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RULE 56. SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof. A motion for summary judgment may not be filed until the expiration of 20 days from the commencement of the action.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, but within such time as not to delay the trial, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Proceedings on Motion. Any party opposing a motion may serve opposing affidavits as provided in Rule 7(c). Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by subdivision (h) show that there is no genuine issue as to any material fact set forth in those statements and that any party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly. In the event that a moving party's motion for summary judgment is denied in whole or in part, facts admitted by the parties solely for the purpose of the summary judgment motion shall have no preclusive effect at trial.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party's pleading, but must respond by affidavits or as otherwise provided in this rule, setting forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Statements of Material Fact.

In addition to the material required to be filed by Rule 7, a motion for summary judgment and opposition thereto shall be supported by statements of material facts as addressed in paragraphs (1), (2), (3), & (4) of this rule.

(1) Supporting Statement of Material Facts. A motion for summary judgment shall be supported by a separate, short, and concise statement of material facts, set forth in numbered paragraphs, as to which the moving party contends there is no genuine issue of material fact to be tried. Each fact asserted in the

statement shall be set forth in a separately numbered paragraph and shall be supported by a record citation as required by paragraph (4) of this rule.

(2) Opposing Statement. A party opposing a motion for summary judgment shall submit with its opposition a separate, short, and concise statement. The opposing statement shall admit, deny or qualify the facts by reference to each numbered paragraph of the moving party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by this rule. Each such statement shall begin with the designation "Admitted," "Denied," or "Qualified" (and, in the case of an admission, shall end with such designation). In addition to any denials or qualifications, the party opposing summary judgment may note any objections to factual assertions made by the moving party as set forth in paragraph (i). The opposing statement may contain in a separately titled section any additional facts which the party opposing summary judgment contends raise a disputed issue for trial, set forth in separate numbered paragraphs and supported by a record citation as required by paragraph (4) of this rule.

(3) Reply Statement of Material Facts. A party replying to the opposition to a motion for summary judgment shall submit with its reply a separate, short, and concise response limited to the additional facts submitted by the opposing party and any objections to denials or qualifications as set forth in paragraph (i). The reply statement shall admit, deny or qualify such additional facts by reference to the numbered paragraphs of the opposing party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by paragraph (4) of this rule. Each reply statement shall begin with the designation "Admitted," "Denied," or "Qualified" (and, in the case of an admission, shall end with such designation).

(4) Statement of Facts Deemed Admitted Unless Properly Controverted; Specific Record of Citations Required. Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted. An assertion of fact set forth in a statement of material facts shall be followed by a citation to the specific page or paragraph of identified record material supporting the assertion. The court may disregard any statement of fact not supported by a specific citation to record material properly considered on summary judgment. The court shall have no independent duty to search or consider any part of the record not specifically referenced in the parties' separate statement of facts.

(i) Motions to Strike Not Permitted.

(1) Motions to strike factual assertions, denials, or qualifications contained in any statement of material facts filed pursuant to this rule are not permitted. If a party contends that the court should not consider a factual assertion, denial, or qualification, the party may set forth an objection in either its opposing statement or in its reply statement and shall include a brief statement of the reason(s) for the objection and any supporting authority or record citations.

(2) A party moving for summary judgment may respond in its reply statement to any objections made by the party opposing summary judgment. If the moving party objects in its reply statement to any factual assertion, denial, or qualification made by the opposing party, the party opposing summary judgment may file a response within 7 days of the filing of the reply statement. Such a response shall be strictly limited to a brief statement of the reason(s) why the factual assertion should be considered and any supporting authority or record citations.

(j) Foreclosure Actions. No summary judgment shall be entered in a foreclosure action filed pursuant to Title 14, Chapter 713 of the Maine Revised Statutes except after review by the court and determination that (i) the service and notice requirements of 14 M.R.S. § 6111 and these rules have been strictly performed; (ii) the plaintiff has properly certified proof of ownership of the mortgage note and produced evidence of the mortgage note, the mortgage, and all assignments and endorsements of the mortgage note and the mortgage; and (iii) mediation, when required, has been completed or has been waived or the defendant, after proper service and notice, has failed to appear or respond and has been defaulted or is subject to default. In actions in which mediation is mandatory, has not been waived, and the defendant has appeared, the defendant's opposition pursuant to Rule 56(c) to a motion for summary judgment shall not be due any sooner than ten (10) days following the filing of the mediator's report.

Advisory Note – November 2011

The amendment to Rule 56(d) establishes that a fact admitted or not opposed by any party solely for purposes of summary judgment is not deemed admitted for any other purpose if the motion for summary judgment is denied. The purpose of the amendment is to make it unnecessary to controvert facts for purposes of summary judgment solely because of concern about the possible preclusive effect

of any admission of fact at trial or in other subsequent proceedings. The rule amendment does not preclude the issuance of a partial summary judgment order.

Advisory Note
August 2009

This amendment to Rule 56[j] is designed to assure that, prior to entry of any summary judgment in a foreclosure action, the trial court reviews the record and determines that, as required by law, the notice and service requirements of law have been complied with and any available mediation has been completed or has been waived. In addition, when mediation is mandatory and the defendant has appeared but not waived mediation, this amendment sets the deadline for opposing a motion for summary judgment ten days following the filing of the mediator's report. For some counties, foreclosure mediation may not be available or required until January 1, 2010.

Advisory Committee Note
April 2, 2007

The purpose of these amendments is to make Rule 56 practice more uniform and efficient and, in particular, to eliminate the practice of filing motions to strike in order to raise or preserve objections to factual assertions contained in statements of material facts filed in connection with motions for summary judgment. This practice has led to a situation where motions for summary judgment, which are often complicated enough in their own right, have spawned multiple subsidiary motions and needless additional filings in the form of motions to strike and objections thereto.

The second major change is that a new last sentence in subsection (d) explicitly states that facts admitted for summary judgment shall have no preclusive effect at trial upon any third party who did not participate in the summary judgment proceeding.

There is a related concern among practitioners that a court may not grant partial summary judgment but will instead determine factual issues at the summary judgment stage with preclusive effect at trial. The Committee did not amend the rule to address this concern for two reasons. First, the existing rule makes clear that such a finding under subdivision (d) occurs only after the court "by interrogating counsel" determines those facts "without substantial controversy," a

finding that could not be made if counsel in this process indicates that facts are disputed. Second, the amended rule states that there is no such preclusive effect on third parties for facts admitted on summary judgment. The Committee also observed that the procedure of subdivision (d) appears to be used rarely if at all. Until real problems arise, there seems to be little need to amend the rule to eliminate a process that could potentially be useful if properly employed.

The rule continues to provide that a party opposing summary judgment must admit, deny, or qualify each statement in the moving party's statement of material facts. Because motions to strike assertions contained in statements of material fact have been eliminated, the amended rule provides that parties may also object to factual assertions, denials, or qualifications in their statements of material facts. The grounds for such objections are specified in subparagraph (i).

The reply statement previously was limited only to the so-called additional facts in the opposing statement of material facts, but as part of this amendment the reply statement may now also be used to object to denials or qualifications in the Rule 56(h)(2) statement submitted by the party opposing summary judgment. The objection should be limited to a short and concise statement of the basis for the objection with a statement of authority or a record citation. The objection, however, is not an excuse for not responding to the factual statement. The statement should still be admitted, denied or qualified subject to the objection.

These amendments also provide that if objections are raised for the first time in a reply statement of material facts, the opposing party may file a response to the objections within seven days. Such response, however, is to be strictly limited to a brief statement of why the objection is invalid along with any supporting authority or record citations.

In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts. In short, the statements of fact should be precisely what the rule requires: "short and concise." Rule 56(h)(1).

Where a party raising an objection to factual assertions or disputes contained in a statement of material facts wishes to direct the court's attention to portions of the record which support the objection, the party shall set forth citations to the relevant portions of the record in its opposing or reply statement of facts. Thus, all citations to the record should be found in the original statement of material facts, in

the opposing statement of material facts, or in the reply statement of material facts. On a motion for summary judgment, the court is not obliged to review any portions of the record that are not identified in any of the statements of material fact filed in connection with the motion.

The parties may bring any unusual issues presented by a motion for summary judgment to the attention of the court in their memoranda of law or as otherwise permitted by the rules without filing motions to strike. For instance, if a statement of material facts cites to documents or witnesses that were requested but not disclosed during discovery, the opposing party may, in addition to raising an objection to this effect, also bring the discovery violation to the attention of the court by requesting a conference pursuant to Rule 26(g) while the summary judgment motion is pending.

Advisory Committee Notes
January 1, 2004

The amendments to M.R. Civ. P. 56(h)(1), (2), and (3) continue the policy of conforming summary judgment practice under M.R. Civ. P. 56 with practice under Local Rule 56 of the United States District Court for Maine. The amendments are nearly identical to amendments to Local Rule 56 effective July 1, 2003. The only difference is that the amendment to Rule 56(h)(1) is added to the last sentence, rather than the middle sentence, of the Rule to make the wording of the amendment more precise.

The purpose of these amendments is to clarify that:

1. Each separate fact asserted in a supporting or opposing statement of material fact must be stated in a separately numbered paragraph, and

2. Responses must also be in separately numbered paragraphs and, if a fact is admitted, the admission shall be stated and nothing more. If a fact is denied or qualified, the denial or qualification must be supported by a record citation.

These amendments will make it easier to determine what facts are stated, what facts are admitted, denied or qualified, and what facts are unopposed and may be deemed admitted under M.R. Civ. P. 56(b)(4).

Advisory Committee's Notes
July 1, 2001

The amendment, striking reference to Rule 7(d) and substituting the reference to subdivision (h) makes a correction necessitated by moving of the statement of material fact requirements from Rule 7(d) to Rule 56(h).

Advisory Committee's Notes
January 1, 2001

The requirement that motions for summary judgment be supported or opposed by statements of material fact was originally added as Rule 7(d). Its provisions were based on then existing Rule 19(b) of the Local Rules for the United States District Court for Maine in order to have practice similar in Federal and State courts. Experience in summary judgment motion practice indicated need for some clarification of the statement of material fact requirement. Accordingly, in 1999, the Local Federal Rule regarding statements of material fact was amended and renumbered as Rule 56 of the Local Rules. This amendment conforms state practice for statements of material fact to the present Federal Local Rule 56, and moves the statement of material fact requirements back into Rule 56(h). The important changes from Rule 7(d):

— Emphasize that each statement of material fact must be short, concise and supported by a record citation. Pursuant to Rule 56(e), the record citation must be to facts "as would be admissible in evidence."

— Require that opposing statements reference each numbered paragraph of the moving party's statement and admit, deny or qualify those facts, with denials or qualifications supported by record references. Opposing statements may add additional statements of material fact supported by record references.

— Allow a properly supported responding statement by the moving party.

— Specify that record citations must be to specific pages or paragraphs of the record. General references (e.g. "See Deposition Pages 8-25," "See Plaintiff's Affidavit") are no longer sufficient and may be disregarded.

— State that the court has no independent duty to search the record beyond the parts specifically referenced in the parties' statements of material facts.

Advisory Committee's Notes
1999

The last two sentences of subdivision (a) have been eliminated in view of the corresponding replacement of Rule 16. The time for filing and disposing of motions, including motions for summary judgment, is now governed by the scheduling order and pretrial order issued under new Rule 16.

Advisory Committee's Notes
February 15, 1996

Rule 56(a) is amended for conformity with the simultaneous amendment of Rule 16(c)(2) requiring post-discovery summary judgment motions in fast-track cases to be filed within 60 days after completion of discovery or within 21 days after filing of such a motion by an opponent. For other actions, the motion must be filed when specified in a pretrial order under Rule 16, subject to the continuing requirement that filing not delay the trial.

Advisory Committee's Notes
1990

Rule 56(c) is amended to strike provisions governing timing of filing and opposition to motions for summary judgment. The timing for such motions is now subject to the provisions of Rule 7, which has been simultaneously amended. *See* Advisory Committee's Note to that amendment. The court's decision under Rule 56(c) is now closely tied to the requirement of new Rule 7(d) that the parties file statements of material fact with or in opposition to a summary judgment motion. In ruling on the motion, the court is to consider only the portions of the record referred to, and the material facts set forth, in the Rule 7(d) statements.

Advisory Committee's Notes
1985

Rule 56(c) is amended to change from 10 to 30 days the time before hearing by which a motion for summary judgment must be filed and to require that the adverse party serve opposing affidavits at least 7 days prior to hearing unless

permitted to make service at a later time on a showing of good cause. The amendment is applicable in the District Court by virtue of its incorporation in M.D.C. Civ. R. 56.

The amendment is intended to cure a problem which the short filing times in the original rule have created. These filing times frequently result in disruption of the summary judgment hearing process, because the judge has not had adequate time to review memoranda and affidavits filed at the last minute in opposition to the motion. This difficulty is in part caused by an inadvertent conflict between Rule 56(c) and the 1981 addition of Rule 7(b)(3) requiring a memorandum in opposition to a motion to be filed within 10 days after service of the motion. The 30-day time limit in the present amendment will assure that the Rule 7(b)(3) memorandum is before the court well before the hearing date. The 7-day time period for filing affidavits will further assist in eliminating the last-minute burden on the judge. Where difficulties in obtaining affidavits in time arise, the good cause exception in the amended rule may be invoked by motion for enlargement of the time period under Rule 6(b).

Advisory Committee's Note
December 31, 1967

This amendment is designed to prevent delaying tactics and reflects present practice. The courts, using their inherent powers, have in practice interpreted the rule in this manner. This amendment simply makes it clear that they have the power to do so and conforms to the language of Rule 12(c).

Explanation of Amendment
(Nov. 1, 1966)

This amendment was taken from a 1963 amendment to F.R. 56(e). It is trivial in nature. The caption is changed to make it more informative, and "answers to interrogatories" is inserted as one of the means by which summary judgment affidavits may be supplemented or opposed. Other 1963 changes in F.R. 56(e) were in M.R.C.P. 56(e) as originally promulgated.

Reporter's Notes
December 1, 1959

This rule is substantially the same as Federal Rule 56. It is an innovation in Maine procedure, but it represents established practice in over 30 states. Rule 56(c)

is the heart of the rule. The third sentence states the guiding principle. The key words are that a summary judgment will be entered upon a showing "that there is no genuine issue as to any material fact." In making this determination the court considers pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. The federal rule does not include answers to interrogatories as a basis for summary judgment, but their inclusion reflects the federal case law. *American Airlines v. Ulen*, 186 F.2d 529 (D.C.Cir.1949). If the motion is heard on the pleadings alone, it serves the function of the old demurrer. The affidavits, if any, must be on personal knowledge and set forth such facts as would be admissible in evidence. Summary judgment may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.