

Rule 56 Procedure in consent cases

The following procedures do not apply to any case filed by a pro se prisoner. In all other civil cases in which the parties have consented under 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73 to the exercise of jurisdiction by Magistrate Judge Grimes, the following procedures will apply to motions for summary judgment under Federal Rule of Civil Procedure 56. The requirements of Local Rule 7.1, including the deadlines in Rule 7.1(d) and (e) and the memoranda length limitation in Rule 7.1(f), apply to any memorandum of law filed under these procedures.

1. Summary judgment procedures followed by Judge Grimes

1.1. Moving Party. Before moving for summary judgment under Federal Rule of Civil Procedure 56, the movant must confer with that party's opponent and prepare a joint statement of stipulated facts. The movant must file the joint statement of stipulated facts with the motion for summary judgment. When moving for summary judgment under Federal Rule of Civil Procedure 56, the moving party must serve and file—

(a) a supporting memorandum of law that complies with 1.7, below;
and

(b) a separate, short and concise statement of material facts that complies with 1.4, below, and that attaches the cited evidentiary material.

Failure to comply with 1.1(a) and (b) may be grounds for denial of the motion.

1.2. Opposing Party. Each party opposing a summary judgment motion must serve and file—

(a) a supporting memorandum of law that complies with 1.7, below;

(b) a response to the 1.1(b) statement of material facts that complies with 1.5, below and that attaches any cited evidentiary material not attached to the 1.1(b) statement of material facts; and

(c) if the opposing party wishes to assert facts not set out in the 1.1(b) statement of material facts or the 1.2(b) response, the party must serve and file a separate, short and concise statement of additional material facts that complies the statement-of-material facts requirement described in 1.4, below, and that attaches any cited evidentiary material not attached to the 1.1(b) statement or 1.2(b) response.

1.3. Moving Party’s Reply. After an opposing party files its materials under 1.2, the movant must serve and file—

(a) a reply memorandum of law that complies with 1.7; and

(b) a response to the 1.3(c) statement of additional material facts— if any—that complies with 1.5, below and that attaches any cited evidentiary material not attached to the 1.1(b) statement, the 1.2(b) response, or the 1.2(c) statement.

1.4. Statement of Material Facts.

(a) Each 1.1(b) statement of material facts and 1.2(c) statement of additional facts must consist of short and concise numbered paragraphs. Subparagraphs are not permitted.

(b) Each asserted fact must be supported by citation to the specific evidentiary material, including the specific page number, that supports it. *The court may disregard any asserted fact that is not supported with this required, specific citation.*

(c) All evidentiary material identified in 1.1(b) and 1.2(c) citations must be included as exhibits with the statements of fact. Exhibits should be given descriptive names to aid in their identification (e.g., “John Doe Deposition,” or “Jane Doe Affidavit”).

(d) Neither the 1.1(b) statement of material facts nor the 1.2(c) statement of additional facts may contain legal argument.

(e) A movant’s 1.1(b) statement of material facts must not exceed 80 numbered paragraphs. An opposing party’s 1.2(c) statement of additional facts must not exceed 40 numbered paragraphs. A party must seek leave *before* exceeding these limits.

1.5. Response to Statement of Facts.

(a) Each 1.2(b) and 1.3(b) response must consist of numbered paragraphs corresponding to the numbered paragraphs in the 1.1(b) or 1.2(c) statement, respectively, and must attach the evidentiary material identified in 1.2(b) and 1.3(b), respectively. Each paragraph must set forth the text of the asserted fact—including its citations to the supporting evidentiary material—and then must set forth the response.

(b) Each response must admit the asserted fact, dispute the asserted fact, or admit in part and dispute in part the asserted fact. To the extent possible, admitted facts should be included in the joint statement of stipulated facts filed under 1.1, above. If the response admits in part and disputes in part the asserted fact, it must specify which part of the asserted fact is admitted and which part is disputed. A response may not set forth any new facts. A response may not assert legal arguments except to make an objection, including objections based on admissibility, materiality, or absence of evidentiary support. A party's response brief or reply brief is the appropriate place to argue that a party's opponent has included objectionable or immaterial evidence or argument in a submission under these procedures.

(c) To dispute an asserted fact, a party must cite specific evidentiary material that controverts the fact and must concisely explain how the cited material controverts the asserted fact. Merely disagreeing with the movant's asserted facts without referencing specific supporting material is insufficient to dispute an asserted fact. Asserted facts may be deemed admitted if not controverted with specific citations to evidentiary material.

1.6. Reply in Support of Statement of Facts. No reply to a 1.2(b) or 1.3(b) response is permitted without leave. The moving party may use its reply memorandum of law to respond to an evidentiary or materiality objection raised in a 1.2(b) response. The opposing party must seek leave for a supplemental filing to respond to an evidentiary or materiality objection raised in a 1.3(b) response.

1.7. Memorandum of Law. Each memorandum of law must set forth legal argument in support of or opposition to summary judgment and may include a statement of facts. When addressing facts, the memorandum must cite directly to specific paragraphs in the statements or responses filed under these procedures. The length limitation in Local Rule 7.1(f) applies to any memorandum of law filed under these procedures.

2. Procedures in cases in which any party is unrepresented by counsel

Any party that moves for summary judgment against an unrepresented party must serve the unrepresented party with its summary judgment papers and separate copies of (1) the *Summary judgment procedures followed by Judge Grimes* as set out in section 1, above, and (2) the Notice to Unrepresented Litigants Opposing Summary Judgment, set out below. The moving party must also file the Notice with a certificate of service. For purposes of these procedures only, an unrepresented party will be considered to be represented by counsel if that party is a licensed attorney.

Notice to Unrepresented Litigants Opposing Summary Judgment

BE SURE TO READ THIS ENTIRE DOCUMENT

The defendant has moved for summary judgment against you. That makes the defendant the “movant” and you the “nonmovant.” By moving for summary judgment, the defendant has asked the Court to decide this case without a trial, based on written materials, including affidavits, submitted in support of the motion. **THE CLAIMS YOU ASSERT IN YOUR COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION ON TIME** by filing sworn affidavits or other documents as required by Rule 56(c) of the Federal Rules of Civil Procedure and by the *Summary judgment procedures followed by Judge Grimes*. The full text of the *Summary judgment procedures followed by Judge Grimes* is attached.

When moving for summary judgment, the defendant must serve on you and file:

- (1) a statement of facts, which is a list of the facts the defendant thinks are true and undisputed;
- (2) the evidence that supports those facts; and
- (3) a memorandum of law that makes a legal argument about why the defendant wins based on the law and the facts.

There are rules that both lawyers and people without lawyers must follow in moving for or opposing summary judgment. If you do not follow the rules, then the judge may not consider your facts or your arguments.

This notice is meant to help explain the summary judgment process to you. If you have more questions, you should consult the Court’s Handbook for Pro Se Litigants, <https://www.ohnd.uscourts.gov/sites/ohnd/files/ProSeGuide.pdf>.

What You Should File

Rule 56 provides that you may NOT oppose summary judgment simply by relying upon the allegations in your complaint. Rather, to oppose a motion for summary judgment, you must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising specific facts that support your claim. If you have proof of your claim, now is the time to submit it. Any witness statements must be in the form of either affidavits or declarations made under penalty of perjury under 28 U.S.C. § 1746. An affidavit, which must be signed and notarized, is a sworn statement of fact based on personal knowledge stating facts that would be admissible in evidence at trial. A declaration need only

be signed and include the following language from 28 U.S.C. § 1746: “I declare under penalty of perjury that the foregoing is true and correct. Executed on [insert date]. [Signature].” You may submit your own affidavit/declaration and/or the affidavits/declarations of others. You may submit affidavits or declarations that were prepared specifically in response to defendant’s motion for summary judgment.

If you do not respond to the motion for summary judgment on time with affidavits/declarations and/or documents contradicting the material facts asserted by the defendant, the Court may accept defendant’s facts as true. Your case may then be dismissed and judgment may be entered in defendant’s favor without a trial.

To respond to the summary judgment motion, you must file, as separate documents:

- a response to the defendant’s statement of material facts (see Section 1, below);
- a statement of additional facts, if you want the judge to consider facts not included in the defendant’s statement of material facts or your response to the defendant’s statement (see Section 2, below);
- the evidentiary material that supports your response to the defendant’s statement of facts and any statement of additional facts (the material should be labeled as exhibits); and
- a memorandum of law that explains why the defendant is not entitled to summary judgment based on the facts and the law (see Section 3, below).

More details about these documents are below. If you do not respond to the defendant’s summary judgment motion by the deadline the judge gives you, the judge may rule on the motion based solely on what the defendant has to say. *Even if you file your own summary judgment motion, you still must respond to the defendant’s summary judgment motion.*

1. Response to Defendant’s Statement of Facts

The defendant has listed what it thinks are undisputed facts in a series of short paragraphs. This document is called a “statement of facts.” For each fact, the defendant must point to evidence—such as affidavits, deposition transcripts, recordings, and other documents—that the fact is true.

You must respond to each of the defendant’s facts, paragraph by paragraph. If you do not respond to a fact asserted by the defendant, the judge may decide that you have admitted that the fact is true. Here is how you can respond to a fact asserted by the defendant:

(a) Admit it.

If you agree with a fact, write “Admitted.” If you admit a fact in your response, you cannot later deny that fact in your statement of additional facts or in your legal argument.

(b) Dispute it.

If you think that a fact is not supported by the evidentiary material cited by the defendant, you should write “Disputed” and then briefly explain why you dispute the fact and cite the specific page(s) of evidence that supports your position.

If your response cites evidence that the defendant did not submit, you must include that additional evidence in an appendix filed and served along with your response.

For example, if the defendant asserts that the traffic light was red at a particular time and supports that assertion with an affidavit, and if you believe that the light was green at that time, you can dispute the asserted fact and cite to evidentiary material (such as an affidavit, declaration, or deposition testimony) that supports your view that the light was green.

(c) Object to evidence that the defendant submitted.

If you would like to object to a particular piece of evidence cited in the defendant’s statement of facts—for example, because it is not relevant or is hearsay—you should briefly explain your objection. When addressing facts, the memorandum must cite directly to specific paragraphs in the statements or responses filed under the *Summary judgment procedures followed by Judge Grimes*. If you both disagree with a fact and object to the evidence that the defendant cites to support that fact, then your response to that fact should explain both your denial of the fact and your objection. If you object to the defendant’s evidence but do not deny the fact, and the judge overrules your objection, then the judge may consider you to have admitted the fact.

Do not include the following things in your response to statements of fact:

New facts. To state new facts, meaning facts that are not fairly responsive to the defendant's asserted facts, list them in your separate statement of additional fact (see Section 2, below).

Legal arguments. Legal arguments must be made in your brief (see Section 3). The one exception is for arguments in support of legal objections (for example, hearsay) to the evidentiary material cited by the defendant.

2. Statement of Additional Facts

If you want the judge to consider new facts—meaning facts other than those in the defendant's statement of facts or your response to the statement of facts—you must submit a statement of additional facts as a separate document from your response to the defendant's statement. If you do not submit a statement of additional facts, the judge may consider only the asserted facts in the defendant's statement of facts and any facts in your response to the defendant's statement of facts that are fairly responsive to the defendant's asserted facts.

Your statement of additional facts should be organized into short, numbered paragraphs with no more than one fact in each paragraph. Unless you get permission from the judge, your statement of additional facts must not have more than 40 numbered paragraphs.

You must support each fact with a citation to a specific piece of evidence that supports it. For example, you might cite a particular page of a deposition transcript, a particular paragraph of an affidavit, or a timestamp on a recording. You can cite the evidence that the defendant submitted with its statement of material facts to support your statement of additional facts. You can also cite your own evidence that the defendant did not submit, but you must file and serve that evidence along with your statement of additional facts.

If you want to submit evidence of your own testimony (other than a deposition transcript), you should prepare an affidavit or declaration, which sets forth facts you know to be true based on your personal knowledge.

The defendant will have an opportunity to respond to your statement of additional facts.

3. Memorandum of Law

The defendant has submitted a legal memorandum explaining why it should win the case on summary judgment based on its statement of facts and governing law. You must answer that brief by filing a memorandum that responds to the defendant's arguments and explains why the defendant should not win the case

on summary judgment. Your memorandum should be separate from your response to the defendant's statement of facts and your statement of additional facts.

Your memorandum should explain why the defendant is not entitled to summary judgment. If you do not make a legal argument in your memorandum, you may lose the opportunity to make that argument on appeal. You can argue that because you and the defendant disagree on important facts, there needs to be a trial to decide which of you is right about those facts. You can also explain why the defendant's legal arguments are wrong based on the law or based on the facts that you disputed in your response and/or that you included in your statement of additional facts.

4. Federal Rule of Civil Procedure 56 and these procedures

Summary judgment is governed by Federal Rule of Civil Procedure 56, and Judge Grimes also has certain requirements that are described in the *Summary judgment procedures followed by Judge Grimes*, which is attached as a separate document. Section 1.1 of the *Summary judgment procedures followed by Judge Grimes* explains what someone seeking summary judgment must submit, and Section 1.2 explains what you need to do to oppose summary judgment.

Reading this Notice is not a substitute for reviewing Federal Rule of Civil Procedure 56 and the *Summary judgment procedures followed by Judge Grimes*. You should be familiar with both before you prepare your opposition to summary judgment.