08-CV-177

February 17, 2009

Peter G. McCabe, Secretary
Committee on rules of Practice and Procedure
Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, DC 20544

Re. Why I'm against the Proposed Amendments to Rule 56

Dear Mr. McCabe

I write to add my comments to those of the National Employment Lawyers Association and its members who have written and testified regarding the proposed imposition of a point-counterpoint approach to summary judgment practice. Like the other NELA members who have commented, I represent plaintiffs in job rights cases, and I have to respond to a summary judgment motion in just about every one of them.

I'm against the point-counterpoint amendment for the same reasons cited by NELA and its members, but I'd like to add another comment about why I think it's a bad idea.

I'm sure you're familiar with that old addage "if it ain't broke, don't fix it." Well, for certain the summary judgment device truly is broke and in great need of fixing, but adding this additional hurdle doesn't fix anything. Far from streamlining the process, it just adds another layer of complexity and time. And it forces non-movants (overwhelmingly plaintiffs) to make a point by point response to any piece of information the movant decides to throw in there. This kind of requirement only adds to the disputes, the papers, and the contentiousness between the parties. None of that is helpful to a judge or his or her staff

I would suggest not imposing this additional burden and instead focusing on fixing the defects in the process that allow so many of these motions to get filed and granted, thereby depriving citizens of their right to a jury. I don't know what its like in other fields of the law, but in the employment law context, summary judgment practice needs to be restricted, not enhanced.

Thank you for the opportunity to submit public comment on this amendment process.

Sincerely,

Paul R. Harris
Tx. State Bar No. 24059905