

Carolyn A. Koegler

From: Hon. William Delker
Sent: Tuesday, November 22, 2016 5:54 PM
To: Justice Robert J Lynn
Cc: Carolyn A. Koegler
Subject: Proposed Summary Judgment Rule
Attachments: Proposed Summary Judgment Rule.docx

Dear Justice Lynn-

Attached is a proposed rule submitted by the superior court designed to require both sides in the context of motions for summary judgment to submit a single document identifying the undisputed facts and any disputed facts. This will force the parties to identify where there is agreement or disagreement and allow the trial judge to more quickly evaluate whether the facts are really in dispute, and, if so, whether those disputed facts are material to the outcome of the case. Under current practice both sides presented lengthy narratives advocating each sides interpretation of the facts. It is very difficult to identify what facts are in dispute and what are not.

The propose rule is modeled on a Massachusetts rule.

The superior court is hoping that this rule can be considered by the Advisory Committee at the December meeting and put out for public comment on short order.

Thank you,

Will Delker
Supervisory Judge
Rockingham County Superior Court
Brentwood, NH
wdelker@courts.state.nh.us

(g) Motions for Summary Judgment.

(1) Motions for summary judgment shall be filed, defended and disposed of in accordance with the provisions of RSA 491:8-a as amended. Such motions and responses thereto shall provide specific page, paragraph, and line references to any pleadings, exhibits, answers to interrogatories, depositions, admissions, and affidavits filed with the court in support of or in opposition to the Motion for Summary Judgment. Only such materials as are essential and specifically cited and referenced in the Motion for Summary Judgment, responses, and supporting memoranda shall be filed with the court. In addition, except by permission of the court received in advance of filing the memoranda, no such motion, response, or supporting memorandum of law shall exceed 20 double-spaced pages. The purpose of this rule is to avoid unnecessary and duplicative filing of materials with the court. Excerpts of documents and discovery materials shall be used whenever possible.

(2) Every motion for summary judgment shall be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue to be tried, set forth in consecutively numbered paragraphs, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Failure to include the foregoing statement shall constitute grounds for denial of the motion. The statement of material facts shall be contemporaneously sent in electronic form by email to all parties against whom summary judgment is sought in order to facilitate the requirements of the following paragraph. The statement of material facts in electronic form shall be sent as an attachment to an email and shall be in a Word document (or a document convertible to Word) unless the parties agree to use another word processing format. The requirement to email the statement of material facts to the opposing party does not alter the date or method of service. The requirement for transmission by email of the statement of material facts in electronic form shall be excused if (A) the moving or any opposing party is appearing pro se, (B) the attorney for the moving party certifies in an affidavit that he or she does not have access to email, or (C) the attorney for the moving party certifies in an affidavit that an opposing party's attorney has no email address or has not disclosed his or her email address.

(3) The 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. An opposition to a motion for summary judgment shall include a response to the moving party's statement of facts as to which the moving party claims there is no genuine issue to be tried. To permit the court to have in hand a single document containing the parties' positions as to material facts in easily comprehensible form, the opposing party shall save the moving party's statement of material facts as a new document and shall set forth a response to each directly below the appropriate numbered paragraph, including, if the response relies on opposing evidence, page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Where the obligation to send the statement of material facts in electronic form has been excused, the response to the statement of material facts may be in a separate document. For purposes of summary judgment, the moving party's

statement of a material fact shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(4) Neither the statement of material facts as to which there is no genuine issue to be tried nor the response thereto shall be subject to the 20-page limitation in paragraph (g)(1) of this rule.

(5) An opposing party, with the response to the moving party's statement of facts, may assert an additional statement of material facts with respect to the claims on which the moving party seeks summary judgment, each to be supported with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Such an additional statement shall be a continuation of the opposing party's response described in Paragraph (g)(3), with an appropriate heading, and shall not be a separate document. Where the party opposing summary judgment includes such an additional statement in its response, the response, including the additional statement, also shall be sent in electronic form by email to the moving party, unless excused as provided in Paragraph (g)(2). The 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), resulting in a single document for the court's consideration, unless the obligation to send the additional statement of material facts in electronic form has been excused. For purposes of summary judgment, the opposing party's additional statement of a material fact shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(6) Cross-motions for summary judgment and oppositions thereto shall comply with the requirements of Paragraph (g)(3), with the result that there shall be a single consolidated document for both motions for summary judgment (multiple documents may only be filed with advance leave of court) containing the respective statements of material facts and responses thereto, unless excused as provided in Paragraph (g)(2).

(7) Where a plaintiff successfully moves for summary judgment on the issue of liability or a defendant concedes liability and the case proceeds to trial by jury, the parties must provide the trial judge with a statement of agreed facts sufficient to explain the case to the jury and place it in a proper context so that the jurors might more readily understand what they will be hearing in the remaining portion of the trial. The court shall present the jury with the agreed statement of facts. Absent such an agreement on facts, the court shall provide such a statement.

(8) Sanctions for Noncompliance. The court need not consider any motion or opposition that fails to comply with the requirements of this rule.