

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: **Amendment of Local Civil** :
Rules : **ORDER**

The Court being vested with authority pursuant to 28 U.S.C. § 2071 & Rule 83 of the Federal Rules of Civil Procedure to make and amend local rules; proposed amendments to Local Civil Rules having been submitted to the Lawyers Advisory Committee and the public for comment; no comments having been received, and the proposed amendments having been approved by the Board of Judges;

It is on this 22nd day of June, 2012, ORDERED that Local Civil Rules are amended to read:

Civ. RULE 56.1 SUMMARY JUDGMENT MOTIONS

(a) Statement of Material Facts Not in Dispute

On motions for summary judgment, the movant shall furnish a statement which sets forth material facts as to which there does not exist a genuine issue, in separately numbered paragraphs citing to the affidavits and other documents submitted in support of the motion. A motion for summary judgment unaccompanied by a statement of material facts not in dispute shall be dismissed. The opponent of summary judgment shall furnish, with its opposition papers, a responsive statement of material facts, addressing each paragraph of the movant's statement, indicating agreement or disagreement and, if not agreed, stating each material fact in

dispute and citing to the affidavits and other documents submitted in connection with the motion; any material fact not disputed shall be deemed undisputed for purposes of the summary judgment motion. In addition, the opponent may also furnish a supplemental statement of disputed material facts, in separately numbered paragraphs citing to the affidavits and other documents submitted in connection with the motion, if necessary to substantiate the factual basis for opposition. The movant shall respond to any such supplemental statement of disputed material facts as above, with its reply papers. Each statement of material facts shall be a separate document (not part of a brief) and shall not contain legal argument or conclusions of law.

Civ. RULE 9.1 - SPECIAL MATTERS - SOCIAL SECURITY MATTERS

(a) Review of Social Security Matters - Generally

(1) In any action involving the review of a final decision by the Commissioner of Social Security (Defendant) denying a claim for benefits under the Social Security Act (42 U.S.C. §405(g) (hereinafter “Social Security case”)) the following rules and procedures shall apply:

(2) These rules are not intended to cover any type of case other than record review of individual Social Security cases. Class actions or constitutional challenges to the law will continue to be governed by the Federal Rules of Civil Procedure and this Court’s Local Civil Rules.

(b) Filing the Complaint

(1) Plaintiff shall adhere to the standard complaint format specified in paragraph (2) of this subsection. For the convenience of litigants, sample complaint form(s) can be found on this Court’s website at: www.njd.uscourts.gov.

(2) The complaint shall contain:

(A) a statement of jurisdiction to include a statement of proper venue and timeliness, with reference to the date of the decision of the Appeals Council;

(B) a short and plain statement of the claim showing that the Plaintiff is entitled to relief;
and

(C) a demand for the specific relief claimed.

(c) Defendant's Response

(1) Within 60 days of receipt of the summons and complaint, Defendant will either file an answer to the complaint or otherwise move. If Plaintiff is *pro se*, Defendant will also serve Plaintiff, by first class mail, a copy of the answer or response.

(2) If answering the complaint, Defendant will contemporaneously file and serve the administrative record on both the Clerk of this Court and Plaintiff's counsel, or *pro se* Plaintiff if there is no counsel.

(3) In the event a motion is made, Local Civil Rule 7.1 for the handling of motions will apply.

(d) Plaintiff's Statement

(1) To encourage early and amicable resolution of Social Security matters, Plaintiff, within 14 days of the filing of Defendant's answer, shall file with the Clerk of this Court a statement setting forth Plaintiff's primary contentions or arguments as to why plaintiff believes that he or she is entitled to relief.

(2) Defendant shall file a response within 30 days of the filing of Plaintiff's statement.

(3) If the parties agree on the resolution of a Social Security matter, the parties shall proceed in accordance with Local Civil Rule 41.1(b).

(e) Briefing

(1) Plaintiff shall file a brief within 75 days of the receipt of the answer to the complaint.

(2) Defendant shall file a responsive brief within 45 days after the receipt of Plaintiff's brief.

(3) Plaintiff may file a reply brief within 15 days after receipt of Defendant's brief. No further briefing is permitted without leave of the Court.

(4) All briefing shall conform to Local Civil Rule 7.2.

(5) Plaintiff's brief shall contain:

(A) a statement of the issues presented for review;

(B) a statement of the case. This statement should indicate briefly the course of the proceeding and its disposition at the administrative level;

(C) a statement of facts with reference to the administrative record;

(D) 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 Plaintiff's arguments with respect to the issues presented and reasons therefor; and

(E) a short conclusion stating the relief sought.

(6) Defendant's brief;

(A) may contain counter-statements to the Plaintiff's statement of the issues, statement of the case, and statement of facts, if Defendant disagrees with any portion thereof;

(B) shall contain an argument responding to Plaintiff's argument; and

(C) shall contain a short conclusion stating the relief sought.

(f) Disposition

All Social Security cases will be handled by the Court on written briefs unless a request for oral argument is granted or as otherwise directed by the Court.

EXPLANATORY NOTES

LOCAL CIVIL RULE 9.1

In 2009, a committee was formed to review Local Civil Rule 9.1 (Rule) concerning Social Security matters before the Court and to determine whether there was a need to amend the Rule. The committee consists of United States District Judge Katharine S. Hayden, members of the Court Clerk's office, private attorneys from plaintiff's bar, as well as government attorneys representing the Commissioner of Social Security (Commissioner or Defendant) from the Social Security Administration's (SSA's) Office of General Counsel (OGC) and the U.S. Department of Justice (collectively, "Committee").

The Committee agrees that recent technological changes, such as the implementation of Case Management/Electronic Case Filing (CM/ECF) and SSA's move to an "electronic administrative record," or "ECar" require changes to the Rule. The Committee decided to use the current version of Local Civil Rule 9.1 as a template and draft a new proposed Rule rather than revise or "redline" the current Rule. The Committee proposes to include in the new Rule a sample pro se complaint, which can be used by both unrepresented and represented parties. The sample complaint is designed to include all of the required elements to commence suit, yet keep the pleadings to a minimum. The new Rule provides that the sample complaint is accessible through the Court's website.

In its deliberations, the Committee gave special consideration to the statement setting forth Plaintiff's primary contentions (statement of contentions) required under 9.1(a)(2), as well as the briefing schedule and brief content under 9.1(a)(3) and (4), of the current Rule. The Committee agreed that Plaintiff's statement of contentions is a useful tool and should be retained in the new Rule. The stated purpose of the statement of contentions is to "encourage early and

amicable resolution” of Social Security cases. The Committee agreed that this required statement of contentions accomplishes the goal, albeit with some disruption of the current briefing schedule as the parties attempt to resolve the case before full briefing.

Consequently, the Committee acknowledges that requests for extensions of time for briefing are common. Under the current Rule, Plaintiff must file his/her brief within 60 days from Defendant’s answer. However, this 60-day deadline does not account for the time Plaintiff expends in connection with the statement of contentions, which Plaintiff must file within 14 days of Defendant’s answer. In turn, Defendant must respond within 30 days of receiving the statement of contentions. Even if Plaintiff submits the statement of contentions, and Defendant responds that if s/he intends to defend the case, in the time the current Rule permits, there remain only 16 days of the original 60 days allowed for the filing of Plaintiff’s brief. Likewise, attorneys for Defendant find an early resolution can be difficult to achieve in the time allowed by the current Rule, where Defendant is seriously considering consenting to remand the matter based upon Plaintiff’s statement of contentions. This results in frequent requests for extensions of time to file briefs in Social Security cases by one or both parties. While the Court has liberally granted extension requests, it expends time and resources ruling on these requests. Additionally, the parties expend time and resources requesting extensions and securing opposing counsel’s consent for same.

Consequently, the Committee proposes that the new Rule expand the current Rule’s briefing schedule by allowing Plaintiff 75, rather than 60, days from the receipt of Defendant’s answer to file a brief. The 15 additional days takes into account the period allotted for Plaintiff’s submission of, and Defendant’s response to, the statement of contentions. Assuming all submissions are timely, the change reasonably provides Plaintiff a minimum of 31 days to file a

brief from the deadline of Defendant's response to Plaintiff's statement of contentions. In turn, the new Rule provides Defendant an additional 15 days from the filing of Plaintiff's brief, for a total of 45 days, to file a responsive brief.

While this proposed change adds 30 days to the entire briefing schedule, the Committee expects that the change will (1) eliminate a good number of routine extension requests and (2) require the parties to pursue, and the Court to consider, extension requests only in exigent, rare, and/or unusual circumstances.

The Committee believes that, as a general proposition, Local Civil Rule 9.1 accomplishes its intended purposes. The Committee further believes that the recommended changes will address the technological advances that have occurred and will continue to occur, while allowing parties to litigate, and the Court to preside over and decide, Social Security matters as efficiently as possible. The Committee stands ready to serve the Court, if requested to do so.

Local Social Security Rule Committee

Hon. Katharine S. Hayden, U.S.D.J., Chair

John T. O'Brien, Legal Coordinator

Jessica Calella, Pro Se Attorney

Anthony Labruna, Assistant U.S. Attorney

Maria Fragassi Santangelo, Social Security Administration - Office of General Counsel

Susan Reiss, Social Security Administration - Office of General Counsel

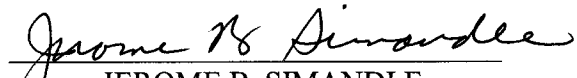
Adrienne Jarvis, Esquire

Robert Petruzzelli, Esquire

Alan Polonsky, Esquire

It is FURTHER ORDERED these amendments are effective this date.

FOR THE COURT:



JEROME B. SIMANDLE
Chief Judge