

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

IN RE:)
)
 Amendments to and Adoption of Local)
 Civil Rules 83.I.04, 83.I.06, 83.VII.02,)
 83.VII.03, 83.VII.04, 83.VII.05, 83.VII.06,)
 83.VII.07, 83.VII.08, 83.VII.09, and 83.VII.10.)
 _____)

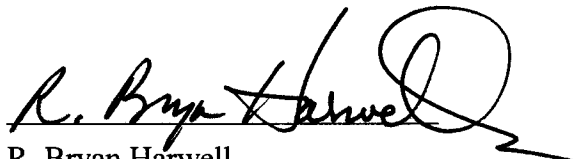
ORDER

Upon due consideration by the Court, amendments to Local Civil Rules 83.I.04, 83.I.06, 83.VII.02, 83.VII.03, 83.VII.04, 83.VII.05, 83.VII.06, 83.VII.07, 83.VII.08, 83.VII.09, and 83.VII.10 of the United States District Court for the District of South Carolina (Local Civil Rules) in the form appended hereto, are hereby adopted and promulgated by the Court. These Local Civil Rules are effective immediately.

Pursuant to 28 U.S.C. § 2071(b) and Rule 83 of the Federal Rules of Civil Procedure, proper public notice of the proposed amendments to these Local Civil Rules and an opportunity for comment was given. All comments were considered, and modifications to the proposed amendments as deemed necessary by the Court have been incorporated into the attached Local Civil Rules.

IT IS SO ORDERED by the Court this 3rd day of June, 2022.

FOR THE COURT:


R. Bryan Harwell
Chief United States District Judge

83.I.04: *Representation by Local Counsel Who Must Sign All Pleadings.*

- (A) Except as provided in subsection (B) below, litigants in civil and criminal actions, other than parties appearing pro se, must be represented by at least one member of the bar of this court who shall sign each pleading, motion, discovery procedure, or other document served or filed in this court. The attorney identification number is also required on each pleading, motion, discovery procedure, or other document served or filed in this court.
- (B) The following attorneys are exempt from the requirements of Local Civil Rules 83.I.01-83.I.06, except for Rule 83.I.05(B):
 - (1) United States Department of Justice attorneys attending to the interests of the United States, pursuant to 28 USC §§ 515(a) and 517; and
 - (2) Social Security Administration attorneys serving as Special Assistant United States Attorneys to represent the agency in court.

Such attorneys shall sign each pleading, motion, discovery procedure, or other document served or filed in this court.

83.I.06: *Pleadings, Service, and Attendance by Local Counsel in Cases Where Out-of-State Attorneys Appear.* Pleadings and other documents filed in a case where an attorney who is not admitted to the bar of this court appears pursuant to Local Civil Rule 83.I.05 shall contain the individual name, firm name, address, and phone number of both the attorney making a special appearance under that rule and of the associated local counsel. In such a case, the service of all pleadings and notices as required shall be sufficient if served upon only the associated local counsel. Unless excused by the court, the associated local counsel shall be present at all pretrial conferences, hearings, and trials and may, but is not required, to attend discovery proceedings or other proceedings that are not before the court. Local counsel is expected to be prepared to actively participate in all proceedings before the court if necessary.

83.VII.02: *Initial Service of Process.* When a complaint seeking judicial review under 42 U.S.C. § 405(g) is filed, the Clerk of Court shall issue a Notice of Electronic Filing (NEF) using the Case Management and Electronic Filing (CM/ECF) system, notifying the appropriate Regional Social Security Administration Office of the General Counsel and the United States Attorney's Office of the case. No summonses shall issue.

All documents filed after the original complaint shall be served by the parties in the manner required by Federal Rule of Civil Procedure 5.

83.VII.03: *Reference to Magistrate Judge.*

- (A) After the briefing schedule (as set out in Local Civ. Rules 83.VII.06, 83.VII.07 (D.S.C.)), the case will be referred to a magistrate judge for either a recommendation or a final order, dependent upon the consent of the parties and the district court.
- (B) The court will issue an order referring Social Security cases to the assigned magistrate judge for final disposition in those cases where all parties have submitted their consent to such referral.

83.VII.04: *Answer of the Commissioner.* The electronic certified administrative record (eCAR) filed by the Agency shall be deemed as the Commissioner's answer to the complaint, unless a separate answer or motion to dismiss is filed when the eCAR is filed.

Because of the large volume of Social Security cases being filed in this district, the Commissioner has been unable to obtain certified copies of transcripts required by 42 U.S.C § 405(g) to be filed as a part of its answer within the sixty-day (60-day) time period. Therefore, the Commissioner of Social Security is granted an additional sixty (60) days beyond the time otherwise allowed by law for the filing of its answer without the necessity of a motion so requesting. The Commissioner may request a further extension of time to respond to the complaint so long as the extension request is filed 10 days in advance of the deadline.

83.VII.05: *Expediting Cases.* When a case that meets the criteria for being expedited as a critical case as defined by the Agency's Hearings, Appeals, and Litigation Law Manual has not already been expedited by the Agency the claimant's counsel shall confer with agency counsel about that issue as soon as possible. *See* Local Civ. Rule 7.02 (D.S.C.). If the parties cannot agree on whether the case should be expedited, the claimant may file a motion seeking an order requiring that the eCAR be prepared and filed in a shorter timeframe than what these rules would otherwise allow.

83.VII.06: *Petitioner's Brief.* After the filing of an answer, the petitioner may file a written brief within sixty (60) days. Any motion for an extension of time must demonstrate good cause for the extension and be accompanied by a proposed order.

83.VII.07: *Commissioner's Brief*. The Commissioner will be allowed forty (40) days after service of the petitioner's brief to file his or her responsive brief. Any motion for an extension of time must demonstrate good cause for the extension and be accompanied by a proposed order. The petitioner's reply brief, if any, will be filed within fourteen (14) days after service of the Commissioner's brief.

83.VII.08: *Service of Briefs*. Briefs shall be served on each of the other parties.

83.VII.09: *Objections to Report and Recommendation*. A party may file an objection to the magistrate judge's report and recommendation within the time prescribed in 28 U.S.C. § 636(b)(1).

83.VII.10: *Application for Attorney's Fees*. The following procedure will be used if the petitioner's attorney applies to the court for an order fixing attorney's fees to be paid out of past accrued benefits for an award of past due benefits. This rule does not apply to fees awarded pursuant to the Equal Access to Justice Act.

- (A) The original of any petition for attorney's fees will be filed together with a certificate of service showing a copy served on the United States Attorney. The petition for attorney's fees shall be filed no later than sixty (60) days after the issuance of all notices of award of benefits from the Social Security Administration. This does not preclude filing a petition based on fewer than all anticipated notices of award of benefits. Noncompliance with this time limit may be deemed a waiver of any claim for attorney's fees, unless the attorney can show good cause for the delay.
- (B) The petition should comply with the requirements set forth in *Gisbrecht v. Barnhart*, 535 U.S. 789, 792 (2002), and should contain evidence (copy of Certificate of Social Insurance Award) that the case has reached the final determination, that the Commissioner is withholding the fee requested, and that the attorney and client entered a valid agreement for the fees. It should also contain a supporting statement or affidavit by the attorney if a substantial amount is involved or there are exceptional circumstances.
- (C) The United States Attorney shall be allowed thirty (30) days in which to file any objections to the petition for attorney's fees. (D) The petition, together with supporting materials and the Commissioner's objection, if any, will be forwarded to the appropriate district judge or magistrate judge for consideration.