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cc
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Subject Proposed Amendment to Fed. R Civ P. 56

08-CV-164

Dear Mr McCabe and Committee Members

As a Magistrate Judge in the District of Oregon since 1993, I strongly urge elimination of proposed Rule 56(c) which requires a separate statement of material facts

A Local Rule in the District of Oregon has required the filing of a Concise Statement of Material Facts since well before my appointment in 1993 Based on my experience routinely handling summary judgment motions in civil cases, I now always waive the filing of a Concise Statement of Material Facts In fact, due to widespread dissatisfaction among federal practitioners with our Local Rule, the court's Local Rules Committee, which is now in the process of amending the Local Rules, is considering the deletion of this particular rule unless your proposed amendment is adopted

Requiring the moving party to submit such a statement of material facts certainly does not assist the court By requiring a Concise Statement of Material Facts, the District of Oregon has seen no increase in the quality or decrease in the quantity of summary judgment motions Instead, the quantity has increased and the quality has declined In addition, the Concise Statement of Material Facts engenders more motion practice by both sides in the form of motions to strike all or a portion of the other's statement of facts or supporting materials This not only places an added expense on the parties, but also an added burden on the court's resources We already spend far more time on summary judgment motions than can be justified by the result, without also resolving motions to strike

I also fail to see any benefit to the parties Instead, requiring a separate statement of facts seems to simply increase the time and expense involved in filing a summary judgment motion, with no added benefit in streamlining the issues presented

Other reasons not to mandate the filing of a separate statement of facts are.

1 Because the moving party cannot know in advance what facts the opposing party will dispute, it is likely to create a longer statement of facts than is actually necessary The response then frequently includes objections to the proffered facts and often adds more purportedly undisputed facts to which the moving party must then respond These competing fact statements become duplicative, time-consuming, confusing, disputes over semantics, and counterproductive to an understanding of the issues This is especially true in employment disputes (a large source of summary judgment motions) where the parties rely primarily on reasonable inferences from a synthesis of facts.

2 Although our Local Rule limits a Concise Statement of Material Facts to five pages, the parties routinely file motions to expand the number of pages, usually due to the number of claims and/or legal issues presented

3 The separate statement of facts usually duplicate the fact section in the legal memoranda which is a waste of time and money. Since the legal memoranda provide a narrative context to the facts, they are much more useful in identifying the fact issues than the Concise Statements of Material Facts

4 Instead of citing to the evidence, the legal memoranda cite to the Concise Statement of Material Facts, which in turn cites the underlying evidence As a result, the court must turn first to the Concise Statement of Material Facts, and then to the evidence cited in support of a material fact It would be much easier to turn directly from the legal memoranda to the supporting evidence

5 In administrative record review cases (such as ERISA cases) which are usually resolved on

cross-motions for summary judgment, there is no need at all for competing fact statements

Although the proposed amendment would allow the court to waive a separate statement of facts in a particular case, I much prefer that the default position in Rule 56 NOT mandate a separate statement of facts. Because the laboratory of the District of Oregon has shown it to be a failed experiment, a separate statement of facts should be the exception, not the rule

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