

# FROM MY SIDE OF THE BENCH

## Summary Judgments

BY HON. RANDY WILSON

**T**RIAL JUDGES READ A LOT OF SUMMARY JUDGMENTS. A lot of them. I've been reading them now for nearly twelve years. I know how I approach them. I've talked to many colleagues and I have a pretty good sense of how other judges view them as well. In other words, I think I know what I'm talking about. Here are my suggestions on summary judgment motions and responses.

First, don't bother giving the standards for granting or defeating summary judgments. Virtually every motion and response has such a section. The author details how the respondent need only establish more than a scintilla of evidence and all inferences are accorded to the non-movant. While you're welcome to include all this boilerplate, don't bother. Most judges simply flip the page and don't read it. Whatever you do, if you insist on including the legal standards, don't embed any facts or anything important in that section since the judge probably won't read it.

Second, start with a one paragraph summary of the argument. Just give a few sentences explaining why you're entitled to summary judgment or why summary judgment is not appropriate. Don't make the reader have to try to figure out the reasons for the motion or response.

Third, if you are opposing a summary judgment because there are disputed fact questions, then list those disputed facts. One of the most effective responses to a motion for summary judgment simply had a bullet point list of the five disputed fact questions in the case. Thus, a summary judgment response should have a section entitled "Disputed Fact Questions" and could read something like this: Summary judgment is not appropriate because the following fact questions exist:

- Did respondent sign the release in question?
  - Did defendant fraudulently induce plaintiff into an agreement?
  - Did the agent have authority to negotiate with plaintiff?
- Just list the disputed facts.

Fourth, focus on the affidavits. Judge usually zero in on what the witnesses say in their affidavits rather than how the lawyers spin the facts in the briefs. Don't give the other side pick low hanging fruit by filing defective affidavits. If your evidence is struck because of a defective affidavit, you might find yourself with no proof. Follow these simple rules:

- Make sure the affidavits are sworn;
- Make sure the affidavit is based on personal knowledge. Don't merely parrot the phrase. The affidavit must

show a basis for the personal knowledge;

- Don't merely give factual conclusions. Give detailed facts.

Finally, merely attaching a document does not make it admissible. A simple affidavit authenticating the exhibit is all that's required. However, I cannot begin to tell you the number of times I've been confronted with summary judgment "proof" that merely refers to documents without making any attempt to authenticate the exhibit.

*Judge Randy Wilson is judge of the 157<sup>th</sup> District Court in Harris County, Texas. Judge Wilson tried cases at Susman Godfrey for 27 years and taught young lawyers at that firm before joining the bench. He now offers his suggestions of how lawyers can improve now that he has moved to a different perspective. ★*

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