

## § 6.7 Motions for Summary Judgment and Summary Adjudication

Motions for summary judgment (“MSJ”) and motions for summary adjudication (“MSA”) are intended to dispose of either an entire case (summary judgment), or selected causes of action, issues, affirmative defenses, claims for damages, or an issue of duty (summary adjudication). These motions are appropriate where the material facts (on which liability would turn) are undisputed, and there is therefore nothing for the trier of fact (judge or jury) to determine. Instead, the rights of the parties may be determined as a matter of law. Either party may bring these motions.

For example, assume Wronged has sued on a single theory, negligence, alleging that Wrongdoer was exceeding the posted speed limit, the speeding caused the accident, and the accident caused his damages. To prevail, Wronged must prove each of those elements. If Wrongdoer has conclusive evidence that he was driving under the speed limit, or if he can show that Wronged has no evidence to establish that he was speeding, Wrongdoer might bring an MSJ on the ground that an element of the cause of action cannot be established. With only one cause of action, the grant of that MSJ would end the case. (On the other hand, Wronged could bring an MSJ if he had undisputed evidence establishing all elements of the single cause of action.)

If there are undisputed facts as to less than all causes of action, summary judgment cannot be granted, but summary adjudication might be appropriate. For example, assume Wronged alleged two causes of action, one for negligence for speeding, and one for breach of statutory duty as owner of the vehicle for failing to fix the car’s tail lights. If Wrongdoer has conclusive evidence that he was not the owner of the vehicle, or if he can show that Wronged has no evidence that he was the owner, Wrongdoer might bring an MSA as to the statutory duty cause of action. (Similarly, Wronged could bring an MSA if he had undisputed evidence establishing that there is no affirmative defense to a particular cause of action.)

An MSA may be brought by itself or in the alternative to an MSJ. For example, where Wronged is sued for negligence for speeding and for breach of statutory duty, and Wrongdoer believes the evidence is undisputed as to both causes of action, Wrongdoer might move for summary judgment on the entire complaint, and in the alternative, for summary adjudication of individual causes of action. That way, if the MSJ is denied, the MSA might still be granted as to one of the causes of action.

Generally, motions for summary adjudication are only to be granted where they will completely dispose of a cause of action, affirmative defense, a claim for damages, or an issue of duty. **However, as of January 1, 2012, summary adjudication of a single issue which does not dispose of an entire cause of action may be sought so long as the parties stipulate to bringing the motion, and the court allows the motion to be brought. (See § 6.7.2.)**

New for  
January  
2012

MSJ’s and MSA’s are governed by C.C.P. § 437c and C.R.C., Rules 3.1350-3.1354. Either party may bring these motions at any time after 60 days have elapsed since the appearance of the opposing party. **The motions must be heard at least 30 days before trial.** (C.C.P. § 437c(a))

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In form, they are much like regular motions, containing a notice of motion, points and authorities, declarations, and exhibits. However, unlike regular motions, they always require separate statements. In addition, they are subject to significantly different notice requirements and page limitations, as the following table illustrates.

**Differences Between Regular Motions and MSJ's/MSA's**

<b><u>Specifications</u></b>	<b><u>Regular Motions</u></b>	<b><u>MSJ's and MSA's</u></b>
1 <sup>st</sup> day may be brought	May depend upon subject of motion; no rule barring motions in general prior to a certain date.	Not until 60 days after opposing party has appeared - C.C.P. § 437c(a)
Last day may be heard	Non-expert discovery motions: 15 days before initial trial date; expert discovery motions: 10 days before initial trial date; otherwise, no deadline.	30 days before trial - C.C.P. § 437c(a)
Notice and motion must be filed and served	at least 16 court days before hearing	at least 75 days before hearing C.C.P. § 437c(a) [even earlier if not personally served]
<b>Opposition [and objections to evidence in MSA/MSJ]</b> must be filed and served	at least 9 court days before hearing	at least 14 days before hearing C.C.P. § 437c(b)(2)
<b>Reply [and objections to evidence in MSA/MSJ]</b> must be filed and served	at least 5 court days before hearing	at least 5 days before hearing C.C.P. § 437c(b)(4)
Limit on opening and opposing P's & A's	15 pages	20 pages - C.R.C., Rule 3.1113(d)
Limit on reply P's & A's	10 pages	10 pages - C.R.C., Rule 3.1113(d)
When Separate Statement required	with motion to compel further answers	ALWAYS - C.C.P. § 437c(b)(1)

C.R.C., Rule 3.1350 lists the various parts of MSJ's and MSA's and oppositions to those motions. The notices of motion, declarations, and points and authorities follow the same basic format as regular motions. The formats for the separate statements in support of and in opposition to the two motions are specifically described in Rule 3.1350(h). There is one format specified for separate statements in support of MSJ's and another for separate statements in support of MSA's. There is also a specified format for objections to evidence, specifically described in Rule 3.1354.

Since some aspects of the formats differ from one another, we deal with the two motions separately, starting with the MSJ and then showing how the MSA is different.