

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
January 22, 2016
LAWRENCE K. BAERMAN, CLERK

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



GENERAL ORDER #18

In the Matter of:

**THE ASSIGNMENT, MANAGEMENT AND FILING REQUIREMENTS OF
THE DISTRICT'S SOCIAL SECURITY DOCKET**

Amended this 22nd day of January, 2016

A. ASSIGNMENT OF SOCIAL SECURITY CASES

Effective **February 1, 2016**, it is **Ordered** that all cases in which a plaintiff seeks review, pursuant to 42 U.S.C. § 405(g), of a decision by the Commissioner of Social Security (“Commissioner”), shall be randomly assigned to a United States Magistrate Judge.¹ The Chief Judge may direct the reassignment of cases as needed to assure a more equitable distribution.

The United States has already indicated its general consent to Magistrate Judge jurisdiction in cases of this nature subject to its reserved rights to withdraw the consent in a given case and to withdraw its general consent. Promptly after the filing of all such cases, the Clerk shall direct a Notice of Social Security Case Assignment to all parties that accomplishes the following:

- (1) Identifies the Magistrate Judge to whom the case is assigned;
- (2) Confirms that any withdrawal of consent by the United States must be filed no later than the date the United States files the administrative record;
- (3) Notifies plaintiff and/or plaintiff’s counsel of plaintiff’s right to consent to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c);
- (4) Provides a *consent/declination* form for plaintiff to complete and advises plaintiff that the executed form must be received by the Clerk within **21 days** of the date of the notice; and
- (5) Advises the parties as to the court’s procedure in the absence of consent.

If plaintiff timely consents, and if the United States does not timely withdraw consent, the case shall be deemed assigned to the Magistrate Judge without the necessity of an order of referral. In the event that the plaintiff does not timely consent, or if the United States timely withdraws its consent, the Clerk shall reassign the case to a U.S. District Judge consistent with General Order 12.² Such reassigned cases shall be referred to the same Magistrate Judge to whom the case was originally assigned for all pretrial, non-dispositive matters and for issuance of a report and recommendation.

¹ This General Order suspends the requirement under Local Rule 72.3(d) to initially assign Social Security Cases to a District Judge. If the parties elect not to consent to the jurisdiction of a Magistrate Judge pursuant to 28 U.S.C. § 636(c), the Clerk shall then assign a District Judge, and the originally assigned Magistrate Judge will be placed in the referral role.

² General Order #12 - Case Assignment Plan for the Northern District of New York

Proceeding In Forma Pauperis. Unless the court otherwise directs, upon filing, the Clerk shall assign to a Magistrate Judge all motions and applications to proceed in forma pauperis. Upon receipt, the Clerk shall assign to a Magistrate Judge any referral or request from an appellate court for a determination regarding in forma pauperis status on appeal. All applications to proceed in forma pauperis are deemed referred pursuant to 28 U.S.C. § 636.

B. PILOT PROGRAM FOR ELECTRONIC SERVICE IN SOCIAL SECURITY CASES

A significant number of cases seeking review of the Commissioner's decision denying an application for benefits are filed in this District. The Court and the United States Attorney's Office for the Northern District of New York ("USAO-NDNY") share an interest in facilitating the efficient resolution of those complaints. To this end, the USAO-NDNY and Regional Counsel for the Social Security Administration have agreed to participate in a Pilot Program for Electronic Service in Social Security Cases ("Pilot Program"). This Section of the Order sets forth the terms of the Pilot Program.

THE COURT HEREBY ORDERS:

- (1) The effective date of the Pilot Program shall be **February 1, 2016**, and shall run until further Order of this Court, provided that, during pendency of the Pilot Program, upon one month's notice, the USAO-NDNY and Regional Counsel for the Social Security Administration may unilaterally modify or terminate the Pilot Program in light of experience.
- (2) The Pilot Program shall only apply to complaints instituted by a plaintiff against the Commissioner in which the only claim that is being brought is pursuant to 42 U.S.C. § 405(g). It shall not apply to any other complaint. In particular, the Pilot Program does not apply to (a) complaints that include claims against the Commissioner in addition to, or other than, those brought pursuant to 42 U.S.C. § 405(g); or (b) complaints that include defendants other than the Commissioner.
- (3) Complaints filed pursuant to 42 U.S.C. §405(g), shall be filed with the Clerk of Court, pursuant to General Order 22, Section 4.2. Following case assignment and case opening, CM/ECF will generate a Notice of Electronic Filing (NEF) to the United States Attorney and Regional Counsel for the Social Security Administration.
 - A. Upon filing the Complaint by the Clerk, the NDNY CM/ECF system will serve the Complaint through a Notice of Electronic Filing to the USAO-NDNY and Regional Counsel for the Social Security Administration.

- B. When filing the Complaint with the Clerk, Plaintiff shall also file a Social Security Identification Form³ containing the full name and complete social security number of the plaintiff, including that of a minor plaintiff not otherwise identified by his or her full name. If the plaintiff's application for Social Security benefits was filed on another person's wage-record, that person's Social Security number shall also be provided. The identifying information is necessary for the Commissioner to obtain and produce the certified administrative record. The Social Security Identification Form will be lodged in CM/ECF as a restricted document and sent via Notice of Electronic Filing to the U.S. Attorney and Regional Counsel for the Social Security Administration through the NDNY CM/ECF system. Upon the filing of the Administrative Record, the Clerk shall remove the Social Security Identification Form from the docket.
- C. Upon receipt of the Complaint and Social Security Identification Form by the USAO-NDNY and Regional Counsel for the Social Security Administration, the Government shall file a Notice of Appearance. Upon the filing of the Notice of Appearance, the Clerk shall remove the e-mail address that was used for service of the Complaint and Social Security Identification Form from the instant case. Thereafter, all Notices of Electronic Filing will be served upon the attorney representing the Social Security Administration in accordance with the Notice of Appearance.
- (4) Service of a Complaint along with the Social Security Identification Form under the Pilot Program will be considered complete only when the three steps in paragraph 3(A), 3(B) and 3(C) above have been completed.
- (5) If a plaintiff follows the steps above and service is effectuated in accordance with this General Order, the USAO-NDNY and Regional Counsel for the Social Security Administration agree not to raise insufficient service as a defense in the response to the Complaint. Nothing in this General Order or the Pilot Program, however, shall be deemed to be a waiver of service pursuant to Federal Rule of Civil Procedure 4(d). **Electronic service under the Pilot Program is intended to more efficiently move the processing of these cases through the litigation life cycle.**

³ A Social Security Identification Form is available on the Court's website at nynd.uscourts.gov.

C. FILING OF THE ADMINISTRATIVE RECORD AND BRIEFING SCHEDULE

IT IS HEREBY

ORDERED that, after service of the Complaint and the Social Security Identification Form has been effectuated, the defendant shall file the certified transcript of the administrative proceedings, which shall constitute the defendant's answer **within 90 days** of said service, or a motion to dismiss⁴ **within 90 days** of said service; and it is further

ORDERED that, if a motion to dismiss is denied, the defendant shall file the certified transcript of the administrative proceedings, which shall constitute the defendant's answer, **within 30 days** of service of said denial; and it is further

ORDERED that, after the filing of the certified transcript of the administrative proceedings, which shall constitute the defendant's answer, counsel for the parties or the party, if appearing pro se, shall submit briefs in accordance with the following requirements:

- (1) **Within forty-five (45) days** from the filing of the certified transcript of the administrative proceedings, which shall constitute the defendant's answer, plaintiff shall serve and file a brief setting forth the grounds that plaintiff contends entitle plaintiff to relief. The brief shall contain the following items, under the appropriate headings and in the order here indicated:
 - (a) A statement of the issues presented for review, set forth in separately numbered paragraphs.
 - (b) A statement of the case. This statement should briefly indicate 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, if relevant, 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 addressing each issue and must set forth plaintiff's contentions 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.

⁴ Any 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, if consent has been given pursuant to 28 U.S.C. § 636(c), the assigned Magistrate Judge.

- (d) A short conclusion stating the relief sought. The issues 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 that identifies and responds 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 included unless defendant is dissatisfied with plaintiff's recitation of the same.
- (3) No party shall file or serve a brief that exceeds twenty-five (25) pages in length, double-spaced, unless leave from the assigned judge is obtained prior to filing the brief. All briefs shall be formatted as prescribed by Local Rule 10.1(a) and shall contain a table of contents and; and it is further

ORDERED that, upon receipt of the defendant's brief as provided herein, the Clerk shall forward the entire file to the assigned judge as determined in Part A of this Order. The assigned 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 plaintiff wants the Court to remand the case based on new and material evidence, plaintiff must file a motion for remand pursuant to sentence six of 42 U.S.C. § 405(g). Motion filing and response papers must be filed in accordance with NDNY Local Rule 7.1. Upon plaintiff's filing of a motion for remand pursuant to sentence six, the parties' brief filing deadlines for an adjudication of the merits will be stayed until the court rules on the sentence six motion. If the motion is denied, plaintiff's brief will be due within 45 days from the date of the court's order, and defendant's brief will be due within 45 days of service of plaintiff's brief; and it is further

ORDERED that, generally no oral argument will be heard by the court. If, however, an oral hearing is requested and scheduled before the assigned judge, or ordered by the Court *sua sponte*, 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 the case; and it is further

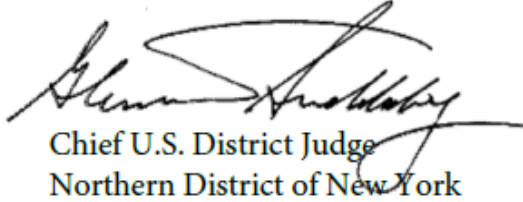
ORDERED that the Clerk shall serve a copy of this Order upon counsel for the parties herein upon the filing of the complaint; and it is further

ORDERED that this General Order shall apply to all District Judges and Magistrate Judges in the Northern District of New York, including visiting judges and recalled Magistrate Judges.

NOTIFICATION OF THE CONSEQUENCES OF FAILING TO FILE A BRIEF
AS REQUIRED BY PARAGRAPH (1)(a-d)

A party's brief may be its only opportunity to set forth arguments that entitle the party to a judgment in its favor. The failure to file a brief by either party may result in the consideration of the record without the benefit of the party's arguments. In the event a plaintiff fails to submit a brief, the defendant may file a motion to dismiss for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b), and the action may be dismissed with prejudice on the basis of the plaintiff's failure to file a brief.

DATED: January 22, 2016


Chief U.S. District Judge
Northern District of New York