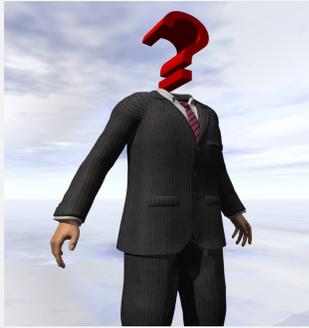




To Reply? Or Not to Reply?



Did you know the Texas Rules of Civil Procedure related to summary judgment practice (TRCP 166a) do not require that a reply be filed after the non-movant files a response? Even though it's not required, it's always an option. I would suggest taking that option.

Last week, as I was preparing for a hearing on my client's motion for summary judgment, I was debating whether it would be worthwhile to draft a reply. I had already drafted my objections to evidence presented by the non-movant, so I had already started a written document.

I simply couldn't decide whether or not to add my legal argument to this document, and spend my client's money doing so. I also didn't know whether the Judge would even have time to review my arguments before we appeared in Court. The central docket system in Travis County District Court sometimes only gives the Judge or the staff attorney a quick moment to skim the documents before the hearing. I thought that if I didn't outline my arguments in reply, that surely I could simply point the Judge in the right direction with my argument at the hearing and case law in response to the legal arguments raised by the non-movant.

I erred on the side of outlining my arguments in response to the non-movant, along with supporting case law, in a short reply. I'm so glad I did. The Judge assigned to the hearing had a chance to review the file prior to the start of the hearing, and only had some pointed questions to ask related to the legal arguments. The Judge saw no need to open the hearing up to full argument, and seemed to be undecided on only a couple issues. We only focused on those issues and the legal support on both sides. Even though I pointed the Judge to my supporting case law during the hearing, I also had that reply that was already in the record for review, further outlining anything I may have missed in our short oral argument.

The Judge took the motion under advisement, and later granted my motion in its entirety to the delight of my client. I can only assume that having the arguments outlined in the reply, with case law attached and highlighted, provided the Judge and staff attorney with the support needed to grant my motion.

Of course, if you're also protecting your client's appellate interests, always file a reply to preserve the record of your arguments since the Judge is not required to provide a court reporter or oral record for a summary judgment hearing. A court of appeals may only have what you've provided in your briefing for review.

So, to answer the question: To reply, or not to reply? Always reply!

<http://foskittlaw.com/localcounsel/>



- Sara M. Foskitt
- After spending many years as a staff attorney for a Travis County District Court Judge, I have a unique perspective, as well as inside knowledge of Travis County Courts. Part of my practice is acting as local counsel for firms with cases in Austin, Texas. I will share my tips and strategies for practicing in Travis County in this blog.