

## **F.R.Civ.P. 56. Summary Judgment**

### **LRCiv 56.1**

#### **MOTIONS FOR SUMMARY JUDGMENT**

**(a) Separate Statement of Facts.** Any party filing a motion for summary judgment must file a statement, separate from the motion and memorandum of law, setting forth each material fact on which the party relies in support of the motion. The separate statement should include only those facts that the Court needs to decide the motion. Other undisputed facts (such as those providing background about the action or the parties) may be included in the memorandum of law, but should not be included in the separate statement of facts. Each material fact in the separate statement must be set forth in a separately numbered paragraph and must refer to a specific admissible portion of the record where the fact finds support (for example, affidavit, deposition, discovery response, etc.). A failure to submit a separate statement of facts in this form may constitute grounds for the denial of the motion.

**(b) Controverting Statement of Facts.** Any party opposing a motion for summary judgment must file a statement, separate from that party's memorandum of law, setting forth: (1) for each paragraph of the moving party's separate statement of facts, a correspondingly numbered paragraph indicating whether the party disputes the statement of fact set forth in that paragraph and a reference to the specific admissible portion of the record supporting the party's position if the fact is disputed; and (2) any additional facts that establish a genuine issue of material fact or otherwise preclude judgment in favor of the moving party. Each additional fact must be set forth in a separately numbered paragraph and must refer to a specific admissible portion of the record where the fact finds support. No reply statement of facts may be filed.

**(c) Alternative Procedure.** As an alternative to filing a statement of facts and controverting statement of facts, the movant and the party opposing the motion may jointly file a stipulation signed by the parties setting forth a statement of the stipulated facts if the parties agree there is no genuine issue of any material fact. As to any stipulated facts, the parties so stipulating may state that their stipulations are entered into

only for the purpose of the motion for summary judgment and are not intended to be otherwise binding.

**(d) Deadline for Responsive and Reply Memoranda.** Notwithstanding the provisions of Rule 7.2 (c), (d), and (f), Local Rules of Civil Procedure, the opposing party may, unless otherwise ordered by the Court, have thirty (30) days after service within which to serve and file a responsive memorandum in opposition; the moving party, unless otherwise ordered by the Court, may have fifteen (15) days after service of the responsive memorandum within which to serve and file a reply memorandum. If oral argument is scheduled pursuant to Rule 7.2(f), Local Rules of Civil Procedure, the time of hearing must be set so as to give each party sufficient time to comply with these Local Rules and to allow the Court at least fourteen (14) days additional time prior to the hearing.

**(e) Citations in Memoranda.** Memoranda of law filed in support of or in opposition to a motion for summary judgment, including reply memoranda, must include citations to the specific paragraph in the statement of facts that supports assertions made in the memoranda regarding any material fact on which the party relies in support of or in opposition to the motion.

**(f) Supporting Documents.** A document referenced in the separate statement of facts or the controverting statement of facts does not need to be submitted in its entirety. Instead, an excerpt of the document may be submitted that includes the pages providing the evidentiary support for which the document is referenced.

**(g) Modification by Court.** The Court may modify the foregoing procedures in its discretion.

## **F.R.Civ.P. 79. Records Kept by the Clerk**

### **LRCiv 79.1**

#### **CUSTODY AND DISPOSITION OF NON-ELECTRONICALLY SUBMITTED EXHIBITS, ADMINISTRATIVE RECORDS, AND SEALED DOCUMENTS**

**(a) Retention by Party or Attorney.** All non-electronically submitted exhibits offered by any party in civil or criminal proceedings, whether or not received as evidence, shall be retained after trial by the party or attorney offering the exhibits until time for appeal expires or the mandate on appeal issues, unless otherwise ordered by the Court. All non-electronically submitted administrative records offered by any party, whether or not received into evidence, in Social Security cases and other cases reviewed under the Administrative Procedure Act will be returned to the party or attorney when the time for appeal expires or the mandate on appeal issues, unless otherwise ordered by the Court.

**(b) Sensitive Exhibits.** Sensitive exhibits, whether or not received as evidence, shall remain in the custody of the arresting or investigating agency or its designee throughout the proceedings, unless otherwise ordered by the Court. Sensitive exhibits include drugs and drug paraphernalia, guns and other weapons, money, and any other exhibit designated as sensitive by the Court.

**(bc) Transmission on Appeal.** If requested by the Court of Appeals, each party or attorney is responsible for transmitting non-electronic exhibits to the appellate court as part of the record on appeal.

**(ed) Notice to Remove Non-electronically Submitted Exhibits and Administrative Records.** Upon thirty (30) days' notice, the Clerk may destroy or otherwise dispose of any non-electronically submitted exhibits or administrative records when the time for appeal expires or the mandate on appeal issues, unless otherwise ordered by the Court.

**(de) Sealed Documents – Search Warrants, Orders on Pen Registers, Orders on Trap and Trace Devices, and Mobile Tracking Device Warrants.** Unless otherwise ordered by the Court, any search warrant, order on pen register, order on trap

and trace device, or mobile tracking device warrant ordered sealed by a magistrate judge in a criminal matter on or after December 1, 2014, will be unsealed 180 days after the file date of the search warrant or the expiration date of the pen/trap order or tracking warrant. At least 60 days before the expiration of the sealing order, the Clerk of Court must notify the Criminal Chief at the Office of the United States Attorney, or designee, of the date when the documents will be unsealed. Before the expiration of the sealing order, the government may move the court to extend the sealing order. A motion to extend a sealing order may be filed ex parte. Documents that have been unsealed may be destroyed when eligible under the Records Disposition Schedule in the *Guide to Judiciary Policy*.

## **LRCiv 83.10**

### **DISPUTE RESOLUTION**

(a) **Consideration of Alternative Dispute Resolution.** Litigants in all civil cases must consider the use of alternative dispute resolution (ADR) at an appropriate stage in the litigation. As early as the scheduling conference held under Rule 16(b) of the Federal Rules of Civil Procedure, or at any time requested by the parties, the court may offer or parties may request to refer the action to a magistrate judge for the purpose of holding a timely settlement conference (mediation), minitrial, summary jury trial, early neutral evaluation, or other form of ~~dispute resolution~~ADR. The court may require the parties to participate only in ~~alternative dispute resolution~~, ~~but only with respect to mediation and or~~ early neutral evaluation. ~~Alternative dispute resolution shall not be offered as a reason to delay the processing of the case as established in the Rule 16 scheduling order. This Local Rule is promulgated pursuant to 28 U.S.C. § 651(b) and 28 U.S.C. § 652(a).~~

(b) **Confidentiality.** All participants in a settlement conference or other form of neutral evaluation referred to and presided over by a magistrate judge must maintain the confidentiality of the proceedings, unless ordered otherwise by the presiding judge or magistrate judge. This confidentiality shall not apply to orders setting and regulating the ADR process.

(c) **Disqualification.** The provisions of 28 U.S.C. § 455 apply to any magistrate judge to whom an action has been referred for ADR.

(d) **No Delay in Case Processing.** No party may offer ADR as a reason to delay the processing of the case as established in the Rule 16 scheduling order.

**DIVISION OR LOCATION OF INITIAL  
APPEARANCE**

Unless otherwise provided in these Rules, a defendant arrested on a warrant issued by a division of this Court shall be transported without unnecessary delay for an initial appearance to the division where the warrant issued. A defendant arrested on a new charge, without a warrant or who has an outstanding warrant from another division, shall be first transported without unnecessary delay to the division where the arrest on the new charge was made. A defendant arrested for a misdemeanor or petty offense near Yuma, Arizona, in either the Phoenix or Tucson division, may be transported for presentment to the Magistrate Judge located in Yuma, Arizona.

**Title VII. Post-Conviction Procedures**  
**F.R.Crim.P. 32. Sentencing and Judgment**  
**LRCrim 32.1**

**SENTENCING - PRESENTENCE INVESTIGATIONS**

**(a) Presentence Investigation.** Upon conviction by trial or plea, a court shall order that defendant not leave the District of Arizona without prior authorization until having been interviewed by a Probation Officer.

**(b) Appeals.** In all cases where a defendant has been sentenced to a period of probation, and files a notice of appeal, the period of probation and supervision shall begin on the date of judgment, notwithstanding the pendency of the appeal.

~~**(c) Petition for Disclosure of Presentence or Probation Records.** No confidential records of this Court maintained by the Probation Office, including presentence and probation supervision records, shall be sought by any applicant except pursuant to the provisions under General Order 05-12, Testimony of Judiciary Personnel and Production of Judiciary Records in Legal Proceedings.~~

**(dc) Preparation and Use of Presentence Reports.**

(1) Plea agreements, whether a public record or sealed by order of the Court, shall be made available to the Probation Office for the District of Arizona, for the limited use of the Probation Officer preparing the presentence report and exercising probation supervision.

(2) Unless the Court directs otherwise, the Probation Officer shall disclose the sentencing recommendation as part of the initial and final presentence reports. The Probation Office shall disclose the initial and final presentence reports to the defendant's attorney or to the defendant, if pro per, and to the United States Attorney. The defendant's attorney may provide a copy to the defendant.

(3) The Probation Office will file under seal the original (final) copy of the presentence report on behalf of the Clerk of the Court. When a request is made to the Clerk's Office to view a copy of the presentence report, the request shall be referred to the Probation Office. If appropriate, the Probation Office shall prepare for the requestor a

copy of the presentence report exclusive of the Rule 32(d)(3), Fed.R.Crim.P., information.

(4) Nothing in this Local Rule shall prohibit the Probation Office from disclosing the presentence report to an Arizona Superior Court Probation Office if that office agrees in writing, on a form approved by the Chief Judge of this Court, to maintain confidentiality of matters so specified by this Court.