

#2016-013  
# 2017-001  
# 2016-015

**Carolyn A. Koegler**

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**From:** Kara Cain <kara.cain@aderant.com>  
**Sent:** Thursday, May 11, 2017 6:14 PM  
**To:** RulesComment  
**Subject:** Comments to Proposed Amendments to Superior Court Rules

Good afternoon,

We have reviewed the Proposed Amendments to the Superior Court Rules, currently out for comment until June 15, 2017, and write to bring your attention to several ambiguities and procedural issues regarding the amendments.

### **Superior Court Rule 12(g)**

As proposed, Superior Court Rule 12(g)(5) provides in part that “[t]he moving party shall respond to the opposing party’s additional statement of material facts within 20 days and in the manner required by Paragraph (g)(3).” [Emphasis added.]

Because there is a new requirement for the statement of additional facts to be sent by email (if not excused), it is somewhat unclear what is considered the triggering event for the deadline to respond. Is it 20 days from the emailing of the additional statement, 20 days from the filing of the additional statement, 20 days from service of the additional statement, or something else?

To eliminate any ambiguity, we respectfully suggest that the rule be further amended to clarify this issue. For example, the rule could state:

The moving party shall have 20 days after service of the opposing party’s additional statement of material facts to respond in the manner required by Paragraph (g)(3).

Similarly, Superior Court Rule 12(g)(3) provides that “[t]he non-moving party shall have 30 days to respond to a motion for summary judgment, unless another deadline is established by order of the court.” [Emphasis added.]

This paragraph also does not clearly specify what event triggers the 30-day period to respond. Is it 30 days from service of the summary judgment motion, 30 days from filing of the summary judgment motion, or something else?

In order to avoid confusion, we suggest that the rule be modified to clarify when the 30-day period to respond begins. For example, the rule could be revised to state:

The non-moving party shall have 30 days after service of a motion for summary judgment to respond, unless another deadline is established by order of the court.

### **Superior Court Rules 28 and 37**

The stated purpose of the amendment to Superior Court Rule 28 is to “delete the requirement that requests for admissions and responses to requests for admissions be filed with the court.”

As proposed, Superior Court Rule 28(a)(ii) provides, “Notwithstanding (i) above, signatures and endorsements of all written instruments declared on will be considered as admitted unless the party disputing the signature or endorsement shall serve notice on the opposing party that they are disputed within 30 days after the date the defendant files an Answer. See Rule 37(c).” [Emphasis added.]

However, it appears from Appendix I of the proposal that Superior Court Rule 37(c) would continue to provide that “[t]he signatures and endorsements of all written instruments declared on will be considered as admitted unless the defendant shall file a notice that they are disputed within 30 days after the date the defendant files an Answer.” [Emphasis added.]

Thus, we suggest that Superior Court Rule 37(c) also be amended to state that the defendant shall serve, and not file, a notice.

We are also concerned with the use of the terms "deliver" or "delivery" in Superior Court Rule 28. As proposed, Paragraph (a)(i) requires a party to "deliver an original request therefor, accompanied by any documents involved." It also states that each of the matters is deemed admitted unless "within 30 days after such delivery the party requested delivers a copy thereof by mail or in hand to the party requesting such admission."

It is our opinion that the term "deliver" tends to imply that personal delivery is required while the term service is much broader (see for example Superior Court Rule 3 which discusses service by email). In order to avoid confusion, we suggest that the words "deliver" and "delivery" be replaced by the words "serve" and "service."

For example, the Superior Court Rule 28(a)(i) could be revised to state:

Any party, desiring to obtain admission of the signature on or the genuineness of any relevant document or of any relevant facts which he or she believes not to be in dispute, may, after 30 days after the date the defendant is served with the Summons and Complaint, without leave of court, ~~file an original request therefor with the court, accompanied by any documents involved, and deliver a copy of such request and documents~~ serve an original request therefor, accompanied by any documents involved, to the adverse party or his or her representative. Each of the matters of which an admission is requested shall be deemed admitted unless within 30 days after such ~~delivery~~ service the party requested ~~files with the court and delivers~~ serves a copy thereof by mail or in hand to the party requesting such admission, or his or her attorney or non-attorney representative, either a sworn denial thereof or a written objection on the ground of privilege or that it is otherwise improper. [Proposed changes in red.]

Thank you very much for your time and consideration of these issues.

Sincerely,

**Kara Cain**  
Rules Attorney

Email: kara.cain@aderant.com  
Office: +1-888-604-2366



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