# Recent Updates: Summary Judgment La. C.C.P. Art. 966

*Louisiana Judicial College*
*Evidence and Procedure Seminar*

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# What are the Top Plaintiff Issues in a Motion for Summary Judgment?

1. Meeting MSJ deadlines.
2. Attaching proper and sufficient evidence.
3. Completing discovery.
4. Filing for continuance of the MSJ.
5. Making the most concise and persuasive argument(s).
6. Daubert issues related to the MSJ.

# Question No. 1

When can a plaintiff's motion for summary judgment be filed?

a. At anytime
b. Only after an answer has been filed.
c. Only after an opportunity for adequate discovery.
d. Only after all exceptions have been decided.

***ANSWER:***

**B. A plaintiff's motion may be filed at any time after the answer has been filed. Article 966(A)(1). A defendant's motion for summary judgment may be filed at any time, even before an answer is filed.**

# Question No. 2

Which of the following documents cannot be filed with a motion for summary judgment or opposition?

a. Certified medical records.
b. Admissions.
c. Private acts duly acknowledged.
d. Declarations.

***ANSWER:***

**C. Private acts duly acknowledged. There is no such document under Louisiana law. The proper document is an "act under private signature duly acknowledged." While proper under federal law, a declaration is not a proper document under Article 966 that can be filed with a motion or opposition. If not timely objected to, however, the declaration must be considered by the court under Article 966(D)(2).**

# Question No. 3

Can an objection be made in an opposition or reply memorandum to a document listed under Article (A)(4)(a) filed with a motion for summary judgment?

a. Yes.

b. No.

***ANSWER:***

**A. Yes. Objections to any of the documents listed in Article 966(A)(4)(a) or their contents may be raised in a timely filed opposition or reply memorandum. See Comments – 2023.**

# Question No. 4

If a party references a document with its motion for summary judgment or opposition, the party must do all the following except:

a. List the document by title and date of filing.
b. List the number of pages in the document referenced.
c. Concurrently furnish the court with a copy of the entire document.
d. Concurrently furnish opposing counsel with a copy of the entire document.

***ANSWER:***

**B. All other requirements must be satisfied to reference a document in lieu of filing the entire document. Failure to comply with these requirements is a basis for an objection requesting that the court not consider the referenced document.**

# Question No. 5

If you have not had adequate time for discovery, can you file a motion for continuance after the deadline for filing an opposition (15 days prior to the hearing) has passed?

a. Yes.

b. No.

***ANSWER:***

**B. No. The deadline for filing an opposition is mandatory and the court lacks discretion to grant a continuance of the hearing on the motion for summary judgment after the deadline for filing an opposition has passed. Note that the court may exercise discretion to grant a continuance if the motion to continue is filed prior to the deadline.**

# Question No. 6

If the trial court grants a continuance of the hearing on the motion for summary judgment:

a. All parties may file additional documents.
b. The deadlines are re-set.
c. The court may be required to continue the trial on the merits.
d. All the above.

***ANSWER:***

**D. All the above.**

# Question No. 7

All motions for summary judgment and oppositions and documents filed therewith and all reply memoranda shall be served:

a. By mail.
b. Electronically.
c. By commercial courier.
d. By actual delivery.

***ANSWER:***

**B. Electronically. Article 966(B)(1), (2), and (3) were amended to require electronic service. Note that the standard of electronic service is different if there is a court date in the document; also note that if the service cannot be properly effected via electronic means, another proper service method is allowed. See Article 1313 (A)(4) and (C).**

# Question No. 8

Can a party supplement an affidavit that has been previously filed with a motion for summary judgment or opposition?

a. Yes.

b. No.

***ANSWER:***

**Yes, Article 967(A) provides that "the court may permit affidavits to be supplemented…" However, any supplementation that is granted by the court will reset the mandatory deadlines.**

**Note that no additional documents may be filed with a reply memorandum, and a sur-reply is not permitted. A party cannot in a reply memorandum attempt to authenticate documents that were not properly authenticated in the documents filed with the motion for summary judgment.**

# Question No. 9

How can a party object to an expert's affidavit?

a. By objecting to the form of the affidavit in a timely filed opposition or reply.
b. By objecting and filing a motion in limine to question the qualifications and methodology of the expert.
c. By requesting that the court set and rule on a motion filed in accordance with Article 1425(F) prior to hearing on the motion for summary judgment.
d. All the above.

***ANSWER:***

**D. If a party files a motion in accordance with Article 1425(F) to challenge the qualifications or methodology of an expert, the court shall set the hearing and rule on the motion prior to the hearing on the motion for summary judgment.**

# Question No. 10

If a party fails to object to a document filed with a motion for summary judgment or opposition:

a. He can make an oral objection at the hearing.
b. He can make an oral motion to strike at the hearing.
c. The court should consider the document and determine if it has any evidentiary value.
d. The court should weigh the document and determine its credibility.

***ANSWER:***

**C. Though the court must consider any document to which no objection is made, the court must still make a determination of whether the document has any evidentiary value. The court will not make determinations as to credibility or otherwise evaluate or weigh the document.**

# Question No. 11

What is the burden of proof on the party that files a motion for summary judgment?

a. The mover has no burden.
b. Only to point out the absence of factual support for one or more of the adverse party's claims.
c. To file documentary evidence in accordance with Article 966 (A)(4)(a) to support that there are no genuine issues of fact.
d. To file a supporting memorandum showing there are no genuine issues of fact and mover is entitled to summary judgment as a matter of law.

***ANSWER:***

**C. The burden of proof is on the moving party. The burden does not shift to the opposition until the mover meets the initial burden of showing there are no genuine issues of material fact.**

**Note that the failure to file an opposition or opposing affidavits does not automatically entitle the mover to summary judgment.**

# Question No. 12

What happens if exceptions are filed prior to the hearing on the motion for summary judgment?

a. The court must rule on any outstanding exceptions filed by the opposing party.
b. Any exceptions filed by the mover are waived upon the court granting the motion.
c. An objection raising the exception of lack of subject matter must be ruled upon first.
d. All the above.

***ANSWER:***

**D. An objection raising the exception of lack of subject matter must be ruled upon first. If denied, the exceptions of the opposing party must be ruled upon prior to the ruling on the motion for summary judgment.**

# Question No. 13

What happens if summary judgment is granted dismissing one defendant, and the plaintiff does not appeal, and the dismissal is reversed by the appellate court?

a. The dismissed defendant is brought back into the case only as to the co-defendants but not the plaintiff.
b. The dismissed defendant's fault is allocated by the court to the other defendants but not to the plaintiff.
c. The plaintiff's recovery is reduced by any fault allocated to the dismissed defendant since the plaintiff failed to appeal.
d. The dismissed defendant is returned to the case as to all parties.

***ANSWER:***

**D. If the judgment dismissing a defendant is reversed, the reversal is applicable to all of the parties, even to the plaintiff who did not appeal. See Article 966(G).**

# Question No. 14

The granting of a motion for summary judgment dismissing on one cause of action or theory of recovery is appealable if:

a. It is certified by the trial court in accordance with Article 1915(B) and approved by the appellate court.
b. It is filed within thirty days of the judgment.
c. It is accompanied by written reasons from the trial court as to why there is no just reason for delay.
d. All the above.

***ANSWER:***

**A. The partial summary judgment must be certified by the trial court. Otherwise, the appellate court has no jurisdiction. The partial summary judgment also must be approved by the appellate court who makes its own determination that there is no just reason for delay.**

**Note that dismissal of one party by motion for summary judgment need not be certified by the trial court to be appealable under 1915(A).**

# Question No. 15

If the plaintiff receives a notice from the court of appeal setting the dismissal of a summary judgment for briefing and oral argument, the plaintiff's attorney should:

a. Say a novena.
b. Hire additional appellate counsel.
c. Submit a new brief in opposition to granting the motion for summary judgment.
d. All the above.

***ANSWER:***

**D. All the above.**