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REPORT

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WILL YOUR SUMMARY JUDGMENT STICK? SUMMARY JUDGMENT REVERSAL RATES IN THE CALIFORNIA COURT OF APPEAL



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You're elated that after years of discovery fights, you finally convinced the trial court to grant summary judgment and get rid of a meritless shakedown. Or, you're devastated that the trial court overlooked key evidence and took your righteous case from the jury. So now you're wondering: what are the odds the California Court of Appeal will reverse the summary judgment triumph/travesty in your case?



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While your particular odds will depend on the particular facts, you can expect the California Court of Appeal to reverse, on average, about 29% of the summary judgments that are appealed. If you want a number, that's the bottom line. The rest of

this article summarizes others' studies of the general appellate reversal rates, describes our methodology, and provides some more particularized summary judgment appellate statistics.

Others' Studies

The Judicial Council of California publishes the California Court of Appeal's reversal statistics in a yearly Court Statistics Report. (Judicial Council of Cal., 2024 Court Statistics Report <<https://www.courts.ca.gov/documents/2024-Court-Statistics-Report.pdf>> [as of May 1, 2024].) For fiscal year 2023, the Judicial Council reports that out of 2,601 appeals

that terminated by written opinion, 70% were affirmed in full, 9% were affirmed with modification, 17% were reversed, and 4% were dismissed. These disposition rates remain fairly consistent from year to year. Based on these statistics, we tell clients that, practically speaking, the overall reversal rate for civil appeals in California is in the range of 20%.

Of course, summary judgments are reviewed de novo, whereas many other appeals require the Court of Appeal to deferentially review the case under the substantial evidence or abuse of discretion standards. Thus, we would expect the reversal rate following summary judgment to exceed the 20% overall civil reversal rate. The question is: by how much?

One article reviewed about 130 appellate decisions evaluating summary judgments in employment discrimination and retaliation claims under California's Fair Employment and Housing Act between 2017 and 2020. (See Dixler & Hamill, *Calif. Employment Law Cases Actually Favor Summary Judgment* (June 25, 2020) Law360 <<https://www.law360.com/articles/1283989>> [as of May 6, 2024].) This article found the reversal rate in such cases was about 24%.

Less rigorously, another article reported that unnamed California appellate justices "estimate" that about 35% of summary judgments are reversed on appeal. (Arkin, *Summary Judgment Motions Are Case Killers* (Dec. 2020) Advocate Magazine <<https://www.advocatemagazine.com/article/2020-december/summary-judgment-motions-are-case-killers>> [as of May 6, 2024].)

Our Methodology

To investigate for ourselves, we analyzed every California Court of Appeal opinion from 2023 that mentioned “summary judgment.” We then assessed which appellate decisions actually decided whether the lower court’s orders granting defendants’ summary judgment motions should be affirmed or reversed. This resulted in our including 353 total cases in our study.

Apart from complete reversals, there were many instances where the Court of Appeal reversed the summary judgment in part—meaning it affirmed summary adjudication as to some causes of action but reversed as to others. For purposes of this article, we grouped “reversed in part” decisions with complete reversals. If the trial court enters judgment for the defendant, but the Court of Appeal revives some part of the plaintiff’s case, most often that will be viewed as a “win” for the plaintiff-appellant.

Summary Judgment Reversal Statistics

Of the 353 appeals from defense summary judgments in 2023, the Court of Appeal reversed 68 in whole and 33 in part, yielding an overall reversal rate of 28.6%.

Published opinions made up less than 18% of the summary judgment decisions we analyzed. Of the published opinions, 34.4% were reversed, compared to only 27.4% of the nonpublished opinions. This disparity makes sense because the Court of Appeal is more likely to publish an opinion where reasonable judges can disagree with the result, rather than cases where all judges agree. But the overrepresentation of reversals in published summary judgment authority may lead to the misimpression that summary judgment reversals are more common than they actually are.

We also analyzed the summary judgment reversal rates in three general areas of the law: employment, contract, and tort. We found that there is some—but not much—variation. The reversal rate was 27.7% in contract actions (18 out of 65), 29.1% in employment actions (23 out of 79), and 30.2% in tort actions (48 out of 159). Before drawing any conclusions from these reversal rates, we would want to see if this pattern holds over several years.

We also studied whether the particular appellate district where the case is heard informs the probability of reversal. The Sixth District had the highest reversal rate in summary judgment appeals by far, reversing 37.5% of the time (6 out of 16)—but it also handled the fewest number of such cases. The Fourth District reversed 32% of the summary judgment appeals it considered (24 out of 75). The Second District

reversed 31.5% (47 out of 149). The Third District reversed 21.4% (6 out of 28). The First District reversed 21.2% (14 out of 66). And the Fifth District reversed 21.1% (4 out of 19). At first glance, it appears that the Second, Fourth, and Sixth Districts reverse at a higher rate than the First, Third, and Fifth Districts. However, without examining the data over more years, one cannot draw any definite conclusions about any district’s inclination to reverse summary judgments.

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There was once a time in California where terminating a case through summary judgment was disfavored. But the Legislature amended Code of Civil Procedure section 437c in 1992 “to liberalize the granting of such motions.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 848.) Summary judgment “is now seen as ‘a particularly suitable means to test the sufficiency’ of the plaintiff’s or defendant’s case.” (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542.) By affirming around 70% of the summary judgments before them—across various subject matter areas and in various appellate districts—the Courts of Appeal have generally stayed true to this liberal policy.

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