

ATTACHMENT¹

Arizona Rules of Civil Procedure

Rule 56. Summary Judgment

Rule 56(a). ~~For claimant~~ Motion for Summary Judgment or Partial Summary Judgment.

~~A party seeking to recover upon a claim, counterclaim, or cross claim or to obtain a declaratory judgment may, after the expiration of twenty days from the service of process upon the adverse party, but no sooner than the date on which the answer is due, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof. Any such motion shall be filed no later than 90 days prior to the date set for trial.~~

A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the request.

STATE BAR COMMITTEE NOTE

2005 Amendment

[No change in text.]

Rule 56(b). ~~For defending party~~ Time to File a Motion.

~~A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof. Any such motion shall be filed no later than 90 days prior to the date set for trial.~~

(1) A claimant may move for summary judgment with or without supporting affidavits:

(A) after the expiration of 20 days from the service of process upon the adverse party, but no sooner than the date on which the answer is due, or

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

(B) after service of a Rule 12(b)(6) motion to dismiss or a motion for summary judgment by the adverse party.

(2) Any other party may move for summary judgment, with or without supporting affidavits, at any time after the action is commenced.

(3) A motion by any party shall be filed no later than the dispositive motion deadline set by the court or local rule, or in the absence of such a deadline, 90 days before the date set for trial.

STATE BAR COMMITTEE NOTE

2005 Amendment

[No change in text.]

Rule 56(c). ~~Motion and proceedings thereon~~ Motion and Proceedings.

~~(1) Upon timely request by any party, the court shall set a time for hearing of the motion. If no request is made, the court may, in its discretion, set a time for such hearing. A party opposing the motion must file affidavits, memoranda or both within 30 days after service of the motion. The moving party shall have 15 days thereafter in which to serve reply memoranda and affidavits. The foregoing time periods may be shortened or enlarged by the court or by agreement of the parties. The judgment sought shall be rendered forthwith if the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.~~

~~(2) Any party filing a motion for summary judgment shall set forth, separately from the memorandum of law, the specific facts relied upon in support of the motion. The facts shall be stated in concise, numbered paragraphs. As to each fact, the statement shall refer to the specific portion of the record where the fact may be found. Any party opposing a motion for summary judgment shall file a statement in the form prescribed by this Rule, specifying those paragraphs in the moving party's statement of facts which are disputed, and also setting forth those facts which establish a genuine issue of material fact or otherwise preclude summary judgment in favor of the moving party. In the alternative, the movant and the party opposing the motion shall file a joint statement in the form prescribed by this Rule, setting forth those material facts as to which there is no genuine dispute. The joint statement may provide that any stipulation of fact is not intended to be binding for any purpose other than the motion for summary judgment.~~

(1) Upon timely request by any party, the court shall set a time for hearing on the motion, provided, however, that the court need not conduct a hearing if it determines that

the motion should be denied or if the motion is uncontested. If no request for a hearing is made, the court may, in its discretion, set a time for such hearing.

(2) A party opposing the motion must file its response and any supporting materials within 30 days after service of the motion. The moving party shall have 15 days after service of the response in which to serve a reply memorandum and any supporting materials. These time periods may be shortened or enlarged by a filed stipulation of the parties or by court order; provided, however, that court approval is required for any stipulated extensions to a briefing schedule that would purport to make a reply or other memorandum due less than five days before a hearing date previously set by the court, or would require postponement of a scheduled hearing date or other modifications to an existing case scheduling order.

(3) Any party filing a motion for summary judgment shall set forth, in a statement separate from the memorandum of law, the specific facts relied upon in support of the motion. The facts shall be stated in concise, numbered paragraphs. As to each fact, the statement shall refer to the specific portion of the record where the fact may be found. Any party opposing a motion for summary judgment shall file a statement in the form prescribed by this Rule, specifying those paragraphs in the moving party's statement of facts which are disputed, and also setting forth those facts which establish a genuine issue of material fact or otherwise preclude summary judgment in favor of the moving party. In the alternative, the movant and the party opposing the motion shall file a joint statement in the form prescribed by this Rule, setting forth those material facts as to which there is no genuine dispute. The joint statement may provide that any stipulation of fact is not intended to be binding for any purpose other than the motion for summary judgment.

STATE BAR COMMITTEE NOTE

2005 Amendment

[No change in text.]

STATE BAR COMMITTEE NOTE

1963 Amendment

[No change in text.]

2000 Amendment

[No change in text.]

Rule 56(d). ~~Case not fully adjudicated on motion~~ Declining to Grant All the Requested Relief.

~~If on motion under this Rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.~~

If the court does not grant all the relief requested by the motion, or if on independent consideration pursuant to section (h) of this Rule judgment is not rendered on the whole case, the court may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

Rule 56(e). Form of Affidavits and Depositions; Further Testimony; Defense Required.

~~Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. Only a written transcript of a deposition or portion thereof and not any electronic recording thereof may be submitted in support of or opposition to a motion for summary judgment except where a party contends that the written transcript is erroneous. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.~~

(1) An affidavit used to support or oppose a motion shall be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a properly authenticated copy shall be attached to or served with the affidavit.

(2) Affidavits may be supplemented or opposed by depositions, answers to interrogatories, additional affidavits or other materials that would be admissible in evidence.

(3) If all or part of a deposition is submitted in support of or in opposition to a motion for summary judgment, the offering party must submit a written transcript of the testimony. An electronic recording of the testimony may be submitted only if the offering party contends that the written transcript is erroneous.

(4) When a motion for summary judgment is made and supported as provided in this Rule, an opposing party may not rely merely on allegations or denials of its own pleading; rather, its response must, by affidavits or as otherwise provided in this Rule, set forth specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, if appropriate, shall be entered against that party.

STATE BAR COMMITTEE NOTE

1963 Amendment

[No change in text.]

Rule 56(f). When affidavits are unavailable When Facts are Unavailable to the Nonmovant; Request for Rule 56(f) Relief and Expedited Hearing.

~~Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.~~

(1) If a party opposing summary judgment files a request for relief and expedited hearing under this Rule, along with a supporting affidavit showing that, for specified reasons, it cannot present evidence essential to justify its opposition, the court may, after holding a hearing:

(A) defer considering the motion for summary judgment and allow time to obtain affidavits or to take discovery before a response to the motion is required;

(B) deny the requested relief and require a response to the motion for summary judgment by a date certain; or

(C) issue any other appropriate order.

(2) Unless otherwise ordered by the court, the filing of a request for relief and affidavit under this section does not by itself extend the date by which the party opposing summary judgment must file a memorandum and separate statement of facts as prescribed in section (c) of this Rule.

(3) No request for relief will be considered and no hearing will be scheduled unless the request for relief is accompanied by a separate statement of counsel seeking the relief certifying that, after personal consultation and good-faith efforts to do so, the parties have been unable to satisfactorily resolve the matter.

(4) The party moving for summary judgment is not required to file a response to the request for relief or affidavit unless otherwise ordered by the court. If such a party elects to file a response, it must be filed no later than two days before the hearing scheduled to consider the requested relief.

(5) Except as provided in subsection (3), the court shall hold an expedited hearing concerning the requested relief, in person or by telephone, within seven days after the filing of a request for hearing by the party seeking the relief. If the court's calendar does not allow a hearing within seven days, a later date may be set.

Rule 56(g). Affidavits mMade in bBad fFfaith.

~~Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.~~

If satisfied that an affidavit under this Rule is submitted in bad faith or solely for delay, the court may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result, or may impose other appropriate sanctions. The court shall allow notice and a reasonable time to respond before imposing any sanctions pursuant to this section.

Rule 56(h). Judgment Independent of the Motion or Based on Materials Not Cited in the Motion.

After giving notice and a reasonable time to respond, the court may:

- (1) grant summary judgment for a nonmovant;
- (2) grant the motion on grounds not raised by a party; or
- (3) consider summary judgment after identifying for the parties material facts that may not be genuinely in dispute.

Comment to 2012 Amendments to Rule 56

Rule 56 is revised in several respects. The language of some sections is updated and simplified to conform to the 2010 restyling of Rule 56 of the Federal Rules of Civil Procedure, with no intended substantive change to Arizona's rule or summary judgment procedure. These revisions are selective and reflect a determination that fundamental differences between Arizona's rule and the counterpart federal rule weigh against wholesale adoption of the federal rule amendments. In addition, a number of other changes have been made to improve or clarify Arizona's summary judgment practice.

Section (a). The standard for granting summary judgment has been moved from section (c) to section (a). In addition, the language of new section (a) has been modified to conform to the language of Federal Rule of Civil Procedure 56(a). These changes are stylistic and are not intended to alter the substantive requirements for obtaining summary judgment as developed in Arizona case law, including *Orme School v. Reeves*, 166 Ariz. 301, 802 P.2d 1000 (1990), and its progeny. Likewise, the new language, which recognizes the availability of partial summary judgment, is not intended to change existing Arizona law.

Section (b). Section (b) incorporates aspects of former sections (a) and (b), governing when a claimant and defending party, respectively, may move for summary judgment. Former section (a) restricted a claimant's ability to move for summary judgment until after the answer was due or the adverse party moved for summary judgment, while section (b) allowed a defending party to move for summary judgment at any time. The amendment additionally authorizes a claimant to move for summary judgment after an opposing party moves to dismiss under Rule 12(b)(6). Subsection (3) is modified to clarify that any dispositive motion cut-off established by the court will control over the 90-day period provided in the rule.

Section (c). Section (c)(1) is modified to clarify certain hearing and briefing requirements. The standard for granting summary judgment has been moved to section (a).

Section (d). Section (d) is modified to conform to the stylistic revisions to Federal Rule of Civil Procedure 56(g), which simplified the language of this section and made it more concise. No substantive change is intended. Section (d) cross-references new

section (h), which allows the court to grant summary judgment on independent consideration in appropriate circumstances.

Section (e). The first sentence of section (e) is modified to conform to the stylistic revisions to similar language contained in Federal Rule of Civil Procedure 56(c)(4). Other stylistic revisions were made to the remainder of the section to make it easier to understand. No substantive change is intended.

Section (f). Section (f) is modified in several significant respects. Subsection (1) has been modified to set forth a uniform procedure requiring the filing of a request for Rule 56(f) relief and expedited hearing, along with a supporting Rule 56(f) affidavit. Subsection (1) also requires a hearing before relief can be granted. Subsection (2) clarifies that absent a court order extending the time for response, filing a request for Rule 56(f) relief does not extend the date for opposing a motion for summary judgment. Subsection (3), modeled after Arizona Rule of Civil Procedure 26(g), requires a party seeking relief to attempt to resolve the issue by good-faith personal consultation with the opposing party and to submit a separate certification regarding such consultation with its Rule 56(f) affidavit. Subsection (4) provides that the party moving for summary judgment is generally not required to file a response to the request for Rule 56(f) relief; but, if it chooses to do so, it must file the response within two days of the scheduled hearing. Finally, subsection (5) adopts an expedited hearing procedure, requiring courts to hold a telephonic or in-person hearing within seven days after any hearing request filed by the party seeking the relief. These procedures are intended to facilitate resolution of section (f) disputes and minimize the need for court intervention. Section (f) affidavits must continue to satisfy the specificity requirements set forth in existing Arizona case law. *E.g., Simon v. Safeway, Inc.*, 217 Ariz. 330, 173 P.3d 1031 (Ct. App. 2007).

Section (g). Section (g) is modified to conform to the stylistic revisions to counterpart Federal Rule of Civil Procedure 56(h), which simplified the language of this section and made it more concise. Additionally, section (g)'s reference to the sanction of "contempt" has been eliminated. The rule allows "other appropriate sanctions," leaving it to the court to determine whether a sanction of contempt is warranted by the applicable substantive law. The language of section (g) also has been modified to make clear that notice and an opportunity to respond are required before the court may impose any sanctions.

Section (h). New section (h) is based on counterpart Federal Rule of Civil Procedure 56(f). The section recognizes the court's inherent authority to dispose of matters on summary judgment on the court's own initiative, where appropriate. The section (h) procedure strikes a balance between the court's inherent power and the rights of litigants, by requiring notice and a hearing before the court may grant summary

judgment for a nonmovant, grant a motion on grounds not raised by a party, or otherwise consider summary judgment on the court's own initiative.