LR 7.2 PROCEDURES IN SOCIAL SECURITY CASES

(a) ~~(a)~~ Case Assignment.

(1) Consent to disposition by magistrate judge.

(A) The clerk must randomly assign all cases filed under 42 U.S.C. § 405(g) to a magistrate judge to conduct the proceedings and dispose of the case.

(B) A party consents to disposition by the magistrate judge unless that party files notice under LR 7.2(a)(2)(A).

(2) Withdrawing consent to disposition by magistrate judge.

(A) To withdraw consent to disposition by the magistrate judge, a party must file a notice to withdraw consent on or before the date that the answer must be filed.

(B) If a timely notice withdrawing consent is filed, the clerk must randomly assign the case to a district judge. The magistrate judge assigned to the case will remain assigned to the case to conduct such proceedings as the district judge directs.

(b) Filing an Answer.

(1) Within 60 days after the United States is served with a pleading under 42 U.S.C. § 405(g), the Commissioner of Social Security must file and serve an answer and a certified copy of the administrative record.

(2) If the Commissioner seeks an extension of time to answer, the Commissioner must move for the extension before the end of the 60-day period set forth in LR 7.2(a)(1).

(~~b~~c) Motions; Time Limits.

(1) Within 60 days after the Commissioner of Social Security serves the answer and administrative record, the plaintiff must file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(2) Unless the court orders otherwise, all motions will be decided without oral argument.

(3) If a magistrate judge issues a report and recommendation, a party may object to the report and recommendation in accordance with Fed. R. Civ. P. 72(b), LR 72.2(b), and 28 U.S.C. § 636(b)(1)(B), and the opposing party may respond to the objecting party in accordance with the same rules and laws. Objections and responses must not exceed the word limit set forth in LR 72.2(b).

(~~c~~d) Review After Remand When Courts Retain Jurisdiction.

(1) If the Commissioner of Social Security's final decision upon remand is adverse to the plaintiff, the Commissioner must file and serve a supplemental administrative record within 60 days after that final decision.

(2) Within 60 days after the Commissioner serves the supplemental administrative record, the plaintiff may file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(~~d~~) e) Attorney's Fees ~~under~~Under the Social Security Act.

~~(1)~~ Petitions for fees under the Social Security Act must be filed within 30 days after the plaintiff's attorney is notified of the Commissioner of Social Security's award certificate.

~~(2) Petitions for attorney's fees under the Social Security Act or any other authority must be itemized and must be served on the Commissioner. Attorneys are directed to 20 C.F.R. § 404.1725 when preparing their petitions.~~

[Adopted effective November 1, 1996; amended January 3, 2000; amended May 17, 2004; amended October 18, 2007; amended September 24, 2009; amended December 1, 2009; amended January 31, 2011; amended _____, 2014]

2014 Advisory Committee's Note to LR 7.2

The rule was amended to require that social security appeals be initially assigned to only a magistrate judge. The court will presume that the parties consent to disposition by a magistrate judge unless a party notifies the court to the contrary on or before the date that the answer is due. If a party does notify the court to the contrary, a district judge will also be assigned to the case, the magistrate judge will issue a report and recommendation (R&R), and either or both parties may seek de novo review of the R&R from the district judge. Thus, these amendments do not in any way affect the substantive rights of parties to social security appeals.

The purpose of these amendments is to encourage parties in social security appeal cases to consent to final disposition by a magistrate judge in order to considerably reduce the amount of time that such cases are pending in this court. Unlike most cases, social security cases have been pending for a lengthy period of time before they arrive in district court. Present – and historical – practice has been for the district judge to refer these cases to a magistrate judge for an R&R. The case then pends before the magistrate judge for the amount of time necessary to conduct a thorough review of what is generally a voluminous record and write what is generally an exhaustive R&R. If either party objects to the R&R, the case then pends before the district judge for the amount of time necessary to conduct a de novo review. The judgment of the district court may then be appealed to the United States Court of Appeals for the Eighth Circuit, further extending the time that the parties are without a final determination of their rights.

These rule amendments seek to reduce by one the number of structural delays in arriving at a final disposition in these important cases.

The amendments also delete former subsection (d)(2), which provided unnecessary directions for filing fee petitions.

2011 Advisory Committee's Note to LR 7.2

The language of LR 7.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 7.2(b) corrects an inadvertent inconsistency with the word limits set forth in LR 72.2(b).

The former provisions in LR 7.2(d) describing when motions for attorney's fees under certain laws may be filed are deleted as redundant.

2007 Advisory Committee's Note to LR 7.2

The rule was amended by replacing all references to "Secretary of Health and Human Services" to "Commissioner of Social Security" as referenced in the statute upon which the local rule is based.

1996 Advisory Committee's Note to LR 7.2

LR 7.2(b)(3) was amended to properly refer to "Magistrate Judge" rather than "Magistrate."

LR 7.2(c) was amended so that it applies only to cases remanded under sentence six of 42 U.S.C. § 405(g) where the Court has retained jurisdiction. See Note accompanying LR 7.2(d).

LR 7.2(d)(1): Although this paragraph was not amended, practitioners should be aware that the date which triggers the time for filing a motion or petition for attorney's fees varies in Social Security cases remanded by the Court to the Secretary depending on which sentence of 42 U.S.C. § 405(g) authorized the remand.

In *Melkonyan v. Sullivan*, 501 U.S. 89 (1991), the Supreme Court discussed the time for filing a petition for attorney's fees under the Equal Access to Justice Act (EAJA) in Social Security appeals. The Supreme Court recognized that under 42 U.S.C. § 405(g), a federal district court has the authority to remand a Social Security appeal under two separate and distinct circumstances.

The Court may, under the fourth sentence of § 405(g), "enter a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing." If the Court remands the cause for a rehearing under this sentence, it is referred to as a "sentence four" remand.

The Court may, under the sixth sentence of § 405(g), "on motion for the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken by the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." These remands are called "sentence six" remands.

When a claim is remanded by the Court under sentence four, the remand is a final decision and the judge's order shall state that a judgment should be entered. The Court does not retain jurisdiction to review the proceedings on remand. In Shalala v. Schaefer, 509 U.S. 292 (1993), the Supreme Court held that a claimant becomes a prevailing party by obtaining a sentence-four judgment. The time within which to petition for attorney's fees under the EAJA begins on the date of entry of the final judgment in conjunction with the remand order. If the decision on remand is adverse to the claimant, the claimant must file and serve a new summons and complaint.

When a claim is remanded under sentence six, the Court properly retains jurisdiction until after the administrative proceedings on remand. After the final decision of the Secretary upon remand, the Court must take some further action. If the decision is favorable to the claimant, the Court should issue a final judgment in the claimant's favor. The time within which to petition for attorney's fees under EAJA begins on the date of the entry of the final judgment. If the final decision of the Secretary upon remand is adverse to the claimant, then the procedure set forth in LR 7.2(c)(1) and (2) should be followed.

LR 7.2 PROCEDURES IN SOCIAL SECURITY CASES

(a) Case Assignment.

(1) Consent to disposition by magistrate judge.

(A) The clerk must randomly assign all cases filed under 42 U.S.C. § 405(g) to a magistrate judge to conduct the proceedings and dispose of the case.

(B) A party consents to disposition by the magistrate judge unless that party files notice under LR 7.2(a)(2)(A).

(2) Withdrawing consent to disposition by magistrate judge.

(A) To withdraw consent to disposition by the magistrate judge, a party must file a notice to withdraw consent on or before the date that the answer must be filed.

(B) If a timely notice withdrawing consent is filed, the clerk must randomly assign the case to a district judge. The magistrate judge assigned to the case will remain assigned to the case to conduct such proceedings as the district judge directs.

(b) Filing an Answer.

(1) Within 60 days after the United States is served with a pleading under 42 U.S.C. § 405(g), the Commissioner of Social Security must file and serve an answer and a certified copy of the administrative record.

(2) If the Commissioner seeks an extension of time to answer, the Commissioner must move for the extension before the end of the 60-day period set forth in LR 7.2(a)(1).

(c) Motions; Time Limits.

(1) Within 60 days after the Commissioner of Social Security serves the answer and administrative record, the plaintiff must file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(2) Unless the court orders otherwise, all motions will be decided without oral argument.

(3) If a magistrate judge issues a report and recommendation, a party may object to the report and recommendation in accordance with Fed. R. Civ. P. 72(b), LR 72.2(b), and 28 U.S.C. § 636(b)(1)(B), and the opposing party may respond to the objecting party in accordance with the same rules and laws. Objections and responses must not exceed the word limit set forth in LR 72.2(b).

(d) Review After Remand When Courts Retain Jurisdiction.

(1) If the Commissioner of Social Security's final decision upon remand is adverse to the plaintiff, the Commissioner must file and serve a supplemental administrative record within 60 days after that final decision.

(2) Within 60 days after the Commissioner serves the supplemental administrative record, the plaintiff may file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(e) Attorney's Fees Under the Social Security Act. Petitions for fees under the Social Security Act must be filed within 30 days after the plaintiff's attorney is notified of the Commissioner of Social Security's award certificate.

[Adopted effective November 1, 1996; amended January 3, 2000; amended May 17, 2004; amended October 18, 2007; amended September 24, 2009; amended December 1, 2009; amended January 31, 2011; amended _____, 2014]

2014 Advisory Committee's Note to LR 7.2

The rule was amended to require that social security appeals be initially assigned to only a magistrate judge. The court will presume that the parties consent to disposition by a magistrate judge unless a party notifies the court to the contrary on or before the date that the answer is due. If a party does notify the court to the contrary, a district judge will also be assigned to the case, the magistrate judge will issue a report and recommendation (R&R), and either or both parties may seek de novo review of the R&R from the district judge. Thus, these amendments do not in any way affect the substantive rights of parties to social security appeals.

Proposed Amendments – LR 7.2

The purpose of these amendments is to encourage parties in social security appeal cases to consent to final disposition by a magistrate judge in order to considerably reduce the amount of time that such cases are pending in this court. Unlike most cases, social security cases have been pending for a lengthy period of time before they arrive in district court. Present – and historical – practice has been for the district judge to refer these cases to a magistrate judge for an R&R. The case then pends before the magistrate judge for the amount of time necessary to conduct a thorough review of what is generally a voluminous record and write what is generally an exhaustive R&R. If either party objects to the R&R, the case then pends before the district judge for the amount of time necessary to conduct a de novo review. The judgment of the district court may then be appealed to the United States Court of Appeals for the Eighth Circuit, further extending the time that the parties are without a final determination of their rights.

These rule amendments seek to reduce by one the number of structural delays in arriving at a final disposition in these important cases.

The amendments also delete former subsection (d)(2), which provided unnecessary directions for filing fee petitions.

2011 Advisory Committee's Note to LR 7.2

The language of LR 7.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 7.2(b) corrects an inadvertent inconsistency with the word limits set forth in LR 72.2(b).

The former provisions in LR 7.2(d) describing when motions for attorney's fees under certain laws may be filed are deleted as redundant.

2007 Advisory Committee's Note to LR 7.2

The rule was amended by replacing all references to "Secretary of Health and Human Services" to "Commissioner of Social Security" as referenced in the statute upon which the local rule is based.

1996 Advisory Committee's Note to LR 7.2

LR 7.2(b)(3) was amended to properly refer to "Magistrate Judge" rather than "Magistrate."

LR 7.2(c) was amended so that it applies only to cases remanded under sentence six of 42 U.S.C. § 405(g) where the Court has retained jurisdiction. See Note accompanying LR 7.2(d).

LR 7.2(d)(1): Although this paragraph was not amended, practitioners should be aware that the date which triggers the time for filing a motion or petition for attorney's fees varies in Social Security cases remanded by the Court to the Secretary depending on which sentence of 42 U.S.C. § 405(g) authorized the remand.

In *Melkonyan v. Sullivan*, 501 U.S. 89 (1991), the Supreme Court discussed the time for filing a petition for attorney's fees under the Equal Access to Justice Act (EAJA) in Social Security appeals. The Supreme Court recognized that under 42 U.S.C. § 405(g), a federal district court has the authority to remand a Social Security appeal under two separate and distinct circumstances.

The Court may, under the fourth sentence of § 405(g), "enter a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing." If the Court remands the cause for a rehearing under this sentence, it is referred to as a "sentence four" remand.

The Court may, under the sixth sentence of § 405(g), "on motion for the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken by the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." These remands are called "sentence six" remands.

When a claim is remanded by the Court under sentence four, the remand is a final decision and the judge's order shall state that a judgment should be entered. The Court does not retain jurisdiction to review the proceedings on remand. In Shalala v. Schaefer, 509 U.S. 292 (1993), the Supreme Court held that a claimant becomes a prevailing party by obtaining a sentence-four judgment. The time within which to petition for attorney's fees under the EAJA begins on the date of entry of the final judgment in conjunction with the remand order. If the decision on remand is adverse to the claimant, the claimant must file and serve a new summons and complaint.

When a claim is remanded under sentence six, the Court properly retains jurisdiction until after the administrative proceedings on remand. After the final decision of the Secretary upon remand, the Court must take some further action. If the decision is favorable to the claimant, the Court should issue a final judgment in the claimant's favor. The time within which to petition for attorney's fees under EAJA begins on the date of the entry of the final judgment. If the final decision of the Secretary upon remand is adverse to the claimant, then the procedure set forth in LR 7.2(c)(1) and (2) should be followed.

LR12.1 CRIMINAL DISCOVERY AND PRETRIAL MOTIONS

(a) Discovery.

(1) To the extent practicable, the government must fulfill its discovery obligations under Fed. R. Crim. P. 16(a) within 7 days after the defendant's arraignment.

(2) To the extent practicable, the defendant must fulfill the defendant's discovery obligations under Fed. R. Crim. P. 16(b) within 14 days after the defendant's arraignment.

(b) Requirement to Confer. Before filing a motion under Fed. R. Crim. P. 12(b), the moving party must confer with the responding party. The parties must attempt in good faith to clarify and narrow the issues in dispute.

(c) Pretrial Motions.

(1) Moving Party.

(A) Time Limits. A motion under Fed. R. Crim. P. 12(b) must be filed within 21 days after the arraignment.

(B) Motion Contents. To the extent practicable, a motion under Fed. R. Crim. P. 12(b) to suppress evidence must identify that evidence and the nature of the challenge.

(2) Responding Party Time Limits. A response to a motion under Fed. R. Crim. P. 12(b) must be filed within 35 days after the arraignment.

(3) Notice of Intent to Call Witnesses.

(A) Notice. When a party intends to call witnesses at a hearing on a motion under Fed. R. Crim. P. 12(b), the party must file a notice within 35 days after the arraignment. The notice must identify the number of witnesses whom the party intends to call, the motion or motions that each witness will be addressing, and the estimated duration of each witness's testimony.

(B) Responsive Notice. If after reviewing a notice under LR 12(c)(3)(A), another party intends to call witnesses at the same hearing, that party must file a responsive notice within 38 days after the arraignment. The responsive notice must identify the number of witnesses whom the party intends to call, the motion or motions each witness will be addressing, and the estimated duration of each witness's testimony.

(C) Defendant Testimony. A defendant is not required to declare in advance whether the defendant will testify at the hearing.

(d) Motion Hearing. The motion hearing will be scheduled no earlier than 42 days after the arraignment.

(e) Modification of Schedule. The court may modify the requirements of this rule for good cause.

[Adopted effective ___, 2014]

2014 Advisory Committee's Note to LR 12.1

This rule is intended to promote early and comprehensive disclosures in criminal cases and an ongoing exchange of information between the parties, particularly as to discovery and suppression issues to be addressed at a hearing. Identification of the evidence that may be introduced at trial and the nature of any challenges to that evidence will facilitate efficient resolution of suppression and other motions.

The requirement that the parties confer is not intended to alter the discovery obligations imposed by the Federal Rules of Criminal Procedure and by case law. The conferral requirement is also not intended to require disclosure of information protected by the attorney-client privilege, work-product doctrine, or any other privilege.

This rule is further intended to provide magistrate judges with advance notice of the anticipated duration and complexity of a motion hearing. As a general rule, a hearing on one or more motions filed under Fed. R. Crim. P. 12(b) will be limited to the factual and legal issues addressed in the motion papers and to any unanticipated issues that arise at such hearings.

The following table illustrates the timeline described in LR 12.1:

Day	Event	LR Subsection
Day X	Arraignment	
Day X + 7	Discovery of government	(a)(1)
Day X + 14	Reciprocal discovery of defendant	(a)(2)
Day X + 21	Motion deadline	(b)(1)(A)
Day X + 35	Motion response deadline and notice deadline	(b)(2), (b)(3)(A)
Day X + 38	Responsive notice deadline	(b)(3)(B)
Day X + 42	Motion hearing	(d)

The schedule prescribed in this rule may be modified for good cause. For example, modifications may be warranted in cases that involve complex issues or voluminous discovery. Likewise, modifications may be warranted to expedite cases involving little motion practice.

The committee recognizes that a defendant may file a motion – for example, a motion to compel disclosure under *Brady v. Maryland*, 373 U.S. 83 (1963) – in order to preserve the defendant's rights, even if there does not appear to be a dispute between the parties. This rule is not intended to interfere with that practice.