



**NEW YORK STATE**  
**Unified Court System**

OFFICE OF COURT ADMINISTRATION

**HON. JOSEPH A. ZAYAS**  
CHIEF ADMINISTRATIVE JUDGE

**HON. NORMAN ST. GEORGE**  
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

**DAVID NOCENTI**  
COUNSEL

**MEMORANDUM**

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on a proposal to amend 22 NYCRR § 202.8-b to eliminate word limits on evidentiary materials, and to repeal 22 NYCRR § 202.8-g to eliminate the need for Statements of Material Fact to accompany summary judgment motions

Date: November 4, 2024

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The Administrative Board of the Courts is seeking public comment on a proposal to amend 22 NYCRR § 202.8-b to eliminate word limits on evidentiary materials, and to repeal 22 NYCRR § 202.8-g to eliminate the need for Statements of Material Fact to accompany summary judgment motions.

The proposed amendments are attached as Exhibit A.

Attached as Exhibit B is a memorandum from the Chair of the Advisory Committee on Civil Practice, explaining the reasoning behind the two requests. As noted in that memorandum, the Advisory Committee believes that the word limits were not intended to apply to evidentiary materials, and that such limits may adversely impact the ability of litigants to submit evidence. In addition, the Advisory Committee believes there is no need to require that a Statement of Material Fact accompany all motions for summary judgment, particularly because an attorney affirmation generally serves the same purpose.

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Persons wishing to comment on the proposal should e-mail their submissions to [rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov) or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10<sup>th</sup> Fl., New York, New York, 10004. Comments must be received no later than Friday, December 13, 2024.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

**EXHIBIT A**

## Proposed Amendments

**Section 208-b of the Rules of the Chief Administrator is hereby amended to read as follows (deletions in strikethrough, and additions underscored):**

Section 202.8-b Length of Papers.

(a) Where prepared by use of a computer, unless otherwise permitted by the court: (i) affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7,000 words each; (ii) reply affidavits, affirmations, and memoranda shall be no more than 4,200 words and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief. These word limitations shall not apply to evidentiary materials such as affidavits, affirmations or reports from lay or expert witnesses.

(b) For purposes of paragraph (a) above, the word count shall exclude the caption, table of contents, table of authorities, and signature block.

(c) Every brief, memorandum, affirmation, and affidavit which was prepared by use of a computer shall include on a page attached to the end of the applicable document, a certification by the counsel who has filed the document setting forth the number of words in the document and certifying that the document complies with the word count limit. The counsel certifying compliance may rely on the word count of the word-processing system used to prepare the document.

(d) Where typewritten or handwritten, affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 20 pages each; and reply affidavits, affirmations, and memoranda shall be limited to 10 pages each and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief. These word and page limitations shall not apply to evidentiary materials such as affidavits, affirmations or reports from lay or expert witnesses.

(e) Where a party opposing a motion makes a cross-motion, the affidavits, affirmations, briefs, or memoranda submitted by that party shall be limited to 7,000 words each when prepared by use of a computer or to 20 pages each when typewritten or handwritten. Where a cross-motion is made, reply affidavits, affirmations, briefs or memoranda of the party who made the principal motion shall be limited to 4,200 words when prepared by use of a computer or to 10 pages when typewritten or handwritten. These word and page limitations shall not apply to evidentiary materials such as affidavits, affirmations or reports from lay or expert witnesses.

(f) The court may, upon oral or letter application on notice to all parties permit the submission of affidavits, affirmations, briefs or memoranda which exceed the limitations set forth above. In the event that the court grants permission for an oversize submission, the certification required by paragraph (c) above shall set forth the number of words in the document and certify compliance with the limit, if any set forth by the court.

**Section 208-g of the Rules of the Chief Administrator is hereby repealed in its entirety:**

~~Section 202.8-g. Motions for Summary Judgment; Statements of Material Facts~~

~~(a) Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, the court may direct that there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.~~

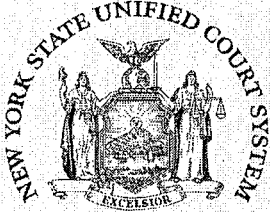
~~(b) In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.~~

~~(c) Each numbered paragraph in the statement of material facts required to be served by the moving party may be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party. The court may allow any such admission to be amended or withdrawn on such terms as may be just.~~

~~(d) Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b), including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.~~

~~(e) In the event that the proponent of a motion for summary judgment fails to provide a statement of undisputed facts though required to do so, the court may order compliance and adjourn the motion, may deny the motion without prejudice to renewal upon compliance, or may take such other action as may be just and appropriate. In the event that the opponent of a motion for summary judgment fails to provide any counter statement of undisputed facts though required to do so, the court may order compliance and adjourn the motion, may, after notice to the opponent and opportunity to cure, deem the assertions contained in the proponent's statement to be admitted for purposes of the motion, or may take such other action as may be just and appropriate.~~

## **EXHIBIT B**



## Advisory Committee on Civil Practice

Co-Chairs: George Carpinello • Hon. John Higgitt

### MEMORANDUM

**TO:** Hon. Joseph Zayas  
**FROM:** George Carpinello, Chair, Advisory Committee on Civil Practice Law and Rules  
**CC:** David Nocenti  
**SUBJECT:** Proposed Amendments to Uniform Rules 202.8-b and 207.8-g  
**DATE:** October 3, 2024

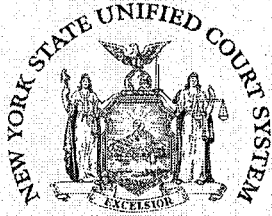
In 2021, the Uniform Rules were amended to apply certain requirements that had been adopted in the Commercial Division to all Supreme and County Courts. Included in these amendments were various requirements pertaining to motion practice.

One of these amendments was embodied in Uniform Rule 202.8-b, which pertains to the length of papers, and it imposed limits of 7,000 words on affidavits, affirmations, briefs and memoranda of law in support of or opposition to motions, and 4,200 words on reply affidavits, affirmations, and memoranda. However, it has come to the Committee's attention that arguments have been made that these limitations apply to evidentiary materials such as affidavits or affirmations submitted by expert witnesses or fact witnesses. Because the Committee does not believe that these word limitations were intended to apply to evidentiary materials, as distinguished from argument by counsel, and because imposing an arbitrary limitation on evidentiary materials may impact litigants' ability to submit evidence, the Committee proposes that Uniform Rule 202.8-b be amended to reflect those word limitations do not apply to evidentiary material.

Another of the amendments was embodied in Uniform Rule 202.8-g, which requires Statements of Material Facts to accompany summary judgment motions. 202.8-g(a) requires the drafting of a separate document with numbered paragraphs setting forth "the material facts as to which the moving party contends there is no genuine issue to be tried." 202.8-g(b) requires a party opposing summary judgment to draft a document with "a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried." 202.8-g(c) provides that each numbered paragraph in the statement of material facts by the moving party "ay be deemed admitted for purposes of the motion unless specifically controverted" in a correspondingly numbered paragraph by the opposing party. 202.8-g(d) requires each statement in these documents to be followed by a citation to the evidence.

As a result of many complaints early-on after 202.8-g was initially adopted, the rule was amended so that it applies only where the court directs such statements. Since that amendment, however, parties moving for summary judgment have generally tended to include such statements regardless of the motion court's rules, and the result has been that parties opposing summary judgment have felt compelled to draft a responsive statement rather than risk leaving the document without a response.

It is the view of the Committee that the requirement of Statements of Material Facts imposes additional and unnecessary burdens on the litigants and the courts that needlessly consume time and resources. Motions for and against summary judgment motions are already supported by affirmations from attorneys, and often by memoranda of law, that should sufficiently identify the facts that the parties claim are not disputed, and those that they claim are in dispute. Recently, in *Taveras v. Inc. Vill. of Freeport*, 225 A.D.3d 822 (2<sup>nd</sup> Dept. 2024), the court noted that "the affirmation of the defendants' attorney 'was the functional equivalent of a statement of material



## Advisory Committee on Civil Practice

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facts....” There is no value to requiring the creation of another document specifying the same information that is provided in an attorney’s affirmation or memorandum of law. Moreover, in the three years since the requirement has existed, the Statements of Material Facts have often become extremely lengthy, consisting of many paragraphs. As a result, this significantly has added to the amount of work and expense to litigants in the summary judgment practice, and added to the workload of the courts to review these additional submissions. It is also notable that this additional procedural requirement may result in summary judgment motions being granted or denied based solely in the procedural defect of a party’s failure to include such a statement, regardless of the merits of the motion, which is counter to sound policy.

For the foregoing reasons, the Committee proposes that Uniform Rule 202.8-g be repealed, and that the word limitations of Uniform Rule 202.8-b be amended to read as follow, with s:

### Section 202.8-b Length of Papers.

(a) Where prepared by use of a computer, unless otherwise permitted by the court: (i) affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7,000 words each: (ii) reply affidavits, affirmations, and memoranda shall be no more than 4,200 words and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief. These word limitations shall not apply to evidentiary materials such as affidavits, affirmations or reports from lay or expert witnesses.

(b) For purposes of paragraph (a) above, the word count shall exclude the caption, table of contents, table of authorities, and signature block.

(c) Every brief, memorandum, affirmation, and affidavit which was prepared by use of a computer shall include on a page attached to the end of the applicable document, a certification by the counsel who has filed the document setting forth the number of words in the document and certifying that the document complies with the word count limit. The counsel certifying compliance may rely on the word count of the word-processing system used to prepare the document.

(d) Where typewritten or handwritten, affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 20 pages each; and reply affidavits, affirmations, and memoranda shall be limited to 10 pages each and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief. These word and page limitations shall not apply to evidentiary materials such as affidavits, affirmations or reports from lay or expert witnesses.

(e) Where a party opposing a motion makes a cross-motion, the affidavits, affirmations, briefs, or memoranda submitted by that party shall be limited to 7,000 words each when prepared by use of a computer or to 20 pages each when typewritten or handwritten. Where a cross-motion is made, reply affidavits, affirmations, briefs or memoranda of the party who made the principal motion shall be limited to 4,200 words when prepared by use of a computer or to 10 pages when typewritten or handwritten. These word and page limitations shall not apply to evidentiary materials such as affidavits, affirmations or reports from lay or expert witnesses.

(f) The court may, upon oral or letter application on notice to all parties permit the submission of affidavits, affirmations, briefs or memoranda which exceed the limitations set forth above. In the event that the court grants permission for an oversize submission, the certification required by paragraph (c) above shall set forth the number of words in the document and certify compliance with the limit, if any set forth by the court.