UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

AN ASSESSMENT OF THE COURT'S DOCKET
JUNE 1991

ADVISORY GROUP
CIVIL JUSTICE REFORM ACT
OF 1990

Subcommittee
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EXECUTIVE SUMMARY

The Civil Justice Reform Act Advisory Group is required by the Civil Justice Reform Act of 1990, to assess the court's workload and to prepare a report recommending specific rules, procedures and programs that the court should adopt in its model plan in order to reduce the cost and delay in litigation in the federal courts. The mission of this subcommittee was to review the status of the docket for the years 1986 through 1990. Attachment A is the Judicial Workload Profile for the Northern District of Georgia for the period of 1985 through 1990. The figures shown for 1985 are distorted by the fact that Cuban detainees housed at the Atlanta Federal Penitentiary during that year filed a large volume of habeas corpus cases. Therefore the civil filing figures for that year reflect an uncommon circumstance, and are not considered in the comparisons made below. Attachment B is the National Judicial Workload Profile for the same years and can be compared to Attachment A to show the Northern District of Georgia's position relative to all district courts. Attachment C is a comparison of all district courts in the Eleventh Circuit for the period ending June 30, 1990. The following case statistics are summarized to provide a basis for discussion of the status of the court's docket.

1. Total filings in the Northern District of Georgia have decreased by 4.8% from the 1986 total of 4,008 to the 1990 total of 3,813. Total terminations have decreased by 32.5% from the 1986 total of 5,495 to the 1990 total of 3,707. The large number of terminations shown in 1986 reflect the completion of the above mentioned Cuban detainee cases. If you take the figures for 1987 and 1990, terminations have decreased by 12.3%. The pending caseload increased by 3% from the 1986 total of 3,736 to the 1990 total of 3,853.

2. Weighted filings per judgeship decreased by 3.3% from 1986 to 1990.

3. Civil filings per judgeship decreased by 2.5% from 1986 to 1990.

4. Criminal filings for the same period have decreased by 17.4% from the 1986 total of 766 to the 1990 total of 632.

5. The percentage of cases over 3 years old has increased from 2.1% in 1986 to 4.0% in 1990. The inflated percentage of 9.4% in 1986 included 150 "blasting" cases arising out of MARTA construction.

6. There was a dramatic increase in the number of hours spent on contested sentencing hearings. This increase was brought on by the Sentencing Reform Act of 1984, which became effective on November 1, 1987. In 1988 the court spent a total of 18 hours on these hearings. In 1990 the number of hours increased to 176.5. The projection for 1991, based on statistics for the first five months, is 201.6 hours.

7. In calendar year 1988, the Northern District of Georgia experienced 4.8 vacant judgeship months. This is a relatively short period of time when considering the five year period of this study, and we feel it would not have a significant impact on the court's statistics. Therefore, we did not factor vacant judgeship months into our calculations.

8. In recent years the Northern District of Georgia has rarely used visiting judges, however, several of the judges have served as visiting judges in other district courts. Of particular importance is the number of days that Judge Harold L. Murphy has devoted to a case in the Northern District of Alabama. This is a case involving the University System of Alabama. All of the judges in Alabama recused themselves from the case. Judge Murphy was specially appointed by the Chief Judge of the Eleventh Circuit Court of Appeals to hear the case and he has spent 79 days in trial there in 1990 and 1991.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

GEORGIA NORTHERN

			TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1990	1989	1988	1987	1986	1985		
OVERALL WORKLOAD STATISTICS	Filings		3,813	4,085	3,949	3,988	4,008	5,869		
	Terminations		3,707	3,884	3,776	4,229	5,495	4,169		
	Pending		3,853	3,870	3,669	3,494	3,736	5,222		
	Percent Change In Total Filings Current Year	Over Last Year...		-6.7					50	6
		Over Earlier Years...			-3.5	-4.4	-4.9	-35.0	81	9
	Number of Judgeships		11	11	11	11	11	11		
	Vacant Judgeship Months		.0	.0	4.8	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	347	371	359	363	364	534	77	9
		Civil	312	322	314	319	320	499	70	9
		Criminal Felony	35	49	45	44	44	35	79	8
	Pending Cases		350	352	334	318	340	475	68	3
	Weighted Filings**		379	396	379	385	392	435	63	8
	Terminations		337	353	343	384	500	379	78	9
	Trials Completed		32	32	33	30	39	38	53	9
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	6.9	5.3	4.7	4.4	3.7	3.5	85	9
		Civil	10	9	9	10	9	9	45	6
	From Issue to Trial (Civil Only)		19	18	18	15	15	16	63	8
OTHER	Number (and %) of Civil Cases Over 3 Years Old		138 4.0	104 3.0	88 2.6	80 2.5	329 9.4	105 2.1	30	5
	Triable Defendants** in Pending Criminal Cases Number (and %)		507 (72.7)	328 (48.4)	243 (49.5)	276 (77.1)	247 (57.6)	195 (56.4)		
	Jurors**	Avg. Present for Jury Selection	31.02	33.55	27.68	27.82	25.77	30.08	40	5
		Percent Not Selected or Challenged	25.6	31.3	25.6	25.0	23.1	31.6	36	5

FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER

1990 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3432	128	225	586	193	66	140	608	626	115	455	12	278
Criminal*	377	7	19	27	18	47	18	75	15	82	6	23	40

* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.
**See Page 167.

United States District Courts — National Judicial Workload Profile

			ALL DISTRICT COURTS					
			1990	*1989*	*1988*	*1987*	*1986*	*1985*
OVERALL WORKLOAD STATISTICS	Filings		251,113	263,896	269,174	268,023	282,074	299,164
	Terminations		243,512	262,806	265,916	265,727	292,092	293,545
	Pending		272,636	265,035 *	268,070	264,953	262,637	272,636
	Percent Change in Total Filings – Current Year	Over Last Year ▶		-4.8				
		Over Earlier Years ▶			-6.7	-6.3	-11.0	-16.1
	Number of Judgeships		575	575	575	575	575	575
	Vacant Judgeship Months		540.1	374.1	485.2	483.4	657.9	883.8
ACTIONS PER JUDGESHIP	FILINGS	Total	437	459	467	466	491	520
		Civil	379	406	417	416	444	476
		Criminal Felony	58	53	51	50	47	44
	Pending Cases		474	461 *	466	461	457	474
	Weighted Filings		448	466	467	461	461	453
	Terminations		423	457	462	462	508	511
	Trials Completed		36	35	35	35	35	36
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.3	5.0	4.3	4.1	3.9	3.7
		Civil	9	9	9	9	9	9
	From Issue to Trial (Civil Only)		14	14	14	14	14	14
OTHER	Number (and %) of Civil Cases Over 3 Years Old		25,207 (10.4)	22,391 (9.2)	21,487 (8.8)	19,782 (8.1)	19,252 (7.9)	16,726 (6.6)
	Triable Defendants in Pending Criminal Felony Cases Number (and %)		20,544 (43.6)	18,084 (43.2)	17,349 (46.2)	16,408 (49.3)	14,171 (44.1)	12,301 (42.9)
	Jurors	Present for Jury Selection	35.84	35.89	32.7	31.1	32.0	32.0
		% Not Selected, Serving, or Challenged	34.2	35.8	33.7	32.1	34.3	34.8

1990 CIVIL AND FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

TOTAL CIVIL		TOTAL CRIMINAL FELONY[1]	
A-Social Security	7,439	A-Immigration	2,180
B-Recovery of Overpayments and Enforcement of Judgments	10,878	B-Embezzlement	1,653
C-Prisoner Petitions	42,630	C-Weapons and Firearms	2,582
D-Forfeitures and Penalties and Tax Suits	8,797	D-Escape	777
E-Real Property	9,505	E-Burglary and Larceny	1,819
F-Labor Suits	13,841	F-Marihuana and Controlled Substances	3,427
G-Contracts	35,161	G-Narcotics	7,229
H-Torts	43,759	H-Forgery and Counterfeiting	1,280
I-Copyright, Patent, and Trademark	5,700	I-Fraud	6,508
J-Civil Rights	18,793	J-Homicide and Assault	583
K-Antitrust	472	K-Robbery	1,379
L-All Other Civil	20,904	L-All Other Criminal Felony Cases	2,981

[1] *Filings in the "Overall Workload Statistics" section include criminal felony transfers, while filings "by nature of offense" do not.*

ATTACHMENT B

COMPARISON OF DISTRICTS WITHIN THE CIRCUIT -- YEAR ENDED JUNE 30, 1990

ELEVENTH CIRCUIT

			AL.N.	AL.M.	AL.S.	FL.N.	FL.M.	FL.S.	GA.N.	GA.M.	GA.S.
*OVERALL WORKLOAD STATISTICS	Filings		3,031	1,663	1,336	1,283	5,059	6,427	3,813	1,334	1,740
	Terminations		2,887	1,597	1,293	1,167	4,833	5,646	3,707	1,184	1,288
	Pending		2,247	1,231	1,288	1,361	4,864	6,281	3,853	1,555	1,471
	Percent Change In Total Filings Current Year	Over Last Year	-9.2	4.8	9.6	-8.1	-8.1	15.7	-6.7	15.6	26.7
		Over 1985	-33.3	-5.9	-24.5	-17.6	-12.4	-5.0	-35.0	-2.7	27.3
	Number of Judgeships		7	3	3	3	9	15	11	3	3
	Vacant Judgeship Months		7.3	.0	11.6	.0	5.2	12.0	.0	.0	.0
*ACTIONS PER JUDGESHIP	FILINGS	Total	433	554	445	428	562	428	347	445	580
		Civil	398	498	390	358	472	340	312	366	534
		Criminal Felony	35	56	55	70	90	88	35	79	46
	Pending Cases		321	410	429	454	540	419	350	518	490
	Weighted Filings*		421	468	419	328	509	402	379	389	612
	Terminations		412	532	431	389	537	376	337	395	429
	Trials Completed		39	52	47	49	41	46	32	48	38
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	1.9	5.8	5.7	5.4	5.9	6.5	6.9	5.2	4.5
		Civil	7	6	11	9	10	7	10	11	9
	From Issue to Trial (Civil Only)		9	9	14	23	13	11	19	16	12
OTHER	Number (and %) of Civil Cases Over 3 Years Old		31 (1.4)	35 (3.1)	23 (2.0)	84 (7.3)	257 (6.0)	161 (3.9)	138 (4.0)	124 (8.7)	0 (.0)
	Triable Defendants in Pending Criminal Felony Cases Number (and %)		63 (53.4)	21 (19.1)	156 (52.2)	86 (24.2)	446 (38.1)	981 (26.4)	507 (72.7)	127 (60.2)	130 (79.3)
	Jurors	Avg. Present for Jury Selection	30.86	17.52	33.06	36.86	43.35	42.85	31.02	27.77	25.11
		Percent Not Selected or Challenged	29.6	14.3	28.7	24.1	42.2	33.9	25.6	21.0	17.4

*See Page 167.

*U.S. GOVERNMENT PRINTING OFFICE: 1990--517-445/D9985

ATTACHMENT C

JURISDICTION

The Northern District of Georgia is a large metropolitan court and is comprised of forty-six counties bordering Alabama, Tennessee, North Carolina, and South Carolina. The district includes four divisional offices: Atlanta, Gainesville, Rome, and Newnan. Court for the four divisions is held in their respective cities. There are currently eleven authorized judgeships for the Northern District of Georgia. At the present time ten of those positions are filled. The Northern District of Georgia has two senior judges with active caseloads. Additionally, five full-time magistrate judges are authorized for the district, all of whom sit in the Atlanta Division. Two additional part-time magistrate judges are also serving the district. One part-time magistrate judge sits in the Gainesville Division. The other one is located in the Rome Division.

All of the judges, active and senior, except Judge Harold L. Murphy receive civil case assignments in the Atlanta Division. Judge Murphy is headquartered in the Rome Division and receives his civil caseload through filings in that division. Whenever the number of civil filings in the Rome Division exceed that of the district-wide average per judge, Judge Robert L. Vining, Jr. is assigned the overflow. All civil cases filed in the Gainesville Division are assigned to Chief Judge William C. O'Kelley. His case assignments in Atlanta are adjusted depending upon the number of cases filed in the Gainesville Division. All civil cases filed in the Newnan Division are assigned to Judge G. Ernest Tidwell. His case assignments in Atlanta are adjusted in the same manner as Chief Judge O'Kelley's.

CASELOAD

As shown in the previous statistical reports, the number of civil cases has decreased by a small percentage over the past 5 years. This parallels a national trend in civil filings. During that same time frame, criminal filings have also decreased. Even though total filings in the district dropped by 4.8% in the last five years, the total number of trials per judge increased from a 1986 average of 39.9 per judge to the 1990 total of 40.9. When the senior judge total of 17 trials held in 1990 is excluded, the per judge average increases to 43 trials per active judge. These trial figures differ from the figures shown on Attachment A. The totals shown here include not only jury and non-jury trials, but also include other matters requiring evidentiary hearings, such as, preliminary injunctions, probation revocation hearings, and sentencing hearings under the Sentencing Guidelines.

Currently there are three special groups of cases that are requiring a great deal of judicial and clerk's office resources. One is the multi-district litigation involving airline ticket price fixing. The second is another multi-district case involving the chiropractic profession. This litigation relates to denial of insurance benefits for chiropractic care. The third is a group of companion cases called the "Renaissance Litigation". These cases involve a public investment offering and over 150 plaintiffs.

WEIGHTED CASELOAD DEFINED

Weighted caseload statistics were developed by the Judicial Conference of the United States in an attempt to adjust for differences among case types by assigning weights which represent the relative amount of judge time necessary to resolve each type. If the "average" case is worth one case, each type of case is worth more than, equal to, or less than that number depending on how much judicial time that type of case may consume. Weighted cases include product liability-personal injury; copyright, patent, and trademark; antitrust; civil rights actions and prosecutions under the Drug Abuse Prevention and Control Act (DAPCA). Less weighted cases include recovery of student loans and social security actions.

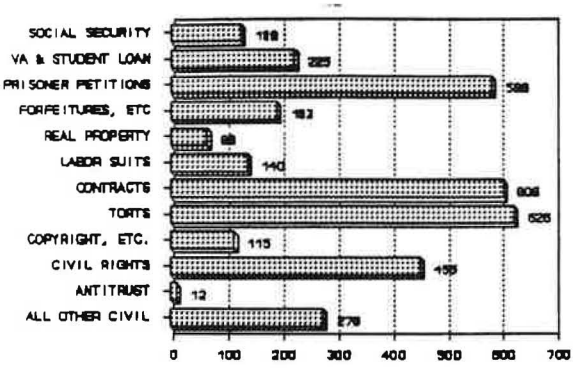
Data used for determining the weights has historically been collected in time studies which require judges to record all time spent on each type over a period of several months. If a particular case type is one percent of all cases terminated but takes 2% of the time spent on all cases, it takes twice as long as the average case and is, hence, given a weight of two. The Federal Judicial Center, the research arm of the federal judiciary, is currently re-evaluating the weighting of cases nationwide. The stated objective of the study is to produce improved calculations of each district's judicial workload. The Northern District of Georgia is participating in the current study.

WEIGHTED AND UNWEIGHTED FILINGS

The weighted caseload per judge for the Northern District of Georgia as of June 30, 1990, was 379. The charts on the following page show the breakdown of filings by category for the twelve month period ending June 30, 1990.

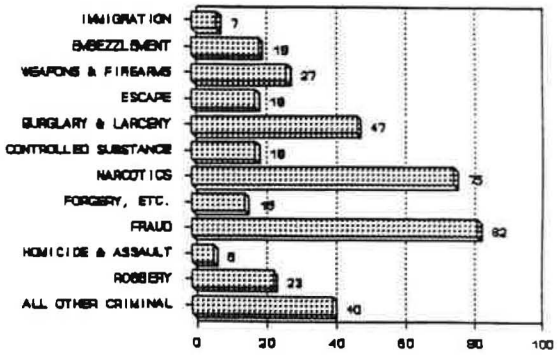
CIVIL FILINGS

TWELVE MONTH PERIOD ENDING JUNE 30, 1990



CRIMINAL FILINGS

TWELVE MONTH PERIOD ENDING JUNE 30, 1990



PENDING THREE YEAR-OLD CASES

The Northern District of Georgia had only 138 pending three-year old cases as of June 30, 1990. This figure represented 4.0% of the total pending caseload. Attachment 1 shows the rankings of the ten Civil Justice Reform Act pilot courts. Among the twenty-five metropolitan district courts, Attachment 2, the figure for the Northern District of Georgia is seventh lowest.

OVERALL RANKING AMONG METROPOLITAN DISTRICT COURTS

Attachment 2 shows the ranking in six categories of the twenty-five largest metropolitan district courts. The chart reveals that a high percentage of cases go to trial in Northern Georgia. Compare Northern Georgia's ranking of 22nd in the category of total filings with its ranking of 13th in the category of number of trials.

As reported above, Northern Georgia ranks 7th in its percentage of 3-year old cases. The general perception is that cases which remain pending for 3 years or more are more difficult to terminate. Such cases may involve extensive discovery or a class action suit or suits in highly specialized areas such as, for example, patents and securities. In 1990, 13 metropolitan courts had percentages of pending 3-year old cases which were at least double Northern Georgia's percentage of 4%. Nine of those courts' percentages were more than 3 times greater than Northern Georgia's percentage.

Northern Georgia, on the other hand, ranks in the lower one-third of metropolitan courts in the categories of number of pending cases, number of pending weighted cases, and number of cases terminated. Considering these

three categories together with the category of 3-year old cases, the suggestion is that termination of a "routine" case takes longer in Northern Georgia because termination of more difficult cases is not routinely deferred.

VACANT JUDGESHIP MONTHS

As stated in the executive summary, the Northern District of Georgia experienced only 4.8 vacant judgeship months in the last five years. This figure accounts for a relatively short period of time over the five year period and would not change the percentages measurably. The vacant judgeship figure is measured by calculating the number of months an authorized judgeship is unfilled. This figure has been low for the past five years, however, for 1991 we have already experienced 5 vacant judgeship months. There is no projection as to when the current vacancy (Judge Hall's replacement) will be filled. This district is also expected to have two additional judges take senior status this year. The number of months that those positions will be vacant is a matter of pure speculation.

MEDIAN TIME FRAMES

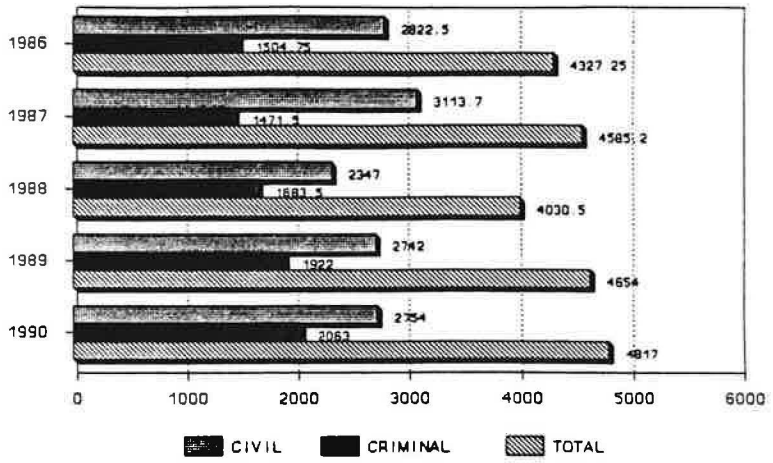
The median time frame from filing to termination in all civil cases was 10 months. This is an increase of only 1 month from the 1986 time of 9 months. The median time frame from filing to termination of all criminal felony cases increased from 3.7 months in 1986 to 6.9 months in 1990.

NUMBER OF TRIALS

The number of trials has previously been referred to in the Caseload Section. Those figures show an increase in the number of trials per judge. The Sentencing Reform Act of 1984, and the establishment of the United States Sentencing Commission went into effect on November 1, 1987. The Sentencing Guidelines have greatly impacted on not only the sentencing process, but also on the number of trials which will be required in the future. There are two areas where the United States Attorney's Office has placed renewed emphasis, firearms prosecutions and drug prosecutions. These two areas particularly carry heavy minimum sentences under the Sentencing Guidelines. Due to the enhanced minimum sentences mandated by the Sentencing Guidelines, there has been a

substantial disincentive to defendants to plead guilty. It is anticipated that the increase in these types of prosecutions, coupled with the Sentencing Guidelines, will reduce the number of guilty pleas and increase the number of trials, while at the same time increasing the median time frame for completion of all cases. The chart at the right shows the increasing number of hours the court is now spending on criminal trials.

TRIAL HOURS

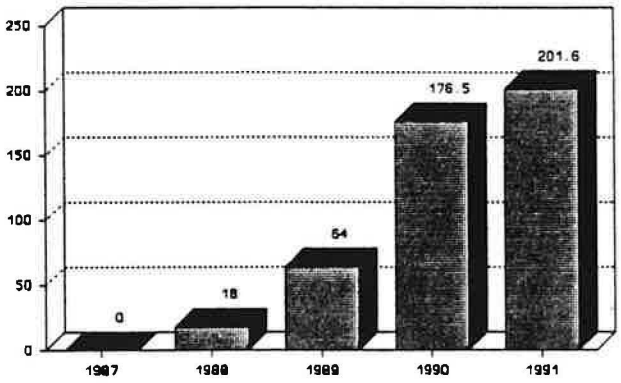


During the calendar year 1986, the court held 5 trials that lasted between 10 to 19 days. During the same year, the court held 2 trials that lasted 20 days or longer. Contrasted to 1990, the court held 9 trials of 10 to 19 days and 2 trials that were 20 days or longer.

It should be stressed that the number of trials does not encompass all of the work performed by judges. Many more cases are disposed of prior to trial by extensive amounts of judicial involvement. Motions must be ruled on, discovery disputes must be handled, settlement conferences must be conducted, and many other routine matters must be dealt with.

Judges are also spending more time on actual sentencing hearings. Under the Sentencing Guidelines, defendants may contest the circumstances presented on their offenses or their criminal histories at these hearings, since these determinations directly affect the sentences imposed. The chart at the right shows the increasing number of hours the court is now spending on contested sentencing hearings.

CONTESTED SENTENCING HEARINGS
COURT HOURS



MAGISTRATE JUDGES

The Northern District of Georgia is served by five full-time magistrate judges in Atlanta, one part-time magistrate judge in Gainesville, and one part-time magistrate judge in Rome.

All of the magistrate judges are authorized to perform the full range of duties permitted under the Federal Magistrate Act. In addition, they handle all of the petty offenses arising out of the many federal parks and other federal properties in the district. Attachment 3 shows the workload of the five full-time magistrate judges in Atlanta, as well as the part-time magistrate judges in Gainesville and Rome. The total of all matters handled by magistrate judges district wide for 1990 was 4,896.

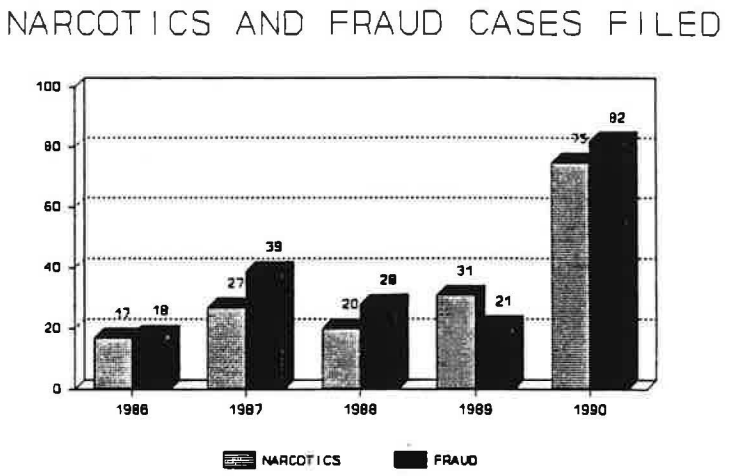
The preliminary proceedings in all criminal cases are handled by the magistrate judges on a rotational basis. Frequently, the magistrate judges are involved in subsequent proceedings in those cases that arose during their duty period. All motions in criminal cases are referred to the magistrate judges who consider the motions and make reports and recommendations to the district judges. Civil matters are referred to the magistrate judges on a selective basis. Attachment 4 is a copy of Internal Operating Procedure 920. This rule shows in detail the assignment of cases and duties to magistrate judges.

SENIOR JUDGES

Any justice or judge of the United States may retire from active service after attaining the age and meeting the service requirements of Title 28, U.S.C., Section 371(c). A judge that retires pursuant to this section becomes a senior judge. This court currently has only two senior judges. One of those has only been on senior status since January 1, 1991. One of the senior judges carries a 100% caseload of civil and criminal cases. The other carries a 30% caseload of civil cases. Those districts that have larger numbers of senior judges have been able to effectively use them to reduce the overall caseload of the active judges. It is anticipated that in the year 1991, two additional judges will take senior status.

CRIMINAL PROSECUTIONS

As stated earlier in the Number of Trials section, criminal trials are expected to increase. Evidence of this is shown by the charts on Attachment 5. They show how the number and percentage of civil trials has decreased since 1985, and how the number and percentage of criminal trials has increased over the same time period. The percentage of criminal defendants that plead guilty in 1986 was 74%. That percentage has dropped to 71% in 1990, thereby increasing the number of trials necessary. As a result of the Sentencing Guidelines, even though the total number of criminal cases generally and drug cases specifically are down over previous years, more criminal cases are proceeding to trial rather than disposition by guilty pleas. The chart at the right shows the increase in narcotics prosecutions and fraud prosecutions for the period of 1986 to 1990. These two types of cases are the most complex and time consuming cases prosecuted in this court. These cases not only require more judicial time ruling on motions, but are also generally more lengthy in the amount of time needed for trials.



The amount of time which judicial officers must now devote to drug prosecutions particularly has increased. They are required to deal with more motions to suppress evidence, which must be handled by the district judge rather than the magistrate judge. They are also more involved in the bond hearings and the forfeiture proceedings that arise out of the criminal prosecution.

NUMBER OF GRAND JURY MATTERS

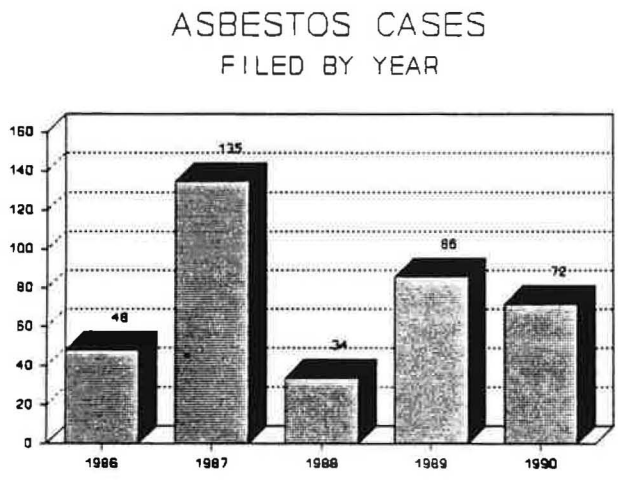
In 1986 district judges handled 34 grand jury matters that required the court to hold hearings. In 1990 the court handled 20 grand jury matters requiring court proceedings.

DIVERSITY JURISDICTION

Diversity cases have declined slightly from 1986 to 1990. In 1986, 1,298 diversity cases were filed in the Northern District of Georgia. In 1990, 1,006 diversity cases were filed. This slight decrease is attributable to the increase in the diversity jurisdictional amount required for a federal diversity case from $10,000 to $50,000 under Title 28, United States Code, Section 1332. This change was effective on May 18, 1989.

The decline in diversity cases is not expected to have a large impact on weighted caseloads because diversity cases are usually lower weighted cases.

ASBESTOS LITIGATION



All asbestos cases are assigned to Judge Robert L. Vining, Jr. Asbestos cases account for 44% of Judge Vining's total caseload. It was decided that the assignment of all asbestos cases to one judge was the most efficient method. The chart on the left shows the number of asbestos cases filed by year from 1986 to 1990. Unless asbestos cases nationwide are combined and placed under the guidelines for multidistrict litigation they will continue to be a drain on judicial resources.

PRO SE LAW CLERK

The Northern District of Georgia employs one pro se law clerk. The pro se law clerk reviews all incoming prisoner petitions. She is responsible for screening the petitions and drafting appropriate recommendations and orders for the Court.

AUTOMATION

On January 1, 1987, the Clerk's office implemented use of the CIVIL system, an on-line automated civil docketing system. On January 1, 1990, the Clerk's office implemented use of the new CRIMINAL system. The two systems, CIVIL and CRIMINAL, are combined under a system called ICMS (Integrated Case Management System). ICMS is an electronic docketing system and case management system that replaced the manual paper system. The Northern District of Georgia was one of four pilot courts nationally that tested and developed the ICMS system. The Northern District of Georgia was also the first court to go to a "live" operation of the CIVIL and CRIMINAL systems. ICMS in the Northern District of Georgia operates on a Unisys 5000/92 computer that is capable of supporting 72 users. ICMS does the following: automates the maintenance of the docket sheet; provides case status, document, and deadline tracking; serves as a central, up-to-date information resource throughout the court or wherever a terminal is linked to the computer; automates production of notices and other standard correspondence, case and party indices, the case opening and closing reports; provides standard reports to assist the judges and court administrators in monitoring case activity; and enables the court to customize reports to address special needs as they arise.

All civil cases filed from January 1, 1987, and all criminal cases filed from January 1, 1990, are contained in the ICMS data base. Each courtroom deputy clerk is located in the judge's chambers and has a terminal linked directly to the system. They have been trained to utilize the system to meet their needs. The automated system has had very little "down time" and there has not been any data loss or misplaced dockets. All deputy clerks are trained to input and retrieve data related to their particular function. Law clerks are also able to access information to more effectively assist the court.

PACER - PUBLIC ACCESS TO COURT ELECTRONIC RECORDS

The PACER system provides improved access to court records for attorneys and other members of the public. The Northern District of Georgia was one of four pilot courts used to develop the system. The user dials in, via telephone lines, from a remote terminal to a personal computer located in the Clerk's Office computer room. The PC is linked to the Unisys computer and is able to access a search of information either through a case name or a case number. The user can request a docket report which is either saved on the user's PC or is printed during on-line access. This service is available approximately 21 hours of the day, thereby improving service to the bar and public.

Currently there are 241 authorized users of the Northern District of Georgia PACER system. The system averages between 150 to 200 calls per week.

CHASER - CHAMBERS ACCESS TO SELECTED ELECTRONIC RECORDS

The CHASER system operates like PACER and will provide access by this court's chambers into the ICMS data base via modem. An expected implementation date for this district has not been set at this time. In addition to docket reports, the CHASER system will be able to provide the chambers user with case management data, such as pending cases, pending motions, and pending schedules reports.

PROCEDURAL INFORMATION MATERIALS

There are two sets of materials that have been extremely helpful in assisting the public and bar in proceeding before the Northern District of Georgia. They are the Pretrial Instructions that are delivered to the parties at the time a case is filed, and Pro Se Guidelines given to the pro se party. Attachments 6 and 7 are copies of the above materials.

TEN PILOT COURTS UNDER THE CIVIL JUSTICE REFORM ACT
Percentage of Pending Cases 3 or More Years Old
As of June 30, 1990

District	Percentage
Eastern Pennsylvania	2.1
Western Oklahoma	3.2
Northern Georgia	4.0
Eastern Wisconsin	6.0
Delaware	8.6
Utah	12.3
Southern California	12.7
Southern New York	12.8
Southern Texas	13.2
Western Tennessee	14.5

ATTACHMENT 1

TWELVE MONTH PERIOD ENDING JUNE 30, 1990
ACTIONS PER JUDGESHIP
OF THE TWENTY-FIVE METROPOLITAN COURTS

DISTRICT	TOTAL FILINGS	PENDING CASES	WEIGHTED CASES	TERM.	NO. TRIALS	% 3-YR. OLD CASES
ARIZONA	462	538	412	405	46	11.5
CALIFORNIA (C)	449	471	487	452	29	8.6
CALIFORNIA (N)	441	458	500	435	17	15.1
CALIFORNIA (S)	406	591	440	435	64	12.7
DISTRICT OF COLUMBIA	254	304	322	248	41	12.0
FLORIDA (M)	562	540	509	537	41	6.0
FLORIDA (S)	428	419	402	376	46	3.9
GEORGIA (N)	**347**	**350**	**379**	**337**	**32**	**4.0**
ILLINOIS (N)	416	346	488	440	27	11.6
LOUISIANA (E)	407	316	354	454	31	2.5
MARYLAND	388	378	400	434	27	10.2
MAINE	393	314	403	391	28	30.8
MICHIGAN (E)	360	342	376	364	24	3.4
NEW JERSEY	426	402	532	441	28	5.9
NEW YORK (E)	449	589	495	391	43	13.1
NEW YORK (S)	354	505	409	344	26	12.8
OHIO (N)	679	1042	876	333	19	5.9
OHIO (S)	417	484	440	458	32	12.6
PENNSYLVANIA (E)	514	537	638	468	36	2.1
PENNSYLVANIA (W)	311	315	310	312	22	7.7
SOUTH CAROLINA	437	358	380	455	39	1.3
TEXAS (N)	566	570	577	555	37	5.8
TEXAS (S)	641	816	587	598	67	13.2
TEXAS (W)	609	565	581	590	88	1.8
VIRGINIA (E)	585	409	647	577	59	23.2
GEORGIA (N)	22nd	18th	20th	21st	T13th	7th

ATTACHMENT 2

The following table sets forth the reported workload of the full-time magistrates at Atlanta.

MAGISTRATE WORKLOAD - Atlanta (5 F/T)

	1986	1987	1988	1989	1990
MISDEMEANORS	367	233	155	150	96
Traffic	272	126	70	49	41
Other	95	107	85	101	55
(Total Trials)	(46)	(34)	(17)	(19)	(8)
PETTY OFFENSES	554	619	344	239	191
Traffic	302	177	189	136	90
Immigration	1	0	16	12	8
Other	251	442	139	91	93
(Total Trials)	(79)	(71)	(52)	(72)	(30)
PRELIMINARY PROCEEDINGS	1779	1931	2098	2518	2353
Search Warrants	165	111	203	277	319
Arrest Warrants	164	252	205	269	159
Initial Appearances	476	526	565	588	577
Detention Hearings	118	139	148	213	191
Bail Reviews	77	57	89	132	90
Preliminary Exams	67	113	114	131	164
Arraignments	524	505	535	699	595
Other	188	228	239	209	258
ADDITIONAL DUTIES	2810	3396	4365	1986	1859
Criminal					
Motions §636(b)(1)(A)	1033	1073	1468	407	244
Motions §636(b)(1)(B)	133	141	131	179	202
Pretrial Conferences	229	247	303	347	274
Evidentiary Hearings	85	55	73	78	93
Other	49	83	67	52	66
Prisoner Litigation					
State Habeas	183	246	295	157	160
Federal Habeas	44	53	60	55	67
Prisoner Civil Rights	246	404	540	87	113
(Evidentiary Hearings)	(10)	(12)	(10)	(5)	(12)
Civil					
Motions §636(b)(1)(A)	572	810	1048	176	201
Motions §636(b)(1)(B)	30	68	99	105	118
Pretrial Conferences	32	72	65	107	80
Evidentiary Hearings	17	8	11	11	13
Special Masterships	6	56	80	125	134
Social Security	147	68	104	75	55
Other	4	12	21	25	39
CIVIL CASES ON CONSENT	4	5	4	19	10
Without Trial	1	5	3	4	0
Jury Trial	0	0	0	9	5
Nonjury Trial	3	0	1	6	5
TOTAL ALL MATTERS	5514	6184	6966	4912	4509

MAGISTRATE WORKLOAD - Rome (P/T)

	1986	1987	1988	1989	1990
PETTY OFFENSES	81	75	85	136	112
Traffic	45	57	69	61	53
Immigration	0	0	0	0	0
Other	36	18	16	75	59
(Total Trials)	(33)	(11)	(20)	(8)	(23)
PRELIMINARY PROCEEDINGS	52	49	66	56	39
Search Warrants	1	6	0	6	2
Arrest Warrants	24	10	18	13	16
Initial Appearances	20	24	39	15	11
Detention Hearings	3	6	6	2	2
Bail Reviews	0	0	0	20	7
Preliminary Exams	4	3	3	0	1
Arraignments	0	0	0	0	0
Other	0	0	0	0	0
ADDITIONAL DUTIES	97	91	62	65	23
Criminal					
Motions §636(b)(1)(A)	0	0	0	1	0
Motions §636(b)(1)(B)	0	0	0	0	0
Pretrial Conferences	0	0	0	0	0
Evidentiary Hearings	0	0	0	1	0
Other	0	0	0	0	0
Prisoner Litigation					
State Habeas	0	0	0	0	0
Federal Habeas	0	0	0	0	0
Prisoner Civil Rights	0	0	0	0	0
(Evidentiary Hearings)	(0)	(0)	(0)	(0)	(0)
Civil					
Motions §636(b)(1)(A)	5	0	2	3	2
Motions §636(b)(1)(B)	0	0	0	3	7
Pretrial Conferences	10	0	0	1	0
Evidentiary Hearings	0	0	0	0	0
Special Masterships	0	0	0	0	0
Social Security	82	91	60	56	13
Other	0	0	0	0	1
CIVIL CASES ON CONSENT	0	1	0	0	0
Without Trial	0	0	0	0	0
Jury Trial	0	0	0	0	0
Nonjury Trial	0	1	0	0	0
TOTAL ALL MATTERS	230	216	213	257	174

MAGISTRATE WORKLOAD - Gainesville (P/T)

	1986	1987	1988	1989	1990
MISDEMEANORS	1	0	0	2	0
Traffic	0	0	0	0	0
Other	1	0	0	2	0
(Total Trials)	(0)	(0)	(0)	(0)	(0)
PETTY OFFENSES	42	46	48	37	65
Traffic	7	11	5	9	6
Immigration	0	0	0	0	0
Other	35	35	43	28	59
(Total Trials)	(34)	(30)	(22)	(22)	(25)
PRELIMINARY PROCEEDINGS	24	35	67	112	103
Search Warrants	0	0	2	4	6
Arrest Warrants	0	10	10	17	4
Initial Appearances	12	13	34	43	26
Detention Hearings	0	0	4	2	3
Bail Reviews	0	3	0	5	18
Preliminary Exams	4	1	4	4	7
Arraignments	6	8	11	31	37
Other	2	0	2	6	2
ADDITIONAL DUTIES	0	0	2	24	45
Criminal					
Motions §636(b)(1)(A)	0	0	0	0	10
Motions §636(b)(1)(B)	0	0	0	0	2
Pretrial Conferences	0	0	0	16	25
Evidentiary Hearings	0	0	0	6	4
Other	0	0	0	2	0
Prisoner Litigation					
State Habeas	0	0	0	0	0
Federal Habeas	0	0	1	0	2
Prisoner Civil Rights	0	0	0	0	2
(Evidentiary Hearings)	(0)	(0)	(0)	(0)	(1)
Evidentiary Hearings	0	0	0	0	0
Special Masterships	0	0	0	0	0
Social Security	0	0	0	0	0
Other	0	0	1	0	0
TOTAL ALL MATTERS	67	81	117	175	213

RULE 920

ASSIGNMENT OF CASES AND DUTIES TO MAGISTRATES

920-1. **Civil Cases Upon Consent of the Parties.**

(a) **Method of Assignment.** Civil cases referred to magistrates upon consent of the parties shall be assigned to the magistrates in the same manner as cases assigned to judges. No case shall be referred to a specific magistrate nor shall any party be told prior to the filing of the joint consent and reference the name of the magistrate to whom the case will be assigned.

(b) **Relief of Magistrates.** It is the intention of the judges of this Court that the handling of the other duties assigned to the magistrates by the Court take priority over the trial of civil cases. Accordingly, the Chief Judge shall, on his own motion or upon the request of any judge, relieve any magistrate from the rotation for assignment of civil trials if such appears necessary to enable the magistrate to perform his other duties expeditiously. A magistrate so relieved shall not be assigned any further civil cases until he satisfies the Chief Judge that he is current in the performance of his other duties.

920-2. **Title VII Actions Brought In Atlanta and Newnan Divisions.**

(a) **Method of Assignment.** All cases brought in the Atlanta and Newnan Divisions pursuant to 42 U.S.C. §2000e-2 (Title VII of the Civil Rights Act of 1964) shall be referred at the time of filing to the full-time magistrates under the authority of 42 U.S.C. §2000e-5(f)(5) who shall, acting as special masters, hear and decide said cases in their entirety. Class actions shall not be assigned under this rule. Where there are additional causes of action arising under federal or state law in a referred case, such action shall also be referred to the magistrates, under Rule 53 of the Federal Rules of Civil Procedure if the parties do not consent to the trial of such issues by the magistrate pursuant to 28 U.S.C. §636(c).

(b) **Relief of Magistrates.** The operation of this rule may be suspended at any time by order of the Chief Judge if it appears after consultation with the Magistrates Committee that:

(1) The docket of the courts permits the trial of such cases within 120 days after issue has been joined; and

(2) At any other time when the efficient disposition of other work of the Court so requires.

An individual judge may withdraw any reference made under this rule at any time when in his discretion the issues are unique, novel, or such withdrawal would otherwise be in the public interest.

920-3. **Duties Assigned to Magistrates.**

(a) **Civil Proceedings.**

(1) Conduct calendar and status calls; determine motions to expedite or postpone the trial of cases for the judges.

(2) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pre-trial proceedings.

(3) Hear and determine procedural and discovery motions and conduct any required hearings in connection therewith.

(4) Conduct voir dire and select petit juries for the court.

(5) Accept petit jury verdicts in civil cases in the absence or disability of a trial judge.

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

(7) Conduct proceedings for the collection of civil fines and penalties for boating violations assessed pursuant to the relevant provisions of Title 46, United States Code Annotated, as amended 1983.

(8) Conduct examinations of judgment debtors, in accordance with Rule 69 of the Federal Rules of Civil Procedure.

(9) Perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

(b) **Criminal Proceedings.**

(1) Supervise, under the direction of the Chief Judge, implementation of the Speedy Trial Act of 1974, 18 U.S.C. §§3161-74 (1982), and this Court's Plan for Achieving Prompt Disposition of Criminal Cases.

(2) Administer the Court's Criminal Justice Plan, by supervising attorney lists, appointing attorneys, and examining vouchers.

(3) Supervise the criminal calendar, including calendar calls and motions to expedite or postpone the trial of criminal cases.

(4) Conduct post-indictment arraignments; accept not guilty pleas; and order a presentence report on a defendant who signifies the desire to plead guilty. A magistrate may not accept pleas of guilty or nolo contendere in cases outside his statutory jurisdiction.

(5) Conduct pretrial conferences, omnibus hearings, and related proceedings.

(6) Issue writs of habeas corpus ad testificandum and habeas corpus ad prosequendum. Issue warrants for commitment to another district in accordance with Rule 40(d)(3), Federal Rules of Criminal Procedure.

(7) Hear and determine motions relating to discovery and inspection and for a bill of particulars.

(8) Hear and determine motions relating to depositions, subpoenas, and for the appointment of interpreters or expert witnesses, including approval of payment vouchers for them.

(9) Hear and determine motions regarding the availability of the defendant for identification or handwriting exemplars.

(10) Receive grand jury returns, in accordance with Rule 6(f), Federal Rules of Criminal Procedure.

(c) **Miscellaneous Duties.**

(1) Coordinate the Court's efforts in such areas as the promulgation of local rules and procedure and administration of the collateral forfeiture system.

(2) Supervise proceedings on request for letters rogatory in civil and criminal cases, upon special designation by the district court.

(3) Receive complaints made under 18 U.S.C. §3184 (1982) for international extradition; issue warrants for the apprehensions of persons so charged; set conditions of release; hear and consider evidence of criminality; and, where the evidence is sufficient, certify the evidence together with a copy of all the testimony taken to the Secretary of State of the United States of America.

(4) Issue administrative inspection warrants.

(5) Issue orders prior to ratification of sale and mortgage foreclosure proceedings on properties financed through government loans (Veterans Administration and Federal Housing Administration).

(6) Conduct research for the Court in specific areas of the law or on individual projects.

(7) If designated, serve as a member of the district's Speedy Trial Act Planning Group, including service as the reporter, if designated. (18 U.S.C. §3168 (1982)).

(8) Perform such other duties as may be assigned by the Court.

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY85-90

Northern District of Georgia

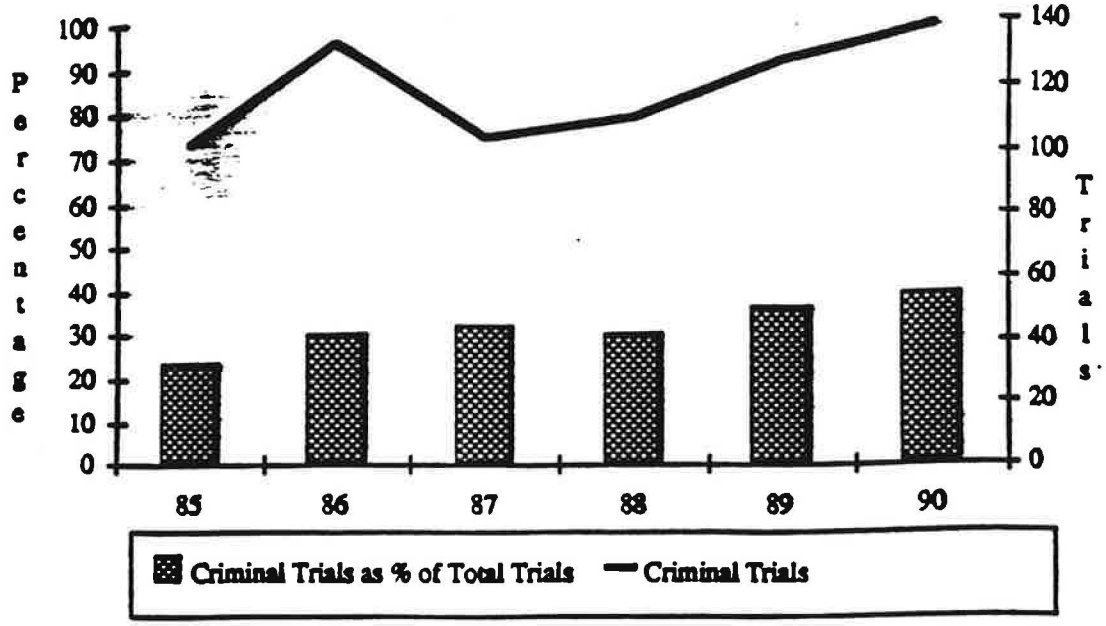
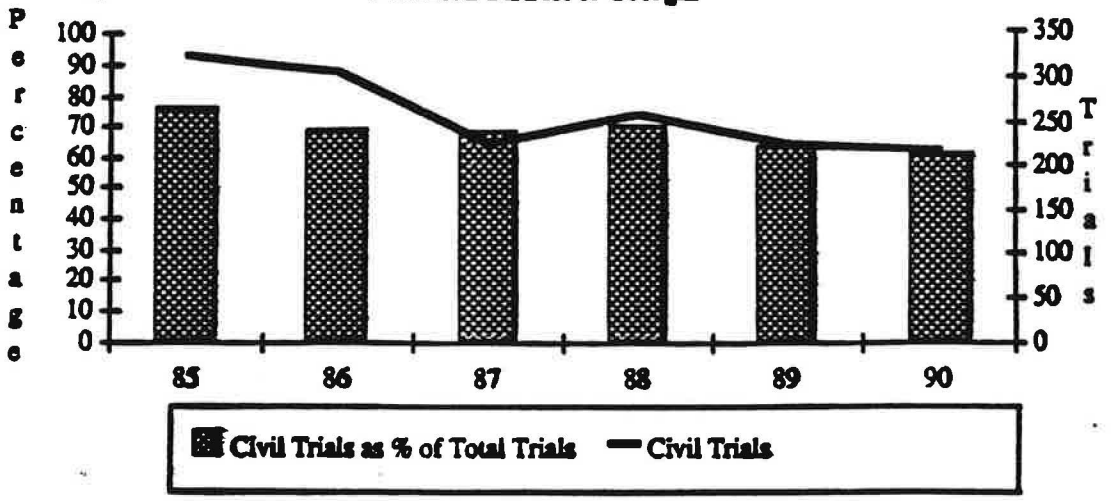


Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY85-90

Northern District of Georgia



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 settlement conferences during and following discovery and the filing of a settlement certificate; 1/ (4) the submission of a joint preliminary statement and scheduling order; 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 scheduling order, 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

---

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

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.

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. LR 201-1.
Settlement Conference During Discovery:	within 30 days after issue is joined. LR 235-2(a).
Settlement Certificate:	within 10 days after initial settlement conference. LR 235-2(a). Appendix B.
Preliminary Statement and Scheduling Order:	within 10 days after Scheduling initial settlement conference. LR 235-3; Appendix B.
Motions not specially limited by rules:	within 100 days after the local complaint is filed. LR 220-1(a); Appendix B.
Motions to Compel:	prior to close of discovery or, if longer, within 10 days after service of the timely-filed discovery responses. LR 220-4; 225-4(d); Appendix B.
Settlement Conference after Discovery:	within 10 days after the close discovery. LR 235-2(b).
Summary Judgment Motions:	within 20 days after the close of discovery, unless otherwise permitted by Court order. LR 220-5; Appendix B.
Close of Discovery:	4 months after the last answer to the complaint 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. Discovery must be initiated sufficiently early in the discovery period to permit the filing of answers and responses thereto within the time limitations of the existing discovery period. LR 225-1(a); Appendix B.
Proposed Pretrial Order:	not later than 30 days after the close of discovery. LR 235-4; Appendix B.
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. LR 255-2.

Instructions

I. Certificate of Interested Persons

Local Rule 201-1. Counsel for all private (nongovernmental) parties shall be required to submit a joint Certificate of Interested Persons within 10 days after 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 LR 201-1(c).

II. Discovery Limitations

A. Interrogatories. Local 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. Local 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. Local Rule 225-1. The basic discovery period in this Court during which discovery must be initiated and completed is four months after the last answer to the complaint is filed or should have been filed. Discovery must be initiated sufficiently early within the discovery period to permit the filing of answers and responses thereto within the time limitations of the existing discovery period. LR 225-1(a). 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. LR 225-1(b).

D. Motions to Compel. Local Rules 220-4; 225-4; 235-3 (Appendix B). 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 LR 225-4(b). Motions to compel may be filed prior to the close of discovery or, if longer, any time within 10 days after service of the responses upon which the objection is based.

III. Settlement Conference and Certificate.

A. Conference During Discovery. Local Rule 235-2(a).

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

2. Within 10 days after the conference, counsel shall file a joint statement certifying that the conference was held, whether the conference was in person or by telephone, the date of the meeting, the names of all participants, and that any offers of settlement were communicated to the clients. The certificate shall also indicate whether counsel intend to hold any future settlement conferences prior to the close of discovery; counsel's opinions as to the prospects of settlement of the case; specific problems, if

any, which are hindering settlement; and whether counsel desire a conference with the Court regarding settlement problems. A form settlement certificate prepared by the Court and which counsel shall be required to use is contained in Appendix B to the Local Rules. A copy of the form is also attached to these instructions.

B. Conference Following Discovery. Local Rule 235-2(b).

Lead counsel are required to meet in person within 10 days following the close of discovery to discuss, in good faith, settlement of the case. All settlement offers must be communicated to the parties and the results of the conference must be reported in the pretrial order.

C. Cases Not Subject to Rule. Local Rule 235-2(c).

Pro se litigants and their opposing counsel and cases involving administrative appeals are exempt from the requirements of this rule.

IV. Preliminary Statement and Scheduling Order.

Local Rule 235-3. For all cases not settled at the initial settlement conference, counsel are required to complete and file (concurrently with the settlement conference certificate) a joint preliminary statement and scheduling order form providing the information requested in LR 235-3. Counsel are required to use the form Preliminary Statement and Scheduling Order 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. Motions not specially limited in time by the local or federal rules must be filed within 100 days after the complaint is filed. Local Rule 220-1(a); 235-3 (Appendix B).

B. Motions to Compel. Local Rules 220-4; 225-4; 235-3 (Appendix B). Unless otherwise ordered by the Court, motions to compel discovery must be filed prior to the close of discovery or, if longer, within 10 days after service of the timely filed discovery responses upon which the motions is based.

C. Summary Judgment. Local Rules 220-5; 235-3 (Appendix 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. The Court will provide the respondent 20 days notice of his right to file materials in opposition to the motion.

VI. Proposed Consolidated Pretrial Order.

Local Rule 235-4. 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.

Local 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 containing the citations to authorities 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

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

SETTLEMENT CERTIFICATE

The undersigned lead counsel for the parties hereby certify that:

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

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

For plaintiff: Lead counsel:

_____.

Other participants:

_____

_____.

For defendant: Lead counsel:

_____.

Other participants:

_____

_____.

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

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

_____.

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

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

(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

vs. : Civil Action No. _____

JOINT PRELIMINARY STATEMENT AND
SCHEDULING ORDER

1. Description of Case:

(a) Describe briefly the nature of this action:

_____

_____.

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

_____

_____

_____

_____

_____

_____

_____

_____.

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

_____

_____

_____

_____.

2. **Counsel:**

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

Plaintiff:

_____

_____

Defendant:

_____

_____

3. **Jurisdiction:**

Is there any question regarding this Court's jurisdiction?

_____ Yes _____ No

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

4. **Parties to This Action:**

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

_____

_____.

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

_____

_____.

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

_____

_____.

(d) The parties shall have a continuing duty to inform the Court of any contentions regarding unnamed parties necessary to

this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

5. **Amendments to the Pleadings:**

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

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

_____

_____.

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

6. **Filing Times For Motions:**

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

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

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

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

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

7. **Discovery Period:**

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

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

8. **Related Cases:**

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

(a) **Pending Related Cases:** _____

_____

(b) **Previously Adjudicated Related Cases:** _____

_____

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

_____ _____

Counsel for Plaintiff Counsel for Defendant

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

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

_____

_____

_____

_____.

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

_____

UNITED STATES DISTRICT JUDGE

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 the other parties, if any.

_____

_____

12.

In accordance with LR 255-1, NDGa, all civil cases to be tried wholly or in part by jury shall be tried before a jury consisting

of six members. Unless otherwise noted herein, each side as a group will be allowed three strikes in accordance with 28 U.S.C. §1870 and Rule 47(b) of the Federal Rules of Civil Procedure. State the basis for any requests for additional strikes. _____

_____

_____

13.

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

_____

_____

_____

14.

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

15.

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

Items of damage not identified in this manner shall not be recoverable.

16.

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

17.

The legal issues to be tried are as follows: _____

_____

_____

_____

_____

_____

18.

Attached hereto as Attachment "F-1" for the plaintiff, Attachment "F-2" for the defendant, and Attachment "F-3", etc. for all other parties is a list of all the witnesses and their addresses for each party. The list must designate the witnesses whom the party will have present at trial and those witnesses whom the party may have present at trial. Expert (any witness who might express an opinion under Rule 702), impeachment and rebuttal witnesses whose use can be reasonably anticipated must be anticipated. Each party shall also attach to his list a reasonably specific summary of the expected testimony of each expert witness.

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 expert, impeachment and 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 date 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, lead counsel met in person on _____, 19_____, to discuss in good faith the possibility of settlement of this case. The Court (_____) has or (_____) has not discussed settlement of this case with counsel. It appears at this time that there is:

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

27.

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

28.

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

29.

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

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

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

_____
UNITED STATES DISTRICT JUDGE

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

_____ _____
Counsel for Plaintiff Counsel for Defendant

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FPI-LEX 3/91

GUIDELINES FOR PRO SE LITIGANTS IN THE NORTHERN DISTRICT OF GEORGIA

These guidelines are designed to make persons who represent themselves in lawsuits familiar with the rules and procedures which must be followed in the United States District Court for the Northern District of Georgia. Lawsuits in federal court go through a number of steps from the time they are begun until they are ultimately resolved by a judge or jury. These guidelines summarize the procedures concerning where and how to file the necessary legal papers, the conduct of discovery into the facts which you may need to prove or defend your case and what you may be required to allow your opponent to discover, trial preparation, and certain other legal procedures which you and your opponent may need to use before your case is finally resolved.

This summary is intended only as a general guide and is not exhaustive. Where applicable, the guidelines cite to the actual rules governing procedure in the federal courts generally and the local rules which are used in the Northern District of Georgia. This summary does not take the place of or relieve a pro se litigant of the responsibility of complying with the Local Rules, the Federal Rules of Civil Procedure, or any other obligations imposed by the law.

NOTE: The following summary does not take the place of or relieve a pro se litigant of the responsibility for complying with this Court's Local Rules, the Federal Rules of Civil Procedure, evidence, or any other obligations imposed by the law

Beginning a Lawsuit

The Complaint

A civil lawsuit is begun by filing a complaint in the office of the Clerk of the Court. The purpose of the complaint is to give notice to the persons being sued and to the court as to the nature of the lawsuit. The complaint should contain: (1) a caption specifying the court in which the suit is brought and the names of the parties; (2) a short and plain statement of why the court has jurisdiction; (3) a short and plain statement of the claim showing that the plaintiff is entitled to relief, including a concise statement of the facts; and (4) a statement of the particular relief sought. The complaint, as well as all subsequent pleadings filed in the case, should be simple and direct; no technical legal jargon is required. Generally each statement of the claim should be made in separately numbered paragraphs, with each paragraph limited as far as possible to a statement of a single set of factual circumstances. The complaint and all subsequent pleadings must include the plaintiff's address and telephone number, and must be signed by the plaintiff. See Rules 8-11, Federal Rules of Civil Procedure. It is mandatory that pro se litigants keep the Clerk of the Court informed of their current address and telephone number during the entire lawsuit. Failure to do so is grounds for dismissal of the case. Local Rule 110-4(a).

Where to File

The United States District Court for the Northern District of Georgia comprises four divisions: Atlanta, Gainesville, Newnan and Rome. Generally, suit must be filed in the division where the defendant resides or where the claim arose. In suits based on diversity of citizenship (i.e., when the plaintiff and defendant are residents of different states), suit may be brought in the division where the plaintiff resides.

The Atlanta Division comprises the counties of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fulton, Gwinnett, Henry, Newton, and Rockdale.

The Gainesville Division comprises the counties of Banks, Barrow, Dawson, Fannin, Forsyth, Gilmer, Habersham, Hall, Jackson, Lumpkin, Pickens, Rabun, Stephens, Towns, Union, and White.

The Newnan Division comprises the counties of Carroll, Coweta, Fayette, Haralson, Heard, Meriwether, Pike, Spalding, and Troup.

The Rome Division comprises the counties of Bartow, Catoosa, Chattooga, Dade, Floyd, Gordon, Murray, Paulding, Polk, Walker, and Whitfield.

The complaint and other pleadings filed must be delivered or mailed to the Clerk's office in the appropriate division at the addresses listed below. Do not send papers concerning your case directly to the judge.

Atlanta Division: mail to the Office of the Clerk, 2211 United States Courthouse, 75 Spring Street, S.W., Atlanta 30335 or deliver to the Financial Intake Unit located on the 22nd floor.

Gainesville Division: Office of the Clerk, Federal Building, Room 201, Gainesville 30501.

Newnan Division: Office of the Clerk, Federal Building, P. O. Box 939, Newnan 30264.

Rome Division: Office of the Clerk, Post Office Building, P. O. Box 1186, Rome 30161.

What to File

A civil cover sheet must be filled out and submitted with the complaint. Civil cover sheets and instructions for completing them are available in the Clerk's office. The complaint and all other pleadings must be on 8 1/2" x 11" paper. The Court allows double spacing or 1 1/2 spacing. Finally, a duplicate of the complaint and all other pleadings must be filed with the original, with each marked accordingly. See Local Rule 200.

Filing Fees

Filing fees must be paid to the Clerk at the time of filing suit. The fee for a civil action is $120.00. The fee for habeas corpus petitions is $5.00.

In Forma Pauperis

A plaintiff who cannot pay the filing fee and costs of the suit may request to proceed in forma pauperis. The request must be submitted with the complaint and must be accompanied by an affidavit setting forth the plaintiff's financial resources. Form affidavits are available in the Clerk's office.

Service of Process

The plaintiff is responsible for serving a summons and a copy of the complaint upon each party to the lawsuit, and for returning proof of the service to the Court. Failure to serve the summons and complaint within 120 days after the filing of the complaint is grounds for dismissal as to each party not served.

A summons for each defendant must be completed and submitted to the Clerk of the Court with the complaint. Summonses are available in the Clerk's office. The summons must show the date by which the defendant is required to respond to the complaint. Defendants have twenty (20) days and United States defendants have sixty (60) days to file an answer after they are served with the complaint. Defendants in cases seeking review of decisions under the Social Security Act have one hundred (100) days to answer. Defendants in cases brought under the Freedom of Information Act have thirty (30) days to answer. Failure to include the response date on the summons is grounds for dismissal of the case. The plaintiff should also submit to the Clerk of

the Court the copies of the complaint which he intends to serve on the defendant or defendants so that the Clerk can mark the copies as filed and enter the number which the case is assigned.

The summons will be executed by the Clerk and returned to the plaintiff along with the service copies of the complaint. The plaintiff then must serve the summons and complaint upon each defendant, either by delivering them or mailing them first class to each defendant or to a person authorized to accept them on the defendant's behalf. Finally, the plaintiff must return to the court the appropriate proof that the defendants have been served.

Where service is made by mail, proof of service must be made by filing with the Court a notice that conforms substantially with form 18-A. A sample of form 18-A is available from the Clerk's office and is also contained in the Appendix of Forms to the Federal Rules of Civil Procedure. Where service is made other than by mail, proof of service can be made by completing and returning to the Clerk of the Court a civil process return form that conforms substantially to the sample form available in the Clerk's office and also contained in Local Rule 205-3. Unlike all other forms referred to in these guidelines, which may be furnished directly to litigants by the Clerk's office, the Clerk of the Court provides only samples of form 18-A and the civil process return form. It is the responsibility of the person serving process to prepare and submit the forms showing proof of service. Federal Rules of Civil Procedure 4(g).

Samples of form 18-A and the civil process return form are therefore attached to these guidelines as Appendices A and B respectively. Plaintiffs proceeding in forma pauperis may request that the summons and complaint be served on their behalf by a United States Marshal or by a person appointed by the Court. Plaintiffs should read Local Rule 205 and Federal Rule of Civil Procedure 4 to become thoroughly familiar with the procedures governing service of process.

Responding to the Complaint

A. The Answer

As stated above, the defendant in an ordinary civil case will have twenty (20) days from the date of service of the complaint to file an answer. The United States or a federal official will have sixty (60) days. Just as the plaintiff in the complaint must make a short and plain statement of the claim, the defendant in the answer must state the defenses to the claim and either admit or deny the specific allegations contained in the complaint. Federal Rule of Civil Procedure 8(b). As with the complaint and all other pleadings, a defendant must file the answer with the Clerk of the Court and serve a copy on the opposing party. Failure to answer or otherwise defend in a timely fashion is grounds for judgment by default against the defendant. Federal Rule of Civil Procedure 55.

B. Motions Against the Complaint

Although most defenses to a complaint must be asserted in the answer, a defendant has the option of asserting certain defenses in the form of a motion to dismiss the complaint before filing the answer. A motion is an application to the court asking that the court take some particular action in the case. Motions to dismiss the complaint typically make the following arguments: (1) the court lacks the power to decide the subject matter of the case or to compel a defendant to appear; (2) service of process was not sufficient; or (3) the complaint fails to state a claim which the law will recognize as enforceable. Federal Rules of Civil Procedure 12(b).

If such a motion is made, a plaintiff will have ten (10) days after it is served in which to file a response. It is very important to respond to such motions to dismiss; otherwise, the case may be dismissed without the plaintiff having an opportunity to present an argument to the Court.

Assignment of Cases and Pretrial Instructions

Civil cases are assigned at random to the judges of the district court. Assignments are made so that no party or lawyer may choose the judge to which the case is assigned.

After a defendant has filed an answer to the complaint, the judge will issue a set of instructions to the parties governing the conduct of the case until trial. It is extremely important to follow the judge's pretrial instructions carefully.

Motions

As stated, a motion is an application to the Court asking that the Court take certain action (e.g., compel discovery, discussed later) with respect to the conduct of the case. Unless made orally during a hearing or trial, motions should be in writing, should state the order or action sought, and must be accompanied by a memorandum setting forth the facts and legal authority supporting the motion. Motions are the primary way for litigants to ask the Court to take action in a case, they must be filed with the Clerk of the Court and served on the opposing party; written motions should not be made directly to the judges.

Each party opposing a motion has ten (10) days to respond after service of the motion, except that twenty (20) days is allowed for response to a motion for summary judgment. (Summary judgment is discussed in a later section). If a party fails to file a response to a motion, the Court will assume that the motion is not opposed.

Dismissals for Failure to Pursue the Lawsuit

Once a case has been filed, it is extremely important for a plaintiff to be diligent in pursuing the case. A plaintiff has an obligation to attempt to make the case ready for trial, and all parties must make their best efforts to complete discovery into the facts of the case within the time limits and according to the procedures discussed in the next section of these guidelines. In addition, a plaintiff must obey all orders of the

Court that may issue in the case, and must appear for all conferences or hearings which a judge may schedule. Failure to do so is grounds for dismissal. Local Rule 230-3.

Discovery

Rules 26 through 37 of the Federal Rules of Civil Procedure provide for pretrial discovery. Local Rule 225 sets forth the discovery procedure followed in this court; in addition, each judge has his or her own set of discovery procedures which are contained in the pretrial instructions outlined earlier. The Local and Federal Rules are followed in every judge's court.

Local Rule 225-1 states that discovery must be completed within four months after the defendant has filed the answer. Local Rule 225-1(b) allows for extension of the discovery period if the Court grants a motion to extend discovery prior to the expiration of discovery.

There are five devices for conducting discovery: (1) depositions; (2) interrogatories to parties; (3) production for inspection of documents and other tangibles; (4) physical or mental examinations; and (5) requests for admission. The Federal Rules also define the scope of discovery, as well as set forth both the means for compelling disclosure and protection from overreaching.

Federal Rule 26(b) states that the matter sought must be "relevant to the subject matter involved in the pending action."

However, the Federal Rules grant immunity from discovery to privileged information, i.e., communication between attorneys and clients, patient and physicians, information that may be self-incriminatory, information involving state or military secrets, etc. Discovery is also limited by the right of any person from whom discovery is sought to seek a court order protecting him from "annoyance, embarrassment, oppression, or undue burden or expense." Federal Rule 26(c).

Depositions (Federal Rules 27-32)

After commencement of a civil action, a deposition may be taken of any witness, whether or not a party. The witness, called the deponent, is examined under oath by the discovering party; adverse parties may cross-examine. A question and answer format is used, and the testimony is recorded. The party that requests the deposition be taken is responsible for having a court reporter present. Also, the party requesting the deposition is responsible for paying the court reporter. The deposition may be taken on oral examination, i.e., by counsel present and putting the questions orally. This method resembles trial examination. Alternatively, examination may be by written questions which are formulated in advance, served on other parties (who in turn may serve cross-questions), and propounded to the witness by a designated officer. Obviously, oral examination provides the examiner with greater flexibility since

he can formulate questions in light of prior responses. For that reason the oral deposition is the preferred device, although it is more expensive because attendance of counsel is required. Indeed, the oral deposition is by far the most widely used of all devices. Partly this is because, unlike most of the devices, it can be aimed at nonparties.

The discovering party initiates the process by notifying the other parties of the time and place of taking the deposition and of the name and address of the deponent. (Where information is sought from an organization, such as a corporation, and the discovering party does not know what person in the organization has the desired information, the organization may be named as the deponent and the matter on which examination is sought specified. The organization then designates the person to testify on that subject.) The deponent, if a nonparty, must be subpoenaed to compel his attendance. This may require taking the deposition at a place other than where the action is pending.

The deposition is taken before one authorized to administer oaths. But that officer is not a judge and has no power to rule on objections that arise during the course of taking the deposition. Some objections simply raise questions of admissibility at trial. As to those the objection can be noted, the answer given and resolution deferred until the deposition is offered in evidence at trial.

After the discovery period has ended, depositions may be taken only pursuant to court order or with the consent of all other parties. The court will allow post-discovery depositions to be taken if the purpose of the deposition is to perpetuate the testimony of a witness who will not be and/or cannot be made to appear at trial.

A deposition is used at trial to contradict or impeach testimony of the deponent given as a witness. Depositions are also used at trial when the deponent is not available to testify at trial. A party may use the deposition of an adverse party at any time for any purpose.

Interrogatories to Parties (Federal Rule 33)

Any party may serve on any other party written interrogatories (questions) each of which must be answered in writing under oath unless it is objected to and the reasons for objection are stated in lieu of an answer. Interrogatories are confined to parties. Parties usually require that the interrogatories be supplemented as the information becomes available.

Production for Inspection of Documents (Federal Rule 34)

A request for the production of tangible items for inspection may be served on any other party. The request should designate the tangible item, usually a document, sought and specify a time, place, and manner of making the inspection.

The party on whom the request is served is required to respond either acquiescing to the request or stating the reasons for objection to production. The requesting party may seek a court order requiring production.

Document discovery is limited to parties and to items in their possession or control. The requesting party's legal right to obtain possession is the central inquiry, and the requested party may not avoid discovery simply by divesting himself of possession. Moreover, documents in the possession of nonparties may be discovered by including in the subpoena addressed to a deponent a requirement that he produce. And an independent court action against the nonparty may be available where the discovery devices are inadequate.

Physical or Mental Examinations (Federal Rule 35)

Federal Rule 35 provides that, when the physical or mental condition of a party or a nonparty over whom a party has custody or legal control is in controversy, on motion the court may order a physical or mental examination. A showing of good cause is a prerequisite. The order defines the cicumstances of the examination. The party against whom the order is made is entitled on request to a copy of the examining physician's report. Such a request, however, obligates that party, in turn, to make available his own, similar reports of examinations

As stated earlier, discovery ends four months after the defendant files the answer unless the time period is extended by court order. No case will proceed to trial until the discovery period has ended, and the court will not compel that any discovery take place after the discovery period has ended. Local Rule 225-4(d).

Before the discovery period has ended any party may ask the court to require another party to comply with discovery requests. This is done by filing a motion to compel discovery. Local Rule 225-4 sets forth the procedure for doing this. A party seeking to compel discovery must: (1) quote verbatim each interrogatory or request for admission or production sought; (2) quote the specific objection raised by the opposing party or state that the opposing party has not responded to the request; (3) state the reasons why the objection is not appropriate; and (4) state that the parties have talked, either in person or by telephone, and have not been able to work out the dispute. (Of course, the parties must talk about the discovery problem before any motion can be filed.)

Ending the Case Without a Trial

A trial is necessary only when there are disputed issues of fact. After the discovery period has ended, it may become apparent that the facts in the case are not in dispute. Since there is no need to have a trial, one or more parties may file a

previously or thereafter made. Moreover, by making such a request, the party examined waives any privilege (the patient-physician privilege) regarding the testimony of one making similar examinations. Usually, but not necessarily, the examination is conducted by a physician designated by the party seeking the examination. The examined party's physician may be present.

Requests for Admissions (Federal Rule 36)

Under Rule 36 a party may serve on another party requests for admission of the genuineness of documents or of facts or of the application of law to fact. The party served is obligated to make reasonable inquiry before responding. Failure to answer constitutes an admission. In the answer the party served may admit, deny, state that he lacks knowledge or information sufficient to permit admission or denial (only after making inquiry), or object to the request. An admission is for the purpose of the pending action only; but it is conclusive, rather than evidentiary, unless leave is obtained to withdraw or amend it. The post-trial sanction for improper failure to admit is payment of the requesting party's expenses of proof. Additionally, the requesting party may seek pretrial judicial scrutiny of the sufficiency of answers or objections; the court may order an answer, amendments to answers given, or even that the matter be deemed admitted.

motion for summary judgment. A motion for summary judgment can be filed at any time after the answer is filed. Each judge in this district states in his or her pretrial instructions when a motion for summary judgment may be filed; therefore, it is important to read these instructions carefully.

Local Rule 220-5 sets forth the procedure for filing a motion for summary judgment. A party files a motion for summary judgment when there are undisputed facts as to part or all of the case so that the court can decide part or all of the case without a trial. The party filing a motion for summary judgment must: (1) state that he is entitled to prevail on some or all of the issues in the case; (2) state on a separate piece of paper all of the facts in the case that are not in dispute; and (3) state the reasons why he should prevail on some or all of the issues in the case.

The opposing party has twenty (20) days to respond to a motion for summary judgment. If the opposing party does not respond, the version of the facts stated by the party that filed the motion will be accepted. In responding to a motion for summary judgment, a party must: (1) state what issues are in dispute; (2) state on a separate piece of paper what facts are in dispute; and (3) state the reasons why summary judgment is not appropriate. It is not enough for a responding party to merely negate the other party's motion; the responding party must present to the court evidence that shows the facts are in dispute and that a trial must be held. A responding party must file with

the court all depositions, answers to interrogatories, documents and other items that show the facts are in dispute. A responding party must have evidence that indicates that a dispute does in fact exist or no trial will be held.

After the motion for summary judgment and the response have been filed, the court, without conducting a hearing, will decide whether or not to grant the motion. If the court grants the motion in whole, the case will be over and judgment will be entered in favor of the party who moved for summary judgment. If the court grants the motion in part, the issues that are in dispute will be tried and those issues on which summary judgment was granted will not be. If the court denies the motion, the case will be set for trial.

Pretrial Procedures

Once the discovery period has ended and discovery is completed, the judge to whom the case is assigned will conduct final pretrial activity in accordance with the pretrial instructions which the judge has mailed to the parties. Usually, pretrial activity will include a conference between the judge and the parties at which they discuss the issues which will be tried and the evidence that is to be used at trial. The judge usually will also require that a pretrial order be submitted by the parties in which the trial plans of the parties are set forth in writing.