

SUMMARY JUDGMENT PRACTICE & PROCEDURES

*Judge G. Rand Beacham
Fifth District Court
Revised February 29, 2008*

I. GOVERNING RULES

- A. Rule 7, Utah Rules of Civil Procedure (last amended 11-1-05); few annotations, but some appellate court decisions re former Rule 4-501 (repealed 11-1-03) would apply.
- B. Rule 56, Utah Rules of Civil Procedure (last amended 11-1-04); 18 pages of annotations.

II. MOVING PARTY

- A. Burdens of proof and persuasion [Rule 56 (c)]:
 - 1. “that there is no genuine issue as to any material fact and”
 - 2. “that the moving party is entitled to a judgment as a matter of law.”
- B. Motion: Must be in writing and “state succinctly and with particularity the relief sought and the grounds for the relief sought.” [Rule 7(b)]
- C. Supporting Memorandum:
 - 1. Use the correct title. [see Rule 7(c)(1)]
 - 2. “Statement of Material Facts” [Rule 7(c)(3)(A)]: The most critical part of the memo; the foundation for summary judgment.
 - a. Must be “a statement of material facts as to which the moving party contends no genuine issue exists.”
 - b. Each fact must be “separately stated and numbered;” narrative paragraphs do not comply.
 - c. Each fact must be “supported by citation to relevant materials such as affidavits or discovery materials.”
 - d. The opposing party will have no obligation to respond to anything that you do not properly state and support with admissible evidence.

3. Argument and Analysis:
 - a. Memorandum must not exceed 10 pages of argument, without leave of the court. [Rule 7(c)(2)]
 - b. If permitted to submit more than 10 pages of argument, must include “a table of contents and a table of authorities with page references.” [Rule 7(c)(3)(C)]
 - c. Make concise arguments with references to numbered statements of fact and citations to relevant authorities; do not include new facts in your argument.
4. May attach a proposed order. [Rule 7(c)(1)]

D. Affidavits:

1. Since 2004 amendments, may file motion and memorandum with or without affidavits. [Rule 56(a)]
- 2.. May also refer to pleadings, depositions, answers to interrogatories and admissions which are “on file” as part of the record. [Rule 56(c) and (e)]
3. Documents cited in memorandum should be attached “as exhibits” to the memorandum. [Rule 7(c)(3)(D)]
4. Affidavits used (a) “shall be made on personal knowledge,” (b) “shall set forth such facts as would be admissible in evidence,” and (c) “shall show affirmatively that the affiant is competent to testify to the matters stated therein.” [Rule 56(e)] The same standard should apply to every evidentiary source cited.
5. Papers attached to affidavit must be “sworn or certified.” [Rule 56(e)] Do not attach voluminous exhibits or exhibits without proper evidentiary foundation in the affidavit.

E. Reply Memorandum:

1. Moving party may file reply within 5 days after service of opposing memorandum. [Rule 7(c)(1)]
2. Limited to 5 pages of argument, unless granted leave of court. [Rule 7(c)(2)]
3. Reply memorandum “shall be limited to rebuttal of matters raised in the memorandum in opposition,” i.e., not just repetition or getting the last word. [Rule 7(c)(1)] Show that there are no genuine issues of material fact, and rebut opposing arguments.

4. If the opposing party has raised genuine issues (even if the opposing affidavits contain lies) and has opposed your motion in proper form, simply withdraw it.
- F. “No other memoranda [from moving party] will be considered without leave of court.” [Rule 7(c)(1)]

III. OPPOSING PARTY

A. Burdens of proof and persuasion [cf. Rule 56 (c)]:

1. “that there [are] genuine issue[s] as to [one or more] material fact[s]” or
2. “that the moving party is [not] entitled to judgment as a matter of law.”

B. Memorandum in Opposition:

1. Use the correct title. [see Rule 7(c)(1)]
2. Do not file meaningless extra papers like an “Objection” or “Opposition”. Also note that the rules do not use the term “cross-motion.”
3. File and serve memorandum within 10 days after service of the motion. Also note Rule 6(a) and (e) re timing.
4. Controvert the moving party’s “Statement of Material Facts.” [Rule 7(c)(3)B]
The most critical part of your opposition to the motion.
 - a. Must contain “a verbatim restatement of each of the moving party’s facts that is controverted.”
 - b. For each controverted fact, must “provide an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials.”
 - c. Do not simply file a different statement of facts! It is not the duty of the court to compare two versions of facts to determine whether there is an issue lurking somewhere.
 - d. May also include, however, “a separate statement of additional facts in dispute.” [But in dispute with what?] Must be in same form as for a supporting memorandum.
 - f. “Each fact set forth in the moving party’s memorandum is deemed admitted for the purpose of summary judgment unless controverted by the responding party.” [Rule 7(c)(3)(A)]

5. Argument and Analysis:
 - a. Same as for moving party, including same 10-page limit. [Rule 7(c)(2)]
 - b. If more than 10 pages of argument, must also contain “a table of contents and a table of authorities with page references.” [Rule 7(c)(3)(C)]
6. May attach a proposed order. [Rule 7(c)(1)]

C. Affidavits:

1. Not necessary, especially if moving party filed no affidavits or evidentiary materials or if moving party is not entitled to judgment as a matter of law.
 2. If the motion is properly supported, “an adverse party may not rest upon the mere allegations or denials of the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” [Rule 56(e)]
 3. Opposing party may use same sources of facts as moving party, subject to same standards.
 4. Documents cited in memorandum should be attached “as exhibits” to the memorandum. [Rule 7(c)(3)(D)]
 5. If unable to obtain affidavits or other sources of “facts essential to justify the party’s opposition” to the motion, opposing party must file affidavit(s) stating the reasons that opposing affidavits and other sources are unavailable and request denial of the motion or a continuance to obtain evidence. [Rule 56(f)]
- D. “No other memoranda [from opposing party] will be considered without leave of court.” [Rule 7(c)(1)]

IV. GETTING A DECISION

A. Request to Submit for Decision [Rule 7(d)]:

1. Either party may file “when briefing is complete.” [Does other party’s failure to file an opposing memorandum or a reply memorandum within the time limits of the rule mean “briefing is complete?”]
2. “Request to Submit for Decision” must state the dates of service of (i) the motion, (ii) the opposing memorandum, and (iii) the reply memorandum, and whether a hearing has been requested.

3. The motion will not go to the judge for decision unless a party files a Request to Submit for Decision.

B. Hearings [Rule 7(e)]:

1. Request for hearing may be made in the motion, a memorandum or the request to submit for decision. Must identify “Request for Hearing” in caption [but also make request in text].
2. Court must grant request for hearing on summary judgment motion unless it finds (a) that the motion or opposition is “frivolous” or (b) that the issue “has been authoritatively decided.”

C. Courtesy copies:

1. Practice varies by judge, so there is no rule. Check with judge assigned to case.
2. Remember: The district court’s “library” may be entirely online, and the judge may not have the time or the inclination to search for your cases. Include courtesy copies of important cases, especially those from other jurisdictions.