

Rule 56. Summary Judgment^{*}**

1 **(a) Motion for Summary Judgment or Partial Summary**
2 **Judgment.** A party may move for summary judgment
3 on all or part of a claim or defense. The court should^{****}
4 grant summary judgment if there is no genuine dispute
5 as to any material fact and a party is entitled to judgment
6 as a matter of law. The court should state on the record
7 the reasons for granting or denying the motion.

8 **(b) Time to File a Motion, Response, and Reply.** These
9 times apply unless a different time is set by local rule or
10 the court orders otherwise in the case:

11 **(1)** a party may file a motion for summary judgment at
12 any time until 30 days after the close of all
13 discovery;

14 **(2)** a party opposing the motion must file a response
15 within 21 days after the motion is served or that

^{***}Text of current Rule 56, which is on page 41, is deleted; new substitute language is proposed.

^{****}Some observers have argued that this should be “must grant” summary judgment. The issue is framed by the invitation for comment (see page 23 for a detailed discussion).

16 party's responsive pleading is due, whichever is
17 later; and

18 (3) any reply by the movant must be filed within 14
19 days after the response is served.

20 (c) **Procedures.**

21 (1) ***Case-Specific Procedure.*** The procedures in this
22 subdivision (c) apply unless the court orders
23 otherwise in the case.

24 (2) ***Motion, Statement, and Brief; Response and***
25 ***Brief; Reply and Brief.***

26 (A) ***Motion, Statement, and Brief.*** The movant
27 must simultaneously file:

28 (i) a motion that identifies each claim or
29 defense — or the part of each claim or
30 defense — on which summary judgment
31 is sought;

32 (ii) a separate statement that concisely
33 identifies in separately numbered
34 paragraphs only those material facts that

35 cannot be genuinely disputed and entitle
36 the movant to summary judgment; and
37 **(iii)** a brief of its contentions on the law or
38 facts.

39 **(B)** *Response and Brief by the Opposing Party.*

40 A party opposing summary judgment:

41 **(i)** must file a response that, in
42 correspondingly numbered paragraphs,
43 accepts or disputes — or accepts in part
44 and disputes in part — each fact in the
45 movant’s statement;

46 **(ii)** may in the response concisely identify
47 in separately numbered paragraphs
48 additional material facts that preclude
49 summary judgment; and

50 **(iii)** must file a brief of its contentions on
51 the law or facts.

52 **(C)** *Reply and Brief.* The movant:

- 53 (i) must file, in the form required by Rule
54 56(c)(2)(B)(i), a reply to any additional
55 facts stated by the nonmovant; and
56 (ii) may file a reply brief.

57 (3) *Accept or Dispute Generally or for Purposes of*
58 *Motion Only.* A party may accept or dispute a fact
59 either generally or for purposes of the motion only.

60 (4) *Citing Support for Statements or Disputes of*
61 *Fact; Materials Not Cited.*

62 (A) *Supporting Fact Positions.* A statement that
63 a fact cannot be genuinely disputed or is
64 genuinely disputed must be supported by:

- 65 (i) citation to particular parts of materials
66 in the record, including depositions,
67 documents, electronically stored
68 information, affidavits or declarations,
69 stipulations (including those made for
70 purposes of the motion only),
71 admissions, interrogatory answers, or
72 other materials; or

73 (ii) a showing that the materials cited do not
74 establish the absence or presence of a
75 genuine dispute, or that an adverse party
76 cannot produce admissible evidence to
77 support the fact.

78 **(B) *Materials Not Cited.*** The court need consider
79 only materials called to its attention under
80 Rule 56(c)(4)(A), but it may consider other
81 materials in the record:

- 82 (i) to establish a genuine dispute of fact; or
- 83 (ii) to grant summary judgment if it gives
84 notice under Rule 56(f).

85 **(5) *Assertion that Fact is Not Supported by***
86 ***Admissible Evidence.*** A response or reply to a
87 statement of fact may state that the material cited
88 to support or dispute the fact is not admissible in
89 evidence.

90 **(6) *Affidavits or Declarations.*** An affidavit or
91 declaration used to support a motion, response, or
92 reply must be made on personal knowledge, set out

93 facts that would be admissible in evidence, and
94 show that the affiant or declarant is competent to
95 testify on the matters stated.

96 **(d) When Facts Are Unavailable to the Nonmovant.** If a
97 nonmovant shows by affidavit or declaration that, for
98 specified reasons, it cannot present facts essential to
99 justify its opposition, the court may:

- 100 (1) defer considering the motion or deny it;
101 (2) allow time to obtain affidavits or declarations or to
102 take discovery; or
103 (3) issue any other appropriate order.

104 **(e) Failure to Respond or Properly Respond.** If a
105 response or reply does not comply with Rule 56(c)— or
106 if there is no response or reply — the court may:

- 107 (1) afford an opportunity to properly respond or reply;
108 (2) consider a fact undisputed for purposes of the
109 motion;
110 (3) grant summary judgment if the motion and
111 supporting materials — including the facts

112 considered undisputed — show that the movant is
113 entitled to it; or

114 (4) issue any other appropriate order.

115 (f) **Judgment Independent of the Motion.** After giving
116 notice and a reasonable time to respond, the court may:

117 (1) grant summary judgment for a nonmovant;

118 (2) grant or deny the motion on grounds not raised by
119 the motion, response, or reply; or

120 (3) consider summary judgment on its own after
121 identifying for the parties material facts that may
122 not be genuinely in dispute.

123 (g) **Partial Grant of the Motion.** If the court does not
124 grant all the relief requested by the motion, it may enter
125 an order stating any material fact — including an item of
126 damages or other relief — that is not genuinely in
127 dispute and treating the fact as established in the case.

128 (h) **Affidavit or Declaration Submitted in Bad Faith.** If
129 satisfied that an affidavit or declaration under this rule
130 is submitted in bad faith or solely for delay, the court —
131 after notice and a reasonable time to respond — may

132 order the submitting party to pay the other party the
133 reasonable expenses, including attorney’s fees, it
134 incurred as a result. An offending party or attorney may
135 also be held in contempt.

COMMITTEE NOTE

1 Rule 56 is revised to improve the procedures for presenting and
2 deciding summary-judgment motions and to make the procedures
3 more consistent with those already used in many courts. The standard
4 for granting summary judgment remains unchanged. The language
5 of subdivision (a) continues to require that there be no genuine
6 dispute as to any material fact and that a party be entitled to judgment
7 as a matter of law. The amendments will not affect continuing
8 development of the decisional law construing and applying these
9 phrases. The source of contemporary summary-judgment standards
10 continues to be three decisions from 1986: *Celotex Corp. v. Catrett*,
11 477 U.S. 317; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242; and
12 *Matsushita Electrical Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574.

13 **Subdivision (a).** Subdivision (a) carries forward the summary-
14 judgment standard expressed in former subdivision (c), changing only
15 one word — genuine “issue” becomes genuine “dispute.” “Dispute”
16 better reflects the focus of a summary-judgment determination.

17 The first sentence is added to make clear at the beginning that
18 summary judgment may be requested not only as to an entire case but
19 also as to a claim, defense, or part of a claim or defense. The
20 subdivision caption adopts the common phrase “partial summary
21 judgment” to describe disposition of less than the whole action,
22 whether or not the order grants all the relief requested by the motion.

23 Subdivision (a) also adds a new direction that the court should
24 state on the record the reasons for granting or denying the motion.
25 Most courts recognize this practice. Among other advantages, a
26 statement of reasons can facilitate an appeal or subsequent trial-court
27 proceedings. It is particularly important to state the reasons for

28 granting summary judgment; the statement may be dispensed with
29 only when the reasons are apparent both to the parties and to an
30 appellate court. The form and detail of the statement of reasons are
31 left to the court's discretion.

32 The statement on denying summary judgment need not address
33 every available reason. But identification of central issues may help
34 the parties to focus further proceedings.

35 **Subdivision (b).** The timing provisions in former subdivisions (a)
36 and (c) [were consolidated and substantially revised as part of the
37 time computation amendments that took effect in 2009.] These
38 provisions are adapted by new subdivision (b) to fit the context of
39 amended Rule 56. The timing for each step is directed to filing.

40 Subdivision (b)(2) sets an alternative filing time for a
41 nonmovant served with a motion before the nonmovant is due to file
42 a responsive pleading. The time the responsive pleading is due is
43 determined by all applicable rules, including the Rule 12(a)(4)
44 provision governing the effect of serving a Rule 12 motion.

45 **Subdivision (c).** Subdivision (c) is new. It establishes a common
46 procedure for summary-judgment motions synthesized from similar
47 elements found in many local rules.

48 The subdivision (c) procedure is designed to fit the practical
49 needs of most cases. Paragraph (1) recognizes the court's authority
50 to direct a different procedure by order in a case that will benefit from
51 different procedures. The order must be specifically entered in the
52 particular case. The parties may be able to agree on a procedure for
53 presenting and responding to a summary-judgment motion, tailored
54 to the needs of the case. The court may play a role in shaping the
55 order under Rule 16.

56 The circumstances that will justify departure from the general
57 subdivision (c) procedures are variable. One example frequently
58 suggested is the (c)(2)(A)(ii) statement of facts that cannot be
59 genuinely disputed. The court may find it useful, particularly in
60 complex cases, to set a limit on the number of facts the statement can
61 identify.

62 Paragraph (2) spells out the basic procedure of motion, response,
63 and reply. It directs that contentions as to law or fact be set out in a

64 separate brief. Later paragraphs identify the methods of supporting
65 the positions asserted, recognize that the court is not obliged to search
66 the record for information not cited by a party, and carry forward the
67 authority to rely on affidavits and declarations.

68 Subparagraph (2)(A) directs that the motion must describe each
69 claim, defense, or part of each claim or defense as to which summary
70 judgment is sought. A motion may address discrete parts of an action
71 without seeking disposition of the entire action.

72 The motion must be accompanied by a separate statement that
73 concisely identifies in separately numbered paragraphs only those
74 material facts that cannot be genuinely disputed and entitle the
75 movant to summary judgment. Many local rules require, in varying
76 terms, that a motion include a statement of undisputed facts. In some
77 cases the statements and responses have expanded to identification of
78 hundreds of facts, elaborated in hundreds of pages and supported by
79 unwieldy volumes of materials. This practice is self-defeating. To be
80 effective, the motion should focus on a small number of truly
81 dispositive facts.

82 The response must, by correspondingly numbered paragraphs,
83 accept, dispute, or accept in part and dispute in part each fact in the
84 Rule 56(c)(2)(A)(ii) statement. Under Rule 56(c)(3), a response that
85 a material fact is accepted or disputed may be made for purposes of
86 the motion only.

87 The response may go beyond responding to the facts stated to
88 support the motion by concisely identifying in separately numbered
89 paragraphs additional material facts that preclude summary judgment.

90 The movant must reply — using the form required for a
91 response — only to additional facts stated in the response. The reply
92 may not be used to address materials cited in the response to dispute
93 facts in the Rule 56(c)(2)(A)(ii) statement accompanying the motion.
94 Except for possible further rounds of briefing, the exchanges stop at
95 this point. A movant may file a brief to address the response without
96 filing a reply, but this brief cannot address additional facts stated in
97 the response unless the movant files a reply.

98 Subdivision (c)(4)(A) addresses the ways to support a statement
99 or dispute of fact. Item (i) describes the familiar record materials

100 commonly relied upon and requires that the movant cite the particular
101 parts of the materials that support the facts. Materials that are not yet
102 in the record — including materials referred to in an affidavit or
103 declaration — must be placed in the record. Once materials are in the
104 record, the court may, by order in the case, direct that the materials be
105 gathered in an appendix, a party may voluntarily submit an appendix,
106 or the parties may submit a joint appendix. The appendix procedure
107 also may be established by local rule. Direction to a specific location
108 in an appendix satisfies the citation requirement. So too it may be
109 convenient to direct that a party assist the court in locating materials
110 buried in a voluminous record.

111 Subdivision (c)(4)(A)(ii) recognizes that a party need not always
112 point to specific record materials. One party, without citing any other
113 materials, may respond or reply that materials cited to dispute or
114 support a fact do not establish the absence or presence of a genuine
115 dispute. And a party who does not have the trial burden of production
116 may rely on a showing that a party who does have the trial burden
117 cannot produce admissible evidence to carry its burden as to the fact.

118 Subdivision (c)(4)(B) reflects judicial opinions and local rules
119 provisions stating that the court may decide a motion for summary
120 judgment without undertaking an independent search of the record.
121 Nonetheless, the rule also recognizes that a court may consider record
122 materials not called to its attention by the parties. Consideration is
123 more likely to be appropriate when uncited material shows there is a
124 genuine dispute. If the court intends to rely on uncited record
125 material to grant summary judgment it must give notice to the parties
126 under subdivision (f).

127 Subdivision (c)(5) provides that a response or reply may be used
128 to challenge the admissibility of material cited to support or dispute
129 a fact. The statement in the response should include no more than a
130 concise identification of the basis for the challenge. The challenge
131 can be supported by argument in the brief, or may be made in the
132 brief alone. There is no need to make a separate motion to strike. If
133 the case goes to trial, failure to challenge admissibility at the
134 summary-judgment stage does not forfeit the right to challenge
135 admissibility at trial.

136 Subdivision (c)(6) carries forward some of the provisions of
137 former subdivision (e)(1). Other provisions are relocated or omitted.
138 The requirement that a sworn or certified copy of a paper referred to
139 in an affidavit or declaration be attached to the affidavit or declaration
140 is omitted as unnecessary given the requirement in subdivision
141 (c)(4)(A)(i) that a statement or dispute of fact be supported by
142 materials in the record.

143 A formal affidavit is no longer required. 28 U.S.C. § 1746
144 allows a written unsworn declaration, certificate, verification, or
145 statement subscribed in proper form as true under penalty of perjury
146 to substitute for an affidavit.

147 **Subdivision (d).** Subdivision (d) carries forward without substantial
148 change the provisions of former subdivision (f).

149 A party who seeks relief under subdivision (d) should consider
150 seeking an order deferring the time to respond to the summary-
151 judgment motion.

152 **Subdivision (e).** Subdivision (e) addresses questions that arise when
153 a response or reply does not comply with Rule 56(c) requirements,
154 when there is no response, or when there is no reply to additional
155 facts stated in a response. Summary judgment cannot be granted by
156 default even if there is a complete failure to respond or reply, much
157 less when an attempted response or reply fails to comply with all Rule
158 56(c) requirements. Before deciding on other possible action,
159 subdivision (e)(1) recognizes that the court may afford an opportunity
160 to respond or reply in proper form. In many circumstances this
161 opportunity will be the court's preferred first step.

162 Subdivision (e)(2) authorizes the court to consider a fact as
163 undisputed for purposes of the motion when response or reply
164 requirements are not satisfied. This approach reflects the "deemed
165 admitted" provisions in many local rules. The fact is considered
166 undisputed only for purposes of the motion; if summary judgment is
167 denied, a party who failed to make a proper Rule 56 response or reply
168 remains free to contest the fact in further proceedings. And the court
169 may choose not to consider the fact as undisputed, particularly if the
170 court knows of record materials that show grounds for genuine
171 dispute.

172 Subdivision (e)(3) recognizes that the court may grant summary
173 judgment if the motion and supporting materials — including the
174 facts considered undisputed under subdivision (e)(2) — show that the
175 movant is entitled to it. Considering some facts undisputed does not
176 of itself allow summary judgment. If there is a proper response or
177 reply as to some facts, the court cannot grant summary judgment
178 without determining whether those facts can be genuinely disputed.
179 Once the court has determined the set of direct facts — both those it
180 has chosen to consider undisputed for want of a proper response or
181 reply and any that cannot be genuinely disputed despite a procedurally
182 proper response or reply — it must determine the legal consequences
183 of these facts and permissible inferences from them.

184 Subdivision (e)(4) recognizes that still other orders may be
185 appropriate. The choice among possible orders should be designed
186 to encourage proper responses and replies. Many courts take extra
187 care with pro se litigants, advising them of the need to respond and
188 the risk of losing by summary judgment if an adequate response is not
189 filed. And the court may seek to reassure itself by some examination
190 of the record before granting summary judgment against a pro se
191 litigant.

192 **Subdivision (f).** Subdivision (f) brings into Rule 56 text a number of
193 related procedures that have grown up in practice. After giving notice
194 and a reasonable time to respond the court may grant summary
195 judgment for the nonmoving party; grant or deny a motion on legal or
196 factual grounds not raised by the motion, response, or reply; or
197 consider summary judgment on its own. In many cases it may prove
198 useful to act by inviting a motion; the invited motion will
199 automatically trigger the regular procedure of subdivision (c) unless
200 the court directs a different procedure.

201 **Subdivision (g).** Subdivision (g) applies when the court does not
202 grant all the relief requested by a motion for summary judgment. It
203 becomes relevant only after the court has applied the summary-
204 judgment standard carried forward in subdivision (a) to each claim,
205 defense, or part of a claim or defense, identified by the motion under
206 subdivision (c)(2)(A)(i). Once that duty is discharged, the court may
207 decide whether to apply the summary-judgment standard to dispose
208 of a material fact that is not genuinely in dispute.

209 If it is readily apparent that the court cannot grant all the relief
210 requested by the motion, it may properly decide that the cost of
211 determining whether some potential fact disputes may be eliminated
212 by summary disposition is greater than the cost of resolving those
213 disputes by other means, including trial. Even if the court believes
214 that a fact is not genuinely in dispute it may refrain from ordering that
215 the fact be treated as established. The court may conclude that it is
216 better to leave open for trial facts and issues that may be better
217 illuminated by the trial of related facts that must be tried in any event.

218 **Subdivision (h).** Subdivision (h) carries forward former subdivision
219 (g) with two changes. Sanctions are made discretionary, not
220 mandatory, reflecting the experience that courts seldom invoke the
221 independent Rule 56 authority to impose sanctions. *See Cecil & Cort,*
222 *Federal Judicial Center Memorandum on Federal Rule of Civil*
223 *Procedure 56(g) Motions for Sanctions (April 2, 2007).* In addition,
224 the rule text is expanded to recognize the need to provide notice and
225 a reasonable time to respond.