

**Rule 56. Summary Judgment****56.01 For Claimant**

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the service of the summons, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(Amended effective March 1, 1994.)

***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 For Defending Party**

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

**56.03 Motion and Proceedings Thereon**

Service and filing of the motion shall 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 ten days before the time fixed for the hearing. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(Amended effective March 1, 1994.)

***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 Case not Fully Adjudicated on Motion**

If, on motion pursuant to this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

**56.05 Form of Affidavits; Further Testimony; Defense Required**

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all documents or parts thereof referred to in an affidavit shall be attached thereto or served therewith. A "sworn copy" includes documents that are authenticated by a signature under penalty of perjury, pursuant to Minnesota Statutes, section 358.116. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(Amended effective July 1, 2015.)

***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 When Affidavits are Unavailable**

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

**56.07 Affidavits Made in Bad Faith**

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party submitting them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits causes the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.