

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

United States District Court  
District of Connecticut  
FILED AT NEW HAVEN

November 15 2018  
Roberta D. Tabora, Clerk

STANDING SCHEDULING ORDER – SOCIAL SECURITY CASES

*[Signature]*  
Deputy Clerk

This Order shall apply only to civil actions under the Social Security Act brought by an individual Plaintiff seeking district court review of a final administrative decision of the Commissioner of Social Security (hereinafter "Defendant") pursuant to 42 U.S.C. § 405(g).<sup>1</sup>

Unless otherwise ordered by the Court, the parties shall adhere to the deadlines set forth in this Scheduling Order. To the extent any prior scheduling order was entered in this case, the terms and conditions of this Scheduling Order shall be controlling. Further, to the extent that the CM/ECF notification system automatically enters deadlines that are inconsistent with any deadline specifically addressed in this Scheduling Order, the terms and conditions of this Scheduling Order shall be controlling.

I. Commencing an Action. To commence an action under 42 U.S.C. § 405(g) to review a final administrative decision of Defendant, Plaintiff shall file a Complaint with the Court. The Court's Case Management and Electronic Case Files ("CM/ECF") system will generate a notice of suit to the Social Security Administration's Office of the General Counsel and the United States Attorney's Office for the District of Connecticut.

a. Contents and form of Complaint. Use of the model "Complaint for Review of Social Security Administration Decision" that appears on the Court's website is sufficient. If the model is not used, the Complaint must contain at least the same content as the model. The Complaint must not include any attachments or evidence, nor may it include argument.

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<sup>1</sup> This Rule shall not apply to any other action, for example (1) actions that include claims against the Commissioner of Social Security in addition to, or other than, those brought pursuant to 42 U.S.C. § 405(g); (2) actions that include multiple plaintiffs or a class action; or (3) actions that include defendants other than the Commissioner of Social Security.

b. Inclusion of Social Security Number. All Complaints filed pursuant to this Order shall state the Plaintiff's full Social Security Number. 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 included in the Complaint. If the Plaintiff commenced an action on behalf of a minor child, the child's Social Security Number shall be included in the Complaint.

c. Service of Complaint. In lieu of service of process of the Complaint and related documents, the Clerk of the Court shall provide service via the Court's CM/ECF system to the Commissioner of Social Security by electronically serving it on the Social Security Administration's Office of the General Counsel and the United States Attorney's Office for the District of Connecticut. If this process is followed, the Defendant has agreed that it will constitute adequate service of process.

## II. Defendant's Response to Complaint

a. Defendant's Appearance. Counsel for the Defendant must file a notice of appearance prior to responding to the Complaint.

b. Filing of Defendant's response. Within 60 days after receiving notification of suit through the Court's CM/ECF system, Defendant must file either:

- i. A dispositive motion; or
- ii. The Certified Administrative Record, which shall be deemed an Answer (general denial) to Plaintiff's Complaint.

c. Redaction. The Certified Administrative Record and all other filings are exempt from any redaction requirements. Access to those documents is governed by Fed. R. Civ. P. 5.2(c) and 5.2(d).

d. Defects. If a party discovers a material omission from, improper submission within, or other similar defect in the Certified Administrative Record, the party must promptly notify the opposing party. When appropriate, Defendant will file a supplemental or amended Certified

Administrative Record. In such circumstances, the briefing deadlines set out in this Order may be re-calculated as circumstances warrant. If the omission or other defect cannot be cured by filing a supplemental or amended Certified Administrative Record within 60 days from the date the Defendant is notified, Defendant will file a motion to remand.

### III. Plaintiff's Briefing Requirements

a. Plaintiff's Motion and Memorandum. Within **60 days** after the filing of the Certified Administrative Record, the plaintiff must serve and file a Motion for Order Reversing the Commissioner's Decision, or for other relief, and a supporting memorandum. The Plaintiff's Memorandum of Law shall not exceed 25 pages.

b. Plaintiff's Statement of Material Facts. Within **60 days** of filing of the Certified Administrative Record, Plaintiff shall file, as a separate document, a Statement of Material Facts consisting of numbered paragraphs and supported by specific page citations to the Certified Administrative Record. The statement must reference facts in the Certified Administrative Record as opposed to conclusions of law. The Statement shall not exceed 20 pages.

### IV. Defendant's Briefing Requirements

a. Defendant's Motion and Memorandum. Within **60 days** after the plaintiff files a Motion for Order Reversing the Commissioner's Decision, the defendant must serve and file a Motion for Order Affirming the Decision of the Commissioner, and a supporting memorandum, or a Motion for Voluntary Remand. The Defendant's Memorandum of Law shall not exceed 25 pages.

b. Defendant's responsive statement of facts. Within **60 days** after Plaintiff files the Statement of Material Facts, the Defendant shall file a responsive statement of facts that corresponds to Plaintiff's Statement of Material Facts and indicate if the Defendant adopts the contents of each paragraph as presented. If the Commissioner elects to supplement or clarify a particular paragraph, then the Commissioner shall respond to Plaintiff's numbered paragraphs by

adding an alphabetical reference (e.g., 1(a)). If the Commissioner decides to proffer additional facts that are unrelated to those proffered by Plaintiff, the Commissioner shall present numbered paragraphs commencing after Plaintiff's last numbered paragraph containing these additional facts (e.g., if Plaintiff's last numbered paragraph is 22, the Commissioner's additional facts would begin at 23.) The Commissioner's statement of supplemental and/or additional facts must reference facts in the Certified Administrative Record as opposed to conclusions of law, and must be supported by specific page citations to the Certified Administrative Record. The Statement shall not exceed 20 pages.

c. In the event that the Plaintiff is not represented by legal counsel or does not comply with the requirements of this Order, the Defendant shall file a Statement of Facts consisting of numbered paragraphs and supported by specific citations to the Certified Administrative Record. This statement of facts shall be filed with Defendant's Motion to Affirm.

V. Reply Briefs and Responses

a. Reply briefs, if any, must be limited to responding to the adversary's brief, must be filed within 14 days of the date of the filing of Defendant's Memorandum of Law, and may not exceed 10 pages.

b. Responses by the Plaintiff to the Defendant's Statement of Material Facts must be filed within 14 days of the date of the Defendant's filing, and may not exceed 10 pages.

c. Page Limits. Parties must obtain leave of the Court to exceed the page limits identified in this Order. A motion for leave to exceed the page limits must be filed in accordance with Local Rule of Civil Procedure 7(a)(2) and must specify the extraordinary circumstances justifying the granting of such leave. If the Court grants such a request for Plaintiff's Memorandum, Defendant will automatically receive the same page-length enlargement for Defendant's Memorandum.

d. Citations and Exhibits. All arguments must include citations to the Certified

Administrative Record page number and not to the docket page number created by the CM/ECF system upon filing of the Certified Administrative Record, and to the relevant legal authority for each argument. Materials, including unpublished cases or agency policies, that are publicly available, including through online resources such as Westlaw or Lexis, need not be attached as exhibits when Plaintiff is represented by counsel.

e. Failure to Comply. The Court, on its own initiative or upon the motion of either party, may strike without prejudice any document that does not comply with this Standing Order. If the Court strikes a Memorandum of Law, the party whose Memorandum was struck must, within fourteen calendar days, re-file a Memorandum of Law that complies with the Court's order and this Standing Order. Failure to re-file in such circumstances will ordinarily be deemed to constitute sufficient grounds to deny the underlying Motion.

#### VI. Motion Practice

a. Dispositive motions prior to filing the Certified Administrative Record. Defendant may file on Plaintiff a dispositive motion within 60 days of the filing of the Complaint. Plaintiff must respond within 30 days of filing of such a motion. If the Court denies the motion, Defendant must file the Certified Administrative Record in accordance with this Standing Order within 30 days of such denial.

b. Motions for remand. If Defendant files a motion for remand for further administrative action, Defendant must state whether Plaintiff consents to the remand. If Plaintiff has not given consent, Plaintiff must file an objection within 14 days of the filing of Defendant's motion or the Court will assume that Plaintiff consents to remand. Any deadlines pending when such a motion is filed will be held in abeyance while the Court considers the motion and objection, if any.

c. After 7 months from the filing of the complaint, if there is no action by either party, a Local Rule 41(a) notice will issue.

VII. Form and Content of Motions and Supporting Memoranda

All motions and memoranda filed with the Clerk shall meet the following requirements:

- a. All text in the body of the document must be double-spaced, except that text in block quotations and footnotes may be single-spaced.
- b. Extensive footnotes and block quotations may not be used to circumvent page limitations.
- c. Documents must have one-inch margins on all four sides.
- d. Pages must be consecutively numbered.
- e. Consistent with the Electronic Filing Order in Social Security Cases, all documents filed electronically, including the Administrative Record, must be filed in OCR text searchable PDF format.

VIII. Fees and Costs

- a. Petitions or Motions for attorney's fees and expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412.
  - i. Petitions or motions for fees and expenses under the EAJA are governed by the requirements and procedures set forth in that Act. Unless stipulated, a petition for fees and expenses under 28 U.S.C. § 2412(d) should not be filed before the judgment at issue is final and not appealable (i.e., a petition or motion not agreed upon shall not be filed before the 61st day after entry of judgment). If any petition for fees and expenses filed before the judgment at issue is final and not appealable, it will be deemed to be filed on the first day after the appeal period has run. Any petition for fees and expenses filed before the judgment at issue is final and not appealable will not include a request for fees for the preparation and filing of the petition.
  - ii. Defendant must file any objection to a petition or motion for fees and expenses under the EAJA within 30 days of the date the judgment at issue becomes final and not appealable. If Defendant does not object, Defendant shall file a Stipulation.

iii. Should a petition or motion for fees under EAJA be filed before the judgment at issue is final and not appealable, and should the Defendant appeal the judgment of the Court, Plaintiff shall withdraw the petition or motion forthwith.

b. Requests for costs under 28 U.S.C. §§ 1920 and 2412(a).

i. Requests for costs under 28 U.S.C §§ 1920 and 2412(a) must be separately itemized from attorney's fees and expenses sought under 28 U.S.C. § 2412(d).

SO ORDERED.

Dated at Bridgeport, Connecticut this 15<sup>th</sup> day of November 2018.

/s/ Stefan R. Underhill  
Stefan R. Underhill  
Chief U.S. District Judge