

SOCIAL SECURITY CASES

83.VII.01: *Copies of Pleadings.* An original for the Court and three (3) copies for service of the complaint and summons must be filed in social security cases. Only an original of all other pleadings must be filed with the Clerk of Court together with a certificate showing proof of service upon the United States Attorney.

83.VII.02: *Reference to Magistrate Judge.*

- (A) After the briefing schedule (as set out in Local Civil Rules 83.VII.04 and 83.VII.05), the case will be referred to a United States 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.03: *Answer of the Commissioner.* Because of the large volume of social security cases being filed in this District, the United States 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 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.

83.VII.04: *Petitioner's Brief.* After the filing of an answer, the petitioner may file a written brief in the Clerk of Court's Office within thirty (30) days. Any motion for an extension of time must be accompanied by a proposed order.

83.VII.05: *Commissioner's Brief.* The Commissioner will be allowed forty (40) days after service of the petitioner's brief to file its responsive brief. No extensions will be granted. The petitioner's reply brief, if any, will be filed within ten (10) days after service of the Commissioner's brief.

83.VII.06: *Service of Briefs.* Briefs shall be served on each of the other parties.

83.VII.07: *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 Local Civil 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 with the Clerk of Court together with a certificate of service showing a copy served on the United States Attorney. The petition for attorney's fees shall be filed within sixty (60) days after the expiration date for filing a notice of appeal or petition for writ of certiorari or affirmance of the judgment on appeal. Noncompliance with this time limit shall be deemed a waiver of any claim for attorney's fees.
- (B) The petition should comply with the requirements set forth in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216 (4th Cir. 1978), 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.

83.VII.08: *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).