

Invitation to Comment

Title	Revised Format for Separate Statements in Support of and in Opposition to Motions for Summary Judgment (amend California Rules of Court, rule 3.1350)
Summary	Rule 3.1350 of the California Rules of Court would be amended, effective January 1, 2008, to change the format for separate statements in support of and in opposition to motions for summary judgment to require the moving party's allegedly undisputed facts <i>and</i> the evidence to support them in a column on the same side of the page.
Source	Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665, Patrick.o'donnell@jud.ca.gov
Discussion	<p>The Conference of Delegates of California Bar Associations (CDCBA) initiated this proposal to amend rule 3.1350 of the California Rules of Court to change the format for separate statements in support of and in opposition to motions for summary judgment. Rule 3.1350 presently prescribes a particular 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.</p> <p>Rule 3.1350 would be amended to require the moving party to state both its allegedly undisputed facts <i>and</i> 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).</p> <p>The proposed amendment of rule 3.1350 is nonsubstantive and would preserve the utility of separate statements. Parties would still</p>

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 also would be preserved. Amending rule 3.1350 as proposed simply would 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 different but should present no new difficulty for moving parties or the courts.

Attachment

Rule 3.1350 of the California Rules of Court would be 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 must
7 separately identify each cause of action, claim, issue of duty, or affirmative
8 defense, and each supporting material fact claimed to be without dispute with
9 respect to the cause of action, claim, issue of duty, or affirmative defense. In a
10 two-column format, the statement must state in numerical sequence the undisputed
11 material facts in the first column ~~and~~ followed by the evidence that establishes
12 those undisputed facts in ~~the second~~ that same column. Citation to the evidence in
13 support of each material fact must include reference to the exhibit, title, page, and
14 line numbers.

15
16 (e)–(g) ***

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

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

21
22 Supporting statement:

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

25
26 1. Plaintiff and defendant entered into a
27 written contract for the sale of widgets.
28 Jackson declaration, 2:17-21; contract,
29 Ex. A to Jackson declaration.

30
31 2. No widgets were ever received.
32 Jackson declaration, 3:7-21.

33
34 Opposing statement:

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

37
38 1. Plaintiff and defendant entered into a
39 written contract for the sale of widgets.
40 Jackson declaration, 2:17-21; contract,

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:

Undisputed.

1 Ex. A to Jackson declaration.

2

3 2. No widgets were ever received.
4 Jackson declaration, 3:7-21.

Disputed. The widgets were received in
New Zealand on August 31, 2001.
Baygi declaration, 7:2-5.

5

6

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

9

10 Supporting statement:

11

ISSUE 1—THE FIRST CAUSE OF ACTION FOR

12

NEGLIGENCE IS BARRED BECAUSE PLAINTIFF

13

EXPRESSLY ASSUMED THE RISK OF INJURY

14

15 Moving Party’s Undisputed Material
16 Facts and Supporting Evidence:

Opposing Party’s Response and
Supporting Evidence:

17

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

~~Plaintiff’s deposition, 12:3-4.~~

21

22 2. Before leaving on the mountain
23 climbing trip, plaintiff signed a
24 complete waiver of liability. Smith
25 declaration, 5:4-5; waiver of liability,
26 Ex. A to Smith declaration.

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

27

28

29

30

31 Opposing statement:

32

ISSUE 1—THE FIRST CAUSE OF ACTION FOR

33

NEGLIGENCE IS BARRED BECAUSE PLAINTIFF

34

EXPRESSLY ASSUMED THE RISK OF INJURY

35

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

Opposing Party’s Response and
Evidence:

38

39 1. Plaintiff was injured while mountain
40 climbing on a trip with Any Company

Undisputed.

41

1 USA. Plaintiff's deposition, 12:3-4.

2

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

8

9 **(i) * * ***

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

Item SPR07-18 Response Form

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

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee. All comments will become part of the public record of the council's action.