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Memorandum

To: Judge Michael Baylson

From: Joe Cecil and George Cort

Subject: Report on Summary Judgment Practice Across Districts with Variations in Local Rules

Purpose: The Advisory Committee on Civil Rules asked the Federal Judicial Center to examine summary judgment practice across federal district courts as a means of assessing the potential impact of proposed amendments to Rule 56 of the Federal Rules of Civil Procedure.¹ Those proposed amendments will, among other things, require the movant to “state in separately numbered paragraphs only those material facts that the movant asserts are not genuinely in dispute and entitle the movant to judgment as a matter of law.” The respondent must then address each of those facts in similarly numbered paragraphs. We compared summary judgment practice across three groups of federal district courts that vary in the extent to which their local rules incorporate the proposed practice. The three groups are: (1) districts with local rules that place the proposed requirements on both the movant and respondent; (2) districts with local rules that place the proposed requirements only on the movant; and, (3) districts with no similar requirement in their local rules. We examine both the nature and outcome of individual summary judgment *motions* (Tables 1 through 5), and the *cases* in which the summary judgment motions are filed and resolved (Tables 6 through 12). Each table first reports the results for all cases in each of the three groups of districts, and then reports the results for five broad types of cases – contracts, torts, employment discrimination, other civil rights, and other remaining cases.

Findings: We undertook this study to determine whether there were differences in the litigation of summary judgment motions in districts with local rules that follow the proposed procedure. The study compared rates of filing, types of motions, rates of resolution, time to resolution, and outcomes. The analyses revealed very few differences across the three types of districts. Nor is it possible to attribute such differences as do appear to the

¹ This report builds on two preliminary reports submitted to the Advisory Committee on Civil Rules on November 2, 2007, and April 2, 2008, and a supplemental analysis submitted on May 30, 2008. The information in this report supersedes those earlier reports.

differences in local rules or the absence of local rules. We found that the three types of districts vary in other characteristics that may independently account for the differences.

Overall, 17% of the cases have at least one motion for summary judgment, and of these, 37% have more than one motion for summary judgment. Summary judgment motions are filed at approximately the same rate by plaintiffs and defendants across all three groups (Tables 6 through 9). Defendants in districts with the proposed structured format for the movant and respondent are somewhat less likely to file a summary judgment motion in civil rights cases (Tables 6 and 7), a difference that is difficult to interpret. We found no large differences across the three groups of districts in the percentage of cases with summary judgment motions granted (Tables 10 and 11) and in the percentage of cases terminated by summary judgment (Table 12).

When we examine individual summary judgment motions rather than cases, it appears that motions are more likely to be resolved in districts that require a structured format for movants and respondents, with a tendency for more motions to be granted (Table 3). Perhaps the structured format leads to more meritorious motions or perhaps it eases the judge's task in resolving such motions.² The increased rate of resolution, however, appears to have little effect on the overall rate of grants or denials. If we consider only those motions resolved, there are no large differences across groups in the percentage of motions granted and denied (Table 4).

More time is required to resolve motions in districts with local rules that specify a structured format for the movant and respondent (see Table 5). However, a supplementary analysis indicated that in these districts even cases without motions for summary judgment require more time to reach a disposition, suggesting that the longer time to disposition may be due to factors other than the local rule regarding summary judgment.³ As indicated in Appendix B, districts with local rules requiring a structured format for the movant and respondent also have greater weighted case filings, more pending cases per judge, fewer case terminations per judge, and longer case disposition times. These district characteristics may have a greater effect on summary judgment motion practice than the structure of the local rule.

² Supplemental analyses revealed some differences across groups in the cases with unresolved motions. Cases in the structured format districts with one or more motions that remain unresolved are less likely to settle (33% in the structured format districts, compared with 38% and 39% in the other two types of districts), more likely to persist beyond the first pretrial conference (36% in the structured format districts, compared with 29% and 32% in the other two types of districts), and somewhat more likely to be resolved after trial (8% in the structured format districts, compared with 5% in each of the other two types of districts). Such cases were also more likely to have other summary judgment motions that have been either granted or denied (14% in structured format districts, compared with 8% and 10% in the other two types of districts). Resolution of the other summary judgment motions in these cases may have mooted the issue raised in the unresolved motions.

³ Supplemental analyses of a subset of cases also revealed that the additional time to disposition of summary judgment motions in structured format districts is due almost entirely to additional time that judges have the summary judgment motions under consideration. In structured format districts judges require a median time of fifteen weeks from the submission of the last brief to rule on a summary judgment motion, compared to nine weeks in each of the other two groups.

As in previous research,⁴ we found great variation in summary judgment practice across individual districts. Some of this variation is due to differences in types of cases filed in the districts, but considerable variation in summary judgment practice still exists across districts in the same types of cases.

While we found few differences across the three groups in employment discrimination cases, the prominent role of summary judgment in such cases is striking. Summary judgment motions by defendants are more common in such cases (Table 7), are more likely to be granted (Tables 10 and 11), and more likely to terminate the litigation (Table 12). This is true without regard to the nature of the local rules regarding summary judgment.

In assessing the differences across the three groups, it is helpful to keep in mind that these groups of districts differ in many ways other than the structure of their local rules governing summary judgment practice. Some of these differences are recorded in Appendix B, but there are certainly other group differences that we did not assess. Some of the findings in the tables are undoubtedly related to these other group differences rather than the structure of the courts' local rules. For this reason it is difficult to attribute differences across the groups solely to the presence or absence of local rules requiring a structured response for summary judgment motions.

Research Methodology: We classified each federal district court into one of three groups based on the district's local rules governing summary judgment, relying on the analysis of local rules by Jeffrey Barr and James Ishida.⁵ The first group consisted of twenty federal districts that have local rules with summary judgment requirements similar to those of the proposed amendment. In general, local rules in these districts require the moving party to include a statement of individual undisputed material facts with its motion for summary judgment, and require the non-moving party to respond to the movant's statement, fact by fact. We refer to these districts as having local rules that require a structured format for the movant and respondent. We assumed that summary judgment practice in these districts follows a pattern that will become common in other federal districts if the proposed amendments are adopted.

The second group consisted of thirty-four federal district courts with local rules that require the moving party to include a statement of undisputed facts, but do not require the respondent to address each fact. We refer to these districts as having local rules that require a structured format for the movant only. We believe that summary judgment prac-

⁴ Joe S. Cecil, Rebecca N. Eyre, Dean Miletich & David Rindskopf, Trends in Summary Judgment Practice: 1975–2000 (Federal Judicial Center 2007); and republished with additional analyses as *A Quarter-Century of Summary Judgment Practice in Six Federal District Courts*, 4 *Journal of Empirical Legal Studies* 861–907 (2007).

⁵ Memorandum to Judge Michael Baylson from Jeffrey Barr and James Ishida, Survey of District Court Local Summary Judgment Rules (March 21, 2007). Mr. Barr and Mr. Ishida are Attorney Advisors in the Office of Judges Programs of the Administrative Office of the U.S. Courts.

tice in these districts may have some but not all of the characteristics of summary judgment practice under the proposed amendment.

The third group consisted of thirty-seven federal district courts that do not require the moving party to submit a statement of undisputed facts with its summary judgment motion, either because these districts do not have a local rule governing summary judgment practice (thirty-one courts) or because the courts' local rules do not require the movant to file a list of undisputed facts in support of its motion (six courts).⁶ We refer to these districts as having local rules that do not specify the structure or response to a motion for summary judgment. We believe that summary judgment practice in this third group may be most affected by the proposed amendment. A list of the districts in each of the three groups is presented in Appendix A. Characteristics of the three groups of districts are presented in Appendix B.

We used Case Management / Electronic Case Filing (CM/ECF) data as our source of information on summary judgment practice in the federal district courts. These data are the primary federal court electronic records reported for each civil case and provide the foundation of the federal courts' administrative and statistical reporting system. We were unable to obtain useable CM/ECF data and local rule information from three districts—Western District of Wisconsin, District of the Northern Marianas Islands, and District of the Virgin Islands—and excluded these districts from the analyses. Data from all other federal districts were included in the analyses.

We began by identifying 62,938 summary judgment motions and their related court orders in the 276,120 civil cases terminated by the federal district courts in fiscal year 2006. Where necessary, we recoded these orders to indicate the final action on the motion taken by the court. We then determined for each case the number and type of summary judgment motions, number of motions by plaintiffs and defendants, number of motions granted in whole or in part, number of motions denied, the number of motions in which the court took no action, whether the case was terminated by summary judgment, and the time required to resolve the motion.

We included in the analyses only cases originally filed in the specified district and cases removed to the district from state courts. We excluded cases designated as class actions (although we have learned from other research that the attorney designation of a class action is an imprecise indicator of such cases), cases consolidated in multidistrict litigation proceedings, cases reopened or remanded from the courts of appeals, cases involving a change of venue,⁷ and cases appealed from magistrate judges' rulings. We then excluded asbestos personal injury product liability cases, bankruptcy appeals and withdrawals (be-

⁶ Those six courts are the Northern District of California, the District of Colorado, the Southern District of Illinois, the Western District of Tennessee, the Eastern District of Washington, and the Northern District of West Virginia.

⁷ In previous analyses we had included cases that transferred to a district through a change of venue. However, upon close inspection we found that such cases included approximately 15,000 cases transferred to the Eastern District of Michigan relating to bankruptcy proceedings in the Silicone Gel Breast Implant Multidistrict Litigation. For this analysis we excluded these cases and approximately 1,000 other cases that had arrived in the districts through a change of venue.

cause summary judgment motions are not filed), Social Security cases (because summary judgment motions are the procedural device used to review the decision of the administrative law judge), and prisoner cases (because such cases are likely to be exempt from the proposed rule due to the pro se nature of the plaintiff). We also removed from the third group of districts those cases terminated by twenty-eight judges who, according to the district web site, routinely use a standing order that requires the parties to engage in the kinds of structured summary judgment motions and responses required by the proposed local rule.

After these exclusions, we were left with 139,247 cases, or 50% of cases terminated in FY 2006. Of these, 23,332 cases contained at least one motion for summary judgment. In total, we analyzed activity in 45,827 separate motions for summary judgment.

The analyses presented in the first eleven tables are based on records for all federal civil cases terminated in FY2006 (other than the cases excluded for the reasons noted above) rather than a sample of those cases, and therefore do not require statistical tests to determine if the differences across groups may be due to sample variation. The analyses of cases terminated by summary judgment in Table 12 are unlike the previous analyses in that they are based on examination of docket sheets in a stratified random sample of cases and do require tests of statistical significance.⁸ To study the rate at which cases are terminated by summary judgment we selected a random sample of cases designed to ensure that each of the three groups included 500 cases in which one or more summary judgment motions were granted. Attorneys reviewed and coded docket sheets in these 1,500 cases to determine if the grant of the motion resolved all outstanding merits claims by all parties.⁹ Validation studies indicated that the coders agreed in their assessment in 98% of the cases.

⁸ Since these estimates of cases terminated by summary judgment were based on samples, we used the Goodman and Kruskal tau statistical test to determine if difference in termination rates between courts in the first group and courts in the other two groups combined meet conventional standards of statistical significance. L.A. Goodman & W.H. Kruskal, *Measures of Association for Cross-Classification*, 49 *Journal of the American Statistical Association* 732–64 (1954). See generally the discussion of statistical testing at David H. Kaye & David A. Freedman, *Reference Guide on Statistics*, in *Reference Manual on Scientific Evidence* 115–17 (Federal Judicial Center 2d ed. 2000). We were unable to use population measures to assess rate at which cases are terminated by summary judgment since this measure is not recorded by the individual federal district courts as part of the CM/ECF system. We initially attempted to construct a variable for case termination by combining existing variables available for all cases, and we reported the results for one of these efforts in Table 12 of the memorandum of April 2, 2008. After preparing that memorandum we learned that data recording practices for those variables differ greatly from district to district; those estimates are inaccurate and should be disregarded.

⁹ Some docket sheets recorded court actions on peripheral matters after the last summary judgment motion was granted (e.g., motions for reconsideration, a new trial, attorneys' fees, sanctions, post-judgment relief, etc.). We disregarded such activity and recorded the case as terminated by summary judgment if after the grant of summary judgment there were no docket entries indicating further consideration of the merits of the litigation.

Table 1: Party Moving for Summary Judgment

Motions in:		Local Rule Requires Structured Format by:			Total Motions
		Movant & Respondent	Movant Only	Neither Party	
All Cases	Defendant	71%	72%	68%	32,221
	Plaintiff	26%	26%	23%	11,360
	No Moving Party	3%	2%	8%	2,242
Contracts	Defendant	56%	60%	57%	
	Plaintiff	43%	40%	35%	
	No Moving Party	2%	1%	8%	
Torts	Defendant	85%	85%	87%	
	Plaintiff	14%	14%	12%	
	No Moving Party	1%	1%	1%	
Employment Discrimination	Defendant	90%	90%	91%	
	Plaintiff	9%	9%	9%	
	No Moving Party	1%	1%	0%	
Other Civil Rights	Defendant	83%	82%	84%	
	Plaintiff	17%	17%	16%	
	No Moving Party	1%	2%	1%	
Other	Defendant	58%	59%	62%	
	Plaintiff	40%	39%	38%	
	No Moving Party	2%	3%	1%	

Table 2: Type of Summary Judgment Motion

		Local Rule Requires Structured Format by:			
		Movant & Respondent	Movant Only	Neither Party	Total Motions
Motions in:					
All Cases	Summary Judgment	91%	85%	89%	39,159
	Partial Summary Judgment	9%	14%	11%	5,094
	Rule 54 Motion	1%	1%	0%	215
Contracts	Summary Judgment	87%	79%	85%	
	Partial Summary Judgment	12%	21%	15%	
	Rule 54 Motion	1%	1%	1%	
Torts	Summary Judgment	90%	84%	87%	
	Partial Summary Judgment	10%	16%	13%	
	Rule 54 Motion	0%	1%	1%	
Employment Discrimination	Summary Judgment	96%	92%	95%	
	Partial Summary Judgment	4%	7%	5%	
	Rule 54 Motion	0%	0%	0%	
Other Civil Rights	Summary Judgment	94%	90%	92%	
	Partial Summary Judgment	6%	10%	8%	
	Rule 54 Motion	0%	0%	1%	
Other	Summary Judgment	88%	83%	88%	
	Partial Summary Judgment	11%	16%	12%	
	Rule 54 Motion	1%	1%	0%	

Table 3: Action on Summary Judgment Motion

		Local Rule Requires Structured Format by:			
		Movant & Respondent	Movant Only	Neither Party	Total Motions
Motion in:					
All Cases	Denied	17%	14%	15%	6,865
	Grant in Whole	24%	18%	19%	9,052
	Grant in Part	8%	5%	7%	2,914
	Adopt Mag R&R	0%	0%	0%	6
	Moot	2%	2%	2%	811
	No Disposition	50%	62%	58%	26,175
Contacts	Denied	18%	16%	17%	
	Grant in Whole	18%	14%	15%	
	Grant in Part	8%	5%	7%	
	Adopt Mag R&R	0%	0%	0%	
	Moot	2%	1%	2%	
	No Disposition	55%	64%	59%	
Torts	Denied	17%	16%	17%	
	Grant in Whole	19%	17%	19%	
	Grant in Part	7%	4%	4%	
	Adopt Mag R&R	0%	0%	0%	
	Moot	2%	2%	2%	
	No Disposition	55%	60%	57%	
Employment Discrimination	Denied	14%	12%	12%	
	Grant in Whole	37%	27%	25%	
	Grant in Part	9%	8%	10%	
	Adopt Mag R&R	0%	0%	0%	
	Moot	2%	1%	1%	
	No Disposition	39%	52%	53%	
Other Civil Rights	Denied	15%	9%	13%	
	Grant in Whole	27%	20%	24%	
	Grant in Part	9%	6%	8%	
	Adopt Mag R&R	0%	0%	0%	
	Moot	2%	1%	3%	
	No Disposition	47%	65%	51%	
Other	Denied	20%	16%	18%	
	Grant in Whole	20%	14%	20%	
	Grant in Part	6%	5%	6%	
	Adopt Mag R&R	0%	0%	0%	
	Moot	3%	2%	2%	
	No Disposition	51%	64%	54%	

Table 4: Outcome of Summary Judgment Motions Granted or Denied

		Local Rule Requires Structured Format by:			Total Motions
		Movant & Respondent	Movant Only	Neither Party	
Motions in:					
All Cases	Denied	35%	38%	37%	6,865
	Grant Whole or Part	65%	62%	63%	11,966
Contracts	Denied	41%	45%	45%	
	Grant Whole or Part	59%	55%	55%	
Torts	Denied	39%	44%	42%	
	Grant Whole or Part	61%	56%	58%	
Employment Discrimination	Denied	23%	26%	25%	
	Grant Whole or Part	77%	74%	75%	
Other Civil Rights	Denied	30%	26%	29%	
	Grant Whole or Part	70%	74%	71%	
Other	Denied	44%	45%	41%	
	Grant Whole or Part	56%	55%	59%	

Table 5: Median Weeks to Disposition for Motions Granted (Whole or Part) or Denied

Motions in:	Local Rule Requires Structured Format by:			Total Motions
	Movant & Respondent	Movant Only	Neither Party	
All Cases	23	17	15	18,283
Contracts	22	15	14	
Torts	22	13	12	
Employment Discrimination	25	17	16	
Other Civil Rights	21	19	15	
Other	23	17	15	

Table 6: Cases with at least One Summary Judgment Motion Filed by Any Party

	Local Rule Requires Structured Format by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	85%	83%	83%	115,915
At Least One Motion Filed	16%	17%	17%	23,332
Types of Cases with at Least One Motion				
Contracts	15%	18%	19%	
Torts	12%	13%	10%	
Employment Discrim.	35%	35%	37%	
Other Civil Rights	20%	25%	27%	
Other	9%	12%	13%	

Table 7: Cases with at least One Summary Judgment Motion by Defendant

	Local Rule Requires Structured Format by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	87%	85%	85%	119,439
At Least One Motion	13%	15%	15%	19,808
Types of Cases with at Least one Motion by a Defendant				
Contracts	10%	13%	14%	
Torts	11%	12%	9%	
Employment Discrim.	35%	34%	37%	
Other Civil Rights	19%	23%	25%	
Other	7%	9%	9%	

Table 8: Cases with at least One Summary Judgment Motion by Plaintiff

	Local Rule Requires Structured Format by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	95%	94%	94%	131,460
At Least One Motion	5%	6%	6%	7,787
Types of Cases with at Least one Motion by a Plaintiff				
Contracts	9%	10%	11%	
Torts	2%	2%	2%	
Employment Discrim.	3%	3%	3%	
Other Civil Rights	4%	6%	5%	
Other	6%	7%	7%	

Table 9: Cases with at Least One Summary Judgment Motion by a Plaintiff and at least One Summary Judgment Motion by a Defendant

	Local Rule Requires Structured Format by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	97%	97%	97%	134,861
At Least One Motion	3%	3%	3%	4,386
Types of Cases with at Least one Motion by a Plaintiff and One by a Defendant				
Contracts	5%	5%	6%	
Torts	1%	1%	1%	
Employment Discrim.	3%	3%	3%	
Other Civil Rights	3%	4%	4%	
Other	3%	4%	4%	

Table 10: Cases with at least One Summary Judgment Motion Granted in Whole

	Local Rule Requires Structured Format by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	94%	95%	95%	131,826
At Least One Motion	6%	5%	5%	7,421
Types of Cases with at Least one Motion Granted in Whole				
Contracts	5%	5%	5%	
Torts	4%	3%	2%	
Employment Discrim.	16%	13%	12%	
Other Civil Rights	8%	8%	9%	
Other	3%	3%	4%	

Table 11: Cases with at Least One Summary Judgment Motion Granted in Whole or Part

	Local Rule Requires Structured Format by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	93%	94%	94%	130,051
At Least One Motion	7%	6%	6%	9,196
Types of Cases with at Least one Motion Granted in Whole or Part				
Contracts	6%	6%	7%	
Torts	5%	4%	3%	
Employment Discrim.	20%	16%	16%	
Other Civil Rights	10%	10%	12%	
Other	4%	4%	5%	

Table 12: Cases Terminated by Summary Judgment

	Local Rule Requires Structured Format by:			Total Cases in Sample
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
Not Terminated by Summary Judgment	96%	97%	97%	26,769
Terminated by Summary Judgment	5% **	4%	4%	1,163
Types of Cases Terminated by Summary Judgment				
Contracts	4%	3%	3%	
Torts	3%*	2%	1%	
Employment Discrim.	15%*	11%	11%	
Other Civil Rights	6%	6%	7%	
Other	3%	3%	3%	

** p < 0.001

* p < 0.01

Appendix A: Classification of Individual Districts*

Local Rule Requires Structured Motion and Response	Local Rule Requires Structured Motion by Movant Only	Local Rule does not Address format of Summary Judgment Motion
Arizona	Alabama - Southern	Alabama - Middle
California - Eastern	Arkansas - Eastern	Alabama - Northern
Connecticut	Arkansas - Western	Alaska
Georgia - Middle	California – Central	California - Northern
Georgia - Northern	District of Columbia	California – Southern
Illinois - Central	Florida - Northern	Colorado
Illinois - Northern	Florida - Southern	Delaware
Iowa - Northern	Georgia - Southern	Florida - Middle
Iowa - Southern	Hawaii	Guam
Maine	Idaho	Illinois - Southern
Nebraska	Indiana - Northern	Kentucky - Eastern
New York - Eastern	Indiana - Southern	Kentucky - Western
New York - Northern	Kansas	Maryland
New York - Southern	Louisiana - Eastern	Michigan – Eastern
Oregon	Louisiana - Middle	Michigan - Western
Pennsylvania - Middle	Louisiana - Western	Minnesota
Pennsylvania - Western	Massachusetts	Mississippi - Northern
Puerto Rico	Missouri - Eastern	Mississippi - Southern
South Dakota	Missouri - Western	North Carolina - Eastern
Tennessee - Middle	Montana	North Carolina - Western
	Nevada	North Dakota
	New Hampshire	Ohio – Northern
	New Jersey	Ohio – Southern
	New Mexico	Pennsylvania – Eastern
	New York - Western	Rhode Island
	North Carolina - Middle	South Carolina
	Oklahoma - Eastern	Tennessee - Eastern
	Oklahoma - Northern	Tennessee - Western
	Oklahoma - Western	Texas - Northern
	Texas - Eastern	Texas - Southern
	Utah	Texas - Western
	Vermont	Virginia - Western
	Virginia - Eastern	Washington - Eastern
	Wyoming	Washington - Western
		West Virginia - Northern
		West Virginia - Southern
		Wisconsin - Eastern

* The districts of the Virgin Islands, Wisconsin – Western, and Northern Marianas Island were excluded from the analyses due to missing data or missing information on local rules.

Appendix B: Median Characteristics
of the Districts in Three Groups

Median Characteristics	Local Rule Requires Structured Format by:		
	Movant & Respondent	Movant Only	Not in Local Rule
Weighted Case Filings per Judge	455	430	426
Pending Cases per Judge	404	375	371
Case Terminations per Judge	413	439	472
Months from Filing to Disposition	10	9	9
Percent Civil Cases over 3 yrs old	7	5	6