

1 **Rule 56. Summary judgment.**

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

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

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

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

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

22 **(b) Time to file a motion.** A party seeking to recover upon a claim, counterclaim or cross-claim or to
23 obtain a declaratory judgment may move for summary judgment at any time after service of a motion for
24 summary judgment by the adverse party or after 21 days from the commencement of the action. A party
25 against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may
26 move for summary judgment at any time. Unless the court orders otherwise, a party may file a motion for
27 summary judgment at any time until 28 days after the close of all discovery.

28 **(c) Procedures.**

29 **(c)(1) Supporting factual positions.** A party asserting that a fact cannot be genuinely disputed
30 or is genuinely disputed must support the assertion by:

31 (c)(1)(A) citing to particular parts of materials in the record, including depositions, documents,
32 electronically stored information, affidavits or declarations, stipulations (including those made for
33 purposes of the motion only), admissions, interrogatory answers, or other materials; or

34 (c)(1)(B) showing that the materials cited do not establish the absence or presence of a
35 genuine dispute.

36 **(c)(2) Objection that a fact is not supported by admissible evidence.** A party may object that
37 the material cited to support or dispute a fact cannot be presented in a form that would be admissible
38 in evidence.

39 **(c)(3) Materials not cited.** The court need consider only the cited materials, but it may consider
40 other materials in the record.

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

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

47 (d)(1) defer considering the motion or deny it;

48 (d)(2) allow time to obtain affidavits or declarations or to take discovery; or

49 (d)(3) issue any other appropriate order.

50 **(e) Failing to properly support or address a fact.** If a party fails to properly support an assertion of
51 fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

52 (e)(1) give an opportunity to properly support or address the fact;

53 (e)(2) consider the fact undisputed for purposes of the motion;

54 (e)(3) grant summary judgment if the motion and supporting materials—including the facts
55 considered undisputed—show that the moving party is entitled to it; or

56 (e)(4) issue any other appropriate order.

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

59 (f)(1) grant summary judgment for a nonmoving party;

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

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

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

66 **(h) Affidavit or declaration submitted in bad faith.** If satisfied that an affidavit or declaration under
67 this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to
68 respond—may order the submitting party to pay the other party the reasonable expenses, including
69 attorney's fees, it incurred as a result. The court may also hold an offending party or attorney in contempt
70 or order other appropriate sanctions.

71 **Advisory Committee Notes**

72 The objective of the 2015 amendments is to adopt the style of Federal Rule of Civil Procedure 56
73 without changing the substantive Utah law. The 2015 amendments also move to this rule the special
74 briefing requirements of motions for summary judgment formerly found in Rule 7.

75 Nothing in these changes should be interpreted as changing the line of Utah cases that the party with
76 the burden of proof on an issue must meet its initial burden to present materials in the record establishing
77 that no genuine issue of material fact exists and that the party with the burden of proof is entitled to
78 judgment as a matter of law. Only then must the party without the burden of proof demonstrate that there
79 is a genuine dispute as to a material fact. Orvis v. Johnson, 2008 UT 2, Harline v. Barker, 912 P.2d 433
80 (Utah 1996), K & T, Inc. v. Koroulis, 888 P.2d 623, (Utah 1994)—contrary to the holding in Celotex Corp.
81 v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).