

NEW HAMPSHIRE SUPREME COURT ADVISORY COMMITTEE ON RULES
REVISED PUBLIC HEARING NOTICE

The public hearing previously scheduled for December 4, 2020 before the New Hampshire Supreme Court Advisory Committee on Rules has been rescheduled for December 18, 2020 – the Committee will hold a PUBLIC HEARING at 12:30 p.m. on Friday, December 18, 2020, at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar on Superior Court Civil Rule 12(g), which relates to Motions for Summary Judgment.

In April 2019, the New Hampshire Supreme Court ordered that Superior Court Civil Rule 12(g) would take effect on July 1, 2019. The Court further ordered that in June 2020, the Advisory Committee on Rules should begin “to evaluate how the rule has worked in practice and as soon as possible thereafter, . . . recommend whether the rule should remain in effect or should be amended further.”

Comments addressing how Rule 12(g) has worked in practice, whether the rule should remain in effect, and whether the rule should be amended further may be submitted in writing to the secretary of the Committee at any time on or before December 17, 2020 or may be submitted at the hearing on December 18, 2020. Comments may be e-mailed to the Committee on or before December 17, 2020 at:

rulescomment@courts.state.nh.us

Comments may also be mailed or delivered to the Committee at the following address:

N.H. Supreme Court
Advisory Committee on Rules
1 Charles Doe Drive
Concord, NH 03301

Any suggestions for rules changes unrelated to Superior Court Civil Rule 12(g) may be submitted in writing to the secretary of the Committee for consideration by the Committee in the future.

Superior Court Civil Rule 12(g) provides as follows:

(g) *Motions for Summary Judgment.*

(1) *Motion for Summary Judgment.* 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) *Statement of Material Facts.*

(a) *Content.* Every motion for summary judgment shall be accompanied by a separate 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.

(b) *Additional Service of Electronic Form of Statement of Material Facts to other Parties.* At the time the motion and separate statement of material facts are filed with the court, the statement of material facts shall also 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 Microsoft 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, (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, or (D) the parties believe that the process outlined herein will be unworkable due to particular circumstances in their case and receive advance approval from the Court for filing separate documents.

(3) *The Non-Moving Party.*

(a) *Response to the Motion and the Statement of Material Facts.* The non-moving party shall have 30 days after filing to object to a motion for summary judgment, unless another deadline is established by order of the court. An objection to a motion for summary judgment shall include a response to the moving party's statement identifying the facts the moving party contends are material and undisputed. In its response, the nonmoving party shall indicate which, if any, of the purported undisputed facts identified in the moving party's statement the nonmoving party contends are in dispute. The form of the nonmoving party's response shall be consistent with the requirements of paragraph b. For purposes of summary judgment, any fact set forth in the moving party's statement of material facts shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(b) *Filing a Single Document Containing all Parties' Positions.* 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.

(c) *Statement of Additional Material Facts.* Along with its response to the moving party's statement of facts, the nonmoving party 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.

(d) *Filing a Single Document with Additional Material Facts.* Such an additional statement shall be a continuation of the opposing party's response described in Paragraph (g)(3)(a), 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).

(4) *The Moving Party's Reply to Additional Material Facts.* The moving party shall reply to the opposing party's additional statement of material facts within 20 days of filing and in the manner required by Paragraph (g)(3), resulting in a final, single consolidated 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, any fact set forth in the opposing party's additional statement of material facts shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(5) *Page Limits.* 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.

(6) *Cross-Motions.* 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) *Partial Summary Judgment.* 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 and may deny or grant a motion for summary judgment based on the failure of the moving party or the non-moving party to comply with this rule.

New Hampshire Supreme Court
Advisory Committee on Rules

By: Patrick E. Donovan, Chairperson
and Lorrie Platt, Secretary

November 6, 2020