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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HUGH E. STANCIL,)	1:11-cv-000922 GSA
Plaintiff,)	PRO SE INFORMATIONAL ORDER
v.)	
MICHAEL ASTRUE, Commissioner of)	
Social Security,)	
Defendant.)	

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.

I. Service of the Complaint

As is outlined in the Scheduling Order issued in this case, except when other provisions are made pursuant to an application to proceed in forma pauperis, plaintiff *shall* serve

1 a copy of the **(1)** summons, **(2)** complaint, **(3)** notice of availability of a Magistrate Judge and the
2 form of consent/ decline to jurisdiction of United States Magistrate Judge (See Local Rule
3 305(a)), and **(4)** the Scheduling Order, within **twenty (20) days** of plaintiff filing the complaint.

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

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

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

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

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

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

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

25 Office of the United States Attorney
26 Civil Process Clerk
27 2500 Tulare Street, Suite 4401
28 Fresno, CA 93721

1 Office of the Attorney General of the United States
2 950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

3 Office of the General Counsel
4 Social Security Administration
333 Market Street, Suite 1500
5 San Francisco, CA 94105

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

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

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

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

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

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

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

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

9 B. Defendant's Brief

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

13 C. Plaintiff's Reply Brief

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

20 Plaintiff's reply brief should respond to the arguments made in defendant's
21 responsive brief.

22 **IV. Motion to Dismiss**

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

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

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

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

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

14 **VI. Summary of Deadline Calculations**

15 See Section 16 I. above	Service	due 20 days after filing complaint
17 See Section II. 18 above	Administrative Record	due 120 days after service
19 See Section III. A. 20 above	Plaintiff’s Opening Brief	due 95 days after administrative record lodged with court
21 See Section III. B. 22 above	Defendant’s Brief	due 30 days after plaintiff’s opening brief filed
23 See Section III. C. 24 above	Plaintiff’s Reply Brief - optional	due 15 days after defendant’s brief filed

25
26 **VII. Rules for Litigating the Action**

27 Plaintiff is informed of the following:

1 original and two copies, one for the Court's use and one to be returned to the filing party),
2 together with a self-addressed, stamped envelope. The Court cannot provide copy or mailing
3 service for a party, even for an indigent plaintiff proceeding in forma pauperis. Copies of
4 documents from the Court's file may be obtained in the Clerk's Office at the cost of fifty (\$.50)
5 cents per page.

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

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

19
20 IT IS SO ORDERED.

21 **Dated: June 14, 2011**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE