United States District Court
Northern District of Indiana

Robert L Miller, Jr
Chief Judge

204 South Main Street
South Bend, Indiana
46601

08-CV-104

December 29, 2008

Mr. Peter G. McCabe
Secretary to the Rules Committee
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Dear Mr. McCabe and Committee Members:

The United States District Court for the Northern District of Indiana appreciates the opportunity to address one of the proposed changes to Federal Rule of Civil Procedure 56 currently under consideration. This letter reflects the views of all our District Judges and Magistrate Judges.

Our comment centers on the proposed subsection (c)(2)(A)(ii) that requires "a separate statement that concisely identifies in separately numbered paragraphs only those material facts that cannot be genuinely disputed," presumably followed by a corresponding numbered response that either accepts or disputes in whole or in part "each fact in the movant's statement." The Committee's comments indicate that the amendment is meant to promote uniformity and efficiency; the latter virtue is thought to be shown by the number of districts that have adopted similar local rules or that a significant number of judges utilize the practice.

The experience in Indiana doesn't match the Committee's assumption. Some years ago, our sister court in the Southern District of Indiana adopted a local rule substantially similar to that proposed in subsection (c). Our Local Rules Advisory Committee reviewed the change with the hope that the Northern District could follow suit and maintain state-wide uniformity. After studying the proposal and the practice in this court concerning the briefing of summary judgment motions (which the Committee deemed efficient and satisfactory), our rules committee recommended against adoption. Our committee viewed the change as likely to lead to inefficiency. The Southern District of Indiana ultimately abandoned the concept, reverting to the procedure it had previously abandoned and one that is substantially similar to our own. The requirement simply led to too much satellite briefing, such as motions to strike for non-compliance with the requirement.

The Northern District of Indiana has long endorsed and supported the Committee's efforts toward the desirable goal of common nationwide practices. For example, this Court was a pioneer, with the Committee, in requiring initial discovery disclosures under Federal Rule 26 — a welcome bit of self-operating uniformity that ultimately had little effect on the way information flowed to a judge. This proposal is something different. We don't dispute the Committee's observation that "[m]any local rules, and the independent practices of many judges, attest to [subsection (c)'s] efficiency." We believe, that it can be said with equal authority that many local rules and judges have chosen not to adopt such a briefing regime and have done quite well without it. Our comments do not reflect the mere parochial concerns of any one judge or district; rather, we offer these comments to assure that the Committee is aware that one Indiana district tried the concept only to abandon it, and another separately considered and rejected it. Uniformity should not be an end to itself, but rather is only a virtue if it will, in the words of Federal Rule of Civil Procedure 1, "secure the just, speedy, and inexpensive determination of every action and proceeding."

In short, we disagree that the practice outlined in subsection (c) is so commonly accepted and so clearly merited that it should be engrafted wholesale onto Federal Rule 56. Present-day Rule 56 leaves crevices in the summary judgment practice that need to be filled, but those cracks have been admirably filled for the most part by either local rules or individual orders crafted in each instance by those who will receive the ultimate end product. Courts and judges that find the practice espoused by the Committee to be worthy and efficient remain, at present, free to adopt that course.

We thank the Committee for its time and respectful consideration of our views.

Sincerely,

Robert L. Miller, Jr., Chief Judge
Northern District of Indiana