

## **RULE 121. SUMMARY JUDGMENT**

### **(a) Motion for Summary Judgment or Partial Summary Judgment:**

- (1) A party may move for summary judgment on all or any part of the legal issues in controversy.
- (2) The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.
- (3) The Court should state on the record the reasons for granting or denying the motion.

### **(b) Time To File a Motion and Response in Opposition:**

- (1) Unless the Court orders otherwise, a party may file a motion for summary judgment at any time beginning 30 days after the pleadings are closed but within such time as not to delay the trial and, in any event, no later than 60 days before the first day of the Court's session at which the case is calendared for trial.
- (2) Any response in opposition to the motion must be filed within such period as the Court directs.

### **(c) Procedures:**

- (1) **Supporting Factual Positions:** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
  - (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
  - (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.
- (2) *Objection That a Fact Is Not Supported by Admissible Evidence:* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.
- (3) *Materials Not Cited:* The Court need consider only the cited materials, but it may consider other materials in the record.
- (4) *Affidavits or Declarations:* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that

the affiant or declarant is competent to testify on the matters stated.

- (d) **Nonmovant Must Respond or Risk Adverse Ruling:** When a motion for summary judgment is made and supported as set forth in this Rule, the nonmovant may not rest on the allegations or denials in that party's pleading. The nonmovant must respond, setting forth specific facts and supporting those facts as required by Rule 121(c), to show that there is a genuine dispute of fact for trial. If the nonmovant does not so respond, a decision may be entered against that party.
- (e) **When Facts Are Unavailable to the Nonmovant:** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the Court may:
  - (1) defer considering the motion or deny it;
  - (2) allow time to obtain affidavits or declarations or to take discovery; or
  - (3) issue any other appropriate order.
- (f) **Failing To Properly Support or Address a Fact:** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 121(c), the Court may:
  - (1) give an opportunity to properly support or address the fact;
  - (2) consider the fact undisputed for purposes of the motion;
  - (3) grant summary judgment if the motion and supporting materials (including the facts considered undisputed) show that the movant is entitled to it; or
  - (4) issue any other appropriate order.
- (g) **Judgment Independent of the Motion:** After giving notice and a reasonable time to respond, the Court may:
  - (1) grant summary judgment for a nonmovant;
  - (2) grant the motion on grounds not raised by a party; or
  - (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.
- (h) **Declining To Grant All the Requested Relief:** If the Court does not grant all the relief requested by the motion, it may issue an order stating any material fact that is not genuinely in dispute and treating the fact as established in the case.
- (i) **Affidavit or Declaration Submitted in Bad Faith:** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the Court, after notice and a reasonable time to respond,

may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

- (j) **Review Based Solely on Administrative Record:** In cases in which judicial review is based solely on the administrative record, paragraphs (a)(2) and (c)(1) through (4) are not applicable. In such cases, a motion for summary judgment and any response in opposition to a motion for summary judgment must include a statement of facts with references to the administrative record. For procedures governing the identification, certification, and filing of the administrative record, see Rule 93.

(As effective October 3, 2008, [130 T.C. 465–66](#); as amended, effective May 5, 2011, [136 T.C. 627–29](#); effective July 6, 2012, [139 T.C. 549–52](#); effective March 20, 2023, [160 T.C. 654–58](#). For prior history, see [60 T.C. 1126–29](#) (1973); [71 T.C. 1203–04](#) (1979); [81 T.C. 1063](#) (1983); [93 T.C. 940–42](#) (1989).)