

## **RULE 56 - MOTIONS FOR SUMMARY JUDGMENT**

**(As ~~amended January 1, 2015~~)**

### **(a) Motions for Summary Judgment**

In addition to the material required to be filed by Local Rule 7, a motion for summary judgment and opposition thereto shall comply with the requirements of this rule.

#### **Supporting Statement of Material Facts**

A motion for summary judgment shall be supported by a separate, short, and concise statement of material facts, each set forth in a separately numbered paragraph(s), as to which the moving party contends there is no genuine issue of material fact to be tried. Each fact asserted in the statement shall be simply and directly stated in narrative without footnotes or tables and shall be supported by a record citation as required by subsection (f) of this rule.

Nothing in this LR 56 precludes the parties from filing a stipulated statement of material facts as to all, or some, of the facts underlying a motion for summary judgment, or any opposition thereto. In the event the parties file a stipulated statement of material facts, such stipulated facts shall control and take precedence over any conflicting statement of fact filed by any party to the stipulation.

#### **Opposing Statement of Material Facts**

A party opposing a motion for summary judgment shall submit with its opposition a separate, short, and concise statement of material facts. The opposing statement shall admit, deny or qualify the facts by reference to each numbered paragraph of the moving party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by this rule. Each such statement shall begin with the designation "Admitted," "Denied," or "Qualified" and, in the case of an admission, shall end with such designation. The opposing statement may contain in a separately titled section additional facts, each set forth in a separately numbered paragraph and supported by a record citation as required by subsection (f) of this rule.

### **Reply Statement of Material Facts**

A party replying to the opposition to a motion for summary judgment shall submit with its reply a separate, short, and concise statement of material facts which shall be limited to any additional facts submitted by the opposing party. The reply statement shall admit, deny or qualify such additional facts by reference to the numbered paragraphs of the opposing party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by subsection (f) of this rule. Each such reply statement shall begin with the designation "Admitted," "Denied," or "Qualified" and, in the case of an admission, shall end with such designation.

### **Motions to Strike Not Allowed**

Motions to strike statements of fact are not allowed. If a party contends that an individual statement of fact should not be considered by the court, the party may include as part of the response that the statement of fact "should be stricken" with a brief statement of the reason(s) and the authority or record citation in support. Without prejudice to the determination of the request to strike the party shall admit, deny or qualify the statement as provided in this rule. A party may respond to a request to strike either in the reply statement of material facts as provided in this rule or, if the request was made in a reply statement of material facts, by filing a response within 14 days. A response to a request to strike shall be strictly limited to a brief statement of the reason(s) why the statement of fact should be considered and the authority or record citation in support.

### **Statement of Facts Deemed Admitted Unless Properly Controverted; Specific Record of Citations Required**

Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted. An assertion of fact set forth in a statement of material facts shall be followed by a citation to the specific page or paragraph of identified record material supporting the assertion. The court may disregard any statement of fact not supported by a specific citation to record material properly considered on summary judgment. The court shall have no independent duty to search or consider any part of the record not specifically referenced in the parties' separate statement of facts.

## Facts Admitted for Purpose of Summary Judgment

Facts deemed admitted solely for purposes of summary judgment shall not be deemed admitted for purposes other than determining whether summary judgment is appropriate.

## Pre-filing Conference

In all Standard Track cases, except those categories of cases listed in Rule 26(a)(1)(B), F.R.Civ.P., a party intending to move for summary judgment shall file no later than seven (7) days after the close of discovery either (1) a joint motion setting forth a proposed schedule agreed to by all the parties and confirming that all of the parties agree that a pre-filing conference with a judicial officer would not be helpful, or (2) a notice of intent to move for summary judgment, and the need for a pre-filing conference with a judicial officer.

### (1) By Joint Motion with Proposed Schedule

The parties must jointly propose a schedule for briefing all proposed motions for summary judgment. The proposed schedule shall include:

- (A) Proposed page limits and deadlines for filing. If the Motion proposes to exceed the limits set forth in LR 7, the parties shall include a brief statement explaining why good cause exists for allowing extra time and/or pages.
- (B) The estimated number of statements of material fact and the estimated number of additional statements by any party opposing the motion for summary judgment.
- (C)

Any stipulations to be filed. The parties shall generally describe any stipulated record or factual stipulations they propose to file and indicate whether stipulations of fact are made solely pursuant to LR 56(b). If any such stipulated filings will be made, the proposed schedule shall first set a deadline for this stipulated filing, which shall be at least five (5) calendar days before the deadline for filing the motion for summary judgment. ~~The court may adopt or modify the jointly proposed schedule, or instead may set the matter for a pre-filing conference.~~

(D) Proposed page limits and deadlines for filing *Daubert* and/or *Kumho* motions, oppositions to *Daubert* and/or *Kumho* motions, and replies to oppositions to *Daubert* and/or *Kumho* motions.<sup>1</sup> If the parties propose to exceed the time or page limits set forth in Local Rule 7, the parties shall include a brief statement explaining why good cause exists for allowing extra time and/or pages.

The court may adopt or modify the jointly proposed schedule, or instead may set the matter for a pre-filing conference.

(2) By Notice

Alternatively, absent agreement, the movant shall provide the Court and all other parties to the action with written notice of the intent to seek summary judgment and the need for a pre-filing conference with a judicial officer.

(3) Pre-Filing Conference

At any pre-filing conference, the parties shall be prepared to discuss, and the judicial officer shall consider:

(A) The issues to be addressed by a motion for summary judgment;

(B) The length of any statement of material facts filed pursuant to LR 56(b) and (c);

(C) The length of the memoranda filed pursuant to LR 7;

(D) The time within which the motion for summary judgment shall be filed; ~~and~~

(E) ~~(F)~~ The use of a stipulated statement of material facts in addition to or in lieu of, separate statements of material fact; ~~and~~

Whether either party intends to file any *Daubert* and/or *Kumho* motions, and, if so, the issues to be addressed by such motions, the length of any memoranda of law to be filed pursuant to Local Rule 7, and the time within which the *Daubert* and/or *Kumho* motions shall be filed.

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<sup>1</sup> *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

Following any pre-filing conference, the judicial officer shall issue an order reciting the action taken at the conference.

Proposed