

STANDING INSTRUCTIONS REGARDING CIVIL LITIGATION

These instructions apply to all civil actions assigned to Judge William S. Duffey, Jr. They, in combination with this Court's Local Rules and the Federal Rules of Civil Procedure, govern civil cases assigned to Judge Duffey and they constitute an Order of the Court.

Case Administration

1. Contacting Chambers

Benjamin Thurman, Courtroom Deputy Clerk, is your principal chambers point of contact for the processing of a case. Where possible, communication with Mr. Thurman should be by email or in writing, addressed as follows:

Honorable William S. Duffey, Jr.
ATTN: Benjamin Thurman, Courtroom Deputy
1721 United States Courthouse
75 Ted Turner Dr., S.W.
Atlanta, Georgia 30303-3309
Benjamin_Thurman@gand.uscourts.gov

If a telephone call is necessary, you may reach Mr. Thurman at 404-215-1484.

2. Courtesy Copies

For motions and other filings, the delivery of an additional copy of a pleading or document, separate from the copies filed with the Clerk of Court, generally is not necessary and a courtesy copy should not be delivered to chambers. For emergency motions filed pursuant to Local Rule 7.2(B), motions for TRO or motions *in limine*, you should submit courtesy copies of your pleadings to chambers by hand-delivery. The Court will occasionally request a courtesy copy of pleadings but, if they are needed, counsel will be contacted. See also Paragraph 15 regarding Motions for Summary Judgment.

3. Attorney Conduct

If lead counsel has been admitted *pro hac vice*, local counsel in the case is required to be familiar with the matter. The Court presumes that lawyers admitted to the bar of other district courts are competent, diligent, and courteous, but ultimately, local counsel must be accountable and available in a case.

Case Management

1. Jurisdiction Based on Diversity of Citizenship

For a limited liability company (“LLC”), or other unincorporated entity, the plaintiff or removing defendant must list each member of the LLC or unincorporated entity, and provide specific factual allegations to support the citizenship of each member of the LLC or unincorporated entity. See Camden v. Arkoma Assocs., 494 U.S. 185, 195-96 (1990) (citizenship of an unincorporated entity generally depends on the citizenship of all the members composing the organization; limited partnership is a citizen of each state in which any of its partners, limited or general, are citizens); Rolling Greens MHP, L.P. v. Comcast SCH Holdings, L.L.C., 374 F.3d 1020, 1022 (11th Cir. 2004) (“To sufficiently allege the citizenship of these unincorporated business entities, a party must list the citizenships of all the members of the limited liability company”); RES-GA Creekside Manor, LLC v. Star Home Builders, Inc., No. 2:10-cv-207, 2011 WL 6019904, at *3 (N.D. Ga. Dec. 2, 2011) (“[W]hen an entity is composed of multiple layers of constituent entities, the citizenship determination requires an exploration of the citizenship of the constituent entities as far down as necessary to unravel fully the citizenship of the entity before the court.”).

2. Extensions of Time

The Court, and counsel for the parties, are responsible for processing cases toward prompt and just resolutions. To that end, the Court seeks to set reasonable, but firm, deadlines. Motions for extensions, whether opposed, unopposed or by consent, will not be granted as a matter of course. Parties seeking an extension must demonstrate, with specificity, the unanticipated or unforeseen circumstances that require the extension and shall set forth a timetable for the completion of the tasks for which an extension is sought.

3. Extensions of Page Limits

The Court generally does not approve extensions of page limitations. Parties seeking an extension of the page limit must do so at least ten (10) days in advance of their filing deadline. If a party files a motion to extend the page limit at the same time their brief is due, the extension request will be denied absent a compelling and unanticipated reason to exceed the page limit.

4. Conferences

Scheduling, discovery, pre-trial and settlement conferences are efficient ways to structure the processing of a case. The Court encourages the parties to request them when counsel believes the conference will promote the goals of Rule 1 of the Federal Rules of Civil Procedure. If a conference is requested, counsel should prepare an agenda for the conference and submit it to chambers at least three (3) business days before the conference.

5. Leaves of Absence

Counsel is encouraged to review their calendars and file their petitions for leave of absence as early as possible. Counsel does not have to send a copy of the request to chambers.

6. Joint Preliminary Report and Discovery Plan

Local Rule 16.1 provides that, prior to filing the Joint Preliminary Report and Discovery Plan, lead counsel for all parties are required to confer in an effort to settle the case, discuss discovery, limit issues, and discuss other matters addressed in the Joint Preliminary Report and Discovery Plan. LR 16.1, NDGa. This conference may be conducted by telephone.

With respect to the deadlines addressed in the Report, the Court requires that specific due dates be provided. For example, the parties should set forth in the proposed Scheduling Order submitted with the Report the dates for the end of discovery based on the track set by the Court for the category of case involved.

7. Rule 16 Scheduling Conference

In certain cases, the Court may schedule a Rule 16 conference. Whether a conference will be scheduled generally will be determined after the Court reviews the Joint Preliminary Report and Discovery Plan filed by the parties.

8. Detailed Discovery Plan

The Court may require the parties to file a detailed discovery plan. These plans are often required when the parties request a discovery extension or to conduct discovery over a period longer than the discovery period assigned when the case is filed. A detailed discovery plan is required to provide, at a minimum, the date on which written discovery will be served, the persons and entities to be deposed and

the date on which each deposition is scheduled to be conducted (if the plan is required early in the case, the parties will be required to provide a beginning and end date for the period during which depositions will be conducted and to state the date on which specific depositions will be conducted, understanding that not all deponents will have been identified), the date on which experts will be designated and counter-designated and the dates on which each expert will be deposed. If the plan is required early in the case, the parties will be required to provide a beginning and end for the period during which expert depositions will be conducted. The parties are encouraged to submit detailed discovery plans even in cases for which a plan is not required by the Court.

9. Initial Disclosures

Initial disclosures should be as complete as possible based on information reasonably available. Responses may not be reserved to be provided at a later time. The parties should file a certificate of service indicating that the initial disclosures were served.

10. Written Discovery

Responses to written discovery must be in writing and prepared in accordance with the applicable Federal Rules of Civil Procedure and Local Rules of this Court. Specific objections must be made to each discovery request. General objections are not allowed. If an objection is made to certain specific parts of a written discovery request, responses and documents must be provided in response to those portions to which an objection was not asserted. Evidence introduced at trial which was requested but not disclosed during the discovery period will not be admitted.

11. Discovery Motions

The Court requires parties to submit their discovery disputes to the Court before motions to compel, or for a protective order, are filed. The dispute should be described in a joint letter, not to exceed three (3) pages single-spaced, to the Court in which the parties describe the dispute and succinctly summarize their respective positions and the relief requested. These disputes may be resolved by the Court in an email stating the Court's position, an Order entered on the docket, or in a telephone conference with the Court. This dispute resolution process avoids the expense and delay of discovery motion practice. The Court generally is available to convene a telephone conference or respond in writing shortly after it is advised of a dispute.

If a dispute cannot be resolved in a conference or a written response, the Court will advise the parties how to present the dispute for resolution.

The Court is available by telephone to address disputes that arise during depositions.

12. Confidentiality Agreements

If the parties find that a confidentiality agreement is necessary, the following language should be included in any consent confidentiality order submitted for the Court's consideration:

Any document, material or other information designated as entitled to protection under this Order which is submitted to the Court in support of a pleading, or introduced at a hearing, trial or other proceeding, in this action may continue as protected material only by Order of the Court in accordance with these procedures. If information entitled to protection under this Order is submitted to the Court in support of a pleading, such information shall maintain its privileged status for ten (10) days. During this ten-day period the party who designated the information as protected may move the Court to continue the protected status of the information by submitting to the Court a motion for continued protection. The opposing party shall not be permitted to file a response to the motion. The copy of the motion must be delivered to chambers and accompanied by an un-redacted copy of the designated material(s). As an aid to the Court, the un-redacted copy must be tabbed, marking each section for which continued protection is being requested, so the Court can easily review and determine if continued protection will be granted.

A party who seeks to introduce protected information at a hearing, trial or other proceeding shall advise the Court at the time of introduction that the information sought to be introduced is protected. If the party who designated the information as protected requests the protection be continued, the Court will review the information, *in camera*, to determine if the information is entitled to continued protection.

Please Note: It is not the Court's practice to allow entire pleadings to be sealed from public view, but only allow the redaction of specific portions of a pleading if a proper foundation is laid that protection of confidential or proprietary information is required. Counsel should use discretion in

requesting protection for a document, material or information within documents or pleadings. Request protection for only those portions of a pleading or document that you believe should, and upon which there is legal authority to allow, material to remain protected, e.g., bank account numbers, scientific formulas, confidential pricing calculations.

13. Close of Discovery

All discovery must be initiated to ensure that answers and responses to the discovery are due before the close of discovery. The Court will not enforce side agreements to conduct discovery beyond the end of the discovery period, and the Court will not compel responses to discovery that were not initiated in time for responses to be made before discovery ends.

Motions requesting extensions of time must be made prior to expiration of the existing discovery period and will be granted only in those cases where the attorneys could not have anticipated that certain circumstances would arise that would require an extension.

The Court will not permit the taking of depositions for the preservation of testimony after the close of discovery, absent a good faith reason to do so. A party must request the Court's permission to conduct a preservative deposition.

14. Expert Witnesses

The requirements of Local Rule 26.2(C) must be met. Failure to identify an expert and serve an expert report as required by Local Rule 26.2(C) often results in the expert being precluded from offering testimony in a case.

15. Motions for Summary Judgment

In addition to the requirements of Local Rule 56.1, please file summary judgment pleadings as follows:

Movant's Statement of Undisputed Material Facts:

Each of the movant's numbered undisputed material facts must be accompanied by citation to specific record evidence to support such fact. **The movant shall hand-deliver to the Court the excerpts of the record evidence to which the movant cites. The excerpts shall be included in an appendix. The appendix is required to contain separate, numbered tabs or groups corresponding to each**

numbered statement of material fact. Within each tab or group, the movant shall include copies of the record evidence that is cited as support for the corresponding statement of material fact. For example, if the movant's third undisputed material fact cites to two instances of deposition testimony, the third tab or group in Movant's Supporting Excerpts should contain copies of the two relevant excerpts from the deposition transcripts (plus a page from the record before and after the cited excerpt). If excerpts are relied upon to support an earlier numbered statement and they appear elsewhere in the appendix of Supporting Excerpts, the undisputed fact may refer to the previously numbered tab where the excerpts are collected, so long as the specific documents in such tab or group upon which the party relies is specifically identified.

Response to the Statement of Undisputed Material Facts:

Undisputed facts alleged by the movant will be deemed admitted unless specifically controverted by the respondent. In responding to undisputed facts, the opposing party should first state whether the fact is disputed or undisputed. If disputed, the opposing party shall cite to the record facts that create the dispute and **provide to the Court excerpts of the record upon which the party relies.** The excerpts shall be included in an appendix, organized in the form described above, and hand-delivered to the Court.

Respondent's Statement of Additional Facts:

In addition to filing a response to the movant's numbered material facts not in dispute, the respondent may also file a numbered statement of facts that it contends are material and present a genuine issue for trial. The respondent must cite to specific evidence in the record to support each of its additional facts. **Excerpts supporting each statement also should be provided to the Court** in the form described above for the movant's Statement of Material Facts.

Response to Statement of Additional Facts:

Additional facts alleged by the respondent will be admitted as true or disputed unless specifically controverted by the movant. The movant shall respond to a statement of additional facts in the manner described above for responding to the movant's Statement of Undisputed Material Facts.

The interpretation of facts or legal argument is not allowed in the statement of undisputed material facts, statement of additional facts or the parties' responses thereto.

Documents and other record materials, such as depositions, which are relied upon by a party moving for or opposing a motion for summary judgment are required to be filed in their entirety. These should be filed separately from the excerpts discussed above. Courtesy copies of these materials should not be submitted to the Court unless specifically requested.

16. Pretrial Order

If a motion for summary judgment is pending, the proposed consolidated Pretrial Order is required to be filed within thirty (30) days after the entry of an order ruling on the motion for summary judgment, unless a specific due date is set.

Before proposing voir dire questions to the Court, as required in the Pretrial Order, the parties shall go to the district court's website at www.gand.uscourts.gov. On the home page, select Individual Judge Instructions, which will direct you to Cases before Judge Duffey (the "Court's Website Instructions"). Here, the Court has provided its standard Qualifying Questions and Background Jury Questions to be asked of prospective jurors at trial. Please do not duplicate these questions in your proposed voir dire.

The statement of contentions in the Pretrial Order governs the issues to be tried. The plaintiff should make certain that all theories of liability are explicitly stated, together with the type and amount of each type of damage sought. The specific actionable conduct should be set out, and, in a multi-defendant case, the actionable conduct of each defendant should be identified. The defendant should explicitly set out any affirmative defenses upon which it intends to rely at trial, as well as satisfy the above requirements with respect to any counterclaims.

The exhibits intended to be introduced at trial shall be specifically identified. The parties will mark their exhibits using Arabic numbers (for example, Plaintiff's Exhibit 1 or Plaintiff Jones-1 if more than one plaintiff). The parties shall adhere to the guidelines for color coding of exhibit stickers set forth in Local Rule 16.4(B)(19)(b). The parties shall number each exhibit separately. For example, exhibits should not be grouped as "hospital records" or "photographs."

In listing witnesses or exhibits in the Pretrial Order, a party may not reserve the right to supplement their list and may not adopt another party's list by reference. Witnesses and exhibits not identified in the Pretrial Order may not be used during trial, unless it is necessary to allow evidence to be introduced to prevent a manifest injustice.

In preparing the Pretrial Order, each party shall identify to opposing counsel each deposition, interrogatory or request to admit response, or portion thereof, which the party expects to or may introduce at trial, except for impeachment purposes. All exhibits, depositions, and interrogatory and request to admit responses shall be admitted at trial when offered unless the opposing party asserts a specific objection in the Pretrial Order.

17. Pretrial Conference and Motions in Limine

The Court will conduct a pretrial conference to simplify the issues to be tried and to rule on evidentiary objections raised in the pretrial order and motions *in limine*. When the case is set for trial, the parties will be advised of the briefing schedule for motions *in limine*.

The parties are required, five (5) business days before the pretrial conference, to identify in writing to the Court the specific witnesses they will call in their case-in-chief at trial. The list should be sent by email to Mr. Thurman. The Court generally does not require the parties to bring with them to the pretrial conference the exhibits to which there are objections. It is the Court's practice to consider the admissibility of exhibits at trial where the Court will have context for ruling on objections to exhibits. To the extent there is a group of exhibits, or a particular issue to which they pertain, where a ruling on the group or issue may impact the admissibility of exhibits, these groups and issues may be appropriate subjects for Motions *in Limine*.

18. Requests to Charge

Requests to charge and proposed verdict forms are required to be submitted to the Court five (5) business days before the first day of trial. The Court has a standard charge in civil cases covering subjects such as the standard of proof, experts and witness credibility. The Court's standard civil jury charges are found on the Court's Website Instructions. The parties should not submit charges on these general matters unless a party believes the Court's standard charge is inadequate or inaccurate.

The Court requires the parties to submit requests to charge on the specific issues in the case. Each request, with citations of authority, shall be on a separate sheet of paper, numbered and the submitting party should be indicated. The Court is familiar with and has confidence in the Eleventh Circuit Pattern Jury Charges, and the parties should propose the pattern charges unless the pattern instruction is inaccurate or incomplete. A party proposing a change to a pattern instruction

should submit a redline version of the pattern instruction showing the requested change. On questions of Georgia law, the Court encourages the parties to refer to the Suggested Pattern Jury Instructions by the Council of Superior Court Judges of Georgia. Charges for which there is not a pattern charge must contain citations to the legal authorities supporting the charge requested.

The original request to charge shall be filed with the Clerk of Court, one copy shall be provided to opposing counsel and two copies shall be provided to chambers. The copies provided to chambers shall include, behind each requested charge, a copy of all authority for the request. Prior to submitting your charges, refer to the Court's general charges on the Court's Website Instructions.

19. *Proposed Findings of Fact and Conclusions of Law*

Counsel appearing in non-jury trials must submit proposed findings of fact and conclusions of law at least five (5) business days before the first day of trial. The original shall be filed with the Clerk of Court, one copy shall be delivered to opposing counsel, and one copy shall be delivered to chambers, along with a computer disk containing the proposed findings of fact and conclusions of law in Microsoft Word format.

20. *Trial*

The Court usually is in session from 9:00 a.m. until 5:00 p.m.

Opening statements are limited to fifteen (15) minutes per side. Closing arguments are limited to thirty (30) minutes per side. Parties requesting more time for these presentations must seek leave of Court at the pretrial conference.

When the jury is in the courtroom it is the Court's and the litigants' responsibility to use the jury's time efficiently. If matters need to be taken up outside the presence of the jury, they should be raised during breaks or before the start of the trial day. The Court will be available at 8:30 a.m. and until 6:30 p.m. each day of trial for these conferences.

21. *Technology*

Our courtroom has various electronic equipment for use by counsel at trial. For more information about the equipment, please contact Mr. Thurman. It is the parties' responsibility to make sure they know how to use the equipment available,

to have the cords necessary to hook up to the equipment and for ensuring that the parties' equipment interfaces with the Court's technology.

22. Security

A lawyer who has been issued an attorney ID card by the United States Marshals Service may bring exhibits, laptops—virtually anything necessary for use at trial—into the courthouse. If a lawyer does not have this card, counsel will have to obtain from the Court an Order allowing counsel to bring trial exhibits and support equipment into the courthouse. The parties need to coordinate with Mr. Thurman for an Order to be issued. This should be done several days before the hearing or trial at which documents and equipment will be needed.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE