



Hearings: Judge Brailsford will hear oral argument on virtually every summary judgment motion, some motions to dismiss, and other motions as necessary. Counsel should be prepared for questions from the Bench. The Court will have read the briefs, and counsel is expected to be prepared to discuss their argument, not just recite their briefs. Generally, each side will be allotted 20 minutes to present their oral argument. The moving party will generally argue first, and counsel for the moving party should recognize that he/she should reserve some of their 20 minutes for rebuttal argument. In rare instances, the Court will grant additional time to each side. However, requests for additional time must be resolved prior to the hearing.

Notice of Hearing: The Court will issue a notice of hearing. The parties do not need to contact the Court to schedule a hearing. (Dist. Idaho L. Rule 7.1).

Telephonic Hearings: Telephonic hearings will be scheduled only upon request and authorization by the Judge, and only if the parties are unable to attend an in-person hearing. If a telephonic hearing is scheduled, all attorneys will appear by telephone. The Court's notice of hearing will provide instructions for initiating the telephone conference, and typically will require the moving party to initiate the call.

Motions for Summary Judgment: Judge Brailsford prefers only one (1) summary judgment motion per side. The Judge recognizes that the complexity or number of issues presented by some rare cases will make it difficult to address all issues within the 20 page limit for briefs, Dist. Idaho Loc. R. 7.1(b)(1). In those rare cases, counsel should file a motion for permission to file an over-length brief, rather than filing a number of separate dispositive motions in an effort to comply with the twenty-page limit.

Cross Motions for Summary Judgment: To avoid the panoply of briefs generated by the filing of cross motions for summary judgment, the Court prefers that the briefing be combined as follows: initial motion for summary judgment; response combined with cross motion; reply combined with response to cross motion; and a final reply brief. If the parties are unable to address the issues in the 20 page limit, they may request permission to file an overlength brief.

Motions to Dismiss: Since the Supreme Court's decisions in *Iqbal* and *Twombly*, we have seen a substantial increase in motions to dismiss which contend that the complaint does not comply with the *Iqbal-Twombly* standard. In the Court's experience, such motions are almost always resolved by granting the offending party an opportunity to amend their pleadings. For that reason, Judge Brailsford expects that counsel, prior to filing a motion to dismiss based upon *Iqbal-Twombly*, will contact opposing counsel, advise them of the perceived shortcomings in the allegations of the complaint, and attempt to reach agreement for the filing of an amended complaint. If it is still necessary to file a motion to dismiss, the moving party should indicate in their motion that this process has been followed and that it is still necessary to file a motion to dismiss.

Motions to Strike: Motions to strike filed in response to a motion for summary judgment are disfavored. Fed. R. Civ. P. 56(c) permits a responding party to object to evidence (or cited material) that is not admissible. The objection functions like an objection at trial, and may be contained within the briefing or in a separate appendix. Counsel are discouraged from filing separate motions to strike, which prolongs the summary judgment briefing schedule.

Issuance of Order on Non-Contested Motions: Judge Brailsford will make every effort to have an order issued on all non-contested motions within 7 days. Counsel are strongly encouraged to contact the law clerk assigned to the case if an order has not been issued on a non-contested motion within this time frame.

Issuance of Decision on Contested Motions: Judge Brailsford's chambers has an aspirational goal of issuing a decision on every contested motion within 45 days after the motion is at issue, *i.e.*, oral argument has been held or the final brief has been filed on motions in which there is no oral argument. At times, it is impossible to achieve this aspirational goal because of the Judge's trial schedule or the press of a busy docket. Counsel are strongly encouraged to contact the law clerk assigned to the case if a motion has been at issue for more than 60 days.

Assistance: Contact the Judge's Courtroom Deputy for assistance with scheduling, or if the parties require a modification of the hearing date or time.