

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:10-CV-167-RLV-DCK**

CHARLES E. KIMBROUGH,)
)
 Plaintiff,)
)
 v.)
)
 MICHAEL J. ASTRUE,)
 Commissioner of Social Security,)
)
 Defendant.)
 _____)

ORDER

THIS MATTER IS BEFORE THE COURT *sua sponte*, regarding “Plaintiff’s Petition For Attorney Fees Under § 406(b) Of The Social Security Act” (Document No. 28) filed November 15, 2012, and this Court’s “Order” (Document No. 30) filed November 16, 2012. The motion was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and further review is appropriate.

On November 29, 2012, Plaintiff’s counsel contacted the undersigned’s staff to suggest that the Court’s previous “Order” (Document No. 30), granting “Plaintiff’s Petition For Attorney Fees Under § 406(b) Of The Social Security Act” (Document No. 28), is incomplete and/or in error. Plaintiff’s counsel further suggested that the “Order” (Document No. 30) is unclear as to the basis for the relief requested.

After review of the record, including the most recent motions and orders, the undersigned finds that some clarification would be helpful. The undersigned notes that the a “Consent Motion For Entry Of Order Accepting The Parties’ Settlement Agreement On Attorney’s Fees” (Document Nos. 25) was filed on December 19, 2011, along with the parties’ “Settlement Agreement” (Document No. 26) stating that the “parties desire to resolve the matter of entitlement to attorney’s

fees without further time and expense....” The Court issued an “Order” (Document No. 27) on December 19, 2011, granting the “Consent Motion For Entry Of Order Accepting The Parties’ Settlement Agreement On Attorney’s Fees” (Document Nos. 25).

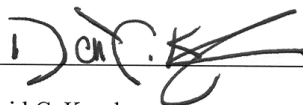
Almost eleven (11) months later, “Plaintiff’s Motion For Attorney Fees Under § 406(b) Of The Social Security Act” (Document No. 28) was filed. It does not appear that “Plaintiff’s Motion For Attorney Fees...” (Document No. 28) satisfied the requirement of consultation pursuant to Local Rule 7.1 (B) or explained the affect, if any, of Plaintiff’s proposed order on the Court’s previous acceptance of the “Settlement Agreement” (Document No. 26) resolving the matter of entitlement to attorney’s fees.

Based on the foregoing, the undersigned agrees that the Court’s most recent “Order” (Document No. 30) may have been issued in error. As such, the undersigned will modify that Order as follows:

IT IS, THEREFORE, ORDERED that the Court’s “Order” (Document No. 30) be **STRICKEN**, and that “Plaintiff’s Motion For Attorney Fees Under § 406(b) Of The Social Security Act” (Document No. 28) be **DENIED WITHOUT PREJUDICE**. Plaintiff may file a renewed motion for attorney’s fees that meets the requirements of Local Rule 7.1(B), thoroughly addresses the relevant history of this case, and explains the basis for the relief requested.

SO ORDERED.

Signed: November 29, 2012



David C. Keesler
United States Magistrate Judge

