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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NATHAN J. CHARLES,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendants.

) 1:09-cv-01873 GSA

) **INFORMATIONAL ORDER FOR PRO**
) **SE LITIGANTS**

Plaintiff is proceeding pro se in an action seeking judicial review of an administrative decision of the Commissioner of Social Security that denied, in whole or in part, plaintiff's claim for benefits under the Social Security Act.

This order provides the following helpful information, and basically serves as a step-by-step guide, for pro se litigants. It is strongly suggested that plaintiff read and re-read this order and keep it readily available for future reference.

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

3 Office of the United States Attorney
4 Civil Process Clerk
5 2500 Tulare Street, Suite 4401
6 Fresno, CA 93721

7 Office of the Attorney General of the United States
8 950 Pennsylvania Avenue, NW
9 Washington, D.C. 20530-0001

10 Office of the General Counsel
11 Social Security Administration
12 333 Market Street, Suite 1500
13 San Francisco, CA 94105

14 after which a proof of service must be filed with the Court without delay pursuant to Local Rule
15 210. If plaintiff is proceeding in forma pauperis, the United States Marshal generally completes
16 the proof of service and files it with the Court; however, if plaintiff is not proceeding in forma
17 pauperis, it is plaintiff's duty to promptly file a proof of service with the Court.

18 **II. Attempt at Informal Resolution of the Case**

19 Pursuant to the Scheduling Order, within **one hundred twenty (120) days** after
20 service of the complaint, defendant is required to serve a copy of the administrative record on
21 plaintiff and also file the administrative record with the Court, which serves as the answer to the
22 complaint in this proceeding.

23 Once the administrative record has been filed, the parties *must* try to resolve the
24 case informally. In this process, the parties *must* exchange informal briefs in the form of letters
25 about the case to see if they can agree that the case should be sent back, or "remanded," to the
26 Social Security Administration for a further hearing by an administrative law judge.
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1 In the letter brief, plaintiff *must* briefly set forth **(1)** the issues in the case, **(2)** the
2 reasons why plaintiff thinks that plaintiff is entitled to Social Security benefits, and **(3)** why the
3 decision to deny benefits should be remanded.

4 The letter brief *must* be marked “Confidential Letter Brief”, should not be filed
5 with the Court, and *must* be served on defendant **within thirty (30) days from the date**
6 **defendant served plaintiff with the administrative record, by mailing copies to all the**
7 **attorneys listed on the court docket as representing defendant**, Commissioner of Social
8 Security, at the addresses noted on the court docket.

9 The name of the attorney or attorneys representing defendant are added to the
10 court docket at the time the Court receives defendant’s response to the complaint which, again,
11 usually consists of the administrative record. Sometimes the court docket lists not only an
12 attorney at the office of the General Counsel of the Social Security Administration in San
13 Francisco, CA, but also an attorney at the United States Attorney’s Office in Fresno, CA; in these
14 particular cases, it will then be necessary for plaintiff to mail copies of the confidential letter
15 brief to more than one attorney for defendant.

16 Defendant’s confidential letter brief *must* be served on plaintiff no later than
17 **thirty-five (35) days** after defendant is served with plaintiff’s confidential letter brief.

18 If the parties agree to a remand, then the case will go back to the Social Security
19 Administration before any formal briefs are filed with the Court, and without the Court ever
20 considering the merits of the case. The parties’ agreement to remand the case *must* be set forth in
21 writing in a document titled “Stipulation and Order,” which *must* be signed and filed with the
22 Court no later than **fifteen (15) days** after defendant served its confidential letter brief on
23 plaintiff. See Local Rule 143(a)(1) & (b).

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

3 **III. Briefs**

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

8 A. Plaintiff's Opening Brief

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

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

15 Office of the Clerk
16 United States District Court
17 Eastern District of California
2500 Tulare Street, Suite 1501
18 Fresno, CA 93721

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

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

23 (2) a summary of the administrative proceedings before the Social
24 Security Administration;

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

1 (4) a summary of all relevant medical evidence, including an
2 explanation of the significance of clinical and laboratory findings, and the purpose and effect of
3 prescribed medication and therapy;

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

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

9 (7) argument separately addressing each claimed error.

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

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

18 B. Defendant's Brief

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

22 C. Plaintiff's Reply Brief

23 Plaintiff may file a reply brief, but is not required to do so, within **fifteen**
24 **(15) days** from the date defendant served its responsive brief on plaintiff. Plaintiff *must* serve a
25 copy of the reply brief on defendant by serving the United States Attorney for the Eastern District
26 of California at the address in Fresno, CA, noted above. Plaintiff *must* also file the original reply
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1 brief, together with a copy, with the Court at the Court’s address in Fresno, CA, noted above.

2 Plaintiff’s reply brief should respond to the arguments made in defendant’s
3 responsive brief.

4 **IV. Motion to Dismiss**

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

8 Plaintiff may oppose a motion to dismiss by filing and serving opposition to the
9 motion within **fourteen (14) days** from the date the motion to dismiss was served on plaintiff,
10 and should be titled “Opposition to Defendant’s Motion to Dismiss.” See Local Rule 230(c).

11 The Court will consider a motion to dismiss only after receiving opposition from
12 plaintiff, or after the time for filing opposition has passed. In ruling on a motion to dismiss the
13 case, the Court may either (1) deny the motion and proceed with the case, ordering the parties to
14 proceed to file the administrative record, attempt informal resolution, and file briefs; or, (2) grant
15 the motion to dismiss, and dismiss all or part of the case.

16 **V. The Court’s Decision on the Merits**

17 The Court will consider the merits of the case only after all briefs have been filed,
18 and may enter a judgment affirming, modifying, or reversing the determination of the Social
19 Security Administration. The Court may or may not remand the case to the Social Security
20 Administration for a further hearing.

21 **VI. Summary of Deadline Calculations**

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See Section 23 I. above	Service	due 20 days after filing complaint
24 See Section II. 25 above	Administrative Record	due 120 days after service

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1 2 3 4	See Section III. A. above	Plaintiff's Opening Brief	due 95 days after administrative record lodged with court
5 6	See Section III. B. above	Defendant's Brief	due 30 days after plaintiff's opening brief filed
7 8	See Section III. C. above	Plaintiff's Reply Brief - optional	due 15 days after defendant's brief filed

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VII. Rules for Litigating the Action

Plaintiff is informed of the following:

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

Local Rule 206 is a special rule for Social Security actions. Specifically (a)(2) and (3) generally states that complaints *shall* contain the last four digits of plaintiff’s Social Security number *only*, i.e., XXX-XX-1234, and that plaintiff shall privately disclose to defendant, within **five (5) days** after a request is made to plaintiff, the full Social Security number of plaintiff. Therefore, plaintiff shall refrain from disclosing the entire Social Security number on any filings.

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

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

1 C. Each document submitted for filing *must* include the original signature of
2 the filing party or parties. Local Rule 131; Fed.R.Civ.P. 11(a). All documents submitted without
3 the required signature(s) will be stricken. Each separate document *must* be separately stapled.
4 See Local Rule 130. If a document is stapled behind another document, it will not be filed and
5 will not enter the court docket.

6 D. All documents filed with the Court *must* be submitted with an additional
7 legible copy to be conformed for the Court's use. See Local Rule 133(d)(2). A document
8 submitted without an extra copy for the Court's use will be stricken. If the filing party wishes the
9 Court to return a file-stamped copy, an additional copy *must* be provided for that purpose (i.e., an
10 original and two copies, one for the Court's use and one to be returned to the filing party),
11 together with a self-addressed, stamped envelope. The Court cannot provide copy or mailing
12 service for a party, even for an indigent plaintiff proceeding in forma pauperis. Copies of
13 documents from the Court's file may be obtained in the Clerk's Office at the cost of fifty (\$.50)
14 cents per page.

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

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

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5 IT IS SO ORDERED.

6 **Dated: March 10, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE