DUCivR 56-1 SUMMARY JUDGMENT: MOTIONS AND SUPPORTING MEMORANDA

Approved by the rules committee on April 12, 2009.

Published for comment on the court's website, April 2009.

Reporter's Note: The process for informing the court of supplemental authority was modified in Rule 7-1 ((b)(5) to require a notice rather than a letter. Rule 56-1 was not amended at that time and still required sending a letter. This amendment makes the two rules consistent.

(a) Motions.

The original and a copy of a summary judgment motion must be filed with the clerk of court, or presented to the court during proceedings, except as otherwise provided in this rule and in DUCivR 5-1. Motions for summary judgment must set forth succinctly, but without argument, the specific grounds of the judgment sought. Failure to comply with the requirements of this section may result in sanctions that may include (i) returning the motion to counsel for resubmission in accordance with the rule, (ii) denial of the motion, or (iii) other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of civil procedure does not meet the requirements of this section.

(b) Length and Fact Statement of Summary Judgment Memoranda; Filing Times.

A motion for summary judgment and the supporting memorandum must clearly identify itself in the case caption and introduction. The memorandum in support of a motion for summary judgment must begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts must be numbered and refer with particularity to those portions of the record on which movant relies. Filing times and length of memoranda are governed by DUCiv R 7-1(b)(3) and (4).

(c) Contested Facts Declared in Summary Judgment Motion.

A memorandum in opposition to a motion for summary judgment must begin with a section that contains a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute must be numbered, must refer with particularity to those portions of the record on which the opposing party relies and, if applicable, must state the number of the movant's fact that is disputed. All material facts of record meeting the requirements of Fed. R. Civ. P. 56 that are set forth with particularity in the statement of the movant will be deemed admitted for the purpose of summary judgment, unless specifically controverted by the statement of the opposing party identifying material facts of record meeting the requirements of Fed. R. Civ. P. 56.

(d) Citations of Supplemental Authority.

When pertinent and significant authorities come to the attention of a party after the party's memorandum in support of or in opposition to a summary judgment motion has been filed, or after oral argument but before decision, a party may promptly file a ~~letter~~ notice with the court and serve a copy on all counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the ~~letter~~ notice must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

(e) Supporting Exhibits to Memoranda.

If any memorandum in support of or opposition to a summary judgment motion cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum when it is filed with the court and served on the other parties.

(f) Failure to Respond.

Failure to respond timely to a motion for summary judgment may result in the court's granting the motion without further notice.

See DUCivR 7-1 for guidelines regarding motions and memoranda in general, and DUCivR 7-2 for guidelines on citing unpublished decisions.