

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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CLERK OF COURT
U.S. DISTRICT COURT
SAN JUAN, P.R.

IN THE MATTER OF:

MOTIONS FOR SUMMARY
JUDGMENT AND ANALOGOUS
MOTIONS TO DISMISS

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All CIVIL cases before
JUDGE S. E. CASELLAS

STANDING ORDER

In view of the substantial waste of private and public resources that results from plainly improper motions for summary judgment and motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) that rely on matters outside the pleadings, the Court finds it necessary and convenient to enter a Standing Order explaining its policy for these dispositive motions. Accordingly, **the Court is instructing all counsel to help streamline litigation by (a) not designating a motion as a 12(b)(6) motion when it is in essence a motion for summary judgment, and (b) not filing a motion that, after consideration, must be denied because of some factual assertion in dispute.** Not only will this practice make for better and more on point motions, but it will also lessen the Court's backlog and the parties' investment of time and money.

As is its usual practice, the Court expects parties to file motions under Rule 56 in a timely manner and only when a given issue is mature for summary judgment disposition. However, the Court strongly advises counsel to be selective as to the scope – and indeed the necessity – of presenting dispositive motions, be they for summary judgment or dismissal. While dispositive motions as a whole are useful tools for managing certain kinds of issues and cases, they should be used sparingly, and only after close perscrutation of the facts and the applicable law. Motions anchored on tenuous grounds are to be avoided at all costs, for the Court does not take kindly to skullduggery or misdirection.

The Court is especially concerned that in many instances counsel are filing early motions for summary judgment (or 12(b)(6) motions to dismiss that depend on factual assertions) where they

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cannot demonstrate that no essential fact is in dispute. This may sprout from a real, albeit unfounded, fear that the Court or opposing counsel may assert that they have waived their opportunity to present such a motion. This fear is unwarranted. Rule 56 makes it clear that motions for summary judgment may be filed later, and in fact the Court in its own Case Management Order sets a deadline at the conclusion of discovery.

If counsel for a moving party knows that even one of the facts essential to a motion for summary judgment is in dispute, then filing the motion is inappropriate. In accordance with Rule 11, the attorney's signature on a motion is a certificate that to the best of counsel's "knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose. . . ." If an attorney knows that some essential fact is in dispute, he cannot properly make this certificate, even if he believes that the evidence is heavily weighted in favor of a fact finding that would support his client's position, since in deciding a motion for summary judgment, a court cannot properly make findings of disputed issues of fact or weigh evidence. If evidence must be weighed, that must be done at trial, and the motion for summary judgment must be denied.

A motion for summary judgment cannot be granted either when, given the state of discovery, it is not yet certain whether essential assertions of fact made by movant will be genuinely in dispute. In these circumstances, a motion for summary judgment is premature. From the Court's perspective, it is a wasteful misuse of the time of both counsel and the Court for a party to file a motion for summary judgment before using requests for admissions or other discovery devices to ascertain whether the factual assertions on which the motion must be based are in dispute.

The proper time for making a motion under Rule 56 is when it is clear that there are no genuine issues of material fact. Therefore, the Court urges counsel to defer filing motions for summary judgment, until discovery is near completion, in every instance in which there is any doubt whether some fact on which the legal argument for the motion is premised will be disputed. Unless the Court enters a specific order to the contrary, a motion for summary judgment will be timely if filed at the expiration of the date fixed **in the Case Management Order** for completion of

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discovery.

The foregoing is not intended to discourage filing of an early motion for summary judgment, before expenses have been incurred in extended discovery, if the motion is grounded on a legal theory under which the many factual controversies in the case are irrelevant. If a party files such a motion, however, it is improper under Rule 11 to add to it other grounds as to which facts are, or as far as counsel can tell, may be in dispute. You may file later a motion for summary judgment on those other grounds if it becomes apparent, after full discovery, that the essential facts in which they are based are not in dispute.

The filing of dispositive motions **does not disrupt the pretrial procedures or suspend the deadlines set in the Case Management Order.** The fact that a motion to dismiss or a motion for summary judgment is pending before the Court **does not entitle the parties to stop conducting discovery.**

Dispositive motions should not exceed twenty (20) pages in length. The Court will not consider motions which exceed that length unless the filing party requests prior leave from the Court, and then only for good cause shown. The same is also true of oppositions to said motions, replies and sur-replies.

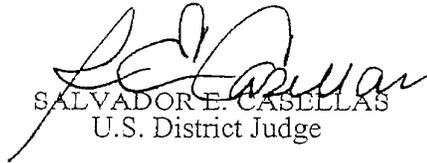
In cases where there are mixed questions of law and fact, such as a tort case where the specific facts of the case must be evaluated in light of the standard of due care, summary judgment cannot be granted unless reasonable factfinders – be they Judge or jury – who correctly understand the applicable legal standard would necessarily come to the conclusion supporting movant's position. Thus, no reasonable grounds exist for filing a motion for summary judgment in a case involving application of such a standard unless counsel believes there are reasonable grounds for arguing that different factfinders, correctly understanding the applicable legal standard, could not reasonably come to different conclusions on the issue.

Finally, all counsel are forewarned that the Court will consider sanctions on attorneys who file frivolous dispositive motions, in disregard of this Standing Order. We must all work together to ensure that the judicial system can settle disputes among the parties and impart justice in a timely and cost-effective manner.

This Court's previous Standing Order regarding motions for summary judgment and analogous motions to dismiss issued on August 24, 1996 is hereby **SET ASIDE**.

SO ORDERED.

In San Juan, Puerto Rico, this 19th day of August 2003.


SALVADOR E. CASELLAS
U.S. District Judge