A Practical Guide to Revision of Local Court Rules

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A PRACTICAL GUIDE TO REVISION OF LOCAL COURT RULES

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Federal Judicial Center
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This paper is a product of a study undertaken in furtherance of the Federal Judicial Center's statutory mission to conduct and stimulate research and development on matters of judicial administration. The analyses, conclusions, and points of view are those of the author. This work has been reviewed by Center staff, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

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In January 1983 the United States District Court for the Northern District of Georgia undertook the total revision of its local court rules. The project, led by the court's rules committee, lasted two years, and it involved all judges and magistrates on the court, and the clerk of court, his deputy clerks, and his assistants. The rules were reviewed by court personnel, government and private attorneys, and the Administrative Office of the U.S. Courts. A former law clerk on the court was hired as research assistant for the project.

This paper was written to facilitate the rules revision process in other trial courts by sharing the experiences of Northern Georgia. The paper is intended to be a "how-to-do-it" presentation. It does not address the philosophical considerations that influence the content of specific rules in the nation's trial courts.

I. THE DECISION TO REVISE

A number of factors may require amendment of a court's local rules: (1) changes in federal law and in the Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure; (2) increases in the number of case filings; (3) additions of judgeships; and (4) significant changes in the types of cases or complexity of cases filed in the court. Independently or in combination, these factors may require wholesale revision of a court's local rules. For example, the addition of judges to a court often makes it imperative for that court to adopt more formalized operating procedures. Northern Georgia discovered that the adoption of uniform basic practices in its 11 courtrooms increased the court's efficiency and, even more important, simplified procedures for attorneys practicing before the court.

Comprehensive review of a court's local rules is also appropriate when those rules have become inadequate to convey court policies or to impart necessary directions to attorneys practicing before the court. In addition, review is appropriate when the number of prior amendments has made insertion of new amendments awkward or the rules difficult to read.

A rules revision project is much more likely to be successful if the factors mandating revision are communicated to each judge on the court. Statistical data regarding the volume of cases or the occurrence of specific problems may be helpful when the primary impetus for revision is growth of the court's caseload. Northern Georgia's revision project evolved in part from the judges' recognition of problems related to the court's size and the volume of cases, and in part from complaints from the local bar association regarding attorneys' inability to remember the varying time limitations and procedures imposed by the court's 11 judges.

Given the impetus for the rules revision project, the goal from the outset was to standardize procedures from chambers to chambers. Several of Northern Georgia's

judges would have preferred promulgation of fewer rules and retention of greater autonomy over practices within their own courtrooms. However, a high level of standardization was achieved, primarily because each judge became convinced that standardization was best for the court and for the bar.

II. ORGANIZING THE RULES COMMITTEE

An effective approach to rules revision is for the court to establish a committee charged with the responsibility for drafting a set of proposed rules that will be submitted to the entire court for review and approval. The committee's membership should be well balanced to reflect the range of tenure and experience on the bench. Northern Georgia's committee consisted of one of the court's more senior judges, who had participated in the drafting of prior court rules, two judges with extensive litigation experience, and a fourth judge who had long-standing interest in the area of court management and procedure. Ex officio members of the committee were the clerk of court, his chief deputy clerk, and the research assistant. Courts in which the magistrates routinely hear civil cases under 28 U.S.C. § 636(c) (1982) may wish to name a magistrate to serve on the rules committee.

A lengthy revision project requires prolonged attention to detail. Prospective committee members should consider this factor in ascertaining their interest in serving on the rules committee. Also, judges holding strong opinions on important issues of known controversy may not make effective rules committee members. When Northern Georgia's rules committee was considering matters that the court was known to be divided on or that noncommittee members had particular interest in, the research assistant was directed to contact the judges concerned and present a summary of their views at the rules committee meeting. When a proposed rule coming out of the committee was adverse to a solicited judge's point of view, the rules committee provided that judge with a written explanation of the reasons for the action. The assurance that there had been a full airing of all points of view promoted understanding and ultimate acceptance of the proposed rule.

Although they were nonvoting members, the clerk of court and chief deputy clerk were essential members of the committee. They were able to answer questions regarding the filing, handling, and submission of cases and motions; procedures for notifying opposing attorneys and pro se parties; and other ministerial matters. The clerk's input was also essential in evaluating the mechanical feasibility of proposed new rules and in formulating procedures to accomplish desired objectives. Northern Georgia also found that the clerk tended to be more familiar with recent pronouncements and publications from the Administrative Office and the Federal Judicial Center than the committee members were. His communication of this information to the rules committee reduced the number of subsequent amendments to the proposed rules and permitted the committee to discuss the feasibility of incorporating experimental procedures, such as alternative dispute resolution procedures, into the court's local rules.

Northern Georgia's rules committee determined that the scope of its revision project made the hiring of a part-time research assistant necessary. Other courts may have a permanent law clerk to whom this responsibility can be assigned. Legal training should be a prerequisite for the assignment, and familiarity with the particular court is desirable. Consistency in style is most easily attained when one person is selected to assist for the duration of the revision project.

Northern Georgia's research assistant was a former law clerk on the court who had also practiced law. Her prior association with the court enabled her and the rules committee to establish quickly a good working relationship. The research assistant also found that her experience as a practicing lawyer was helpful to her once the drafting of proposed rules began.

The research assistant's primary duties were the following:

1. recommending a new format, arrangement, and numbering system for the court's revised local rules;

2. researching relevant law, determining the history of existing court rules targeted for amendment, researching other courts' local rules on topics being reviewed, and conveying the results of her research to committee members by memo prior to discussion at a rules committee meeting;

3. ascertaining the wishes of committee members, and in some instances the court, regarding particular rules through the use of checklists, personal interviews, and limited written questionnaires;

4. drafting the proposed rules pursuant to the directions of the rules committee and arranging for review of the draft rules by other groups or individuals; and

5. preparing meeting agendas and minutes and other memoranda, as needed.

The research assistant was hired to work 20 hours weekly. This schedule enabled the revision project to proceed at a steady pace but not so quickly that committee members were unable to integrate their committee work into their regular judicial duties.

Courts that revise their local rules must provide secretarial support for the revision project. Northern Georgia utilized the court's rotating secretary, whose duties already included doing judges' committee work. The research assistant did not have first call on the secretary's time, but the secretary was readily available to do rules committee work. It is essential in this type of project that the secretary have access to a word processor or memory typewriter.

III. MEETINGS

Northern Georgia's rules committee scheduled biweekly meetings for the sole purpose of revising the court's local rules. Later in the project, for a four- to six-week period, the committee met weekly. The meetings were held at lunchtime and generally lasted about one and one-half hours. Luncheon meetings were selected because they were convenient and easily integrated into the judges' trial schedules.

Biweekly meetings also enabled the research assistant to obtain regular feedback from committee members so that work on the rules was not stalled at any time. A regular meeting schedule also helped to maintain the committee members' interest and permitted them to schedule other obligations around the anticipated meeting dates.

The research assistant circulated a proposed agenda with attachments about four to seven days before each meeting. She also circulated the proposed minutes of a meeting as soon after the meeting as possible. The research assistant found that restatement of the committee's decisions in connection with preparation of the minutes helped to clarify the committee's thoughts on a particular subject for her.

The research assistant also maintained a meeting notebook for each committee member. The notebook was divided into two sections. The front section contained a copy of that day's agenda and attachments. The second section consisted of rules that had already been approved by the committee, in chronological order.

Northern Georgia's experience established that rules committee meetings should be used to discuss or approve previously circulated proposals, research memos, and so forth. In other words, the committee meetings should be primarily working meetings, in which specific matters are considered and decided, rather than generalized brainstorming sessions. For this reason, an experienced research assistant, capable of working alone to digest information and prepare various options for the committee's consideration, can be of invaluable assistance to the rules committee.

IV. ORGANIZATION OF COURT RULES

Northern Georgia decided to separate its court rules into two publications: local court rules, which are prepared for and distributed to attorneys, and internal operating procedures, which are written for the benefit of the court and its staff. Internal procedures are distributed to attorneys only on request. Prior to 1985, some of the court's internal procedures were included in the local rules, and some were either communicated orally or established by court order.

Internal Operating Procedures

The internal operating procedures adopted during Northern Georgia's rules revision project establish practices among the judges or the manner in which the court will be operated. These procedures include those for case assignments and for making adjustments in special circumstances; those relating to court administration, such as the function of committees, the administration of court funds, and the procedures governing judges' meetings; and job descriptions for persons hired by the court. Some court matters of an administrative nature, such as delegation of functions from the court to the clerk, could not be appropriately addressed in the internal procedures and required issuance of individual court orders. Nevertheless, the court found that the reexamination of its internal procedures was beneficial in that it pro-

moted good relationships among the judges and led to the establishment of written processes to cover most problems arising within the court.

Local Rules

The main thrust of any court's rules revision project will be its local rules directing the actions of attorneys before the court. Northern Georgia's local rules include those addressing admission to practice before the court; those setting forth the physical requirements for documents filed in the court and important timing limitations imposed by the court; and those governing attorneys' interaction with one another, the court, and the press.

Preliminary to writing and revising the local rules, the rules committee had to make several decisions regarding the format of the rules: (1) whether to separate the rules into sections (e.g., civil vs. criminal), (2) how to number the rules, and (3) how best to present the rules. The rules committee also formulated a table of contents that reflected the major rule headings within the proposed sections. The research assistant expedited this decision process by reviewing the local rules of other district courts for ideas.

Callaghan & Co.'s *Federal Local Court Rules* (Pike & Fischer eds. 1984) reprints the local rules of all district courts and is an invaluable research tool throughout a court's rules revision project. Copies of appellate and district court local rules are also available from the Lawyers Cooperative Publishing Company in circuit-specific books titled *Federal Procedure Rules Service*. If purchase of these services cannot be financially justified or if they are not available through the circuit's library, a court can request copies of local rules directly from individual districts. In addition, the Federal Judicial Center's Information Services staff will assist courts in identifying rules covering a specific subject.

Northern Georgia divided its local rules into the following six sections:

1. Section I: General Rules;
2. Section II: Civil Rules;
3. Section III: Special Proceedings;
4. Section IV: Grand Juries;
5. Section V: Criminal Rules; and
6. Section VI: Appendices.

At the time this paper was written, the inclusion of a section for local bankruptcy rules was anticipated. Almost every court will need sections for general rules, civil rules, criminal rules, and the appendices. The size of the court, as in the case of Northern Georgia, or the existence of functions unique to a court (e.g., a large maritime caseload) may make the inclusion of additional local rule sections and additional internal rules necessary.

The general rules section should contain rules applicable to all lawyers practicing before the court, regardless of the nature of their case. By separating these gen-

V. DRAFTING THE RULES

It may not always be apparent to the rules committee whether a rule is needed or not. The best rule of thumb is to look at the unrevised rules and determine which are working and which are not working. This can be done by contacting the judges, the courtroom deputies, other clerk's deputies, and representative lawyer groups to inquire about the areas in which those individuals or groups are encountering difficulty. The items reported should be added to the committee's list of topics to be reviewed. The rules committee may not ultimately recommend addition of a new rule on every point, but the process of review almost always suggests a way either to clarify the statement of the existing rule or to modify the existing court practice in order to alleviate the difficulties being experienced.

Northern Georgia decided to tackle its most difficult and most urgent rule needs first. Hindsight affirms that this was an appropriate beginning point, as the successful completion of rules that were of special interest to all committee members gave impetus to the project. Also, working first on rules for which the problems and important considerations were known allowed the rules committee to establish research techniques that set the standard for the remainder of the project.

Review of Existing Rules

The committee's first step in drafting new rules was to review the court's existing rule, if any, on a topic to determine whether changes were needed. In many areas, the research assistant was asked to research the court rules of other district courts. For example, Northern Georgia's rules on discipline, the admission of assistant U.S. attorneys and attorneys pro hac vice, and the format requirements for pleadings incorporate elements from several other district courts' rules.

The committee's second step in reviewing each rule was to seek the views of interested groups. If the rule under review was applicable to a particular group (e.g., the clerk's office, official court reporters, the bar, the U.S. attorney's office), the committee solicited the opinions of members of that group and obtained their review of the final proposed rule. In addition, if the committee knew of an individual judge's interest in a particular rule, it solicited the judge's views and obtained his or her comments on the proposed rule. Examples of such rules were the rules on professional standards of conduct for members of the court's bar, the mode of attorney discipline, the Certificate of Interested Persons, restrictions on letter communications to judges, taxation of costs in late-settling cases, and attorney fees.

In revising the rules, the committee also tried to consolidate instructions on related topics into one rule. For example, prior to the 1985 revision, Northern Georgia addressed the issue of case dismissal in seven different rules. In the revised rules, one rule, entitled Dismissal of Civil Cases, was created, with sections for voluntary dismissals, dismissals without prejudice, and dismissals for want of prosecution.

In reviewing the rules, the committee and the research assistant used several different research techniques. These techniques are described in this section, and copies of the documents used are presented in appendices B, C, and D.

1. Questionnaire. Preferences concerning rules that are technical or formalistic in nature can be obtained through the use of a questionnaire on which committee members check off the features they desire. For example, when Northern Georgia was rewriting rule 200, its rule regarding the format for letter-size pleadings and documents, the research assistant canvassed the rules of the district courts to determine the limitations imposed by other courts. These requirements were then grouped by topic for the rules committee to review. The research assistant's initial draft of the proposed rule was based on the results of the survey. The questionnaire on rule 200 is presented in appendix B.

2. Textual questions for the committee to answer. For the committee's review of particularly complicated matters, it may be necessary for the research assistant to prepare an analytical memo discussing the various options open to the court. The research assistant may wish to include in the memo specific questions for the rules committee members to consider at the next meeting or to respond to in writing prior to the next meeting. Appendix C is the first page of a memo on attorney discipline prepared by Northern Georgia's research assistant and eight questions included in the memo that she presented to the committee for response.

3. Alternative proposed drafts of a rule. Resolution of the substantive features of a rule is sometimes facilitated by the circulation of alternative drafts of the rule to rules committee members prior to discussion at a meeting. Northern Georgia followed this approach when revising its rule limiting the length of the discovery period. The alternative drafts of the court's discovery rule are presented in appendix D.

4. Reference to other courts' rules. The provisions of other courts' rules were of particular interest to Northern Georgia whenever it was considering rules that were entirely new for the court or the rules it was revising would have an impact on attorneys outside the district. An example of the first situation was the enactment of a new rule requiring attorneys to file a Certificate of Interested Persons early in a case. The court determined first what requirements, if any, other trial courts within its circuit imposed and then what requirements trial courts in other circuits imposed. Northern Georgia also considered its own circuit court's rule on the subject. Examples of rules that had an impact on attorneys outside the district were the rule on bar admission requirements for U.S. attorneys and admission policies for attorneys pro hac vice. In these two situations, Northern Georgia wanted to be sure not only that the rule satisfied its needs, but also that the rule was not unduly restrictive compared with rules throughout the nation.

Revision of Civil Pretrial Practices

The largest single endeavor within Northern Georgia's revision project was the analysis and review of the 11 judges' individual civil pretrial practices and the adoption of uniform pretrial documents for the court. This endeavor was complicated because, almost as the work was being completed, rule 16 of the Federal Rules of Civil Procedure was amended to require issuance of a scheduling order 120 days after the filing of the complaint, a timetable that did not mesh well with the case management timetable developed by the court. Because the court's revision of its rules on civil pretrial practices was a large part of the overall revision project, it is described in some detail. The focus of this discussion is on one part of the standardized pretrial practices used by the court—the uniform Pretrial Order.[1]

Realizing that revision of civil pretrial practices would have a significant impact on all the judges, the rules committee felt it was appropriate to solicit the comments of each judge before preparing new rules and standardized documents. Therefore, the research assistant visited all the judges and asked them which features they felt were absolutely essential to a good Pretrial Order. She also asked each judge if there were features about that judge's current Pretrial Order that had not worked well, whether the judge was considering making any format or substantive changes in pretrial instructions, and in which areas, if any, the judge was willing to modify his or her Pretrial Order to achieve courtwide uniformity. A few judges mentioned areas in which they would not be willing to change their existing practices.

A letter was then sent to each judge, explaining the procedure being followed by the rules committee in revising the Pretrial Order. Attached to the letter was a spread sheet that had been prepared by a member of the court's bar council, cataloging the different topics covered by the judges in their Pretrial Orders. The numbers in each column of the spread sheet indicated the paragraph in the judge's Pretrial Order that addressed the topic listed in the column heading. The numbers across the bottom of the spread sheet showed the total number of judges who addressed that particular topic in their pretrial instructions. The research assistant then sent each judge a Pretrial Order analysis she had prepared, focusing on the timing variations contained in the 11 individual Pretrial Orders. (See appendix E for a copy of this analysis.) Because some judges include discovery instructions in their pretrial directions, the research assistant also sent copies of the proposed new rules on discovery practices.

The spread sheet and Pretrial Order analysis revealed that there was considerable uniformity among the issues addressed by the judges in their Pretrial Orders and that, although these instructions were not entirely the same substantively, the primary differences among them were the due dates established by the judges. For example, Section III of the analysis showed that in jury cases eight judges required reports to be filed with the court prior to the Pretrial Order. The information re-

1. In addition to the uniform Pretrial Order, the court adopted two other standardized pretrial documents: the Settlement Certificate and the Preliminary Statement. For a complete description of the court's standardized pretrial procedures, see C. Seron, The Use of Standard Pretrial Procedures: An Assessment of Local Rule 235 of the Northern District of Georgia (Federal Judicial Center 1986).

quested in each report was very similar, but the due dates varied from 90 days after the complaint was filed to 20 days after the completion of discovery. Section VI of the analysis revealed another example of timing variations. One judge required summary judgment motions to be filed prior to expiration of the discovery period; other judges required that they be filed within 15 days after discovery; two judges required that they be filed either before the pretrial conference or filing of the Pretrial Order; and four judges did not include any specific filing deadlines.

After reviewing the spread sheet and analysis, seven judges and several courtroom deputies sent comments about pretrial procedures to the rules committee. Every comment sent to the committee by a judge or courtroom deputy was considered. Most of the comments regarding specific provisions were incorporated into the proposed uniform Pretrial Order, either in substance or in the express language offered by the judge.

Whenever possible, flexibility was incorporated into the uniform Pretrial Order. For example, item 10 of Northern Georgia's uniform Pretrial Order establishes the procedure for submission of general voir dire questions, but specifically states that "[t]he determination of whether the judge or counsel will propound general voir dire questions is a matter of courtroom policy which shall be established by each judge."

Three major drafts of the uniform Pretrial Order were prepared and reviewed by the committee before a final draft document was sent to the court for approval. Prior to the final submission, the preliminary drafts of the uniform Pretrial Order were sent to the Northern District Bar Council, the federal courts committee of the Atlanta Bar Association, the U.S. attorney's office, the Administrative Office, the courtroom deputies, and various other deputy clerks and court officials for comment. The committee spent about a month reviewing the comments and recommendations it had received and incorporating those with merit into the rules. Thus, the final draft of the uniform Pretrial Order presented to the judges for approval incorporated the input of all the judges on the court as well as the comments of those groups who would be completing and handling the order. The result was the creation of a document with provisions acceptable to most judges and attorneys.

To achieve adoption of the uniform Pretrial Order, one significant compromise was necessary. Prior to the rule revisions, half of Northern Georgia's judges had required parties to submit Preliminary Statements before submitting the final Pretrial Order. As part of the effort to adopt a uniform Pretrial Order, all the judges agreed to adopt a requirement for a Preliminary Statement, due 40 days after the joinder of issue. (See appendix F for a copy of the local rule regarding the uniform Pretrial Order and the Preliminary Statement. See appendix G for a copy of the documents themselves.)

The Preliminary Statement also proved to be the device by which the court was able to comply with amended rule 16 of the Federal Rules of Civil Procedure. As noted earlier, this rule was amended just as Northern Georgia was completing its rule revisions. When rule 16 went into effect, the Preliminary Statement was minimally modified to include additional provisions regarding discovery, joinder of parties, and time limitations for amending pleadings. Through the amended Preliminary Statement, the court was able to comply in principle with rule 16. Recently

the court has further modified the Preliminary Statement and retitled it the Joint Preliminary Statement and Scheduling Order. It now expressly fulfills the scheduling order requirements of rule 16, without introducing a second separate order into the court's pretrial documents.

To ensure that inadvertent discrepancies in the interpretation and use of the Preliminary Statement and uniform Pretrial Order did not occur, the rules committee prepared official instructions for distribution to the parties or their attorneys at the time the complaint is filed. These instructions addressed not only the uniform Pretrial Order and Preliminary Statement but also the court's standardized Settlement Certificate and other significant civil rules. The entire court approved these instructions and, by order, directed the clerk to distribute them.

VI. PRINTING AND PUBLISHING THE NEW LOCAL RULES

In part because of the large size of its bar, Northern Georgia decided to contract with a private local printer to print and distribute its local rules. Section 105, 17 U.S.C. (1982) prevents the printer from claiming a copyright on the printed rules edition. The printer offers the rules and a binder for the rules for sale to attorneys and other interested persons for $25.60. A yearly subscription for amendments, which are published quarterly, is offered for $20 per year. When a rule is amended, the entire page is reprinted and the date of the amendment is indicated at the bottom of the replacement page. The court also hired the printer, who regularly reprints and digests law materials, to prepare the index to the rules. The research assistant then carefully reviewed the index submitted by the printer for corrections and addition of other listings.

Northern Georgia completed its new local court rules about two months before they went into effect, during which time the rules were forwarded to the Judicial Council of the Eleventh Circuit for approval. The rules committee also used this time to plan, jointly with the local bar association, two seminars to inform attorneys about the provisions of the new rules and to highlight important changes from the old rules. The two seminars were identical. The first was held one week after the rules had gone into effect, and the second was held the following week. Each seminar qualified for continuing legal education credit. The materials were presented by members of the rules committee, and time was provided at the end of the seminar for questions and answers. Copies of the rules had been available for purchase prior to the seminars and were available for purchase from the printer at the seminars.

Northern Georgia further publicized its new rules by directing the research assistant to prepare an article for publication in the *Georgia State Bar Journal*.[2] This article, which reached lawyers statewide, not only presented the primary changes in

2. J. Bowden, *New Local Rules of Practice for the United States District Court, Northern District of Georgia*, 21 Ga. St. B.J. 163 (May 1985).

the rules, but also summarized the process the court had used in preparing the rules and emphasized the overall goals of the revision endeavor.

Careful attention to the printing and publicizing of the court's new local rules was essential in order to achieve an orderly transition from the old rules to the new rules. The particular vehicles selected may vary from court to court, but the importance of publishing new rules in an effective, comprehensive manner should not be overlooked.

VII. CONCLUSION

Thoughtful planning is probably the most important element in preparing for a major revision of a court's local rules of practice. The planning phase includes determining the desirable scope of the revision project and deciding by whom and in what manner the project should be accomplished for the court. Throughout the project it is essential to provide those judges not on the rules committee with timely explanations of the committee's actions, as well as to encourage the participation of nonmember judges in the drafting of specific rules. Northern Georgia found that once the planning was completed and the research, drafting, and reporting procedures were established, the actual writing of the local rules proceeded smoothly.

Rule 83 of the Federal Rules of Civil Procedure requires a district court to give public notice of an opportunity to comment before making or amending its local rules. Acceptance of the new rules will be greater if the rules committee, in addition, invites representative bar committees and legal groups to participate in the review process.

This paper has highlighted the importance of readability of local rules by discussing the selection of paper size, the format in which the rules are presented, and the numbering of the rules. Readability depends primarily, however, on the conciseness and structural simplicity of the rules. The rules committee should constantly endeavor to express the rules in short sentences. Whenever possible, the committee should avoid including multiple thoughts in a single rule subsection. Even well-reasoned practice procedures will be ineffective if the reader cannot find his or her way through overly long sentences.

When a court adopts standardized documents or other related new procedures, a limited trial use of these documents or procedures in one or two courtrooms is advisable. Northern Georgia followed this approach in trying out its new Pretrial Order and was able to resolve ambiguities before presenting the order to the printer for reproduction.

Amendments to the rules will be inevitable. It is generally advisable to release these amendments on a set timetable. Such a practice allows attorneys using the rules to know when they should check a rule for amendments before relying on it. Consolidation of amendments also helps to hold down the cost, as well as the number, of amendments.

The ultimate success of the revision project will be measured by the degree to which the judges on the court adhere to the new rules. Northern Georgia's experi-

ence confirmed that judge participation in the drafting of the rules was the key to compliance. Thus, even though the court may delegate the major responsibility for preparation of its new rules to a few judges, the rules committee should always be receptive to the comments of nonmember judges and should on appropriate occasions actively solicit their points of view.

APPENDIX A

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APPENDIX B

Questionnaire on Former Rule 150
(New Rule 200)

Questionnaire on Former Rule 150 (New Rule 200)

Please circle those elements you would like included in new Rule 150.

A. Paper Description

1. Size (8 1/2 x 11")

2. Paper quality
   (a) White paper
   (b) White opaque paper of good quality
   (c) Thirteen-pound weight

3. Extend 8 1/2 x 11" requirement to exhibits
   (a) Mandatory
   (b) If possible

4. Other exceptions to letter-size requirements: _____

B. Filing Requirements

1. Flat filing: flat and unfolded

2. Bound at top

3. Civil cover sheet

C. Margins

1. No requirement

2. Top margin only
   (a) In terms of inches. How many? _____
   (b) In terms of lines. How many? _____

3. Side and bottom margin specifications: _____

4. Enough space for file stamping

D. Type

1. (a) Typed
   (b) Printed
   (c) Handwritten, if legible
   (d) Color of type: _____

2. Double-spaced

3. Not less than 1 1/2 spaces between lines

4. Quotations
   (a) Indented
   (b) Single-spaced
   (c) Double or 1 1/2 spaced

5. Characters per inch

6. Lines per inch

7. Numbered lines (left) (right) margin

8. Consecutively numbered pages

9. Exhibits numbered
   (a) Progressively with principal document
   (b) Consecutively within the exhibits

E. Nonconforming Pleadings

1. Do not address

2. Specific rule
   (a) Provisionally accept
   (b) Refuse to accept
   (c) Refuse to accept except upon court order
   (d) (Serve) (Do not serve)

3. General, advisory rule

F. Duplicates

1. Original and one duplicate

2. Amendments
   (a) Original and one duplicate
   (b) Incorporated by reference to prior pleading
   (c) Reproduce entire pleading

3. Three additional copies for three-judge court cases

4. Two additional copies for each case other than lead case in consolidated and related cases

G. Form of Pleadings, Motions, Etc.

1. Do not address

2. Name, address, telephone number of attorney or pro se party on:
   (a) Title page
   (b) Signature page

3. Sample form

4. Verbal description of title page
   (a) Caption and title information
   (b) Demand for jury trial or oral argument
   (c) Class action
   (d) Basis of jurisdiction
   (e) Three-judge court

5. Form of citations

6. Table of contents for briefs over 10 pages

APPENDIX C

Memo on Attorney Discipline and Questions Presented to the Committee

UNITED STATES GOVERNMENT

memorandum

DATE: February 10, 1983

REPLY TO ATTN OF: Jeanne Bowden

SUBJECT: Attorney Discipline

TO: Honorable Marvin H. Shoob
Chairman, Local Rules Committee

Judge Evans, Judge O'Kelley, and Judge Hall each have asked me to research the area of attorney discipline. As recently as August 1982, Judge Moye inquired of you about the possibility of the Rules Committee considering the Model Federal Rules of Disciplinary Enforcement and making a recommendation regarding adoption to the court. As you stated in your August 10th memorandum to Judge Moye, discussion of the Model Rules was tabled by the court indefinitely on June 28, 1979.

The Model Federal Rules of Disciplinary Enforcement were approved by the Judicial Conference on September 21, 1978. Since that date at least twenty-five courts have adopted the Model Rules with, as far as I can determine, only minor changes. Fifty additional courts have local rules addressing the subject of attorney discipline. Many of these rules, like our Rule 71.5, predate the Model Rule. On the other hand, numerous courts have rejected the proposed Model Rules and have since 1978 adopted their own Rules of Discipline.

After reviewing these fifty rules, I have selected five rules to summarize briefly for you. In addition, I am including a summary of the Model Rules. It is my understanding that most of the judges are familiar with the proposed Model Rules. However, please notify me if any judge needs a copy.

I would appreciate some input from the committee as to the type of rule the committee favors before I begin drafting a proposed new Rule 71.5. Specifically:

1. Does the committee favor adoption of the Model Rules?

2. Does the committee want to refer all complaints of misconduct to the State Bar Disciplinary Committee for investigation (see Utah) or just those complaints involving Georgia bar members (see Pennsylvania (W)) or those not involving distinctly federal features (see Florida (M))? What constitutes a distinctly federal feature?

3. Would the findings of the state bar committee be conclusive or simply recommendations to this court?

4. Does the committee want to reserve all investigatory power to the court (see Colorado)? If so, to a committee of judges or to a grievance committee?

5. Should the court establish one grievance committee for the entire district with representatives from each division?

6. Who files disciplinary proceedings in the court? The U.S. Attorney, the investigating committee, a district bar member?

7. How would disciplinary petitions be assigned and determined? Before an individual judge or a panel of judges? Should written findings of fact and conclusions of law be required?

8. Shall suspensions be automatic upon suspension, disbarment, or conviction of a crime in another court with the right to a subsequent hearing within a specified time? Or suspension not effective until after a specified time for a hearing, if requested, has passed (see Florida (M))?

APPENDIX D

Alternative Drafts of Discovery Rule

Alternative I

225-1. Discovery Period.

(a) Length.

All discovery proceedings shall be initiated promptly so that discovery may be completed within four months after the last answer is filed unless the Court has for cause shown extended the time for discovery.

(b) Extensions of Time.

Requests for extensions of time for discovery must be filed with the Court prior to the expiration of the original or previously extended discovery period.

Note: This rule is essentially a restatement of our current rule.

Alternative II

225-1. Discovery Period.

(a) Length.

Discovery proceedings under Rules 26, 30, 31, 33, 34, and 35 of the Federal Rules of Civil Procedure shall be initiated and completed within four months after the date on which issue is joined unless an alternate terminate date is set by the Court upon a showing of good cause. In cases in which there are multiple defendants, the discovery period commences on the date on which the last defendant's answer is filed. In third party actions, discovery must be completed within four months from the filing of the third party defendant's answer.

(b) Extensions of Time.

Same as Alternative I.

Note: This rule is a more complete statement of Alternative I.

Alternative III

225-1. Discovery Period.

Discovery proceedings under Rules 26, 30, 31, 33, 34, and 35 of the Federal Rules of Civil Procedure shall be initiated and completed within four months after the

date on which issue is joined unless an alternative termination date is set by the Court in its Scheduling Order under Rule 16 of the Federal Rules of Civil Procedure. In cases in which there are multiple defendants, the discovery period commences on the date on which the last defendant's answer is filed. In third party actions, discovery must be completed within four months from the filing of the third party answer.

Notes:

1. There is no need for an Extension of Time provision since the procedure outlined in new F.R. Civ. P. Rule 16 would take over.

2. Alternative I could be similarly modified.

3. The new amendments to Rule 16 of the F.R. Civ. P. require that a Scheduling Order be issued no later than four months after the complaint is filed. Our four-month discovery period would expire one month later since it runs from the filing of the answer. At the time of the Scheduling Order requests for extensions of time for discovery could be reviewed along with all other matters since the parties and their attorneys would know by that time whether more discovery time was needed.

Alternative IV

225-1. Discovery Period.

(a) Length.

Discovery proceedings under Rules 26, 30, 31, 33, 34, and 35 of the Federal Rules of Civil Procedure shall be initiated and completed within four months after the date on which issue is joined. If more time for discovery is needed, the parties and/or their attorneys may by written stipulation extend the discovery period one time for a period not to exceed four months. In all other situations, requests for extensions of time must be made to the Court. The Court shall not extend the discovery period except upon a showing of good cause.

(b) Extensions of Time.

Stipulations by party and/or counsel extending the discovery period must be filed with the Court prior to expiration of the original discovery period. Requests

to the Court for extensions of time must be filed prior to the expiration of the original or previously extended discovery period.

Notes:

1. This rule would reduce the number of Requests for Extension coming before the judges.
2. While most attorneys would probably agree to a request for extension, this rule allows an attorney to adhere to the four-month rule unless the Court orders an extension.
3. A shorter stipulated time extension may be appropriate--or perhaps a general extension of the four-month period.

Alternative V

225-1. Discovery Period.

(a) Length.

1. In all civil cases except patent infringement cases and antitrust cases, ... (any of the four alternatives above).

2. In patent infringement and antitrust cases, discovery must be completed within twelve months after the last answer is filed unless the Court orders otherwise upon a showing of good cause.

3. (Appropriately worded provision about extending the time).

Note: This rule recognizes that patent and antitrust cases generally require a longer discovery time.

APPENDIX E

Pretrial Order Analysis

PRETRIAL ORDER ANALYSIS

I. INSTRUCTIONS MAILED

A. One Set Soon After Joinder of Issue

Moye	Evans
O'Kelley	Hall
Freeman	Ward
Shoob	Forrester
Tidwell	

B. Two Sets of Instructions

Murphy — Status conference instructions soon after joinder of issue; sets date Pretrial Order (PTO) due and gives instructions at conference.

PTO instructions mailed toward close of discovery.

Vining — Preliminary instructions toward close of discovery.

PTO instructions once case is ready for placement on pretrial calendar.

II. FORMS OF INSTRUCTIONS

A. Textual

Moye
Freeman
Murphy
Shoob
Vining
Evans

B. Form with Blanks

O'Kelley
Tidwell
Hall
Ward
Forrester

III. ORDERS OR CONFERENCES PRIOR TO PRETRIAL ORDER (PTO)

Moye	Twenty-day statement: discovery schedule and new case statement (lawyers meet 20 days after instructions received; statement due 10 days later) (joint reports).
	Personal settlement conference between attorneys.
O'Kelley	New case statement on specific items, if appropriate (due 20 days from date of notice) (separate report).
Freeman	Fifteen-day statement: discovery schedule and new case report (lawyers meet in person; report due 15 days from date of notice) (joint report).
	Discovery conference--4 to 6 weeks after 15-day statement.
Murphy	Status conference: discovery and new case report (by phone or in person).
Shoob	Twenty-day statement: discovery schedule and new case report (lawyers meet in person 20 days from date instructions received; statement due within 10 days) (joint report).
	Settlement conferences required prior to filing new case statement and proposed PTO.
Vining	Twenty-day statement: new case report (attorneys meet in person 20 days after discovery completed) (joint report).

Tidwell	In-person settlement conference required prior to filing status reports. Ninety-day status report (due 90 days after complaint filed) (separate report by each attorney).
Evans	N/A
Hall	N/A
Ward	N/A
Forrester	Personal settlement conferences required in jury cases: 20 days prior to status conference and 10 days prior to pretrial conference. Status report--generally midway through discovery.

IV. LIMITATIONS ON DISCOVERY

Moye	25 interrogs. 20 doc. requests	20 admission requests No depositions > 6 hrs.
Shoob	20 interrogs. 20 doc. requests	20 admission requests No depositions > 6 hrs.
Tidwell	30 interrogs. 25 doc. requests	25 admission requests No depositions > 6 hrs.
Forrester	30 interrogs. 25 doc. requests	25 admission requests No depositions > 6 hrs.

V. EXTENDING DISCOVERY TIME

Shoob	Four-month discovery period includes time to answer/comply after the period has expired.

Attorneys cannot extend period by consent.

Tidwell — One 60-day extension upon consent of counsel.

Additional extensions require personal conference with judge.

Evans — Cannot extend by consent.

Forrester — One 60-day extension upon consent of counsel; other extensions require personal conference with judge.

VI. TIME LIMITATIONS ON FILING SUMMARY JUDGMENT MOTIONS

Moye — Summary judgment and 12(b)(6) prior filing of Pretrial Order (PTO).

Freeman — 15 days after discovery.

Shoob — Summary judgment motions not encouraged.

Tidwell — 15 days after discovery.

Evans — Prior to expiration of discovery period.

Hall — Prior to PTO conference.

Forrester — Fed. R. Civ. P. 12(b)(2), 12(b)(6), motion for more definite statement filed within 15 days after date of notice; response 10 days later.

Motions to compel, amend, drop parties must be filed 20 days prior to status conference.

Summary judgment motions--15 days after discovery.

VII. PRETRIAL ORDER (PTO) DUE

Moye	Sets time on date initial instructions mailed, in practice this is 15 days after close of discovery.
O'Kelley	15 days after discovery.
Freeman	15 days after discovery.
Murphy	20 days from date of pretrial instructions.
Shoob	15 days after discovery.
Vining	Sends out pretrial calendar after discovery is completed. Proposed order must be submitted one week before PTO conference.
Tidwell	30 days after discovery or (if later) 15 days after ruling on summary judgment motion.
Evans	Sets due date when instructions mailed.
Hall	15 days after date of notice or, if later, 15 days after discovery.
Ward	15 days after discovery.
Forrester	15 days after discovery or, if later, 30 days after summary judgment ruling.

VIII. PRETRIAL CONFERENCE

Moye	Not as a routine matter; attorneys must provide reasons why a conference is needed.
O'Kelley	Always in jury cases.

Freeman	Upon request or at election of judge.
Murphy	Not generally; attorneys may request or at judge's election.
Shoob	At election of judge only.
Vining	Generally; has a pretrial calendar.
Tidwell	Instructions silent on subject; practice is to hold one if appropriate and attorneys have requested a conference.
Evans	Generally in jury cases.
Hall	Upon request or at election of judge.
Ward	Not generally; upon request of attorneys or at election of judge.
Forrester	Instructions silent; in practice judge holds a conference in both jury and nonjury cases.

IX. SCHEDULING FOR TRIAL

Moye	Assumed ready at first calendar call after Pretrial Order (PTO) filed.
O'Kelley	First calendar call subsequent to date set in instructions.
Freeman	N/A
Murphy	N/A; has a running calendar with a general calendar call.
Shoob	First calendar call after PTO filed.

Vining	Instructions silent; practice is to try cases 60-90 days after pretrial conference.
Tidwell	First calendar call after PTO filed; generally 30-60 days.
Evans	Case may appear on trial calendar within 6 months after issue joined.
Hall	First available calendar after PTO filed.
Ward	First available calendar after PTO filed.
Forrester	Generally first or second trial calendar after pretrial conference.

X. REQUESTS TO CHARGE DUE

Moye	With Pretrial Order (PTO) in jury case.
O'Kelley	At trial.
Freeman	With PTO, if conference held; otherwise, 3 days before trial.
Murphy	With PTO; in practice, not until trial.
Shoob	No later than opening of trial.
Vining	Instructions say with PTO; practice is not until trial.
Tidwell	At trial.
Evans	At trial unless directed otherwise at PTO conference.
Hall	Cases < 3 days, 2 full days prior to trial. Cases > 3 days, at trial.

Ward	At trial.
Forrester	At PTO conference.

XI. FINDINGS OF FACT AND CONCLUSIONS OF LAW DUE

Moye	At trial.
O'Kelley	At trial.
Freeman	3 days before trial.
Murphy	Attorneys required to submit written questions, as if for jury; in practice, required toward close of trial.
Shoob	No later than opening of trial.
Vining	Instructions do not address.
Tidwell	At trial.
Evans	Date of submission set when instructions sent out.
Hall	Attorneys initially exchange 15 days before trial.
Ward	At trial.
Forrester	Usually requires; timing varies according to case.

XII. POLICY REGARDING BIFURCATED TRIALS

Moye	Prefers.
Forrester	Bifurcated unless evidence inextricably interwoven.

Freeman, Murphy, Shoob, Evans, Hall	State whether trial should be held separately on any particular issue.

APPENDIX F

Rule Regarding the Uniform Pretrial Order and Other Pretrial Requirements

RULE 235
PRETRIAL AND SETTING FOR TRIAL

235-1. Purpose.

These rules are established to facilitate the prompt and expeditious movement of cases and to assist the Court. Certain provisions of Rule 235-3 have been adopted to implement the scheduling requirements of Rule 16 of the Federal Rules of Civil Procedure.

235-2. Settlement Conferences and Certificates.

(a) Conference During Discovery.

(1) Within 30 days after issue is joined, lead counsel for all parties are required to confer in a good faith effort to settle the case. Plaintiff's counsel shall be responsible for arranging the date of the conference. The Court encourages counsel to meet in person, but

telephone conferences are permitted.

(2) Counsel are required to inform the parties promptly of all offers of settlement proposed at the conference.

(3) Within 10 days after the conference, counsel shall file a joint statement certifying that the conference was held, whether the conference was in person or by telephone, the date of the meeting, the names of all participants, and that any offers of settlement were communicated to the clients. The certificate shall also indicate whether counsel intend to schedule additional settlement conferences prior to the close of discovery; counsel's opinions as to the prospects of settlement of the case; specific problems, if any, which are hindering settlement; and whether counsel desire a conference with the Court regarding settlement problems. A form settlement certificate prepared by the Court and which counsel shall be required to use is contained in Appendix B.

(b) Conference After Discovery.

(1) For cases not settled earlier, counsel for plaintiff shall contact counsel for all other parties to arrange an *in person* conference among lead counsel to discuss, in good faith, settlement of the case. The conference must be held no later than 10 days after the close of discovery. All offers of settlement must be communicated promptly to the parties.

(2) If this personal conference does not produce a settlement, the status of settlement negotiations must be reported in item 26 of the pretrial order.

(c) Cases Not Subject to Rule. Pro se litigants and their opposing counsel and cases involving administrative appeals are exempt from the requirements of this rule.

235-3. Preliminary Statement and Scheduling Order.

For all cases not settled at the initial settlement conference (Rule 235-2(a)), counsel are required to complete the joint preliminary statement and scheduling order form prepared by the Court and attached to these rules as Appendix B. If counsel cannot agree on the answers to specific items, the contentions of each party must be shown on the form. The completed form must be filed 10 days after the initial settlement conference.

Appeals to this Court of administrative determinations which are presented to the Court for review on a completed record shall be excepted from the requirements of this rule. Pro se litigants and opposing counsel shall be permitted to file separate statements.

The preliminary statement and scheduling order shall include:

(1) A classification of the type of action, a brief factual outline of the case, and a succinct statement of the issues in the case.

(2) The individual names of lead counsel for each party.

(3) Any objections, supported by authority, to this Court's jurisdiction.

(4) The names of necessary parties to this action who have not been joined and any questions of misjoinder of parties and inaccuracies and omissions regarding the names of parties.

(5) A description of any amendments to the pleadings which are anticipated and a time-table for the filing of amendments.

(6) Information regarding timing limitations for filing motions in this case.

(7) Directions regarding the length of the discovery period and the procedure for requesting extensions of discovery.

(8) A listing of any pending or previously adjudicated related cases.

(9) The signatures of lead counsel for each party consenting to the submission

of the completed preliminary statement and scheduling order form.

(10) A scheduling order signed by the judge imposing time limits for the adding of parties, the amending of pleadings, the filing of motions, and the completion of discovery in accordance with the completed form submitted by counsel, except as the judge may specifically state otherwise.

235-4. Consolidated Pretrial Order.

(a) Procedure. The parties shall prepare and sign a proposed consolidated pretrial order to be filed with the clerk no later than 30 days after the close of discovery, as defined in Rule 225-1. It shall be the responsibility of plaintiff's counsel to contact defense counsel to arrange a date for the conference. If there are issues on which counsel for the parties cannot agree, the areas of disagreement must be shown in the proposed pretrial order. In those cases in which there is a pending motion for summary judgment, the Court may in its discretion and upon request extend the time for filing the proposed pretrial order.

If counsel desire a pretrial conference, a request must be indicated on the proposed pretrial order immediately below the civil action number. Counsel will be notified if the judge determines that a pretrial conference is necessary. A case shall be presumed ready for trial on the first calendar after the pretrial order is filed unless another time is specifically set by the Court.

(b) Content. Each proposed consolidated pretrial order shall contain the information outlined below. No modifications or deletions shall be made without the prior permission of the Court. A form Pretrial Order prepared by the Court and which counsel shall be required to use is contained in Appendix B. Copies of the form Pretrial Order containing adequate space for response are available at the Public Filing Counter in each division.

The proposed order shall contain:

(1) A statement of any pending motions or other matters.

(2) A statement that, unless otherwise noted, discovery has been completed. Counsel will not be permitted to file any further motions to compel discovery. Provided there is no resulting delay in readiness for trial, depositions for the preservation of evidence and for use at trial will be permitted.

(3) A statement as to the correctness of the names of the parties and their capacity and as to any issue of misjoinder or non-joinder of parties.

(4) A statement as to any question of the Court's jurisdiction and the statutory basis of jurisdiction for each claim.

(5) The individual names of lead counsel for each party.

(6) A statement as to any reasons why plaintiff should not be entitled to open and close arguments to the jury.

(7) A statement as to whether the case is to be tried to a jury, to the Court without a jury, or that the right to trial by jury is disputed.

(8) An expression of the parties' preference, supported by reasons, for a unified or bifurcated trial.

(9) A joint listing of the questions which the parties wish the Court to propound to the jurors concerning their legal qualifications to serve.

(10) A listing by each party of requested general voir dire questions to the jurors. The Court will question prospective jurors as to their address and occupation and as to the occupation of a spouse, if any. Follow-up questions by counsel may be permitted. The determination of whether the judge or counsel will propound general voir dire questions is a matter of

courtroom policy which shall be established by each judge.

(11) A statement of each party's objections, if any, to another party's general voir dire questions.

(12) A statement of the reasons supporting a party's request, if any, for more than three strikes per side as a group.

(13) A brief description, including style and civil action number, of any pending related litigation.

(14) An outline of plaintiff's case which shall include:

(a) A succinct factual statement of plaintiff's cause of action which shall be neither argumentative nor recite evidence.

(b) A separate listing of all rules, regulations, statutes, ordinances, and illustrative case law creating a specific legal duty relied upon by plaintiff.

(c) A separate listing of each and every act of negligence relied upon in negligence cases.

(d) A separate statement for each item of damage claimed containing a brief description of the item of damage, dollar amount claimed, and citation to the law, rule, regulation, or any decision authorizing a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

(15) An outline of defendant's case which shall include:

(a) A succinct factual summary of defendant's general, special, and affirmative defenses which shall be neither argumentative nor recite evidence.

(b) A separate listing of all rules, regulations, statutes, ordinances, and illustrative case law creating a defense relied upon by defendant.

(c) A separate statement for each item of damage claimed in a counterclaim which shall contain a brief description of the item of damage, the dollar amount claimed, and citation to the law, rule, regulation, or any decision which authorizes a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

(16) A listing of stipulated facts which may be read into evidence at trial. It is the duty of counsel to cooperate fully with each other to identify all undisputed facts. A refusal to do so may result in the imposition of sanctions upon the non-cooperating counsel.

(17) A statement of the legal issues to be tried.

(18) A separate listing for each party of the witnesses (and their addresses) whom that party will or may have present at trial, including impeachment and rebuttal witnesses whose use can or should have been reasonably anticipated. A representation that a witness will be called may be relied upon by other parties unless notice is given 10 days prior to trial to permit other parties to subpoena the witness or obtain his testimony by other means. Witnesses not included on the witness list will not be permitted to testify.

(19) (a) A separate, typed, serially numbered listing, beginning with 1 and without the inclusion of any alphabetical or numerical subparts, of each party's documentary and physical evidence. Adequate space must be left on the left margin of each list for Court stamping purposes. A courtesy copy of each party's list must be submitted for use by the judge. Learned treatises which counsel expect to use at trial shall not be admitted as exhibits, but must be separately listed on the party's exhibit list.

(b) Prior to trial counsel shall affix stickers numbered to correspond with the party's exhibit list to each exhibit. Plaintiffs shall use yellow stickers; defendants shall use blue stickers; and white stickers shall be used on joint exhibits. The surname of a party must be

shown on the numbered sticker when there are either multiple plaintiffs or multiple defendants.

(c) A separate, typed listing of each party's objections to the exhibits of another party. The objections shall be attached to the exhibit list of the party against whom the objections are raised. Objections as to authenticity, privilege, competency, and, to the extent possible, relevancy of the exhibits shall be included. Any listed document to which an objection is not raised shall be deemed to have been stipulated as to authenticity by the parties, and such documents will be admitted at trial without further proof of authenticity.

(d) A statement of any objections to the use at trial of copies of documentary evidence.

(e) Documentary and physical exhibits may not be submitted by counsel after filing of the Pretrial Order, except upon consent of all the parties or permission of the Court. Exhibits so admitted must be numbered, inspected by counsel, and marked with stickers prior to trial.

(f) Counsel shall familiarize themselves with all exhibits (and the numbering thereof) prior to trial. Counsel will not be afforded time during trial to examine exhibits that are or should have been listed herein.

(20) A listing of all persons whose testimony at trial will be given by deposition and designation of the portions of each person's deposition which will be introduced. Objections not filed by the date on which the case is first scheduled for trial shall be deemed waived or abandoned. Extraneous and unnecessary matters, including non-essential colloquy of counsel, shall not be permitted to be read into evidence. No depositions shall be permitted to go out with the jury.

(21) Any trial briefs which counsel may wish to file containing citations to legal authority on evidentiary questions and other legal issues. Limitations, if any, regarding the format and length of trial briefs is a matter of individual practice which shall be established by each judge.

(22) Counsel are directed to prepare, in accordance with LR 255-2, NDGa, a list of all requests to charge in jury trials. These charges shall be filed no later than 9:30 a.m. on the date the case is calendered (or specially set) for trial. A short, one-page or less, statement of the party's contentions must be attached to the requests. Requests should be drawn from the latest edition of the Fifth Circuit District Judges Association's *Pattern Jury Instructions* and Devitt and Blackmar's *Federal Jury Practice and Instructions* whenever possible. In other instances, only the applicable legal principle from a cited authority should be requested.

(23) A proposed verdict form if counsel desire that the case be submitted to the jury in a manner other than upon general verdict.

(24) A statement of any requests for time for argument in excess of 30 minutes per side as a group and the reasons for the request.

(25) Counsel are directed to submit a statement of proposed Findings of Fact and Conclusions of Law in nonjury cases, which must be submitted no later than the opening of trial.

(26) A statement of the date on which counsel met personally to discuss settlement, whether the Court has discussed settlement with counsel, and the likelihood of settlement of the case at this time.

(27) A statement of any requests for a special setting of the case.

(28) A statement of each party's estimate of the time required to present that party's evidence and an estimate of the total trial time.

(29) The following paragraph shall be included at the close of each proposed

pretrial order above the signature line for the judge:

IT IS HEREBY ORDERED that the above constitutes the pretrial order for the above captioned case (___) submitted by stipulation of the parties or (___) approved by the Court after conference with the parties.

IT IS FURTHER ORDERED that the foregoing, including the attachments thereto, constitutes the pretrial order in the above case and that it supersedes the pleadings which are hereby amended to conform hereto and that this pretrial order shall not be amended except by Order of the Court, to prevent manifest injustice.

IT IS SO ORDERED this ___ day of _____, 19___.

(30) The signatures of lead counsel for each party on the last page below the judge's signature.

235-5. Sanctions.

Failure to comply with the Court's pretrial instructions may result in the imposition of sanctions, including dismissal of the case or entry of a default judgment.

RULE 240

REMOVAL OF PLEADINGS — PROCEDURES REGARDING EXHIBITS — CLOSED FILES

240-1. Removal of Pleadings.

(a) Original Pleadings. Original pleadings in the custody of the clerk may be removed from the clerk's office by the judges, magistrates, official court reporters, special master, or law clerks to the judges when necessary to expedite the business of the Court.

(b) Duplicate Pleadings. Duplicate files of the pleadings may, upon consent of the clerk, be removed from the clerk's office by counsel.

240-2. Filing of Exhibits.

(a) Admitted Exhibits. All exhibits offered and admitted into evidence at trial or at any hearing shall be delivered to the courtroom deputy who shall keep them in custody until a verdict is rendered in a jury case or a final order entered by the Court in a nonjury case. The deputy may permit United States magistrates and official court reporters to have custody of exhibits when necessary to expedite the business of the Court. No persons other than United States magistrates and official court reporters shall be permitted to remove exhibits from the courtroom deputy's custody except upon order of the Court in extreme circumstances.

(b) Rejected Exhibits. Exhibits tendered but not admitted into evidence shall be retained by the courtroom deputy in the same manner as admitted exhibits. Rejected exhibits shall be identified as having been rejected on both the exhibit list and on the exhibits themselves.

(c) Withdrawn Exhibits. Exhibits that are either withdrawn or not tendered shall not be retained by the courtroom deputy, but shall be shown on the exhibit list as having been withdrawn or not tendered.

APPENDIX G

Uniform Pretrial Order and Other Pretrial Documents

DOCUMENTS REQUIRED TO BE FILED IN CIVIL CASES PENDING IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA

I. SETTLEMENT CERTIFICATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
_____ DIVISION

Style of Case	:	Civil Action No. ____ Settlement Conference (is) (is not) requested.

SETTLEMENT CERTIFICATE

The undersigned lead counsel for the parties hereby certify that:

(1) They met (in person) (by telephone) on _____, 19___, to discuss in good faith the settlement of this case.

(2) The following persons participated in the settlement conference:

For plaintiff: Lead counsel: _____

Other participants: _____

_____

For defendant: Lead counsel: _____

Other participants: _____

_____

(3) The parties were promptly informed of all offers of settlement.

(4) Counsel (_____) do or (_____) do not intend to hold future settlement conferences prior to the close of discovery. The proposed date of the next settlement conference is: _____.

(5) It appears from the discussion by all counsel that there is:

(_____) A good possibility of settlement.
(_____) Some possibility of settlement.
(_____) Little possibility of settlement.
(_____) No possibility of settlement.

SETTLEMENT CERTIFICATE

(6) The following specific problems have created a hindrance to settlement of this case:

_____

_____

(7) Counsel (_____) do or (_____) do not desire a conference with the Court regarding settlement problems.

Submitted this ____ day of _____, 19___.

_____ _____

Counsel for Plaintiff Counsel for Defendant

II. JOINT PRELIMINARY STATEMENT AND SCHEDULING ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
_____ DIVISION

_____	:	
	:	
vs.	:	Civil Action No. ____
	:	
_____	:	

JOINT PRELIMINARY STATEMENT AND SCHEDULING ORDER

1. Description of Case:

(a) Describe briefly the nature of this action:

_____

_____.

PRELIMINARY STATEMENT

(b) Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.

(c) The legal issues to be tried are as follows:

2. Counsel:

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Plaintiff:

Defendant: _____

3. Jurisdiction:

Is there any question regarding this Court's jurisdiction?

____ Yes ____ No.

If "yes," please attach a statement, not to exceed one (1) page, explaining the jurisdictional objection. When there are multiple claims, identify and discuss separately the claim(s) on which the objection is based. Each objection should be supported by authority.

4. Parties to This Action:

(a) The following persons are necessary parties who have not been joined:

(b) The following persons are improperly joined as parties:

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted:

(d) The parties shall have a continuing duty to inform the Court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

5. Amendments to the Pleadings:

Amended and supplemental pleadings must be filed in accordance with the time limitations and other provisions of Rule 15, Federal Rules of Civil Procedure. Further instructions regarding amendments are contained in Local Rule 200.

(a) List separately any amendments to the pleadings which the parties anticipate will be necessary: _____

_____

_____.

(b) Amendments to the pleadings submitted LATER THAN 100 DAYS after the complaint is filed will not be accepted for filing, unless otherwise permitted by law.

6. Filing Times For Motions:

All motions should be filed as soon as possible. The local rules set specific filing limits for some motions. These times are restated below.

All other motions must be filed WITHIN 100 DAYS after the complaint is filed, unless the filing party has obtained prior permission of the Court to file later. Local Rule 220-1(a)(2).

(a) *Motions to Compel*: before the close of discovery or within the extension period allowed in some instances. Local Rules 220-4; 225-4(d).

(b) *Summary Judgment Motions*: within 20 days after the close of discovery, unless otherwise permitted by Court order. Local Rule 220-5.

(c) *Other Limited Motions*: Refer to Local Rules 220-2, 220-3, and 220-6, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.

7. Discovery Period:

(a) As stated in Local Rule 225-1(a), discovery in this Court must be initiated and all responses completed within four months after the last answer to the complaint is filed or should have been filed, unless the judge has set another limit.

(b) Requests for extensions of discovery must be made in accordance with Local Rule 225-1(b).

8. Related Cases:

The cases listed below (include both style and action number) are:

(a) Pending Related Cases: _____

_____

(b) Previously Adjudicated Related Cases: _____

PRELIMINARY STATEMENT

_____

Completed form submitted this ____ day of _____, 19___.

_____ _____

Counsel for Plaintiff Counsel for Defendant

* * * * * * * * * * * *

Upon review of the information contained in the Joint Preliminary Statement and Scheduling Order form completed and filed by the parties, the Court orders that the time limits for adding parties, amending the pleadings, filing motions, and completing discovery are as stated in the above completed form, except as herein modified: _____

_____

_____

_____.

IT IS SO ORDERED, this _____ day of _____, 19___.

_____

UNITED STATES DISTRICT JUDGE

III. PRETRIAL ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
_____ DIVISION

style of case	:	Civil Action No. ____
	:	Conference (is) (is not) requested

PRETRIAL ORDER

1.

There are no motions or other matters pending for consideration by the Court except as noted: _____

_____

_____.

2.

All discovery has been completed, unless otherwise noted; and the Court will not consider any further motions to compel discovery. (Refer to LR 225-4(d), NDGa). Provided there is no resulting delay in readiness for trial, the parties shall, however, be permitted to take the depositions of any persons for the preservation of evidence and for use at trial. _____

_____

_____.

3.

Unless otherwise noted, the names of the parties as shown in the caption to this Order and the capacity in which they appear are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any parties. _____

_____.

4.

Unless otherwise noted, there is no question as to the jurisdiction of the Court; jurisdic-

tion is based upon the following code sections. (When there are multiple claims, list each claim and its jurisdictional basis separately.)

_____

_____.

5.

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Plaintiff: _____

_____

Defendant: _____

_____

Other Parties: (specify) _____

_____

6.

Normally, the plaintiff is entitled to open and close arguments to the jury. (Refer to LR 255-4(b), NDGa.) State below the reasons, if any, why the plaintiff should not be permitted to open arguments to the jury. _____

_____.

7.

The captioned case shall be tried (_____) to a jury or (_____) to the Court without a jury, or (_____) the right to trial by jury is disputed.

8.

State whether the parties request that the trial to a jury be bifurcated, i.e. that the same jury consider separately issues such as liability and damages. State briefly the reasons why trial should or should not be bifurcated.

_____

_____.

9.

Attached hereto as Attachment "A" and made a part of this order by reference are the questions which the parties request that the Court propound to the jurors concerning their legal qualifications to serve.

10.

Attached hereto as Attachment "B-1" are the general questions which plaintiff wishes to be propounded to the jurors on voir dire examination.

Attached hereto as Attachment "B-2" are the general questions which defendant wishes to be propounded to the jurors on voir dire examination.

Attached hereto as Attachment "B-3", "B-4", etc. are the general questions which the remaining parties, if any, wish to be propounded to the jurors on voir dire examination.

The Court shall question the prospective jurors as to their address and occupation and as to the occupation of a spouse, if any. Counsel may be permitted to ask follow-up questions on these matters. It shall not, therefore, be necessary for counsel to submit questions regarding these matters. The determination of whether the judge or counsel will propound general voir dire questions is a matter of courtroom policy which shall be established by each judge.

11.

State any objections to plaintiff's voir dire questions.

_____

_____

State any objections to defendant's voir dire questions.

_____

_____

State any objections to the voir dire questions of the other parties, if any. _____

_____

12.

In accordance with LR 255-1, NDGa, all civil cases to be tried wholly or in part by jury shall be tried before a jury consisting of six members. Unless otherwise noted herein, each side as a group will be allowed three strikes in accordance with 28 U.S.C. §1870 and Rule 47(b) of the Federal Rules of Civil Procedure. State the basis for any requests for additional strikes.

13.

State whether there is any pending related litigation. Describe briefly, including style and civil action number.

14.

Attached hereto as Attachment "C" is plaintiff's outline of the case which includes a succinct factual summary of plaintiff's cause of action and which shall be neither argumentative nor recite evidence. All relevant rules, regulations, statutes, ordinances, and illustrative case law creating a specific legal duty relied upon by plaintiff shall be listed under a separate heading. In negligence cases, each and every act of negligence relied upon shall be separately listed. For each item of damage claimed, plaintiff shall separately provide the following information: (a) a brief description of the item claimed, for example, pain and suffering; (b) the dollar amount claimed; and (c) a citation to the law, rule, regulation, or any decision authorizing a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

15.

Attached hereto as Attachment "D" is the defendant's outline of the case which includes a succinct factual summary of all general, special, and affirmative defenses relied upon and which shall be neither argumentative nor recite evidence. All relevant rules, regulations, statutes, ordinances, and illustrative case law relied upon as creating a defense shall be listed under a separate heading. For any counterclaim, the defendant shall separately provide the following information for each item of damage claimed: (a) a brief description of the item claimed; (b) the

dollar amount claimed; and (c) a citation to the law, rule, regulation, or any decision authorizing a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

16.

Attached hereto as Attachment "E" are the facts stipulated by the parties. No further evidence will be required as to the facts contained in the stipulation and the stipulation may be read into evidence at the beginning of the trial or at such other time as is appropriate in the trial of the case. It is the duty of counsel to cooperate fully with each other to identify all undisputed facts. A refusal to do so may result in the imposition of sanctions upon the non-cooperating counsel.

17.

The legal issues to be tried are as follows: _____

_____

_____

_____

_____

_____

18.

Attached hereto as Attachment "F-1" for the plaintiff, Attachment "F-2" for the defendant, and Attachment "F-3", etc. for all other parties is a list of all the witnesses and their addresses for each party. The list must designate the witnesses whom the party *will* have present at trial and those witnesses whom the party *may* have present at trial. Impeachment and rebuttal witnesses whose use as a witness can be reasonably anticipated must be included. All of the other parties may rely upon a representation by a designated party that a witness will be present unless notice to the contrary is given 10 days prior to trial to allow the other party(s) to subpoena the witness or to obtain his testimony by other means. Witnesses who are not included on the witness list (including impeachment or rebuttal witnesses whose use should have been reasonably anticipated) will not be permitted to testify.

19.

Attached hereto as Attachment "G-1" for the plaintiff, "G-2" for the defendant, and "G-3", etc. for all other parties are the typed lists of all documentary and physical evidence that will be tendered at trial. Learned treatises which are expected to be used at trial shall not be

admitted as exhibits. Counsel are required, however, to identify all such treatises under a separate heading on the party's exhibit list.

Each party's exhibits shall be numbered serially, beginning with 1, and without the inclusion of any alphabetical or numerical subparts. Adequate space must be left on the left margin of each party's exhibit list for Court stamping purposes. A courtesy copy of each party's list must be submitted for use by the judge.

Prior to trial, counsel shall mark the exhibits as numbered on the attached lists by affixing numbered yellow stickers to plaintiff's exhibits, numbered blue stickers to defendant's exhibits, and numbered white stickers to joint exhibits. When there are multiple plaintiffs or defendants, the surname of the particular plaintiff or defendant shall be shown above the number on the stickers for that party's exhibits.

Specific objections to another party's exhibits must be typed on a separate page and must be attached to the exhibit list of the party against whom the objections are raised. Objections as to authenticity, privilege, competency, and, to the extent possible, relevancy of the exhibits shall be included. Any listed document to which an objection is not raised shall be deemed to have been stipulated as to authenticity by the parties and shall be admitted at trial without further proof of authenticity.

Unless otherwise noted, copies rather than originals of documentary evidence may be used at trial. Documentary or physical exhibits may not be submitted by counsel after filing of the pretrial order, except upon consent of all the parties or permission of the Court. Exhibits so admitted must be numbered, inspected by counsel, and marked with stickers prior to trial.

Counsel shall familiarize themselves with all exhibits (and the numbering thereof) prior to trial. Counsel will not be afforded time during trial to examine exhibits that are or should have been listed.

20.

The following designated portions of the testimony of the persons listed below may be introduced by deposition:

Any objections to the depositions of the foregoing persons or to any questions or answers in the depositions shall be filed in writing no later than the day the case is first scheduled for trial. Objections not perfected in this manner will be deemed waived or abandoned. All depositions shall be reviewed by counsel and all extraneous and unnecessary matter, including non-essential colloquy of counsel, shall be deleted. Depositions, whether preserved by stenographic means or videotape, shall not go out with the jury.

21.

Attached hereto as Attachments "H-1" for the plaintiff, "H-2" for the defendant, and "H-3", etc. for other parties, are any trial briefs which counsel may wish to file containing citations to legal authority concerning evidentiary questions and any other legal issues which

counsel anticipate will arise during the trial of the case. Limitations, if any, regarding the format and length of trial briefs is a matter of individual practice which shall be established by each judge.

22.

In the event this is a case designated for trial to the Court with a jury, requests for charge must be submitted no later than 9:30 a.m. on the date on which the case is calendered (or specially set) for trial. Requests which are not timely filed and which are not otherwise in compliance with LR 255-2, NDGa will not be considered. In addition, each party should attach to the requests to charge a short (not more than one page) statement of that party's contentions, covering both claims and defenses, which the Court may use in its charge to the jury.

Counsel are directed to refer to the latest edition of the Fifth Circuit District Judges Association's *Pattern Jury Instructions* and Devitt and Blackmar's *Federal Jury Practice and Instructions* in preparing the requests to charge. Those charges will generally be given by the Court where applicable. For those issues not covered by the *Pattern Instructions* or *Devitt and Blackmar*, counsel are directed to extract the applicable legal principle (with minimum verbiage) from each cited authority.

23.

If counsel desire for the case to be submitted to the jury in a manner other than upon a general verdict, the form of submission agreed to by all counsel shall be shown in Attachment "I" to this Pretrial Order. If counsel cannot agree on a special form of submission, parties will propose their separate forms for the consideration of the Court.

24.

Unless otherwise authorized by the Court, arguments in all jury cases shall be limited to one-half hour for each side. Should any party desire any additional time for argument, the request should be noted (and explained) herein.

_____

_____

25.

If the case is designated for trial to the Court without a jury, counsel are directed to submit proposed findings of fact and conclusions of law not later than the opening of trial.

26.

Pursuant to LR 235-2, NDGa, lead counsel met in person on _____, 19___, to discuss in good faith the possibility of settlement of this case. The Court (_____) has or (_____) has not discussed settlement of this case with counsel. It appears at this time that there is:

(_____) A good possibility of settlement.
(_____) Some possibility of settlement.
(_____) Little possibility of settlement.
(_____) No possibility of settlement.

27.

Unless otherwise noted, the Court will not consider this case for a special setting, and it will be scheduled by the clerk in accordance with the normal practice of the Court. _____

28.

The plaintiff estimates that it will require ____ days to present its evidence. The defendant estimates that it will require ____ days to present its evidence. The other parties estimate that it will require ____ days to present their evidence. It is estimated that the total trial time is ____ days.

29.

IT IS HEREBY ORDERED that the above constitutes the pretrial order for the above captioned case (_____) submitted by stipulation of the parties or (_____) approved by the Court after conference with the parties.

IT IS FURTHER ORDERED that the foregoing, including the attachments thereto, constitutes the pretrial order in the above case and that it supersedes the pleadings which are hereby amended to conform hereto and that this pretrial order shall not be amended except by Order of the Court to prevent manifest injustice.

IT IS SO ORDERED this _____ day of _____, 19___.

_____

UNITED STATES DISTRICT JUDGE

Each of the undersigned counsel for the parties hereby consents to entry of the foregoing pretrial order, which has been prepared in accordance with the form pretrial order adopted by this Court.

_____ _____

Counsel for Plaintiff Counsel for Defendant

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