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**Memorandum**

**To:** Judge Michael Baylson

**From:** Joe Cecil and George Cort

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

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 the proposed amendments to Rule 56. 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," and require the respondent to address each one of those facts in similarly numbered paragraphs.

We sorted each federal district court into one of three groups based the districts' local rules governing summary judgment, relying on the analysis of local rules by Jeffrey Barr and James Ishida to guide this classification.<sup>1</sup> 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 undisputed facts with its motion for summary judgment, and require the non-moving party to respond to the movant's statement, fact by fact. 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-six 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 believe that summary judgment practice in these

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<sup>1</sup> Memorandum to Judge Michael Baylson from Jeffrey Barr and James Ishida, Survey of District Court Local Summary Judgment Rules (March 21, 2007).

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

The third group consisted of thirty-six federal district courts that do not require the moving party to submit a statement of undisputed facts with its motion, either because these courts do not have a local rule governing summary judgment practice or because the courts' local rules do not address the manner in which the motion should be presented. We believe that summary judgment practice in this third group would be most affected by the proposed amendment. A list of the districts in each of the three groups is presented in Appendix A.

Tables 1 through 5 report the nature and outcome of individual summary judgment motions in the three groups of districts. Tables 6 through 12 report the characteristics of the cases in which the summary judgment motions are filed and resolved. Each table first reports the results for all cases in each of the three groups of districts, and then reports the results separately for five broad types of cases – contracts, torts, employment discrimination, other civil rights, and other remaining cases.

After removing problematic cases, our analyses found very few meaningful differences in summary judgment practice across the three groups of district courts. (We interpret a meaningful difference as exceeding five percentile points.) Summary judgment motions are filed and granted at approximately the same rate across all three groups. It appears that more time is required to resolve motions in districts that require stipulation of facts by both the movant and respondent (see Table 5). A few differences also were found among certain types of cases. Defendants in “other civil rights cases” may be less likely to file summary judgment motions in districts that require such stipulation of facts (Tables 6 and 7). Summary judgment motions in employment discrimination cases in such districts also are more likely to be granted rather than remain unresolved (Table 3), though there is no difference in the percentage of motions granted and denied (Table 4). Employment discrimination cases also are somewhat more likely to be terminated by summary judgment in districts that require stipulated facts, a difference that approaches our standard for a meaningful difference (14% vs. 10% and 9%).

### **Methodology Note**

This study examined summary judgment practice in the 276,120 civil cases terminated the federal district courts in Fiscal Year 2006. We used Case Management / Electronic Case Filing (CM/ECF) data to identify 60,013 summary judgment motions and related court orders. Where necessary, we recoded these orders to indicate the final action 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.

Some motions, cases, and districts were excluded from the analyses. We were unable to obtain useable CM/ECF data from five districts: Northern District of Ohio, Western District of Wisconsin, District of Oregon, District of the Northern Marianas Islands, and District of the Virgin Islands. We excluded an additional six districts due to difficulty interpreting the CM/ECF codes: Eastern District of Pennsylvania, Eastern District of Michigan, District of Minnesota, Central District of California, Southern District of California, and District of Delaware.

We included in the analyses only cases originally filed in the specified district, cases removed to the district from state court, and cases transferred to the district through a change of venue. We excluded cases designated as class actions (though 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, and cases appealed from magistrate judges' rulings. We also excluded asbestos personal injury product liability cases, bankruptcy appeals and withdrawals (because 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). Finally, we removed from the third group of districts those cases terminated by seventeen judges who, according to the district web site, routinely use a standing order that requires the parties to engage in the kinds of stipulations and presentation required by the proposed local rule

After these exclusions, we were left with 118,796 cases, or 43 percent of cases terminated in FY 2006. Of these cases, 20,697 contained at least one motion for summary judgment. In total, we analyzed 39,120 motions for summary judgment. For the final report we will resolve the data problems for as many of the excluded districts as we can and add them to the analysis.

Table 1: Party Moving for Summary Judgment

Motions in:		Local Rule Requires Stipulated Facts by:			Total Motions
		Movant & Respondent	Movant Only	Not in Local Rule	
All Cases	Defendant	73%	72%	73%	28342
	Plaintiff	26%	26%	24%	9934
	No Moving Party	1%	2%	3%	844
Contracts	Defendant	56%	59%	56%	
	Plaintiff	<b>42%</b>	40%	<b>35%</b>	
	No Moving Party	<b>2%</b>	0%	<b>10%</b>	
Torts	Defendant	85%	85%	87%	
	Plaintiff	14%	14%	12%	
	No Moving Party	1%	1%	1%	
Employment Discrimination	Defendant	90%	90%	91%	
	Plaintiff	9%	9%	8%	
	No Moving Party	1%	1%	0%	
Other Civil Rights	Defendant	83%	81%	84%	
	Plaintiff	16%	17%	16%	
	No Moving Party	1%	2%	1%	
Other	Defendant	58%	57%	62%	
	Plaintiff	41%	40%	36%	
	No Moving Party	1%	3%	2%	

Table 2: Type of Summary Judgment Motion

Motions in:		Local Rule Requires Stipulated Facts and Response by:			Total Motions
		Movant & Respondent	Movant Only	Not in Local Rule	
All Cases	Summary Judgment	92%	87%	89%	34816
	Partial Summary Judgment	8%	12%	11%	4089
	Rule 54 Motion	0%	1%	1%	215
Contracts	Summary Judgment	88%	82%	86%	
	Partial Summary Judgment	12%	18%	14%	
	Rule 54 Motion	1%	1%	1%	
Torts	Summary Judgment	90%	84%	86%	
	Partial Summary Judgment	10%	15%	13%	
	Rule 54 Motion	0%	1%	1%	
Employment Discrimination	Summary Judgment	96%	94%	96%	
	Partial Summary Judgment	4%	6%	4%	
	Rule 54 Motion	0%	0%	0%	
Other Civil Rights	Summary Judgment	94%	92%	93%	
	Partial Summary Judgment	5%	8%	7%	
	Rule 54 Motion	0%	0%	1%	
Other	Summary Judgment	90%	85%	87%	
	Partial Summary Judgment	9%	14%	13%	
	Rule 54 Motion	1%	1%	1%	

Table 3: Action on Summary Judgment Motion

Motion in:		Local Rule Requires Stipulated Facts and Response by:			Total Motions
		Movant & Respondent	Movant Only	Not in Local Rule	
All Cases	Denied	17%	15%	16%	6208
	Grant Whole or Part	31%	25%	27%	10748
	Adopt Mag R&R	0%	0%	0%	7
	Moot	2%	2%	2%	778
	No Disposition	50%	58%	55%	21379
Contacts	Denied	17%	17%	17%	
	Grant Whole or Part	24%	21%	20%	
	Adopt Mag R&R	0%	0%	0%	
	Moot	3%	2%	2%	
	No Disposition	56%	60%	61%	
Torts	Denied	17%	17%	17%	
	Grant Whole or Part	25%	22%	25%	
	Adopt Mag R&R	0%	0%	0%	
	Moot	2%	3%	2%	
	No Disposition	55%	59%	56%	
Employment Discrimination	Denied	13%	12%	11%	
	Grant Whole or Part	<b>46%</b>	37%	<b>35%</b>	
	Adopt Mag R&R	0%			
	Moot	2%	1%	1%	
	No Disposition	<b>39%</b>	<b>49%</b>	<b>53%</b>	
Other Civil Rights	Denied	15%	10%	14%	
	Grant Whole or Part	34%	28%	33%	
	Adopt Mag R&R	0%	0%	0%	
	Moot	2%	1%	3%	
	No Disposition	<b>49%</b>	<b>60%</b>	50%	
Other	Denied	20%	18%	19%	
	Grant Whole or Part	26%	22%	25%	
	Adopt Mag R&R	0%	0%	0%	
	Moot	3%	2%	2%	
	No Disposition	<b>51%</b>	<b>59%</b>	54%	

Table 4: Outcome of Summary Judgment Motions Granted or Denied

Motions in:		Local Rule Requires Stipulated Facts and Response by:			Total Motions
		Movant & Respondent	Movant Only	Not in Local Rule	
All Cases	Denied	35%	38%	37%	6208
	Grant Whole or Part	65%	62%	63%	10748
Contracts	Denied	42%	46%	45%	
	Grant Whole or Part	58%	54%	55%	
Torts	Denied	41%	43%	41%	
	Grant Whole or Part	59%	57%	59%	
Employment Discrimination	Denied	22%	25%	24%	
	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%	43%	
	Grant Whole or Part	56%	55%	57%	

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

Motions in:	Local Rule Requires Stipulated Facts by:			Total Motions
	Movant & Respondent	Movant Only	Not in Local Rule	
All Cases	<b>23</b>	<b>17</b>	<b>14</b>	16,427
Contracts	<b>23</b>	<b>16</b>	<b>14</b>	
Torts	<b>23</b>	<b>13</b>	<b>12</b>	
Employment Discrimination	<b>26</b>	<b>17</b>	<b>16</b>	
Other Civil Rights	<b>21</b>	19	<b>14</b>	
Other	<b>23</b>	18	<b>15</b>	

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

	Local Rule Requires Stipulated Facts by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	85%	82%	81%	98099
At Least One Motion Filed	15%	18%	19%	20697
Types of Cases with at Least One Motion				
Contracts	15%	19%	20%	
Torts	13%	13%	12%	
Employment Discrim.	35%	35%	38%	
Other Civil Rights	<b>19%</b>	26%	<b>28%</b>	
Other	9%	12%	13%	

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

	Local Rule Requires Stipulated Facts by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	87%	85%	84%	101170
At Least One Motion	13%	15%	16%	17626
Types of Cases with at Least one Motion by a Defendant				
Contracts	10%	14%	14%	
Torts	11%	12%	11%	
Employment Discrim.	34%	34%	38%	
Other Civil Rights	<b>18%</b>	23%	<b>26%</b>	
Other	7%	9%	10%	

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

	Local Rule Requires Stipulated Facts by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	95%	94%	94%	111966
At Least One Motion	5%	6%	6%	6830
Types of Cases with at Least one Motion by a Plaintiff				
Contracts	9%	11%	11%	
Torts	2%	2%	2%	
Employment Discrimin.	3%	4%	3%	
Other Civil Rights	4%	6%	6%	
Other	5%	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 Stipulated Facts by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	97%	96%	97%	114915
At Least One Motion	3%	4%	3%	3881
Types of Cases with at Least one Motion by a Plaintiff and One by a Defendant				
Contracts	5%	6%	6%	
Torts	1%	1%	1%	
Employment Discrim.	3%	3%	2%	
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 Stipulated Facts by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	94%	95%	94%	112,157
At Least One Motion	6%	5%	6%	6,639
Types of Cases with at Least one Motion Granted in Whole				
Contracts	5%	5%	5%	
Torts	4%	3%	3%	
Employment Discrimin.	17%	13%	13%	
Other Civil Rights	8%	9%	9%	
Other	3%	3%	4%	

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

	Local Rule Requires Stipulated Facts by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
No Motions	93%	94%	93%	110,502
At Least One Motion	7%	6%	7%	8,294
Types of Cases with at Least one Motion Granted in Whole or Part				
Contracts	6%	6%	7%	
Torts	5%	4%	4%	
Employment Discrimin.	21%	16%	17%	
Other Civil Rights	10%	11%	12%	
Other	4%	4%	5%	

Table 12: Cases with Terminated by Summary Judgment

	Local Rule Requires Stipulated Facts by:			Total Cases
	Movant & Respondent	Movant Only	Neither Party	
All Cases				
Not Terminated by Summary Judgment	93%	94%	93%	114,410
Terminated by Summary Judgment	4%	4%	3%	4,386
Types of Cases Terminated by Summary Judgment				
Contracts	3%	3%	3%	
Torts	2%	2%	1%	
Employment Discrimin.	<b>14%</b>	10%	<b>9%</b>	
Other Civil Rights	6%	6%	6%	
Other	2%	2%	3%	

Note: Court records include no specific designation of cases terminated by a grant of a summary judgment motion. This designation was constructed for this table by identifying those cases that court records indicate were resolved through a dispositive motion before trial and included at least one summary judgment motion that was granted in whole.

### Appendix A: Classification of Individual Districts

Local Rule Requires Fact-by-Fact Stipulation And Response	Local Rule Requires Fact-by-Fact Stipulation 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	Rhode Island
	New York - Western	South Carolina
	North Carolina - Middle	Tennessee - Eastern
	Oklahoma - Eastern	Tennessee - Western
	Oklahoma - Northern	Texas - Northern
	Oklahoma - Western	Texas - Southern
	Pennsylvania – Eastern*	Texas - Western
	Texas - Eastern	Virginia - Western
	Utah	Washington - Eastern
	Vermont	Washington - Western
	Virgin Islands*	West Virginia - Northern
	Virginia - Eastern	West Virginia - Southern
	Wyoming	Wisconsin - Eastern

\* Districts excluded from the reported analyses. No information on local rules for Wisconsin – Western and Northern Marianas Islands was found, and those districts also were excluded from the analysis.

