

PRACTICE TIP SHEETS

Summary Judgment Motions

There is one very basic premise upon which summary judgment motions are based. The job of the trier of fact (whether jury or judge) is to determine the facts, while determining the law is a job for the judge alone. If there are no facts actually in dispute between the parties, there can be no trial, because there is no role for the trier of fact to play.

Motion for Summary Judgment

Hence, a motion for summary judgment, affectionately known as MSJ, is a motion that seeks to dispose of the entire case because “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” (Fed. R. Civ. P. 56(a)). In other words, if the moving party can show that the facts necessary for deciding the action are not in dispute, and the law is on its side, then the claims can be determined in favor of the moving party.

Either the plaintiff or the defendant can bring an MSJ.

Motion for Summary Adjudication

A Motion for summary adjudication (MSA), on the other hand, is more limited in scope. Rather than trying to dispose of the entire case, an MSA seeks to dispose of *part* of the case, in the form of a specific cause of action, claim of damages, or affirmative defense – once again, because there is no disputed material fact warranting a trial on that claim or defense. Thus, an MSA, if successful, can shorten a trial by limiting the issues to be decided. Either party may bring an MSA.

Basis

The primary point of the summary judgment motion is to show that because there are no facts in dispute, the judge may apply the law to the undisputed facts and rule in favor of the moving party without the need for trial. Thus, the moving party must attempt to prove that there is no disputed admissible evidence in the action for the trier of fact to consider.

In this way, an MSJ differs from a demurrer (in jurisdictions that allow them) or a motion to dismiss. Demurrers and motions to dismiss are generally based on the pleadings, while summary judgment or adjudication motions are based on evidence. Demurrers and motions to dismiss are brought at the beginning of a case, and summary judgment motions are usually brought closer to trial, after enough discovery has been done for evidence to have been gathered.

The moving party’s goal is to show the court: Here are the material facts relevant to the issues being litigated. Each of these material facts is undisputed. Therefore as a matter of law, the case (MSJ), or cause of action, or affirmative defense (MSA) should be disposed of now, without trial.

The facts that are material to deciding the claims or defenses, *and* that each fact has not been or cannot be disputed, must be supported by admissible evidence. This generally involves submitting a sizable amount of proof in the form of deposition testimony, discovery responses, and documents authenticated by declaration.

The responding party will no doubt attempt to show that this evidence is objectionable somehow, and will present additional evidence to try and show that the facts are in dispute after all.

Procedure

The federal statute governing summary judgment or adjudication is [Fed. R. Civ. P. 56](#). It is long on guidance for judges about the criteria for granting the motion (or not), but short on procedure. For that, we need to look to the local court rules.

We must look to local rules for guidance on what our motion should contain, what supporting documents are needed, and how to present and cite to the required evidence.

In some jurisdictions, the evidence used to prove there are no disputed facts is cited to within the body of the brief. In other jurisdictions, the moving party prepares a document called a Separate Statement of Undisputed Facts, which lists – often in table format – each allegedly undisputed material fact, and the evidence being presented to prove the fact is not in dispute.

In all jurisdictions, copies of that evidence must then be submitted to the court for review, generally attached to attorney and party declarations, to requests for judicial notice, or other evidence compilation. This can constitute a huge volume of exhibits. I've seen paper summary judgment filings that filled multiple banker's boxes, and electronic filings that totaled hundreds of megabytes!

Conclusion

Paralegals are often heavily involved in the process of organizing, assembling, and either duplicating or converting to PDF all evidence for filing, as well as verifying that all citations to the evidence are accurate.

These motions are very labor intensive, because they utilize most of the discovery conducted in the case thus far. However, when they succeed, they can save the client the even greater costs of trial.