

# 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

**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?