

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

If you've been served with a Motion for Summary Judgment you have ten days from the date of the motion (plus an additional three days if you received the motion by mail) to file an "opposition" to the motion, explaining to the court why the motion should not be granted and why judgment should not be entered against you. If you fail to serve and file a written opposition, the Court may consider your failure as your admission that the motion is valid and your consent to the grant of the motion and the entry of a judgment against you.

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. In response, a party opposing summary judgment must show that 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 should 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. As stated by the Nevada Supreme Court, however, the party opposing the motion

bears the burden to "do more than simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. The nonmoving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue

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for trial or have summary judgment entered against him.” The nonmoving party “is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.”

Wood v. Safeway, Inc., 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005).

The opposing party’s opposition must also contain a memorandum of law that explains to the court why summary judgment shouldn’t be granted. 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 opposing a summary judgment 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 OPPOSITION

The information you provide on the attached Opposition to Motion for Summary Judgment form should 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 opposition, 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 opposition (line 26); and check the correct box to indicate whether you’re “plaintiff” or “defendant.”
- On page 2, check the correct box to indicate whether you’re “plaintiff” or “defendant” (line 4) and then use the space on lines 5 to 20 to list the material facts that you claim are in dispute in the case. In the Summary Judgment Motion, the moving party should have included his own “Statement of Facts.” In your opposition, you should reply to those

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facts and demonstrate to the court which of those facts aren't true. You do this by writing your own contrary version of the facts and supporting those facts with evidence (which may be an affidavit or declaration, a document, or some admission obtained during discovery). If you don't submit evidence to the court to prove the facts on which you're relying and to counter the moving party's Statement of Facts, the court may grant judgment against you.

You also may need to include additional material facts – beyond those stated in the Motion for Summary Judgment – to show the court that there's a genuine dispute the moving party has ignored or that one of your defenses prevents the moving party's claim. 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 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 find the elements of the claims at issue, 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 opposition for the judge's review.

- On page 3, explain to the court why summary judgment should not be granted (line 5 to 20). 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, explain to the court why the facts the moving party uses to support the elements of its claim are actually still in dispute, and point the court to your facts and evidence that prove there's still a genuine issue of material fact in the case that can only be decided by a trial.

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- You must date and sign your opposition on page 4, lines 4 to 8.
- The bottom of page 4 of your opposition 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 opposition to the opposing party (if he's unrepresented) or the opposing party's attorney (see Part II - Serving & Filing Your Opposition).
- Before filing your motion with the court, make at least four (4) copies.
- A "Declaration in Support of Opposition to Motion for Summary Judgment" is attached as the last page of your opposition. In the declaration, you (or someone else who has direct, personal knowledge of the facts you're asserting in your opposition) should set forth the facts you believe are material and still in dispute in the case and should swear that those facts are true, just as if the person was testifying in a court of law. If you have multiple witnesses who can swear to the facts you're alleging, you may need to use multiple declarations, one for each of your witnesses. Remember that if you don't support your version of the facts with evidence (such as a declaration, affidavit, or document), the court could find that you've failed to defeat the opposing party's summary judgment motion.

The person offering testimony in the declaration is called the "Declarant." On line 5, the Declarant should write his name. On line 12, the Declarant should explain how he came to have personal knowledge of the facts he's including in the declaration (for example, "I was an eye witness to the accident," or "I work for the plaintiff and was involved in the business deal," or "I was at dinner with the parties and heard a conversation between them"). Then, on lines 13 to 25, the Declarant should state in his own words the facts that he knows, which you believe are material to your opposition. The Declarant should date and sign the declaration on line 28. You should attach the declaration as an exhibit to your opposition and reference it in your opposition to support your version of the facts.

PART II - SERVING & FILING YOUR OPPOSITION

Next, take your original opposition and the remaining copies to the clerk of the District Court. If you have already filed some other document in the case, there will be no filing fee. The clerk will file-stamp your opposition and all of the copies. The clerk will then keep the original and at least two copies.

After filing your opposition, you must serve the opposing party's attorney (or opposing party directly if he has no attorney) with a copy of your opposition 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 opposition.

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PART III - WHAT HAPPENS AFTER I FILE MY OPPOSITION?

After you file your opposition, the opposing party has five days (plus an additional three days if your opposition was delivered to the opposing party by mail) in which he can file a written reply to your opposition.

You must then appear before the judge at the hearing on the Motion for Summary Judgment at the date, time, and place indicated on the Notice of Motion included in the moving party's Motion for Summary Judgment. Be prepared to explain to the judge the facts you think are still at issue in your case and why you believe the opposing party is not 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 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 the 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.

OPPOSITION CHECKLIST

- Filled out Opposition
- Attached supporting Declaration or other documents or evidence
- Made 4 copies of Opposition and exhibits
- Filed Opposition with court
- Mailed copy of Opposition to opposing party's attorney (on the date that was filled out on the Certificate of Mailing)

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