



08-CV-028

**UNITED STATES DISTRICT COURT**

District of Alaska  
222 West Seventh Avenue, No. 54  
Anchorage, Alaska 99513-7545

H. Russel Holland  
Senior United States District Judge

907. 677.6252

22 October 2008

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
4-180 Thurgood Marshall Federal Judiciary Bldg.  
One Columbus Circle, N.E.  
Washington, D.C. 20544

Re: Proposed Amendment to Fed. R. Civ. P. 56

Dear Mr. McCabe:

I join Chief Judge Sedwick in urging the committee to reject the proposed amendments to Rule 56, Federal Rules of Civil Procedure.

Like Judge Sedwick, I too have extensive experience in Alaska, which currently operates under Rule 56 without the overlay of a local rule, and in Arizona, where local rules in substance require that motions for summary judgment be developed as required by the proposed Rule 56. I have been a judge of the district court in Alaska since 1984, and have assisted with Arizona civil cases for the last ten years. In Arizona, my work is exclusively with civil cases.

Although seldom mentioned even by judges, the overarching purpose of the Federal Rules of Civil Procedure is the "just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. In my opinion, the proposed amendments to Rule 56, and in particular the proposed subsection (c), are not compatible with that purpose. Based upon my experience in Alaska and Arizona, it is my unqualified opinion that the "separate statement of facts" process embodied in proposed Rule 56(c)(2) causes summary judgment motion practice to be more complex and convoluted, and therefore requires more time on the part of both counsel and the court, than is the case with the present form of Rule 56.

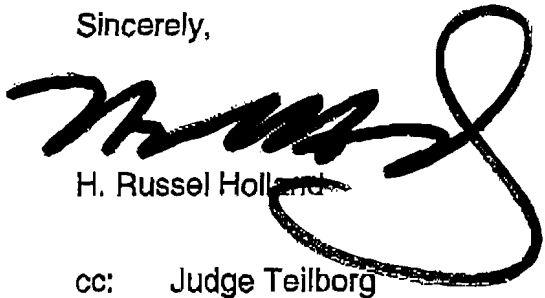
In my opinion, the separate statement of facts requirement – which I must deal with in Arizona cases – actually encourages counsel to claim the existence of fact disputes that either do not exist or are not material to the case. Moreover, the Arizona procedure routinely results in subsidiary motion practice: squabbles over whether a party has or has not met all of the technical requirements of the Arizona rule and/or efforts to strike portions of a party's separate statement of facts. We rarely see that kind of subsidiary motion practice in Alaska, but it is

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very common in Arizona. I would say that there is subsidiary motion practice in somewhere between one-third and one-half of the cases where motions for summary judgment are made. That motion practice almost never advances anyone's cause, and it is both costly and time-consuming for everyone.

I urge the committee to reject the proposed amendments to Rule 56. The proposed changes will benefit neither the litigants nor the court.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'H. Russel Holland', is written over the typed name.

H. Russel Holland

cc: Judge Teilborg

----- via facsimile -----