

1 **Rule 56. Summary judgment.**

2 (a) **For claimant.** A party seeking to recover upon a claim, counterclaim or cross-
3 claim or to obtain a declaratory judgment may, at any time after the expiration of ~~20~~21
4 days from the commencement of the action or after service of a motion for summary
5 judgment by the adverse party, move for summary judgment upon all or any part
6 thereof.

7 (b) **For defending party.** A party against whom a claim, counterclaim, or cross-claim
8 is asserted or a declaratory judgment is sought, may, at any time, move for summary
9 judgment as to all or any part thereof.

10 (c) **Motion and proceedings thereon.** The motion, memoranda and affidavits shall
11 be in accordance with Rule 7. The judgment sought shall be rendered if the pleadings,
12 depositions, answers to interrogatories, and admissions on file, together with the
13 affidavits, if any, show that there is no genuine issue as to any material fact and that the
14 moving party is entitled to a judgment as a matter of law. A summary judgment,
15 interlocutory in character, may be rendered on the issue of liability alone although there
16 is a genuine issue as to the amount of damages.

17 (d) **Case not fully adjudicated on motion.** If on motion under this rule judgment is
18 not rendered upon the whole case or for all the relief asked and a trial is necessary, the
19 court at the hearing of the motion, by examining the pleadings and the evidence before
20 it and by interrogating counsel, shall if practicable ascertain what material facts exist
21 without substantial controversy and what material facts are actually and in good faith
22 controverted. It shall thereupon make an order specifying the facts that appear without
23 substantial controversy, including the extent to which the amount of damages or other
24 relief is not in controversy, and directing such further proceedings in the action as are
25 just. Upon the trial of the action the facts so specified shall be deemed established, and
26 the trial shall be conducted accordingly.

27 (e) **Form of affidavits; further testimony; defense required.** Supporting and
28 opposing affidavits shall be made on personal knowledge, shall set forth such facts as
29 would be admissible in evidence, and shall show affirmatively that the affiant is
30 competent to testify to the matters stated therein. Sworn or certified copies of all papers

31 or parts thereof referred to in an affidavit shall be attached thereto or served therewith.
32 The court may permit affidavits to be supplemented or opposed by depositions, answers
33 to interrogatories, or further affidavits. When a motion for summary judgment is made
34 and supported as provided in this rule, an adverse party may not rest upon the mere
35 allegations or denials of the pleadings, but the response, by affidavits or as otherwise
36 provided in this rule, must set forth specific facts showing that there is a genuine issue
37 for trial. Summary judgment, if appropriate, shall be entered against a party failing to file
38 such a response.

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

44 (g) **Affidavits made in bad faith.** If any of the affidavits presented pursuant to this
45 rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith
46 order the party presenting them to pay to the other party the amount of the reasonable
47 expenses which the filing of the affidavits caused, including reasonable attorney's fees,
48 and any offending party or attorney may be adjudged guilty of contempt.

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