

56.1 Summary Judgment Procedure.

Unless this rule states otherwise, the procedures of Nebraska Civil Rule 7.1 apply to summary judgment motions. Generally, the court does not hear oral argument on summary judgment motions.

(a) Moving Party.

(1) Concise Statement of Material Facts.

A summary judgment motion shall be supported by a brief and a separate statement of material facts about which the moving party contends there is no genuine issue to be tried and that entitles the moving party to judgment as a matter of law. A fact is "material" if pertinent to the outcome of the issues identified in the summary judgment motion. Failure to submit a statement of material facts may be grounds to deny the motion.

(2) Form; Citation to Record.

The statement of material facts should consist of short numbered paragraphs. Each numbered paragraph shall contain pinpoint references to affidavits, pleadings, discovery responses, deposition testimony (by page and line), or other materials that support the material facts stated in the paragraph. Failure to provide citations to the exact locations in the record supporting the factual allegations may be grounds to deny the motion.

(3) Content.

The statement of material facts must describe the parties and recite all facts supporting the court's venue and jurisdiction. The statement must not contain legal conclusions.

(4) Filing.

The statement of material facts shall be filed in a separate document from the motion for summary judgment and brief in support of the motion. The word limits of Nebraska Civil Rule 7.1(d) shall apply to briefs supporting or opposing summary judgment but shall not apply to a separate statement of material facts or response to such statement.

(b) Opposing Party.

(1) Response to Movant's Statement of Material Facts.

(A) Form; Citation to Record.

The party opposing a summary judgment motion must file a brief and a separate statement of concise responses to the moving party's statement of material facts. The statement should consist of separate numbered paragraphs corresponding to the numbered paragraphs in the movant's separate statement of facts, and must include pinpoint references to affidavits, pleadings, discovery responses, deposition testimony (by page and line), or other materials upon which the opposing party relies.

(B) Contents of Response.

Each response must clearly state that the asserted fact is:

- (i) undisputed,
- (ii) disputed, or
- (iii) undisputed in part and disputed in part.

Properly referenced material facts in the movant's statement are considered admitted unless controverted in the opposing party's response.

If the response admits in part and disputes in part the asserted fact, it must specify which part of the asserted fact is admitted and which part is disputed. A response may not assert legal arguments except to make an objection to the evidentiary support for the asserted fact or the admissibility of that evidence. Arguments about the relevance or materiality of an asserted fact may be raised in the argument section of a brief, but are not a proper basis for disputing that fact.

(2) Statement of Additional Material Facts.

If the party opposing a summary judgment motion wishes to assert facts not set forth in the moving party's statement of material facts, the opposing party may include in its response its statement of additional material facts, in the same form and manner as set forth in sections (a)(2), (3), and (4), above.

(3) Filing.

The opposing party's brief and response to movant's statement of material facts may be filed within 21 days after service of the motion and supporting statement. The responsive statement of facts shall be filed in a separate document from the brief opposing the motion. Failure to file an opposing brief or statement *alone* is not considered confession of a motion; however, nothing in this rule excuses a party opposing a summary judgment motion from meeting the party's burden under Federal Rule of Civil Procedure 56.

(c) Reply.

If the party opposing summary judgment submits a statement of additional material facts as provided in section (b)(2) above, the moving party shall, within 14 days after service of the opposing statement, serve and file a statement of concise responses to the opposing party's statement of additional material facts, in the same form as set forth in section (b)(1)(A), above.

(d) Effect of Admission.

Facts deemed admitted pursuant to this rule are admitted solely for purposes of summary judgment, and shall not be deemed admitted for any other purpose, including as admissions at trial.

(e) Compliance.

If a party files a statement of material facts, statement of additional material facts, or brief that does not comply with this rule, the court may require immediate compliance or provide any other relief that the court deems appropriate. The opposing party shall not file a motion to strike based on alleged noncompliance with this rule. Any dispute over the admissibility of evidence should be raised through an objection, in the objecting party's brief or responsive statement, to the facts relying on that evidence.

(f) Stipulated Material Facts.

Parties are encouraged to stipulate to facts, and may in connection with a motion for summary judgment separately file a stipulation setting forth facts to which the parties have agreed solely for purposes of summary judgment, which shall not be used for any other purpose in the absence of express language to that effect. Facts so stipulated do not require citations to evidentiary support.