

Spring 1999

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Recommended Citation

Margaret B. Seymour, Dispositive Motions and the Role of the United States Magistrate Judge, 50 S. C. L. Rev. 639 (1999).

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DISPOSITIVE MOTIONS AND THE ROLE OF THE UNITED STATES MAGISTRATE JUDGE

THE HONORABLE MARGARET B. SEYMOUR*

Given the bloated dockets that district courts now come to expect as ordinary, the role of the magistrate in today's federal judicial system is nothing less than indispensable.**

—The Honorable John Paul Stevens

I. INTRODUCTION

As federal court dockets have become more crowded, United States magistrate judges are being assigned more responsibilities to ensure the efficient disposition of litigation. As discussed in detail below, United States magistrate judges are assigned numerous pretrial matters when a case is filed in federal district court, as authorized by statute, local rule, or at the discretion of the district court. This Article offers advice from a former United States magistrate judge on the role that magistrate judges play and on techniques advocates should keep in mind when arguing motions in federal court.

II. DISPOSITIVE MOTIONS IN UNITED STATES MAGISTRATE JUDGE'S COURT

Under Local Civil Rule 73.02 of the District of South Carolina, the Clerk of Court automatically assigns the following civil matters to a full-time magistrate judge upon filing:

(a) All motions for remand, dismissal[,] or judgment on the pleadings in actions filed under 42 U.S.C. § 405(g) for review of administrative determination regarding entitlement to benefits under the Social Security Act and related statutes;

(b) All motions for leave to proceed in forma pauperis;

(c) All pretrial proceedings in applications for post-conviction review under the provisions of 28 U.S.C. § 2241 *et seq.*, 28 U.S.C. § 2254 *et seq.*, and mandamus relief as well as for relief sought by persons challenging any form of custody under other federal jurisdictional statutes; [except] . . . actions arising under 28 U.S.C. § 2255[;]

(d) All pretrial proceedings in prisoner petitions for relief under

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** *Peretz v. United States*, 501 U.S. 923, 928 (1991) (quoting *Government of the Virgin Is. v. Williams*, 892 F.2d 305, 308 (3d Cir. 1989)).

42 U.S.C. § 1983;

(e) All pretrial proceedings involving litigation by individuals proceeding *pro se*;

(f) All pretrial proceedings in prisoner petitions which do not challenge prison conditions, conditions of confinement, or any other form of custody[;]

(g) All pretrial proceedings involving litigation arising out of employment discrimination cases invoking federal statutes which proscribe unfair discrimination in employment, including but not limited to 42 U.S.C. §§ 1981-1986; 42 U.S.C. § 2000e-2; 42 U.S.C. § 2000e-16(a); 29 U.S.C. § 206(d); 29 U.S.C. §§ 621-634; or 29 U.S.C. § 794.¹

In addition, any other case pending in district court may be referred to a magistrate judge by a district judge either for the purpose of handling all pretrial matters or for the purpose of handling motions on a case-by-case basis, or the parties may consent to the magistrate judge's disposition of various matters. For example, the magistrate judge may conduct evidentiary hearings into damages issues, hold hearings regarding and decide nondispositive motions such as motions to compel responses to interrogatories and requests to produce, review and approve settlements in which minors are involved or settlements concluding wrongful death actions, hold pretrial conferences, and oversee jury selection.

Prior to the rulings of the United States Supreme Court in *Celotex Corp. v. Catrett*,² *Anderson v. Liberty Lobby, Inc.*,³ and *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*,⁴ trial judges were reluctant to grant summary judgment.⁵ These cases, however, sent the message that the granting of properly grounded motions for summary judgment are judicially favored. As a result, summary judgment is the primary tool for eliminating unsubstantiated claims or defenses. This is in keeping with Rule 1 of the Federal Rules of Civil Procedure, which provides that the Rules are to "be construed . . . to secure the just, speedy, and inexpensive determination of every action."⁶ Thus, motions practice is an extremely important part of a magistrate judge's duties.

When a party files a dispositive motion in a case which has been referred to a magistrate judge for pretrial matters, the magistrate judge will hold a hearing, if deemed necessary, and issue a Report and Recommendation to the district judge assigned to the case.⁷ In the Report and Recommendation, the

1. S.C. DIST. CT. R. 73.02(B)(2).

2. 477 U.S. 317 (1986).

3. 477 U.S. 242 (1986).

4. 475 U.S. 574 (1986).

5. *Celotex*, 477 U.S. at 322-27; *Anderson*, 477 U.S. at 247-52, 257; *Matsushita*, 475 U.S. at 585-88.

6. FED. R. CIV. P. 1.

7. *Id.* 72(b).

magistrate judge will analyze the motion and make a recommendation to the district judge.⁸ The recommendation is not binding on the district judge. Rather, the parties are allowed ten days after service of the Report and Recommendation to make specific, written objections to the magistrate judge's findings.⁹ A party may respond to another party's objections within ten days after being served with a copy of the objections.¹⁰ The district judge then reviews the record *de novo*.¹¹ The district judge may make a determination upon the record or receive additional evidence.¹² The district judge may accept, reject, or modify the recommended decision, in whole or in part, or recommit the matter to the magistrate judge with instructions.¹³

A summary judgment motion can be brought by the plaintiff at any time after the expiration of twenty days after commencement of the case or at any time by the defendant.¹⁴ However, it is suggested that the better practice is for a party to bring a motion after it has undertaken enough discovery to give it an opportunity to learn what facts the opposing party can be expected to produce, or not produce, if trial were held. The motion is designed to permit the judge to pierce through the factual allegations of the complaint and determine if a genuine issue of material fact exists. If there is no genuine dispute as to any material fact, the moving party is entitled to summary judgment. In addition, a party may consider filing motions for partial summary judgment in an effort to streamline the case. For example, the issue of liability can be resolved through summary judgment, even if there is a dispute as to the amount or type of damages.

A judge is more likely to grant summary judgment if (1) discovery is complete or nearly complete, (2) a genuine factual issue does not exist, (3) there is only one unavoidable resolution of a fact issue, or (4) the weight of the evidence in favor of summary judgment clearly outweighs the evidence presented by the nonmoving party. Conversely, a judge is not likely to grant summary judgment if (1) the case turns on credibility determinations, (2) the record contains competing affidavits regarding a material fact, or (3) there exists an issue as to the weight of the evidence. This reluctance results because, on summary judgment, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."¹⁵

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* 56(a), (b).

15. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

III. SPECIFIC SUGGESTIONS ON PRACTICE AND PROCEDURE

Following are some specific practice and procedure tips for preparing and arguing motions in federal court.

- Read the local rules. Check the rules no matter how many times you have done so in the past. It might be helpful to keep a copy of the local rules in a convenient place over your desk and your secretary's desk as a reminder.
- The federal court issues a scheduling order in virtually all cases. It is imperative that you comply with the deadlines set forth in the scheduling order. The scheduling order is an important tool for case management. If you need the court to amend the scheduling order, either contact the court for an informal conference with all parties, particularly if the trial date is affected, or file a motion explaining the reasons for the request and suggesting realistic deadlines for inclusion in an amended scheduling order.
- If you are unsure about the proper format for a motion, make inquiries of another attorney who has appeared before the judge. You also may go to the court and ask the clerk to let you look at some motions that have been filed.
- Neatness, careful editing, proofreading, and reliable authority will help your motion get the judge's attention. Just as the opposite will get you negative attention and could adversely impact your credibility.
- Make your motion, supporting memorandum, and any attachments as readable and accessible as possible. State the issues and your contentions clearly and concisely. When appropriate, include an index, tabs for each exhibit, and copies of unpublished or otherwise not easily obtainable opinions upon which you rely. Put attachments in order. This is extremely important because some cases are decided solely on the record.
- Do not misrepresent the record.
- If you have prepared documents at the last minute, you should contact the court to determine whether it will accept materials via hand delivery or facsimile transmission. Filing papers at argument is highly disfavored in federal court. Do not expect to be able to hand up affidavits or other exhibits to the judge during the hearing.
- If you represent to the court that you are going to file something on a Friday, file it on Friday. And if you cannot, call the clerk's office or judge's law clerk and explain the situation.
- Know the law. You could find, for example, that summary judgment is appropriate on the basis of qualified immunity or the statute of limitations, regardless of the merits of the plaintiff's case. Know the different standards that apply to motions to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure as opposed to

motions for summary judgment under Rule 56.

- Make sure you state your grounds correctly and clearly and be very specific as to the relief requested. A judge is not likely to read into your motion grounds that are not clearly stated. For example, when moving for summary judgment on all the claims in a complaint, make sure you address all possible claims suggested by the complaint, especially if the plaintiff is proceeding *pro se*. Do not decline to seek summary judgment on a claim by asserting that the plaintiff has not alleged the claim in the complaint. If the court disagrees with your reading of the complaint, which often happens in cases filed by *pro se* plaintiffs, the court may be precluded from granting summary judgment with respect to the unaddressed claim. When faced with an ambiguous pleading, file a motion for a more definite statement or send interrogatories to the party and ask whether it is asserting a specific claim.
- Watch out for hearsay in affidavits supporting summary judgment motions. Affidavits must (1) be made by a witness having personal knowledge of the facts stated in the affidavit; (2) state facts that would be admissible evidence (rather than hearsay statements by others, or the declarant's opinions or conclusions); and (3) affirmatively show that the witness would be competent to testify at trial. For example, an affidavit by a non-party who claims another non-party told her something one of the parties said is not admissible, any more than her testimony would be at trial.
- When a motion is based on answers contained in deposition testimony, interrogatories, or requests for admissions, copies of relevant questions and answers or deposition excerpts must be authenticated by declaration or affidavit of the attorney. Be sure to include enough of the deposition to let the judge get a feel for what occurred.
- Be forthcoming about authority that is adverse to your position. You should discuss any split in authority among the federal or state appellate courts. If there is circuit court precedent that is adverse to your position, you should consider a way to make a good faith distinction that will not damage your credibility.
- Do not assume that every motion must be opposed. If the motion almost is certain to be granted and will have no significant impact on the progress of the case, consider whether it is worth the time and expense to file a response to the motion. You may be well advised to consent to the order sought or to file a statement of non-opposition. Let the court know if you are not going to oppose a motion so that the court may rule on it without delay.
- If a new case is discovered or new matters come up after you file your motion or memorandum in opposition, ask the court for permission to file a letter brief on the subject.
- Motions for summary judgment need to be supported fully by

affidavits and other exhibits. For example, if a prisoner alleges he was denied medical treatment, it would be wise for the defendant to attach the prisoner's medical records to the motion for summary judgment. An affidavit denying plaintiff's allegations without supporting documentation creates nothing but an issue of fact that needs to go to trial. The same holds true for the party opposing the motion for summary judgment. Rule 56 provides that "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial."¹⁶ An affidavit by the nonmoving party repeating the allegations of the complaint may not overcome a well-pleaded, well-documented motion for summary judgment.

- The court may be compelled to disregard a portion of an affidavit supporting a summary judgment motion because it is too conclusory and because it does not contain specific facts about the issue before the court. For example, conclusory testimony regarding the limitation an impairment places on a major life activity alone is insufficient to defeat a motion for summary judgment.¹⁷
- Once you are in front of the judge, always address the court and not opposing counsel.
- Attorneys should not testify at motions hearings. You should express your belief in your position; however, you also should remember that there is no jury present, so you should keep theatrics to a minimum.

IV. CONCLUSION

A properly prepared summary judgment motion can be a very effective litigation tool. Just about any claim or defense asserted in federal court can be considered for summary judgment. For the nonmoving party, this may be the only opportunity you have to argue the merits of your case. Therefore, it is important to prepare for the summary judgment motion hearing as if you are going to trial.

16. FED. R. CIV. P. 56(e).

17. *See Helfter v. United Parcel Serv., Inc.*, 115 F.3d 613, 617-18 (8th Cir. 1997).