



Scott
Kreider/INSD/07/USCOURTS

10/07/2008 04:38 PM

To Rules_Comments@ao.uscourts.gov

cc

bcc

Subject Comments on proposed changes FRCP 56

I'm not convinced that the proposed changes will help streamline the summary judgment process or assist courts with the truth-seeking process. In my experience, cases where parties have submitted their statements of fact in enumerated paragraph format often lead to more litigation over what is and is not disputed, resulting in more pages for the court to read than are probably necessary.

If a separate filing of the statement of facts is going to be used, I suggest that a joint statement with the opposing party's responses to each alleged fact be used to assist the court with comprehension and (hopefully) to cut down on the number of documents/briefs that are filed, particularly the sur-replies and responses to sur-replies that are generated in some cases.

Finally, I think some consideration should be given to citation of the evidence in the argument section of a summary judgment memorandum. Many practitioners will cite to their Statement of Material Facts (often abbreviated "SOMF," *e.g.*, "SOMF para. ___") in the argument section rather than citing directly to their evidence (such as "Smith Dep. at ___"). Such a practice is often annoying and time consuming, particularly in more complex cases or in those cases with oversized briefs, because it requires the reader to flip back to the party's SOMF to see what the asserted fact was.