

February 18, 2009

You've heard a lot from us about battles we're fighting on the litigation front. I wanted to let you know that Public Justice is fighting to preserve access to justice in another vitally important area -- by opposing proposed amendments to Rule 56 of the Federal Rules of Civil Procedure that could dramatically reduce victims' ability to achieve justice.



Rule 56, as most lawyers know, governs summary judgment in the federal courts -- a procedure increasingly utilized to prevent cases from going to trial. Last summer, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States proposed the most significant amendments to the Rule since it was adopted seventy years ago. Among other things, they include a "point/counterpoint" procedure that would require the party moving for summary judgment to submit a separate statement of all "facts that cannot be genuinely disputed," along with citations to record evidence proving those facts. The responding party would then be required to respond to each allegedly undisputed fact, also by citing relevant record evidence.

Although the drafters of the amendments undoubtedly had the best of intentions, our comments explain that injecting a blanket national rule mandating the point/counterpoint procedure in every case would dramatically increase the costs of summary judgment -- an outcome that would inevitably benefit defendants, who tend to have more resources at their disposal.

But the problems with the proposed amendment run even deeper: if adopted, we note, they would actually distort the truth-finding function of litigation. In particular, the use of the point/counterpoint procedure would "reduce complex and nuanced disputes, which typically involve matters of perception, credibility, and the clash of opposing expert opinions, into a binary system of 'yes' and 'no' and 'on' and 'off,' in order to dispose of a case without the noise, drama, confrontational tension, suspense, and resulting truth of an actual trial." We urged the Committee not to require point/counterpoint statements and instead utilize other procedures that would preserve the integrity of the civil justice system.

To view our comments, which were written by Elizabeth Cabraser of Lief, Cabraser, Heimann & Bernstein, LLP, [click here.](#)

To view the proposed amendments to Rule 56, [click here.](#)

Our thanks to Elizabeth Cabraser for filing these comments on behalf of Public Justice and the Public Justice Foundation. And, as always, thanks to you for helping make this crucial work possible.

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