UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
MIDDLE DISTRICT OF GEORGIA
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MACON, GEORGIA 31202-0128

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MEMORANDUM

TO: Recipients of the Civil Justice Expense and Delay Reduction Plan of the United States District Court for the Middle District of Georgia

FROM: Gregory J. Leonard, Clerk

DATE: February 2, 1994

Following the distribution of our Expense and Delay Reduction Plan, we discovered that a copy of our Local Rules had been mistakenly deleted from the Plan. Accordingly, we are enclosing herewith a new copy of our Plan that does contain our Local Rules as an attachment.

Plan to Minimize Cost and Delay of Civil Litigation

In the Middle District of Georgia

As Adopted by the United States District Court

for the Middle District of Georgia

Pursuant to The Civil Justice Reform Act of 1990

Also Including

Local Rules of the United States District Court

for the Middle District of Georgia

(Effective June 2, 1993)

United States District Court
for the
Middle District of Georgia

Filed 5:13 P.M.
NOV 24 1993
DEPUTY CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

Order

After considering

(1) the report of the Civil Justice Reform Advisory Group appointed pursuant to the Civil Justice Reform Act of 1990 at 42 U.S.C. § 478,

(2) the principles and guidelines of litigation management and cost and delay reduction listed in 28 U.S.C. § 473(a), and

(3) the litigation management and cost and delay reduction techniques listed in 28 U.S.C. § 473(b),

and

after consulting with the Civil Justice Reform Advisory Group pursuant to 28 U.S.C. § 473(a), (b), the District Court hereby adopts, for implementation effective December 1, 1993, the following Plan to Minimize Cost and Delay involving civil matters arising before the Court. The Plan's provisions will apply to all cases pending on the Court's docket on and after December 1, 1993, but will not necessitate re-litigation of those aspects of pending cases that have already been processed in the normal course of litigation under procedures then in effect.

So ordered for the Court this 24th day of November, 1993.

Wilbur D. Owens, Jr., Chief Judge

Plan to Minimize Cost and Delay of Civil Litigation

In the Middle District of Georgia

As Adopted by the United States District Court

for the Middle District of Georgia

Pursuant to The Civil Justice Reform Act of 1990

I. FINDINGS

This Court has carefully reviewed the "Report of the Advisory Group to the United States District Court for the Middle District of Georgia Pursuant to the Civil Justice Reform Act of 1990." The Court's findings, together with its plan to minimize expense and delay, are based in part on that report, as well as on the Court's experience with the delivery of civil justice in this district.

The Court generally endorses the Advisory Group's characterization of the Middle District's setting, its rather typical civil caseload for such a setting, the condition of the Court's docket, and the views of litigants, attorneys and court personnel about the administration of civil justice here. The Court takes note of the irony, observed by the Advisory Group, that although the level of delay in civil lawsuits here exceeds the ideal, participants appeared to the Advisory Group to express an unusual degree of satisfaction with the cost and time needed to litigate civil matters in this district.

The Court joins the Advisory Group in suspecting that two primary factors may contribute to these counter-intuitive findings.

First, as noted by the Advisory Group, the district's cases receive a relatively high level of close judicial scrutiny. Although judicial familiarity with the particulars of individual cases may slow the process, such attention may be something that participants find on balance worth waiting for. Win or lose, an invaluable dignity is bestowed on all litigants and attorneys who feel that the specifics of their claims, defenses and arguments are genuinely heard. Moreover, close judicial scrutiny discourages runaway discovery.

Second, also as noted by the Advisory Group, the relative informality of local procedure may permit some cases here to be delayed that on the merits may not be wholly appropriate for standard adjudication. In districts with rigid processing parameters, such cases may be forced prematurely through steps that might have proven unnecessary if the cases had been permitted to proceed in more appropriate ways, and at more particular paces.

Both of these possible sources of past participant satisfaction -- close judicial scrutiny, and informal, customized procedure -- apparently require relatively intensive judicial attention to be effective. Because a new judgeship and a new magistrate judgeship have recently been authorized for this district, and will soon both be filled, there is reason to believe that this district can in the future reasonably expect still closer judicial scrutiny, more particularized processing of civil matters, and (if past be prologue) enhanced levels of participant satisfaction. At the same time, the addition of judicial resources will help this district to focus more intently on minimizing cost and delay along the lines proposed by this plan.

So, even without radically altering the ways in which this Court processes civil

litigation, there is reason to expect future improvement in the levels of speed, cost and satisfaction experienced by participants, all in keeping with the objectives of the Civil Justice Reform Act of 1990.

The increased number of judges in this district, and the siting of the newest judge and magistrate judge in Albany, may also help to alleviate the pressure to restructure and consolidate the district's six divisions, a topic that was discussed briefly by the Advisory Group in its report. The Court will postpone any consideration of reconfiguring the district until after the new staffing arrangements have been fully implemented, and the effects of a less centralized district are felt.

The Advisory Group has identified at least three causes of excessive delay and expense in this district:

(1) the length of time spent by judges in deciding dispositive motions;

(2) the level of fees charged by attorneys; and

(3) the tendency for attorneys and litigants to engage in over-discovery.

As to the first issue of excessive delay in issuing rulings on dispositive motions, the Court fully acknowledges the ideal of rendering judgment promptly. The Court also recognizes the tendency for complex motions to be followed by delays in judgment. Furthermore, the Court sees that slow rulings on dispositive motions detract from the satisfaction of litigants and their attorneys with the delivery of civil justice in the Middle District.

Nevertheless, the Court cannot endorse the Advisory Group's recommendation of setting a presumptive time limit on the issuance of rulings by the district's judges. By

limiting the way that those judgments are made, the Court risks elevating one goal, speed, above the paramount goals of civil adjudication: accuracy, reliability, integrity, wisdom and fairness. Any one of those factors is a more critical single measure of a court's worth than the laudable, but secondary, factor of speed.

Of course, speed need not inherently conflict with the more central goals of the civil process. This Court will therefore urge its judges to maximize the value of their work from the perspective of litigants and attorneys by paying heed to the alacrity with which the judges render dispositive judgments. In particular, the Court will recommend as an aspirational goal that its judges attempt to issue rulings on dispositive motions within 90 days after the close of briefing. But to the limited extent that the fundamental goals of the civil process conflict with the goal of quickness, this Court will not impose a firm mandate on its judges to raise speed to the level of an overriding imperative until it can be more clearly demonstrated that lack of speed in this district threatens the very integrity of the process.

As to the Advisory Group's note of alarm about the high level of attorney fees in certain cases, this Court shares that concern. Nonetheless, as the Advisory Group indicated, this Court is relatively powerless to effect economic reform in the legal profession. This plan, therefore, like the Advisory Group's report, ventures no specific proposal to foster reductions in attorneys' fees, other than to monitor carefully any application for attorneys' fees under a fee-shifting statute. See Local Rule 3.8.

As to the third apparent cause of excessive expense and delay pointed to by the Advisory Group, over-discovery, this Court feels freer to take direct remedial action,

because the administration of discovery is clearly within this Court's power to control (unlike monitoring of attorneys' fees across the board), and relatively few countervailing concerns present themselves (unlike the issue of whether to set a presumptive limit on the issuance of dispositive rulings). Therefore, in the specifics of the following plan, as well as in the local rules that this Court adopted June 2, 1993 (included here as Appendix A), the Court undertakes to assist litigants and their counsel in extricating themselves from the insidious web of escalating discovery.

Finally, the Court joins with the Advisory Group in identifying, and seeking to remedy in the following plan of action, a number of miscellaneous problems with the delivery of civil justice in the Middle District that also appear to contribute to excessive cost and delay.

II. ACTIONS

The following discussion of actions that this Court will undertake to minimize excessive cost and delay in civil litigation in the Middle District of Georgia follows the sequence in which the various actions were addressed in the Advisory Group's report, and, in turn, the sequence of consideration under the Civil Justice Reform Act.

A. Differential Case Management

The close judicial scrutiny of cases in this district already constitutes an informal type of differential case management that this Court has found helpful in streamlining civil litigation. Moreover, the Court already provides customized procedures for four substantive categories of civil litigation: prisoner petitions, bankruptcy appeals, social security appeals, and habeas corpus petitions.

However, the Court joins with the Advisory Group in preferring not to formalize a trans-substantive differential case management system (i.e., a tracking system for all civil cases), primarily because it would probably interfere with the efficacy of the informal system of close judicial scrutiny that is already in effect.

The Court recognizes the Advisory Group's concern about the need to provide fair hearings of valid pro se prisoner petitions. In accord with the Advisory Group's recommendation, the Court has already taken a major step to improve those procedures by hiring a pro se law clerk to assist pro se litigants in better meeting the procedural requirements of this Court. Moreover, the Court is working informally with Georgia's

Attorney General to institute a better grievance procedure in the Georgia prison system that would reduce the volume of prisoner petitions to this Court, while increasing the proportion of more serious cases.

B. Early and Ongoing Control of the Pretrial Process

Early judicial involvement in the pretrial process is seen as a hallmark of this district's practice, which the Court will seek to continue and enhance.

The recent adoption of local rules in this district memorializes some of the routine control procedures in effect, addressing the Advisory Committee's concern that the terms of judicial control be made more explicit. In particular, Local Rule 4.1 explains the procedures for developing discovery plans and orders. Local Rule 4.2 explains this Court's presumption that all discovery materials are to be filed. Local Rules 4.3, 4.4 and 4.5 set presumptive limits on interrogatories, requests for production, and requests for admission.

A careful review of these new rules, however, reveals that at least some of them may not be binding on judges who opt out of their provisions. Recognizing this feature of many of the local rules, the Advisory Group has recommended that the Court standardize the pretrial control procedures used by the district's judges.

The Court understands the Advisory Group's preference for a more predictable set of assumptions about judicial management. Surprising variations in the procedures followed by the various judges within a district may indeed result in inefficiencies, and at least the appearance of unfairness.

At the same time, the Court is cognizant of its responsibility to preserve what the

Advisory Group also emphasized as one of the district's greatest existing strengths -- close judicial supervision. This desirable characteristic of civil litigation in this district has blossomed in part because the district has been small and flexible enough for each judge here to have been accorded substantial responsibility for supervising his own docket.

The Court harbors the concern that, under a more standardized procedure, the sense of personal accountability felt by the judges in this district may be diminished to the net detriment of the overall system. Therefore, the Court chooses at this time to proceed cautiously by making the range of local procedure more explicit, and by articulating advisory parameters for local judicial practice, without adopting mandatory standards that might deprive the judges of their capacities to implement effective, if occasionally idiosyncratic, systems for pretrial control.

Thus, the Court does not support the Advisory Group's recommendation that deadlines for the completion of discovery be adopted, given the particularized treatment of cases in this district. However, informally, in the letters sent by those judges in this district who do invite case management proposals, a six-month discovery period is already suggested. In the next revision of the local rules, this goal will be stated explicitly.

The Court has considered whether to adopt deadlines for the filing and disposition of motions, as suggested by 28 U.S.C. § 473(a)(2)(D). The motion process, which in most civil cases serves as the modern alternative to trial, is critically important to the quality of justice achieved in this district. Because the Court is reluctant to interfere with the complex, case-specific decisions of litigants and counsel about when to present issues by motion for judicial resolution, the Court will not at this time opt to set deadlines for the

filing of motions.

However, the Court is willing to adopt as an aspirational goal the suggestion of the Advisory Group that the district's judges endeavor to issue rulings on dispositive motions within 90 days of the close of briefing. This goal will be memorialized in the next revision of the local rules.

In the next revision of the local rules, the Court will also state the goal, recommended by the Advisory Group, that a trial date normally be set within 12 to 18 months of a case's filing. In the meantime, the Court's judges will experiment with setting early and firm trial dates as part of their individual case management practices.

After the fourth judge in this district has been seated, the Court will further facilitate the setting of more reliable trial dates by establishing regular, planned terms of court, as urged by the Advisory Group. Although those terms will of necessity be devoted first to criminal matters, their predictability and regularity may still help improve the ability of attorneys and litigants to anticipate possible trial dates for civil matters.

C. Case Management Conferences

Local Rule 4.1(b) provides that case management conferences may be held at the individual judge's discretion. To the extent that an individual judge has not sought a case management conference and an attorney feels that such a conference would be desirable, the individual judge may be presumed to invite a motion for the conduct of such a conference. This standing invitation will be memorialized in the next revision of the local rules.

D. Voluntary Exchange of Information

In general, this Court shares the Supreme Court's view that quicker and cheaper civil lawsuits could lead to noticeably fairer results, especially if opponents shared basic case information more readily, without engaging in customized discovery. Following the lead of the Northern District of Georgia (a pilot district under the Biden Bill), the Court had intended to adopt a local rule mandating early exchange of basic information when, at the end of April, 1993, the Supreme Court proposed its own mandatory disclosure provisions as possible amendments to the Federal Rules of Civil Procedure. This Court then withdrew its analogous proposed local rule so as to avoid confusion if both had taken effect.

Now, however, Congress appears poised to veto the Supreme Court's proposed amendments to Rule 26 of the Federal Rules of Civil Procedure, involving mandatory disclosure. If such a veto does issue, this Court will seek the advice of the Middle District's Committee on local rules on whether to adopt mandatory interrogatories. Otherwise, the mandatory disclosure provisions under the Federal Rules of Civil Procedure are expected to take effect on December 1, 1993, in accord with the objectives of the Civil Justice Reform Act.

E. Pre-Certification of Discovery Disputes

In Local Rule 3.6, the Court now requires pre-certification that discovery disputants have consulted with one another before any disputant moves to compel discovery.

F. Handling of Dispositive Motions

As discussed in its findings above, the Court will endeavor to monitor the speed of its judges in ruling on dispositive motions. Moreover, the Court has adopted Local Rule 3.7 to help movants systematize submissions in the context of motions for summary judgment. Furthermore, to the extent that the Court can additionally facilitate the research needs of its judges as they consider dispositive motions, it will endeavor to do so.

However, the Court is loath to interfere with any judge's procedures for reaching judgment, and hence will set no arbitrary limits on the time for judgment in any particular case.

G. Referral to Alternative Forms of Dispute Resolution

If funding remains available, the Court will continue its current pilot program of voluntary court-annexed arbitration.

The Court will also develop expertise and procedures to help its judges to identify, recommend, and, where appropriate, help facilitate various dispute-resolution alternatives that may be more appropriate than traditional adjudication in particular cases, including a nonbinding neutral evaluation conducted early in the litigation.

H. Settlement Conferences

In any form letters used by this district's judges to attorneys in advance of pretrial conferences, the judges will require that counsel certify that they have met by telephone or in person with their opponent's counsel prior to the pretrial conference to discuss

settlement. The judges will also be expected to require that counsel report to the Court at the pretrial conference on the status of those discussions. These requirements will be made explicit in the next revision of the local rules, specifically in Local Rule 5.1.

I. Attendance of Party Representatives at Key Conferences

The Court will adopt the requirement suggested in 28 U.S.C. § 473(b)(2) that each party be represented at the pretrial conference by someone who has the authority to bind that party regarding all matters previously identified by the Court for discussion at the conference and all reasonably related matters, including settlement. In cases in which a non-party may contribute to settlement (e.g., an insurer), the non-party must be present or available for phone consultation during the conference. These changes will be implemented initially by modifying the form letters sent by the judges to counsel in advance of the pretrial conference, and will later be reflected in a revision to Local Rule 5.1.

The Court joins the Advisory Group in its lack of enthusiasm for the suggestion in 28 U.S.C. § 473(b)(3) that parties be obliged to sign requests for extensions. Extension practice has recently been addressed and limited by Local Rules 6.1 and 6.2.

J. Voir Dire

In the interest of efficiency, and also given the diversity of practice among this Court's judges on the handling of voir dire, the Court will not require in every case that voir dire questions be proposed at the pretrial conference. Many cases that go through pretrial conferences do not actually try. The propagation of voir dire questions at such an early

date would probably result in substantial unnecessary labor.

However, as recommended by the Advisory Group, the Court will consider revising its standard juror questionnaire to incorporate questions more particularly of interest to civil litigants. Furthermore, the Court will direct the Clerk to send the questionnaire to all prospective jurors throughout the district, including prospective jurors in divisions in which the existing questionnaire is not presently used.

K. Court Reporting

The Court will generally support efforts by counsel to use electronic taping of depositions in lieu of typed memorials.

M. The Role of Magistrate Judges

With the addition of a new magistrate judge in this district, the Court anticipates that it will employ its magistrate judges more fully to the limits of their statutory powers, leading to faster resolutions of, and greater focus on, particular matters. In keeping with practice in this district, the Court plans to direct entire matters to the magistrate judges for reasons of efficiency, rather than splitting off particular elements of cases that are simultaneously being monitored by other judges.

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF GEORGIA

LOCAL RULES

(Effective June 2, 1993)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

In the Matter of :

The Adoption of Local Rules For the United States District Court For The Middle District of Georgia :

Filed 3:24 P M
JUN - 2 1993
DEPUTY CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

ORDER

IT IS HEREBY ORDERED that the following rules are adopted as The Local Rules of the United States District Court for the Middle District of Georgia to become effective June 2, 1993. On and after said date, they shall govern all proceedings then pending or thereafter brought to the Court. All prior rules of this Court are revised or repealed in accordance herewith.

IT IS FURTHER ORDERED that these Rules be entered of record upon the minutes of this Court for each of its statutory divisions, that copies be made available by the Clerk of this Court to officers and members of the Bar of this court, and furnished to the Supreme Court of the United States, the Eleventh Circuit Court of Appeals and the Administrative Office of the United States Courts.

This 2nd day of June, 1993.

WILBUR D. OWENS, JR.
CHIEF UNITED STATES DISTRICT JUDGE

J. ROBERT ELLIOTT
UNITED STATES DISTRICT JUDGE

DUROSS FITZPATRICK
UNITED STATES DISTRICT JUDGE

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RULE PAGE

LOCAL RULE ONE

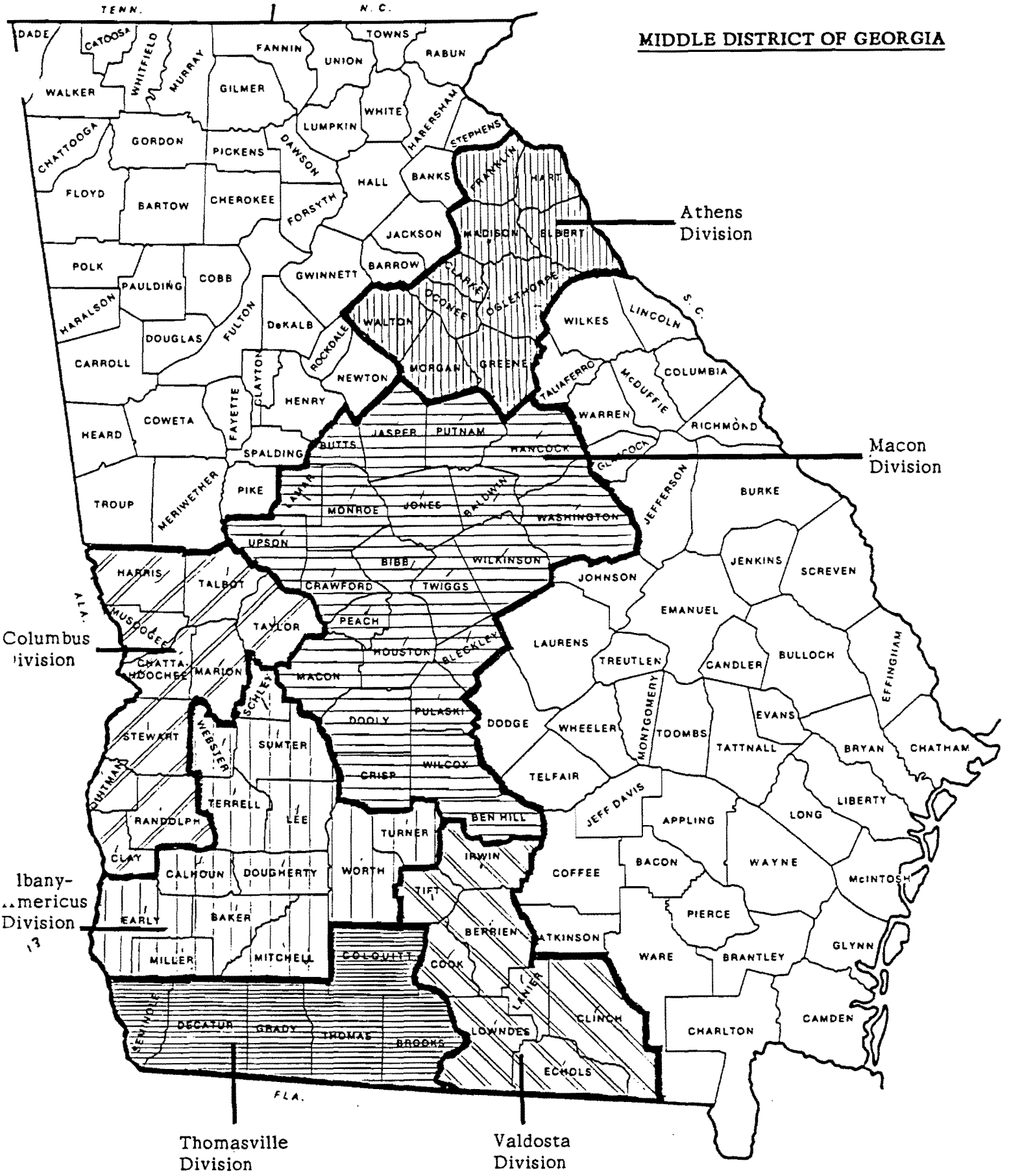
DIVISIONS OF THE COURT

1.1 **SIX DIVISIONS.** The United States District Court for the Middle District of Georgia is divided into six divisions: Macon, Columbus, Albany/Americus, Athens, Valdosta, and Thomasville. See attached map of district.

1.2 **DIVISIONAL CLERK'S OFFICES.** Divisional Clerk's Offices are staffed and open at all times in Albany, Columbus, Macon and Valdosta. When court is in session, Athens and Thomasville Clerk's Offices are staffed and open. Athens case files are maintained in Macon; Thomasville case files are maintained in Valdosta.

1.3 **DIVISION FILINGS.** Although it is recommended that all pleadings and papers in civil and criminal cases be filed in the divisional office in which the case file is maintained, such pleadings and papers may be filed in any divisional clerk's office within this district. In such event, the clerk of the court shall receive and mark the pleadings and papers filed and promptly forward such pleadings and papers to the divisional office in which the case file is maintained.

1.4 **VENUE IN CIVIL CASES.** Plaintiff may file a civil case in the division in which the plaintiff resides, the defendant resides or the claim arose. The clerk of the court is directed to transfer to the appropriate division any civil case that is filed in a division in which neither the plaintiff or defendant resides nor the claim arose.


MIDDLE DISTRICT OF GEORGIA
TENN.
N. C.
S. C.
FLA.
ALA.
DADE
CATOOSA
WHITFIELD
MURRAY
WALKER
FANNIN
UNION
TOWNS
RABUN
GILMER
WHITE
HABERSHAM
STEPHENS
CHATTOOGA
GORDON
PICKENS
DAWSON
LUMPKIN
HALL
BANKS
FRANKLIN
HART
FLOYD
BARTOW
CHEROKEE
FORSYTH
JACKSON
MADISON
ELBERT
Athens Division
POLK
PAULDING
COBB
GWINNETT
BARROW
CLARKE
OGLETHORPE
HARALSON
DOUGLAS
FULTON
DeKALB
ROCKDALE
WALTON
OCONEE
WILKES
LINCOLN
CARROLL
CLAYTON
NEWTON
MORGAN
GREENE
TALIAFERRO
McDUFFIE
COLUMBIA
FAYETTE
HENRY
WARREN
RICHMOND
HEARD
COWETA
SPALDING
BUTTS
JASPER
PUTNAM
HANCOCK
GLASCOCK
Macon Division
TROUP
MERIWETHER
PIKE
LAMAR
MONROE
JONES
BALDWIN
WASHINGTON
JEFFERSON
BURKE
UPSON
BIBB
WILKINSON
JOHNSON
JENKINS
SCREVEN
HARRIS
TALBOT
CRAWFORD
TWIGGS
EMANUEL
MUSCOGEE
TAYLOR
PEACH
Columbus Division
LAURENS
TREUTLEN
CANDLER
BULLOCH
EFFINGHAM
CHATTAHOOCHEE
MARION
MACON
HOUSTON
BLECKLEY
SCHLEY
DODGE
WHEELER
TOOMBS
MONTGOMERY
EVANS
TATTNALL
BRYAN
CHATHAM
STEWART
WEBSTER
SUMTER
DOOLY
PULASKI
QUITMAN
CRISP
WILCOX
TELFAIR
TERRELL
RANDOLPH
LEE
TURNER
BEN HILL
JEFF DAVIS
APPLING
LIBERTY
LONG
CLAY
CALHOUN
DOUGHERTY
WORTH
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Albany-Americus Division
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MILLER
MITCHELL
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COOK
WARE
BRANTLEY
GLYNN
DECATUR
GRADY
THOMAS
BROOKS
LANIER
LOWNDES
CLINCH
CHARLTON
CAMDEN
ECHOLS
Thomasville Division
Valdosta Division

(70 counties)

LOCAL RULE TWO

ATTORNEYS - ADMISSIONS, ABSENCES AND DUTIES

2.1 ADMISSIONS

a. ROLL OF ATTORNEYS. The bar of this Court shall consist of those persons heretofore admitted to practice in this court and those who may hereafter be admitted in accordance with this rule.

b. ELIGIBILITY. To be admitted to practice in this court an attorney must have been admitted to practice in the trial courts of the State of Georgia and be a member of the State Bar of Georgia. Only attorneys who are admitted to practice in this Court, or who have otherwise obtained permission under Rule 2.2c, may appear as counsel.

c. PROCEDURE FOR ADMISSION.

1. Each applicant for admission to the bar of this Court shall file with the clerk a written petition on the form provided by the clerk setting forth his state bar number and reciting the fact that he is now a member in good standing of the State Bar of Georgia. Each applicant shall also sign an AO 153 Oath of Admission card.

2. The applicant for admission, after completing the petition and oath card, shall submit the same to the clerk of the court with the prescribed enrollment fee. If the petition and oath card are in proper form, the Clerk for the judges of this court or a judge will sign an order admitting petitioner to practice in this court. A certificate will issue from the clerk's office. Unless requested by the court, petitioner will not be required to make a personal appearance before the court.

2.2 DUTIES

a. DESIGNATION OF LEAD COUNSEL. Counsel shall designate the name, address, and telephone number of the attorney who shall act as lead counsel in the case on the signature page of the first pleading filed in every action. In the absence of such designation, the first name appearing on the pleading shall be designated lead counsel. Any subsequent change in lead counsel shall be noted by the filing of a notice.

b. BAR NUMBERS. All counsel are required to designate their State Bar of Georgia Number on the signature page of each pleading filed.

c. PERMISSION TO PRACTICE IN A PARTICULAR CASE. Any member in good standing of the bar of any other district court of the United States who is not a member of the State Bar of Georgia and who does not reside in or maintain an office in this state for the practice of law, may be permitted with prior approval of the court to appear and participate in a particular case, civil or criminal, in this court subject to the following provisions:

1. In a civil case in which a party is represented only by counsel not a member of the bar of this court, such counsel must designate in writing some willing member of the local bar of this court upon whom motions and papers may be served and who will be designated as local counsel. That designation shall not become effective until such local counsel has entered a written appearance therein.

In addition, in any case in which an attorney makes an appearance in any action or case pending in this court and said attorney is not a member of the bar of this court, he

shall certify that he is a member in good standing of a district court of the United States and shall file a certificate of good standing from that court with the clerk of this court.

2. Any attorney representing the United States government, or any agency thereof, may appear and participate in particular actions or proceedings in his official capacity without a petition for admission or certificate of good standing, provided he is a member of a bar of a district court of the United States.

2.3 LEAVES OF ABSENCE. Formal applications by attorneys for leaves of absence should not be filed and will not be acted upon unless the attorney has been notified by the court to appear during the time he wishes to be absent.

LOCAL RULE THREE

MOTIONS

3.1 FILING. Unless the assigned judge prescribes otherwise, every motion filed in civil and criminal proceedings shall be accompanied by a memorandum of law citing supporting authorities. Civil motions that include allegations of fact must be supported by a statement of fact. This rule does not apply to motions for enlargement of time.

3.2 RESPONSE. Respondent's counsel desiring to submit a response, brief, or affidavits shall serve the same within twenty (20) days after service of movant's motion and brief.

3.3 REPLY. Movant's counsel shall serve any desired reply brief, argument, or affidavit within ten (10) days after service of respondent's response, brief, or affidavit.

3.4 PAGE LIMITATION. Except upon good cause shown and leave given by the court, all briefs in support of a motion or in response to a motion are limited in length to twenty (20) pages; the movant's reply brief may not exceed ten (10) pages.

3.5 HEARINGS. All motions shall be decided by the court without a hearing unless otherwise ordered by the court on its own motion or in its discretion upon request of counsel.

3.6 MOTIONS TO COMPEL. Motions to compel disclosure or discovery will not be considered unless they contain a statement certifying that movant has in good faith conferred or attempted to confer with the opposing party in an effort to secure the information without court action.

3.7 SUMMARY JUDGMENTS - STATEMENT OF FACTS REQUIRED. Upon filing any motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions, and affidavits which support such contentions shall be filed with the motion and supporting memorandum.

The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue of material fact to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file and affidavits which support such contentions.

All material facts set forth in the statement served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

Failure to comply with this rule by the moving party may result in denial of the motion.

3.8 MOTIONS FOR ATTORNEY'S FEES. In all cases in which the prevailing party is entitled to an award of attorney's fees, a motion for attorney's fees must be filed within fourteen (14) days from the entry of judgment by the clerk unless otherwise provided by statute. Failure to file such a motion within the prescribed time period will be deemed a waiver of attorney's fees.

All motions for attorney's fees when filed shall include, the following:

a. An itemized bill in which all segments of time are identified as to the nature of the work performed;

b. A breakdown of time for each attorney working on the case;

c. The hourly rate applicable and an explanation of how that hourly rate was arrived at; and

d. A certification by the requesting attorneys that the work performed was reasonably necessary to the preparation and presentation of the case.

LOCAL RULE FOUR

DISCOVERY

4.1 DISCOVERY PLAN AND ORDER.

a. After responsive pleadings are filed in civil cases (except those hereafter identified as exempt), the court by letter may direct all counsel to confer in person to discuss the nature and basis of their claims and defenses; the possibilities for a prompt settlement; the disclosures required by Rule 26, Federal Rules of Civil Procedure; and to develop a proposed discovery plan. The contents of the discovery plan will be described in the court's letter. Within ten (10) days after the meeting, plaintiff's counsel shall submit to the court a proposed, combined order detailing the results of the meeting and the plan for discovery.

b. After receiving the proposed, combined order, the court may consult with counsel by conference, telephone or mail before entering an order.

c. The following categories of civil cases are exempt from this rule:

1. Prisoner civil rights cases brought under 42 U.S.C. Section 1983 in which all plaintiffs are unrepresented by an attorney;

2. Appeals from orders entered by a bankruptcy judge or a magistrate judge;

3. Social Security cases;

4. Habeas corpus cases arising under 28 U.S.C Section 2254 or 2255.

4.2 FILING OF DISCOVERY. ALL DISCOVERY MATERIAL SHALL BE FILED unless the presiding judge gives permission for it to be retained by counsel.

4.3 INTERROGATORIES. Except with written permission of the court first obtained, interrogatories may not exceed twenty-five (25) to each party. Form, canned, excessive-in-number interrogatories are not usually approved. The answering party must retype the questions with the answers and/or objections following immediately thereafter.

4.4 REQUESTS FOR PRODUCTIONS OF DOCUMENTS AND THINGS. Except with written permission of the court first obtained, requests for production under Rule 34 Fed. R. Civ. P., may not exceed ten (10) requests to each party.

4.5 REQUESTS FOR ADMISSIONS. Except with written permission of the court first obtained, requests for admissions under Rule 36 Fed. R. Civ. P., may not exceed ten (10) requests to each party.

LOCAL RULE FIVE

PRETRIAL CONFERENCES AND PROCEDURES

5.1 PRETRIAL CONFERENCE. A civil case may be scheduled for pretrial conference anytime after the expiration of the discovery period. Counsel who will actually try the case and other counsel of record with authority to define issues, make stipulations and discuss settlement, shall attend the pretrial conference.

5.2 PRETRIAL ORDER. The parties shall submit a jointly proposed pretrial order in the form prescribed by the assigned judge on the date specified in the notice of the pretrial conference. When entered by or at the direction of the assigned judge, the pretrial order shall supersede all prior pleadings, shall control the trial of the case, and shall be amended only by order of the court and only upon a showing of good cause.

LOCAL RULE SIX

CONTINUANCES AND EXTENSIONS OF TIME

6.1 GENERALLY. A continuance of any trial, pretrial conference, or other hearing will be granted only by the court on its own motion or on motion of any party. Continuances may not be obtained by stipulation between counsel.

Any extensions of time within which to answer, plead or respond by affirmative defenses or otherwise may be done by written, filed stipulations of counsel, not to exceed more than thirty (30) days from the original answer deadline without approval of the court. Any further extensions must be made by motion to the court.

6.2 EXTENSIONS BY CLERK FOR FILING OF BRIEFS. In civil cases, the clerk of the court and his deputies are authorized to permit extensions of time not to exceed fourteen (14) days for the filing of briefs. No more than one (1) such extension may be granted for the same brief. Permission of the court must be obtained for any further extensions.

LOCAL RULE SEVEN

FACSIMILE TRANSMISSIONS OF PLEADINGS

7.1 ACCEPTANCE OF FACSIMILE TRANSMISSIONS. Filings by facsimile transmission will only be accepted in compelling circumstances and **only with prior authorization** from any district judge, magistrate judge, the clerk or chief deputy of the court. The routine filing of pleadings, will not be authorized by facsimile transmission.

7.2 AFTER FILING FACSIMILE TRANSMISSIONS. After receiving authorization to file pleadings by facsimile transmission, counsel shall immediately file the original pleading by conventional means. Upon receipt in the Clerk's Office the original will be filed nunc pro tunc to the receipt date of the facsimile transmission copy. The court may, at its election, act upon the facsimile transmission copy prior to receipt of the original.

In the event that a document is transmitted by facsimile machine without prior authorization, the filing party will be notified that the documents will not be accepted for filing and that filing must instead be accomplished by conventional means.

LOCAL RULE EIGHT

FILES AND EXHIBITS AND REMOVAL THEREOF

8.1 REMOVAL OF ORIGINAL PAPERS. Original papers in the custody of the clerk shall not be removed except by permission of the clerk and then, only after a receipt provided by the clerk has been signed by the removing party.

8.2 EXHIBITS AND DOCUMENTS. All exhibits received into evidence at any trial or hearing shall be retained by the clerk who shall keep them in custody. All such exhibits, including models, diagrams, books or other exhibits other than contraband received into evidence or marked for identification in an action or proceeding shall be removed by the filing party at the expiration of the time for the filing of a Notice of Appeal, or if an appeal is filed, after the final adjudication of the action and disposition of the appeal. Said exhibits if not so removed may be destroyed or otherwise disposed of as the clerk may deem appropriate after ten (10) days notice to counsel.

Sensitive exhibits received in evidence, which shall include but are not limited to, drugs, articles of high monetary value, weapons or contraband of any kind shall be entrusted to the custody of the United States Attorney or to the arresting or investigative agency of the government, who will maintain the integrity of these exhibits pending disposition of the case and for any appeal period thereafter.

LOCAL RULE NINE

TAXATION OF COSTS

9.1 GENERALLY. The clerk of the court shall tax costs as authorized by the law in all civil cases. See Rule 54(d) Fed. R. Civ. P. The requests for taxation of costs by the prevailing party shall be made on a Bill of Costs form provided by the clerk. The Bill of Costs form shall be supplemented with citations of authority and copies of invoices and other supporting documentation. Opposing counsel will be given the opportunity to respond to the prevailing party's Bill of Costs.

9.2 TIME FOR FILING. A Bill of Costs must be filed by the prevailing party within thirty (30) days from the entry of the judgment that awarded the costs. Opposing counsel shall have twenty (20) days from the service of the Bill of Costs to file a response.

LOCAL RULE TEN

SOCIAL SECURITY APPEALS

10.1 JUDICIAL REVIEW. Judicial review of any final decision of the Secretary is obtained by filing a civil action pursuant to 42 U.S.C. § 405(G) alleging that the Secretary's decision should be modified, reversed, or remanded. As the term "review" indicates the court in such cases is acting as a quasi appellate court. Its task is to affirm, modify, remand, or reverse the Secretary's decision, and the standard for doing so is as set forth in the statute. Motions for summary judgment are not appropriate since the issue is not whether there is any genuine issue as to any material fact; instead, it is whether the Secretary's findings of fact are supported by substantial evidence.

10.2 BRIEFING SCHEDULE. After service of an answer by the Secretary, claimant will have thirty (30) days within which to file his brief. The Secretary must then submit a brief within thirty (30) days after receipt of claimant's brief. Within five (5) days after receiving the Secretary's brief, claimant may submit a reply brief if so desired.

10.3 EXTENSIONS OF TIME. The Clerk of court and his deputy clerks are authorized to grant one extension of time for filing briefs in social security appeals. The party seeking the extension must make his request in writing with a copy to opposing counsel. Reasonable requests for extensions of time will be granted. If either party needs any additional extensions of time for filing briefs, they must make their request by way of a motion to the court.

LOCAL RULE ELEVEN

COURT ANNEXED ARBITRATION

11.1 STATEMENT OF PURPOSE. It is the purpose of the Court, through adoption and implementation of this rule, to provide an alternative mechanism for the resolution of civil disputes (a Court annexed, voluntary arbitration procedure) leading to an early disposition of many civil cases with resultant savings in time and costs to the litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial de novo on demand.

11.2 CERTIFICATION OF ARBITRATORS.

(a) The Chief Judge or his designee judge shall certify those persons who are eligible and qualified to serve as arbitrators under this rule, in such numbers as he shall deem appropriate, and shall have complete discretion and authority to thereafter withdraw the certification of any arbitrator at any time.

(b) An individual may be certified to serve as an arbitrator under this rule if:

(1) He has been for at least ten years a member of a State Bar;

(2) He is admitted to practice before this Court or any other United States District Court;

(3) He is determined by the Chief Judge to be competent to perform the duties of an arbitrator.

(c) Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. Section 453 before serving as an arbitrator. Current lists of all persons certified as arbitrators in each Division of the Court, respectively, shall be

maintained in the office of the Clerk. Depending upon the availability of funds from the Administrative Office of the United States Courts, or other appropriate agency, arbitrators shall be compensated for their services in such amounts and in such manner as the Chief Judge shall specify from time to time by standing order; and no arbitrator shall charge or accept for his services any fee or reimbursement from any other source whatever absent written approval of the Court given in advance of any such payment. Any member of the bar who is certified and designated as an arbitrator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

(d) Any person selected as an arbitrator may be disqualified for bias or prejudice as provided in 28 U.S.C. Section 144, and shall disqualify himself in any action in which he would be required to do so if he were a justice, judge, or magistrate judge governed by 28 U.S.C. Section 455.

11.3 CASES TO BE ARBITRATED.

(a) Any civil action shall be referred by the Clerk to arbitration in accordance with this rule if:

(1) The United States is a party; and

(A) The action is of a type that the Attorney General has provided by regulation may be submitted to arbitration; or

(B) The action consists of a claim for money damages not in excess of $150,000, exclusive of interest and costs (and the Court determines in its discretion that any non-monetary claims are insubstantial), and is brought pursuant to the Miller Act, 40 U.S.C. Section 270(a) et seq., or the Federal Tort Claims Act, 28 U.S.C. Sections 1346(b) and 2671 et seq.

(C) The action is not based on an alleged violation of a right secured by the Constitution of the United States, and jurisdiction is not based in whole or in part on 28 U.S.C. Section 1343.

(2) The United States is not a party; and

(A) The action consists of a claim or claims for money damages not in excess of $150,000, individually, exclusive of punitive damages, interest, costs and attorneys fees (and the Court determines in its discretion that any non-monetary claims are insubstantial), and is brought pursuant to

(i) 28 U.S.C. Section 1331 and the Jones Act, 46 U.S.C. Section 688, or the FELA, 45 U.S.C. Section 51;

(ii) 28 U.S.C. Sections 1331 or 1332 arising out of a negotiable instrument or a contract; or

(iii) 28 U.S.C. Sections 1332 or 1333 and Rule 9(h), Fed.R.Civ.P., to recover for personal injuries or property damage.

(B) The action is not based on an alleged violation of a right secured by the Constitution of the United States, and jurisdiction is not based in whole or in part on 28 U.S.C. Section 1343.

(3) The parties consent to arbitration as provided in this rule with respect to any case not within the provision of subsections (a)(1) and (2) above, and agree to pay a reasonable fee to the arbitrator. The written consent to arbitration shall include a statement of understanding that:

(A) Consent to arbitration is freely and knowingly obtained; and

(B) No party or attorney can be prejudiced for refusing to participate in arbitration by consent.

(b) Cases pending at the time of implementation of the arbitration program may be put into the program <u>if</u> the case has not already been pretried and if the presiding judge so directs.

(c) The arbitration process will not interfere with the normal progression of a case through the discovery process. Federal Rules of Civil Procedure, Rule 16(b) Scheduling Orders will still be requested of the parties and it is expected that a certain amount of discovery will have been completed prior to the arbitration hearing.

11.4 PROCEDURE.

(a) In any civil action subject to arbitration pursuant to Rule 11.3, the Clerk shall notify the parties within twenty (20) days after an answer has been filed that the action is being referred to arbitration in accordance with these rules. [If a motion to dismiss is filed in lieu of an answer the case will be referred to arbitration after the motion has been ruled on. Pending motions other than motions to dismiss will not delay arbitration.] Within twenty (20) days thereafter, by written notice to the Clerk, either party may exercise its right to opt-out of arbitration. Upon the expiration of such twenty (20) day period and in absence of timely notice of desire to withdraw from arbitration; the Clerk will begin the arbitrator selection process. First, three (3) names will be chosen from the arbitrator list and mailed to the parties. Each party will be allowed to confidentially strike or reject one of the three names. The one name remaining (or the first name on the list if more than one name is left) will be selected as the arbitrator.

(b) Upon selection and designation of the arbitrator, the Clerk shall communicate with the parties and the arbitrator in an effort to ascertain a mutually convenient date for a hearing, and shall then schedule and give notice of the date and time of the arbitration hearing which shall be held in space to be provided in a United States Courthouse. The hearing shall be scheduled within ninety (90) days from the date of the selection and

designation of the arbitrator on at least twenty (20) days notice to the parties. Any continuance of the hearing beyond that ninety (90) day period may be allowed only by order of the Court for good cause shown.

(c) The award of the arbitrator shall be filed with the Clerk within ten (10) days following the hearing, and the Clerk shall give immediate notice to the parties.

(d) At the end of thirty (30) days after the filing of the arbitrator's award the Clerk shall enter judgment on the award if no timely demand for trial de novo has been made. If the parties have previously stipulated in writing that the award shall be final and binding, the Clerk shall enter judgment on the award when filed.

(e) Within thirty (30) days after the filing of the arbitration award the Clerk, any party may demand a trial de novo in District Court. Written notification of such a demand shall be filed with the Clerk and a copy shall be served by the moving party upon all other parties.

11.5 ARBITRATION HEARING.

(a) The arbitration hearing may proceed in the absence of a party who, after due notice fails to be present; but an award of damages shall not be based solely upon the absence of a party.

(b) At least ten (10) days prior to the arbitration hearing each party shall furnish to every other party a list of witnesses, if any, and copies (or photographs) of all exhibits to be offered at the hearing. The arbitrator may refuse to consider any witness or exhibit which has not been so disclosed.

(c) Individual parties or authorized representative of corporate parties shall attend the arbitration hearing unless excused in advance by the arbitrator for good cause shown. The hearing shall be conducted informally; the Federal Rules of Evidence shall be a guide, but shall not be binding. It is contemplated by the Court that the presentation of testimony shall be kept to a minimum, and that cases shall be presented to the arbitrator primarily through the statements and argument of counsel.

(d) Any party may have a recording and transcript made of the arbitration hearing at his expense.

11.6 AWARDS.

(a) The award shall state the result reached by the arbitrator without necessity of factual findings or legal conclusions. The amount of the award, if any, shall not be limited to the sum stated in Rule 11.3 if the arbitrator determines that an award in excess of that amount is just and is in keeping with the evidence and the law.

(b) The contents of any arbitration award shall not be made known to any judge who might be assigned to the case --

(1) Except as necessary for the Court to determine whether to assess costs or attorney fees under 28 U.S.C. Section 655,

(2) Until the District Court has entered final judgment in the action or the action has been otherwise terminated, or

(3) Except for purposes of preparing the report required by Section 903b of the Judicial Improvements and Access to Justice Act.

11.7 TRIAL DE NOVO.

(a) Upon a demand for a trial de novo the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, and any right of trial shall be preserved inviolate.

(b) At the trial de novo the Court shall not admit evidence that there has been an arbitration proceeding, the nature or amount of the award or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Federal Rules of Evidence, or the Federal Rules of Civil Procedure.

(c) No penalty for demanding a trial de novo shall be assessed by the Court.

LOCAL RULE TWELVE

UNITED STATES MAGISTRATE JUDGES

12.1 DUTIES UNDER 28 U.S.C. § 636(a). Each full-time United States Magistrate Judge for the Middle District of Georgia is authorized and empowered (except as otherwise ordered by a district judge) to conduct proceedings in the following matters and to enter such orders, verdicts, judgments, sentences, findings and/or recommendations relating thereto, consistent with the Constitution and laws of the United States:

1. All criminal proceedings of a grade of misdemeanor or less, provided the defendant consents thereto, in accordance with applicable provision of law including, but not limited to, 18 U.S.C. §3401;

2. All cases brought by prisoners under 42 U.S.C. § 1983 or Biven vs. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), challenging conditions of confinement;

3. All applications for post-trial relief made by individuals convicted of criminal offenses, including, but not limited to, motions for writs of habeas corpus under 28 U.S.C. § 2241 et. seq., § 2254 and § 2255;

4. All social security appeals;

5. All actions filed pursuant to provisions of Title VII of the Civil Rights Act of 1964, as amended; and,

6. Such other civil actions referred by a judge of this court for trial and/or disposition provided all parties therein consent.

12.2 NONDISPOSITIVE PRETRIAL MATTERS. In accordance with 28 U.S.C. § 636(b)(1)(A), magistrate judges shall hear and determine all pretrial criminal and civil matters assigned by the judges of this court except a motion of injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or

information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

12.3 DISPOSITIVE PRETRIAL MATTERS. In accordance with 28 U.S.C. § 636(b)(1)(B), magistrate judges are hereby authorized and empowered at the election of the district judge to conduct hearings, including evidentiary hearings, and to submit to the judges of this court PROPOSED FINDINGS OF FACT AND RECOMMENDATIONS for the disposition by said judges of the following motions: a motion of injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

12.4 SPECIAL MASTER REFERENCES AND TRIAL BY CONSENT.

a. In accordance with 28 U.S.C. § 636 (b)(2), magistrate judges are hereby authorized and empowered to serve as a special master upon specific designation by the judge to whom said matter is assigned.

b. Under 28 U.S.C. § 636(c), and with the consent of all parties, magistrate judges are specifically authorized and empowered to conduct any and all proceedings in a jury or non-jury civil matter and to order the entry of judgment therein.

12.5 OTHER DUTIES OF MAGISTRATE JUDGES. A magistrate judge is also authorized to:

a. Conduct arraignments in cases not triable by the magistrate judge to the extent of taking a not guilty plea;

b. Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;

c. Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings;

d. Order the exoneration or forfeiture of bonds;

e. Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure; and

f. Any and all other duties of a judicial officer of this court as are not inconsistent with the Constitution and laws of the United States; it being the express intention of the court to authorize magistrate judges to conduct any and all proceedings in this court permitted by 28 U.S.C. § 636 whether or not specifically set forth in these rules.

LOCAL RULE THIRTEEN

RULES GOVERNING ATTORNEY DISCIPLINE

Prefatory Statement

Nothing contained in these rules shall be construed to deny the Court its inherent power to maintain control over the proceedings conducted before it nor to deny the Court those powers derived from statute, rule of procedure, or other rules of court.

When alleged attorney misconduct is brought to the attention of the Court, whether by a Judge of the Court, any lawyer admitted to practice before the Court, any officer or employee of the Court, or otherwise, the Court may, in its discretion, dispose of the matter through the use of its inherent, statutory, or other powers; refer the matter to an appropriate state bar agency for investigation and disposition; refer the matter to the local grievance committee as hereinafter defined; or take any other action the court deems appropriate including referring the matter for possible investigative and criminal prosecution. These procedures are not mutually exclusive.

13.1 Standards for Professional Conduct.

A. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility

or Rules of Professional Conduct adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney/client relationship. Attorneys practicing before this Court shall be governed by this

Court's Local Rules, by the Rules of Professional Conduct adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, and, to the extent not inconsistent with the preceding, the American Bar Association Model Rules of Professional Conduct, except as otherwise provided by specific Rule of this Court.

B. Discipline for misconduct defined in these rules may consist of (a) disbarment, (b) suspension, (c) reprimand, (d) monetary sanctions, (e) removal from this Court's roster of attorneys eligible for practice before this Court, or (f) any other sanction the Court may deem appropriate.

13.2 Grievance Committee.

A. The Court, consisting of the active Judges thereof, may appoint a [at least one] standing committee consisting of at least five members of the bar to be known as the "Grievance Committee." One of those first appointed shall serve a term of one year; two for two years; and the remainder and all thereafter appointed for a term of three years. Each member shall serve until his or her successor has been appointed. The Court may vacate any such appointment at any time. The Court shall designate one of the members to serve as chairman. A majority of the committee shall constitute a quorum.

B. Purpose and Function

The purpose and function of the Committee is to conduct, upon referral by the Court, investigations of alleged misconduct of any member of the Bar of this Court, or any attorney appearing and participating in any proceeding before the Court; to conduct, upon referral by the Court, inquiries and investigations into allegations of inadequate

performance by an attorney practicing before the Court, as hereinafter provided; to conduct and preside over disciplinary hearings when appropriate and as hereinafter provided; and to submit written findings and recommendations to the Court for appropriate action by the Court, except as otherwise described herein. The members of the Grievance Committee, while serving in their official capacities, shall be considered to be representatives of and acting under the powers and immunities of the Court, and shall enjoy all such immunities while acting in good faith and in their official capacities.

C. Jurisdiction and Powers

(1) The Court may, in its discretion, refer to the Committee any accusation or evidence of misconduct by way of violation of the disciplinary rules on the part of any member of the bar with respect to any professional matter before this Court for such an investigation, hearing, and report as the Court deems advisable. The Committee may, in its discretion, refer such matters to an appropriate State Bar for preliminary investigation, or may request the Court to appoint special counsel to assist in or exclusively conduct such proceedings, as hereinafter provided in these rules. (See Rule 13.11, infra.). The Court may also, in its discretion, refer to the Committee any matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court, as hereinafter provided. (See Rule 13.8, infra.). The Committee may under no circumstances initiate and investigate such matters without prior referral by the Court.

(2) The Committee shall be vested with such powers as are necessary to conduct the proper and expeditious disposition of any matter referred by the Court, including the power to compel the attendance of witnesses, to take or cause to be taken the

deposition of any witnesses, and to order the production of books, records, or other documentary evidence, and those powers described elsewhere in these rules. The Chairman, or in his or her absence each member of the Committee, has the power to administer oaths and affirmations to witnesses.

13.3 Disciplinary Proceedings.

A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by complaint or otherwise, the Judge may, in his or her discretion, refer the matter to the Grievance Committee for investigation and, if warranted, the prosecution of formal disciplinary proceedings or the formulation of such other recommendation as may be appropriate.

B. Should the Grievance Committee conclude, after investigation and review, that a formal disciplinary proceeding should not be initiated against an attorney because sufficient evidence is not present or for any other valid reason, the Committee shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or any other action. In cases of dismissal, the attorney who is the subject of the investigation need not be notified that a complaint has been submitted or of its ultimate disposition. All investigative reports, records and recommendations generated by or on behalf of the Committee under such circumstances shall remain strictly confidential.

C. If the Committee concludes from preliminary investigation, or otherwise, that probable cause exists, the Committee shall file with the Court a written report of its

investigation, stating with specificity the facts supporting its conclusion, and shall apply to the Court for the issuance of an order requiring the attorney to show cause within 30 days after service of that order why the attorney should not be disciplined. The order to show cause shall set forth the particular act or acts of conduct for which he or she is sought to be disciplined. A copy of the Committee's written report should be provided to the attorney along with the show cause order. The accused attorney may file with the Committee within ten days of service of the order a written response to the order to show cause. After receipt of the attorney's response, if any, the Committee may request that the Court rescind its previously issued order to show cause. If the show cause order is not rescinded, and upon at least ten days notice, the cause shall be set for hearing before the Committee. A record of all proceedings before the Committee shall be made, and shall be made available to the attorney. That record, and all other materials generated by or on behalf of the Committee or in relation to any disciplinary proceedings before the Committee, shall in all other respects remain strictly confidential unless and until otherwise ordered by the Court. In the event the attorney does not appear, the Committee may recommend summary action and shall report its recommendation forthwith to the Court. In the event that the attorney does appear, he or she shall be entitled to be represented by counsel, to present witnesses and other evidence on his or her behalf, and to confront and cross examine witnesses against him. Except as otherwise ordered by the Court or provided in these Rules, the disciplinary proceedings before the Committee shall be guided by the spirit of the Federal Rules of Evidence. Unless he or she asserts a privilege or right properly available to him under applicable federal or state law, the accused attorney may be called as a witness by the

Committee to make specific and complete disclosure of all matters material to the charge of misconduct.

D. Upon completion of a disciplinary proceeding, the Committee shall make a full written report to the Court. The Committee shall include its findings of fact as to the charges of misconduct, recommendations as to whether or not the accused attorney should be found guilty of misconduct justifying disciplinary actions by the Court, and recommendations as to the disciplinary measures to be applied by the Court. The report shall be accompanied by a transcript of the proceedings before the Committee, all pleadings, and all evidentiary exhibits. A copy of the report and recommendation shall also be furnished the attorney. The Committee's written report, transcripts of the proceedings, and all related materials shall remain confidential unless and until otherwise ordered by the Court.

E. Upon receipt of the Committee's finding that misconduct occurred, the Court shall issue an order requiring the attorney to show cause why the Committee's recommendation should not be adopted by the Court. The Court may, after considering the attorney's response, by majority vote of the active Judges thereof, adopt, modify, or reject the Committee's findings that misconduct occurred, and may either impose those sanctions recommended by the Committee or fashion whatever penalties provided by the rules which it deems appropriate.

13.4 Attorneys Convicted of Crimes.

A. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth, or possession of the United States of any serious crime as herein defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, nolo contendere, verdict after trial, or otherwise, and regardless of the pendency of any appeal. The suspension so ordered shall remain in effect until final disposition of the disciplinary proceedings to be commenced upon such conviction. A copy of such order shall be immediately served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

B. The term "serious" crime shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction in which it was entered, involves false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or the use of dishonesty, or an attempt, conspiracy, or solicitation of another to commit a "serious crime."

C. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based on the conviction.

D. Upon the filing of a certified copy of a judgment of conviction of any attorney for a serious crime, the Court may, in addition to suspending that attorney in accordance

with the provisions of this rule, also refer the matter to the Grievance Committee for institution of disciplinary proceedings in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

E. An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement will not terminate any disciplinary proceedings then pending against the attorney, the disposition of which shall be determined by the Committee on the basis of all available evidence pertaining to both guilt and the extent of the discipline to be imposed.

13.5 Discipline Imposed By Other Courts.

A. An attorney admitted to practice before this Court shall, upon being subjected to suspension or disbarment by a court of any state, territory, commonwealth, or possession of the United States, or upon being subject to any form of public discipline, including but not limited to suspension or disbarment, by any other court of the United States or the District of Columbia, promptly inform the Clerk of this Court of such action.

B. Upon the filing of a certified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another court as described above, this Court may refer the matter to the Grievance Committee for a

recommendation for appropriate action, or may issue a notice directed to the attorney containing:

1. A copy of the judgment or order from the other court, and
2. An order to show cause directing that the attorney inform this Court, within thirty days after service of that order upon the attorney, of any claim by the attorney predicated upon the grounds set forth in subsection E, supra, that the imposition of identical discipline by the Court would be unwarranted and the reasons therefor.

C. In the event that the discipline imposed in the other jurisdiction has been stayed there, any reciprocal disciplinary proceedings instituted or discipline imposed in this Court shall be deferred until such stay expires.

D. After consideration of the response called for by the order issued pursuant to subsection B, supra, or after expiration of the time specified in that order, the Court may impose the identical discipline or may impose any other sanction the Court may deem appropriate.

E. A final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purpose of a disciplinary proceeding in this Court, unless the attorney demonstrates and the Court is satisfied that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears that:

1. The procedure in that other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

2. there was such an infirmity of proof establishing misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

3. the imposition of the same discipline by this Court would result in grave injustice; or

4. the misconduct established is deemed by this Court to warrant substantially different discipline.

F. This Court may at any stage ask the Grievance Committee to conduct disciplinary proceedings or to make recommendations to the Court for appropriate action in light of the imposition of professional discipline by another court.

13.6 Disbarment on Consent or Resignation in Other Courts.

A. Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from any other bar while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

B. An attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth, or possession of the

United States while an investigation into allegations of misconduct is pending shall, upon the filing with this Court of a certified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the role of attorneys admitted to practice before this Court.

13.7 Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

A. Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

1. The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
2. the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;
3. the attorney acknowledges that the material facts so alleged are true; and
4. the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the

proceeding were prosecuted, the attorney could not successfully defend himself.

B. Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

C. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required pursuant to the provisions of this rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

13.8 Incompetence and Incapacity.

A. When it appears that an attorney for whatever reason is failing to perform to an adequate level of competence necessary to protect his or her clients' interests, the Court may take any remedial action which it deems appropriate, including but not limited to referral of the affected attorney to appropriate institutions and professional personnel for assistance in raising the affected attorney's level of competency. The Court may also, in its discretion, refer the matter to the Grievance Committee for further investigation and recommendation.

B. A referral to the Grievance Committee of any matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court is not a disciplinary matter and does not implicate the formal procedures previously described in these Rules. Upon a referral of this sort, the Grievance Committee may request that the attorney meet with it informally and explain the circumstances which gave

rise to the referral and may conduct such preliminary inquiries as it deems advisable. If after meeting with the attorney and conducting its preliminary inquiries the Committee determines that further attention is not needed, the Committee shall notify the referring Judge and consider all inquiries terminated.

C. If after meeting with the attorney and conducting its preliminary inquiries the Committee deems the matter warrants further action, it may recommend to the attorney that the attorney take steps to improve the quality of his or her professional performance and shall specify the nature of the recommended action designed to effect such improvement. The attorney shall be advised of any such recommendation in writing and be given the opportunity to respond thereto, to seek review or revocation of the recommendation, or to suggest alternatives thereto. The Committee may, after receiving such response, modify, amend, revoke, or adhere to its original recommendation. If the attorney agrees to comply with the Committee's final recommendation, the Committee shall report to the referring Judge that the matter has been resolved by the consent of the affected attorney. The Committee may monitor the affected attorney's compliance with its recommendation and may request the assistance of the Court in ensuring that the attorney is complying with the final recommendation.

D. If the Committee finds that there is a substantial likelihood that the affected attorney's continued practice of law may result in serious harm to the attorney's clients pending completion of the remedial program, it may recommend that the Court consider limiting or otherwise imposing appropriate restrictions on the attorney's continuing practice

before the Court. The Court may take any action which it deems appropriate to effectuate the Committee's recommendation.

E. Any attorney who takes exception with the Committee's final recommendation shall have the right to have the Court, consisting of the active Judges thereof, consider the recommendation and the response of the affected attorney. The Court may, after considering the attorney's response, by majority vote of the active Judges thereof, adopt, modify, or reject the Committee's recommendations as to the necessary remedial actions and may take whatever actions it deems appropriate to ensure the attorney's compliance.

F. All information, reports, records, and recommendations gathered, possessed, or generated by or on behalf of the Committee in relation to the referral of a matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court shall be confidential unless and until otherwise ordered by the Court.

G. Nothing contained herein and no action taken hereunder shall be construed to interfere with or substitute for any procedure relating to the discipline of any attorney as elsewhere provided in these rules. Any disciplinary actions relating to the inadequacy of an attorney's performance shall occur apart from the proceedings of the Committee in accordance with law and as directed by the Court.

13.9 Reinstatement.

A. After Disbarment or Suspension

An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with this Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume the practice of law before this Court until reinstated by order of the Court.

B. Time of Application Following Disbarment

An attorney who has been disbarred after hearing or consent may not apply for reinstatement until the expiration of at least five years from the effective date of disbarment.

C. Hearing on Application

Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. The Chief Judge may submit the petition to the Court or may, in his or her discretion, refer the petition to the Grievance Committee which shall within thirty days of the referral schedule a hearing at which the petitioner shall have the burden of establishing by clear and convincing evidence that he or she has the moral qualifications, competency, and learning the law required for admission to practice before this Court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive of the public interest. Upon completion of the hearing, the Committee shall make a full report to the Court. The Committee shall include in its findings of fact as to

the petitioner's fitness to resume the practice of law and its recommendations as to whether or not the petitioner should be reinstated.

D. Conditions of Reinstatement

If after consideration of the Committee's report and recommendation the Court finds that the petitioner is unfit to resume the practice of law, the petition shall be dismissed. If after consideration of the Committee's report and recommendation the Court find that the petitioner is fit to resume the practice of law, the Court shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, an don the making of partial or complete restitution to all parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the Court, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment. Provided further that any reinstatement may be subject to any conditions which the Court in its discretion deems appropriate.

E. Successive Petitioners

No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

F. Deposit for Costs of Proceeding

Petitions for reinstatement under this Rule shall be accompanied by a deposit in an amount to be set from time to time by the Court in consultation with the Grievance Committee to cover anticipated costs of the reinstatement proceeding.

13.10 Attorneys Specially Admitted.

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct arising in the course of or in the preparation for such a proceeding which is a violation of this Court's Local Rules and/or the Rules of Professional Conduct adopted by this Court as provided in these Rules.

13.11 Appointment of Counsel.

Whenever, at the direction of the Court or upon request of the Grievance Committee, counsel is to be appointed pursuant to these rules to investigate or assist in the investigation of misconduct, to prosecute or assist in the prosecution of disciplinary proceedings, or to assist in the disposition of a reinstatement petition filed by a disciplined attorney, this Court, by a majority vote of the active Judges thereof, may appoint as counsel any active member of the bar of this Court, or may, in its discretion, appoint the disciplinary agency of the highest court of the state wherein the Court sits, or other disciplinary agency having jurisdiction.

13.12 Service of Paper and Other Notices.

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the affected attorney at the address shown on the role of attorneys admitted to practice before this Court. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the attorney at the address shown on the role of attorneys admitted to practice before this Court; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or document filed by them in the course of any proceeding.

13.13 Duties of the Clerk.

A. Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.

B. Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

C. Whenever it appears that any person who has been convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, this Court shall, within ten days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence address of the disciplined attorney.

D. The Clerk of this Court shall, likewise, promptly notify the National Discipline Bank operated by the American Bar Association of any order imposing public discipline on any attorney admitted to practice before this Court.

LOCAL RULE FOURTEEN

PROBATION

14.1 PROCEDURES REGARDING PREPARATION AND SUBMISSION OF PRESENTENCE INVESTIGATION REPORTS. The following procedures shall apply in all divisions of the court effective on November 1, 1987, for offenses committed after October 31, 1987:

a. Ordinarily, sentencing will occur within 60 calendar days following the defendant's plea of guilty or nolo contendere, or upon being found guilty.

b. Not less than 25 days prior to the date set for sentencing, the probation officer shall provide a copy of the presentence investigation report to the defendant and to counsel for the defendant and the government. Within 10 days thereafter, counsel (or the defendant if acting pro se) shall communicate in writing to the probation officer and to each other any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report.

c. After receiving counsel's objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The officer may require counsel for both parties as well as the defendant and/or the case agent to meet with the officer to discuss unresolved factual and legal issues. All counsel shall make themselves available to the officer for this purpose on short notice regardless of place of residence.

d. No later than 5 days prior to the date of the sentencing hearing the probation office shall submit the presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon. The probation officer shall certify that the contents of the report, including any revisions thereof, have been disclosed to the defendant and to counsel for the defendant and the government, that the content of the addendum has been communicated to the defendant and to counsel, and that the addendum fairly states any remaining objections.

e. Except for any objections made under subdivision (b) that has not been resolved, the report of the presentence investigation may be accepted by the court as accurate. The court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact the court may consider any reliable information presented by the probation officer, the defendant or the government.

f. Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure.

g. The presentence report shall be deemed to have been disclosed (1) when a copy of the report is physically delivered; or (2) one day after the report's availability for inspection is orally communicated; or (3) three days after a copy of the report or notice of its availability is mailed.

14.2 DISCLOSURE OF PRESENTENCE REPORTS OR PROBATION RECORDS.

a. No person shall otherwise disclose, copy, reproduce, deface, delete from or add to any report within the purview of this rule.

b. No confidential records of the court maintained at the probation office, including presentence reports and probation supervision reports, shall be sought by any applicant except by written petition to the court establishing with particularity the need for specific information believed to be contained in such records. When a demand for disclosure of such information or such records is made by way of subpoena or other judicial process served upon a probation officer of this court, the probation officer may file a petition seeking instruction from the court with respect to the manner in which he should respond to such subpoena or such process.

c. Any party filing an appeal or cross appeal in any criminal case in which it is expected that any issue will be asserted pursuant to 18 U.S.C. § 3742 concerning the sentence imposed by the court shall immediately notify the probation officer who shall then file with the clerk for inclusion in the record in camera a copy of the presentence investigation report.