

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

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Lee Smalley Edmon, Chair
Uniform Rules Subcommittee
Hon. Brian R. Van Camp, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
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DATE: October 9, 2007

SUBJECT: Revised Format for Separate Statements in Support of Motions for
Summary Judgment (amend California Rules of Court, rule 3.1350)
(Action Required)

Issue Statement

Rule 3.1350 of the California Rules of Court prescribes the format for separate statements filed in support of or opposition to motions for summary judgment and summary adjudication of issues. The rule should be amended to change the format for separate statements to require the moving party's allegedly undisputed facts and the evidence to support them to be located together in a column on the left side of the page. This amendment will reduce the amount of reformatting required to prepare a statement in opposition to a motion.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2008, amend rule 3.1350 to revise the format for separate statements submitted in support of a motion for summary judgment or motion for summary adjudication of issues.

The text of amended rule 3.1350 is attached at pages 4–6.

Rationale for Recommendation

The Conference of Delegates of California Bar Associations initiated this proposal to amend rule 3.1350 of the California Rules of Court to change the format for separate statements in support of motions for summary judgment. Rule 3.1350

presently prescribes the following format for parties' separate statements in support of and in opposition to summary judgment motions: the moving party must separately state each material fact it claims to be undisputed in the column on the left side of the page and, in a column on the right side, must state the evidence supporting that fact; parties opposing motions for summary judgment must place the moving parties' statements of material facts and evidence in columns on the left side of the page and then place their evidence disputing the moving party's alleged undisputed facts on the right side.

Rule 3.1350 should be amended to simplify this format by requiring the moving party to state its allegedly undisputed facts *and* the evidence to support them on the left side of the page (rather than the facts on the left side and corresponding evidence on the right), and to have the opposing party set out its evidence disputing the movant's facts on the right side of the page (without need to first move the movant's supporting evidence to the left side of the page).

The proposed amendment of rule 3.1350 preserves the utility of separate statements. Parties would still have clear notice of the opposing parties' evidence, and courts would still be able to readily ascertain the facts. The basic two-column format of separate statements would be preserved. Amending rule 3.1350 as proposed would simply alleviate the procedural burden on parties opposing summary judgment of engaging in the mechanical, time-consuming task of reformatting the moving party's separate statement. The new format of the separate statement would be a little different, but should present no new difficulties for moving parties or the courts.¹

Alternative Actions Considered

The rule on formatting could be left unchanged. But for the reasons explained above, the committee concluded that the proposed amendment would simplify the formatting process and so is preferable.

Comments From Interested Parties

A total of eight comments were received on this proposal. The commentators included court administrators, the president of a local bar association, the State Bar's Committee on the Administration of Justice, and a legal publisher. A chart summarizing the public comments and the committee's responses is attached at pages 7–10.

¹ In addition, the example of the undisputed fact on page 5 has been slightly modified to provide a better example.

Implementation Requirements and Costs

The proposed new format should simplify the task of preparing separate statements for attorneys filing motions for summary judgment. It will require no implementation by the courts and will impose no costs on them.

Attachments

Rule 3.1350 of the California Rules of Court is amended, effective January 1, 2008, to read as follows:

1 **Rule 3.1350. Motion for summary judgment or summary adjudication**

2
3 (a)–(c) ***

4
5 (d) **Separate statement in support of motion**

6 The Separate Statement of Undisputed Material Facts in support of a motion
7 must separately identify each cause of action, claim, issue of duty, or
8 affirmative defense, and each supporting material fact claimed to be without
9 dispute with respect to the cause of action, claim, issue of duty, or affirmative
10 defense. In a two-column format, the statement must state in numerical
11 sequence the undisputed material facts in the first column ~~and followed by~~
12 the evidence that establishes those undisputed facts in ~~the second~~ that same
13 column. Citation to the evidence in support of each material fact must include
14 reference to the exhibit, title, page, and line numbers.

15
16 (e)–(g) ***

17
18 (h) **Format for separate statements**

19 Supporting and opposing separate statements in a motion for summary
20 judgment must follow this format:

21
22 Supporting statement:

23
24 Moving Party’s Undisputed Material
25 Facts and Supporting Evidence:

26
27 1. Plaintiff and defendant entered into a
28 written contract for the sale of widgets.
29 Jackson declaration, 2:17-21; contract,
30 Ex. A to Jackson declaration.

31
32 2. No widgets were ever received.
33 Jackson declaration, 3:7-21.

34
35 Opposing statement:

36
37 Moving Party’s Undisputed Material
38 Facts and Alleged Supporting Evidence:

Opposing Party’s Response and
Supporting Evidence:

~~Jackson declaration, 2:17-21; contract,~~
~~Ex. A to Jackson declaration.~~

~~Jackson declaration, 3:7-21.~~

Opposing Party’s Response and
Evidence:

1 1. Plaintiff and defendant entered into a Undisputed.
2 written contract for the sale of widgets.
3 Jackson declaration, 2:17-21; contract,
4 Ex. A to Jackson declaration.

5
6 2. No widgets were ever received. Disputed. The widgets were received in
7 Jackson declaration, 3:7-21. New Zealand on August 31, 2001.
8 Baygi declaration, 7:2-5.
9

10 Supporting and opposing separate statements in a motion for summary
11 adjudication must follow this format:

12
13 Supporting statement:

14
15 ISSUE 1—THE FIRST CAUSE OF ACTION FOR
16
17 NEGLIGENCE IS BARRED BECAUSE PLAINTIFF
18
19 EXPRESSLY ASSUMED THE RISK OF INJURY
20

21 Moving Party's Undisputed Material
22 Facts and Supporting Evidence:

Opposing Party's Response and
Supporting Evidence:

23
24 1. Plaintiff was injured while mountain
25 climbing on a trip with Any Company
26 USA. Plaintiff's deposition, 12:3-4.
27

~~Plaintiff's deposition, 12:3-4.~~

28 2. Before leaving on the mountain
29 climbing trip, plaintiff signed a
30 complete waiver of liability. Smith
31 declaration, 5:4-5; waiver of liability,
32 Ex. A to Smith declaration.
33

~~Smith declaration, 5:4-5; waiver of~~
~~liability, Ex. A to Smith declaration.~~

34 Opposing statement:

35
36 ISSUE 1—THE FIRST CAUSE OF ACTION FOR
37
38 NEGLIGENCE IS BARRED BECAUSE PLAINTIFF
39
40 EXPRESSLY ASSUMED THE RISK OF INJURY
41

42 Moving Party's Undisputed Material
43 Facts and Alleged Supporting Evidence:

Opposing Party's Response and
Evidence:

1
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13

1. Plaintiff was injured while mountain climbing on a trip with Any Company USA. Plaintiff's deposition, 12:3-4.

2. Before leaving on the mountain climbing trip, plaintiff signed a ~~complete~~ waiver of liability for acts of negligence. Smith declaration, ~~3:6-7~~ 5:4-5; waiver of liability, Ex. A to Smith declaration.

Undisputed.

Disputed. Plaintiff did not sign the waiver of liability; the signature on the waiver is forged. Jones declaration, ~~5:4-5; waiver of liability~~ 3:6-7.

(i) * * *

SPR07-18

**Revised Format for Separate Statements in Support of and in Opposition to Motions for Summary Judgment
(amend California Rules of Court, rule 3.1350)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee’s response
1.	Saul Bercovitch, Staff Attorney Committee on Administration of Justice State Bar of California San Francisco, CA	A	Y	The Committee on Administration of Justice supports this proposal.	No response required.
2.	Stephen A. Bouch Executive Officer Superior Court of California, County of Napa Napa, CA	A	N	No specific comments.	No response required.
3.	Joseph L. Chairez President Orange County Bar Association Irvine, CA	A	Y	<p>This addresses the form of the separate statement of undisputed facts required in summary judgment motions. At present, the moving party lists “undisputed” facts or issues in a column on the left with the supporting evidence in a column on the right. The new form will require that both the undisputed facts/issue and the evidence be presented on the left, and the contrary evidence showing a disputed fact and the supporting evidence (i.e., the opposition separate statement) in a column on the right.</p> <p>This is a good change, especially since current Cal. Rules of Court, rule 3.1350(i) already allows the responding party to obtain the separate statement in electronic form on three days’ request</p>	The committee agreed with the comment.

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				(and there is almost 60 days to prepare opposition), simplifying the process of presenting the contrary evidence showing disputed facts in the right column, without having to input the left column.	
4.	Julie A. Goren Attorney/Author-Publisher Sherman Oaks, CA	A	N	Although I agree with the change, I wonder if it goes far enough to alleviate the need for the opposing party to reformat the document. There may be situations where the parties' respective word processing programs are not in sync (e.g., moving party uses Word and the opposing party uses WordPerfect) and all formatting is lost anyway. Perhaps, the rule should be amended to allow the responding party to request the electronic statement to be in a particular electronic format, and the moving party should have to comply if reasonably possible.	This comment goes beyond the scope of the proposal that concerns the format of separate statements. In reviewing the comment, the committee concluded that current rule 3.1350(i) adequately addresses requests for electronic versions of separate statements and does not need to be changed. So the committee does not intend to pursue this suggestion.
5.	Superior Court of California, County of Los Angeles Los Angeles, CA	A	Y	No specific comments.	No response required.
6.	Pam Moraida Program Manager Superior Court of California, County of Solano Fairfield, CA	A	N	No specific comments.	No response required.

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7.	Michael M. Roddy Executive Officer Superior Court of California, County of San Diego San Diego, CA	AM	Y	<p>The supporting (moving) separate statements should follow a single-column format (i.e., facts and evidence all in the left-hand column). A “two-column” format should only be required for opposing statements. Rule 3.1350(d) should state that moving separate statements are to be submitted in a single-column format (as opposed to a “two-column format” as currently proposed). Similarly, the examples should reflect a single-column format for moving statements and a two-column format for opposing statements.</p> <p>Unless these modifications are made, moving parties will be forced to include an unnecessary blank right-hand column merely to comply with the rule. Moreover, if the proposed modifications are made, the court and counsel would be able to immediately distinguish between moving and opposing statements (which would be especially helpful when managing lengthy statements and voluminous evidence often filed in support and in opposition to a motion for summary judgment).</p>	<p>The committee disagreed with the commentator’s suggestion. It believes that the proposed new two-column format will be clearer for both supporting as well as opposing statements.</p> <p>Under the amended rule, the blank right-hand column will make it immediately evident that a separate statement is the moving party’s. The column on the right will then be completed by the opposing party in its separate statement.</p>

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8.	Gloria M. Sanchez Small Claims/Civil Advisor Superior Court of California, County of Contra Costa Martinez, CA	A	N	No specific comments.	No response required.