

Table of Contents

See also *Summary of Contents* beginning on page ix.

Chapter One

A Description of Summary Judgment Motions	1
<i>Submitted by: Nancy Winkelman, Esq.</i>	

Section 1

Summary Judgment—Rule 56	3
<i>Northwestern University Law Review</i>	
Summary Judgment—Rule 56	5
The Fundamental Elements of Rule 56	7
The Restrictive and Liberal Approaches to Rule 56	10
Toward a New Theory of the Summary Judgment Proceeding	16
Conclusion	20

Section 2

An Appraisal of Summary Judgment Practice under Rule 56	
Federal Rules of Civil Procedure	23
<i>L. Arnold Pyle, Esq.</i>	

Chapter Two

Judicial Analyses of Summary Judgment Motions	47
<i>Submitted by: Nancy Winkelman, Esq.</i>	

Section 1

Summary Judgment Without Illusions	49
<i>Honorable D. Brock Hornby</i>	
The Term “Summary Judgment”	51
I. What Summary Judgment Does Not Do	52
A. Lawyer Time and Fees	52
B. Court Time	53
C. Trial Numbers	54
II. What Summary Judgment Does	54
A. Reassigning Work	54
B. Delaying Outcomes	56
C. Changing Stakes	57
III. What Can We Do About Summary Judgment?	58
A. We Can’t Eliminate It	59
B. We Can’t Reduce Complexity	59
C. We Can’t Prevent Work Delegation	61
D. What We Can Do	61

1. We Can Change Terminology and Expectations	61
2. We Can Take It Out of the Back Room, Make It Part of Public Litigation, and Elevate Its Status	62
3. We Can Just Say No	64
Conclusion	66
Section 2	
Summary Judgment Procedure under Rule 56 of The Federal Rules of Civil Procedure—Its Use and Abuse	67
<i>Honorable Harry J. Lemley</i>	
Chapter Three	
Why Denials of Summary Judgment Should Be Appealable	75
<i>Professor Bradley Scott Shannon</i>	
Introduction	78
I. Setting the Stage: <i>Ortiz v. Jordan</i>	79
A. Procedural History	80
B. The Supreme Court’s Opinion	80
C. The Concurrence	81
D. <i>Ortiz</i> and the Appealability of Denials of Summary Judgment	82
II. Why Denials of Summary Judgment Should Be Appealable	83
A. Clearing the Deck of Red Herrings	85
B. The Rule 11/Rule 56 Framework	87
C. The Mandatory Nature of Summary Judgment	89
D. The Purpose of Summary Judgment	91
E. The Appealability of Denials of Dispositive Motions Generally	93
F. The Appealability of Denials of Summary Judgment	94
Conclusion	99
Appendix A:	
Rules Governing Summary Judgment	101
Section 1	
Federal Rule of Civil Procedure 56	103
<i>LexisNexis</i>	
Section 2	
State Rules Governing Summary Judgment	107
25 Pa. Code § 1021.94a – Summary Judgment Motions	109
<i>The Pennsylvania Code</i>	
Pa. R.C.P. 1035.1 – Motions for Summary Judgment. Definition	113
<i>LexisNexis</i>	
Pa. R.C.P. 1035.2 – Motion	114
<i>LexisNexis</i>	
Pa. R.C.P. 1035.3 – Response. Judgment for Failure to Respond	117
<i>LexisNexis</i>	
Pa. R.C.P. 1035.4 – Affidavits	120
<i>LexisNexis</i>	

Pa. R.C.P. 1035.5 – Procedure When Judgment is Denied or Is Not Rendered Upon
the Whole Case 121
LexisNexis

Appendix B:
Recommended Reading List..... 123
Nancy Winkelman, Esq.

