

2015 Regular Session

HOUSE BILL NO. 696

BY REPRESENTATIVE ABRAMSON AND SENATOR MURRAY

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 966, relative to motions for summary
3 judgment; to provide for certain procedures at the hearing on a motion for summary
4 judgment; to provide for the filing and consideration of certain documents; to
5 provide for the burden of proof; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Civil Procedure Article 966 is hereby amended and reenacted to
8 read as follows:

9 Art. 966. Motion for summary judgment; procedure

10 A.(1) ~~The plaintiff or defendant in the principal or any incidental action, with~~
11 ~~or without supporting affidavits, A party~~ may move for a summary judgment ~~in his~~
12 ~~favor~~ for all or part of the relief for which he has prayed. ~~The A~~ plaintiff's motion
13 may be ~~made~~ filed at any time after the answer has been filed. ~~The A~~ defendant's
14 motion may be ~~made~~ filed at any time.

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

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

22 (4) The only documents that may be filed in support of or in opposition to
23 the motion are pleadings, memoranda, affidavits, depositions, answers to
24 interrogatories, certified medical records, written stipulations, and admissions. The

1 court may permit documents to be filed in any electronically stored format
2 authorized by court rules or approved by the clerk of the court.

3 ~~B.(1) The motion for summary judgment, memorandum in support thereof,~~
4 ~~and supporting affidavits shall be served within the time limits provided in District~~
5 ~~Court Rule 9.9. For good cause, the court shall give the adverse party additional~~
6 ~~time to file a response, including opposing affidavits or depositions. The adverse~~
7 ~~party may serve opposing affidavits, and if such opposing affidavits are served, the~~
8 ~~opposing affidavits and any memorandum in support thereof shall be served pursuant~~
9 ~~to Article 1313 within the time limits provided in District Court Rule 9.9.~~

10 ~~(2) The judgment sought shall be rendered forthwith if the pleadings,~~
11 ~~depositions, answers to interrogatories, and admissions, together with the affidavits,~~
12 ~~if any, admitted for purposes of the motion for summary judgment, show that there~~
13 ~~is no genuine issue as to material fact, and that mover is entitled to judgment as a~~
14 ~~matter of law. If the motion for summary judgment is denied, the court should~~
15 ~~provide reasons for the denial on the record, either orally upon rendition or in writing~~
16 ~~sua sponte or upon request of a party within ten days of rendition. Unless extended~~
17 ~~by the court and agreed to by all of the parties, a motion for summary judgment shall~~
18 ~~be filed, opposed, or replied to in accordance with the following provisions:~~

19 ~~(1) A motion for summary judgment and all documents in support of the~~
20 ~~motion shall be filed and served on all parties in accordance with Article 1313 not~~
21 ~~less than sixty-five days prior to the trial.~~

22 ~~(2) Any opposition to the motion and all documents in support of the~~
23 ~~opposition shall be filed and served in accordance with Article 1313 not less than~~
24 ~~fifteen days prior to the hearing on the motion.~~

25 ~~(3) Any reply memorandum shall be filed and served in accordance with~~
26 ~~Article 1313 not less than five days prior to the hearing on the motion. No additional~~
27 ~~documents may be filed with the reply memorandum.~~

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

1 C.(1) ~~After adequate discovery or after a case is set for trial, a motion which~~
 2 ~~shows that there is no genuine issue as to material fact and that the mover is entitled~~
 3 ~~to judgment as a matter of law shall be granted.~~

4 (2) ~~The burden of proof remains with the movant. However, if the movant~~
 5 ~~will not bear the burden of proof at trial on the matter that is before the court on the~~
 6 ~~motion for summary judgment, the movant's burden on the motion does not require~~
 7 ~~him to negate all essential elements of the adverse party's claim, action, or defense,~~
 8 ~~but rather to point out to the court that there is an absence of factual support for one~~
 9 ~~or more elements essential to the adverse party's claim, action, or defense.~~
 10 ~~Thereafter, if the adverse party fails to produce factual support sufficient to establish~~
 11 ~~that he will be able to satisfy his evidentiary burden of proof at trial, there is no~~
 12 ~~genuine issue of material fact.~~

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

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

17 (b) Notice of the hearing date shall be served on all parties in accordance
 18 with Article 1313(C) or 1314 not less than thirty days prior to the hearing.

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

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

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

25 D. ~~The court shall hear and render judgment on the motion for summary~~
 26 ~~judgment within a reasonable time, but in any event judgment on the motion shall~~
 27 ~~be rendered at least ten days prior to trial.~~

28 (1) The burden of proof rests with the mover. Nevertheless, if the mover
 29 will not bear the burden of proof at trial on the issue that is before the court on the
 30 motion for summary judgment, the mover's burden on the motion does not require

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 him to negate all essential elements of the adverse party's claim, action, or defense,
 2 but rather to point out to the court the absence of factual support for one or more
 3 elements essential to the adverse party's claim, action, or defense. The burden is on
 4 the adverse party to produce factual support sufficient to establish the existence of
 5 a genuine issue of material fact or that the mover is not entitled to judgment as a
 6 matter of law.

7 (2) The court may consider only those documents filed in support of or in
 8 opposition to the motion for summary judgment and shall consider any documents
 9 to which no objection is made. Any objection to a document shall be raised in a
 10 timely filed opposition or reply memorandum. The court shall consider all
 11 objections prior to rendering judgment. The court shall specifically state on the
 12 record or in writing which documents, if any, it held to be inadmissible or declined
 13 to consider.

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

18 F.~~(1)~~ A summary judgment may be rendered or affirmed only as to those
 19 issues set forth in the motion under consideration by the court at that time.

20 ~~(2) Evidence cited in and attached to the motion for summary judgment or~~
 21 ~~memorandum filed by an adverse party is deemed admitted for purposes of the~~
 22 ~~motion for summary judgment unless excluded in response to an objection made in~~
 23 ~~accordance with Subparagraph (3) of this Paragraph. Only evidence admitted for~~
 24 ~~purposes of the motion for summary judgment may be considered by the court in its~~
 25 ~~ruling on the motion. The court may permit documentary evidence to be filed in the~~
 26 ~~record with the motion or opposition in any electronically stored format authorized~~
 27 ~~by the local court rules of the district court or approved by the clerk of the district~~
 28 ~~court for receipt of evidence.~~

29 ~~(3) Objections to evidence in support of or in opposition to a motion for~~
 30 ~~summary judgment may be raised in memorandum or written motion to strike stating~~

1 (c) Subparagraph (A)(4), which is new, contains the exclusive list of
2 documents that may be filed in support of or in opposition to a motion for summary
3 judgment. This Subparagraph intentionally does not allow the filing of documents
4 that are not included in the exclusive list, such as photographs, pictures, video
5 images, or contracts, unless they are properly authenticated by an affidavit or
6 deposition to which they are attached. Although a memorandum is not a pleading
7 or evidence, it is a proper document that can be used by a party to advance his
8 arguments in support of or in opposition to the motion. See, e.g., *Meaux v. Galtier*,
9 972 So.2d 1137 (La. 2008). An opinion of the medical review panel cannot be filed
10 in support of or in opposition to the motion unless it is properly authenticated and
11 attached to the affidavit or deposition. Article 1458 requires that interrogatories be
12 answered under oath, and only answers that are made under oath may be filed in
13 support of or in opposition to a motion for summary judgment. This Subparagraph
14 continues the rule that no oral testimony shall be allowed at a hearing on a motion
15 for summary judgment, even if all parties agree. See *Mapp Construction, LLC v.*
16 *Amerisure Mutual Insurance Co.*, 143 So.3d 520 (La. App. 1st Cir. 2014). All
17 supporting documents may be filed electronically if provided for by local rules or the
18 clerk of court.

19 (d) Subparagraphs (B)(1), (B)(2) and (B)(3) are new. They establish the
20 time periods for filing or opposing motions for summary judgment. These
21 provisions supersede Rule 9.9 of the District Court Rules but at the same time
22 recognize the ability of the trial court and all of the parties to enter in to a case
23 management or scheduling order or other order to establish deadlines different from
24 those provided by this Article. Nevertheless, these orders may not shorten the period
25 of time allowed for a party to file or oppose a motion for summary judgment under
26 this Article. The Article makes clear that all motions, memoranda, and supporting
27 documents shall be served on all parties and filed with the clerk of court. This
28 Article continues the rule that no new documents may be filed with a reply
29 memorandum. Unless provided otherwise by an order agreed upon by all of the
30 parties and the court, the motion, any opposition, and any reply shall be served by
31 the methods provided for in Article 1313 (e.g., mailing, delivering a copy, or by
32 electronic means).

33 (e) Subparagraph (B)(4) is new. This Subparagraph follows Article 5059 and
34 its interpretation in *Becnel v. Northrop Grumman Ship Sys., Inc.*, 18 So.3d 1269 (La.
35 2009). It establishes the rule that, if the date for filing the motion, opposition, or
36 reply memorandum falls on a legal holiday, the party has until the next day that is
37 not a legal holiday to file the pleading and supporting documents. This is significant
38 because the trial court has vast discretion whether to consider late-filed affidavits or
39 documents in support of an opposition. See, e.g., *Buggage v. Volks Constructors*,
40 928 So.2d 536 (La. 2006).

41 (f) Subparagraphs (C)(1) and (2) are new. A motion for summary judgment
42 shall be set for hearing more than thirty days after filing. The notice of the date of
43 the hearing shall be served in accordance with Article 1313(C) (i.e., by certified mail
44 or commercial courier) or 1314 (i.e., by the sheriff) to ensure that a party receives
45 timely notice of the hearing date. The hearing on the motion shall be set at least
46 thirty days prior to the trial date.

47 (g) Subparagraph (C)(2) establishes the rule that if a party has a good cause
48 for failing to meet this deadline, the court may order a continuance of the hearing on
49 the motion so that the parties and the court can comply with the applicable deadlines.

50 (h) Subparagraph (C)(3), which is new, changes the law. This time period
51 requires the court to decide a motion for summary judgment sufficiently in advance
52 of the trial to allow a party to apply for supervisory writs without interrupting the
53 trial setting.

1 (i) Subparagraph (C)(4) is new. The court shall state either on the record or
 2 in writing the reasons for granting or denying the motion. Nevertheless, the court
 3 does not have to address every reason or argument, and the form and detail of the
 4 reasons are left to the discretion of the court. Cf. Federal Rules of Civil Procedure,
 5 Rule 56(a).

6 (j) Subparagraph (D)(1) does not change the law. It is consistent with
 7 Section 4 of Acts 1997, No. 483, which declares that "all cases inconsistent with"
 8 Hayes v. Autin, 685 So.2d 691 (La. App. 3d Cir. 1996) are legislatively overruled.
 9 Hayes holds that Celotex v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265
 10 (1986), correctly states the law for our summary judgment procedure. In accordance
 11 with Celotex and Babin v. Winn-Dixie Louisiana Inc. 764 So.2d 37 (La. 2000), once
 12 the motion for summary judgment has been properly supported by the moving party,
 13 the non-moving party must produce evidence of the existence of a material factual
 14 dispute or demonstrate that the mover is not entitled to judgment as a matter of law.

15 (k) Subparagraph (D)(2) maintains most of the recent legislative changes to
 16 this Article, which change the law. Subparagraph (D)(2) makes clear that the court
 17 can consider only those documents filed in support of or in opposition to the motion.
 18 This rule differs from Federal Rules of Civil Procedure, Rule 56(c)(3), which allows
 19 the court to consider other materials in the record. This Subparagraph also maintains
 20 the requirement that any objection to any supporting document must be raised in a
 21 timely-filed opposition or reply memorandum. The provision changes prior law by
 22 specifically removing the motion to strike as a means of raising an objection to a
 23 document offered by an adverse party in support of or in opposition to a motion for
 24 summary judgment and does not allow a party to file that motion. This
 25 Subparagraph also makes explicit that an oral objection to any document cannot be
 26 raised at the hearing on the motion for summary judgment and that a court must
 27 consider all documents to which there is no objection. This Subparagraph adds the
 28 provision that the court shall specifically state either on the record or in writing what
 29 evidence it deems to be inadmissible or declines to consider. The court may, in
 30 accordance with Code of Judicial Conduct Canon 3, make a reasonable effort for a
 31 self-represented litigant to be fairly heard, attempt to make the legal concepts
 32 understandable, and provide information about the proceeding and the evidentiary
 33 and foundational requirements.

34 (l) Paragraphs E and F do not change the law, except that Paragraph F makes
 35 clear that, in deciding a motion for summary judgment, a court can consider only the
 36 issues raised in the motion or opposition filed by the parties. The court cannot rule
 37 on issues not raised by the parties.

38 (m) Paragraph G, which is new, adopts the rule from prior Article 966(G)(1)
 39 that if a person is found in a summary judgment not to be negligent, not at fault, not
 40 to have caused the injury or harm, that person cannot be considered in any allocation
 41 of fault. The requirement of former Article 966(G)(2) is removed. The trial judge
 42 does not have to specifically provide in the judgment on the motion that the person
 43 is not to be part of any allocation of fault at trial for this rule to apply. The
 44 Paragraph also establishes the rule that, at trial, evidence of that person's fault shall
 45 not be admitted, nor shall that person's fault be referred to by any person or be
 46 submitted to the jury on the jury verdict form.

47 (n) Paragraph H is new. This provision requires the appellate court to assign
 48 the matter for briefing and to permit the parties an opportunity to request oral
 49 argument if the court intends to reverse a lower court decision that denied a motion
 50 for summary judgment. If a summary judgment is granted at the trial level
 51 dismissing a party or a case, the losing party is entitled to an appeal. See Article
 52 1915(A). However, under prior law, if the appellate court, on a supervisory writ,
 53 reversed the lower court and granted the motion for summary judgment dismissing
 54 a party or the case, the losing party was denied an appeal. This Paragraph changes

1 the law and provides a party against whom summary judgment may be rendered at
2 the appellate level an opportunity to brief his case and to request oral argument on
3 his case.

4 Section 2. The provisions of this Act shall not apply to any motion for summary
5 judgment pending adjudication or appeal on the effective date of this Act.

6 Section 3. The provisions of this Act shall become effective on January 1, 2016.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____