

INSTRUCTIONS FOR PREPARING, FILING, AND SERVING A MOTION FOR SUMMARY JUDGMENT IN DISTRICT COURT (Generic)

A motion (or request) for summary judgment allows plaintiff or defendant to argue to the court that the undisputed facts in the case require judgment to be entered in favor of the party filing the motion. A party moving (applying) for summary judgment is attempting to prove to the judge (by sworn statements and documentary evidence) that there are no material issues of fact remaining to be tried, and the moving party is entitled to judgment as a matter of law. Summary judgment is used when no factual questions exist for a judge or jury to decide. If a trial could result in the jury (or judge in a bench trial) deciding in favor of the party opposing the motion, then summary judgment will not be granted.

A court will grant a summary judgment motion only if it finds (1) that there are no genuine issues of material facts to be resolved at trial and (2) that, when the law is applied to the undisputed facts, one party is clearly entitled to judgment. A “genuine issue of material fact” means that a critical fact in the case is in dispute. For example, in a case to collect money owed on a contract, if one party is claiming the money hasn’t been paid, but the other party is claiming that it has (and assuming both parties can support their positions with some evidence), whether the money has or has not been paid is a genuine issue of material fact that would prevent the court from granting summary judgment.

To establish the facts, the party moving for summary judgment must submit a statement of undisputed facts to the court. The party can refer to any evidence that the court could consider if there were to be a trial, such as depositions, admissions, and documents received during discovery. The party opposing summary judgment must then introduce evidence that contradicts the moving party’s version of the facts. In deciding whether to grant or deny the motion, the court will consider all materials in the light most favorable to the party opposing the summary judgment motion.

The moving party’s motion must also contain a memorandum of law that explains the basis of the motion to the court. The court will likely require oral argument on the motion so the judge can question the lawyers or parties on issues in the case.

If you’re filing a summary judgment motion or opposing a motion that has been filed against you, you should familiarize yourself with Rule 56 of the Nevada Rules of Civil Procedure, which sets forth the procedures and standards for summary judgment. For a more detailed discussion of summary judgment in Nevada, you can refer to the *Nevada Civil Practice Manual*, which can be found at any local law library.

PART I - PREPARING YOUR MOTION

The information you provide on the attached Motion for Summary Judgment form should

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be either typewritten or neatly handwritten in ink. The form is also available on the Self-Help Center's website, www.clarkcountycourts.us/self-help.html, and can be downloaded from the website and filled out and printed from a computer.

- On page 1 of the motion, start by completing your name (line 1), address (lines 2 and 3), and telephone number (line 4), and choose the correct box to indicate whether you're the "plaintiff" or the "defendant" (line 5). The "plaintiff" is the party that is suing the defendant and who the initially filed the Complaint to commence the case. The "defendant" is the party who was served with the Complaint and who is being sued. You'll see on line 5 that you're designated as the plaintiff or defendant "pro se." The phrase "pro se" lets the court know that you're representing yourself.
- On page 1, lines 9 to 14, complete the caption as it appears on the Complaint: plaintiff's name, defendant's name, case number, and department number. The case caption should remain the same throughout the case.
- On page 1, line 16, check the correct box to indicate whether you're plaintiff or defendant and fill in the blank with your name.
- On page 1, line 23, insert the current day, month, and year; sign the motion (line 26); and check the correct box to indicate whether you're plaintiff or defendant.
- The top of page 2 contains your Notice of Motion, which puts you and the opposing party on notice of when and where the hearing on your motion will take place. When you file the motion, the court clerk will write in the date and time of the hearing and the department in which it will take place. You must date the Notice of Motion on line 6, sign on line 9, and check the appropriate box to indicate whether you're plaintiff or defendant.
- Page 2, lines 15 to 28, contains a space for you to list the material facts that you claim are not in dispute in the case. Think carefully about the facts that are critical (or "material") to your case, and include only those facts. Don't include facts that are irrelevant. From plaintiff's point of view, a fact is likely "material" if plaintiff must prove it at trial to prevail on his claim; and if he doesn't prove it, he loses. From defendant's point of view, a fact may be "material" if it contradicts one of the essential facts plaintiff must prove or if it establishes an affirmative defense that precludes plaintiff's claim.

Typically, the only way you can know which facts are "material" is to know the elements of the claim you're trying to prove (or defend against) or the elements of the affirmative defense you're trying to establish. For example, in a case where a customer slipped and fell at a grocery store, one of the elements of a "negligence" claim the customer must prove is that he suffered some damage (for example, money spent on medical bills or lost time at work). So if the customer is moving for summary judgment, a material fact the customer might include is, "I incurred \$7,800 in doctor and medical fees." On the other hand, if the grocery store is opposing the customer's motion, a material fact the store might include is, "Plaintiff did not seek medical attention and suffered no damage." (To

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find the elements of the claims in your case, you can refer to the *Nevada Pattern Jury Instructions* or research published decisions from the Nevada Supreme Court, both of which are available at your local law library.)

For clarity, you should set out each fact separately in a separately numbered paragraph. You should also include a reference to the evidence you have that supports that particular fact, whether it's a document, an affidavit, deposition testimony, or the opposing party's admission in a pleading or in response to discovery. If you refer to a particular document or other piece of evidence, you should attach a copy of that document to your motion for the judge's review.

- On page 3, check the correct box to indicate whether you're plaintiff or defendant (line 12) and then explain to the court why summary judgment should be granted (line 13 to 28). You might want to begin your argument by identifying the elements of plaintiff's claim or the elements of defendant's affirmative defense. This is useful because unless the judge knows what the elements are, the judge may not be able to determine whether the moving party has proven the necessary facts to establish his claim or defense. After that, it's simply a matter of explaining to the judge how and why the documents and other evidence you've referenced in your statement of facts and attached to the motion really do establish the facts you've included as undisputed material facts.
- On page 4, line 3, insert the amount of money that you want the judge to award should she grant your motion.
- You must date and sign your motion on page 4, lines 4 to 8.
- The bottom of page 4 of your motion contains the Certificate of Mailing. Provide the name and address for the opposing party's attorney (or the opposing party if he does not have an attorney) on lines 15 to 18. By dating and signing the Certificate of Mailing, you are telling the court that you have served a copy of your motion to the opposing part (if the he's unrepresented) or the opposing party's attorney (see Part II - Serving & Filing Your Motion).
- Before filing your motion with the court, make at least four (4) copies.

PART II - SERVING & FILING YOUR MOTION

Next, take your original motion and the remaining copies to the clerk of the District Court. The court clerk will fill in the Notice of Motion and give you a hearing date and time. The filing fee for a Motion for Summary Judgment is \$200. The clerk will file-stamp your motion and all of the copies. The clerk will then keep the original and at least two copies.

After filing your motion, you must serve the opposing party's attorney (or opposing party directly if he has no attorney) with a copy of your motion by mail. You will find the attorney's address on previous filings in the case. You must mail a copy on the same date that you filled in on the Certificate of Mailing on page 4, line 11, of your motion. Make sure that the copy you

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mail to the opposing party's attorney (or opposing party) indicates the hearing date, time, and place on the Notice of Motion.

PART III - WHAT HAPPENS AFTER I FILE MY MOTION?

After you file your motion, the opposing party has ten days (plus an additional three days if you served your motion by mail) to file a written opposition, explaining to the court why the opposing party believes your motion should not be granted. The opposing party is required to provide you with a copy of its written opposition. From the date the opposition was served (which will be shown on the opposition's certificate of mailing), you have five days (plus an additional three days if the opposition was sent to you by mail) in which you can file a written reply to the opposing party's opposition, if you choose to do so.

You must then appear before the judge at the hearing on your summary judgment motion at the date, time, and place indicated on your Notice of Motion. Be prepared to explain to the judge the undisputed facts in your case and why you believe you are entitled to judgment. Also be prepared to answer any questions the judge might have. The judge will likely hear argument from both sides. The judge might make a decision on the motion from the bench at the hearing or, alternatively, could conclude the hearing and make a decision at a later date. The judge may direct you or the opposing party to prepare an order for the judge's signature, reflecting the judge's grant or denial of your motion.

When appropriate, a court can award summary judgment on some claims in the case and let the other claims go forward. This is known as "partial summary judgment." A decision granting summary judgment can be appealed without delay. A decision denying summary judgment ordinarily cannot be immediately appealed, and the case continues on its normal course.

MOTION CHECKLIST

- Filled out Motion
- Made 4 copies of Motion and exhibits
- Filed Motion with court and obtained a hearing date, time, and place
- Mailed copy of Motion (including hearing date, time, and place) to opposing counsel's attorney (on the date that was filled out on the Certificate of Mailing)

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