

1 **Rule 56. Summary judgment.**

2 **(a) Motion for summary judgment or partial summary judgment.** A party may move
3 for summary judgment, identifying each claim or defense—or the part of each claim or
4 defense—on which summary judgment is sought. The court shall grant summary
5 judgment if the moving party shows that there is no genuine dispute as to any material
6 fact and the moving party is entitled to judgment as a matter of law. The court should
7 state on the record the reasons for granting or denying the motion. The motion and
8 memoranda must follow Rule [7](#) as supplemented below.

9 | ~~(a)~~(1) Instead of a statement of the facts under Rule [7](#), a motion for summary
10 judgment must contain a statement of material facts claimed not to be genuinely
11 disputed. Each fact must be separately stated in numbered paragraphs and
12 supported by citing to materials in the record under paragraph (c)(1) of this rule.

13 | ~~(a)~~(2) Instead of a statement of the facts under Rule [7](#), a memorandum opposing the
14 motion must include a verbatim restatement of each of the moving party's facts that
15 is disputed with an explanation of the grounds for the dispute supported by citing
16 to materials in the record under paragraph (c)(1) of this rule. The memorandum may
17 contain a separate statement of additional materials facts in dispute, which must be
18 separately stated in numbered paragraphs and similarly supported.

19 | ~~(a)~~(3) The motion and the memorandum opposing the motion may contain a concise
20 statement of facts, whether disputed or undisputed, for the limited purpose of
21 providing background and context for the case, dispute and motion.

22 | ~~(a)~~(4) Each material fact set forth in the motion or in the memorandum opposing the
23 motion under paragraphs (a)(1) and (a)(2) that is not disputed is deemed admitted
24 for the purposes of the motion.

25 **(b) Time to file a motion.** A party seeking to recover upon a claim, counterclaim or
26 cross-claim or to obtain a declaratory judgment may move for summary judgment at
27 any time after service of a motion for summary judgment by the adverse party or after

28 21 days from the commencement of the action. A party against whom a claim,
29 counterclaim, or cross-claim is asserted or a declaratory judgment is sought may move
30 for summary judgment at any time. ~~Unless the court orders otherwise, a party may file~~
31 ~~a motion for summary judgment at any time no later than 28 days after the close of all~~
32 ~~discovery.~~ The court may set a deadline under Rule 16 to file motions for summary
33 judgment.

34 **(c) Procedures.**

35 ~~(e)~~**(1) Supporting factual positions.** A party asserting that a fact cannot be genuinely
36 disputed or is genuinely disputed must support the assertion by:

37 ~~(e)~~**(1)(A)** citing to particular parts of materials in the record, including
38 depositions, documents, electronically stored information, affidavits or
39 declarations, stipulations (including those made for purposes of the motion
40 only), admissions, interrogatory answers, or other materials; or

41 ~~(e)~~**(1)(B)** showing that the materials cited do not establish the absence or presence
42 of a genuine dispute.

43 ~~(e)~~**(2) Objection that a fact is not supported by admissible evidence.** A party may
44 object that the material cited to support or dispute a fact cannot be presented in a
45 form that would be admissible in evidence.

46 ~~(e)~~**(3) Materials not cited.** The court need consider only the cited materials, but it
47 may consider other materials in the record.

48 ~~(e)~~**(4) Affidavits or declarations.** An affidavit or declaration used to support or
49 oppose a motion must be made on personal knowledge, must set out facts that
50 would be admissible in evidence, and must show that the affiant or declarant is
51 competent to testify on the matters stated.

52 **(d) When facts are unavailable to the nonmoving party.** If a nonmoving party shows
53 by affidavit or declaration that, for specified reasons, it cannot present facts essential to
54 justify its opposition, the court may:

55 | ~~(d)~~(1) defer considering the motion or deny it without prejudice;

56 | ~~(d)~~(2) allow time to obtain affidavits or declarations or to take discovery; or

57 | ~~(d)~~(3) issue any other appropriate order.

58 | **(e) Failing to properly support or address a fact.** If a party fails to properly support an
59 | assertion of fact or fails to properly address another party's assertion of fact as required
60 | by paragraph (c), the court may:

61 | ~~(e)~~(1) give an opportunity to properly support or address the fact;

62 | ~~(e)~~(2) consider the fact undisputed for purposes of the motion;

63 | ~~(e)~~(3) grant summary judgment if the motion and supporting materials – including
64 | the facts considered undisputed – show that the moving party is entitled to it; or

65 | ~~(e)~~(4) issue any other appropriate order.

66 | **(f) Judgment independent of the motion.** After giving notice and a reasonable time to
67 | respond, the court may:

68 | ~~(f)~~(1) grant summary judgment for a nonmoving party;

69 | ~~(f)~~(2) grant the motion on grounds not raised by a party; or

70 | ~~(f)~~(3) consider summary judgment on its own after identifying for the parties
71 | material facts that may not be genuinely in dispute.

72 | **(g) Failing to grant all the requested relief.** If the court does not grant all the relief
73 | requested by the motion, it may enter an order stating any material fact – including an
74 | item of damages or other relief – that is not genuinely in dispute and treating the fact as
75 | established in the case.

76 | **(h) Affidavit or declaration submitted in bad faith.** If satisfied that an affidavit or
77 | declaration under this rule is submitted in bad faith or solely for delay, the court – after
78 | notice and a reasonable time to respond – may order the submitting party to pay the
79 | other party the reasonable expenses, including attorney's fees, it incurred as a result.

80 The court may also hold an offending party or attorney in contempt or order other
81 appropriate sanctions.

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83 **Advisory Committee Notes**

84 The objective of the 2015 amendments is to adopt the class of Federal Rule of Civil
85 Procedure 56 without changing the substantive Utah law. The 2015 amendments also
86 move to this rule the special briefing requirements of motions for summary judgment
87 formerly found in Rule 7. Nothing in these changes should be interpreted as changing
88 the line of Utah cases regarding the burden of proof in motions for summary judgment.

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90 | *Effective: ~~November 2015~~ May/Nov. 1, 20*