

Invitation to Comment

Title	Motions in Unlawful Detainers and Other Summary Proceedings Involving Possession of Real Property (adopt California Rules of Court, rules 3.1327, 3.1347, and 3.1351; and amend rule 3.1350)
Summary	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 filing and serving opposition and reply papers, if any, 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 rules provide that all oppositions and replies may be submitted to the court at the hearing on the motions, either in writing or orally. The proposed rules also clarify (1) that service of such motions is subject to Code of Civil Procedure section 1013 and (2) that summary judgment motions in such actions are exempt from the provisions of rule 3.1350 of the California Rules of Court concerning the content and form of motions for summary judgment.
Source	Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair
Staff	Anne M. Ronan, Small Claims and Limited Case Subcommittee Counsel, 415-865-8933, anne.ronan@jud.ca.gov
Discussion	<p>Under this proposal, the Judicial Council would make the following changes to the California Rules of Court:</p> <ol style="list-style-type: none"> 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, and renumber the current rules concerning discovery motions as 3.1345, 3.1346, and 3.1348; 3. Adopt rule 3.1351 concerning motions for summary judgment or summary adjudication in summary proceedings involving possession of real property; and 4. 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 when made in summary proceedings involving possession of real property.

Statutory Provisions

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. (Code Civ. Proc., § 1170.8.) This provision parallels the shortened notice provisions already existing for motions for summary judgment in such proceedings, which motions may also be made on five days' notice (Code Civ. Proc., § 1170.7), and motions brought to quash service of summons on the grounds of lack of jurisdiction or to stay or dismiss the action for inconvenient forum, which may be brought on three to seven days' notice (Code Civ. Proc., § 1167.4).

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. (Code Civ. Proc., § 1170.9.)

Placement of New Rules

Since there are three separate types of motions for which the Judicial Council is to develop rules, three separate rules are proposed, even though identical content is recommended for each. This allows the rules to be placed where they will be easily located by the litigants.

All the new rules would be placed in 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 would be placed in article 1, Pleading and Venue Motions.

The rules regarding discovery motions brought under Code of Civil Procedure section 1170.8 would be placed in a new article, article 4, Discovery Motions. At present all the rules regarding discovery, including those regarding discovery motions, are in division 10, Discovery. 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 the new article, will make the rules easier for litigants to locate.

The rules regarding motions for summary judgment/adjudication 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 the chapter on Particular Motions, will be renumbered to reflect the insertion of the Discovery Motions article.)

Timing of Opposition and Reply

The proposed rules contain identical content for each of the three types of motions: “Any opposition to the motion and any reply thereto may be made orally or in writing at the time of hearing.” See proposed rules 3.1327(b), 3.1347(b), and 3.1351(b).

The committee has determined that current practice in handling such motions varies throughout the state. Some courts require written oppositions 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 raised in oral arguments 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, with no means of providing and serving a written opposition in advance of the hearing, if at all; and (3) the fact that, in summary judgment motions, these types of summary proceedings are exempted from the general requirement that an opposition be supported by a memorandum, separate statement, and written evidence in the form of declarations, *et al.* (Code Civ. Proc., § 437c(b), (r).)

The proposed rule adopts the practice of not requiring a written opposition or reply and not requiring filing or service of a written opposition prior to the hearing.

Alternatives

The committee considered and rejected several alternatives, including (1) requiring that a written opposition be filed, either at the time of hearing or one court day before; (2) not requiring a written opposition, but providing that, if one were filed, it must be filed and served by noon one court day before the hearing; and (3) distinguishing between limited and unlimited cases, with no written opposition required in limited cases, but with a written opposition required to be filed and served one court day before the hearing in an unlimited case. Each of

the alternatives was rejected in light of the very short notice permitted by the statutes.

The committee also considered and invites comment on a provision that would permit a party to choose to file a written opposition earlier if the party wishes to have it considered by the court in advance of the hearing. The proposed language, which could be added following subdivision (b) of each of the rules, is as follows:

(c) If a party seeks to have a written opposition considered in advance of the hearing, the written opposition must be 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 close of business on that day. The court, in its discretion, may consider written opposition filed later.

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 the time of notice for service by mail or overnight delivery service. In order to clarify any confusion that has arisen regarding this issue, the new rules state that notice of motion must be provided in compliance with both the statutes providing for shortened notice (Code Civ. Proc. §§ 1167.4, 1170.7, and 1170.8) and in compliance with section 1013. See proposed rules 3.1327(a), 3.1347(a), and 3.1351(a).

Revision 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. The current rule lists those documents that the Code of Civil Procedure requires to be filed in support of and in opposition to such motions, including separate statements of undisputed facts and responses thereto. (See Cal. Rules of Court, rule 3.1350(c) and (e) and Code Civ. Proc., § 4 37c(b).) The statute, however, expressly exempts from those requirements motions brought in actions for unlawful detainer or other summary proceedings involving possession of real property. (Code Civ. Proc., § 437c(r).)

The proposed revisions to rule 3.1350(c) and (e) note this exception to the statutory requirements for such actions.

Rules 3.1327, 3.1347, and 3.1351 of the California Rules of Court would be adopted, and rule 3.1350 of the California Rules of Court would be amended by the Judicial Council, effective January 1, 2009, to read:

1 **Rule 3.1327. Motions to quash or to stay action in summary proceeding involving**
2 **possession of real property**

3
4 **(a) Notice**

5
6 In an unlawful detainer action or other action brought pursuant to chapter 4 of title 3
7 of part 3 of the Code of Civil Procedure (commencing with section 1159), notice of
8 a motion to quash service of summons on the grounds of lack of jurisdiction or to
9 stay or dismiss the action on the grounds of inconvenient forum must be given in
10 compliance with Code of Civil Procedure section 1167.4 and section 1013.

11
12 **(b) Opposition and Reply**

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14 Any opposition to the motion and any reply thereto may be made orally or in
15 writing at the time of hearing.

16
17 **Chapter 3. Article 4. Discovery Motions**

18
19 **Rule ~~3.1020~~ 3.1345. Format of discovery motions * * ***

20
21 **Rule ~~3.1025~~ 3.1346. Service of motion papers on nonparty deponent * * ***

22
23 **Rule 3.1347. Discovery motions in summary proceeding involving possession of real**
24 **property**

25
26 **(a) Notice**

27
28 In an unlawful detainer action or other action brought pursuant to chapter 4 of title 3
29 of part 3 of the Code of Civil Procedure (commencing with section 1159), notice of
30 a discovery motion must be given in compliance with Code of Civil Procedure
31 section 1170.8 and section 1013.

32
33 **(b) Opposition and Reply**

34
35 Any opposition to the motion and any reply thereto may be made orally or in
36 writing at the time of hearing.

37
38 **Rule ~~3.1030~~ 3.1348. Sanctions for failure to provide discovery * * ***

Article 4 5 . Summary Judgment Motions

Rule 3.1350. Motion for summary judgment or summary adjudication

(a)–(b) * * *

(c) Documents in support of motion

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

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

(d) * * *

(e) Documents in opposition to motion

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

- (1) [*Opposing party's*] memorandum in opposition to [*moving party's*] motion for summary judgment or summary adjudication or both;
- (2) [*Opposing party's*] separate statement of undisputed material facts in opposition to [*moving party's*] motion for summary judgment or summary adjudication or both;

1 (3) [*Opposing party's*] evidence in opposition to [*moving party's*] motion for
2 summary judgment or summary adjudication or both (if appropriate); and
3

4 (4) [*Opposing party's*] request for judicial notice in opposition to [*moving*
5 *party's*] motion for summary judgment or summary adjudication or both (if
6 appropriate).
7

8 (f)–(h) * * *

9
10
11 **Rule 3.1351. Motions for summary judgment in summary proceeding involving**
12 **possession of real property**
13

14 **(a) Notice**
15

16 In an unlawful detainer action or other action brought pursuant to chapter 4 of title 3
17 of part 3 of the Code of Civil Procedure (commencing with section 1159), notice of
18 a motion for summary judgment must be given in compliance with Code of Civil
19 Procedure section 1170.7 and section 1013.
20

21 **(b) Opposition and reply**

22 Any opposition to the motion and any reply thereto may be made orally or in
23 writing at the time of hearing.
24

25 **Article 5 6. Miscellaneous Motions**

26
27 **Article 7. Petitions Brought Under California Environmental Quality Act**
28

29 **Article 6 8. Other Civil Petitions**

Item SPR08-19 Response Form

Title: **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)

- 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: _____

To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments.

Internet: www.courtinfo.ca.gov/invitationstocomment

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
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DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

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