



## I.R.C.P. 56. Summary Judgment

### Idaho Rules of Civil Procedure Rule 56. Summary Judgment.

**(a) Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense, or the part of each claim or defense, on which summary judgment is sought. The court must 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.

#### **(b) Time.**

(1) *Time for Filing.* The motion may be filed any time after the expiration of 21 days from the service of process upon the adverse party or that party's appearance in the action or after service of a motion for summary judgment by the adverse party. However, a motion for summary judgment must be filed at least 90 days before the trial date, or filed within 7 days from the date of the order setting the case for trial, whichever is later, unless otherwise ordered by the court.

(2) *Other Time Requirements.* The motion, supporting documents and brief must be served at least 28 days before the date of the hearing. If the adverse party wishes to oppose summary judgment, the party must serve an answering brief. The answering brief and any opposing documents must be served at least 14 days before the date of the hearing. Any reply brief of the moving party must be served at least 7 days before the date of the hearing.

(3) *Altering Time Requirements.* The court may alter or shorten the time periods and requirements of this rule for good cause shown, may continue the hearing, and may impose costs, attorney fees and sanctions against a party or the party's attorney, or both.

#### **(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 is not admissible in evidence at the hearing.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits.* An affidavit 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. Sworn or certified copies of all papers or parts of papers referred to in an affidavit must be attached to or served with the affidavit. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.

**(d) 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.

**(e) 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 56(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.

**(f) Failing to Grant all the Requested Relief.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact, including an item of damages or other relief, that is not genuinely in dispute and treating the fact as established in the case.

**(g) Affidavit or Declaration Submitted in Bad Faith.** If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court, after notice and a reasonable time to respond, must 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.

[\(Adopted March 1, 2016, effective July 1, 2016 \[1\].\)](#)

**Source URL:** <https://isc.idaho.gov/ircp56-new>

### Links

[1] <https://isc.idaho.gov/rules/IRCP/03012016-Adoption-Newly-Formatted.pdf>