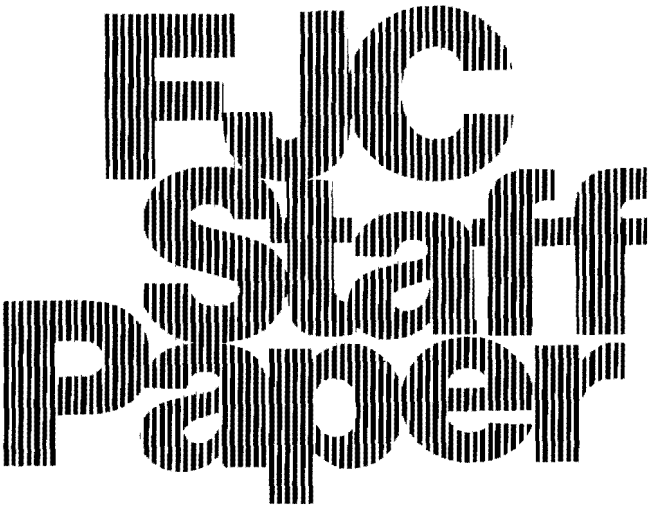

The Use of Standard Pretrial Procedures: An Assessment of Local Rule 235 of the Northern District of Georgia

Federal Judicial Center

THE USE OF STANDARD PRETRIAL PROCEDURES: AN ASSESSMENT OF LOCAL RULE 235 OF THE NORTHERN DISTRICT OF GEORGIA

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SUMMARY

This report presents findings from a case study of the use of standard pretrial procedures in the Northern District of Georgia. Since January 1985, judges in Northern Georgia have followed the same procedures in all civil cases. Lawyers are required to prepare four documents: (1) a preliminary statement with a brief outline of the issues in dispute and a determination of the need for a scheduling order, (2) a certificate of interested parties setting forth any potential conflicts of interest that might require recusal, (3) a settlement certificate that indicates counsel's good-faith effort to resolve the dispute, and (4) a joint pretrial statement following the close of discovery. Forms for all four documents are contained in the local rules.

The court's decision to adopt standard procedures and forms is a departure from the practices in most districts. Though there is a general trend toward similar scheduling procedures within a district, judges' practices for settling cases and preparing pretrial orders vary considerably. This report sets forth judges' assessment of the effectiveness of uniform case management procedures based upon one year's experience.

Overall, judges gave favorable marks to the adoption of a standard pretrial order, since it has reduced clerical tasks of courtroom deputies and introduced procedures that are easier for lawyers to follow. Judges also reported that the statement of interested parties is an effective and concise way to determine if recusal is appropriate, particularly in a large urban district.

On the other hand, there was much less agreement among judges about the effectiveness of the preliminary statement and settlement certificate. The court introduced these steps in response to the 1983 amendments to rule 16 of the Federal Rules of Civil Procedure. Some judges commented that the information required on the preliminary statement is not necessary in many civil cases and that the settlement certificate is required too early to be an effective avenue for encouraging an informed settlement. The assessments of these judges provide useful insights into more general concerns about the introduction of effective approaches to case management.

I. BACKGROUND AND METHODOLOGY

In 1982 the Northern District of Georgia undertook a major revision of the district's local rules. As part of this effort, the court adopted local rule 235, effective January 1, 1985, which establishes a uniform set of pretrial instructions. The rule sets forth pretrial steps that are to be used by all judges in all civil cases except those involving pro se litigants and administrative appeals.[1] This report describes the factors that led to the decision to adopt standard pretrial instructions, the steps the court took to implement this change, and the judges' assessment of the procedures after one year's experience so as to provide a contextual history and assessment of an innovation in case management practice.

Although the 1983 amendments to rule 16 of the Federal Rules of Civil Procedure fueled Northern Georgia's project, they were not the impetus: The court had decided to revise its local rules before the 1983 amendments. For many years, the bar had been urging the court to adopt a standard pretrial order with uniform time frames for the filing of various papers. The revision of pretrial practice that was ultimately undertaken was part of a much larger endeavor to update the district's rules. To accomplish this task, the court created a rules committee, composed of Judges Robert Hall, William O'Kelley, and Orinda Evans and chaired by Judge Marvin Shoob. The Clerks Division of the Administrative Office provided funds to retain the services of a former law clerk, who worked directly with the committee.[2] Also included in this effort was the eleven-member Bar Council, which the court asked to serve as advisor on the project.[3] The Bar Council played an active role in the review

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1. See appendix A for local rule 235 and the instructions to counsel that are distributed when a case is filed.

2. The court retained the services of Ms. Jeanne Bowden, a former law clerk of Judge Hall. I am very grateful to Ms. Bowden for the materials she provided for this report. Specifically, table 1 is based on her careful comparison of each judge's pretrial order prior to the adoption of local rule 235.

3. The Bar Council is composed of a cross section of practitioners from

and revision of the new rules. Following the completion of the project, the council was particularly active in introducing the new rules to the practicing bar. Thus this project was undertaken by a committee of the court, with part-time staff support and with active input from a representative group of the practicing bar.

The court read the 1983 amendments to the federal rules to require it to include a settlement and scheduling component as part of its local rule. When the project began, the court had not planned to address these issues. In their final form, however, the local rules require the filing of the following documents in every civil case:

1. Settlement certificate. A statement signed by all counsel is to be filed with the court thirty days after issue is joined, certifying that they have met in person to attempt to settle the case and that they have reported the results of this effort to their clients.

2. Preliminary statement. If the case is not settled, counsel must file a form that requires a brief outline of the case, including a statement about the need for a scheduling order or conference.

3. Certificate of interested parties. Parties must file a certificate to inform the judge of any potential conflicts of interest and reasons why recusal may be necessary.

4. Joint pretrial order. Thirty days after the close of discovery, attorneys are required to file a joint statement outlining the remaining issues in contention, the requirements for trial, and, again, whether or not they require a conference with the court.

Both the certificate of settlement and the preliminary statement are responsive to the new requirements of federal rule 16; they complement the spirit and purpose of the changes in that rule. The statement of interested parties was included so that judges may assess quickly whether recusal is appropriate; the topics covered in the pretrial order are a synthesis of the various requirements of the orders the judges used before 1985. In conjunction with other local rules, rule 235 provides for limitations on discovery and the time for filing summary judgment motions.

In addition to the local rules, the court prepared a document entitled Instructions Regarding Pretrial Proceedings in the United States District

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Northern Georgia; members are asked to serve for three years and may be reappointed for one additional term to serve for a maximum of six years.

Court for the Northern District of Georgia.[4] These instructions detail the steps for filing documents with the court; that is, they provide a concise overview of the court's pretrial requirements as well as the specified time for filing all documents. To preserve the desired uniformity, the court decided to distribute instructions over the signature of the clerk of court, rather than the signatures of individual judges or their courtroom deputies.

There are two dimensions to the standardization of practice in Northern Georgia's new pretrial requirements: All judges follow the same pretrial procedures, and all civil cases (except administrative matters and pro se cases) are subject to the same degree of pretrial preparation. The practices required by the local rule adopted in Northern Georgia are a notable departure from general practice; while many districts are moving toward more uniform scheduling procedures, settlement techniques and pretrial orders often vary from judge to judge or case to case within a district.

The Larger Picture: The Amendments to Federal Rule 16

The amendments to rule 16 contemplate that courts will take early and assertive control of pretrial preparation. Two elements of pretrial are articulated in the federal rule: Procedurally, cases must be scheduled; substantively, settlement should be included in the topics for discussion.[5]

Nancy Weeks's 1984 study[6] focuses on districts' steps to comply with the scheduling requirements of rule 16. Her review of selected districts' local rules disclosed that some districts have developed "fixed-time" rules that specify time frames for the completion of various tasks, such as a scheduling order or a joint pretrial statement. Alternatively, some courts have "case-specific" rules that provide "individualized deadlines" that are prepared either by the court or by counsel and submitted to the court. Her work underscores the range of local responses to the 1983 amendments to rule 16. Despite the variations she describes, it is probably fair to say that there has been a general, though slow, trend toward a more uniform approach to sched-

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4. See appendix A for the text of this document.

5. See Fed. R. Civ. P. 16 advisory committee note.

6. See N. Weeks, District Court Implementation of Amended Federal Civil Rule 16: A Report on New Local Rules (Federal Judicial Center 1984).

uling procedures among judges within a district, even though the practices vary across districts.

Research on settlement techniques, which are the other major change in the requirements of rule 16, discloses much less uniformity among judges, even within the same district. Indeed, the development and dissemination of innovative settlement practices are probably among the fastest changing areas of federal pretrial procedure and the subject of intense debate within the judicial and academic communities. As D. Marie Provine's work shows,[7] judges are experimenting with court-annexed, nonbinding arbitration; mediation; minitrials; and summary jury trials--to name but a few. Her informal survey of judges underscores the variations in judges' use of these practices, very often within the same district.

Northern Georgia's efforts to comply with rule 16 reveal at least two important issues. First, although many courts have taken steps to incorporate rule 16 requirements into their local rules, few districts have taken steps to develop a standard pretrial order for use by all judges.[8] While we do not have a definitive picture of the use of pretrial orders, there is the general impression that most judges prefer to develop their own order, tailored to individual preferences, styles, and sometimes cases. Indeed, it is probably fair to say that many judges believe that it is not feasible to standardize pretrial orders. Some believe that it is not even a desirable goal.

The second issue turns on the appropriate fit between pretrial preparation and case complexity. Although there is a growing recognition that early intervention facilitates effective case management, there is substantial debate about the types of cases that need such attention. The 1983 amendments to rule 16 suggest that the current thinking in pretrial management is that the most effective practice is to require a scheduling order and to encourage settlement efforts in most cases. Although this may place the burden

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7. D. M. Provine, Settlement Strategies for Federal District Judges (Federal Judicial Center 1986).

8. Bowden, supra note 2, reported that at the time she reviewed local rules in her work for the district, she found only four districts that had standard pretrial orders in their local rules. She did not examine, however, whether or not all judges actually use the order contained in their local rules.

of preparation on lawyers, the point is to get the papers filed at an early stage. Yet, many question whether it is effective to apply the same procedures to all cases; whether smaller, more straightforward civil matters require such detailed preparation.[9] The federal rule does provide for flexibility: Districts may exempt categories of cases from their pretrial requirements. For example, a court might decide to exempt all of the smaller personal injury and contract disputes from the requirements of rule 16.[10]

Seen in this context, the steps taken by Northern Georgia to use one set of pretrial instructions for nearly all cases are an interesting departure from the practices of most districts. They rely on one scheduling procedure outlined in the preliminary statement; one settlement procedure, submission of the certificate;[11] and one pretrial order that is applicable to all civil cases. All details for case preparation are described in one set of instructions that is distributed to counsel when the case is filed. Further, Northern Georgia has taken an expansive approach to the requirements of the federal rule by excluding only the most obvious candidates; that is, Social Security and prisoner petition cases.

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9. See, e.g., Resnik, Failing Faith, U. Chi. L. Rev. (forthcoming).

10. In a sense, court-annexed arbitration is a de facto exclusion of cases from rule 16 requirements. At present, there are ten arbitration programs in the federal system. By local rule, a group of civil cases (generally, the diversity docket) in which counsel for the plaintiff has certified that less than a specific dollar amount (ranging from $50,000 to $150,000) is in dispute must be heard initially by a panel of between one and three individuals who have volunteered to serve as arbitrators; following the decision, either side may request a de novo hearing before the judge assigned to the case if he or she is not satisfied with the decision at arbitration. Thus, arbitration programs are compulsory for certain categories of cases, but nonbinding. For a further discussion, see A. Lind & J. Shapard, Evaluation of Court-Annexed Arbitration in Three Federal District Courts (Federal Judicial Center 1983).

11. There is nothing in the local rule that precludes a judge from using other settlement techniques. In interviews with the judges, however, all reported that they have not used any technique other than the certificate of settlement and, when requested, a judge-hosted conference in jury cases as the trial date approaches.

Underscoring judges' general reluctance to experiment in this area, Chief Judge Moye reported that he has raised the possibility of pairing judges to try to facilitate settlement, but he did not "stir up much interest" among the bench. The idea has not been pursued.

This development raises at least two questions, the subject of this report:

1. Can one set of pretrial instructions be designed to fit the wide variety of civil filings that come into a large, urban court?

2. What has been the court's experience with this procedure? Have some judges introduced modifications? If so, how have they done this?

A Framework for Investigation

In drafting local rule 235, the court began its work with a question: If a uniform procedure is put into place, must judges make notable changes in their individual practices? The local rules committee prepared a document comparing each judge's pre-1985 instructions. Table 1 summarizes that comparison and presents the current requirements of local rule 235. Thus, for example, table 1 shows that the current format of the rule includes forms with a series of blanks to fill in the necessary information; it also shows that some judges had previously used this type of format, while others had used textual forms. Similarly, the table shows that some judges had required a "20-day" statement, while others had not; by comparison, the local rule now requires a preliminary statement in all cases. The timing for filing documents also varied in the past from judge to judge but is now standardized in the local rule.

The points of comparison reported in table 1 provided an entry point for this study and the basis for the open-ended questions directed to each judge. Taking each stage of pretrial, I asked the judges to assess the current requirements of rule 235 and to compare those requirements with their earlier practice. For example, judges were asked to consider the benefits of the settlement certificate and preliminary statement and then to compare the procedure with their earlier practices. Additionally, they were asked to describe any individual requirements they make of attorneys, their overall appraisal of the local rule, and whether or not they would recommend this rule to other districts considering a similar undertaking.[12]

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12. A copy of the interview schedule for judges is contained in appendix D. Note that all judges were on the bench as of Jan. 1, 1985, when the rule went into effect.

TABLE 1

A COMPARISON OF LOCAL RULE 235 WITH JUDGES' PRE-1985 PRACTICES

Judge	Instructions	Activities Prior to Pretrial Order	Discovery	Summary Judgment	Pretrial Order and Conferences	Handling for Trial
Local rule 235	All contained in local rule; includes form for completion of pretrial order.	1. Settlement: Required to meet for purposes of settlement and report outcome to clients and to court. 2. Preliminary statement: Must include factual outline of case, persons to join case, jurisdictional questions, related litigation, if case subject to Manual for Complex Litigation, controlling legal issues, unusual problems, amendments to pleadings, signatures of lead counsel, necessity of scheduling order.	40 interrogatories; 6-hour maximum on depositions; 120 days for discovery.	Not later than 20 days after close of discovery.	Due no later than 30 days after close of discovery. Topics outlined in prepared form. If final conference requested, must be indicated on pretrial order; judge's decision to hold.	Presumed ready for trial on first calendar after pretrial order filed, unless another time specifically set.
Moye	Sent after issue joined; textual instructions.	1. Required 20-day statement setting forth discovery schedule and case summary. 2. Held settlement conference with attorneys.	25 interrogatories; 20 documents requests; 20 requests for admission of evidence; 6-hour maximum, depositions.	Must be submitted prior to pretrial order.	Set date for pretrial order when initial instructions sent; usually due 15 days after close of discovery. Conference not held unless attorneys demonstrate need.	Assumed ready at first calendar call after pretrial order filed.
O'Kelley	Mailed after issue joined; instructions, a form with blanks.	If needed, case statement on specific items. To be submitted 20 days from date of notice.	-----	-----	Pretrial order due after close of discovery. Always held final conference in jury trials.	Trial set for first calendar call subsequent to date set in instructions.
Freeman	Sent after issue joined; textual instructions.	1. Statement outlining discovery schedule and status report due 15 days from date of notice; must be joint report. 2. Informal conference to discuss discovery held 4 to 6 weeks from 15-day statement.	-----	Must be submitted 15 days after close of discovery.	Pretrial order due 15 days after close of discovery. May hold final conference on request or election of judge.	-----

TABLE 1 (Continued)

Judge	Instructions	Activities Prior to Pretrial Order	Discovery	Summary Judgment	Pretrial Order and Conferences	Handling for Trial
Murphy	Used two sets of instructions: status conference instructions with date pretrial order due; pretrial order instructions sent toward close of discovery. Used textual instructions.	Telephone or in-person conference to discuss status of discovery and case.	-----	-----	Pretrial order 20 days from date pretrial instructions sent. Held final conference if requested by attorneys or at judge's election.	Used a running calendar, with a general calendar call.
Shoob	Sent after issue joined; textual instructions.	1. Within 20 days of receipt of instructions, counsel meet personally to formulate joint statement on discovery and new case statement. Must be filed with court 30 days after receipt of instructions. 2. Prior to filing new case statement, must meet personally to attempt to settle case. Outcome must be reported in case statement.	25 interrogatories; 20 documents requests; 20 requests for admission of evidence; 6-hour maximum, depositions; 4-month discovery period includes time to answer/comply after time expired; cannot extend time by mutual consent.	Discourages.	Pretrial order due 15 days after close of discovery. Final conference held at request of attorneys or election of judge.	Must be prepared for trial at first calendar call after pretrial order filed.
Vining	Two sets of instructions: preliminary instructions toward close of discovery and pretrial instructions when placed on pretrial calendar. Used textual instructions.	Required joint report from attorneys 20 days after completion of discovery.	-----	Must be filed 15 days after close of discovery.	Sent out pretrial calendar after completion of discovery; proposed order to be submitted 1 week before final conference. Generally, held pretrial conference.	Pretrial order silent; practice was to try cases 60-90 days after pretrial conference.
Tidwell	One set of instructions, sent after issue joined. Instructions, a form with blanks.	1. Required in-person settlement conference prior to filing status report. 2. Required separate status report from each attorney 90 days after complaint filed.	30 interrogatories; 25 documents requests; 25 requests for admission of evidence. Permitted one 60-day extension with consent of counsel.	Must be filed 15 days after close of discovery.	Pretrial order due 30 days after discovery; if summary judgment motion, 15 days after ruling. Instructions silent; practice to hold conference if appropriate and attorneys requested.	First calendar call after pretrial order filed, usually 60-90 days.

TABLE 1 (Continued)

Judge	Instructions	Activities Prior to Pretrial Order	Discovery	Summary Judgment	Pretrial Order and Conferences	Handling for Trial
Evans	One set of instructions, sent after issue joined. Used textual instructions.	-----	Discovery cannot be extended by consent.	Must be filed prior to expiration of period for discovery.	Date for pretrial order set when instructions sent. Generally, held final pretrial conference in jury cases.	Case may appear on trial calendar within 6 months after issue joined.
Hall	One set of instructions, sent after issue joined; instructions, a form with blanks.	-----	-----	Motion must be filed prior to pretrial conference.	Pretrial order due 15 days after day of notice or, if later, 15 days after close of discovery; held final pretrial conference upon request or at election of judge.	Must be prepared at first available calendar call after pretrial order filed.
Ward	One set of instructions, sent after issue joined; instructions, a form with blanks.	-----	-----	-----	Pretrial order due 15 days after close of discovery. Generally, did not hold final conferences, unless at request of of attorneys or election of judge.	First available calendar after final pretrial order filed.
Forrester	One set of instructions, sent after issue joined; instructions, a form with blanks.	1. Required settlement conference in person if a jury case; held 20 days prior to status conference and 10 days prior to pretrial conference. Results to be communicated to clients and to court. 2. Required status report midway through discovery.	30 interrogatories; 25 documents requests; 25 requests for admission of evidence. Permitted one 60-day extension with consent of counsel.	Summary judgment motions required 15 days after close of discovery. (Also specifies time limits on motions to dismiss and to compel.)	Pretrial order due 15 days after close of discovery or, if later, 30 days after summary judgment ruling. Instructions silent; in practice held a conference in all cases.	Generally, at first or second trial calendar after pretrial conference.

In adopting rule 235 the court hoped to reduce some burdens on courtroom deputies, particularly the distribution of materials to attorneys, so the deputies would have more time to devote to case management tasks. Thus, where appropriate, each judge's courtroom deputy was interviewed and also asked to assess the new rule.[13]

Finally, the staff assistant to the rules committee and the chairperson of the Bar Council were interviewed about their role in the project.

The following discussion reports observers' perceptions of and experience with the local rule; chapter 2 describes the procedures used to prepare, circulate, discuss, and adopt new local rules, including the work of the special staff and Bar Council; chapter 3 presents judges' and courtroom deputies' assessment of this innovation.

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13. A copy of the interview schedule for courtroom deputies is contained in appendix D. Most interviewees have held their position for a number of years; where this was not the situation, the interview was abbreviated.

II. THE LOCAL RULES PROJECT

Because the idea of uniform pretrial procedures had been in the air since the early 1970s, it is not surprising that Northern Georgia eventually adopted them. Since the early 1970s, several judges had been strong advocates of the bar's request for standardized procedures. Further impetus came from the Omnibus Judgeship Act of 1978,[14] which nearly doubled the size of the court. Judge O'Kelley took responsibility for orienting these new judges. As a result of these in-court orientation efforts as well as the court's general commitment to collegiality and uniformity,[15] the judges' pretrial practices were evolving in a similar direction. But similar practices should not be confused with uniform requirements; when the idea of a standard pretrial order was actually put on the table, many were skeptical that it was feasible. As one member of the court commented, everyone had the same reaction: "It's a great idea; let's use mine." On this note, the court went forward with the project.

A number of key factors facilitated this process. First, the local rules committee had the special advantage of part-time staff support. With this assistance, there was time to review and to compare other districts' local rules before making suggestions to the full court. For example, before adopting a numbering system for the local rules, a thorough review of other courts' procedures was undertaken; the district borrowed the system used by the District of Hawaii because it felt that it was the most straightforward, logical, yet flexible numbering system.[16] Second, before the committee undertook re-

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14. Pub. L. No. 95-486, 92 Stat. 1629 (1978).

15. See C. Seron, The Roles of Magistrates: Nine Case Studies 15-33 (Federal Judicial Center 1985).

16. Bowden, supra note 2, reported that the major change was the adoption of the pretrial procedure described in local rule 235. She reported, however, that there were other notable changes: (a) the separation of the rules into criminal, civil, and special rules affecting civil cases (e.g., class actions); (b) the presentation of the rules in the same order as the chronology of a typical case; (c) the clarification of procedures for filing summary judgment motions (rule 220); (d) the requirement that counsel submit a statement of interested parties (rule 201); (e) the requirement that discovery be

visions of more controversial issues, all of the judges were asked to report their opinions and the points on which they were inflexible; this step helped to keep judges apprised of and involved in the project and, it was reported, reduced the number of times a particular rule went through revision. Third, the rules committee had easy access to the court through monthly meetings; whenever necessary, the rules committee was given time on the agenda to discuss and debate various changes in rules that were under consideration.[17] Finally, the rules committee sought advice from the magistrates, the U.S. attorney's office, and the Bar Council; comments and suggestions from these groups were incorporated into revised proposals where appropriate.

The push from the Bar Council was, perhaps, a critical step. In 1982, Judge Hall, the liaison judge to the Bar Council, requested that the bar develop a procedure whereby lawyers could be available to represent litigants, usually in prisoner cases, on a pro bono basis. With this service in place, the Bar Council felt more comfortable about approaching the court about their one major complaint: the confusion of various forms and instructions for pretrial. To move the court toward uniformity, and to underscore that it was not so difficult to achieve, the chairperson of the Bar Council prepared an initial document comparing each judge's instructions (see table 1). This document became an important ingredient in focusing the discussion and getting the project off the ground.

Local rule 235 is the final product of these efforts: Although the rule incorporates elements of many of the judges' previous procedures, it required some change and adjustment for each judge. The court adopted the rule to be

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initiated and completed within four months as well as the limitations placed on discovery devices (rule 225); and, as noted above, (f) the use of one numbering system that permits easy amendment as the need arises. Bowden also reported that she took special care to prepare a very comprehensive index that was initially constructed by a professional service and then reviewed and edited by her. In addition, the rules committee, taking the lead from appellate practice, prepared a set of internal operating procedures that are available on request but are not part of the local rules.

17. The judges also meet together for lunch on a regular basis; the court has extended invitations to magistrates and bankruptcy judges to use their facility as well. Therefore, informal discussion of court issues often takes place over lunch, where all judicial officers can participate. For a further discussion, see C. Seron, supra note 15, at 18-20.

effective January 1, 1985, but many judges put the rule into practice before that date as a way to get used to the changes required.

Special steps were taken to educate the bar. Seminars were conducted and an article describing the new rules was published in the local bar journal.[18] Two seminars were sponsored by the Continuing Legal Education Committee of the Atlanta Bar so that practitioners would be able to gain continuing legal education credit for attendance;[19] these seminars were held at the court, where judges participated actively in the presentations. The major changes in the rules were reviewed carefully, and the rationale for the new rule was presented.

With a detailed set of new rules in place and local practitioners informed of the changes, what is the assessment of the court?

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18. 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).

19. These seminars were held on Jan. 5 and Jan. 16, 1985--that is, immediately following the formal adoption of the new rules--so that attorneys could be informed of all changes. Of course, it should be noted as well that the new instructions also provided a detailed description of the steps counsel are required to follow in preparing a case.

III. ASSESSMENT OF LOCAL RULE 235

In comparing judges' pre-1985 pretrial guidelines, the rules committee took special care to examine obvious points of difference, such as the substantive requirements of the pretrial order itself (e.g., inclusion of questions for voir dire), as well as more subtle variations, such as the format of instructions and time frames for filing.

In like manner, I asked judges to assess all aspects of the changes in practice necessitated by the adoption of local rule 235. The first section of this chapter addresses the format of the instructions and the shift in responsibility for dissemination from the courtroom deputies to the clerk's office. The second section reports modifications introduced by individual judges. The third section describes an assessment of the preliminary statement, the settlement certificate, and the statement of interested parties, which for many judges are the most noteworthy, and controversial, changes. The fourth section focuses on discovery limitations and summary judgment motions. The fifth section presents the court's experience with the use of the pretrial order itself. Calendaring cases for trial is discussed in the sixth section. The final section contains observers' overall appraisal and recommendation to other courts.

Format and Distribution of Pretrial Instructions

Prior to the adoption of local rule 235, judges used two different formats to inform counsel of their requirements: Six judges used textual instructions and five used a form with blanks--the format that was eventually adopted by the court. Generally, judges who were required to make a change did not report any problems. One judge, who had used textual instructions, described a preference for the new format because information is reported in a more predictable fashion. Another judge, however, did note a difficulty. Prior to the adoption of the rule, counsel had been required to attach documents directly following the question. The new rule requires that all documents be attached at the end of the pretrial statement, and this judge preferred his earlier requirement.

To help ensure that the form and content of the instructions do not vary and to reduce the burdens of mailing materials by courtroom deputies, pretrial instructions are now distributed over the signature of the clerk of court. When a case is filed, the intake clerk distributes the court's Instructions Regarding Pretrial Proceedings, which contain information about the preliminary statement, settlement certificate, statement of interested parties, and pretrial order. The materials are distributed by counsel for the plaintiff to all subsequent parties who enter the case. When the rules were being revised, the courtroom deputies suggested that this change would reduce their clerical tasks.[20]

Courtroom deputies were absolutely consistent in their positive evaluation of this change. Though a case is assigned when filed, they do not have to get involved until issue is joined, and the clerk's office then informs them of case assignment. Distribution of instructions at filing by the clerk's office has eliminated the enormous task of reproducing materials as well as mailing them as parties enter the case. The conserved time can be devoted to managing the caseload by tracking cases and contacting lawyers when necessary. The uniformity of instructions means fewer telephone calls about a judge's requirements from confused attorneys.

Distribution of Additional Instructions

A major benefit of local rule 235 is that it reduces clerical tasks of courtroom deputies without adding a major burden to the other personnel of the clerk's office. In light of this particular benefit, it is useful to examine whether or not judges have introduced any personal instructions that require a mailing to counsel by courtroom deputies. Of equal importance, this question may be posed: Have personal instructions thwarted the goal of local rule 235, which is to introduce uniform pretrial procedures?

Individualized instructions to augment the guidelines of rule 235 may be distributed to attorneys at two stages: after issue is joined and as part of the trial calendar. If a judge distributes instructions at some point after

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20. Northern Georgia's decision to distribute pretrial instructions at filing is a departure from the practice of most districts; the old procedure, which was to have a deputy send his or her judge's pretrial requirements, was closer to the national norm. Observation confirmed by Wendy Jennis, Clerks Division, Administrative Office of the U.S. Courts.

issue is joined but before the case is placed on a trial calendar, a special mailing is required. Special instructions for the trial itself can be distributed with the trial calendar. Most judges reported that they had introduced some written modifications into the pretrial procedure; indeed, there were only three judges who reported that they had not. Of the eight judges who do distribute personal instructions, four do so at the time the calendar is mailed and four do so earlier.[21]

What do these personal instructions require of counsel? Table 2 summarizes the types of personal instructions introduced by judges. Of the four judges who send an additional notice after issue is joined, two send one that notifies counsel of the dates various documents are due, so this notice is simply a confirmation and specification of information contained in the local rule. One judge sends instructions detailing requirements for his pretrial order and briefs; while more elaborate, these instructions, like the notice of date confirmation, do not have the effect of altering the flow of pretrial as outlined in rule 235. This judge reported his strongly held view that the length of briefs should be limited, a view that he passed on to the committee. Since the court did not set limits on brief length in the local rules, he felt it necessary to inform counsel himself. In questioning, a number of judges commented that they would be inclined to require page limits on briefs. The fourth judge to send materials after issue is joined has developed two form orders, which are sent after review of the preliminary statement. Order "A," which is much more commonly used, waives the need to file a scheduling order, while order "B" requires counsel to file one. Here too the order confirms or rejects counsel's response to question eleven of the preliminary statement; that is, whether or not a scheduling order is necessary.

Of the four judges who distribute personal instructions with the calendar call, three provide information clarifying requirements for trial. Two judges instruct counsel that they may submit only fifteen requests to charge and that they must be filed with the court prior to the day the case may be called for trial unless otherwise ordered.[22] Although one judge's instructions are

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21. Appendix B contains documents used by those judges who require mailing after issue is joined but before the distribution of a trial calendar; appendix C contains instructions distributed by judges when the trial calendar is sent.

22. The court's instructions do not set a limit on requests to charge and require that they be filed by 9:30 a.m. on the day of trial.

TABLE 2

TYPES OF PERSONALIZED PRETRIAL INSTRUCTIONS

After Issue Joined	With Trial Calendar
Notice with dates papers due (two judges)	Documents in nonjury trials to be filed three work days prior to trial (one judge)
After preliminary statement: Order "A" waiving scheduling order or order "B" setting date for filing of order (one judge)	Notification of limitation of 15 requests to charge, excluding pattern charges, except upon prior authorization of court (two judges)
Sends out calendar call with six-month notice; sends out calendar call with three-month notice (one judge)	
Detailed case instructions (one judge)	

more detailed specifications of the way he wants documents ordered and coded, they are elaborations of rule 235. Another judge sends special instructions about submission of documents to the court in nonjury cases. Finally, one judge sends a six-month calendar call, which is then followed by a three-month reminder. Although the materials sent with the calendar call do not contain any additional instructions, this procedure does have the effect of modifying slightly the flow of the case as outlined in the local rules, and may perhaps alter the expectations of counsel.

Generally, these individualized procedures do not have the effect of undermining the intent of rule 235 to develop uniform pretrial requirements. The clerical burdens of some courtroom deputies are, however, affected: When judges require the distribution of personal materials prior to the calendar call, an additional mailing to all parties is required.[23] At this stage, interviews with the court did not reveal a concern that the efforts that went

23. As one courtroom deputy pointed out, however, part of a deputy's job is to inform attorneys through informal channels of a judge's preferences; whether informal transmittal of information is more or less burdensome than the more formal route of mailing written materials is open to speculation.

into the promulgation of rule 235 might be undermined. These individual practices are generally known among all judges and have not become a point of debate or concern within the court.

Activities Prior to Pretrial: The Settlement Certificate, Preliminary Statement, and Statement of Interested Parties

Judges' views vary about the usefulness of the settlement certificate,[24] preliminary statement, and statement of interested parties that are now required shortly after issue is joined. Table 1 discloses that most judges had some requirements within the first twenty to thirty days, but that none was as elaborate or detailed as the current procedure.

Settlement certificate. Most judges expressed skepticism about the value of the settlement certificate. Nearly every judge commented that the requirement comes too early to be useful and that lawyers are simply not willing to negotiate at this stage.[25] One judge elaborated that if a case is going to settle within thirty days of issue being joined, the court is not likely to be the agent that facilitates the outcome. Generally, judges noted that few, if any, certificates contained requests to hold a conference.[26] One gains an overall sense that the settlement certificate was a way to address the court's view of the spirit of the changes in federal rule 16 without compromising this district's general commitment to a more hands-off approach to settlement

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24. As noted earlier, local rule 235 requires that counsel meet in person within the first thirty days after issue is joined to discuss settlement; the results of this meeting must be reported to clients, and within ten days of the meeting counsel must certify to the court the results of this effort.

A review of local rules discloses that three other districts have a similar requirement that counsel must seek to settle the case and certify to the court the results of their efforts; they are Hawaii, Southern West Virginia, and Southern Texas.

25. The chairperson of the Bar Council reported that the council was consulted on nearly every rule change except the preliminary statement and settlement certificate; she also noted that the bar would welcome a more active approach to settlement but that the certificate was not, she suspected, a very effective route.

26. Note that requests for conferences can also be made on the pretrial order; judges reported that later requests are more frequent. Supporting this point, one judge commented that the rate of settlement has been steadily increasing, but that he doubts that settlements come early in the game.

during the early stages of pretrial preparation. As one judge put it, the certificate circumvents the "judge problem"--that is, the problem of giving one's view of the value of a case when one may be asked to try it at a later point--but few are enthusiastic supporters.

Preliminary statement. Five judges required a "20-day" statement that was quite similar in spirit to the preliminary statement currently in use, but of these five judges three reported that they had been on the verge of dropping the statement prior to the promulgation of rule 235. All three judges who did not specify any early requirements questioned the value of the preliminary statement. These skeptics reported that they went along with the decision to include the preliminary statement because of the court's commitment to introduce uniform procedures and to comply with the amendments to rule 16. A few judges did note that the preliminary statement may occasionally be helpful in spotting a difficult case, but suggested that the same ends might be accomplished through a simpler route.

Statement of interested parties. In contrast to views on the preliminary statement, all members of the court found the statement of interested parties to be a very useful addition. The concept behind this local rule was borrowed from appellate practice; judges reported that in a large, more urban district it is helpful to have a concise statement about any potential conflicts of interest posed by a case. There was a strong consensus that the statement is a prompt and efficient way of addressing this issue.

A review of table 1 shows that a number of judges had been holding status conferences at an early stage in the case. Rule 235 contemplates few conferences throughout pretrial; there is, moreover, a consensus that the elimination of an early status conference in most civil cases is a positive step. Most judges who modified their practice as a result of the new local rule reported that the change helped them rethink procedures and, in their view, use their time more effectively.[27] Even though there is disagreement about

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27. Apropos of this point, two judges commented that they have found that the most effective practice to get counsel involved with a case is to hold an early in-chambers status conference; nothing works quite like an appearance in court to get lawyers moving, these judges claim. These same judges went on to point out, however, that the effect rarely warrants the time and effort expended by the judge to hold the conference. Thus the question becomes, Short of holding an in-chambers status conference at an early stage, what is the best approach to early management of a case?

the usefulness of the preliminary statement and settlement certificate, there is general agreement that early conferences are not the best use of a judge's time.

Elaborating, a few judges commented that it might have been effective to exempt more civil case categories from the requirements of rule 235. By exempting cases that raise more factual issues, or involve smaller sums of money, the anticipated benefits of a preliminary statement might be realized. Of course, this concern highlights a much larger issue in case management: While there is general agreement that the court should intervene at an early stage to get lawyers to prepare their cases, what the intervention should be, and how it should be accomplished, remains a hotly debated point.

Despite the questions raised by these judges about the effectiveness of the statement and certificate, all noted that they have no intention of returning to personal instructions. The judges' commitment to uniformity outweighs their skepticism about the effectiveness of these required documents. This commitment originates from a strong sense that the bar had a legitimate complaint about the confusion caused by multiple instructions for pretrial procedures.

Pretrial Motions: Discovery and Summary Judgment

Limitations on discovery. The new rules set limits on discovery along three dimensions: (1) Discovery must be initiated and completed within 120 days, (2) no more than forty interrogatories, including subparts to questions, can be filed without leave of court to file more, and (3) depositions are limited to six hours per witness or party without leave of court to extend. Prior to the adoption of the local rules, only four judges placed limitations on the number of interrogatories and duration of depositions, so these limitations are new for a majority of the bench, all of whom are very enthusiastic about the change. The judges reported that they have received few requests to waive the limitations and that the requirements seem to curb unnecessary discovery.

The new local rule does not permit even one extension for discovery upon agreement of counsel. A member of the rules committee reported that he had urged this step because the first extension is inevitably granted; underscoring his point, he reported that in discussions of this topic judges did

acknowledge that they tend to grant the first extension if all sides agree, but that they did not want to place control with counsel.

Interviews with judges confirmed this view. Generally, it was noted, the first request for a time extension is granted, though the length of the extension (usually from 60 to 120 days) often varies from judge to judge. Judges' attitudes toward granting subsequent extensions are fairly evenly divided. About half the judges reported that they are inclined to grant additional extensions of time; a judge who advocated this position commented that "there is nothing etched in stone about four months" and that discovery, or the disclosure of information, helps facilitate settlement. On the other hand, a number of judges claimed that they have been known to deny extensions; that they may grant less than 120 days on the first request; or that they will grant one extension, note that this is the last one, and indicate the date that the pretrial order is due to underscore their point.

In contrast to the general uniformity in issuing pretrial instructions, the judges take more diverse approaches to limiting time for discovery. The guidelines for discovery contained in the local rule provide an outline of the court's approach; what judges actually do, however, especially in terms of their willingness to grant extensions of time, varies. Of course, variations in practice are, to some extent, a function of the particulars of a case; no doubt, there is an interplay between judicial approach and case problems that shapes each decision. On balance, one may discern a consensus that the guidelines contained in the local rules are a positive step (particularly the limitations on interrogatories and depositions); a full assessment requires, however, the input of practitioners.

Summary judgment motions. In revising the local rules in Northern Georgia, the court gave careful attention to preparing a thorough local rule on filing summary judgment motions, because the old rules had been very confusing.[28] The local rule now states clearly that the time for filing a motion for summary judgment is no later than twenty days after the close of discovery. Many of the judges feel that there is little reason to file a summary judgment motion before discovery is completed and sufficient information is available to prepare the motion. On the other hand, filing of such motions

28. See N.D. Ga. R. Civ. P. 220-5 and supra note 15.

should not be used to stall the preparation of a final pretrial order.[29] All judges agreed that clarification of the time frame for filing has helped considerably. As one judge elaborated, lawyers used to be able to file summary judgment motions on the eve of trial, thereby disrupting a calendar; the elimination of this possibility is helpful in monitoring one's schedule.

The Pretrial Order

Interestingly, I found that the core innovation of local rule 235, the use of a standard pretrial order, evoked very little dissent: All the judges noted that the standard order is substantially complete and meets their needs. Although a few judges commented that the order requires too much information for some types of simpler civil cases, most did not see this as a major problem. A few judges reported that they prepare their own voir dire questions, so the information required by counsel is used only in an advisory fashion.

Rule 235 requires that the pretrial order be filed thirty days after the close of discovery. Prior to the adoption of the standard pretrial order, a few judges had set earlier deadlines, but no judge reported that the change caused a problem. All in all, the judges reported that the standard order itself has not necessitated a change in practice.

As noted above, the local rule discourages pretrial conferences. Underscoring this point, Chief Judge Moye commented that if a pretrial order is properly prepared, a visiting judge can pick it up and try a case without holding a conference;[30] likewise, if pretrial orders are prepared properly, he contended, conferences need rarely be held. Reflecting this point of view, the local rule states that counsel may request a conference, but that the judge has discretion to make the final decision. A number of judges, who had held final pretrial conferences on a regular basis, reported that they are

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29. Although most judges agreed that the information obtained during discovery is necessary to prepare a summary judgment motion, many other judges disagreed that these motions are filed as a stalling device, noting that the motion can take more time to prepare than a pretrial order. Many judges claimed that summary judgment motions, even when denied, can be very educational for the judge and lawyers; as many judges commented, they "like" these motions.

30. Supporting his point, the chief judge cited D. Stienstra, Visiting Judges in Federal District Courts (Federal Judicial Center 1985).

holding many fewer conferences since rule 235 went into effect; as a result, they claim, their time has been put to better use.

The pros and cons of conferencing prior to trial are, of course, part of a much larger debate within the judicial community. An important goal of the amendments to federal rule 16 was to encourage settlement, which, some suggest, is best achieved through a tailor-made, face-to-face, in-court conference. There is, indeed, a group of judges on the Northern Georgia bench that echoes this view. Slightly over half of the judges interviewed reported that they hold a final pretrial conference just before a case is to be tried; these judges claim that they have found that a conference on the eve of trial is the most effective strategy for reaching an agreeable settlement.

What, then, is the appropriate use of final pretrial conferences? An examination of the rates of case dispositions for judges in this, or other, courts does not really shed additional light on this question.[31] In the Northern District of Georgia, at least, the variation among judges' individual statistics is, with a few exceptions, not notable. The district's profile--composed of judges who do and do not hold final pretrial conferences--is fairly close to the average for all districts; that is, Northern Georgia is neither a particularly fast nor a particularly slow court.

One can only speculate, of course, but there may be another factor to weigh. The critical ingredient may be the determination of an approach that is best for the individual judge and, once this is done, the adoption of a consistent set of practices. An important aim of the revision of federal rule 16 was to encourage judges to fit pretrial conferences to case requirements and complexity. It may be equally important, however, to explore and to analyze the fit between individual judicial styles and approaches to case management.

At the same time, uniformity of procedures among judges, particularly in a larger urban court, needs to be factored into the equation. As we saw earlier, each of the judges in Northern Georgia reported that the introduction of local rule 235 was not personally advantageous to them, but that the bar's

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31. See Provine, supra note 7, who attempted to examine the relationship between settlement techniques and time to disposition and was not able to discern a consistent pattern. It should be noted, however, that the disposition categories used by the Administrative Office may not be refined enough to capture the effect of a settlement technique.

complaint about confusion before the rule's adoption was legitimate. Implicitly, these judges distinguish between problems of individual and court effectiveness: Though their personal pre-1985 instructions were individually effective, their various practices taken as a whole did produce a degree of courtwide ineffectiveness. Thus the appropriate, and difficult, task for a district may be to develop guidelines that provide an outline of pretrial that all members of the bench can live with while also permitting individual flexibility.

The Trial Calendar

Local rule 235 states that counsel must be ready for trial on the first available calendar after the pretrial order is filed. Discussion with each of the judges disclosed, however, that calendaring cases for trial remains a stumbling block and further that the local rule is silent about various details of calendaring, such as the need to attend a calendar call. In practice, then, the local rule does not establish uniform procedures for setting a trial calendar.

A number of judges commented that they have tried various procedures and have not hit upon one that works best. There is the ever-present, and unpredictable, element that some cases will settle at the last minute, thereby making it difficult to plan ahead. Recognizing this problem, some judges require that counsel be present at the calendar call, although others do not. Some reported that they make a concerted effort to carry cases in consecutive order from month to month; others do not.

Preparing a calendar and keeping attorneys apprised of it is a primary responsibility of courtroom deputies. As one deputy commented, and a number of others corroborated, it is highly unlikely that judges would agree to adopt uniform requirements and procedures for calendaring, because personal preferences are so important at this stage.

An Overall Appraisal and Recommendation

With the introduction of local rule 235, judges in Northern Georgia agreed to move cases through the same pretrial steps from a settlement certificate to a preliminary statement to a pretrial order. Two developments shaped the court's actions: (1) the bar's request to adopt a uniform pretrial

order and to standardize the time of filing and (2) the amendments to rule 16 of the Federal Rules of Civil Procedure that require a scheduling order and suggest a settlement discussion. Overall, the bench is enthusiastic about the use of a standard pretrial order and statement of interested parties, but skeptical about the value of the preliminary statement and the settlement certificate.

Despite contrary expectations, the adoption of a standard pretrial order did not entail a major change in practice for most judges; in addition, the judges reported that the statement of interested parties provides a quick way to deal with possible conflicts of interest. As a preparatory step, the rules committee compared the requirements of each judge's pretrial order, found that most of their orders covered the same general topics, and then incorporated the unique elements of each. Though judges had had different requirements for the time of filing of the pretrial order, none reported dissatisfaction with the change. Many judges also noted that they benefited indirectly from the standard instructions: To the extent that their courtroom deputies were no longer burdened with distributing individual instructions to all counsel in a case, they received fewer inquiries from attorneys and had more time to devote to managing cases. Interviews with courtroom deputies corroborated this point. The other group to benefit from a standard order, judges commented, was the practicing bar, who had had a legitimate complaint about the confusion caused by individualized instructions for pretrial.[32] For these reasons, judges reported that they would recommend the introduction of a standard pretrial order to courts considering this change. Summing up, a judge who had been quite skeptical about the undertaking closed by saying that the pretrial order works well and that he would recommend it without hesitation.

Many judges were, however, dubious about the benefits of the settlement certificate and the preliminary statement. These judges commented that they went along with it for the sake of uniformity, but that they do not find the information received warrants the effort required of lawyers. Elaborating,

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32. Although it is reasonable to assume that the judges' observation is accurate, a more complete answer entails an assessment by the practitioners themselves. Since a number of judges have introduced some modifications in

they commented that they would be reluctant to recommend these requirements without a systematic assessment of their effectiveness; a number of judges stated that before recommending the procedure to other courts, they would want to see some empirical evidence from lawyers that the certificate facilitates settlement negotiations.

Because of the skepticism about the effectiveness of the preliminary statement and settlement certificate, I asked judges if they thought the court might decide to eliminate or amend these requirements. Here, too, their responses were consistent: A great deal of effort, time, and money went into the creation of local rule 235, and the court is not ready to start making changes after such a short time.

The candor of the judges' response underscores a problem. After expending a great deal of effort on a notable change, individuals are reluctant to examine carefully whether or not the change has been worth making. That is, if we have been part of the process of making a change happen, we are generally reluctant to question its effect. There is no easy answer to this. Yet, as we continue to pursue avenues for streamlining and improving the judicial process, of introducing procedures that we hope will be more cost-effective, and of altering traditional paths of adjudication, it is equally important to assess whether outcomes meet expectations.

In closing his interview, one judge commented that there is a virtue and a vice to Northern Georgia's experiment with procedural standardization. The virtue is that the procedure seems to have improved the court's management of cases and to have eliminated some problems for practitioners. The vice is that the court may develop an overriding commitment to standardization, so that individual judges will be reluctant to experiment with other innovative approaches to adjudication and to question the wisdom of the procedures already in place.

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practice, and judges still have quite different attitudes toward enforcement of deadlines, there is a great deal of room for variation among judges' practices.

CONCLUSION

The goal of the project in Northern Georgia was to introduce one set of pretrial instructions. The bar put this project on the court's agenda, claiming that various instructions, requirements, and time frames for filing pretrial documents were confusing and unnecessarily difficult. All judges noted, however, that the introduction of local rule 235 did not affect their individual case management practices. Each member of the bench was willing to make changes in personal procedures because of the overriding gains of introducing courtwide procedures.

In closing, it is useful to reflect on at least three larger issues raised by this case study. First, what does Northern Georgia's response to settlement negotiations suggest about the larger boundaries of this debate? Second, how widely should pretrial requirements be applied? Third, are there limitations to effective standardization of practices?

As noted, the use of settlement techniques is one of the most contested topics within the judicial community. Earlier research by Steven Flanders[33] demonstrated that a pretrial conference may, in practice, be held for a purpose other than preparing a case for trial; that is, other topics may be covered at a pretrial conference--including, he found, the management of the case and the feasibility of settlement. In one sense, the 1983 amendments to federal rule 16 are a recognition of these developments in pretrial activities. Discussions with judges in Northern Georgia disclose, however, that the judicial family does not speak with one voice, at least when it comes to the settlement issue. There are those who express concerns about getting too involved in management and negotiation--even when there is a request from counsel. Seen in this context, the use of a settlement certificate as developed in Northern Georgia is an interesting compromise: It leaves the judge out of the negotiation process, yet may prod lawyers to confront the issues in dispute. In future research, we need to explore other techniques that are evolving that incorporate a similar concern to balance traditional notions of

33. S. Flanders, Case Management and Court Management in United States District Courts (Federal Judicial Center 1977).

judicial passivity and contemporary desires for effective management.

The concerns raised by the judges in Northern Georgia bring home the importance of examining further the need to fit pretrial activities to case demands. At one extreme, the Manual for Complex Litigation[34] is helpful for sorting out the management of the very big case; but, short of the most complex of cases, how should pretrial management be approached? Do we need to develop different types of pretrial treatment for different types of cases? Some of the questions raised by the judges in Northern Georgia suggest that this issue requires our further consideration.

Finally, the judges' comments provide insight into the feasible limitations of establishing standard procedures among a relatively large number of judges. They suggest that local rules may serve as guidelines for the substance and timing of various documents, but that it is very difficult to carry this further. Indeed, at this time there is little to suggest that more uniformity is even necessary or desirable.

There are additional questions that remain to be explored about the effectiveness of Northern Georgia's experiment with pretrial standardization. It is important, however, to underscore these special features of the court's innovation: the judges' willingness to take seriously the concerns of practitioners, to make compromises, and to experiment with uniform procedures.

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34. Manual for Complex Litigation, Second (1985).

APPENDIX A

Local Rule 235 and Instructions Regarding Pretrial Proceedings in the United States District Court for the Northern District of Georgia

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 have been adopted to implement the scheduling requirements of Rule 16 of the Federal Rules of Civil Procedure. The limitations imposed by this Court regarding the length of the discovery period and the use of discovery devices are set forth in Rule 225.

235-2. Settlement Conference and Certificate.

(a) Conference. Within 30 days after issue is joined, lead counsel for all parties are required to meet in person in a good faith effort to settle the case. At the conclusion of the conference, any offers made shall be communicated to the client.

(b) Certificate. Within 10 days after the conference, counsel shall file a joint statement certifying that the conference was held, 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 hold any future settlement conferences; 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. Pro se litigants and their opposing counsel and cases involving administrative appeals are exempt from the requirements of this rule.

235-3. Preliminary Statement.

For all cases not settled at the settlement conference, counsel are required to file concurrently with the certificate required by Rule 235-2, a joint preliminary statement providing the information listed below. 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. A form preliminary statement prepared by the Court and which counsel shall be required to use is contained in Appendix B.

The preliminary statement shall include:

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

(2) Any questions of misjoinder of parties and inaccuracies and omissions regarding the names of the parties to the action.

(3) The names of any persons whom the parties anticipate it will be necessary to join in the action.

(4) Any questions concerning the Court's jurisdiction.

(5) The pendency or disposition of any related litigation.

(6) Notification that a case should be made subject to the Manual for Complex Litigation.

(7) Any controlling legal issues involved in the litigation and whether the parties anticipate filing any motions directed thereto and/or

(8) Any unusual problems anticipated during the course of this litigation.

(9) A description of any amendments to the pleadings which the parties anticipate will be necessary.

(10) The signatures of lead counsel for each party on the last page consenting to submission of the preliminary statement.

(11) An order by the judge that a scheduling order is not necessary or directing counsel to submit a proposed scheduling order.

235-4. Time Limitations for Filing Motions.

(a) Generally. Motions addressing items reported in the preliminary statement (see Rule 235-3) shall, if not previously filed, be filed promptly after submission of the preliminary statement. Such motions shall, unless otherwise ordered by the Court, be filed no later than 100 days after the complaint is filed. This rule shall not be construed to supersede any requirements regarding filing time contained in the Federal Rules of Civil Procedure.

(b) Summary Judgment. Motions for summary judgment shall be filed as soon as possible, but unless otherwise permitted by Court order, not later than 20 days after the close of discovery, as established by the expiration of the original or extended discovery period or by written notice of all counsel, filed with the Court, indicating that discovery was completed earlier.

235-5. 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 235-4, above. 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 counter-claim 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 calendared (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 dates on which counsel met personally to discuss settlement, whether counsel intend to meet again to discuss settlement, 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.

235-6. 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.

INSTRUCTIONS REGARDING PRETRIAL PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

The following instructions of the Court pertain to (1) the filing of a joint certificate of interested persons; (2) the conduct of discovery; (3) the scheduling of a settlement conference and filing of a settlement certificate;[1] (4) the submission of a joint preliminary statement;[2] (5) time limits for various motions; (6) the submission of a proposed consolidated (not separate) pretrial order; and (7) the submission of requests to charge in the above-styled case. Forms are attached for counsel to use in the submission of the joint settlement certificate, the joint preliminary statement, and the proposed consolidated pretrial order.

The purpose of these instructions is to summarize information contained in the Court's local rules and to direct your attention to the appropriate local rules. No further instructions regarding these pretrial matters will be provided you. Rather, it is the responsibility of counsel to assure the orderly conduct of discovery and to submit promptly the documents requested by the Court without further notice, order, or direction. Failure on the part of any party to cooperate with others in compliance with these instructions may result in the imposition of dismissal, default judgment, or other sanction as provided by the Federal Rules of Civil Procedure and the Local Rules of this Court.

Summary of Relevant Dates

Certificate of Interested Persons:	within 10 days after issue is joined. Rule 201-1.
Settlement Conference:	within 30 days after issue is joined. Rule 235-2.
Settlement Certificate:	within 10 days after settlement conference. Rule 235-2,

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1. Pro se litigants and opposing counsel and counsel in cases involving administrative appeals are not required to hold a settlement conference.

2. Pro se litigants and opposing counsel shall be permitted to file separate preliminary statements. Preliminary statements are not required in cases appealing administrative determinations.

Preliminary Statement:	within 10 days after settlement conference. Rule 235-3.
Motions to Compel:	prior to close of discovery. Rules 220-4; 225-4(d).
Motions Relating to Preliminary Statement:	as soon as possible, but, unless permitted by Court order, not later than 100 days after complaint is filed. Rule 235-4.
Summary Judgment Motions:	within 20 days after the close of discovery, unless otherwise permitted by Court order. Rules 220-5; 235-4.
Close of Discovery:	four (4) months after the last answer is filed or should have been filed, unless the Court has either shortened the time for discovery or has for cause shown extended the time for discovery. Answers and responses to initiated discovery must be served within this 4 month period. Rule 225-1(a).
Proposed Pretrial Order:	not later than 30 days after the close of discovery. Rule 235-5.
Requests to Charge:	no later than 9:30 AM on the date on which the case is calendared (or specially set) for trial, unless otherwise ordered by the Court. Rule 255-2.

Instructions

I. Certificate of Interested Persons

Rule 201-1. Counsel for all private (nongovernmental) parties shall be required to submit a joint Certificate of Interested Persons within 10 days of the joinder of issue. The certificate must include a listing of all persons, associations of persons, firms, partnerships or corporations having either a financial interest or some other interest which could be substantially affected by the outcome of this particular case. Subsidiaries, conglomerates, affiliates, and parent corporations, and any other identifiable legal entity related to a party must be listed. Lawyers serving in the proceeding must also be listed. A prescribed form for the certificate is set out in Rule 201-1(c).

II. Discovery Limitations

A. Interrogatories. Rule 225-2(a). A party shall not at any one time or cumulatively serve more than 40 interrogatories upon any other party. Each subdivision of one numbered interrogatory shall be construed as a separate interrogatory. If counsel for a party believes that more than 40 interrogatories are necessary, he shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. In the event a written stipulation cannot be agreed upon, the parties seeking to submit additional interrogatories shall file a motion with the Court showing the necessity for relief.

B. Depositions. Rule 225-2(b). Unless otherwise ordered by the Court, no deposition of any party or witness shall last more than six (6) hours.

C. Extensions of Time. Rule 225-1. The basic discovery period in this Court during which discovery must be initiated and completed (including responses thereto) is four months after the last answer is filed or should have been filed. A request for an extension of time for discovery must be filed with the Court prior to the expiration of the original or previously extended discovery period and must include the date issue was joined, the date on which the time period in question is to expire, the dates of any and all previous extensions of time, and a description of the additional discovery which is needed.

D. Motions to Compel. Rules 220-4, 225-4. Counsel are required to confer regarding discovery disputes before filing a motion to compel. A certificate certifying both counsel's good faith effort to resolve the discovery dispute by agreement must be attached to the motion. Directions regarding the form and content of a motion to compel are contained in Rule 225-4(b). Motions to compel may be filed any time prior to the close of discovery, unless otherwise ordered by the Court.

III. Settlement Conference and Certificate.

A. Conference. Rule 235-2(a). Within 30 days after issue is joined, lead counsel for all parties are required to meet in person in a good faith effort to settle the case. At the conclusion of the conference, any offers made shall be communicated to the client.

B. Certificate. Rule 235-2(b). Within 10 days after the conference, counsel shall file a joint statement certifying that the conference was held, 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 hold any future settlement conferences; 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 to the Local Rules. A copy of the form is also attached to these instructions. Pro se litigants and their opposing counsel and cases involving administrative appeals are exempt from the requirements of this rule.

IV. Preliminary Statement.

Rule 235-3. For all cases not settled at the settlement conference, counsel are required to file (concurrently with the settlement conference certificate) a joint preliminary statement providing the information requested in Rule 235-3. Counsel are required to use the form Preliminary Statement contained in Appendix B to the Local Rules, a copy of which is attached to these instructions. Pro se litigants and opposing counsel shall be permitted to file separate statements. Appeals to this Court of administrative determinations which are presented to the Court for review on a completed record are excepted from the requirements of this rule.

V. Motions.

A. Generally. All motions filed in this Court shall be made in compliance with the Federal Rules of Civil Procedure and the local rules of this Court. See Local Rule 220.

B. Motions to Compel. Rules 220-4; 225-4. Unless otherwise ordered by the Court, no motions to compel discovery may be filed after the close of discovery.

C. Motions Relating to Preliminary Statement. Rule 235-4(a). Motions addressing items reported in the preliminary statement shall, if not previously filed, be filed promptly after submission of the preliminary statement. Unless

otherwise ordered by the Court, such motions shall not be permitted to be filed later than 100 days after the complaint is filed.[3]

D. Summary Judgment. Rules 220-5; 235-4(b). Motions for summary judgment shall be filed as soon as possible, but, unless otherwise permitted by Court order, not later than 20 days after the close of discovery.

VI. Proposed Consolidated Pretrial Order

Rule 235-5. The Court has prepared a form pretrial order, which counsel shall be required to complete and file with the Court no later than 30 days after the close of discovery. Use of the form pretrial order, which is contained in Appendix B of the local rules, is mandatory. A copy of the form is also attached to these instructions. No deviations from this form shall be permitted, except upon the express prior approval of the Court. The form may be retyped provided it is not modified in any way. Additional copies of the form pretrial order may be obtained from the Public Filing Counter in each division.

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.

VII. Requests to Charge.

Rule 255-2. Requests to Charge shall be filed with the courtroom deputy no later than 9:30 AM on the date on which the case is calendared (or specially set) for trial unless otherwise ordered by the Court. The requests shall be numbered sequentially with each request and the citations to author-

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3. These instructions shall not be construed to supersede any requirements regarding filing time contained in the Federal Rules of Civil Procedure.

ities supporting the request presented on a separate sheet of paper. In addition to the original, counsel must file two copies of each request with the clerk and must serve one copy of the requests on opposing counsel. Additional instructions regarding requests to charge are contained in Item 22 of the form pretrial order.

BY ORDER OF THE COURT.

Luther D. Thomas, Clerk

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

SETTLEMENT CERTIFICATE

The undersigned counsel for the parties hereby certify that:

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

(2) In addition to the undersigned counsel, the following persons participated in the settlement conference:

For plaintiff: _____

_____

For defendant: _____

_____

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

(4) Counsel (____) do or (____) do not intend to hold future settlement conferences. Date of any proposed settlement conference: _____.

(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.

(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

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

style of case : Civil Action No. ____

PRELIMINARY STATEMENT

1.

The following statement is a brief, factual outline of the case and succinct summary of the issues in the case:

_____

_____

_____

_____

_____

_____

_____

_____

_____

2.

The persons listed below are improperly joined as parties: _____

_____

_____

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

_____

_____

3.

The persons listed below are necessary parties who have not been joined: _____

_____

_____

4.

The following questions exist concerning this Court's jurisdiction: ____

_____

_____

_____

_____

_____

5.

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

Pending Related Cases: _____

_____

_____

Previously Adjudicated Related Cases: _____

_____

_____

6.

This case (____) should or (____) should not be made subject to the Manual for Complex Litigation.

7.

The following issues, listed separately, are controlling legal issues: ___

_____

_____

_____

It is anticipated that the parties will file the following motions, if any, addressing these issues (list each motion separately): _____

_____

_____

8.

The following unusual problems, if any, are anticipated to arise during the litigation: _____

_____

_____

9.

The parties anticipate that it will be necessary to file the following amendments, listed separately, to the pleadings: _____

_____

_____

The undersigned counsel for the parties hereby consent to submission of the above Preliminary Statement of the case this _____ day of _____, 19__.

_____ _____

Counsel for plaintiff Counsel for defendant

Upon review of the information contained in the Preliminary Statement filed by the parties, the Court finds that this case does not require entry of an individualized scheduling order pursuant to Rule 16, F.R.Civ.P.

OR

Upon review of the information contained in the Preliminary Statement filed by the parties, the Court hereby directs the parties to submit a proposed scheduling order relating to Items ____ within ____ days of the date of this order.

IT IS SO ORDERED this ____ day of _____, 19__.

_____

UNITED STATES DISTRICT JUDGE

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; jurisdiction 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 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. Section 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 calendared (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, counsel met to discuss the possibility of settlement on the following date(s) _____. 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 pretrial instructions provided by this Court and in accordance with the form pretrial order adopted by this Court.

_____
Counsel for Plaintiff

_____
Counsel for Defendant

APPENDIX B

Three Sample Personal Instructions to Counsel, Sent After Issue Is Joined

[PERSONAL INSTRUCTIONS TO COUNSEL USED BY
CHIEF JUDGE CHARLES MOYE AND JUDGE HAROLD MURPHY]

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

_____	: CIVIL ACTION NO. _____
Plaintiff(s)	:
	: Date of this Notice _____
	: Last Answer Filed _____
_____	:
Defendant(s)	: Jt. Statement of : Settlement Conference and : Preliminary Statement Due _____
	: Discovery Expires _____
	: Pretrial Order Due _____

N O T I C E

This notice is pursuant to Local Rule 235. The dates given above are the dates as determined by the courtroom deputy clerk of the Honorable _____.

Any extension of time for filing the Preliminary Statement, Discovery, or for filing of the Pretrial Order, MUST BE APPROVED by the Court.

Failure to file the required documents on the due date as shown above, or any other date authorized by the Court could result in DISMISSAL of the case by the Court.

_____
CLERK

By: _____
(name)
Courtroom Deputy Clerk

[PERSONAL INSTRUCTIONS TO COUNSEL USED BY JUDGE WILLIAM O'KELLEY]

[Order "A"]

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

:
:
:
:
:
:
:
:

O R D E R

Upon review of the information contained in the Preliminary Statement filed by the parties, the court finds that this case does not require entry of an individualized scheduling order pursuant to Rule 16, Fed. R. Civ. P.

IT IS SO ORDERED this ____ day of _____, 198__.

WILLIAM C. O'KELLEY
United States District Judge

[Order "B"]

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

:
:
:
:
:
:
:
:

O R D E R

Upon review of the information contained in the Preliminary Statement filed by the parties, the court hereby directs the parties to submit a proposed scheduling order relating to Items _____ within _____ days of this order.

IT IS SO ORDERED this _____ day of _____, 198__.

_____
WILLIAM C. O'KELLEY
United States District Judge

[PERSONAL INSTRUCTIONS TO COUNSEL USED BY JUDGE OWEN FORRESTER]

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

: CIVIL ACTION
: NO. C

CASE INSTRUCTIONS[1]

BY ORDER OF THE HONORABLE J. OWEN FORRESTER

1. Read the 1985 Local Rules of the Court and comply in every way with their letter and spirit. A failure to do so could result in the imposition of sanctions, including dismissal or default.

2. No brief will be considered which exceeds twenty-five (25) pages, double-spaced, unless leave to exceed the limit is granted in advance. The type shall be at least ten-pitch and shall have a top margin of not less than one and one-half inches and a left margin of not less than one inch. Any brief in excess of fifteen (15) pages shall be indexed. Allegations in briefs of intentional misconduct by opposing counsel are, of course, subject to the requirements of Rule 11, Federal Rules of Civil Procedure.

3. Counsel should feel free to seek scheduling conferences, discovery conferences, preliminary pretrial conferences, and settlement conferences when counsel believe it will promote the goals of Rule 1, Federal Rules of Civil Procedure.

---

1. These instructions supplement the 1985 Local Rules of the Court and are intended to govern only in cases assigned to the undersigned.

4. Local Rule 110-2 allows, on certain conditions, pro hac vice admission in particular cases for lawyers who are not members of the bar of this court. One of the conditions is that local counsel be associated. Local counsel should notice that under certain circumstances they may have full responsibility for the case, and so local counsel should be as familiar with the case as though they were co-counsel.

Pro hac vice admission is conditional upon adherence to the Local Rules of the Court, demonstration of professional competence, and the maintenance of professional decorum and courtesy. The court begins with the presumption that lawyers admitted to the bar of other district courts are competent, decorous, and courteous, but the presumption is rebuttable, and, therefore, the pro hac vice admission is provisional.

DISCOVERY

5. It is the intent of the court that discovery be completed within the period allowed for it under LR 225.1 NDGA. Therefore, absent extraordinary circumstances, no witness, including experts, may testify at trial and no document may be introduced if there is objection, if the witness or document should have been identified during the discovery period in response to proper inquiry, but was not so identified.

6. The court will not enforce any agreement between counsel to continue discovery beyond the end of the discovery period, as determined by the Local Rules or by order of this court. This does not relieve any party of an obligation to supplement earlier discovery responses if new events occur which are relevant to any issue. Out-of-time production of information which could have been produced with the exercise of due diligence within the time allowed by the Federal Rules of Civil Procedure or the Local Rules may occasion the imposition of an appropriate sanction.

PRETRIAL ORDER

7. Where the discovery time has ended and there is a pending motion for summary judgment and/or dismissal, the pretrial order need not be filed until thirty (30) days from the date of ruling on such motion. [See generally LR 235-5(a)].

8. LR 235-5(b)(2) NDGA allows the taking of evidentiary depositions after the close of discovery. This is for preservation of evidence and not for

discovery. If the witness to be deposed has not earlier been deposed, it shall be presumed that the deposition is primarily for discovery, and said deposition may not be taken after the close of discovery over objections unless leave of the court is first obtained.

9. The contentions of the parties (LR 235-5(b)(14) and (15)) shall contain all the theories of liability, defense or damages. If a theory does not appear there, it will not be submitted for decision.

10. A witness or document not listed in the pretrial order may not be used at trial for any purpose absent extraordinary circumstances.

11. Do not list documents by data sets unless every document in the set had the same circumstances of origin or one adopts the others by reference. (Example: Contract which adopts specifications may be listed as one document. Personnel or hospital file containing documents made by different people at different times must be broken down into individual documents.)

12. Documents and deposition testimony that are not objected to in writing, as provided by the Local Rules, shall not be admitted when offered unless the grounds for objection could not earlier have been learned.

13. All information called for in the pretrial order form shall be supplied at the time the order is filed unless a later time is specifically provided by rule. The requirements may not be changed by agreement between counsel.

TRIAL

14. Voir Dire. The court propounds the questions relating to cause, the general questions, and asks each juror to state his name, address, occupation, etc. Counsel may ask additional questions relating solely to socioeconomic data of the juror or his family.

15. The court encourages the use of videotaped depositions or other audio-visual aids.

16. No witness should be asked about the contents of a document until it is admitted.

17. Evidentiary objections or proffers should be made with reference to specific sections of the Federal Rules of Evidence.

18. No attorney may participate in closing argument unless he has been present throughout all of the trial and the pretrial conference.

19. The plaintiff, in closing argument, shall make a full opening on all theories and shall state the specific amounts requested as damages.

SO ORDERED.

J. OWEN FORRESTER
UNITED STATES DISTRICT JUDGE

By: _____
Delores W. Page
Courtroom Deputy Clerk
Tel. No. 404-221-3735

APPENDIX C

Two Sample Personal Instructions to Counsel, Sent with Calendar for Trial

[PERSONAL INSTRUCTIONS TO COUNSEL USED BY JUDGE MARVIN SHOOB]

NEW POLICY CONCERNING CIVIL JURY CHARGES

1. Each party may submit no more than fifteen requests to charge. Several plaintiffs or several defendants generally shall be treated as a single party for this purpose. A party seeking to submit additional requests to charge shall file a motion with the Court showing the necessity for relief.

2. Counsel shall exchange requests to charge at least two days prior to the first day of trial. Counsel shall confer in an attempt to agree on a single, jointly submitted charge for each point of law. On those rare occasions when counsel cannot agree to consolidate their charges in this manner, counsel must fully explain, in writing, their objections to the charge requested. Immediately prior to trial, counsel shall file their requests to charge, together with any objections to any party's requests to charge, with the courtroom deputy, Ms. Adrienne Lawler. Objections not noted in this manner shall be deemed to have been waived.

3. Requests to charge need not address matters covered by the pattern jury instructions used in this circuit.[1] In the charge conference at the close of the evidence, counsel may suggest to the Court the pattern instructions to be charged.

4. The Court will reject requests to charge that are repetitive, argumentative, or one-sided. Counsel may not submit more than one charge addressing the same point of law.

5. Citations to authorities supporting each request to charge are required by Local Court Rule 255-2. Whenever a case is cited, the citation must include the specific page or pages on which support for the charge appears. For example, the Court would reject a charge containing a citation in the following form: Young v. Kemp, 758 F.2d 514 (11th Cir. 1985). If the supporting passage appeared on page 516, the citation could be corrected by including that specific page: 758 F.2d 514, 516.

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1. U.S. Fifth Circuit District Judges Association, Pattern Jury Instructions (Civil Cases) (West 1980).

[PERSONAL INSTRUCTIONS TO COUNSEL USED BY JUDGE ROBERT HALL]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

There will "NOT" be a calendar call.

Counsel are directed that requests to charge should be filed in accordance with Local Rule 255-2. Each party is limited to FIFTEEN (15) requests to charge, excluding pattern charges, except upon PRIOR authorization by the court.

Counsel are directed that the proposed findings of fact and conclusions of law for Non-Jury Trials be filed in accordance with Local Rule 235-5(25) and the instructions listed below:

Counsel for each of the parties shall prepare proposed findings of facts and conclusions of law, three copies of which are to be served upon opposing counsel not later than THREE (3) days PRIOR to the opening of trial.

(Note: The plaintiff's conclusions of law shall include a statement of the applicable statute(s) conferring jurisdiction upon the court, with appropriate citations.)

Upon receiving these proposed findings of fact and conclusions of law from the opposing side, each counsel shall then:

(A) Underline in red pencil those portions he/she disputes.

(B) Underline in blue pencil those portions he/she admits.

(C) Underline in yellow pencil those portions which he/she does not dispute, but deems irrelevant.

In this connection, counsel are to note that they need not come to a uniform conclusion as to an entire proposed finding, or, indeed, an entire sentence within a proposed finding. They may agree with part of it, disagree with part of it, and/or consider a portion of it irrelevant.

Upon completion of the foregoing, each counsel shall then file TWO (2) marked copies of opposing counsel's proposed findings of fact and conclusions of law with the court in chambers 2188, and return one marked copy to opposing counsel, not later than THE OPENING OF TRIAL.

The court requests that TWO (2) courtesy copies of the requests to charge be submitted in chambers 2188 TWO (2) FULL DAYS PRIOR TO TRIAL if possible.

Counsel are directed to use the pattern charges which are given in most civil cases tried before this court and to NOTE the "BLUE PAGE" which gives directions to counsel.

The court requests that counsel consider consenting to be tried before a Magistrate. Enclosed is a form for your use to be returned to me if counsel/parties consent.

Counsel are advised that the customary number of jurors in a civil panel to strike from is 18. If additional jurors are needed, counsel are to agree upon the amount needed and advise the court in WRITING BY THE MORNING THE TRIAL CALENDAR BEGINS.

Trial Informational Guidelines

Judge Robert H. Hall

These guidelines are intended to inform counsel of the procedures to follow in the preparation and trial of a case that has been assigned to Judge Hall.

Trials will generally begin at 9:30 A.M. and run until approximately 5:00 P.M. There will be a fifteen minute mid-morning and mid-afternoon recess. A one hour lunch recess will occur at 12:30 or 1:00 P.M.

Voir Dire

Voir dire will be conducted as follows: the jurors will enter the courtroom and be seated in the order listed on the juror list. The Court will qualify the jurors as to their relationship to the parties and to counsel when appropriate. The clerk will then call the name of each juror (one at a time) and have the juror give his/her residence, occupation and that of any spouse and employed children. Before the next juror is called, counsel may ask individual questions of that juror on matters of residence or occupation. After the panel has been called, the court will allow counsel to ask his/her proposed voir dire questions which have been previously approved by the Court. The plaintiff will proceed first. The questions asked by counsel will be addressed to the panel as a whole. If there are any challenges for cause

or favor at the conclusion of these questions, counsel will request permission to approach the bench.

Peremptory Challenges

The plaintiff and the defendant will each have three peremptory challenges. Multiple plaintiffs and multiple defendants will generally be considered as a single party for the purpose of making challenges. The challenges or strikes will be done silently with the clerk moving from one counsel to the other.

Excusal of Witnesses

All witnesses called to testify will be subject to the control of counsel who subpoenaed them (or secured their voluntary appearance). At the close of the witness' testimony, counsel need not ask the Court's permission to excuse the witness. Rather, the witness may be excused unless other counsel requests at that time that the witness not be excused. If the witness is not excused, the witness must remain within the courtroom for the remainder of the court session on that day. Attendance on subsequent dates is not required unless the party desiring the witness' attendance serves a subpoena upon the witness. Payment of a witness' per diem and other covered expenses is the responsibility of counsel who on that date has the witness under subpoena.

Instructions to Jury

At the time the pretrial order is signed the deputy clerk sends counsel a copy of the basic instructions that the court will use in the trial. They are in substance the Fifth Circuit Pattern Jury Instructions. A blue sheet is included which tells counsel which requests to charge the court expects to receive. In general these are the charges on the substantive law. The court urges counsel to use the Pattern Charges (available from West Publishing Company) in their requests if applicable and, if not, to use Devitt and Blackmar for federal question cases and the Georgia Pattern Charges for diversity cases. Counsel should be sure to cover all the substantive law issues and should not assume that the court has its own charge on the substantive law. Each request to charge should be on a separate page with the authority for requested charge cited at the bottom of the page. A courtesy copy of the requests should be given to the Courtroom Deputy Clerk. See also Local Rule 255.-2, N.D. Ga.

Impeachment--Inconsistent Statement

A subject with which many counsel have difficulty at the trial is the use of depositions of impeachment purposes.

First of all, the Federal Rules of Evidence now define prior contradictory statements under oath in depositions as non-hearsay statements. Fed. R. Evid. 801(d)(1)(A). Therefore, prior inconsistent statements of a witness in a deposition can come in as substantive evidence to prove the truth of the matter asserted. As a result, those portions of the prior deposition which are inconsistent with in-court testimony of the deponent, in addition to being used for impeachment, can actually be received as substantive evidence to prove the truth of the matter contained therein.

Counsel should impeach by developing on cross-examination the fact that the deposition was taken and before whom it was taken, including the presence of the deponent's own attorney. Counsel should bring out the fact that the witness read it over before s/he signed it, the fact that s/he signed it, and the fact that s/he made no changes after reading. Counsel then asks the witness the question in the same manner and style that it was asked in the deposition. If s/he answers it differently, counsel should then call his/her attention to the time, place, and circumstances of the deposition and state "in answer to such and such a question to you, did you not answer so and so?" If s/he says "yes," s/he has admitted the inconsistent statement. If s/he says "no," counsel may offer into evidence the relevant pages of the deposition as a prior inconsistent statement. (This last step is rarely taken by counsel.)

Establishing Predicate for Admission of Business Records

Another subject with which many counsel have difficulty at the trial is establishing the predicate for admission of business records. With particular reference to the introduction of records or documents under Rule 803(6) of the Federal Rules of Evidence (the "business records" exception to the hearsay rule), the following predicate facts must be developed through examination of a witness (and not left to speculation or conclusions to be drawn from the document itself):

1. That the record was made at or near the time of the event or transaction described;

2. That the record was made by a person with knowledge of the event

or transaction described (or was made from information transmitted to the preparer by a person with knowledge);

3. That the record was made in the course of a regularly conducted business activity (if made from information transmitted to the preparer by a person with knowledge that such person was acting in the regular course of business);

4. That it was a part of that regularly conducted business activity to make and keep that record; and

5. That the witness is able to identify the document from actual knowledge of its preparation or as its business custodian.

To establish these predicate facts the following questions (with appropriate variations if necessary) must be asked:

1. Are you familiar with the document?

   (Custodian or Preparer)

2. Who prepared the document?

   (Name and/or job title of Preparer)

3. What is the nature of the document?

   (Without disclosing specific contents)

4. When was the document prepared?

   (At or near the date of the transaction described)

5. What was the source of the information relied upon by the person who prepared the document?

   (Personal observation or reliable information transmitted by others)

6. Was the document prepared in the usual course of a regularly conducted business activity?

7. Was it a part of that activity to make and keep the record?

8. If made upon reliable information transmitted by others, was the informant acting in the course of a regularly conducted business?

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

NOTICE OF RIGHT TO CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE

In accordance with the provisions of 28 U.S.C. Section 636(c), you are hereby notified that the full-time United States Magistrates of this District Court, in addition to their other duties, may, upon the consent of all parties in a civil case, conduct any and all proceedings in a civil case, including a jury or non-jury trial, and order the entry of a final judgment. Copies of appropriate consent forms are attached and, further, are available from the Clerk of Court.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States Magistrate for disposition is entirely voluntary and should be communicated solely to the Clerk of the District Court. Only if all parties to the case consent to the reference to the Magistrate will either the Judge or the Magistrate to whom the case has been assigned be informed of your decision.

Your opportunity to have your case disposed of by a Magistrate is subject to the calendar requirements of the Court. Accordingly, the District Judge to whom your case is assigned must approve the reference of the case to a Magistrate for disposition.

If all parties to the case consent, the same must appear by the filing of a signed consent in the form provided by rule within ten (10) days of the joining of issue by all parties. If any party does not consent to having a Magistrate hear and determine the case, his identity shall not be revealed. No consent form shall be filed with the Clerk unless all parties have signed the same.

CONSENT FORM ON REVERSE SIDE OF THIS FORM

BEFORE PROCEEDING FURTHER, SEE NOTICE ON REVERSE SIDE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

_____, Plaintiff	:	
v.	:	DOCKET NO. _____
_____, Defendant	:	

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE

In accordance with the provisions of 28 U.S.C. Section 636(c), the parties to the above-captioned civil matter hereby waive their right to proceed before a judge of the United States District Court and consent to have a United States Magistrate conduct any and all further proceedings in the case (including the trial) and order the entry of judgment.

_____ _____
_____ _____
_____ _____

Any appeal shall be taken to the United States Court of Appeals for this judicial circuit, in accordance with 28 U.S.C. Section 636(c)(3), unless all parties further consent by signing below, to take any appeal to a judge of the District Court, in accordance with 28 U.S.C. Section 636(c)(4).

_____ _____
_____ _____
_____ _____

NOTE: RETURN THIS FORM TO THE CLERK OF COURT ONLY IF IT HAS BEEN EXECUTED BY ALL PARTIES TO THE CASE

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-captioned matter be referred to United States Magistrate _____ for the conduct of all further proceedings and the entry of judgment in accordance with 28 U.S.C. Section 636(c) and the foregoing consent of the parties.

_____ _____
DATE UNITED STATES DISTRICT JUDGE

AO 187 (Rev. 4/82)

EXHIBIT AND WITNESS LIST

VS.		DISTRICT COURT
PLAINTIFF'S ATTORNEY	DEFENDANT'S ATTORNEY	DOCKET NUMBER
		TRIAL DATE(S)
PRESIDING JUDGE	COURT REPORTER	COURTROOM DEPUTY

PLF. NO.	DEF. NO.	DATE OFFERED	Marked	Admitted	DESCRIPTION OF EXHIBITS* AND WITNESSES

*Include a notation as to the location of any exhibit not held with the case file or not available because of size.

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

The attached pattern charges will be given in most civil cases that will be tried before Judge Robert H. Hall.

This information is being furnished counsel at the time of the Pre-trial Order to assist them in the preparation of their requests to charge.

ROBERT H. HALL
United States District Judge

Preliminary Instructions Before Trial

Ladies and Gentlemen:

You have now been sworn as the jury to try this case. By your verdict you will decide disputed issues of fact. I will decide all questions of law that arise during the trial, and before you retire to deliberate at the close of the case, I will instruct you on the law that you must follow and apply in deciding upon your verdict.

Since you will be called upon to decide the facts of this case, you should give careful attention to the testimony and evidence presented for your consideration, bearing in mind that I will instruct you at the end of the trial concerning the manner in which you should determine the credibility or "believability" of each witness and the weight to be given to his testimony. During the trial, however, you should keep an open mind and should not form or express any opinion about the case one way or the other until you have heard all of the testimony and evidence, the closing arguments of the lawyers, and my instructions to you on the applicable law.

While the trial is in progress you must not discuss the case in any manner among yourselves or with anyone else, nor should you permit anyone to discuss it in your presence. [You should avoid reading any newspaper articles that might be published about the case, and should also avoid seeing or hearing any television or radio comments about the trial.] [Also, you must not visit the scene of the accident that is the subject of this case unless I later instruct you to do so.]

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. You should not infer or conclude from any ruling or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. And if I sustain an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

During the trial it may be necessary for me to confer with the lawyers out of your hearing with regard to questions of law or procedure that require consideration by the court alone. On some occasions you may be excused from the courtroom for the same reason. I will try to limit these interruptions as much as possible, but you should remember the importance of the matter you are here to determine and should be patient even though the case may seem to go slowly.

The order of the trial's proceedings will be as follows: In just a moment the lawyers for each of the parties will be permitted to address you in turn and make what we call their "opening statements." The Plaintiff will then go forward with the calling of witnesses and presentation of evidence during what we call the Plaintiff's "case in chief." When the Plaintiff finishes (by announcing "rest"), the Defendant(s) will proceed with witnesses and evidence, after which, within certain limitations, the Plaintiff may be permitted to again call witnesses or present evidence during what we call the "rebuttal" phase of the trial. The Plaintiff proceeds first, and may rebut at the end, because the law places the burden of proof upon the Plaintiff (as I will further explain to you as a part of my final instructions). When the evidence portion of the trial is completed the lawyers are then permitted to address you and make their summations or final arguments in the case, after which I will instruct you on the applicable law and you will then retire to deliberate upon your verdict.

Now, we will begin by affording the lawyers for each side an opportunity to make their opening statements in which they may explain the issues in the case and summarize the facts they expect the evidence will show. The statements that the lawyers make now (as well as the arguments they present at the end of the trial) are not to be considered by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you understand the issues and the evidence as it comes in, as well as the positions taken by both sides. So I ask that you now give the lawyers your close attention as I recognize them for purposes of opening statements.

Court's Instructions to the Jury

Members of the Jury:

Now that you have heard all of the evidence and the argument of counsel, it becomes my duty to give you the instructions of the Court concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the Court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

In deciding the facts of this case you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. The law is no respecter of persons, and all persons stand equal before the law and are to be dealt with as equals in a court of justice.

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common

sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence--such as the testimony of an eyewitness. The other is indirect or circumstantial evidence--the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness you should consider his or her relationship to the Plaintiff or to the Defendant; his or her interest, if any, in the outcome of the case; his or her manner of testifying; his or her opportunity to observe or acquire knowledge concerning the facts about which he or she testified; his or her candor, fairness and intelligence; and the extent to which he or she has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

A witness may be discredited or "impeached" by contradictory evidence, by a showing that he testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony on a material point.

If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state his opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

The burden is on the Plaintiff in a civil action such as this to prove every essential element of his claim by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than

not true. In other words, to establish a claim by a "preponderance of the evidence" merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, the jury may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them. If the proof should fail to establish any essential element of Plaintiff's claim by a preponderance of the evidence, the jury should find for the Defendant as to that claim.

COUNSEL WILL PREPARE REQUESTS TO CHARGE FOR INSERTION HERE ON THE SPECIFIC INSTRUCTIONS NEEDED CONCERNING CLAIMS AND DEFENSES, SPECIAL ISSUES AND DAMAGES, IN THE FOLLOWING GENERAL FORMAT AND SEQUENCE. THE COURT SUGGESTS USING THE FIFTH CIRCUIT PATTERN INSTRUCTIONS AND DEVITT & BLACKMAR, FEDERAL JURY PRACTICE AND INSTRUCTIONS (3RD ED. 1977) WHERE APPROPRIATE.

(a) Statement of facts stipulated by the parties.
(b) Description of the Plaintiff's contentions.
(c) Description of the Defendant's contentions.
(d) Enumeration of the essential elements of the Plaintiff's claim(s).
(e) Substantive law requests on Plaintiff's claims; and any other special instructions necessary to further explain or qualify the claim(s).
(f) Regarding defenses and counterclaims, enumeration of the essential elements of the defenses and counterclaims; substantive law requests; and any other special instructions necessary to further explain or qualify the defense(s) and/or the counterclaim(s).
(g) Enumeration of Plaintiff's (and counterclaimant's) recoverable elements of damage and explanation, as appropriate, of each element including the amount of damages sought.

In considering the issue of Plaintiff's damages, you are instructed that you should assess the amount you find to be justified by a preponderance of the evidence as full, just and reasonable compensation for all of the Plaintiff's damages, no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the Defendant. Neither can damages be based on speculation because it is only actual damages--what the law calls compensatory damages--that are recoverable.

Of course, the fact that I have given you instructions concerning the issue of Plaintiff's damages should not be interpreted in any way as an indication that I believe the Plaintiff should, or should not, prevail in this case.

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or

effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times you are not partisans. You are judges--judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Upon retiring to the jury room you should first select one of your number to act as your foreman or forewoman who will preside over your deliberations and will be your spokesman here in court. A form of verdict has been prepared for your convenience.

[Explain verdict]

You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreman or forewoman fill it in, date and sign it, and then return to the courtroom.

If, during your deliberations, you should desire to communicate with the Court, please reduce your message or question to writing signed by the foreman or forewoman, and pass the note to the marshall who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

APPENDIX D

Interview Schedule for Judges and Courtroom Deputies Used for This Study

UNIFORM PRETRIAL PRACTICES--LOCAL RULE 235--
NORTHERN DISTRICT OF GEORGIA--QUESTIONNAIRE TO JUDGES

I would like to begin this interview by asking you to compare your old practice for pretrial preparation with the current procedure described in local rule 235.

(1) Form of instructions: Under rule 235, all instructions are contained in the local rule, including the form to be used for the pretrial order.

It is my understanding that prior to the adoption of rule 235 you [describe practice from table].* Thus, your practice did/did not differ from the current one.

If change required: Have you adopted the new procedure, or have you continued your previous practice? If you did make a change, has it been problematic? Why? Why not?

All respondents: Has it been useful to have one form used for all cases? Are there situations/cases where the form is inappropriate? Elaborate. Have you in fact been using this form in all cases?

(2) Activities prior to pretrial order: Under the new local rule, parties must make a good-faith effort to settle the case and report their results to the court. Further, counsel must provide a preliminary statement of the case with specific topics to be covered, as outlined in section 235-3.

It is my understanding that prior to the adoption of rule 235 you did/did not require a settlement conference; while you did/did not require a preliminary statement, it was not as detailed as that specified in the new local rule.

a. Settlement: As amended in 1983, federal rule 16 now encourages judges to include settlement discussions as part of their general case management procedures. Following this, local rule 235 does require counsel to make a very good faith effort at settlement. In general, there has been increasing attention directed to the pros and cons of a more active approach to settlement.

Have you found that the formula worked out in your new local rule has been useful? Do you follow this procedure?

Have you developed any alternative strategies? That is, have you developed any techniques beyond that described in the local rule? If so, what are they? Have you been spending more or less time trying to settle cases? Why?

b. Preliminary statement: Has the step taken to require a uniform

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*The table is table 1 of the text of this study. The table was used in conjunction with the questionnaire.

preliminary statement in all cases been useful? Do you follow this practice? If not, why not? How have you negotiated this change in practice?

(3) Discovery: The new local rule sets a limit of 48 interrogatories and a maximum of 6-hour depositions, subject to leave of court to file more; counsel are given 120 days in which to complete discovery.

Prior to the adoption of the new rules you did/did not set limits on the scope of discovery.

If yes: The court set a higher limit than you had previously set; do you find this new practice to be acceptable? Elaborate.

If no: Since this must be a fairly recent strategy for you, have you found it to be an effective way to control the scope of discovery? Elaborate.

(4) Summary judgment motions: Under the new local rule, if a summary judgment motion is to be filed, it must occur no later than 20 days after the close of discovery. Prior to the adoption of the local rule, you did/did not set a time limitation for filing.

If yes: The time limitation imposed is longer than you previously permitted; has this change been acceptable? Elaborate.

If no: Have you found this new practice to be a useful way to control the flow of case management? Elaborate.

(5) Pretrial order and conferences: Under the new local rule, a standard pretrial order must be filed no later than 30 days after the close of discovery; further, a conference may be held if counsel request it and you agree.

a. Order: I would suspect that this was the most difficult part of the new local rule to agree to because the format of a pretrial order needs to suit one's personal style. Was this indeed the case? Have you found this order to be an effective model? Do you indeed always use it?

b. Conference: It is my understanding that prior to the adoption of this rule you generally did/did not hold a final conference to review the pretrial order. Overall, from reading local rule 235 I have the impression that the court sought to reduce the number of pretrial conferences to an absolute minimum.

Has this required a change in your personal practices? Can you elaborate?

(6) Personal appraisal of local rule: Have your case management practices been improved by the court's adoption of local rule 235? If so, can you please describe the benefits? If not, why not?

a. Does the current rule provide sufficient flexibility? Is it appropriate for all types of cases in all types of circumstances?

b. Are there certain areas of pretrial preparation where you have introduced personal practices that deviate from the new local rule? Can you elaborate?

(7) Personal practices: Beyond those provided for in local rule 235, have you introduced any other modifications in your pretrial preparation? If so, can you please describe them?

(8) Overall appraisal: Do you support the concept of standard procedures across the court as developed in local rule 235?

a. What are the advantages to you of standardized procedures? Are there any disadvantages?

b. Are there advantages to the court as a whole? If so, what are they?

c. What are the factors that make this local rule work effectively in your court? For example, collegiality, meetings, informality, etc.

(9) Recommendation: Based upon your experience thus far, would you recommend this approach to pretrial case management to other courts? What are your observations about the necessary preconditions to make this type of procedure work successfully?

(10) Background: I have heard that the initial idea to introduce a standard pretrial order and procedures was suggested by the court's advisory committee. Was this indeed the case?

a. What factor(s) convinced the court that this was a worthwhile endeavor to pursue? For example, were there advantages that the judges thought might flow from the introduction of standard pretrial procedures? If so, what were they?

b. Have these advantages been realized?

c. Were there any other factors that contributed to the court's decision to develop uniform civil pretrial case management procedures? If so, what were these factors?

(11) Implementation: What were the actual logistics of working out the details of local rule 235? Were there points along the way when you thought that the court might not agree? If so, why?

UNIFORM PRETRIAL PRACTICES--LOCAL RULE 235--NORTHERN DISTRICT OF GEORGIA--QUESTIONNAIRE TO COURTROOM DEPUTIES

As part of a larger effort to understand effective case management, the Research Division has undertaken a study of local rule 235 in the Northern District of Georgia; we are especially interested in the court's decision to require that all judges follow the same pretrial procedures in civil cases. To this end, I would like to ask you a few questions concerning your role in pretrial preparation.

(1) Background:

a. How long have you been a courtroom deputy?

b. How long have you worked with Judge _____?

c. Have you worked for other judges as a courtroom deputy? If yes, how many?

(2) Pretrial tasks: Can you please describe how Judge _____ prepares a civil case for trial?

Are there a set of tasks that are your primary responsibility? If so, what are they?

How do you keep Judge _____ apprised of the status of his/her caseload?

(3) Change in practice: Can you please describe the changes you have made in pretrial preparation since the court adopted local rule 235? Please be as specific as possible.

(4) Appraisal: What is your appraisal of the effect of local rule 235?

Have you found that you have more effective control over the management of a case since the adoption of rule 235? In other words, has this local rule made your job easier?

Have there been any disadvantages to the uniform approach embodied in local rule 235? For example, have you found that the procedures embodied in local rule 235 are too inflexible? Or apply to types of cases where the procedure is not necessary?

Were there certain factors that facilitated the implementation of this local rule? Again, I would appreciate it if you could be as specific as possible.

(5) Recommendation: Would you recommend that other courts consider a similar concept?

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