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From: "Malinda Gaul" <malindag@swbell.net>  
Date: 01/07/2009 08:42PM

08-CV-118

Subject: Re: Memo to Witnesses Testifying at Civil Rules Hearing - January 14, 2009, San Antonio, TX

To: John K. Rabiej

This is in response to your memorandum to the witnesses testifying at the Civil Rules Hearing scheduled for January 14, 2009, in San Antonio, Texas. My testimony will be as follows:

My name is Malinda Gaul and I practice with the Law Firm of Gaul and Dumont. For almost twenty-five years, I have practiced in the Federal Courts in San Antonio, Texas, primarily representing employees in employment disputes. I would like to make a very brief comment on the proposed procedures identified as FRCP 56(c). The Committee states it does not intend to make any changes in the standard for summary judgment nor in the assignment of burdens and submits its proposals in an attempt to increase good motions and deter bad motions. I am in support of the proposed procedures with the following additions: (1) Since the moving party must only present material facts that cannot be genuinely disputed and entitle the movant to summary judgment, if the non-moving party demonstrates a dispute as to *any* fact claimed to be material by the moving party, then the Court must deny the motion for summary judgment. (2) The moving party must support its motion by undisputed material facts, without inferences. While, the non-moving party may support its response by undisputed and disputed facts, as well as any inferences drawn from the evidence.

Finally, I encourage the Committee to add a provision for mandatory oral arguments. In my area of practice, the filing of motions for summary judgment has become routine. I cannot remember the last time I participated in a case in which the employer failed to file a motion for summary judgment. In employment disputes, summary judgments are granted in far greater numbers than they are denied. Many of these decisions are overturned at the appellate level, but often the employee is unable to afford an appeal. Therefore, I encourage the addition of a requirement for the Courts to conduct oral arguments on all motions.\

Thank you for the opportunity to address the Committee.

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