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December 23, 2008

08-CV-114

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

Re. Proposed amendment to Federal Rule of Civil Procedure 56(c)

Dear Mr. McCabe

I am the current President of the Alaska Chapter of the Federal Bar Association. I write in that capacity and on behalf of the Chapter to express our opposition to the proposed amendment to Federal Rule of Civil Procedure 56(c) by which separate statements of fact would be required to be filed to support motions for summary judgment.

The Alaska Chapter of the Federal Bar Association believes that current summary judgment procedures are adequate and do not require amendment. The proposed amendment will needlessly increase fees and costs as it will take more time to draft, review, and file motion papers. It will also take more time to analyze responses filed by opposing parties. Current practice provides for a streamlined filing that incorporates argument with relevant facts in one filing. This procedure works. We question the need for change.

We also believe that there is some anecdotal evidence suggesting that it may take more time for courts to analyze two separate filings filed on each party's behalf, but we would defer to judicial officers to address the impact the proposed rule may have on their respective courts. However, we know that the District Judges in the District of Alaska oppose the proposed amendment. See Letter from Chief Judge Sedwick, October 15, 2008. We also know that the District Judges in the Northern District of California have written to Judge Rosenthal and Judge Kravitz opposing the proposed amendment. See Memorandum from Chief Judge Wilken, December 11, 2008. We believe that the views of the Northern District of California are especially

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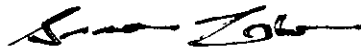
persuasive because that district used to require filing a separate statement of facts to support summary judgment motion papers. The Northern District of California ultimately abandoned the practice because it was too costly, inefficient, and time-consuming. See Memorandum from Chief Judge Wilken, December 11, 2008 at pp. 1-2. We assume that there are Judges in other districts who would agree with the views expressed by Chief Judge Sedwick and Chief Judge Wilkens

The proposed amendment will also create differences between state and federal practice in those states (such as Alaska) where separate statements are not required.

We believe that District Courts that want to require separate statements of fact may adopt local rules in accordance with Rule 83. That would allow the Judges in each district to adopt the procedural rules that they determine are best suited to govern practice in their respective districts

The Alaska Chapter of the Federal Bar Association therefore respectfully requests that the Committee decline to adopt the proposed amendment. Thank you for considering our views

Very truly yours,



Gregory S. Fisher