

## Responding to a Motion for Summary Judgment Form and Instructions

### What is a Motion for Summary Judgment?

A Motion for Summary Judgment is a request by a party in a lawsuit for the Court to decide all or part of a case *without a trial*. The party that files the Motion for Summary Judgment is called the “moving party.” The moving party does not think that a full trial is needed, because he or she believes that there are *no genuine disputes as to any material fact* in the case. That basically means the moving party believes that the important facts all fall on their side, and that none of the important facts help your case. More specifically, a “material fact” is a fact that is important to or will likely prove any of the claims or defenses in a case. For example, in a case where someone was injured in a car accident and a party is suing to collect money against the party who caused the accident, the following would be (some of the) material facts:

- Defendant was driving 100 miles per hour when her car hit with plaintiff’s car.
- Defendant was using her cell phone to text message before her car hit with plaintiff’s car.

### How is a Motion for Summary Judgment started?

The moving party files written materials with the Court. The written materials usually include the following separate documents: a Motion for Summary Judgment (a formal written request for the Court to decide in their favor); a Brief in Support of Motion for Summary Judgment (like a memo or report explaining why the Court should rule in their favor); a Statement of Material Facts (a list of all the important facts that are not in dispute); and any affidavits and/or other evidence to support their Motion for Summary Judgment (documents that support their claim).

The moving party serves on the other party to the lawsuit (mails or delivers) all of the documents that are filed with the Court. A Motion for Summary Judgment is very powerful, because it can have a final effect on the case. For this reason, **it is very important when served with a Motion for Summary Judgment by the other party that you file a response to that motion, stating your side of the matter. A response is due within 20 days from the date the Motion for Summary Judgment is served.** It is not enough to defend a Motion for Summary Judgment by only relying on what you said in earlier documents filed with the Court. **You must prepare and file a response to the Motion for Summary Judgment.** If you do not, the Court will rule in favor of the party that filed the Motion for Summary Judgment. If a Motion for Summary Judgment is

denied, the case will go to trial. Denial of a Motion for Summary Judgment does not mean that the non-moving party has won the case, only that the Court has decided a trial is needed to decide the case.

### **What must be included when responding to a Motion for Summary Judgment?**

The two most important things to give the Court when responding to a Motion for Summary Judgment are: 1.) a list of material facts (important facts) that support your side of the case; and 2.) copies of any documents, papers, affidavits (sworn written statements) or other things that act as evidence for the facts supporting your side. It is also recommended that you fill out a reply brief or other document explaining why the Motion for Summary Judgment should be denied.

To respond to a Motion for Summary Judgment, you should prepare, file with the Court, and serve on the other party (mail or deliver) the following documents:

1. Opposition to Motion for Summary Judgment: this is a summary of the facts of your case, including the important facts that you believe the Court should know that will help you win your case. You should attach to this document any pieces of evidence that support your facts. In the body of this document, you should also point out for the Court what pieces of evidence support what facts. Name each piece of evidence as a separate exhibit (e.g. Exhibit A, Exhibit B, . . . ).
2. Statement of Material Facts: this is a list of material facts that you claim support your side of the case, and therefore go against the other side's case. Each material fact that is listed must have a note (citation) of where it can be found in the evidence that you include.
3. Certificate of Service: a signed statement that each document you file with the Court has been served (mailed or delivered) on the other parties to the lawsuit. The certificate of service must list the date that the documents were mailed or delivered, the type of mail service used, and the addresses where you sent the document(s).
4. Supporting Evidence: this is a set of documents, photos, affidavits and/or other sources of proof that support your side of the case. Evidence is attached to the Opposition to Plaintiff's Motion for Summary Judgment as exhibits.
5. Affidavit: an affidavit is a common form of evidence. It is a sworn statement about something that you write down on a piece of paper, and sign in front of a

notary public. An affidavit is like testifying in Court, but is done on paper outside of Court, then later filed with the Court. You must be mentally fit to testify to the topics in your affidavit and you can only testify about things that you personally know about. An Affidavit is then attached to the Opposition to Motion for Summary Judgment document.

**All of these documents must be signed and a certificate of service completed before filing with the Court.**

### **How do I fill out the top part (the Caption) of the forms?**

The Caption is the same for all papers filed in a lawsuit and is made up of information to help the court employees know which lawsuit the document applies to. It helps the court organize the papers. The easiest way fill out the Caption is to look at how the other party filled it out on their Motion for Summary Judgment that you received.

Where there is a box, you need to mark the appropriate box. If your case is in District Court, mark that box with an “x”, if your case is in Circuit Court, mark that box with an “x”. If you are the Plaintiff, mark that box with an “x”. If you are the Defendant, mark that box with an “x”. If you are the one who started the lawsuit, you are the Plaintiff. If you did not start the lawsuit, you are the Defendant. Where there are lines, you need to fill in that space. There is a space for the county that your case is in, there is a space for the judicial district your case is in and the case number given to your lawsuit (ask the clerk of court if you are unsure), and there are spaces for the names of the Plaintiff and the Defendant in your case.

### **What do I do once I have filled out all the documents?**

You need to file all documents and evidence with the Court, and send a copy of all documents and evidence to the other party in the case. Be sure to save a copy of everything for your records, too. **Remember, all documents and evidence in response to a Motion for Summary Judgment must be filed with the Court within 20 days from the date you received the Motion for Summary Judgment. THIS IS VERY IMPORTANT!**

**Note:** It is very important when handwriting the forms to **write very clearly**, so the judge and the other party can read what you write. It is best to **print the words rather than using cursive**. Also, always write in pen, either in **black or blue ink**.

IN THE DISTRICT [ ] CIRCUIT [ ] COURT FOR THE \_\_\_\_\_ JUDICIAL DISTRICT

STATE OF WYOMING )  
 )SS  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, )  
Plaintiff, )  
 vs. )  
\_\_\_\_\_, )  
Defendant. )

Civil Action No. \_\_\_\_\_

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**PLAINTIFF [ ] DEFENDANT [ ] OPPOSITION TO  
MOTION FOR SUMMARY JUDGMENT**

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COMES NOW, pro se Plaintiff [ ] Defendant [ ], and submits its Opposition to Motion for Summary Judgment, in accordance with W.R.C.P. 56.

**FACTUAL BACKGROUND AND ARGUMENT**

[Here you want to tell the Court the factual background of your case, along with the reasons why the Motion for Summary Judgment should be denied. Start by shortly telling the Court what the case is about. Explain to the Court what the other side is trying to do in the case. Also, write down the facts that are important to your side of the case and/or those facts that you believe show that you should win the case. Whenever possible, tell the court what evidence supports what facts (e.g. Fact: I paid the credit card bill off in full. Evidence: Exhibit A - Credit card monthly statement from, June 1, 2000). You will attach copies of all evidence you have to the back of this document. Whenever possible, separate each piece of evidence as its own exhibit and give it a title (e.g. Exhibit A). For each piece of evidence, write the title (e.g. Exhibit A, Exhibit B . . .) at the bottom of the first page for each exhibit. When talking about a piece of evidence, refer to it in your writing as Exhibit A, Exhibit B, etc.]











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FOR THE ABOVE STATED REASONS, a genuine issue of material fact remains in the above-captioned matter. WHEREFORE, Defendant [ ] Plaintiff [ ] respectfully requests this Court deny the opposing party's Motion for Summary Judgment in its entirety.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
PLAINTIFF [ ] DEFENDANT [ ]

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing instrument was served on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by depositing a true and correct copy of the same in the United States Mail, postage prepaid, and addressed to the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

## **INSTRUCTIONS FOR COMPLETING STATEMENT OF MATERIAL FACT FORM**

1. Fill in the blanks on the top of the form (the Caption). See instructions above.
2. Complete the body of the Statement of Material Facts form. In the table, list each and every material fact (important fact) you would like the Court to consider in deciding on the moving party's Motion for Summary Judgment. Here is where you want to **list each and every material fact** that you feel is important to your case, **and point out where in the evidence each fact can be found**. You need to number and list each material fact separately, and provide a pin point source in the evidence that has been presented. Continue listing each material fact and citation until all material facts supporting your case are listed. Attach additional pages as needed. See example below.
3. Sign and date the Statement of Material Fact form.
4. Fill out the Certificate of Service, including the date that you will be mailing a copy of the form to the other party in the lawsuit. List the other party's address. Sign the Certificate of Service.

Example:

<b>MATERIAL FACT</b>	<b>SOURCE (CITATION)</b>
1. Jane Doe was driving her car at a rate of 100 miles per hour before the crash.	Exhibit A - Affidavit of John Smith, page 2 paragraph 6.
2. Jane Doe was texting on her cell phone while driving.	Exhibit B - Affidavit of John Smith, page 3 paragraph 1.
3. ...	



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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
PLAINTIFF [ ] DEFENDANT [ ]



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing instrument was served on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by depositing a true and correct copy of the same in the United States Mail, postage prepaid, and addressed to the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

### Instructions for filling out an Affidavit

1. In the title of the Affidavit, write the name of the person who is making the statement. The person giving the statement is known as the Affiant.
2. In the body of the Affidavit, you want to write one statement or fact for each numbered line.
3. Include in the body of the Affidavit any facts that the Affiant has personal knowledge of, that support your side of the case.
4. Use the Affidavit to lay out evidence that will support your case by having the Affiant talk about evidence they have personal knowledge of.
5. You can submit as many Affidavits as you want.
6. There can be only one Affiant for each Affidavit. If you want another witness to provide a statement, you must make a separate Affidavit.
7. Attach any documents you refer to in the Affidavit as an exhibit to the Affidavit.
8. When you have finished your Affidavit, have the Affiant sign and date the Affidavit **in front of a Notary Public**. A notary public is someone who will verify that the person signing the Affidavit is the person listed as the Affiant.
9. The Notary Public will sign the Affidavit on the notary block and stamp the Affidavit with his/her credentials as a Notary Public. This is the part that makes the Affidavit a sworn statement.

Example:

COMES NOW Affiant John Doe, and presents the following sworn testimony:

1. My name is John Doe and I am 35 years old.
2. I am of sound mind and competent to provide the following testimony.
3. All of my following testimony is based on personal knowledge.
4. In 2000 I signed up for a credit card with Chase Manhattan Bank.
5. The credit card account number ends in the last four numbers of 1234.
6. I made purchases with my credit card of \$400.00.
7. On August 10, 2000, I made a payment of \$423.00. This payment paid my balance off in full. My credit card statement confirmed that. See Exhibit D.
8. ....

IN THE DISTRICT [ ] CIRCUIT [ ] COURT FOR THE \_\_\_\_ JUDICIAL DISTRICT

STATE OF WYOMING )  
 )SS  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, )  
Plaintiff, )  
 vs. )  
\_\_\_\_\_, )  
Defendant.

Civil Action No. \_\_\_\_\_

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**AFFIDAVIT OF \_\_\_\_\_**

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COMES NOW Affiant \_\_\_\_\_, and presents the following sworn testimony:

1. My name is \_\_\_\_\_ and I am \_\_\_\_\_ years old.
2. I am of sound mind and competent to provide the following testimony.
3. All of my following testimony is based on personal knowledge.
- 4.

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Further Affiant sayeth naught.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[Signature:] \_\_\_\_\_

[Print Name:] \_\_\_\_\_

**Notary Block**

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on \_\_\_\_\_ (date) by

\_\_\_\_\_ (name(s) of person(s) making statement).

(Seal) \_\_\_\_\_

My commission expires: \_\_\_\_\_

Signature of Notarial Officer:

\_\_\_\_\_