

RICHARD A. HARRIS, ESQ.
Nevada State Bar No. 505
RICHARD HARRIS LAW FIRM
801 S FOURTH ST.
LAS VEGAS NV 89101
Ph: (702) 444-4392
Fax: (702) 444-4455
Email: rick@richardharrislaw.com
Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

| | | |
|---|--|--|
| RONALD SCOTT BEATTY, Plaintiff, vs. ACTING COMMISSIONER of Social Security, Defendant. | | 2:13-cv-01092-RFB-GWF STIPULATED MOTION FOR ATTORNEYS’ FEES UNDER THE EQUAL ACCESS TO JUSTICE ACT |
|---|--|--|

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff will be awarded attorney fees in the amount of EIGHT THOUSAND TWO HUNDRED DOLLARS (\$8200.00) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d); and costs of \$400 for reimbursement of the filing fee to the court under 28 U.S.C. § 2412(a)(1) and 28 U.S.C. § 1920. See Docket #2, as follows: “ORDER Granting 1 Plaintiff’s Motion/Application for Leave to Proceed in forma pauperis **with the caveat that the fees shall be paid if recovery is made.**” Id., emphasis added. The Government may reimburse the Court directly for the filing fee if a proper showing of payment is made to Plaintiff. This total amount represents compensation for all legal services rendered on behalf of Plaintiff by counsel in connection with this civil action, in accordance with 28 U.S.C. §§ 2412(d), 1920.

1 To satisfy the requirements of the Equal Access to Justice Act, Plaintiff alleges that the
2 position of Defendant was not substantially justified, that Plaintiff had a net worth of less than
3 two million dollars at the time this civil action was filed, that Plaintiff's attorneys have expended
4 at least 43 hours in connection with this matter, and that the current applicable EAJA hourly rate,
5 as adjusted for inflation, is \$192.68 (pursuant to the 9th Circuit Memorandum, available on the
6 9th Circuit website; see <http://www.ca9.uscourts.gov/>).

7 After the Court issues an order for EAJA fees to Plaintiff, the Defendant will consider any
8 assignment of EAJA fees to Richard Harris, Esq. Pursuant to *Astrue v. Ratliff*, 130 S.Ct. 2521,
9 2252-2253 (2010), the ability to honor any such assignment will depend on whether the fees are
10 subject to any offset allowed under the United States Department of the Treasury's Offset
11 Program. After the order for EAJA fees is entered, the Defendant will determine whether they are
12 subject to any offset.

13 If the Department of the Treasury determines that Plaintiff does not owe a federal debt,
14 then the government shall cause the payment of fees to be made directly to Richard Harris, Esq.,
15 pursuant to any assignment executed by Plaintiff. Any payments made shall be delivered to
16 Richard Harris, Esq.

17 This stipulation constitutes a compromise settlement of Plaintiff's request for EAJA
18 attorney fees and does not constitute an admission of liability on the part of Defendant.
19

20 DATED this 23rd day of February, 2017.

DATED this 23rd day of February, 2017.

21
22 /s/ Richard A. Harris
23 **RICHARD A. HARRIS, ESQ.**
24 Richard Harris Law Firm
25 801 S Fourth Street
26 Las Vegas NV 89101
27 **Attorney for Plaintiff**
28

/s/ Jeffrey Chen
(signed per email authorization)
JEFFREY T. CHEN, ESQ.
Special Assistant United States Attorney
160 Spear Street, Suite 800
San Francisco CA 94105
Of Attorneys for Defendant

1 **RICHARD A. HARRIS, ESQ.**
Nevada State Bar No. 505
2 RICHARD HARRIS LAW FIRM
801 S FOURTH ST.
3 LAS VEGAS NV 89101
Ph: (702) 444-4392
4 Fax: (702) 444-4455
5 Email: rick@richardharrislaw.com
Attorney for Plaintiff

6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
9

10 RONALD SCOTT BEATTY ,

Case No. 2:13-cv-01092-RFB-GWF

11 Plaintiff,

12 vs.

**PROPOSED ORDER
FOR EAJA FEES**

13 ACTING COMMISSIONER OF SOCIAL
14 SECURITY,

15 Defendant.

16
17 Based on the Motion being filed, it is hereby ORDERED that attorneys' fees and costs in the
18 amount of EIGHT THOUSAND TWO HUNDRED EIGHTEEN DOLLARS AND 00/100
19 (\$8200.00), pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412, shall be awarded to
20 Plaintiff; made payable to and mailed to Plaintiff's attorney at the address above.
21

22 DATED this 27th day of February, 2017.

23
24 
Hon. Richard F. Boulware, II
United States District Court

25 presented by:

/s/ Richard A. Harris

26 **RICHARD A. HARRIS, ESQ.**, Nevada State Bar No. 505
RICHARD HARRIS LAW FIRM
801 S FOURTH ST. LAS VEGAS NV 89101
27 Ph: (702) 444-4392 Fx: (702) 444-4455
Email: rick@richardharrislaw.com
28 **Attorney for Plaintiff**

FEDERAL COURT RETAINER AGREEMENT

AGREE TO REPRESENTATION: I employ Richard Harris, Esq. as my Attorney in Federal Court in the Social Security Disability case. My attorney is authorized to file documents and act for me in all respects. I agree that another attorney may be employed or associated as co-counsel by RICHARD HARRIS LAW FIRM, and that any such attorney may assist in my representation in this matter, under the terms of the fee agreement which follows. My attorney is authorized to disclosed information in my file to other attorneys, representatives, or government officials with whom my attorneys deem it appropriate to confer regarding matters related to my case. If my attorneys procure a remand for another hearing, I understand that my representative who appeared at the Administrative hearing will continue to handle my case. I authorize my attorney to divide the work on my case with one or more additional attorneys, and to share fees among attorneys in a manner which shall be left to the sole discretion of the attorneys, so long as such fee sharing does not increase the total fee owed by me beyond the amount allowed by law. I understand the scope of my attorneys' practice currently is focused on Federal Court appeals, and if my attorney obtains an order sending my case back for another hearing, the original representative will continue representation at that administrative hearing.

The scope of representation of this agreement is limited to the continuing appeal of one specific adverse determination or decision, made by the Social Security Administration, in my claim for Social Security Disability and/or SSI benefits. My attorneys have not agreed to represent or advise me with regard to any other claim. The representation herein may terminate, at the sole discretion of the attorney, at (or any time after) the time a decision is issued by a court or by the Social Security Administration.

I agree to re-pay my attorneys all out of pocket expenses and costs, namely the \$~~400~~⁴⁰⁰.00 filing fee, incurred by my attorneys in pursuing this claim even if my attorneys are not successful in this representation.

I and my attorneys agree that the federal court attorneys' fee shall be the GREATER of the following: 25 percent of the past-due benefits resulting from my claim or claims. (which I understand may exceed \$750.00 per hour) OR the amount of any award ordered pursuant to the Equal Access to Justice Act (EAJA). EAJA fees are paid by an agency of the U.S. government – not out of the claimant's past-due benefits. To the fullest extent permissible under law, I assign to my attorneys the right to receive any EAJA award or check in payment of award directly in the attorney's name. My attorneys shall have the beneficial interest in the EAJA fee award. See 31 C.F.R. § 285(e)(5) (2010). If the government issues checks in my name for fees, costs, or expenses under any law which shifts to the government the responsibility for making such payments, I authorize my attorneys to sign and deposit such checks on my behalf and immediately to take any amounts to which the attorneys are entitled under this contract. I authorize my attorneys to request the court award beneficial interest on any costs-expenses and/or EAJA fees to my attorney, and that the government authority responsible for payment of such awards pay and all amounts awarded directly to my attorneys in a check made payable to my attorneys and mailed to attorneys address, or via deposit to my attorneys account. If any portion of a fee awarded in my case is taken by the federal government to pay any debt I owe, I agree immediately to reimburse my attorneys for the amount of the fee taken in payment of my debt.

I understand and agree that my attorneys may receive EAJA fees for obtaining a court order remanding my case for further administrative proceedings, even if I am not ultimately found disabled after such further administrative proceedings. In order for my attorneys to become entitled to federal court fees paid out of my retroactive benefits, however, there must be a finding of disability (made either by the court or by the Social Security Administration after remand from the court) followed by an award of benefits to me and/or to other beneficiaries in association with my claim. If the Social Security Administration sends to my attorney a court fee authorized under 42 USC § 406(b) which is larger than the fee my attorney is entitled to keep after off-setting any EAJA fee previously received by my attorney in connection with my claim, I instruct my attorney, on my behalf and as a convenience to me, to forward to my administrative representative (if any) up to but not in excess of the amount of any then unpaid fee due (or pending agency approval) from me for representation before the agency.

The total fee for both Title II and Title XVI (SSD & SSI) claim may not exceed the amounts stated above.

Date: 6-7-2013

RS Beatty
CLIENT SIGNATURE

Richard Harris
RICHARD A. HARRIS, ESQ

**ASSIGNMENT OF AWARD OF EQUAL
ACCESS TO JUSTICE ATTORNEY FEES**

I, Ronald Scott Beatty, hereby assign any entitlement I may have to a fee under the Equal Access to Justice Act (EAJA), 28 U.S.C. 2412(d), to my attorney, Richard Harris, Esq. I acknowledge that the fee compensates my attorney for representing me before the United States District Court. Therefore, I ask that the EAJA award be made payable to my attorney, Richard Harris, and not to me as Plaintiff.

DATED: 6-7-2013

RS Beatty
Ronald Scott Beatty

TIMESHEET

CLIENT: Beatty
ATTORNEY: ZISKIN

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| Date | Activity | Time |
|----------|--|------|
| 4/29/13 | review case for USDC | 1.2 |
| 8/30/13 | review Answer | .1 |
| 9/3/13 | review procedural order | .1 |
| 9/4/13 | receive admin record; inspect; docket | .1 |
| 1/30/14 | review file/read transcript/annotate ALJ decision | 4.5 |
| 1/31/14 | finish reading transcript; begin writing opening brief; outline procedural history; begin statement of facts | 5.6 |
| 2/3/14 | continue writing opening brief; draft args, legal research | 5.5 |
| 2/4/14 | continue writing opening brief; write args | 4.9 |
| 2/5/14 | finish writing opening brief; edit, finalize, file opening brief | 6.2 |
| 2/5/14 | note def notice of change of atty | .1 |
| 2/19/14 | note def notice of appearance | .1 |
| 2/21/14 | approve def req for extension; rvw motion | .2 |
| 2/24/14 | rvw order re: def ext | .1 |
| 5/6/14 | rvw def's cross motion, response | .3 |
| 6/20/14 | review case file, ALJ decision, prior brief; read def brief | 1.5 |
| 6/21/14 | annotate, outline def's brief, legal research; draft args; complete reply brief | 4.2 |
| 10/16/14 | rvw court order re: recusal | .1 |
| 10/20/14 | rvw case reassignment; note change in case # | .1 |
| 2/20/15 | review briefs and ALJ decision; read court opinion; discuss with rep to convey info to client as to status of case | 1.7 |
| 3/9/15 | review def objections | .3 |

| | | |
|----------|--|-------------------------|
| 3/25/15 | review prior briefs and magistrate report; legal research; draft args | 1.5 |
| 3/26/15 | write reply to objections | 2.9 |
| 7/17/15 | note def change of atty | .1 |
| 9/21/15 | note association of def counsel | .1 |
| 12/20/15 | note court order re resubmission of record; discuss with law firm staff/opposing counsel | .2 |
| 1/6/15 | approve def request for ext | .1 |
| 1/11/16 | rvw court order | .1 |
| 8/29/16 | read court order accepting R&R; discuss with staff re: communicating with client | .3 |
| 9/6/16 | discuss with staff re: no judgment | .2 |
| 11/23/16 | read amended order | .2 |
| 11/24/16 | assist paralegal in drafting email to court regarding entry of judgment | .3 |
| 11/28/16 | rvw judgment; docket for fees | .1 |
| | Total hours LZ | 43 |
| | total hours 2013: 1.5 @ \$187.02 ¹ | \$280.53 |
| | total hours 2014: 33.4 @\$190.06 | \$6348.00 |
| | total hours 2015: 6.9 @\$190.28 | \$1312.93 |
| | total hrs 2016: 1.2 @ \$192.68 | \$231.22 |
| | Total EAJA fee requested Atty Ziskin | \$8172.68 |
| | plus fee from attached Attorney Harris time sheet, plus paralegal time | \$273.88 |
| | Total EAJA fee requested | <u>\$8446.56</u> |

¹ EAJA rates pursuant to 9th Circuit memo/ *Thangaraja*.
See <http://www.ca9.uscourts.gov/>.

RICHARD A. HARRIS, ATTORNEY AT LAW

Beatty v. Astrue---- 2:13-cv-01092-APG-GWF

Contemporaneous Time Record Of Legal Services At The U.S. District Court Level:

| DATE | NATURE OF LEGAL SERVICES | TIME | |
|----------|--|------------------------|---|
| 06/20/13 | Draft & file complaint | .6 | A |
| 07/10/13 | File Certificate of Interested Parties | .2 | P |
| 09/09/13 | Calendar scheduling order dates | .2 | P |
| 02/06/14 | Contact with client re status | .2 | P |
| 02/21/14 | Email re Commissioner's request for extension of time. | .2 | P |
| 01/06/15 | Contact with client re status | .2 | P |
| 03/04/15 | Review and send email to Ziskin of Report & Recommendation | .1 | P |
| 05/08/15 | Contact with client re status | .2 | P |
| 01/06/16 | Call from OGC re resubmission of certified copy | .1 | A |
| 08/31/16 | Contact with client re status | .2 | P |
| 09/02/16 | Contact with client re status | .2 | P |
| 11/07/16 | Contact with client re status | .2 | P |
| | | | |
| | total hours | 2.0 | |
| | Calculated @ hourly rate per CPI Thangaraja: 2013 \$187.02 x .6 = \$112.21 2016 \$191.70 x .1 = \$19.17 P= Paralegal time \$75.00/hr x 1.9 142.50 | <u>\$273.88</u> | |

(paralegal time pursuant to Richlin v. Cherthoff.)