

2020-008

**Lorrie Platt**

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**From:** Justin Richardson <justin@nhwaterlaw.com>  
**Sent:** Saturday, November 7, 2020 11:58 PM  
**To:** RulesComment  
**Subject:** Summary Judgment Rule 12 (g)

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To the advisory committee:

I feel that the joint list of undisputed facts under Rule 12 (g) should be eliminated for two reasons.

First, preparation of a joint list is cumbersome and places too much emphasis on facts that are not disputed. However, summary judgment requires that opposing facts and inferences therefrom submitted by the opposing party be given weight by the Court. In one case, the moving party disputed my clients' opposing facts and thereby kept them off the joint list when the law requires opposing facts to be considered, even if they are disputed. I recommend removing the joint list of undisputed facts.

Second, the structure of the rule is less than ideal. When the non-moving party submits additional opposing facts with an objection, the moving party thereafter can dispute or respond to those additional facts. However, this occurs after the motion and objection have been written and submitted. This means a reply and sur-reply are needed in many cases. However, the rule provides no guidance. Again, I recommend that the joint list be eliminated from the rule.

Thank you for considering these comments. I hope that they are helpful.

Respectfully,

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