

PRACTITIONERS' COMMENT ON RULE 56(c)

08-CV-072

December 1, 2008

By Email

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure of the
Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
One Columbus Circle NE
Washington, DC 20544

Re: Proposed Amendment of Federal Rule of Civil Procedure 56

Dear Mr. McCabe:

The undersigned are all experienced federal practitioners, including plaintiffs' and defense lawyers; practitioners from large and small firms; leaders of law firms, litigation departments and litigation practice groups; and leaders in national, state, federal and local bar organizations. We write in response to the request of the Advisory Committee on the Federal Rules of Civil Procedure for comment on the proposed amendment to Rule 56. We address only Rule 56(c), and only one aspect of that provision.

We urge the Advisory Committee not to mandate the use of statements of undisputed fact ("SUF") as the default rule in connection with all summary judgment motions but, rather, to make the default rule that no SUF is required, permitting the judge, in any particular case, to require an SUF if he or she deems it appropriate.

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Committee on Rules of Practice and Procedure
December 1, 2008
Page 3

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Committee on Rules of Practice and Procedure

December 1, 2008

Page 4

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Committee on Rules of Practice and Procedure

December 1, 2008

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