. L. Thomas Surh, Chair  
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DATE: August 8, 2008

SUBJECT: Civil Rules: Unlawful Detainers and Other Summary Proceedings  
Involving Possession of Real Property (adopt Cal. Rules of Court,  
rules 3.1327, 3.1347, and 3.1351; renumber rules 3.1020, 3.1025, and  
3.1030; and amend rule 3.1350 (Action Required))

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Issue Statement

Code of Civil Procedure section 1170.9, enacted in 2007 as part of Assembly Bill 1126, directs the Judicial Council to adopt rules prescribing the time for serving and filing opposition and reply papers relating to certain motions that may be heard on shortened notice in unlawful detainer actions and other summary proceedings involving possession of real property. The proposed and amended rules provide that all oppositions may be submitted to the court either in writing on the court day before the hearing on the motions or orally at the hearing. Any replies may be made orally at the hearing.

The proposed rules also clarify that (1) service of such motions is subject to Code of Civil Procedure section 1013, and (2) the provisions of rule 3.1350 concerning the content and form of motions for summary judgment do not apply to summary judgment motions in these actions.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2009:

1. Adopt rule 3.1327, concerning motions to quash or stay actions in summary proceedings involving possession of real property;
2. Adopt rule 3.1347, concerning discovery motions in summary proceedings involving possession of real property;
3. Adopt rule 3.1351, concerning motions for summary judgment in summary proceedings involving possession of real property;
4. Renumber rules 3.1020, 3.1025, and 3.1030 on discovery motions as rules 3.1345, 3.1346, and 3.1348, respectively; and
5. Amend rule 3.1350 to clarify that the rules requiring the filing of certain documents to support or oppose a motion for summary judgment do not apply to such motions made in summary proceedings involving possession of real property.

The text of the new, renumbered, and amended rules is attached at pages 12–15.

#### Rationale for Recommendation

Assembly Bill 1126 added and amended certain statutes regarding discovery in summary proceedings involving possession of real property, including actions for unlawful detainer, forcible detainer, and forcible entry. The new law also provided that discovery motions in such actions could be brought on five days' notice.<sup>1</sup> This provision parallels the shortened notice provisions already existing for motions for summary judgment in such proceedings, which may also be made on five days' notice (Code Civ. Proc. § 1170.7<sup>2</sup>), and motions to quash service of summons based on the ground of lack of jurisdiction or to stay or dismiss the action based on inconvenient forum, which may be brought on three to seven days' notice (Code Civ. Proc., § 1167.4(a)<sup>3</sup>).

Neither the new legislation regarding discovery motions nor the existing statutes regarding shortened notice for summary judgment motions or motions to quash include any provisions regarding the filing of oppositions or replies. As part of the new law, the Legislature directed the Judicial Council to develop such provisions.

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<sup>1</sup> Code Civ. Proc., § 1170.8: "In any action under this chapter, a discovery motion may be made at any time upon giving five days' notice."

<sup>2</sup> Id., § 1170.7: "A motion for summary judgment may be made at any time after the answer is filed upon giving five days notice. Summary judgment shall be granted or denied on the same basis as a motion under Section 437c."

<sup>3</sup> Id., § 1167.4(a): "Where the defendant files a notice of motion as provided for in subdivision (a) of Section 418.10, the time for making the motion shall be not less than three days nor more than seven days after the filing of the notice."

Code of Civil Procedure section 1170.9 states:

The Judicial Council shall adopt rules, not inconsistent with statute, prescribing the time for filing and serving opposition and reply papers, if any, relating to a motion under Section 1167.4, 1170.7, or 1170.8.

*Placement of new and existing rules*

Because there are three separate types of motions for which the Judicial Council is to develop rules under Code of Civil Procedure section 1170.9, three sets of rules are recommended, even though identical content is recommended for each set. This allows the rules to be placed where litigants may easily locate them.

All the new rules will be placed within title 3 (Civil Rules), division 11 (Law and Motion), chapter 6 (Particular Motions).

Within that chapter, the rules regarding motions based on lack of jurisdiction or inconvenient venue brought under Code of Civil Procedure section 1167.4 will be placed within article 1 (Pleading and Venue Motions).

The rules regarding discovery motions brought under Code of Civil Procedure section 1170.8 will be moved from their current location in division 10 (Discovery) and placed in a new article in division 11 (Law and Motion), chapter 6 (Particular Motions), article 4 (Discovery Motions). Moving the Discovery Motion rules (currently rules 3.1020 through 3.1030) into the Law and Motion division and adding the new rule regarding discovery motions in unlawful detainer actions to that location will make the rules easier for litigants to locate.

The rules regarding motions for summary judgment brought under Code of Civil Procedure section 1170.7 will be added to the current article 4, Summary Judgment Motions. (This article, and the subsequent ones in chapter 6, Particular Motions, will be renumbered to reflect the insertion of the new Discovery Motions article.)

*Timing of opposition and reply*

The proposed rules contain identical provisions for each type of motion:

- (b) Opposition and reply at hearing  
Any opposition to the motion and any reply to an opposition may be made orally at the time of hearing or in writing as set forth in (c).
- (c) Written opposition in advance of hearing  
If a party seeks to have a written opposition considered in advance of the hearing, the written opposition must be filed and served on or

before the court day before the hearing. Service must be by personal delivery, facsimile transmission, express mail, or other means consistent with Code of Civil Procedure sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties no later than the close of business on the court day before the hearing. The court, in its discretion, may consider written opposition filed later.

See proposed rules 3.1327, 3.1347, and 3.1351.

The committee has determined that current practice in handling such motions varies throughout the state. Some courts require written opposition filed at the time of hearing or one or two court days before the hearing. The practice in other courts is to not require written opposition at all, but to instead allow opposition to be made orally at the time of hearing and to receive written oppositions, if any, as late as the beginning of the hearing.

The practice of not requiring advance or written opposition is based on several factors present in most unlawful detainer actions: (1) the very short notice period for such motions; (2) the fact that many of the defendants are self-represented and legally unsophisticated, without the expertise to identify and follow applicable rules and statutes, and with no means of providing and serving a written opposition in advance of the hearing, if at all; and (3) the fact that summary judgment motions in these types of summary proceedings are exempted from the generally applicable requirements for filing detailed written papers to oppose motions. (Code Civ. Proc., § 437c(b), (r).)

The proposed rule adopts the practice of not requiring a written opposition or reply. Any other requirement would preclude many litigants from opposing a motion, no matter how meritorious a case they might have.

The new rules further provide that, if a party wants to file a written opposition, it may do so up to one court day before the hearing, with service to be completed within that same time frame. This eliminates the problems that can arise when parties provide written opposition papers at the beginning of a hearing.

#### *Clarification of notice requirements*

There is some confusion among litigants as to whether motions brought in unlawful detainer actions, particularly motions for summary judgment, are subject to the provisions of Code of Civil Procedure section 1013 that extend time of notice for service by mail or overnight delivery. Under that code section, when service is provided by mail, any period of notice prescribed by statute or rule of court is extended by five days. (Code Civ. Proc. §1013(a).) When service is

provided by overnight delivery, the notice period is extended by two days. (Code Civ. Proc. §1013(b).) In order to clarify any confusion that has arisen regarding this issue, which the committee finds particularly important in light of the extremely short notice on these motions, the new rules state that notice must be provided in compliance with both the statutes providing for shortened notice (Code Civ. Proc., §§ 1167.4, 1170.7, and 1170.8) and the provisions of section 1013. Thus, for example, the new rule clarifies that the five days notice required for a motion for summary judgment under section 1170.7 is extended by another five days if notice is served by mail. See proposed rules 3.1327(a), 3.1347(a), and 3.1351(a).

*Amendment of current summary judgment rules 3.1350(c) and (e).*

Rule 3.1350 addresses the form and format of motions for summary judgment or summary adjudication and the oppositions thereto. The current rule lists those documents that Code of Civil Procedure section 437c requires to be filed in support of and in opposition to such motions, including written memorandums, separate statements of undisputed facts, and responses to the separate statements. (See Cal. Rules of Court, rule 3.1350(c) and (e), and Code Civ. Proc., § 437c(a)–(b).) The statute, however, expressly excepts from those requirements motions brought in actions for unlawful detainer actions or other summary proceedings involving possession of real property. (Code Civ. Proc. § 437c(r).) The proposed amendment to rule 3.1350(c) and (e) notes this exception to the statutory requirements.

Alternative Actions Considered

*Timing of opposition and reply*

The committee considered and ultimately rejected several alternatives, including (1) requiring that a written opposition be filed, and (2) distinguishing between limited and unlimited cases, requiring that a written opposition be filed and served one court day before the hearing in an unlimited case, but not requiring written opposition in limited cases. Both alternatives were rejected in light of the very short notice permitted by the statutes and the large number of self-represented litigants involved in these proceedings.

The committee also considered and circulated for comment as part of the original proposal a provision that a written opposition could be served and filed as late as the time of hearing. Upon further consideration and after reviewing the detailed comment received from the Superior Court of the County of San Mateo, the committee concluded that requiring any written opposition, should one be filed, to be served and filed in advance of the hearing would be less burdensome on the

court and ultimately more fair to the parties.<sup>4</sup> This provision requires that service of the opposition papers be completed in such a way that the moving party will receive the papers by close of business on that same day. See proposed rules 3.1327(c), 3.1347(c), and 3.1351(c).

*Clarification of notice requirements*

The committee considered not including a reference to Code of Civil Procedure section 1013 in the rules regarding notice. However, the committee agreed that the statutory provisions for the time of notice for service by mail or overnight delivery applied to the motions at issue here<sup>5</sup> and that a rule to this effect would clarify the applicable procedures for litigants.

Clarification of a statute by the Judicial Council is appropriate when it comports with the intent of the Legislature in enacting the statute, as determined from the ordinary meaning of the statutory words themselves. *Iverson v. Superior Court* (1985) 167 Cal.App.3d 544, 548. Code of Civil Procedure section 1170.7 states: “A motion for summary judgment may be made at any time after the answer is filed upon giving five days notice.” (See also Code. Civ. Pro., § 1170.5.)

Considering the ordinary meaning of those words, the intent of the Legislature appears to be twofold: (1) that a motion for summary judgment (or a discovery motion, or motion to quash) in these summary proceedings must be heard more quickly than similar motions in other types of civil actions and (2) that a moving party must provide an opponent with at least five days’ notice of the hearing. If service is by mail, the second prong cannot be met without an extension of the notice period. If, for example, a moving party should put papers in the mail on a Friday for a hearing the following Wednesday, the opposing party would not have five days’ notice of the hearing because of the time it would take the notice to be delivered.

The Legislature has dealt with the delay in notice caused by service by mail or overnight delivery for motions in civil actions in general by enacting Code of Civil Procedure section 1013. Although the Legislature has not expressly stated in the statutes concerning summary civil proceedings that the extensions of time under section 1013 apply to motions made in such proceedings, their application would not be inconsistent with the Legislature’s intent to provide sufficient notice to opposing parties and the courts. Nor would application of the provisions run afoul of the Legislature’s intent that moving parties should have their motions heard

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<sup>4</sup> The alternative provision circulated for comment provided that the papers be filed by noon on the court day before the hearing, but the committee has concluded that requiring filing by a particular hour of the day is unworkable, because some courts do not include the time of day in their file stamps.

<sup>5</sup> See discussion below in Comments From Interested Parties, *Application of Code of Civil Procedure section 1013*, at pages 10-11.

swiftly, because a party could avoid the extension of time simply by serving the motion by personal delivery. Indeed, if the provisions regarding service by mail and other delivery methods set forth in Code of Civil Procedure sections 1012 and 1013 are inconsistent with legislative intent to provide for speedy trials in unlawful detainer proceedings, then there is no statutory authority for service by mail to begin with.

The committee concluded that, in light of the absence of a statutory provision addressing this issue, making a rule clarifying that the provisions of section 1013 apply in this instance is appropriate and within the scope of the Judicial Council's authority to adopt rules for court administration, practice, and procedure that are not inconsistent with statute. (Cal. Const., art. VI, § 6.).

#### Comments From Interested Parties

The proposed rules were circulated for public comment during the spring 2008 comment cycle. Comments were received from 22 individuals and organizations, including several courts, legal services agencies, and a property-owner association.<sup>6</sup> Many comments, particularly those from legal service agencies, self-help centers, and several courts, were strongly in favor of the proposal, particularly the provisions that permit oral opposition at the time of hearing. The Legal Aid Society of Orange County summarized the basis for this support as follows:

Often tenants who do not have the benefit of any legal assistance are totally bewildered by the process and do not file opposition, thereby having a summary judgment granted against them. Allowing an opportunity to orally advise the court of their defenses on the day of the hearing will give tenants more access to justice.

Twelve commentators were in full agreement with the circulated proposal, including the Superior Court of Los Angeles County and the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee (TCPJAC/CEAC) Joint Working Group on Rules. Three other commentators approved of the proposal in its present form as far as it goes, but thought that it should be broadened to include other types of motions.<sup>7</sup>

Other commentators, including the California Apartment Association, the Superior Court of San Mateo County, and a commissioner from the Superior Court of Los Angeles County, raised concerns about various aspects of the proposal.

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<sup>6</sup> The comments and the committee's responses are summarized in the chart beginning at page 16.

<sup>7</sup> Such modifications are beyond the scope of this proposal but may be considered by the committee in the future.

### *Timing of oppositions and replies*

Most commentators supported the timing for oppositions and replies, including the provision for filing any written opposition in advance. Some commentators sought modification to clarify whether, if written opposition were permitted in advance, it would also be accepted at the time of the hearing. (Comment 1 and comment 2 at point 1.) Some approved the provision allowing service and filing of written opposition at the time of hearing. However, as noted above, the commentator from the Superior Court of San Mateo County, with whom the committee agrees, objected, noting that receiving a flurry of papers at the time of the hearing burdened the court and could adversely affect the hearing process. (Comment 16, point 1.)

The commentator from the Superior Court of San Diego County generally agreed with the timing set forth in the proposal, but proposed a modification requiring that any written opposition filed the day before a hearing be filed directly in the courtroom. (Comment 15.) The committee declined to recommend such a modification in light of the different ways courts deal with filing and lodging papers, concluding that this is an area where local rules would be more appropriate than statewide rules.

One attorney agreed with the timing in the proposed rules if the rules were modified to provide for a mandatory continuance of the hearing to allow rebuttal evidence if the opposing party raised facts for the first time at hearing. (Comment 3.) Such modification is unnecessary as a court has the discretion to continue the hearing if appropriate.

Two commentators, including the San Mateo County Superior Court, asked that some provision be made regarding tentative rulings. (Comments 11 and 16.) The committee noted that courts are already handling tentative rulings in summary proceedings under existing rules. This proposal is not intended to and does not address the rules concerning tentative rulings, although the committee may review them in the future.

### *Amendment to summary judgment rules*

The lengthy comments from the California Apartment Association (CAA) included a query regarding whether the rule on shortened time for notice of motions for summary judgment (rule 3.1351) should also encompass motions for summary adjudication. (Comment 2 at points 3 and 4.) The committee intends that the language in the proposed rule mirror the language in Code of Civil Procedure section 1170.7, which states only that a motion for summary judgment may be made on shortened notice.

Several commentators objected to the proposed amendment to rule 3.1350(c) and (e), the rules listing the documents that must be filed in support of or in opposition to a motion for summary judgment. The amendment to the rule recognizes an exception to those detailed document requirements “as provided by Code of Civil Procedure section 437c(r) and rule 3.1351.” The CAA argued that the amended rule could be read as eliminating the requirement that the moving party file any documents at all and that that is not what the Legislature intended when it enacted section 437c(r). (Comment 2, point 5.) Commissioner Kohn agreed. (Comment 8.) The commentator from the Superior Court of San Mateo County raised some of the same concerns and proposed that the rule be modified to provide that subdivision (r) exempt unlawful detainer litigants only from the provisions in subdivisions (a) and (b) of section 437c that set the time frame for filing summary judgment motions, opposition, and replies, and that require that a separate statement of facts be filed, but from no other provisions within those subdivisions. (Comment 16, point 2.) The commentator from the Superior Court of Ventura County objected to the provision permitting oral opposition, and proposed that the rules for summary judgment motions, along with those for other types of motions, be modified to provide that all testimony and evidence must be in writing. (Comment 17.)

The committee does not recommend these proposed modifications. The amendment to rule 3.1350(c) and (e) is intended to confirm that, just as Code of Civil Procedure section 437c(r) exempts motions brought in summary proceedings involving possession of property from the provisions of subdivision (a) and (b) of that statute, such motions are exempt from the provisions of rule 3.1350(c) and (e). Those rule provisions, mandating that certain documents are to be filed in summary judgment motions, are based on Code of Civil Procedure sections 437c(a) and (b). Because those statutory provisions do not apply to motions brought in unlawful detainer proceedings, the rule provisions may not be applied to such motions either. A rule of court may not be inconsistent with statute.

The committee does not intend, by clarifying in subdivision (c) of rule 3.1350 that motions in unlawful detainer proceedings are exempt from the specific document requirements of that subdivision, to suggest that a moving party in an unlawful detainer action is exempt from all document requirements. Subdivision (c) of section 437c, which applies to unlawful detainer actions, provides that a motion for summary judgment is to be granted “if the papers submitted” show that there is no triable issue of fact. Hence, a motion for summary judgment, even in an unlawful detainer action, must be based on written papers. Further, the provisions of Code of Civil Procedure section 1010 and California Rules of Court, rules 3.1110 et. seq., regarding the format of motions papers generally, apply to motions in unlawful detainer proceedings. It is only the more detailed requirements of Code of Civil Procedure section 437c(a)–(b) and rule 3.1350(c) that do not.

Subdivision (r) is not a new addition to the summary judgment statute. It was added to the statute in 1983, and courts and litigators have been proceeding under it since that time. The amended rules are in no way intended to change the provisions of the statute.

*Application of Code of Civil Procedure section 1013*

Three commentators expressly addressed the aspect of the rules providing that Code of Civil Procedure section 1013 applies to service of notice of the motions addressed in this proposal. Under that statute, if service of notice is by mail, a five-day extension is added to the notice requirement. Two of the commentators, the Western Center on Law and Poverty (comment 22) and the Superior Court of San Mateo County (comment 16, point 3), approved of the proposed rule. The court stated: “This would clarify the present state of confusion in the law, provide uniformity of practice between Courts, and give greater opportunity for filing any opposition prior to the hearing date.”

The only objector, CAA, asserted that the statutory provisions do not apply to unlawful detainer actions and so should not be referenced in the rule. CAA argued that unlawful detainers are not “civil actions” but rather “special proceedings,” and hence, CAA concluded, section 1013 does not apply. CAA is correct that the statutes pertaining to unlawful detainer, forcible entry, and forcible detainer proceedings are within part 3 of the Code of Civil Procedure, “Special Proceedings of a Civil Nature,” while section 1013 is in part 2, “Civil Actions.” And several cases cited by the commentator do hold that an unlawful detainer is a special proceeding and a creation of statute. But none of the cited cases conclude that actions brought under those statutes are not subject to the general rules of practice and procedure.

There is case law that the extended notice provisions of section 1013 do not apply to 30-day notices of termination or 3-day notices to quit that must be served *prior* to the filing of an unlawful detainer action (Code Civ. Proc., §§ 1161 and 1162). The appellate courts have refused to extend the provisions of section 1013 to such notices because, the courts held, the notices are not part of a pending civil action, but rather the prerequisite for bringing such an action, and section 1013 applies to service of papers only *after* proceedings have been initiated. See *Losornio v. Motta* (1998) 67 Cal.App.4th 110, 115; *Walters v. Meyers* (1990) 226 Cal.App.3d Supp. 15, 17–18. The motions addressed by the rules proposed here involve the service of papers after proceedings have been initiated, as part of a pending action. Hence, service of notice of the motions is subject to the extension provisions of section 1013 unless the law otherwise provides.

Where the Legislature has intended to provide otherwise, it has expressly done so

by statute. For example, in Code of Civil Procedure section 116.140, the Legislature provided that section 1013 does not apply to actions brought under the Small Claims Act. The statutory provisions for small claims actions, like those for unlawful detainers, are not within part 2 of the Code of Civil Procedure and so, under CAA's argument should be automatically exempt from the application of section 1013. The Legislature apparently did not believe that such an automatic exemption existed and instead expressly enacted one. No such exemption has been included in the statutes concerning unlawful detainers.

#### Implementation Requirements and Costs

The implementation of the proposed rules may require some education and training for judicial officers and court staff.

Attachments





1  
2 **Rule ~~3.1025~~ 3.1346. \* \* \***

3  
4 **Rule 3.1347. Discovery motions in summary proceeding involving possession**  
5 **of real property**

6  
7 **(a) Notice**

8  
9 In an unlawful detainer action or other action brought under chapter 4 of title  
10 3 of part 3 of the Code of Civil Procedure (commencing with section 1159),  
11 notice of a discovery motion must be given in compliance with Code of Civil  
12 Procedure sections 1013 and 1170.8.

13  
14 **(b) Opposition and reply at hearing**

15  
16 Any opposition to the motion and any reply to an opposition may be made  
17 orally at the time of hearing or in writing as set forth in (c).

18  
19 **(c) Written opposition in advance of hearing**

20  
21 If a party seeks to have a written opposition considered in advance of the  
22 hearing, the written opposition must be served and filed on or before the  
23 court day before the hearing. Service must be by personal delivery, facsimile  
24 transmission, express mail, or other means consistent with Code of Civil  
25 Procedure sections 1010, 1011, 1012, and 1013, and reasonably calculated to  
26 ensure delivery to the other party or parties no later than the close of business  
27 on the court day before the hearing. The court, in its discretion, may consider  
28 written opposition filed later.

29  
30 **Rule ~~3.1030~~ 3.1348. \* \* \***

31  
32 **Article 45. Summary Judgment Motions**

33  
34 **Rule 3.1350. Motion for summary judgment or summary adjudication**

35  
36 **(a)–(b) \* \* \***

37  
38 **(c) Documents in support of motion**

39  
40 Except as provided in Code of Civil Procedure section 437c(r) and rule  
41 3.1351, the motion must contain and be supported by the following  
42 documents:  
43

- 1 (1) Notice of motion by *[moving party]* for summary judgment or summary  
2 adjudication or both;  
3  
4 (2) Separate statement of undisputed material facts in support of *[moving*  
5 *party's]* motion for summary judgment or summary adjudication or both;  
6  
7 (3) Memorandum in support of *[moving party's]* motion for summary  
8 judgment or summary adjudication or both;  
9  
10 (4) Evidence in support of *[moving party's]* motion for summary judgment  
11 or summary adjudication or both; and  
12  
13 (5) Request for judicial notice in support of *[moving party's]* motion for  
14 summary judgment or summary adjudication or both (if appropriate).  
15

16 **(d) \* \* \***

17  
18 **(e) Documents in opposition to motion**

19  
20 Except as provided in Code of Civil Procedure section 437c(r) and rule  
21 3.1351, ¶the opposition to a motion must consist of the following  
22 documents, separately stapled and titled as shown:  
23

- 24 (1) *[Opposing party's]* memorandum in opposition to *[moving party's]*  
25 motion for summary judgment or summary adjudication or both;  
26  
27 (2) *[Opposing party's]* separate statement of undisputed material facts in  
28 opposition to *[moving party's]* motion for summary judgment or  
29 summary adjudication or both;  
30  
31 (3) *[Opposing party's]* evidence in opposition to *[moving party's]* motion for  
32 summary judgment or summary adjudication or both (if appropriate);  
33 and  
34  
35 (4) *[Opposing party's]* request for judicial notice in opposition to *[moving*  
36 *party's]* motion for summary judgment or summary adjudication or both  
37 (if appropriate).  
38

39 **(f)–(i) \* \* \***  
40  
41

1 **Rule 3. 1351. Motions for summary judgment in summary proceeding**  
2 **involving possession of real property**

3  
4 **(a) Notice**

5  
6 In an unlawful detainer action or other action brought under chapter 4 of title  
7 3 of part 3 of the Code of Civil Procedure (commencing with section 1159),  
8 notice of a motion for summary judgment must be given in compliance with  
9 Code of Civil Procedure sections 1013 and 1170.7.

10  
11 **(b) Opposition and reply at hearing**

12  
13 Any opposition to the motion and any reply to an opposition may be made  
14 orally at the time of hearing or in writing as set forth in (c).

15  
16 **(c) Written opposition in advance of hearing**

17  
18 If a party seeks to have a written opposition considered in advance of the  
19 hearing, the written opposition must be filed and served on or before the  
20 court day before the hearing. Service must be by personal delivery, facsimile  
21 transmission, express mail, or other means consistent with Code of Civil  
22 Procedure sections 1010, 1011, 1012, and 1013, and reasonably calculated to  
23 ensure delivery to the other party or parties no later than the close of business  
24 on the court day before the hearing. The court, in its discretion, may consider  
25 written opposition filed later.

26  
27 **Article 56. Miscellaneous Motions**

28  
29 **Article 67. Other Civil Petitions**

**SPR08-19****Motions in Unlawful Detainers and Other Summary Proceedings Involving Possession of Real Property**

(adopt Cal. Rules of Court, rules 3.1327, 3.1347, and 3.1351; amend rule 3.1350)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Susan Marchant Angel Attorney San Rafael	A	[Agree,] Except I also believe the proposed (c), allowing written opposition the day before, if desired, should be added. It does not burden litigants, as it is optional and just reflects reality. If the opposition is filed the day before, the court will look at it in advance just because it is there—whether we have this law or not.	The proposal has been modified to provide that any written opposition is to be served and filed on the court day before the hearing.
2.	California Apartment Association By Heidi Palutke Research and Legislative Counsel	AM	<p>The California Apartment Association is an organization of 50,000 rental property owners and managers who are responsible for nearly 2 million rental units throughout the State of California. CAA offers the following comments to assist the Judicial Council’s preparation of rules regarding motions in unlawful detainers and other summary proceedings involving possession of real property.</p> <p>CAA appreciates the Judicial Council’s efforts to make the timelines for motions in unlawful detainers reflect the summary nature of the proceeding and generally supports the Council’s proposed Rules of Court. CAA’s specific comments on the proposal follow:</p> <p>1. Rule 3.1327. Motions to Quash or to Stay Action in Summary Proceeding Involving Possession of Real Property. The proposal states that “any opposition to the motion, and any reply thereto may be made ... writing at the time of the hearing.” It is not clear whether a written opposition may be filed prior to the hearing. By contrast, the alternative proposal, on page 4 of the Invitation to Comment, appears to allow a written opposition only if it is filed the day prior to the hearing. CAA recommends that the proposed Rule be clarified to allow the party the choice</p>	<p>The committee responds below to the separate points raised by the commentator.</p> <p>1. The proposal has been modified to provide that any written opposition is to be served and filed on the court day before the hearing.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree

**SPR08-19****Motions in Unlawful Detainers and Other Summary Proceedings Involving Possession of Real Property**  
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			<p>of filing written opposition <i>either</i> prior to or at the hearing. CAA supports the option for a party to provide a reply orally at the hearing because this will obviate the necessity for postponing hearings and rulings to allow a party to file a written reply.</p> <p>2 Article 4 Discovery Motions - Rule 3.1347(b) Opposition and Reply. See comments under Rule 3.1327 (above).</p> <p>Article 5 Summary Judgment Motions.</p> <p>3. Rule 3.1350. Motions for Summary Judgment or Summary Adjudication. The heading for Rules 3.1350 and 3.1351 (“Motions for Summary Judgment in Summary Proceeding...”) are similar and potentially misleading. Does Rule 3.1350 deal with both motions for summary judgment and summary adjudication and Rule 3.1351 only with summary judgments? CCP Sec. 1170.7 permits a motion for summary judgment to be filed upon 5 days notice. The statute is silent as to motions for summary adjudication. It is not clear whether a motion for summary adjudication may be filed in an unlawful detainer action, or at least, whether it may be filed on 5 days’ notice.</p> <p>4. (a) Notice. It appears that the Council believes that motions for summary adjudication in unlawful detainer actions must be filed with the usual notice and not with 5 days’ notice because Rule 3.1351(a) makes no reference to summary adjudication motions, just summary judgment motions. Is this intentional?</p>	<p>2. See response above.</p> <p>3. The language in the proposed rule mirrors the language in Code Civ. Proc., § 1170.7, which states that a motion for summary judgment may be made on shortened notice. Because no separate reference is made in the statute to motions for summary adjudication, and the committee is not aware of any appellate decision addressing this point, the rule does not contain a separate reference to motions for summary adjudication. The Committee does not intend this rule to change the law.</p> <p>4. See above response.</p>

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			<p>5. (c) [sic] Documents in Support of Motion.</p> <p>Page 4 of the Invitation to Comment, states that existing law “expressly exempts from [certain] requirements motions brought in actions for unlawful detainer or other summary proceedings involving possession of real property. CCP 437c(r).” The proposed rule incorporates this purported statutory exception. The effect is that <i>none</i> of the listed documents (see page 6 of proposal) such as the separate statement, memorandum in support, etc. must be filed by either party. At least with respect to the opposition to the motion, this is consistent with the approach of these proposed rules to allow the opposition to be verbal at the hearing itself.</p> <p>However, it is not clear if existing law authorizes the Judicial Council to dispose of the requirement of a separate statement and supporting evidence. There appears to be some disagreement about what the exception in 437c(r) really means. Section 437c(r) states that unlawful detainer actions are exempt from the requirements of subsection 437s(a) and (b). Subsection (a) addresses the timing requirements for filing a motion for summary judgment. Subsection (b)(2) addresses the timing requirements for the opposition. However subsections (b)(1) and (3) address the content of the motion and opposition. This is where the requirement of the separate statement appears.</p> <p>The CEB Landlord/Tenant Practice Guide, at Section 11.38 states the following:  There is uncertainty about whether the applicability of 437c(b) provisions to unlawful detainer suits. It is</p>	<p>5.The amendment to rule 3.1350 is intended to confirm that, because Code Civ. Proc., § 437c(r) exempts motions brought in summary proceedings involving possession of property from the provisions of subdivisions (a) and (b) of that statute (which include the provisions requiring certain documents, including separate statement of undisputed facts, as well as timing requirements), such motions are also exempt from the provisions of rule 3.1350(c) and (e). Those subdivisions of the rule, mandating what specific documents are to be filed in summary judgment motions, are based on Code Civ. Proc., § 437c(a) and (b). A rule of court may not be inconsistent with statute.</p> <p>The committee does not intend, by clarifying that Rule 3.1350 must be read in conjunction with Code Civ. Proc., § 437c(r), to suggest that a moving party in an unlawful detainer action need not base its motion on a written notice and motion and provide written evidence. Subdivision (c) of the summary judgment statute, which does apply to motions in unlawful detainer actions, provides that the motion is to be granted “if the papers submitted” show that there is no triable issue of fact. See also Code Civ. Proc., §1010 and</p>

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			<p>probably that the legislature only intended to make exceptions in CCP 437c(r) apply only to the scheduling and timing provision of subdivisions (a) and (b) because 437c(c)–(e), which remain applicable to unlawful detainer actions, all assume the requirement of (and directly refer to) the supporting evidence and papers originally defined or characterized in subdivisions (a) and (b). Prudent counsel will act on the probability that CCP 437c(r) is directed only at the scheduling and timing provisions of subdivisions (a) and (b). Counsel should always submit a separate statement of undisputed facts with the motion in any event because it makes the court’s task easier in reviewing the merits of the motion.</p> <p>The CEB comment is consistent with the experience of CAA member attorneys—that depending on the court, a Separate Statement may or may not be required. This may be a matter where clarification from the Legislature is appropriate.</p> <p>6. Rule 3.1351 Motions for Summary Judgment in Summary Proceeding Involving Possession of Real Property. See Comments on Proposed Rule 3.1350, above.</p> <p>7. Applicability of CCP 1013 to Unlawful Detainer Proceedings. The Council correctly points out that there is confusion among litigants as to whether motions brought in unlawful detainer actions, particularly motions for summary judgment, are subject to the provisions of the</p>	<p>Cal. Rule of Court, rules 3.1110 et seq. (regarding format of motions). A written motion and supporting papers are required, just not the specific documents set forth in Code Civ. Proc., §437c(a) and (b)</p> <p>6. See response above.</p>

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			<p>Code of Civil Procedure § 1013 that extend the time of notice for service by mail. Without comment, the Council concludes that CCP § 1013 should apply. CAA disagrees. Unlawful Detainer proceedings are “special proceedings.” Personally serving a defendant (who in these cases is often avoiding service), is not practical, and adding an additional five days for mailing, goes against the intended summary nature of the proceedings. Additionally, if the opposition to the motion and any reply thereto may be made orally, or in writing, at the time of hearing, the need for five days’ additional notice provided by § 1013 is essentially eliminated. Authorities supporting the position that CCP 1013 does not apply to unlawful detainer proceedings appear below.</p> <p>It is well established that unlawful detainer proceedings are wholly created and strictly controlled by statute in California. The statutes prevail over inconsistent general principles of law and procedure because of the special function of unlawful detainer proceedings to restore immediate possession of real property. <i>Markham v. Fralick</i> (1934) 2 Cal.2d 221, 225-227; <i>Kwok v. Bergen</i> (1982) 130 Cal.App.3d 596, 599; <i>Vasey v. California Dance Co</i> (1977) 70 Cal.App.3d 742, 748.</p> <p>“An unlawful detainer action is not based upon contract... it is a statutory proceeding and is governed solely by the provisions of the statute creating it.” <i>Fifth &amp; Broadway Partnership v. Kimny, Inc.</i> (1980) 102 Cal.App.3d 195, 200. As special proceedings are created and authorized by statute, the jurisdiction over any special proceeding is</p>	<p>7. The committee disagrees, for the reasons set forth in the report.</p>

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			<p>limited by the terms and conditions of the statute under which it was authorized. <i>Lay v. Superior Court</i> (1909) 11 Cal.App. 558, 560.</p> <p>Chapter 4 of title 3 of part 3 of the Code of Civil Procedure (§§ 1159-1179a) is commonly known as the Unlawful Detainer Act (hereafter, “the Act”). Procedures and proceedings in unlawful detainer were not known at common law and are entirely creatures of statute. <i>Woods-Drury, Inc. v. Superior Court</i> (1936) 18 Cal.App.2d 340, 344. As such, they are governed solely by the statutes that created them. <i>Kwok v. Bergen</i> (1982) 130 Cal.App.3d 596, 599. Thus, where the Act “deals with matters of practice, its provisions supersede the rules of practice contained in other portions of the code.” <i>Schubert v. Lowe</i> (1924) 193 Cal. 291, 295.</p> <p>Unlawful Detainer proceedings, are “Special proceedings”, not “actions.” See CCP § 22 and 23; <i>Tide Water Assoc. Oil Co. v. Superior Court</i> (1955) 43 CA 2d 815, 822. Civil actions are governed by part 2 of the Code of Civil Procedure entitled “Civil Actions.” But, unlawful detainers are set out in part 3 of the Code of Civil Procedure, entitled, “Special Proceedings,” and are not civil actions even though they are “civil cases.” This distinction is important because the statutes governing civil actions do not apply to special proceedings except to the extent that a specific statute applicable to civil actions expressly states that it applies to special proceedings (or simply “proceedings” as in the term “actions and proceedings”) or is incorporated by one or more of the statutes governing the</p>	

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			<p>special proceeding.</p> <p>Because an unlawful detainer is a summary proceeding: the time periods for pleadings and service of process are shorter; the period for setting the matter for trial is shorter; the proceeding is entitled to priority on the trial calendar; and expeditious enforcement procedures are provided.</p> <p>In the case of <i>Losornio v. Motta</i> (1998) 67 Cal.App.4th 110, the defendant argued that C.C.P. § 1013's extension of time for service by mail applies to <i>all</i> notices whose time periods are prescribed by statute. The defendant predictably argued that unless there is a specific exception, the extension applies to any mail service under the Act. The Appellate Court disagreed and stated in part... "we conclude that the service and notice provisions pertaining to unlawful detainer and the service and extension of time provisions set forth in section 1013 are mutually exclusive. Unlawful detainer is a unique body of law and its procedures are entirely separate from the procedures pertaining to civil actions generally. Thus, where provisions in the Act relate to practice, they supersede the rules of practice contained in the Code of Civil Procedure."</p> <p>Therefore, C.C.P. § 1013 does not extend the notice periods in unlawful detainer proceedings.</p>	
3.	Gregory Chappel, Attorney Oakhurst	AM	Some provision should be made that if responding party presents evidence at time of hearing, either orally or in writing, that on request of moving party, court must order continuance of hearing to allow reply and submission of rebuttal evidence. The continuance should be no more than	The committee appreciates the comment but disagrees and declines to make such a continuance mandatory. A court has the discretion to continue a matter or allow further briefing, if appropriate under the

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			a few days, say 2–3, and the reply and/or rebuttal evidence may be submitted in writing or orally at the time of the continued hearing. The granting of a continuance under these circumstances should be MANDATORY.	circumstances of a particular case.
4.	Community Legal Services– Compton By Julius Craig Wesson Directing Attorney	A	In Unlawful Detainer cases, the Motion for Summary Judgment has been used so self represented litigants do not have the opportunity to be heard. I support the proposed rule changes which allow more access for these litigants. Besides having eviction cases heard, there is a need to have consistency throughout the state in handling these motions.	Commentator’s response is noted, and the committee agrees that there should be consistency in how motions are handled.
5.	Community Legal Services– Norwalk By Anthony S. Filer Directing Attorney	A	1. As a legal aid attorney that has seen what I consider is the unethical use of the Motion for Summary Judgment, I feel very strongly that this rule change should be implemented. Specifically, some plaintiff’s attorneys intentionally use the motion as a mechanism to confuse unlawful detainer defendants to the point that they are kept from participating in the defense of their unlawful detainer cases. In our court system, don’t we want both sides to be heard and for cases to be decided on the merits, not because one side did not understand the complicated summary judgment process? I believe that it is unethical for a plaintiff’s attorney to file “blanket” motions for summary judgment in every unlawful detainer case that they file on behalf of a landlord (which is occurring). There is no consideration as to whether or not an Answer filed by a defendant or the undisputed facts in a case set forth “triable issues of fact”, which is the primary basis for the motion. Finally, I would like the Judicial Council to be aware of a MCLE UD training for landlords that I attended where the	1. Commentator’s agreement is noted.

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**SPR08-19**

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			<p>trainer recommended that the attorneys representing landlords file Motions for Summary Judgment in every case they filed because it is, in his words, “like setting up ducks in a row” because the defendants won’t understand how to respond to the motions. This just seems unethical to me and I was saddened that it was part of a continuing education course for future plaintiff’s attorneys. Allowing defendants to oppose the motions orally will help to level the playing field, or at least make sure the defendants are allowed to play.</p> <p>2. P.S. Has the Judicial Council considered requiring that the plaintiff serve a blank copy of the ANSWER-UNLAWFUL DETAINER (FORM UD-105) when they serve the Unlawful Detainer Summons and Complaint (similar to what is required in family law cases, where Responsive pleadings are required to be served)? This would also go a long way in making sure everyone has access to the court process and that matters are heard on the merits, rather than people losing their housing simply because they don't understand the process, or which forms to file.</p>	<p>2.This proposal is outside the scope of the proposal circulated for comment. The committee will consider the proposal in the future as time and resources permit.</p>
6.	John R. Engel Sullivan Hill Lewin Rez & Engel San Diego	AM	<p>I agree with the proposed changes, but suggest the following:</p> <p>Rename the caption to subdivision (b) of each of the rules to read: “Oral or Written Opposition and Reply at Hearing.”</p> <p>Change proposed subdivision (c) to read as follows:</p>	<p>The committee appreciates the comment. It has modified the proposed rules regarding when written oppositions are to be filed, but has not changed the rule providing that a reply to the opposition, if any, should be made orally at the hearing.</p>

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			<p>(c) Optional Written Response before Hearing.</p> <p>If a party seeks to have a written opposition, reply or combination of both (collectively a “response”) considered in advance of the hearing, the court shall consider the same if it is filed and served by noon one court day before the hearing. Service must be by personal delivery or other method reasonably calculated to assure delivery by the close of business on that day. The court, in its discretion, may consider any other written reply filed later.</p>	
7.	Debora. Friedman, Attorney West Hollywood	AM	Rule 3.1327 should also apply to demurrers because many times the Pro Per Defendants do not send Plaintiff any motion paper for demurrer so no opposition can be timely filed.	The commentator’s agreement with the proposal is noted. The committee notes, however, that demurrers are outside the scope of the proposed rules. The Legislature has not provided a shorter notice period for demurrers in unlawful detainer actions.
8.	Hon. Barry D. Kohn Superior Court of Los Angeles County		<p>The crux of my discussion [below] is that when CCP437(c)(4) was added, its intent and purpose was for timing and scheduling of Motions for Summary Judgment in Unlawful Detainer and related real property cases and not eliminate required evidence and statement of facts.</p> <p>PROFESSIONAL HISTORY: I have been a Commissioner of the Los Angeles Municipal and Superior Courts for over 26 years. I have presided over municipal and limited civil cases for over 12 years. I have been assigned to limited detainer (UD) prejudgment motions, trials and miscellaneous limited motions and hearings for 11 years. I currently hear at least 4 UD Motions for Summary</p>	The amendment to rule 3.1350 is intended to confirm that, because Code Civ. Proc., § 437c(r) exempts motions brought in summary proceedings involving possession of property from the provisions of subdivisions (a) and (b) of that statute (which include the provisions requiring certain documents, including separate statement of undisputed facts, as well as timing requirements), such motions are also exempt from the provisions of rule 3.1350(c) and (e). Those subdivisions of the rule, mandating what specific documents are to be filed in summary judgment motions, are based

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			<p>Judgment (MSJ) per week. It logically follows that my Court hears more limited UD MSJ than any Court in the State.</p> <p>CCP 437(c): Section 437(c)(a) CCP sets forth a 75 day notice requirement for MSJ. Sections 437(c)(b) CCP sets timing of responses for MSJ, and Section 437(c)(b)(1) sets forth evidentiary requirements including affidavits, declarations, etc., and separate statements of facts.</p> <p>CRC 3.1350: CRC 3.1350 sets forth the evidentiary requirements for MSJ and includes Statements of Facts with a format.</p> <p>INTERPRETATION OF CCP 437(c)(r): Historically, subsection (r) of CCP 437(c) was added to the Code of Civil Procedure when time for notice for UD and non-UD MSJ became different (75 vs. 5). The invitation to comment states the statute (CCP 437(c)(r)) expressly exempted the requirements of CCP 437(c)(a) &amp; (b) and therefore CRC 3.1350 (c) and (e) UD and other summary proceedings involving possession of real property.</p> <p>I believe this evaluation is not correct as set forth hereafter.</p> <ol style="list-style-type: none"> <li>1. If this interpretation were correct, no evidence would be required for MSJ in UD. Paragraph 437(c)(b)(1) would be deleted for UD.</li> <li>2. It is my interpretation that subparagraph (r) was enacted FOR TIMING AND SCHEDULING of UD MSJ in that the notice period . . . for UD MSJ is not 75 days with a specific response time but 5 days with response due at time</li> </ol>	<p>on Code Civ. Proc., § 437c(a) and (b). A rule of court may not be inconsistent with statute.</p> <p>The committee does not intend, by clarifying that Rule 3.1350 must be read in conjunction with Code Civ. Proc., § 437c(r), to suggest that a moving party in an unlawful detainer action need not base its motion on a written notice and motion and provide written evidence. Subdivision (c) of the summary judgment statute, which does apply to motions in unlawful detainer actions, provides that the motion is to be granted “if the papers submitted” show that there is no triable issue of fact. See also Code Civ. Proc., §1010 and Cal. Rule of Court, rules 3.1110 et seq. (regarding format of motions). A written motion and supporting papers are required, just not the specific documents set forth in Code Civ. Proc., §437c(a) and (b)</p>

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			of hearing.  STATEMENT OF FACTS: The purpose of Statements of Facts is to require the parties to define issues and evidence. They assist the bench officer in preparing for hearing. Although non UD MSJ may have more issues, the Motion is on 75 days notice and the response is required prior to hearing. In UD MSJ are [set] on 5 days notice with response due at time of hearing. A Statement of Facts assists a UD MSJ bench officer in preparation and understanding of issues.	
9.	Sara Lee, Attorney Legal Aid Society of Orange County Santa Ana	A	I have seen landlord's attorney who appears to be abusing the use of the Motion for Summary Judgment (MSJ) by filing for all their cases like a mill. The unlawful detainer is already a summary proceeding and some attorneys appear to be using the MSJ to prevent tenants from a fair trial.	Commentator's agreement with the proposal is noted.
10	Legal Aid Society of Orange County By Crystal C. Sims Director of Litigation Santa Ana	A	The Legal Aid Society of Orange County and community Legal Services provide assistance to thousands of very low income tenants facing eviction each year. Certain attorneys, particularly in Orange County, regularly file summary judgment motions against tenants who have filed answers <i>in propria persona</i> . This office frequently files opposition to summary judgment motions filed by tenants who contact Legal Aid for assistance if the tenant has a meritorious defense. These comments are submitted in support of the proposed changes to allow all oppositions and replies to be submitted to the court at the hearing on motions involving possession of real property.	Commentator's agreement with the proposal is noted.

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			<p>It is difficult, if not impossible, for self-represented litigants to file an opposition to a motion for summary judgment on their own. First, the statutes and court rules do not clearly state when opposition to a summary judgment must be filed and whether a separate statement of undisputed and disputed issues is required. There is wide discrepancy in the informal procedures followed in each courtroom. Sometimes judges will allow the tenant to file opposition the day of the hearing. In other courtrooms, the judges will not even consider the opposition if it is not filed at least two days before the hearing date. This makes it almost impossible for a tenant to get legal assistance when the motion for summary judgment is served five days before the hearing.</p> <p>Second, the pleadings themselves are difficult for self-represented litigants to understand. The Memorandum of Points and Authorities and the Separate Statement of Undisputed Material Facts are legal pleadings incomprehensible to a layman. The summary judgment motion is intended to establish that there are no undisputed facts. A written declaration or oral statement at the hearing by the tenants should be sufficient to establish that there are disputed facts.</p> <p>It appears that in many instances that landlords' attorneys use the summary judgment process as a way of depriving tenants who have legitimate defenses of their right to trial. The declarations are usually pro forma statements that do not even address the merits of defenses raised by the defendant tenants. Often tenants who do not have the</p>	

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			benefit of any legal assistance are totally bewildered by the process and do not file opposition thereby having a summary judgment granted against them. Allowing an opportunity to orally advise the court of their defenses on the day of the hearing will give tenants more access to justice.	
11	Legal Services of Northern California By Stephen Goldberg Sacramento	AM	<p>1. The proposed rule making opposition optional and allowing opposition to be filed either the day before hearing or during hearing does not indicate what to do in the courts that that have tentative ruling systems. The rule should include some provision for this.</p> <p>2. We support inclusion of an option giving a party the opportunity to have a written opposition considered in advance of the hearing if it is submitted before noon on day before. This would give the court at least a little time to think about the case, and a little time for the other party to have notice and have time to more thoughtfully reply, if necessary.</p> <p>3. Re Proposed Rule 3.1327: The proposed notice of motion rule is limited to only motions for stays based on inconvenient forum. We suggest the proposed rule be expanded to stays for any reason. Other examples common in our practice include when there is a pending</p>	<p>1. Amending the current the rules regarding tentative ruling procedures is outside the scope of the legislative mandate this proposal is addressing. At this time, the committee has not considered whether separate rules should be developed for tentative rulings in summary proceedings, whether those at issue here or others, but may do so in the future as time and resources permit.</p> <p>2. The committee has included the provision that any written oppositions be filed one court day in advance of the hearing, but has deleted the requirement of filing by noon.</p> <p>3. While the committee recognizes that there are other motions that may arise in unlawful detainer cases, the Legislature has only provided for shortened notice for the three types of motions addressed by these rules.</p>

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			<p>administrative proceeding addressing same issues or a pending court case addressing same issues. Additionally, the rule should cover motions for consolidation with other court actions and motions to reclassify from UD to regular civil action.</p> <p>4. General comment re existing discovery motion rule: The current discovery motion rule (5 days notice) under CCP Sec. 1170.8 is problematic because we often have to assist or represent in cases on relatively short notice. If there is a need to do discovery late in the process, the 5-day cut off rule sometimes compels us to do a motion for an order shortening time.</p>	<p>4. The provision of five days' notice for discovery motions is a legislative enactment (see Code Civ. Proc., § 1170.8), not a part of the California rules of court, and so is outside the scope of these proposed rules.</p>
12	Orange County Bar Association By Cathrine Castaldi, President Newport Beach	A	No specific comments.	Commentator's agreement is noted.
13	Superior Court of Los Angeles County	A	Given the short notice, it is suggested that consideration be given to allowing parties to submit oppositions and replies in connection with summary judgment motions in UD cases either in writing or orally at the hearings.	Commentator's agreement is noted. The committee notes, however, that it has modified the proposed rule to require written oppositions to be filed a day in advance of the hearing. The court will still have the discretion to consider later-filed oppositions.
14	Superior Court of San Bernardino County By Debra Meyers, Director Staff Counsel Services and Self- Help Division	A	No specific comments.	No response required.

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15	Superior Court of San Diego County By Michael M. Roddy, Executive Officer	AM	<p>With regard to the request for input regarding inserting subsection (c) into California Rules of Court, rules 3.1327, 3.1347, and 3.1351, the proposal to allow early filing provides an excellent option for litigants to get their position before the court prior to the hearing; however, it will only work if the opposition papers are required to be filed in the actual department hearing the motion. Due to the press of business in some of the larger courts, papers filed in the court’s business office one court day before the hearing may not be received by the department hearing the motion until after the hearing is held, which defeats the purpose of the proposed section. The proposed language for subsection (c) should be amended as follows:</p> <p>(c) If a party seeks to have a written opposition considered in advance of the hearing, the written opposition must be filed <i>in the department hearing the motion</i> and served by noon one court day before the hearing. Service must be by personal delivery or other method reasonably calculated to assure delivery by close of business on that day. The court, in its discretion, may consider written opposition filed later.</p>	The committee appreciates the comment but declines to adopt it. In some courts, filings are not permitted in the courtrooms. In addition, some courtrooms are closed at various times, which makes even lodging courtesy copies difficult. This would appear to be an area where local rules may be more appropriate.
16	Superior Court of San Mateo County By Hon. Marie S.Weiner	N	<p>We submit for your consideration the following disagreement with two of the proposed changes to the Rules of Court regarding unlawful detainer procedures, as set forth in SPR08-19:</p> <p>1. We disagree with proposed rules 3.1327(b), 3.1347(b), and 3.1351(b), stating: “Any opposition to the motion and any reply thereto may be made orally or in writing at the time of the hearing.” The Code of Civil Procedure provides</p>	<p>1. The committee has, partly in response to this comment, modified the proposed rule to provide that any written opposition should be</p>

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			<p>that pretrial motions in unlawful detainer actions can be filed and heard on very short time, usually five days. At present the law is in a state of confusion as to whether notice time is increased based upon the method of service, pursuant to C.C.P. Sections 1005 and 1013. Under the present circumstances of the law and in an abundance of caution, the San Mateo County Superior Court has followed the procedure (used by other Courts as well) that an opponent may file an opposition prior to the hearing or present opposition at the time of the hearing.</p> <p>Given that Law &amp; Motion matters are subject to posting of a tentative ruling the prior court day, pursuant to CRC rule 3.1308, motions in unlawful detainer are sufficiently disruptive to the Law &amp; Motion calendar, as (a) it is common for parties to appear at the hearing, regardless of the tentative ruling, (b) it is common for the motion to be unopposed until the day of the hearing, and (c) it is common for the parties to appear pro per rather than with the assistance of counsel.</p> <p>Such procedural and court timing problems will be increased by the proposed Rules. Tentative rulings will be fruitless—but still required to be given under CRC rule 3.1308. Law &amp; Motion hearings on unlawful detainer motions would become evidentiary hearings, with the parties presenting the Court with written, oral, and documentary evidence and briefs at the time of the hearing from both sides to be sorted and determined on the spot. Conversely taking every unlawful detainer matter under submission, to sort through this last-minute barrage of</p>	<p>filed on or before the court day before the hearing. Otherwise, opposition is to be made orally at the hearing, as is any reply.</p> <p>The committee has not at this time considered whether separate rules should be developed for tentative rulings in summary proceedings but may do so in the future as time and resources permit.</p>

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			<p>“oppositions” and “replies” would also be disruptive.</p> <p>Our suggestion is that the Rule either provide for filing of a written opposition prior to the hearing date, or alternatively provide that oral opposition may be presented at the time of the hearing, but there should be no right to any formal reply (although the moving party may be allowed to present counter-oral argument at the hearing). Prior written opposition, particularly if there is evidence being presented by documents or declarations, is a preferred procedure.</p> <p>2. We disagree with the wording of proposed 3.1350. C.C.P. Section 1170.7 provides that summary judgment motions in unlawful detainer actions “shall be granted or denied on the same basis as a motion under Section 437c.” Section 437c(r) provides that its subdivisions (a) and (b) do not apply to unlawful detainer actions. Many attorneys in the field, and several courts, have interpreted and applied subdivision (r) to mean that a moving party bringing a summary judgment motion in an unlawful detainer action does not have to present a separate statement of undisputed facts. Anne Ronan, Subcommittee Counsel, indicated that the proposed rule seeks to clarify that a separate statement of undisputed facts is not required for summary judgment in unlawful detainer.</p> <p>Unfortunately, that is not what the language of proposed Rule 3.1350 states. It needs to be completely rewritten, because as written it can be interpreted to say that a party bringing a motion for summary judgment in an unlawful detainer actions doesn’t have to file anything. Taken</p>	<p>2. The amendment to rule 3.1350 is intended to confirm that, because Code Civ. Proc., § 437c(r) exempts motions brought in summary proceedings involving possession of property from the provisions of subdivisions (a) and (b) of that statute (which include the provisions requiring certain documents, including separate statement of undisputed facts, as well as timing requirements), such motions are also exempt from the provisions of rule 3.1350(c) and (e). Those subdivisions of the rule, mandating what specific documents are to be filed in summary judgment motions, are based on Code Civ. Proc., § 437c(a) and (b). A rule of court may not be inconsistent with statute.</p>

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			<p>literally as written, it states that one would not be required to file a notice of motion, brief, present evidence, request judicial notice, etc. Indeed, the proposed rule would create greater confusion than already exists.</p> <p>Our suggestion is that the Rule simply clarify that subdivision (r) of C.C.P. Section 437c means that the time periods for filing of summary judgment motions, opposition, and replies do not apply, and that no separate statement of facts need be filed by the moving party nor the opposition.</p> <p>3. On behalf of the Civil Litigation Review Committee of the San Mateo County Superior Court, we submit our support for the Rules proposed to clarify and mandate that the time for giving of notice of pretrial motions in unlawful detainer actions be subject to C.C.P. Section 1013. This would clarify the present state of confusion in the law, provide uniformity of practice between Courts, and give greater opportunity for filing any opposition prior to the hearing date.</p>	<p>The committee does not intend, by clarifying that Rule 3.1350 must be read in conjunction with Code Civ. Proc., § 437c(r), to suggest that a moving party in an unlawful detainer action need not base its motion on a written notice and motion and provide written evidence. Subdivision (c) of the summary judgment statute, which does apply to motions in unlawful detainer actions, provides that the motion is to be granted “if the papers submitted” show that there is no triable issue of fact. See also Code Civ. Proc., §1010 and Cal. Rule of Court, rules 3.1110 et seq. (regarding format of motions). A written motion and supporting papers are required, just not the specific documents set forth in Code Civ. Proc., §437c(a) and (b)</p> <p>3. Commentator’s agreement is noted.</p>
17	Superior Court of Ventura County By Hon. Mark S. Borrell	AM	I have been asked by the presiding judge to respond to the Invitation to Comment regarding the adoption of certain proposed rules concerning oppositions and replies to motions for summary judgment, motions to quash, and discovery motions in unlawful detainer actions. We recognize that the proposed revisions are motivated to a desire to make the Court Rules more complete and user-	The amendment to rule 3.1350 is intended to confirm that, because Code Civ. Proc., § 437c(r) exempts motions brought in summary proceedings involving possession of property from the provisions of subdivisions (a) and (b) of that statute (which include the provisions requiring certain documents, including

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			<p>friendly, and my court fully supports that effort. Nevertheless, we are concerned that the simplicity of proposed rules may, in practice, prove to be counterproductive in one respect, particularly to the self-represented litigant.</p> <p>The essence of the proposed rules is to permit oppositions and replies to motions for summary judgment, motions to quash, and discovery motions in unlawful detainer actions (1) to be made orally or in writing; and (2) to be filed and served as late as the time for hearing on the motion. If read literally, this could mean that a party opposing such a motion could present his/her evidence “orally”—i.e., through live witness testimony at the hearing. With respect to motions for summary judgment, such a rule would contravene Code of Civil Procedure section 437c, subd. (b)(2), which states that “[t]he opposition, where appropriate, shall consist of affidavits, declarations, and matters of which judicial notice shall or may be taken.” And while Code of Civil Procedure section 437c, subd. (r), provides that subdivision (b) of section 347c does not apply in unlawful detainer actions, it seems counterintuitive that a party could oppose a summary judgment motion with oral testimony.</p> <p>Similarly, discovery motions and motions to quash based on personal jurisdiction issues are frequently opposed on the basis of some set of facts presented by the opposing party. Of course, the general rule in law and motion practice is that those facts should be established through declarations and/or properly authenticated documentary</p>	<p>separate statement of undisputed facts, as well as timing requirements), such motions are also exempt from the provisions of rule 3.1350(c) and (e). Those subdivisions of the rule, mandating what specific documents are to be filed in summary judgment motions, are based on Code Civ. Proc., § 437c(a) and (b). A rule of court may not be inconsistent with statute.</p> <p>The committee does not intend, by clarifying that Rule 3.1350 must be read in conjunction with Code Civ. Proc., § 437c(r), to suggest that a moving party in an unlawful detainer action need not base its motion on a written notice and motion and provide written evidence. Subdivision (c) of the summary judgment statute, which does apply to motions in unlawful detainer actions, provides that the motion is to be granted “if the papers submitted” show that there is no triable issue of fact. See also Code Civ. Proc., §1010 and Cal. Rule of Court, rules 3.1110 et seq. (regarding format of motions). A written motion and supporting papers are required, just not the specific documents set forth in Code Civ. Proc., §437c(a) and (b)</p> <p>The committee does not find it necessary or appropriate, in light of the many self-represented litigants who must deal with these motions, to mandate in more detail the type of</p>

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			<p>evidence. (See Cal. Prac. Guide Civ. Pro. Before Trial, Ch. 9(I)-D, § 9:175; Rosenthal v. Great Western Fin. Securities Corp. (1996) 14 Cal.4th 394, 413-414.) A party’s ability to present live witness testimony in connection with motions like this rests with the discretion of the court. (Ibid.) However, a literal reading of the rules would seem to suggest that a party opposing such a motion has a right to “orally” present evidence supporting that party’s opposition. The proposed rules present the potential that motions in unlawful detainer cases could morph into mini-trials, adding delay and expense to what is supposed to be an expedited procedure. Finally, the proposed rules appear to strike an uneven balance by granting the opposing party the right to present evidence orally, but not allowing a comparable opportunity to the moving party.</p> <p>We believe this ambiguity in the proposed rule could result in unintended confusion and delay, and both are particularly unwelcome in unlawful detainer litigation. We also fear that self-represented litigants could be misled by a literal reading of the proposed rules in their present form. The proposed rules would also undermine the court’s discretion to limit oral testimony on law and motion matters.</p> <p>We would suggest that the committee consider adding language to the proposed rules to address these concerns. As for motions for summary judgment, we suggest that proposed Rule 3.1351(b) contain language requiring evidence in opposition to the motion be presented in the form of affidavits, declarations, and matters of which</p>	<p>evidence that is required.</p>

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			<p>judicial notice shall or may be taken.</p> <p>The proposed rules concerning discovery motions and motions to quash may also be improved with clarifying language. Paraphrasing the Supreme Court’s language in <i>Rosenthal v. Great Western Fin. Securities Corp.</i>, supra, 14 Cal.4th, at p. 413-414, those rules could include this reference: “Facts are to be proven by written affidavit or declaration and documentary evidence, with oral testimony taken only in the court's discretion.”</p> <p>With respect to the time for service of opposition papers, it is our view that where a party intends to present a written opposition, those papers should be filed and served in a manner reasonably calculated to result in actual receipt by the moving party at least one court day prior to the hearing. However, the court should be permitted, upon a showing of good cause, to receive and consider late papers.</p>	
18	Superior Court of Ventura County Self-Help Legal Access Center By Tina Rasnow Senior Attorney / Coordinator	AM	<p>1. I agree that it is a good thing to allow responses to motions in UD cases to be brought orally at the time of the hearing, and I do not see a reason for adding the possible proposed language about time limits for service and filing of written responses, since the court will have discretion to allow written responses. This will make it easier for SRLs [Self Represented Litigants] in UDs to respond to motions.</p> <p>2. However, it may be helpful to clarify that with respect to motions on shortened time, that courts can hear motions to</p>	<p>1. The commentator’s agreement with part of the proposed rule is noted. The committee has modified the proposed rule, partly in response to other comments, to provide that any written opposition should be filed on the court day before the hearing. However, as the commentator notes, the rule confirms that the court retains the discretion to allow later-filed written oppositions.</p> <p>2. While the committee recognizes that there are other motions which may arise in unlawful</p>

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			set aside default/vacate default judgment under CCP 473 on an ex parte basis where there is not sufficient time to bring it on a noticed basis under CCP 1005, and that the defendant does NOT need to bring a separate motion for order shortening time to have heard a motion to set aside/vacate under CCP 473. Making SRL's have to file two separate motions is next to impossible, and by allowing them to simply file the CCP 473 motion on an ex parte basis with telephone notice to the other side allows for the court to cut to the chase and hear in one hearing the grounds for relief under CCP 473. So long as this rule amendment does not preclude courts from hearing CCP 473 motions on an ex parte basis, I support the rule change.	detainer cases, the Legislature has only provided for shortened notice for the three types of motions addressed by these rules. The Legislature has directed the Judicial Council to adopt rules in relation to those three types of motions. See Code Civ. Proc., § 1170.9. The proposed rules do not address and are not meant to have any impact on motions made under Code Civ. Proc., § 473.
19	Derek Tabone, Attorney Van Nuys	A	No specific comments.	Commentator's agreement is noted.
20	TCPJAC/CEAC Joint Working Group on Rules By Patrick Danna, Court Service Analyst and Lead AOC Staff San Francisco	A	The Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Working Group has no objection to the proposal.	Commentator's agreement is noted.
21	Tam Tran, Staff Attorney Legal Aid Society of Orange County Santa Ana	A	None.	Commentator's agreement is noted.
22	Western Center on Law & Poverty By Michael Moynagh Legislative Analyst Sacramento	A	The unlawful detainer statutes provide only five days notice regarding motions for summary judgment and discovery motions. Given the short notice and the large number of in propria persona tenants, we believe the	Commentator's agreement is noted.

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			<p>proposal to allow oral or written oppositions and replies at the time of the hearing will advance judicial fairness. We note that the proposal is even-handed in that landlords are given the opportunity to oppose the same motions, in addition to motions to quash and motions to stay, without submitting oppositions in advance of the hearings. We have been informed by legal services organizations that unsophisticated tenants often do not understand the procedural process and lose motions (and consequently their housing) because they have not submitted oppositions to motions for summary judgment. Allowing oral or written oppositions and replies at the time of the hearing will increase the likelihood that decisions will be based on the merits of the case rather than on the inability of pro per parties to understand the intricacies of civil procedure.</p> <p>We also agree with the provision that clarifies that motions brought in unlawful detainer actions are subject to CCP § 1013. In addition to simply providing clarification for parties and practitioners, providing extra days for service by mail advances judicial fairness. Without the extra days, a motion for summary judgment served by mail on a Friday could be heard on the following Wednesday, giving the opposing party two days to prepare for the hearing. For pro per landlords and tenants, the extra days will allow them time to consult an attorney.</p>	

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