

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

INSTRUCTIONS FOR COUNSEL - SOCIAL SECURITY APPEAL CASES

Contents of Filing Package:

- 1) Form Complaint For Appeal of A Decision by the Commissioner of Social Security**
- 2) U.S. Agency Notification Sheet For Service**
- 3) Civil Cover Sheet**
- 4) Application To Proceed Without Prepayment Of Fees**
- 5) Civil Summons**
- 6) Social Security Action - Case Assignment Form**
- 7) Consent to Proceed Before a U.S. Magistrate Judge**
- 8) Copy of General Order #18 - Social Security Action Scheduling Order**

Dear Counsel:

Please find attached the necessary forms for filing an action against the Commissioner of Social Security. Follow the instructions below for completing the forms. After you have filled out the various forms you should file them with the clerk consistent with General Order #22, Section 4.2. Once you have completed service, please remember to electronically file affidavits of service.

1) Complete the Form Complaint - Electronically file complaint in the **00-at-99999** case in CM/ECF. Further directions can be found at the court's website,

<http://www.nynd.uscourts.gov/cmecf/documents/attycaseopeninginstructions.pdf>

* Please attach a Copy of the Appeals Council Decision to the Complaint Form.

2) Complete the Application to Proceed Without Prepayment of Fees and Affidavit (2 sided form)

- If the Court grants the Application to Proceed Without Prepayment of Fees the Filing Fee will be waived.

* If you are going to pay the filing fee do not complete this form.

3) Complete the Civil Cover Sheet

4) Complete the summons - Pursuant to General Order #18 the Government has 100 days to answer or move.

* Please complete all copies of the summons, the clerk will issue the summons and attach one to each copy of the complaint to be served.

5) A Notice to Consent to the Exercise of Civil Jurisdiction by A Magistrate Judge is attached for your review and consideration.

6) A Social Security Action - Case Assignment Form. The Clerk will complete this form and return it to you when the action is filed with the Court.

7) A copy of General Order #18 - Scheduling Order for Social Security Actions - Please keep this order.

REMEMBER TO SIGN ALL ORIGINAL DOCUMENTS

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

NOTICE

TO: Counsel Filing Social Security Appeal Cases

FROM: The Clerk's Office

SUBJECT: Service of the Summons and Complaint

When serving a case against the Social Security Administration, you must also serve the Attorney General of the United States and United States Attorney for the district in which you file your action along with the Commissioner of Social Security.

Service upon the United States, and its Agencies, Corporations or Officers must be in accordance with Federal Rule of Civil Procedure 4(I).

SERVICE OF SOCIAL SECURITY COMPLAINTS

1) United States Attorney General
Constitution Avenue & 10th St., N.W.
Washington, D.C. 20530

(Summons and Complaint to be served by Registered or Certified Mail)

2) Office of the Regional Chief Counsel
Region II
26 Federal Plaza, Room 3904
New York, New York 10278-0004

(Summons & Complaint to be served by Registered or Certified Mail)

3) LOCAL OFFICES OF THE U.S. ATTORNEY - NDNY

United States Attorney
Northern District of New York
100 S. Clinton Street
Room 900
Syracuse, NY 13261-7198

United States Attorney
Northern District of New York
James T. Foley U.S. Courthouse Bldg.
Room 231
Albany, NY 12207-2924

United States Attorney
Northern District of New York
15 Henry Street, 3rd Floor
Binghamton, NY 13902

(Service upon the U.S. Attorney for the Northern District may be made by delivering a copy of the Summons and Complaint to one of the local offices or by sending the Summons and Complaint by Registered or Certified Mail)

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

FORM COMPLAINT FOR APPEAL OF A DECISION
BY THE COMMISSIONER OF SOCIAL SECURITY

Plaintiff
V. Civil Action No : ____-CV-____
Commissioner of Social Security
Defendant

The above-named plaintiff makes the following representations to the Court for the purpose of obtaining judicial review of a decision of the defendant adverse to the plaintiff:

1. The plaintiff is a resident of (city) _____, in the State of _____ . The last four digits of the Plaintiffs social security number are ____ ____ ____ ____ .
2. The plaintiff complains of a decision which adversely affects the plaintiff in whole or in part. The decision has become the final decision of the Commissioner for purposes of judicial review and bears the following caption:

In the case of	Claim for
_____	_____
(Claimant)	
_____	(Last 4 digits of Social Security Number)
(Wage Earner)	

3. A copy of the Action of the Appeals Council is attached to this Complaint.
4. The plaintiff has exhausted administrative remedies in this matter and this Court has jurisdiction for judicial review pursuant to 42 U.S.C. § 405(g).

WHEREFORE, plaintiff seeks judicial review by this Court and the entry of judgment for such relief as may be proper, including costs.

Dated _____

Signature of Attorney of Plaintiff Pro Se

Address of Attorney or **Plaintiff Pro Se

Attorney Bar Roll Number _____

****Pro Se plaintiff(s) shall only provide City and State**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE _____

SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

Plaintiff(s)

v.

Defendant(s)

**APPLICATION TO PROCEED
WITHOUT FULL PREPAYMENT
OF FEES; AFFIDAVIT AND
AUTHORIZATION FORM**

CASE NUMBER:

I, _____ declare that I am (check appropriate box)

petitioner/plaintiff/movant other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 U.S.C. § 1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated?: Yes No (If "No" go to Part 2)

If "Yes" state the place of your incarceration: _____

Are you employed at the institution? Yes No

Do you receive any payment from same? Yes No

Notice to Inmates: The Certificate Portion Of This Affidavit Must Be Completed.

2. Are you currently employed?: Yes No

a. If the answer is "Yes" state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and the name and address of your last employer.

3. In the past twelve months have you received any money from any of the following sources?
- | | | | | | |
|----|--|--------------------------|-----|--------------------------|----|
| a. | Business, profession or other self employment | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| b. | Rent payments, interest or dividends | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| c. | Pensions, annuities or life insurance payments | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| d. | Disability or workers compensation payments | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| e. | Gifts or inheritances | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| f. | Any other sources | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |

If the answer to any of the above is "Yes" describe each source of money and state the amount received **and** what you expect you will continue to receive.

4. Do you have any cash, checking or savings accounts? Yes No
If "Yes" state the total amount _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or **any other assets**? Yes No
If "Yes" describe the property and state its value (Attach additional sheets as necessary):

6. List the person(s) who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

I declare under penalty of perjury that the above information is true and correct.

DATE

SIGNATURE OF APPLICANT

CERTIFICATE

(To be completed by appropriate official at institution of incarceration)

I certify that the applicant named herein has the sum of \$ _____ on account to his/her credit at (Name of Institution) _____.

I further certify that the applicant has the following securities to his/her credit: _____

I further certify that **during the past six(6) months** the applicant's average balance was \$ _____

DATE

SIGNATURE OF AUTHORIZED OFFICER

UNITED STATES DISTRICT COURT

NORTHERN

District of

NEW YORK

SUMMONS IN A CIVIL ACTION

V.

Commissioner of Social Security

CASE NUMBER:

TO: (Name and address of Defendant)

United States Attorney General
Constitution Avenue & 10th St., NW
Washington, DC 20530

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is served on you with this summons, within 100 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT

NORTHERN

District of

NEW YORK

SUMMONS IN A CIVIL ACTION

V.

Commissioner of Social Security

CASE NUMBER:

TO: (Name and address of Defendant)

Office of General Counsel
Region II, SSA
26 Federal Plaza, Room 3904
New York, NY 10278-0004

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is served on you with this summons, within 100 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and complaint was made by me ⁽¹⁾	DATE
NAME OF SERVER (<i>PRINT</i>)	TITLE

Check one box below to indicate appropriate method of service

- Served personally upon the defendant. Place where served:

- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
 Name of person with whom the summons and complaint were left:

- Returned unexecuted:

- Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL \$0.00
--------	----------	--------------

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date *Signature of Server*

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT

NORTHERN

District of

NEW YORK

SUMMONS IN A CIVIL ACTION

V.

Commissioner of Social Security

CASE NUMBER:

TO: (Name and address of Defendant)

United States Attorney
100 South Clinton ., PO Box 7198
Syracuse, NY 13261-7198

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is served on you with this summons, within 100 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and complaint was made by me ⁽¹⁾	DATE
NAME OF SERVER (<i>PRINT</i>)	TITLE

Check one box below to indicate appropriate method of service

- Served personally upon the defendant. Place where served:

- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
 Name of person with whom the summons and complaint were left:
- Returned unexecuted:

- Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL \$0.00
--------	----------	--------------

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date *Signature of Server*

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT

District of _____

Plaintiff
V.

NOTICE, CONSENT, AND ORDER OF REFERENCE —
EXERCISE OF JURISDICTION BY A UNITED STATES
MAGISTRATE JUDGE

Case Number: _____

Defendant

**NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION**

In accordance with the provisions of 28 U.S.C. §636(c), and Fed.R.Civ.P. 73, you are notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court’s jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of this district court.

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with provisions of 28 U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Party Represented	Signatures	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ORDER OF REFERENCE

IT IS ORDERED that this case be referred to _____
United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. §636(c) and Fed.R.Civ.P. 73.

Date United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED SEPT. 12, 2003
LAWRENCE K. BAERMAN, CLERK

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK**



GENERAL ORDER NO. 18

In the Matter of:

**NORTHERN DISTRICT ORDER DIRECTING FILING OF
ANSWER, ADMINISTRATIVE RECORD, BRIEFS, AND
PROVIDING FOR ORAL HEARING ON APPEAL FROM
SOCIAL SECURITY BENEFITS DECISION**

Dated: September 12, 2003
Supersedes the January 24, 2002

and September 19, 2001 General Orders

Appeals from a final decision of the Secretary of Health and Human Services denying plaintiff's claim for Social Security benefits have been referred to one of the Magistrate Judges pursuant to this Court's Local Rule 72.3(d) and either 28 U.S.C. Section 636(b) for review and recommendation as to disposition or 28 U.S.C. Section 636(c) for all further proceedings and entry of final judgment, and it is hereby

ORDERED, that after service of the Summons and Complaint has been effected, the defendant shall file either an answer, together with a certified copy of the transcript of the administrative proceedings, **within 100 days** of said service, or a motion to dismiss¹ **within 60 days** of said service, and it is further

ORDERED, that if a motion to dismiss is denied, the defendant shall file an answer, together with a certified copy of the transcript of the administrative proceedings, **within 30 days** of service of said denial, and it is further

ORDERED, that after the answer is filed, counsel for the parties or the party, if appearing pro se, submit briefs in accordance with the following requirements:

- (1) **Within forty-five (45) days** from the filing of the answer, plaintiff shall serve and file a brief setting forth all errors which plaintiff contends entitle plaintiff to relief. The brief shall contain under the appropriate headings and in the order here indicated:

¹Any such motion to dismiss shall be briefed in accordance with Local Rule 7.1 (b)(2) and made returnable before the assigned district judge (or magistrate judge who is conducting all proceedings pursuant to 28 U.S.C. §636(c)).

(a) A statement of the issues presented for review, set forth in separate numbered paragraphs.

(b) A statement of the case. This statement should indicate briefly the course of the proceeding and its disposition at the administrative level and should set forth a general statement of the facts. The statement of the facts shall include plaintiff's age, education, work experience and a summary of other evidence of record. Each statement of fact shall be supported by reference to the page in the record where the evidence may be found.

(c) An argument. The argument may be preceded by a summary. The argument shall be divided into sections separately treating each issue and must set forth the contentions of plaintiff with respect to the issues presented and reasons therefor. Each contention must be supported by specific reference to the portion of the record relied upon and by citations to statutes, regulations, and cases supporting plaintiff's position. Cases from other districts and circuits should be cited only in conjunction with relevant cases from this jurisdiction or if authority on point from this jurisdiction does not exist Citations to unreported district court opinions must be accompanied by a copy of the opinion.

(d) A short conclusion stating the relief sought. The issue before the Court are limited to the issues properly raised in the briefs.

- (2) **Within forty-five (45) days** after service of plaintiff's brief, defendant shall serve and file a brief which responds specifically to each issue raised by plaintiff. Defendant's brief shall conform to the requirements set forth above for plaintiff's brief, except that a statement of the issues and a statement of the case need not be made unless defendant is dissatisfied with plaintiff's statement thereof.

No party shall file or serve a brief that exceeds twenty-five (25) pages in length, double spaced, unless leave of the judge hearing the appeal is obtained prior to filing the brief. All briefs shall be in the form prescribed by Local Rule 10.1(a) and shall contain a table of contents and, wherever possible, parallel citations.

IT IS FURTHER ORDERED, that upon the receipt of the defendant's Brief as provided herein, the Clerk shall forward the entire file to the assigned Magistrate Judge. The Magistrate Judge will treat the proceeding as if both parties had accompanied their briefs with a motion for judgment on the pleadings pursuant to Rule 12 (c) of the Federal Rules of Civil Procedure, and it is further

ORDERED that when a plaintiff wishes to support an appeal with new evidence, such evidence must be accompanied by a legal memorandum setting forth an argument for the acceptance of the new evidence based upon the three-part showing required by the regulations. First, a plaintiff must show that the evidence he or she wishes to submit is "new" and not simply restating information that is already in the record. Second, a plaintiff must show that the new evidence is "material." In other words, it must be shown that the evidence is relevant to the plaintiff's condition during the time period for which benefits were denied and that the evidence helps to prove that the plaintiff is in fact entitled to benefits. Third, the memorandum must include a statement setting forth good cause for the failure to present the evidence earlier. Tirado v. Bowen, 842 F.2d 595, 597 (2d Cir. 1988). See also 42 U.S.C. § 405(g) (1995). The new evidence and accompanying memorandum shall be filed and a copy shall be served upon the counsel for the Commissioner of Social Security, the United States Attorney.

Upon receipt, the United States Attorney will have **THIRTY (30) DAYS** to file opposition papers.

And it is further

ORDERED, that generally no oral argument will be heard. If, however, an oral hearing is requested and scheduled before the assigned Magistrate Judge, notice of same will be sent to the parties, and at said hearing counsel should be fully prepared to argue the facts, issues, and legal contentions in this case, and it is further

ORDERED, that the Clerk shall serve a copy of this Order upon counsel for the parties herein upon the filing of the complaint, and it is further

ORDERED, that the Clerk shall notify the parties of the name of the Magistrate Judge assigned to their proceeding.

ORDERED, that this General Order shall apply to all United States Magistrate Judges in the Northern District of New York.

NOTIFICATION OF THE CONSEQUENCES OF FAILING TO FILE A BRIEF

AS REQUIRED BY PARAGRAPH (1)(a-d)

PLAINTIFF'S BRIEF IS THE ONLY OPPORTUNITY FOR PLAINTIFF TO SET FORTH THE ERRORS PLAINTIFF CONTENDS WERE MADE BY THE COMMISSIONER OF SOCIAL SECURITY THAT ENTITLE PLAINTIFF TO RELIEF. THE FAILURE TO FILE A BRIEF AS REQUIRED BY THIS ORDER WILL RESULT IN THE CONSIDERATION OF THIS APPEAL WITHOUT THE BENEFIT OF PLAINTIFF'S ARGUMENTS AND MAY RESULT IN A DECISION HEAVILY INFLUENCED BY THE COMMISSIONER'S VERSION OF THE FACTS AND SUBSEQUENT DISMISSAL OF YOUR APPEAL.

DATED September 12, 2003

/S/
Frederick J. Scullin, Jr., Chief Judge
United States District Court
Northern District of New York