

Kathleen P. Sweeney  
Deputy Solicitor General/Chief Counsel Civil Appeals Section  
State Bar Number 011118  
Submitting comment on behalf of the Arizona Attorney General's Office  
Firm State Bar Number 14000  
2005 N. Central Ave.  
Phoenix, AZ 85004  
kathleen.sweeney@azag.gov  
(602) 542-8027

The Attorney General's Office generally supports this petition. The Office does not, however, support the following proposed amendments.

The Office does not support proposed amendment (c)(3)(A), which changes the facts that a statement of facts supporting a summary judgment motion can include from "specific facts relied on in support of the motion" to "specific *material* facts relied on in support of the motion." (Emphasis added.) Background facts are sometimes necessary to provide the court with the context to understand a particular argument or the litigation as a whole. Given that, it may not always be clear which facts should be excluded under the proposed amendment. This could lead to uncertainty and to the types of disputes between attorneys that judges are loath to address. And, the rule already limits a statement of facts to those facts that are "relied on in support of the motion," which should limit statement of facts to relevant facts.

The Office does not support proposed amendment (c)(3)(A)(iii), which requires moving parties to state in their statements of facts only the facts that they

cite in their supporting memoranda. Moving parties should be permitted to make a complete record in their statements of facts and to include facts that they are not directly addressing in their supporting memoranda but that they anticipate will be necessary to defend against the opposing party's claims. This allows moving parties to obtain supporting affidavits from their clients that address all of the anticipated issues, which in turn reduces the necessity of obtaining supplemental client affidavits to support the reply. It also allows the reply to focus mainly on the legal arguments. Restricting the facts that the moving party's statement of facts can include will lead to a busier reply and to one that requires substantially more work under a relatively short deadline, which is even more problematic given the shorter word limit for replies. Presenting a complete record in the statement of facts also allows the opposing party to see the moving party's entire case, including all of the facts that the moving party thinks will be relevant to defending against the opposing party's claims, and to respond accordingly.