2023 Regular Session

HOUSE BILL NO. 196

BY REPRESENTATIVE BROWN

(On Recommendation of the Louisiana State Law Institute) Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana. CIVIL/PROCEDURE: Provides relative to summary judgment

1	AN ACT
2	To amend and reenact Code of Civil Procedure Article 966(A)(4), (B)(1), (2), and (3),
3	(D)(2), and (G), and to enact Code of Civil Procedure Article 966(B)(5) and (D)(3),
4	relative to motions for summary judgment; to provide for certain procedures at the
5	hearing on a motion for summary judgment; to provide for the filing and
6	consideration of certain documents; and to provide for related matters.
7	Be it enacted by the Legislature of Louisiana:
8	Section 1. Code of Civil Procedure Article 966(A)(4), (B)(1), (2), and (3), (D)(2),
9	and (G) are hereby amended and reenacted and Code of Civil Procedure Article 966(B)(5)
10	and (D)(3) are hereby enacted to read as follows:
11	Art. 966. Motion for summary judgment; procedure
12	А.
13	* * *
14	(4)(a) The only documents that may be filed or referenced in support of or
15	in opposition to the motion are pleadings, memoranda, affidavits, depositions,
16	answers to interrogatories, certified medical records, certified copies of public
17	documents or public records, certified copies of insurance policies, written
18	stipulations, and admissions. The court may permit documents to be filed in any
19	electronically stored format authorized by court rules or approved by the clerk of the
20	court.

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1	(b) Any document listed in Subsubparagraph (a) of this Subparagraph
2	previously filed into the record of the cause may be specifically referenced and
3	considered in support of or in opposition to a motion for summary judgment by
4	listing with the motion or opposition the document by title and date of filing. The
5	party shall concurrently with the filing of the motion or opposition furnish to the
6	court and the opposing party a copy of the entire document with the pertinent part
7	designated and the filing information.
8	B. Unless extended by the court and agreed to by all of the parties, a motion
9	for summary judgment shall be filed, opposed, or replied to in accordance with the
10	following provisions:
11	(1) A Except for any document provided for under Subsubparagraph
12	(A)(4)(b) of this Article, a motion for summary judgment and all documents in
13	support of the motion shall be filed and served on all parties in accordance with
14	Article $1313(A)(4)$ not less than sixty-five days prior to the trial.
15	(2) Any Except for any document provided for under Subsubparagraph
16	(A)(4)(b) of this Article, any opposition to the motion and all documents in support
17	of the opposition shall be filed and served in accordance with Article $1313(A)(4)$ not
18	less than fifteen days prior to the hearing on the motion.
19	(3) Any reply memorandum shall be filed and served in accordance with
20	Article 1313(A)(4) not less than five days inclusive of legal holidays notwithstanding
21	<u>Article 5059(B)(3)</u> prior to the hearing on the motion. No additional documents may
22	be filed with the reply memorandum.
23	* * *
24	(5) Notwithstanding Article 1915(B)(2), the court shall not reconsider or
25	revise the granting of a motion for partial summary judgment on motion of a party
26	who failed to meet the deadlines imposed by this Paragraph, nor shall the court
27	consider any documents filed after those deadlines.
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1	D.
2	* * *
3	(2) The court may shall consider only those documents filed or referenced
4	in support of or in opposition to the motion for summary judgment and shall consider
5	any documents to which no objection is made but shall not consider any document
6	that is excluded pursuant to a timely filed objection. Any objection to a document
7	shall be raised in a timely filed opposition or reply memorandum. The court shall
8	consider all objections prior to rendering judgment. The court shall specifically state
9	on the record or in writing which documents, if any, it held to be inadmissible or
10	declined to consider whether the court sustains or overrules the objections raised.
11	(3) If a timely objection is made to an expert's qualifications or
12	methodologies in support of or in opposition to a motion for summary judgment, any
13	motion in accordance with Article 1425(F) to determine whether the expert is
14	qualified or the expert's methodologies are reliable shall be filed, heard, and decided
15	prior to the hearing on the motion for summary judgment.
16	* * *
17	G. When the court grants a motion for summary renders judgment in
18	accordance with the provisions of this Article, that a party or non-party nonparty is
19	not negligent, is not at fault, or did not cause in whole or in part the injury or harm
20	alleged, that party or non-party nonparty shall not be considered in any subsequent
21	allocation of fault. Evidence shall not be admitted at trial to establish the fault of that
22	party or non-party nonparty. During the course of the trial, no party or person shall
23	refer directly or indirectly to any such fault, nor shall that party or non-party's
24	<u>nonparty's</u> fault be submitted to the jury or included on the jury verdict form. <u>This</u>
25	Paragraph does not apply if the trial or appellate court's judgment rendered in
26	accordance with this Article is reversed. If the judgment is reversed by an appellate
27	court, the reversal applies to all parties.
28	* * *

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2 (a) Subsubparagraph (A)(4)(a) expands the exclusive list of documents that 3 may be filed and offered in support of or in opposition to a motion for summary 4 judgment to include certified copies of public records and public documents as well 5 as certified copies of insurance policies. Objections to any of the documents listed 6 in Subparagraph (A)(4)(a) or their contents may be raised in a timely filed opposition 7 or reply memorandum. See Subparagraph (D)(2) and Comment (k) (2015) to this 8 Article. Even though affidavits may be filed in accordance with Subsubparagraph 9 (A)(4)(a), objections may be filed if the affidavit does not comply with the 10 requirements of Article 967. Objections may be raised in a timely filed opposition 11 or reply memorandum if the content of any document filed in accordance with 12 Subparagraph (A)(4)(a), including any certified copies of public records or public 13 documents, would not be admissible at the trial on the merits. See Thompson v. 14 Center for Pediatric and Adolescent Medicine, L.L.C., 244 So. 3d 441, 446 (La. App. 15 1 Cir. 2018). In most cases, a certified copy of an insurance policy should include 16 the declaration page and relevant endorsements.

17 (b) Subsubparagraph (A)(4)(b) is new and provides that a document listed 18 in Subsubparagraph (A)(4)(a) that was previously filed in the record may be specifically referenced with the motion and opposition by title and date of filing. At 19 20 the time of the filing of the motion or opposition, the party shall also furnish to the 21 court and opposing party a copy of the entire document, designate the pertinent part 22 of the document, and include the date the document was filed. See Louisiana District 23 Court Rule 9.10. Failure to comply with Subsubparagraph (A)(4)(b) may be 24 grounds for an objection requesting that the court not consider the referenced 25 document. This Subsubparagraph still allows a party to attach to the motion or 26 opposition all documents that are submitted and does not require a party to reference 27 a previously filed document. Subparagraphs (B)(1) and (2) were also revised in 28 accordance with this change.

(c) Subparagraphs (B)(1), (2), and (3) now require that the motion for
summary judgment, opposition to the motion, reply memorandum, and all documents
filed or referenced in support of or in opposition to the motion for summary
judgment be served electronically in accordance with Article 1313(A)(4).

33 (d) Subparagraph (B)(3) clarifies that legal holidays are included in the 34 calculation of time within which the mover shall file the reply memorandum. 35 Subparagraph (B)(4) continues to apply in this situation. For example, if the hearing 36 on the motion for summary judgment is set on Friday, the fifth day to file the reply 37 memorandum falls on the preceding Sunday. Accordingly, under Subparagraph 38 (B)(4), the mover would have the entirety of the preceding Monday to file the reply 39 memorandum. The court should be aware of this requirement when setting hearings 40 on motions for summary judgment.

(e) Subparagraph (B)(5) is new and would change the result reached by the
Louisiana Supreme Court in Zapata v. Seal, 330 So. 3d 175 (La. 2021). This
Subparagraph is intended only to prohibit a trial court from reconsidering the
granting of a partial summary judgment because a document was not timely filed and
served with an opposition in accordance with the deadlines imposed by this Article.

- 46 (f) Subparagraph (D)(2) was amended to include only slight changes in
 47 phraseology. The amendment is not intended to make substantive changes to the
 48 law.
- (g) Subparagraph (D)(3) sets forth a rule recognizing that if a party timely
 objects to the expert's opinion attached to either the motion for summary judgment
 or the opposition and elects to file a motion in accordance with Article 1425(F)

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questioning the expert's qualifications or methodologies, the court shall set a hearing and decide the Article 1425(F) motion prior to the hearing on the motion for summary judgment. To avoid any possible conflict between the time delays in this Article and Article 1425(F), the court should set appropriate deadlines for the Article 1425(F) hearing in a scheduling or pretrial order.

6 (h) Paragraph G was amended to codify the holding of the Louisiana 7 Supreme Court in Amedee v. Aimbridge Hospitality LLC, 351 So. 3d 321 (La. 8 2022). A defendant who has filed an opposition to the granting of a motion for 9 summary judgment dismissing a codefendant may appeal the judgment despite the 10 plaintiff's failure to appeal. Paragraph G was also amended to answer the question raised in footnote 1 of the opinion - if summary judgment is granted finding a party 11 12 not at fault, not negligent, or not to have caused in whole or in part the injury of any 13 harm alleged, and that judgment is subsequently reversed, the fault or contribution 14 of that party is deemed not to have been adjudicated as to any other party, 15 notwithstanding whether any other party has appealed. As a result of the reversal, 16 the previously dismissed defendant is returned as a party to the case for all purposes and as to all parties. The final judgment of the appellate court reversing the granting 17 18 of a motion for summary judgment as to one party applies to all parties, including 19 a plaintiff who has failed to appeal.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 196 Original

2023 Regular Session

Brown

Abstract: Provides with respect to the substance and procedure relative to motions for summary judgment.

<u>Present law</u> (C.C.P. Art. 966(A)(4)) sets forth the documents that may be filed in support of or in opposition to a motion for summary judgment.

<u>Proposed law</u> (C.C.P. Art. 966(A)(4)(a)) adds to the documents listed under <u>present law</u> certified copies of public documents and public records and certified copies of insurance policies.

<u>Proposed law</u> (C.C.P. Art. 966(A)(4)(b)) provides that any document previously filed into the record in support of or in opposition to the motion for summary judgment may be referenced in the motion or opposition if the party referencing the document furnishes to the court and the opposing party a copy of the document with the pertinent part designated and with the filing information.

<u>Present law</u> (C.C.P. Art. 966(B)(1)-(3)) provides relative to filing, opposing, and replying to motions for summary judgment and requires any motion, opposition, or reply memorandum to be filed and served in accordance with Article 1313.

<u>Proposed law</u> changes <u>present law</u> by requiring that motions for summary judgment, oppositions, and reply memoranda be filed and served electronically in accordance with Article 1313(A)(4).

<u>Proposed law</u> (C.C.P. Art. 966(B)(3)) also clarifies <u>present law</u> relative to the timely filing of reply memoranda.

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<u>Proposed law</u> (C.C.P. Art. 966(B)(5)) provides that the granting of a motion for partial summary judgment shall not be reconsidered or revised if the party seeking the reconsideration or revision fails to meet the applicable deadlines set forth in this Article.

<u>Present law</u> (C.C.P. Art. 966(D)(2)) provides that the court shall consider only those documents filed in support of or in opposition to the motion for summary judgment.

<u>Proposed law</u> retains <u>present law</u> but makes semantic changes and adds that the court shall also consider documents that are referenced in support of or in opposition to the motion for summary judgment, with the exception of any document that is excluded pursuant to a timely filed objection.

<u>Proposed law</u> (C.C.P. Art. 966(D)(3)) provides that objections made in accordance with Art. 1425(F) to determine whether an expert is qualified or whether the expert's methodologies are reliable shall be filed, heard, and decided prior to the hearing on the motion for summary judgment.

<u>Present law</u> (C.C.P. Art. 966(G)) provides that when the court grants a motion for summary judgment, a party or nonparty that is not negligent, is not at fault, or did not cause in whole or in part the injury or harm alleged shall not be considered in any subsequent allocation of fault.

<u>Proposed law</u> retains <u>present law</u> and adds that this provision does not apply if the court's judgment is reversed. <u>Proposed law</u> further specifies that if the judgment is reversed by an appellate court, the reversal is applicable to all parties.

(Amends C.C.P. Art. 966(A)(4), (B)(1), (2), and (3), (D)(2), and (G); Adds C.C.P. Art. 966(B)(5) and (D)(3))