

1 Honorable Randall Warner
2 Superior Court of Arizona, Maricopa County
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6 IN THE SUPREME COURT
7 STATE OF ARIZONA

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9 PETITION TO AMEND RULE 56
10 OF THE RULES OF CIVIL
11 PROCEDURE } Supreme Court No. R-_____

12 Pursuant to Rule 28(a), Arizona Rules of the Supreme Court, the
13 undersigned petitions to amend Arizona Rule of Civil Procedure 56 to
14 presumptively limit summary judgment motions to one per side. Judges could
15 permit additional summary judgment motions in their discretion. Following is the
16 proposed language, which would be added as Rule 56(b)(4):
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19 (4) Presumptive Limit on Motions. Each side of a case
20 may file only one summary judgment motion without
21 leave of court. The court may permit additional
22 motions in its discretion, considering the issues in the
23 case and the cost of additional motion practice
relative to the amount in controversy.

24 See Attachment “A,” Proposed Rule. The proposed amendment would enable trial
25 judges to ensure dispositive motion practice is, like discovery, proportional to the
26 needs of the case.
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1 In 2016, the Supreme Court’s Committee on Civil Justice Reform issued its
2 final report titled “A Call to Reform.”¹ Noting that Arizona has long been an
3 innovator in civil justice, the Committee proposed reforms to “allow Arizona’s
4 already-innovative courts to better serve the goal neatly described in Rule 1—‘to
5 secure the just, speedy, and inexpensive determination of every action.’”²
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8 The Committee stressed that judges should manage cases actively with
9 proportionality as the guiding principle. To that end, the Committee proposed
10 placing civil cases in discovery tiers which tether the amount of discovery to the
11 complexity of the case and the amount and issues at stake. The Supreme Court
12 adopted that recommendation by adding Rule 26.2 to the Rules of Civil
13 Procedure.
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16 On the heels of Arizona’s discovery reform, the Institute for the
17 Advancement of the American Legal System, or IAALS, engaged a working
18 group to tackle dispositive motion reform. That group’s recommendations are in a
19 January 2019 report titled “Efficiency in Motion,”³ which concludes that
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25 ¹ See A Call to Reform, The Committee on Civil Justice Reform’s Report to the Arizona Judicial Council (October
26 2016), found at www.azcourts.gov/cscommittees/Committee-on-Civil-Justice-Reform.

27 ² *Id.* at 2.

28 ³ See Efficiency in Motion: Recommendations for Improving Dispositive Motions Practice in State and Federal
Courts (January 2019), found at https://iaals.du.edu/sites/default/files/documents/publications/efficiency_in_motion_dispositive_motions.pdf.

1 proportionality should apply to dispositive motions just as it does to discovery.⁴

2 This is because it has the similar potential for increasing the cost of and time for
3 resolving disputes, thus impeding access to justice. When used well, the report
4 notes, motions to dismiss under Rule 12(b)(6) and motions for summary judgment
5 under Rule 56 can make civil litigation more efficient. But they can also have the
6 opposite effect by injecting cost and delay into the dispute resolution system.⁵
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9 Trial judges see this firsthand. Some lawyers file a motion to dismiss or
10 motion for summary judgment as a matter of course regardless of the amount in
11 controversy or the likelihood of the motion succeeding. Some file multiple
12 motions for partial summary judgment on different issues. Some file an early
13 motion for summary judgment and, if denied, refile the same motion after
14 discovery is completed. Even when dispositive motion practice is not purposely
15 used to exert financial pressure—and it sometimes is—it often has that effect, thus
16 undermining the goals of Rule 1. And because the Rules contain no limitation on
17 how many summary judgment motions can be filed, dispositive motion practice is
18 frequently disproportionate to the needs of the case.
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27 ⁴ *Id.* at 25, 26.

28 ⁵ *Id.* at 1.

1 One of IAALS's solutions is active judicial management of dispositive
2 motions, including a pre-motion conference when appropriate.⁶ But as IAALS
3 notes, pre-motion conferences are infeasible in many cases.⁷ This is true in
4 Arizona's trial courts, where caseloads are typically high and include many small-
5 dollar collection and personal injury cases.
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8 This proposal is therefore a middle ground between unmanaged dispositive
9 motions and total judicial management of dispositive motions. In every case, each
10 side could file one summary judgment motion as of right. Any more would require
11 leave of court, justified by the needs of the case. And on receiving a request for
12 more summary judgment motions, the trial judge could hold the kind of pre-
13 motion conference IAALS recommends to manage dispositive motions in the
14 interests of fairness and efficiency.
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18 Under the proposed rule, a party could file a summary judgment motion
19 early in the case or after the close of discovery, but not both unless they can
20 explain why the needs of the case warrant it. And they could file a single summary
21 judgment motion on all issues, but not multiple partial motions unless they can
22 justify why multiple motions are warranted.
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27 ⁶ *Id.* at 20-22.

28 ⁷ *Id.* at 22.

1 The result of this change should be fewer serial summary judgment
2 motions, fewer motions for partial summary judgment, and decreased dispositive
3 motion practice in cases—especially those in Tiers 1 and 2—in which the amount
4 in controversy or the nature of the issues may not justify the time and cost of
5 extensive motion practice. At the same time, judges will have the discretion to
6 permit additional motions when appropriate to make the litigation more efficient,
7 either by obviating trial when there are no triable issues of fact, or by streamlining
8 the issues for trial.
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12 There is an argument to be made for eliminating summary judgment
13 motions altogether in Tier 1 cases. It is not uncommon to see such motions in
14 small cases, even though going straight to arbitration or trial is more cost-
15 effective. But a significant number of Tier 1 cases are consumer debt cases, and
16 many of those are resolved by summary judgment. Balancing these
17 considerations, this petition does not propose treating Tier 1 cases differently from
18 Tier 2 and Tier 3 cases.
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22 It should be noted that some superior court judges already have a one-
23 motion-per-side requirement in their case management orders. The premise of this
24 petition is that such issues are better addressed in the Rules of Civil Procedure,
25 both to limit inconsistent practices between judicial divisions, and to empower all
26 trial judges to actively manage dispositive motions.
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1 RESPECTFULLY SUBMITTED this 3rd day of January, 2023.

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4 Hon. Randall Warner
5 Superior Court of Arizona, Maricopa County

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8 Electronic copy filed with
9 the Clerk of the Arizona Supreme Court
10 this ___ day of January, 2023.

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ATTACHMENT “A”
(new language is underlined)

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 shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion.

(1) Claimant. A claimant may move for summary judgment only after:

(A) the date when a responsive pleading is due from the party against whom summary judgment is sought; or

(B) the filing of a Rule 12(b)(6) motion to dismiss or a summary judgment motion by the party against whom summary judgment is sought.

(2) Other Parties. Any other party may move for summary judgment at any time after the action is commenced.

(3) Filing Deadline. A summary judgment motion may not be filed later than the dispositive motion deadline set by the court or local rule, or absent such a deadline, 90 days before the date set for trial.

(4) Presumptive Limit on Motions. Each side of a case may file only one summary judgment motion without leave of court. The court may permit additional motions in its discretion, considering the issues in the case and the cost of additional motion practice relative to the amount in controversy.

c. through h. [no changes]