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December 6, 2019

Advisory Committee on Rules
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

Re: Rules 12(g)(2)-(6) of the Rules of the Superior Court of the State of New Hampshire

Dear Chair Justice Donovan and Members:

I urge the Committee to propose deletion of the above-referenced series of rules, which were part of a recent amendment. This series of rules strikes me as a solution in search of a problem, unnecessarily complicating, and unwieldy. It also has a very strong Massachusetts flavor, which with respect to procedural rules, is not something we should be striving for here in New Hampshire.

While apparently well-intended to streamline motion for summary judgment practice and provide the court with a single document of facts, in my experience, albeit anecdotal, this series of rules has had the opposite effect. In one case, I was compelled to engage in mind-numbing motion practice that dwarfed the substantive issues presented. This certainly did not serve my client's interests, nor the interest of judicial economy. In another case, the opposing party did not satisfy the strictures of Rule 12(g), compelling me to file a motion to strike and effectively rendering the Rule superfluous.

I was not aware that motion for summary judgment practice needed fixing. As a civil litigator filing motions for summary judgment with some frequency, I have always recognized that, by definition, the outcome depends not upon factual questions, but legal ones. Limited recitations of material facts can simply be imbedded within memoranda of law filed with motions for summary judgment. If the responsive party's pleadings reveal any genuine issue(s) of material fact, the result will be a denial. I struggle to see how Rule 12(g)(2) et seq. improve upon this straightforward process.

In sum, Rule 12(g)(2) et seq. create extra work for practitioners and the court and additional expense to clients. Conversely, I do not see any discernible benefit to the court in practice. While new changes often require an adjustment period, my professional experience and judgment tell me that practice surrounding Rule 12(g)(2) et seq. is unlikely to see significant improvement. Let us keep things simple. Please propose deletion.

Sincerely,

A handwritten signature in black ink, appearing to read "Sabin R. Maxwell". The signature is written in a cursive, flowing style.

Sabin R. Maxwell
NH Bar #18599

SRM/as
Enclosure