

From: [\(SUP\) Clerk of Court Office](#)
To: [Miller, Penny](#)
Subject: FW: Proposed Amendment of RCP 56
Date: Wednesday, September 12, 2018 12:29:30 PM
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SEPTEMBER 12, 2018
STATE OF NORTH DAKOTA

Heather Keller

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From: Linda Maroko <linda.maroko@aderant.com>
Sent: Wednesday, September 12, 2018 12:24 PM
To: (SUP) Clerk of Court Office <SupClerkofCourt@ndcourts.gov>
Subject: Proposed Amendment of RCP 56

Dear Ms. Miller,

We have reviewed the proposed amendments to the North Dakota Rules of Civil Procedure 56, out for comment until October 1, 2018, as posted on the Court's website. We write to bring your attention to several ambiguities, and to request clarification of certain deadlines, in proposed Rule 56(c)(1).

Rule 56(c)(1), as proposed, provides:

Time for Service. The motion and supporting documents must be filed at least 90 days before the day set for trial and 45 days before the day set for the hearing unless otherwise ordered. An opposing party has 30 days after service of a brief to serve and file an answer brief and supporting documents. The moving party has 14 days to serve and file a reply brief.

We note that while this subsection is entitled "Time for Service" it does not provide a deadline for service of the motion. We understand that most summary judgment motions will be electronically filed and therefore electronically served at the same time; however, this may not always be the case.

In addition, the proposed amendment does not specify what event, for example the date of service of the answer brief, triggers the 14 day period within which the moving party may serve and file a reply brief.

Accordingly, we respectfully suggest that the proposed Rule 56 be further amended to provide:

Time for Service. The motion and supporting documents must be served at least 90 days before the day set for trial and 45 days before the day set for the hearing unless otherwise ordered. An opposing party has 30 days after service of a motion to serve and file an answer brief and supporting documents. The moving party has 14 days after service of an answering brief to serve and file a reply brief. [Emphasis added.]

Thank you for your time and consideration of our comments.

Linda Maroko

Associate Rules Attorney

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