Scrap the "separate statement" requirement for summary judgment/adjudication motions in California!

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This last week, my paralegal and I put together and filed an opposition to a motion for summary or, in the alternative, for summary adjudication. It was one of several summary judgment motions and oppositions I have done this year. Now, I think summary judgment/adjudication motions are extraordinarily powerful weapons in the trial attorney's arsenal. Cases for which there is no defense can be adjudicated without the expense and delay of trial. Meritless or, more crassly put, BS cases can be dispensed with. Claims can be narrowed, defenses can be vetted, evidence can be challenged. Trials are interesting, challenging, and, in my view, the best part of this business. But, a client should not have to bear the risk, expense, and emotional misery of trial where there really is nothing that needs to be tried. Summary judgment/adjudication motions, when serving their proper function, separate the proverbial wheat from the chaff. They are essential to a proper-functioning civil justice system.

But, it is really time to dump the separate statement of undisputed/disputed facts requirement for such motions in California! Preparing and, more-significantly, responding to these statements is time-consuming, expensive to the client, and, in my view, a largely worthless undertaking.

I know these requirements were put in place to attempt to streamline the summary judgment/adjudication process. But, at least from this trial attorney's perspective, they have done just the opposite. Regularly, even the simplest of summary judgment motions includes a separate statement with pages, and pages, and pages of redundant "undisputed facts", which are then, in the case of the customary alternative summary adjudication motion, cut and paste verbatim into the statement for each successive cause of action at issue. And, per statute, all of this largely

meaningless redundancy and paper must be responded to with more meaningless redundancy and paper.

This is all made more complicated and onerous by the inability of many attorneys to recognize the difference between undisputed facts and evidence. Undisputed facts material to resolution of a case or cause of action offered with supporting evidence, as contemplated by the statute, are often times replaced with pages and pages filled with formatted columns setting forth specific pieces of evidence as "undisputed facts". The summary judgment motion I just opposed, a motion that involved fairly straight-forward substantive issues and limited evidence, came with a 69-page separate statement, including 234 separate "undisputed facts", all of which had to be responded to, per statute. My responsive separate statement was 85 pages long! And, really, the matters at issue were well-briefed, with references to the relevant evidence, in the 20-page points and authorities on each side. The opposing briefs succinctly teed-up the relevant issues for consideration. The separate statements were a largely meaningless sideshow.

It can be - it is - a real mess. Does this really streamline the summary judgment/adjudication process? Should a lawyer or paralegal have to spend hours and hours cutting pasting verbatim text from one column to another across pages of redundant "undisputed facts" to complete a separate statement? Do the judges actually read and review all of the pages and pages of separate statement materials accompanying the large majority of summary judgment/adjudication motions? How could they, and still effectively handle their now-crowded motion and trial calendars? And, most importantly, should clients have to pay for all this time and effort? Or, should attorneys have to eat what would otherwise be good billable time because they cannot, in good conscience, bill a client for such busy work? The answers to these questions are self-evident.

I could, perhaps, envision a better separate statement procedure - maybe one centered on the actual elements of a cause of action or a defense, as opposed to one centered on claimed "undisputed facts". If an element of a cause of action or a defense is claimed not to be subject to factual dispute, the separate statement could set forth that element and the corresponding

evidence that establishes the absence or, conversely, the presence of a factual dispute. That might work better.

But, really, I think the whole separate statement thing should just be scrapped! Put it on the shelf with all the other good ideas that did not work out as contemplated. Get rid of it. Competent attorneys should be, and are, fully able to explain to the court in customary briefings with lodged relevant evidence why they are, or the other side is not, entitled to summary judgment or adjudication. That's what lawyers do - brief issues and tee them up for resolution by the courts! It really is just that simple.

So, I say, repeal the separate statement requirement for summary judgment/adjudication motions in California! We have lived long enough with this onerous, expensive beast. I think you would hear an immediate, loud, collective sigh of relief from both Bar and Bench were that to happen.