



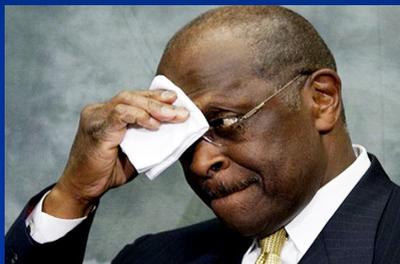
2. Support your motion properly.



3. Be Prepared.



4. Think twice if disputed facts might be a problem.



4 Steps:

1. Stay on course.
2. Support your motion properly.
3. Be prepared.
4. Think twice if disputed facts might be a problem.

Avoid Common Mistakes

**Common Mistakes:
*Movants***

1. Inadequate time for discovery.
2. Insufficient evidence in record.
3. No analogous case citation.
4. Too many arguments, pages, or exhibits.
5. No clear "button" to push.

1. Inadequate time for discovery.

- a. **Rule 56:** “At any time.”
- b. **Cases:** Must allow “adequate time for discovery.”
- c. **Remedy:** Rule 56(f) affidavit: “Facts are unavailable”

2. Insufficient evidence in record

- a. Submitted evidence does not rule out *contrary inferences*.
- b. Requires weighing *degrees* of fault.
- c. Affiant lacks personal knowledge.
- d. Affiant’s conclusions not supported by facts or authenticated documents.

3. No analogous case citation.

- a. No one reads introductory summary judgment standards.
- b. Show judge that **other courts have granted *similar* motions.** . . .
- c. And *not* been *reversed*.

**4. Too many arguments,
pages, or exhibits.**

- a. No summary judgment by the inch.
- b. Remember the “phonebook” rule.
- c. Pick your best arguments.
- d. Consider *partial* summary judgment.

5. No clear “button” to push.

- a. **Introduction:** Concisely summarize *issues* or *claims* ripe for summary adjudication.
- b. **Body:** Specify which parts of the Complaint should be dismissed.
- c. **Conclusion:** Tell the court succinctly exactly what relief you want.

**Common Mistakes:
*Non-Movants***

- 1. Delaying discovery.
- 2. No Rule 56(f) affidavit.
- 3. Affidavit does not address required elements.
- 4. “Authentication by staple.”
- 5. Relying on allegations alone.

1. Delaying discovery.

- a. Rule 56: “At any time.”
- b. Don’t assume that you have plenty of time.
- c. Rule 56(f) relief is limited: Does not authorize “fishing expeditions.”
- d. Start fishing *now!*

2. No Rule 56(f) affidavit.

- a. Affidavits are required.
- b. Arguments in briefs are insufficient.

3. Affidavit does not address required elements.

- a. *Specify* the information you need.
- b. Show that the information likely *exists*.
- c. Explain why the information would tend to create an issue of fact.
- d. Be prepared to explain why you have not already obtained the information.

4. “Authentication by staple.”

- a. Rule 56(e) requires “sworn or certified copies of all papers.”
- b. Authentication required to meet “admissible evidence” requirement.
- c. All facts must be “properly” supported.

5. Relying on allegations alone.

- a. 56(e): “May not rest upon the mere allegations or denials.”
- b. 56(e): “Must set forth specific facts.”
- c. Court need only consider *cited* materials.
- d. No obligation to “scour” record.

**Federal/Local Rule 56
Disconnect:**

A distinction without a difference.

2007 Federal Amendments

Purpose: To make Rules “more easily understood” and “consistent.”

2009 Federal Amendments

- *Purpose:* To revise “outmoded” timing provisions.
- Allows motion “at any time.”
- But recognizes discretion to enlarge response time if motion is premature.

2010 Federal Amendments

- “The standard for granting summary judgment remains unchanged.”
- “The amendments will not affect continuing development of the decisional law . . .”

Follow the Roadmap

- Use the new **2010 federal Rule 56** as a *roadmap* for supporting or opposing a summary judgment motion.

1. Stay on course.



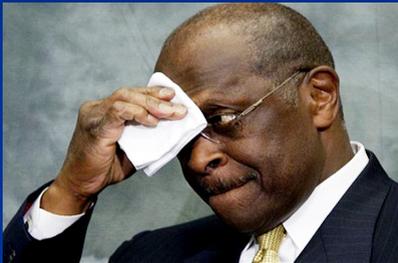
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Thank you!