

RULE 121. SUMMARY JUDGMENT

¹(a) General: Either party may move, with or without supporting affidavits or declarations, for a summary adjudication in the moving party's favor upon all or any part of the legal issues in controversy. Such motion may be made at any time commencing 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, unless otherwise permitted by the Court.

²(b) Motion and Proceedings Thereon: The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. An opposing written response, with or without supporting affidavits or declarations, shall be filed within such period as the Court may direct. A decision shall thereafter be rendered if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law. A partial summary adjudication may be made which does not dispose of all the issues in the case.

(c) Case Not Fully Adjudicated on Motion: If, on motion under this Rule, decision is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court may ascertain, by examining the pleadings and the evidence before it and by interrogating counsel, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear to be without substantial controversy, including the extent to which the relief sought is not in controversy, and directing such further proceedings in the case as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be concluded accordingly.

¹The amendment imposing a 60-day limit for filing a motion for summary judgment is effective with respect to cases in which the Notices of Trial are issued after May 5, 2011. The amendment pertaining to declarations is effective as of July 6, 2012.

²The amendments are effective as of July 6, 2012.

³(d) Form of Affidavits or Declarations; Further Testimony; Defense Required: Supporting and opposing affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant or declarant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit or a declaration shall be attached thereto or filed therewith. The Court may permit affidavits or declarations to be supplemented or opposed by answers to interrogatories, depositions, further affidavits or declarations, or other acceptable materials, to the extent that other applicable conditions in these Rules are satisfied for utilizing such procedures. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of such party's pleading, but such party's response, by affidavits or declarations or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine dispute for trial. If the adverse party does not so respond, then a decision, if appropriate, may be entered against such party.

⁴(e) When Affidavits or Declarations Are Unavailable: If it appears from the affidavits or declarations of a party opposing the motion that such party cannot for reasons stated present by affidavit or declaration facts essential to justify such party's opposition, then the Court may deny the motion or may order a continuance to permit affidavits or declarations to be obtained or other steps to be taken or may make such other order as is just. If it appears from the affidavits or declarations of a party opposing the motion that such party's only legally available method of contravening the facts set forth in the supporting affidavits or declarations of the moving party is through cross-examination of such affiants or declarants or the testimony of third parties from whom affidavits or declarations cannot be secured, then such a showing may be deemed sufficient to establish that the facts set forth in such supporting affidavits or declarations are genuinely disputed.

³The amendments are effective as of July 6, 2012.

⁴The amendment is effective as of July 6, 2012.

⁵(f) Affidavits or Declarations Made in Bad Faith:

If it appears to the satisfaction of the Court at any time that any of the affidavits or declarations presented pursuant to this Rule are presented in bad faith or for the purpose of delay, then the Court may order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits or declarations caused the other party to incur, including reasonable counsel's fees, and any offending party or counsel may be adjudged guilty of contempt or otherwise disciplined by the Court.

⁵The amendment is effective as of July 6, 2012.