

1 I. Service of the Complaint

2 _____ As is outlined in the Scheduling Order issued in this
3 case, except when other provisions are made pursuant to an
4 application to proceed in forma pauperis, plaintiff *shall* serve a
5 copy of the **(1)** summons, **(2)** complaint, **(3)** notice of
6 availability of a Magistrate Judge and the form of consent/
7 decline to jurisdiction of United States Magistrate Judge (See
8 Local Rule 73-305(a)), and **(4)** the Scheduling Order, within
9 **twenty (20) days** of plaintiff filing the complaint.

10 If plaintiff is proceeding in forma pauperis, the
11 United States Marshal usually serves the complaint. However, if
12 plaintiff is not proceeding in forma pauperis, then plaintiff or
13 legal counsel is responsible for service and then filing a proof
14 of service without delay. See Local Rule 4-210.

15 Lawsuits for review of administrative decisions made by
16 the Commissioner of Social Security are prosecuted against the
17 Commissioner of Social Security. Fed.R.Civ.P. 4(i)(2) and (3)
18 provides, in substance, that to serve the Commissioner in his
19 official capacity, the party *must* serve **(1)** the United States,
20 and **(2)** the Commissioner.

21 To serve the United States, a party *must*:

22 **(1)** *deliver* a copy of the summons and complaint to the
23 United States Attorney for the district where the action is
24 brought, or to an Assistant United States Attorney or clerical
25 employee whom the United States Attorney designates in a writing
26 filed with the Court; or, *send* a copy of the summons and
27 complaint, by certified mail *only*, to the Civil Process Clerk at
28 the United States Attorney's Office; and,

1 (2) send a copy of the summons and complaint, by
2 certified mail *only*, to the Attorney General of the United States
3 in Washington, D.C.; and,

4 (3) send a copy of the summons and complaint, by
5 certified mail *only*, to the Commissioner (the officer of the
6 United States whose order is challenged by the lawsuit) in San
7 Francisco, CA. Fed.R.Civ.P. 4(i)(1)-(3).

8 Initial service of process is thus sufficient if
9 plaintiff serves, by certified mail *only*, copies of the summons
10 and complaint on:

11 Office of the United States Attorney
12 Civil Process Clerk
13 2500 Tulare Street, Suite 4401
14 Fresno, CA 93721

15 Office of the Attorney General of the United States
16 950 Pennsylvania Avenue, NW
17 Washington, D.C. 20530-0001

18 Office of the General Counsel
19 Social Security Administration
20 333 Market Street, Suite 1500
21 San Francisco, CA 94105

22 after which a proof of service must be filed with the Court
23 without delay pursuant to Local Rule 4-210. If plaintiff is
24 proceeding in forma pauperis, the United States Marshal generally
25 completes the proof of service and files it with the Court;
26 however, if plaintiff is not proceeding in forma pauperis, it is
27 plaintiff's duty to promptly file a proof of service with the
28 Court.

II. Attempt at Informal Resolution of the Case

Pursuant to the Scheduling Order, within **one hundred
twenty (120) days** after service of the complaint, defendant is
required to serve a copy of the administrative record on

1 plaintiff and also file the administrative record with the Court,
2 which serves as the answer to the complaint in this proceeding.

3 Once the administrative record has been filed, the
4 parties *must* try to resolve the case informally. In this
5 process, the parties *must* exchange informal briefs in the form of
6 letters about the case to see if they can agree that the case
7 should be sent back, or "remanded," to the Social Security
8 Administration for a further hearing by an administrative law
9 judge.

10 In the letter brief, plaintiff *must* briefly set forth
11 **(1)** the issues in the case, **(2)** the reasons why plaintiff thinks
12 that plaintiff is entitled to Social Security benefits, and **(3)**
13 why the decision to deny benefits should be remanded.

14 The letter brief *must* be marked "Confidential Letter
15 Brief", should not be filed with the Court, and *must* be served on
16 defendant **within thirty (30) days from the date defendant served**
17 **plaintiff with the administrative record, by mailing copies to**
18 **all the attorneys listed on the court docket as representing**
19 **defendant**, Commissioner of Social Security, at the addresses
20 noted on the court docket.

21 The name of the attorney or attorneys representing
22 defendant are added to the court docket at the time the Court
23 receives defendant's response to the complaint which, again,
24 usually consists of the administrative record. Sometimes the
25 court docket lists not only an attorney at the office of the
26 General Counsel of the Social Security Administration in San
27 Francisco, CA, but also an attorney at the United States
28 Attorney's Office in Fresno, CA; in these particular cases, it

1 will then be necessary for plaintiff to mail copies of the
2 confidential letter brief to more than one attorney for
3 defendant.

4 Defendant's confidential letter brief *must* be served on
5 plaintiff no later than **thirty-five (35) days** after defendant is
6 served with plaintiff's confidential letter brief.

7 If the parties agree to a remand, then the case will go
8 back to the Social Security Administration before any formal
9 briefs are filed with the Court, and without the Court ever
10 considering the merits of the case. The parties' agreement to
11 remand the case *must* be set forth in writing in a document titled
12 "Stipulation and Order," which *must* be signed and filed with the
13 Court no later than **fifteen (15) days** after defendant served its
14 confidential letter brief on plaintiff. See Local Rule
15 83-143(a) (1) & (b).

16 The informal letter briefs exchanged by the parties are
17 confidential in the sense that they are not filed with the Court.
18 If the parties are unable to agree to a remand, the letters are
19 not part of the case file and, thus, are not before the Court if
20 and when the Court finally considers the case on the merits.

21 III. Briefs

22 If, after exchanging confidential letter briefs, the
23 parties are unable to agree to a remand of the case, then the
24 parties *must* file formal briefs with the Court as directed in the
25 Scheduling Order. It is only after the formal briefs are filed
26 with the Court that the Court will consider the merits of the
27 case and make a decision.

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1 A. Plaintiff's Opening Brief

2 Plaintiff's opening brief *must* be filed and served
3 no later than **thirty (30) days** from the date defendant's informal
4 letter brief was served on plaintiff. Plaintiff *must* serve a
5 copy of the opening brief on all the attorneys listed for
6 defendant on the court docket of the case at the addresses noted
7 on the court docket.

8 Plaintiff *must* also file the original opening
9 brief, together with a copy, with the Court, by either personal
10 delivery or via U.S. mail to:

11 Office of the Clerk
12 United States District Court
13 Eastern District of California
 2500 Tulare Street, Suite 1501
 Fresno, CA 93721

14 Plaintiff's opening brief *must* contain the following:

15 (1) a plain description of plaintiff's alleged
16 physical or emotional impairments, when plaintiff contends they
17 became disabling, and how they disabled plaintiff from work;

18 (2) a summary of the administrative proceedings
19 before the Social Security Administration;

20 (3) a summary of the relevant testimony at the
21 administrative hearing;

22 (4) a summary of all relevant medical evidence,
23 including an explanation of the significance of clinical and
24 laboratory findings, and the purpose and effect of prescribed
25 medication and therapy;

26 (5) a recitation of the Social Security
27 Administration's findings and conclusions relevant to plaintiff's
28 claims;

1 (6) a short, separate statement of each of
2 plaintiff's legal claims stated in terms of the insufficiency of
3 the evidence to support a particular finding of fact or reliance
4 on an erroneous legal standard; and,

5 (7) argument separately addressing each claimed
6 error.

7 All references to the administrative record and
8 all assertions of fact *must* be accompanied by citations to the
9 administrative record. Argument in support of each claim of
10 error *must* be supported by citation to legal authority and
11 explanation of the application of such authority to the facts of
12 the particular case. Briefs that do not substantially comply
13 with these requirements will be stricken. A document that is
14 stricken becomes null and void and is not considered by the Court
15 for any purpose.

16 Plaintiff is further advised that failure to
17 timely file an opening brief will result in dismissal of the
18 action.

19 B. Defendant's Brief

20 Pursuant to the Scheduling Order, defendant's
21 responsive brief is due filed and served on plaintiff within
22 **thirty (30) days** from the date of service of plaintiff's opening
23 brief on defendant.

24 C. Plaintiff's Reply Brief

25 Plaintiff may file a reply brief, but is not
26 required to do so, within **fifteen (15) days** from the date
27 defendant served its responsive brief on plaintiff. Plaintiff
28 *must* serve a copy of the reply brief on defendant by serving the

1 United States Attorney for the Eastern District of California at
2 the address in Fresno, CA, noted above. Plaintiff *must* also file
3 the original reply brief, together with a copy, with the Court at
4 the Court's address in Fresno, CA, noted above.

5 Plaintiff's reply brief should respond to the
6 arguments made in defendant's responsive brief.

7 IV. Motion to Dismiss

8 In some cases, instead of serving and filing an
9 administrative record, defendant may file a motion to dismiss the
10 case pursuant to Fed.R.Civ.P. 12., within **one hundred twenty**
11 **(120) days** from the date defendant is served with plaintiff's
12 complaint.

13 Plaintiff may oppose a motion to dismiss by filing and
14 serving opposition to the motion within **fourteen (14) days** from
15 the date the motion to dismiss was served on plaintiff, and
16 should be titled "Opposition to Defendant's Motion to Dismiss."
17 See Local Rule 78-230(c).

18 The Court will consider a motion to dismiss only after
19 receiving opposition from plaintiff, or after the time for filing
20 opposition has passed. In ruling on a motion to dismiss the
21 case, the Court may either (1) deny the motion and proceed with
22 the case, ordering the parties to proceed to file the
23 administrative record, attempt informal resolution, and file
24 briefs; or, (2) grant the motion to dismiss, and dismiss all or
25 part of the case.

26 V. The Court's Decision on the Merits

27 The Court will consider the merits of the case only
28 after all briefs have been filed, and may enter a judgment

1 affirming, modifying, or reversing the determination of the
2 Social Security Administration. The Court may or may not remand
3 the case to the Social Security Administration for a further
4 hearing.

5 VI. Summary of Deadline Calculations

6 See Section 7 I. above	Service	due 20 days after filing complaint
8 See Section 9 II. above	Administrative Record	due 120 days after service
10 See Section 11 III. A. above	Plaintiff's Opening Brief	due 95 days after administrative record lodged with court
12 See Section 13 III. B. above	Defendant's Brief	due 30 days after plaintiff's opening brief filed
14 See Section 15 III. C. above	Plaintiff's Reply Brief - optional	due 15 days after defendant's brief filed

16 VII. Rules for Litigating the Action

17 Plaintiff is informed of the following:

18 A. In litigating this action, the parties *must* comply
19 with the Federal Rules of Civil Procedure (Fed.R.Civ.P.), and the
20 Local Rules of the United States District Court, Eastern District
21 of California ("Local Rules"). A copy of the Local Rules may be
22 obtained in the Clerk's Office at no charge.

23 Local Rule 8-206 is a special rule for social
24 security actions. Specifically (a)(2) and (3) generally states
25 that complaints *shall* contain the last four digits of plaintiff's
26 social security number *only*, i.e., XXX-XX-1234, and that
27 plaintiff shall privately disclose to defendant, within **five (5)**
28 **days** after a request is made to plaintiff, the full social
security number of plaintiff.

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1 Therefore, plaintiff shall refrain from disclosing
2 the entire social security number on any filings.

3 FAILURE TO COMPLY WITH THE LOCAL RULES, FEDERAL
4 RULES, OR A COURT ORDER, INCLUDING THIS ORDER, WILL BE GROUNDS
5 FOR DISMISSAL OR OTHER APPROPRIATE SANCTIONS. See Local Rule
6 11-110; Fed.R.Civ.P. 41(b).

7 B. Documents intended to be filed with the Court *must*
8 be mailed to the Clerk of the Court in Fresno, CA, at the address
9 noted above. See Local Rule 5-134(a). All documents
10 inappropriately mailed directly to a judge's chambers will be
11 stricken from the record. A document requesting a court order
12 *must* be styled as a motion, not a letter. See Fed.R.Civ.P. 7.

13 C. Each document submitted for filing *must* include
14 the original signature of the filing party or parties. Local
15 Rule 7-131; Fed.R.Civ.P. 11(a). All documents submitted without
16 the required signature(s) will be stricken. Each separate
17 document *must* be separately stapled. See Local Rule 7-130. If a
18 document is stapled behind another document, it will not be filed
19 and will not enter the court docket.

20 D. All documents filed with the Court *must* be
21 submitted with an additional legible copy to be conformed for the
22 Court's use. See Local Rule 5-133(d) (2). A document submitted
23 without an extra copy for the Court's use will be stricken. If
24 the filing party wishes the Court to return a file-stamped copy,
25 an additional copy *must* be provided for that purpose (i.e., an
26 original and two copies, one for the Court's use and one to be
27 returned to the filing party), together with a self-addressed,
28 stamped envelope. The Court cannot provide copy or mailing

1 service for a party, even for an indigent plaintiff proceeding in
2 forma pauperis. Copies of documents from the Court's file may be
3 obtained in the Clerk's Office at the cost of fifty (\$.50) cents
4 per page.

5 E. After any defendant has appeared in an action by
6 filing a pleading responsive to the complaint (i.e., an answer or
7 a motion to dismiss), all documents filed with the Court *must*
8 include a proof of service stating that a copy of the document
9 was served on the opposing party. See 28 U.S.C. § 1746;
10 F.R.Civ.P. 5; Local Rule 5-135. **A document submitted without the**
11 **required proof of service will be stricken.** Where a party is
12 represented by counsel, service on the party's attorney of record
13 constitutes effective service.

14 F. A pro se party has an affirmative duty to keep the
15 Court and opposing parties apprised of a current address. If
16 plaintiff moves and fails to file a notice of change of address,
17 service of court orders at plaintiff's prior address shall
18 constitute effective notice. See Local Rule 83-182(f). If mail
19 directed to plaintiff is returned by the United States Postal
20 Service as undeliverable, the Court will not attempt to re-mail
21 it. If plaintiff's address is not updated, in writing, within
22 **sixty (60) days** of mail being returned, the action will be
23 dismissed for failure to prosecute. See Local Rule 83-183(b).

24
25 IT IS SO ORDERED.

26 **Dated: January 23, 2009**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE