

## Notice to Unrepresented Litigant

A party in this case has moved for summary judgment, under Rule 56 of the Vermont Rules of Civil Procedure. A copy of the rule is attached; please read it carefully. "Summary judgment" means that this party has asked the court to decide this case (or specific issues in this case) without a trial. Summary judgment is used to resolve legal issues only. It is used if the parties disagree about the legal conclusion to be drawn from facts that are not in dispute.

A motion for summary judgment is filed by a legal memorandum and attached written materials, including affidavits. An affidavit is a sworn statement of facts, based on personal knowledge that would be admissible in evidence at a trial.

**IF YOU DO NOT RESPOND TO THIS MOTION, THE COURT MAY CONSIDER AND DECIDE THIS MOTION WITHOUT A HEARING ON THE MOTION and WITHOUT A TRIAL ON THE MERITS OF THE CASE.** If you do wish to oppose this motion, you may argue that you disagree with the facts, or you may argue that even if the facts that your opponent listed in its motion for summary judgment are true, the legal conclusion your opponent reached is incorrect and a different legal conclusion should apply. You may also present both arguments in the alternative.

If you disagree with the facts, you may file your own statement of disputed material facts as required by Rule 56(c).

It is not enough simply to allege that a particular fact is in dispute. Rather, you must cite to specific evidence, such as witness affidavits or documents, which shows that the parties disagree about the facts in this case.

If you do not cite to specific materials in the record, the court need not consider the materials to which you refer when making a decision on the motion. You may also submit affidavits in support of your statement of facts. Affidavits you submit can be your own statement and/or the statement of someone else who has personal knowledge of facts about your case. Affidavits may be prepared specifically in response to the motion for summary judgment.

If you wish to argue against the legal conclusion, you can also file a written response opposing the legal arguments made in the motion for summary judgment. The time limits for these responses are found in Rule 56. Your response must be filed within 30 days of the date on which you were served with this motion, unless the Court has set a different time frame in a pretrial order. If you do file a response, the Court will rule on the motion for summary judgment based on all the papers filed with the court by the deadline, from you and the other parties.

**IF YOU DO NOT RESPOND IN TIME** to the motion for summary judgment some or all of the issues in this case may be decided without any trial or other hearing. That is, in the absence of affidavits or documents disagreeing with the facts as stated in the motion, the court may accept the facts as stated in the motion as true, and it may grant the motion without further notice if it finds the legal arguments of your opponent persuasive. **Procedural questions may be directed to the Environmental Division Clerk's office at (802) 951-1740.**

**RULES OF CIVIL PROCEDURE  
VII. JUDGMENT**

**V.R.C.P. Rule 56 (2012)**

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 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. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File and Oppose a Motion. -- A party may file a motion for summary judgment at any time until 30 days after the close of all discovery, unless a different time is set by stipulation or court order. The adverse party may file a memorandum in opposition, statement of disputed facts and affidavits, if any, up to 30 days after the service of the motion upon the party.

(c) Procedures.

(1) Supporting Factual Positions. -- A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) Filing a separate and concise statement of undisputed material facts or a separate and concise statement of disputed facts, consisting of numbered paragraphs with specific citations to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, 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 cannot be presented in a form that would be admissible in evidence.

(3) Materials Not Cited. -- The court need consider only the materials cited in the required statements of fact, 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 is competent to testify on the matters stated.

(d) When Facts Are Unavailable to the Nonmovant. -- If a nonmovant shows by affidavit 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 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) Judgment Independent of the Motion. -- After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) 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.

(h) 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--may 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.