

UNITED STATES DISTRICT COURT
Western District of North Carolina
Charles R. Jonas Building
401 West Trade Street, Room 230
Charlotte, North Carolina 28202

08-CV-030

Chambers of
Graham C. Mullen
Senior U.S. District Judge

Phone# 704-350-7450

October 21, 2008

Mr. Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the U.S. Courts
Washington, D.C. 20544

RE: Proposed Amendment to F.R.Civ.P. 56(c)

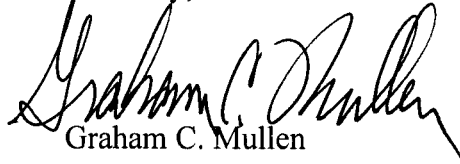
Dear Mr. McCabe:

This letter is submitted as comment to the proposal to amend Rule 56(c) of the Federal Rules of Civil Procedure. I am familiar with the comments of Judge Jack Sedwick, Chief Judge of the District of Alaska, and I echo and support them wholeheartedly. The proposed rule change sounds good, but I greatly fear Judge Sedwick's experience with the local Arizona rule accurately forecasts the practical impact on all districts.

In my own experience, there has been little difficulty with summary judgment practice. The lawyers have all but uniformly cited to appropriate parts of the records in their briefs. Admittedly there have been a very few times lawyers have been sloppy, but when that has happened (I literally cannot recall the last time that occurred) it's simple to order them to refile and properly cite to the record. In essence, we haven't experienced the types of problems the proposed rule would attempt to "fix" and the required procedures proposed for Rule 56(c) in my opinion will cause significant increases in legal costs, increased delay, expenditure of more judiciary resources, and in general, a great deal of costly, unnecessary wheel spinning.

Please reject the addition of proposed Rule 56(c).

Sincerely,


Graham C. Mullen