

**Rule 56. Summary Judgment****56.01 Motion for Summary Judgment or Partial Summary Judgment**

A party may move for summary judgment, identifying each claim or defense - or the part of each claim or defense - on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. The court shall state on the record or in a written decision the reasons for granting or denying the motion.

(Amended effective March 1, 1994; amended effective July 1, 2018.)

***Advisory Committee Comment - 1993 Amendment***

*The amendment to Rule 56.01 is intended to correct a typographical or grammatical error in the existing rule. No change in meaning or interpretation is intended.*

**56.02 Time to File a Motion**

Service and filing of the motion must comply with the requirements of Rule 115.03 of the General Rules of Practice for the District Courts, provided that in no event shall the motion be served less than 14 days before the time fixed for the hearing. Unless the court orders otherwise, a party may not file a motion for summary judgment more than 30 days after the close of all discovery.

(Amended effective July 1, 2018.)

**56.03 Procedures**

**(a) Supporting Factual Positions.** A party asserting that there is no genuine issue as to any material fact must support the assertion by:

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

(2) showing that the materials cited do not establish the absence or presence of a genuine issue for trial, or that an adverse party cannot produce admissible evidence to support the fact.

**(b) Objection That a Fact is Not Supported by Admissible Evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

**(c) Materials Not Cited.** The court need consider only the cited materials, but it may consider other materials in the record.

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

(Amended effective March 1, 1994; amended effective July 1, 2018.)

***Advisory Committee Comment - 1993 Amendment***

*The amendment to Rule 56.03 is intended to make clear the relationship between this rule and Minn. Gen. R. Prac. 115. Rule 56.03 includes a strict ten-day notice requirement before a summary judgment motion may be heard. This minimum notice period is mandatory unless waived by the parties. See *McAllister v. Independent School District No. 306*, 276 Minn. 549, 149 N.W.2d 81*

(1967). The rule is intended to provide protection before claims or defenses are summarily determined by requiring a minimum of ten days' notice.

#### **56.04 When Facts Are Unavailable to the Nonmovant**

If a nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (a) defer considering the motion or deny it;
- (b) allow time to obtain affidavits or to take discovery; or
- (c) issue any other appropriate order.

(Amended effective July 1, 2018.)

#### **56.05 Failing to Properly Support or Address a Fact**

If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56.03, the court may:

- (a) give an opportunity to properly support or address the fact;
- (b) consider the fact undisputed for purposes of the motion;
- (c) grant summary judgment if the motion and supporting materials - including the facts considered undisputed - show that the movant is entitled to it; or
- (d) issue any other appropriate order.

(Amended effective July 1, 2015; amended effective July 1, 2018.)

#### ***Advisory Committee Comments - 2015 Amendments***

*Rule 56.05 is amended in two ways. The first is not substantive in nature or intended effect. The replacement of "papers" with "documents" is made throughout these rules, and simply advances precision in choice of language. Most documents will not be filed as "paper" documents, so paper is retired as a descriptor of them.*

*The second change is substantive in nature, and expressly implements a new statute directing the courts to consider accepting documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minnesota Statutes, section 358.116 (2014) (codifying Minnesota Laws 2014, chapter 204, section 3). The statute allows the courts to require specifically by rule that notarization is necessary, but the difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization. Accordingly, summary judgment affidavits may be signed by the party under penalty of perjury, so long as the appropriate language is included above the party's signature. The rule also requires inclusion of the date of signing and the county and state where signed to provide information necessary to establish the fact and venue of possible perjury; this information is otherwise provided by notarization. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits."*

#### **56.06 Judgment Independent of the Motion**

After giving notice and a reasonable time to respond, the court may:

- (a) grant summary judgment for a nonmovant;

(b) grant the motion on grounds not raised by a party; or

(c) consider summary judgment on its own initiative after identifying for the parties the material facts that may not be genuinely in dispute.

(Amended effective July 1, 2018.)

### **56.07 Failing to Grant All the Requested Relief**

If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact - including an item of damages or other relief - that is not genuinely at issue and treating the fact as established in the case.

(Amended effective July 1, 2018.)

### **56.08 Affidavit Submitted in Bad Faith**

If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court - after notice and a reasonable time to respond - may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

(Added effective July 1, 2018.)

### ***Advisory Committee Comment - 2018 Amendments***

*Rule 56 is extensively revamped to improve its operation. These amendments closely follow the amendments to Rule 56 of the Federal Rules of Civil Procedure in 2010. They are not intended to change substantially practice under the rule, and very carefully preserve the familiar test of "no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law" in Rule 56.01.*

*Rule 56.03(c) makes it clear that the court is not required to consider any matters beyond those filed in conjunction with the motion for summary judgment - filed by either the movant or any other parties. Rule 115.03(d) of the Minnesota General Rules of Practice sets forth specific requirements for what must be filed for summary judgment motions and responses. Rule 56.03 also retains, however, the traditional rule allowing the court to base either the grant or denial of summary judgment on any factual material contained in the record - this means the entire court file record, including all pleadings, other filings, and transcripts of arguments or hearings.*

*Rule 56.03(d) refers to "affidavits" as that term is defined for all proceedings by Rule 15 of the Minnesota General Rules of Practice. That rule encompasses both statements signed, sworn to, and notarized and statements signed under penalty of perjury in accordance with the rule.*

*Rule 56.06 carries forward the existing procedure allowing entry of judgment in favor of the movant or nonmovant, granting the motion on grounds other than those argued, or considering summary judgment on its own initiative. See, e.g., *Del Hayes & Sons, Inc. v. Mitchell*, 304 Minn. 275, 230N.W.2d 588 (1975) (*sua sponte* grant of summary judgment allowed). Where the court acts on its own initiative, the rule specifies that the parties are entitled to notice of its view about fact issues that may not be in dispute. That notice should precede any order for summary judgment by the 14-day minimum notice period specified in Rule 56.02.*