

*Civil Procedure***FJC Weighs Changes to Summary Judgment Rule***Moving parties in all federal courts may soon have to file a statement of uncontested material facts*

BY THOMAS E. ZEHNLE

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The Federal Judicial Center (FJC) has been examining the various approaches taken by federal district courts to summary judgment practice to assess the effect of proposed amendments to Rule 56 of the Federal Rules of Civil Procedure. The most significant of the proposed changes would provide that all districts must require the moving party to file, in separately numbered paragraphs, a statement of uncontested material facts that entitles that party to summary judgment.

Under the current proposal, “the drafting [of these separate statements] would require a concise statement of the key facts,” notes Jeffrey J. Greenbaum, Newark, NJ, who is a member of the Section of Litigation’s Federal Practice Task Force.

Greenbaum believes that, all too often, usually for tactical reasons, one side in civil litigation will file a motion for summary judgment that attempts to inundate the adversary with elaborate statements of fact. These factual statements—especially in those districts in which the non-moving party is required to address the

statement on a fact-by-fact basis—require substantial time, effort, and money to answer, he says.

“The requirement causes lawyers to focus on whether they in fact have a legitimate basis to seek summary judgment, and by encouraging careful analysis of facts may avoid the preparation and filing of motions that should not succeed, resulting in a savings to clients and the preservation of scarce judicial resources,” says Sheldon M. Finkelstein, Newark, NJ, Co-Director of the Section’s Division V (Substantive Areas of Litigation). The proposed rule “would also tend to reduce the number of motions that may be filed for tactical reasons.”

The “local rules have taken over and we need a national rule to govern summary judgment practice.”

The commentary to the proposed amendment to Rule 56 makes clear that the intent of a separate statement is only to identify those facts that are critical to the case. Greenbaum notes that it would be inappropriate to include facts that have little or no relevance to the core issues.

Greenbaum is quick to acknowledge that some disagree with the proposal, but says the variations may have more to do with the status of one’s local practice than

*The Profession***Firms Still Failing to Hire and Retain Female Attorneys of Color**
Panel addresses problem at Section Annual Conference

BY MARY S. DIEMER

LITIGATION NEWS ASSOCIATE EDITOR

According to a recent report by the ABA Commission on Women in the Profession, female attorneys of color experience greater levels of salary disparity, face a lack of mentoring opportunities, and feel isolated from social and other informal networks within law firms. The report notes that, during the past five years, more than 75 percent of minority female associates left jobs in private law firms.

These discouraging statistics highlight the profession’s failure to recruit, retain, and promote minority attorneys, particularly females. At its annual conference last month in Washington, DC, the Section of Litigation drew attention to this discouraging trend by co-sponsoring a program, “Women of Color in the Legal Profession: Why It Means Success for Everyone,” with the ABA Commission on Women.

The diverse sponsorship of this Section program included the ABA’s Commission on Mental and Physical Disability Law, the Section of Individual Rights and Responsibilities, and the Young Lawyers Division. The program also had 16 external sponsors, confirming that numerous professional groups are committed to improving the career opportunities for women of color and devising meaningful solutions, says Pamela J. Roberts, Columbia, SC, Chair of the ABA Commission on Women and moderator of the panel.

The results of the study “are very sobering” and demonstrated that there is a critical need to improve the diversity of our profession through retention and recruitment of women attorneys of color, says Carmelite M. Bertaut, New Orleans, Co-Chair of the Section’s Woman Advocate Committee. Women of color are continuing to enter the legal profession in larger numbers every year, but, Bertaut explains, because they share neither gender nor race with the majority power group in law firms, many lack a common tie with the attorneys at their firms who act as gatekeepers for business opportunities.

The panel covered the findings of the Commission’s report, entitled “Visible Invisibility: Women of Color in Law Firms.” The object of the program was to make “the business case for diversity” and to determine “exactly what strategies are needed” to improve in this area, says Roberts. As more firms realize the value of diversity, they need “to come up with some forward-thinking solutions to change the snapshot” presented in the report, Bertaut says. Also,

companies are increasingly demanding that their outside law firms be more reflective of their own diverse work force, customers, and communities.

The Section program was designed to offer attendees “some practical takeaways” on fostering the career paths of female attorneys of color in the profession, notes Bertaut. The program sought to show law firms how they may make “concrete things happen,” Roberts adds, including how to retain and promote women of color within the legal profession.

The panelists agreed that in tackling the problems of recruitment and retention, law firms must identify the qualities that would make their firm desirable to women attorneys of color, and then embrace policies

that promote their retention. These measures will break the cycle of attrition for women attorneys of color.

Roberts adds that the Commission expects to build upon the report by publishing a hand-

book with some of the insights obtained through interviews with successful women of color. The handbook will include career advancement tips for female attorneys of color and survey the best practices that law firms have used to successfully recruit and retain minority lawyers. ▣

Resource:

More information about the Report of the ABA Commission on Women in the Profession, including the Executive Summary, is available at www.abanet.org/women/woc/wocinitiative.html.

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