

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

JACK E. ALDERMAN

Plaintiff,

v.

JAMES E. DONALD, in his capacity  
as Commissioner of the Georgia  
Department of Corrections; HILTON  
HALL, in his capacity as Warden,  
Georgia Diagnostic and Classification  
Prison; DOES 1-50, UNKNOWN  
EXECUTIONERS, in their capacities  
as employees and/or agents of the  
Georgia Department of Corrections

Defendants.

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CIVIL ACTION  
FILE NO. 1:07-CV-896-BBM

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**DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR ORAL  
ARGUMENT ON DEFENDANTS' MOTION TO DISMISS**

**COME NOW** James E. Donald, Commissioner, Georgia Department of  
Corrections, and Hilton Hall, Warden, Georgia Diagnostic and Classification  
Prison,<sup>1</sup> by counsel, the Attorney General for the State of Georgia, respond to  
Plaintiff's request for oral argument on Defendants' pre-answer Motion to Dismiss.

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<sup>1</sup> Plaintiff has also specified numerous unknown, unnamed party Defendants in this lawsuit. (R1-1, ¶ 4). To the extent that any such individuals have been properly named and served, it is the intent of counsel to represent the individuals. To the extent that there has not been proper service, a "special appearance" is being made for the purpose of presenting this response on their behalf.

1.

Plaintiff filed the instant action challenging “the manner in which Defendants will execute him”. (R1-1). On May 21, Defendants filed a pre-answer motion to dismiss establishing that Plaintiff failed to exhaust administrative remedies. (R1-13). Plaintiff responded to the motion alleging that the motion and attachments were improper and that the issue presented in the instant lawsuit is not grievable so that exhaustion is not required. (R1-16). Defendants submitted a reply. (R1-18). Thereafter, Plaintiff requested that the Court schedule oral argument on the motion to dismiss. (R1-19).

2.

Plaintiff recognizes that *Local Rule 7.1E.*, governs oral arguments on motions as he cites the *Rule* in his request. The *Rule* states that motions are usually decided without oral argument. However, the court has the discretion to order argument.

In this case, Plaintiff simply asks for argument without setting forth any basis such as novel or complicated issues. Indeed, as set forth in Defendants’ pleadings, the issue before the court is very basic and routine: did the Plaintiff file the instant action before exhausting administrative remedies? Accordingly, Defendants submit that there is no need for oral argument in this case.

3.

Although Defendants submit that oral argument is not necessary, should the court believe that argument would be beneficial, Defendants stand ready to argue the issues in this case at the court's convenience.

Respectfully submitted this 13th day of June, 2007.

Georgia

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## **CERTIFICATION AS TO FONT**

Pursuant to N.D. Ga. Local Rule 7.1 D, I hereby certify that this document is submitted in Times New Roman 14 point type as required by N.D. Ga. Local Rule 5.1(b).

Georgia

/s/ Eddie Snelling, Jr.

Bar No. 665725  
Senior Assistant Attorney General

## CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2007 I electronically filed **DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR ORAL ARGUMENT** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

William E. Hoffman, Jr.  
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And, prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed upon:

James Ringer  
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Georgia

/s/ Eddie Snelling, Jr.  
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