

SUMMARY JUDGMENT

COURSE OUTLINE

- Review Standards for Summary Judgment
 - Regulations
 - Fed.R.Civ.P. 56
 - Key Decisions (Supreme Court/EEOC)
- Tips on How to Write Persuasively
 - Persuasive Statements of Fact
 - Precise Arguments
- Practical Considerations
 - What AJ's Do & Don't Like in Motions
 - Helpful Additions

REGULATIONS AUTHORITY and STANDARDS

Regulations & Authority

- EEOC Regulation – 29 CFR § 1614.109(g)
- MD-110, Chapter 7, III.E
- Handbook for AJs – Chapter 5
- Fed.R.Civ.P. – 56
- Court/EEOC Decisions
 - *Celotex Corp. v. Catrett*
 - *Anderson v. Liberty Lobby*
 - *Reeves v. Sanderson Plumbing*
 - *Petty v. Dept. of Defense* (EEOC No. 01A24206)

TIME LIMITS

- For filing Motion:
 - At least 15 days prior to Hearing; or
 - Within time limit set by Administrative Judge
- For filing Memorandum Contra:
 - 15 days after receipt of Motion
 - Usually by “15 Day Notice” sent by AJ
- For filing Reply Memorandum:
 - 5 days after receipt of Memorandum Contra

Summary Judgment Standards

- No Genuine Issue as to Any Material Fact
- Moving Party is Entitled to Judgment as a Matter of Law

SJ Standards Con't.

- Material Facts and Genuine Disputes:
 - Fact is “material” if it has the potential to effect the outcome of the case
 - Substantive law that governs the case controls which facts are “material”
 - Dispute over facts is “genuine” when factual issues can be resolved reasonably in favor of either party (more than one plausible inference can be drawn from the facts)

SJ Standards Con't.

- Where a Complainant cannot establish even one element of the *prima facie* case, genuine dispute of facts on other elements does NOT bar summary judgment
- Where credibility issues regarding material facts must be resolved, summary judgment should not be granted
- *Reeves*: court should review record as a whole, but disregard all evidence favorable to the moving party that the fact-finder is not required to believe

SJ Standards Con't. EEO MD-110

- MD-110 requirements for AJs to issue Decision without a Hearing:
 - AJ must ascertain that adequate factual record has been developed
 - AJ must give non-moving party:
 - Ample Notice of proposal to issue Decision
 - Comprehensive Statement of Undisputed Material Facts
 - Opportunity to respond to each Statement
 - Chance to engage in Discovery to allow adequate response (Fed.R.Civ.P. 56(f))

SJ Standards Con't.

- Non-Moving Party's Burden:
 - Identify disputed facts in the record
 - Identify facts with specificity
 - Identify facts that disprove facts asserted by moving party
 - Explain how those facts in dispute are "material"
- Note: AJ must still review the record and determine independently that there is no material dispute of facts

SJ Standards Con't.

- EEOC regulations plainly indicate that the hearing is intended as a continuation of the investigatory process. Truncation of this process, while material facts are in dispute and the credibility of witnesses is still ripe for challenge, improperly deprives appellant of a full and fair investigation of her claims.
- *Bang v. Runyon*, EEOC No. 01961575 (1998).

CONTENT OF MOTIONS and PERSUASIVE WRITING

Persuasive Writing

- General Considerations:
 - Well written Motions take time and effort
 - Motion writing process is relatively straightforward
 - Key: PREPARATION
 - Knowing the facts of the case
 - Knowing the substantive legal standards
 - **Knowing and Following the RULES**

Persuasive Writing Con't.

- Effective Motions begin with the required Standards:
 - Undisputed Material Facts
 - Federal Rules require a separate statement of facts (EEOC rules do not)
 - Separate Statement of Facts is first opportunity to persuade the AJ about the case
 - Legal Authority applied to facts showing movant is entitled to judgment as a matter of law
 - EEOC allows for argument without reiteration of known standards of law
 - Stating the standards of law shows you have command of them (and can be helpful to the AJ)

Persuasive Writing Con't. Content of Motions

- Statement of Undisputed Facts:
 - State Facts not Arguments
 - For each fact, cite the record where it is contained (document and page number)
 - Include non-material facts only where needed to understand material facts
- Legal Argument:
 - SJ Legal Standard should ALWAYS be stated
 - Substantive Law for each claim
 - Application of facts to Substantive Law

Persuasive Writing Con't.

- Common Shortcomings in Statements of Fact:
 - Failing to present ALL material/relevant facts
 - Ignoring facts that are detrimental to your case
 - Failing to develop a complete record
 - Cluttering the Motion with irrelevant facts
 - Failing to present facts in a manner consistent with the Legal Standards at issue
 - Failing to appropriately cite the record
 - Failing to write the Statement of Facts separately from the Legal Argument

Persuasive Writing Con't. Statements of Facts

- Results of these shortcomings:
 - Undermining of credibility with the AJ
 - Creates impression that omitted facts are material and in dispute = denial of motion
 - Motion is sloppy = not worthy of granting
 - Motion is confusing = denial for want of clarity

Persuasive Writing Con't.

- Legal Argument:
 - Argument Should Track the Established Pattern for Discrimination Claims:
 - *Prima Facie* Case Arguments
 - Legitimate Reason of Employer
 - Pretext Arguments
 - Within Each Item:
 - Legal Standard
 - Applicable Facts applied to the Standard

Persuasive Writing Con't. Legal Arguments

- Tips for Effective Presentation:
 - Avoid “shotgun” arguments
 - If one element of the PF case is not met, argue only that one
 - If every element of the PF is met, argue only a “barebones” case has been made, or focus only on pretext arguments
 - Avoid needless repetition
 - Address opponents best possible argument head-on (you are allowed to dispute evidence)
 - Divide each claim/argument into its own section
 - End each section with assertion that SJ should/should not be granted

PRACTICAL CONSIDERATIONS

Practical Considerations

- Administrative Judges:
 - What AJ's Like to See in Motions for SJ
 - What AJ's Hate to See in Motions for SJ
- Tips:
 - Make the AJ's life (and decision) easy:
 - Clear, concise arguments
 - Clear presentation of arguments
 - Additions that can make the AJ like you:
 - Statement of the Case (short)
 - Conclusion reiterating what you are requesting
 - Statement of the Issues (presented in objective way)
 - Consider Motions for Partial Summary Judgment

QUESTIONS?
