

DUCivR 7-1 MOTIONS AND MEMORANDA

Approved by Rules Committee on April 8, 2008.

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Reporter's Note: There was confusion about the prior rule of the court regarding the length of memoranda supporting and opposing motions and the time periods for responses to different types of motions. Page limits for motions to dismiss had been increased to the same limits as motions for summary judgment with a cross reference to DUCiv R 56-1. It was unclear whether the cross reference also addressed the time periods for responding to the motions. The committee discussed this rule at length and recommends that motions to dismiss and motions for summary judgment have the same length restrictions and time periods for filing responses. The committee felt that motions for injunctive relief should have the relaxed page limit but should not have an increased time period for briefing. The amending rule restructures and clarifies briefing periods and page limits. Language in DUCiv R 56-1 which became redundant by this amendment is deleted.

Further amended based upon discussion at the June 10, 2008 meeting with redrafted language circulated by email.

(a) Motions.

All motions 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](#). Copies shall be provided as required by DUCivR 5-1. Motions must set forth succinctly, but without argument, the specific grounds of the relief 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.¹

(b) Supporting Memoranda.

(1) Memoranda of Supporting Authorities. Except as noted below or otherwise permitted by the court, each motion must be accompanied by a memorandum of supporting authorities that is filed or presented with the motion. Although all motions must state grounds for the request and cite applicable rules, statutes, or other authority justifying the relief sought, no memorandum of supporting authorities is required for the following types of motions:

- (A) to extend time for the performance of an act, whether required or permitted, provided the motion is made prior to expiration of the time originally prescribed or previously extended by the court;
- (B) to continue either a pretrial hearing or motion hearing;
- (C) to appoint a next friend or guardian ad litem;
- (D) to substitute parties;

- (E) for referral to or withdrawal from the court's [ADR](#) program;
- (F) for settlement conferences; and
- (G) for approval of stipulations between the parties.

(2) Concise Memoranda. Memoranda must be concise and state each basis for the motion and limited citations to case or other authority.

~~(3) Length of Memoranda, Filing Times. Memoranda supporting or opposing all motions, except (i) motions to dismiss, (ii) motions for summary judgment as provided in [DUCivR 56-1](#), and (iii) motions pursuant to Fed.R.Civ.P. 65, must not exceed ten (10) pages, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. A memorandum opposing a motion must be filed within fifteen (15) days after service of the motion or within such extended time as allowed by the court. A reply memorandum may be filed at the discretion of the movant within seven (7) days after service of the memorandum opposing the motion. A reply memorandum must be limited to rebuttal of matters raised in the memorandum opposing the motion and must not exceed ten (10) pages. No additional memoranda will be considered without leave of court. Attorneys may stipulate to shorter briefing periods and fewer memorandum pages, and the court encourages them to do so.~~

~~(4) Exceptions. Memoranda supporting or opposing motions to dismiss or motions pursuant to Fed.R.Civ.P. 65 (i) shall not exceed twenty-five (25) pages, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits, and (ii) shall be filed and served pursuant to the provisions of [DUCivR 56-1\(b\)](#). Reply memoranda for such motions must not exceed 10 pages exclusive of face sheet, table of contents, statements of issues and facts, and exhibits.~~

(3) Length of Memoranda.

(A) **Motions to Dismiss, Motions for Summary Judgment, and Motions for Injunctive Relief:** Memoranda supporting or opposing (i) motions to dismiss, (ii) motions for summary judgment, and (iii) motions for injunctive relief must not exceed twenty-five (25) pages, exclusive of any of the following items: face sheet, table of contents, concise introduction, statements of issues and facts, and exhibits. Reply memoranda in support of any motion must be limited to ten (10) pages, exclusive of face sheet, table of contents, and exhibits and must be limited to rebuttal of matters raised in the memorandum opposing the motion. No additional memoranda will be considered without leave of court.

(B) **All Other Motions:** Memoranda supporting or opposing all motions that are not motions to dismiss, for summary judgment, or for injunctive relief must not exceed ten (10) pages, exclusive of any of the following items: face sheet, table of contents, concise introduction, statements of issues and facts, and exhibits. Reply memoranda in support of any motion must be limited to ten (10) pages, exclusive of face sheet, table of contents, and exhibits and must be limited to rebuttal of matters raised in the memorandum opposing the motion. No additional memoranda will be considered without leave of court.

(4) Filing Times

(A) **Motions to Dismiss and Motions for Summary Judgment:** A memorandum

opposing (i) motions to dismiss, and (ii) motions for summary judgment must be filed within thirty (30) days after service of the motion or within such time as allowed by the court. A reply memorandum to such opposing memorandum may be filed at the discretion of the movant within ten (10) days after service of the opposing memorandum. The court may order shorter briefing periods and attorneys may also so stipulate.

- (B) All Other Motions, including Motions for Injunctive Relief: A memorandum opposing any motion that is not a motion to dismiss or for summary judgment must be filed within fifteen (15) days after service of the motion or within such time as allowed by the court. A reply memorandum to such opposing memorandum may be filed at the discretion of the movant within seven (7) days after service of the memorandum opposing the motion. The court may order shorter briefing periods and attorneys may also so stipulate.

(5) Citations of Supplemental Authority. When pertinent and significant authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, a party may promptly file a 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 notice must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

(c) Supporting Exhibits to Memoranda.

If any memorandum in support of or opposition to a 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.

(d) Failure to Respond.

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

(e) Leave of Court and Format for Lengthy Memoranda.

If a memorandum is to exceed the page limitations set forth in this rule, leave of court must be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The court will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such showing, such requests will not be approved. A lengthy memorandum must not be filed with the clerk prior to entry of an order authorizing its filing. Memoranda exceeding page limitations, for which leave of court has been obtained, must contain under appropriate headings and in the order here indicated:

- (1) a table of contents, with page references, listing the titles or headings of each section and subsection;
- (2) a statement of the issues related to the precise relief sought;

- (3) a concise statement of facts, with appropriate references to the record, relevant to the issues concerning the precise relief sought;
- (4) argument, preceded by a summary, containing the contentions of the party with respect to the issues presented and the reasons for them, with citations to the authorities, statutes, and parts of the record relied on; and
- (5) a short conclusion stating the precise relief sought.

(f) Oral Arguments on Motions.

The court on its own initiative may set any motion for oral argument or hearing. Otherwise, requests for oral arguments on motions will be granted on good cause shown. If oral argument is to be heard, the motion will be promptly set for hearing. Otherwise, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

See [DUCivR 56-1](#) for specific provisions regarding summary judgment motions and memoranda in support and opposition to such motions.

DUCivR 56-1 SUMMARY JUDGMENT: MOTIONS AND SUPPORTING MEMORANDA

(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. ~~Memoranda supporting or opposing a motion for summary judgment must not exceed twenty-five (25) pages in length, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. A memorandum opposing a motion for summary judgment must be filed within thirty (30) days after service of the motion or within such extended time as allowed by the court. A reply memorandum to such opposing memorandum may be filed at the discretion of the movant within ten (10) days after service of the opposing memorandum. A reply memorandum must be limited to rebuttal of matters raised in the opposing memorandum and must not exceed ten (10) pages, exclusive of face sheet, table of contents, statement of issues and facts, and exhibits.. No~~

~~additional memoranda will be considered without leave of court.~~ 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 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 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.