

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In the Matter of:

ADOPTION OF LOCAL RULES

MISC. NO. 03-115(RAM)

Amendment of Local Civil Rule 9

ORDER

In accordance with 28 U.S.C. §2071(b), the United States District Court for the District of Puerto Rico is publishing amendments to Local Civil Rule 9 (Social Security Cases) for public comment. Pursuant to 28 U.S.C. 2071(e), the Court has determined that there is an immediate need for the amendments to take effect while affording prompt notice and opportunity for comment. Therefore, comments may be submitted to the Clerk of Court by mail, or personal delivery, to:

**Clerk of Court
Attn Public Comments
Federico Degetau Federal Bldg.
150 Carlos Chardón Avenue, Room 150
San Juan, PR 00918-1767**

The public comment period will end at close of business on Wednesday, July 5, 2023.

The Clerk is instructed to publish this Order and Local Civil Rule 9, as amended, by web publication in www.prd.uscourts.gov, by notice to all members of the bar via mass email, and by having a copy of this Order and the amended local rule available for inspection at the Clerk's Office Intake Section.

IT IS SO ORDERED.

San Juan, Puerto Rico, June 9, 2023.

FOR THE COURT

s/ Francisco A. Besosa
Francisco A. Besosa
United States District Judge
Chair, Local Rules Committee

RULE 9

SOCIAL SECURITY CASES

(amended on 03/xx/2023)

The following procedures shall apply to actions challenging a final decision of the Commissioner of the Social Security Administration filed pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g). These procedures do not apply to any other action.

(a) **Initial Process.**

~~(1) To satisfy Federal Rule of Civil Procedure 4(i)(1), service can be made upon the United States Attorney's Office, Torre Chardon, Suite 1201, 350 Carlos Chardon Ave., San Juan, Puerto Rico 00918. A CM/ECF Notice of Electronic Filing is sufficient to serve the Attorney General and the New York Regional Social Security Administration Office of General Counsel.~~

(1) Plaintiff must provide in a secure fashion their full Social Security number and the full Social Security number of any minor child claimant or person whose wage-record underlies the claim.

(2) Plaintiff must indicate whether (s)he consents to the action, to include the final judgment, being heard before a magistrate judge. The defendant Commissioner has agreed to proceed before a magistrate in all 42 U.S.C. § 405(g) actions.

~~(b) **Response to Complaint.** The defendant Commissioner shall have ninety (90) days after service of the complaint upon the United States Attorney's Office for the District of Puerto Rico, to file the certified administrative record electronically through CM/ECF. The certified administrative record shall constitute the defendant's answer.~~

~~(c) **Memoranda of Law.** The plaintiff shall have sixty (60) days after the administrative record is filed to move the court to reverse the Commissioner's decision or to grant other relief. The defendant Commissioner shall have sixty (60) days to respond. Both plaintiff's request and the Commissioner's response shall be supported by a memorandum of law with precise citations to the certified administrative record. The plaintiff shall have twenty-one (21) days to reply, if requested and allowed by the Court.~~

(b) **Attorney Fees for Social Security Cases.** All Attorneys' Fees requests must be submitted electronically through CM/ECF.

(1) **EAJA Attorneys' Fees.** A party seeking attorneys' fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, shall have thirty (30) days after the judgment remanding the case to the Commissioner becomes final to file its request. The request shall include an assignment of fees document. The Commissioner shall have thirty (30) days to respond.

(2) **42 U.S.C. § 406(b) Attorneys' Fees.** A party seeking attorneys' fees pursuant to 42 U.S.C. § 406(b) shall have fourteen (14) days after counsel's receipt of the original,

amended, or corrected Notice of Award, whichever is latest, to file its request for attorney's fees. The Commissioner shall have thirty (30) days after receipt of the request to respond.

- (A) A request for attorneys' fees pursuant to 42 U.S.C. § 406(b) shall include:
 - (i) The most recent notice of award, including the amount of retroactive benefits payable to plaintiff and each auxiliary (if applicable) and the amount withheld for attorney's fees;
 - (ii) Evidence of the date counsel received the notice of award, if different than the date issued;
 - (iii) An itemized work ledger, including plaintiff's asserted hourly rate and accounting for the time expended and tasks performed by counsel representing plaintiff in federal court.
 - (iv) Any fee agreement between plaintiff and counsel (if applicable); and
 - (v) If EAJA fees are also awarded, a statement affirming compliance with the statutory requirement to refund the smaller of the two fees and specifying the amount to be refunded.
 - (B) Pursuant to Federal Rule of Civil Procedure 60(b), either party may move for a correction of the 42 U.S.C. § 406(b) fee award if it is later found to be incorrect or incomplete.
- (3) Absent a showing of good cause for delay, requests for attorneys' fees submitted after the deadlines in sections (1) and (2) shall be denied as untimely.

**SUPPLEMENTAL RULES FOR SOCIAL SECURITY
ACTIONS UNDER 42 U.S.C. § 405(g)**

(effective 12/01/2022)

Rule 1. Review of Social Security Decisions Under 42 U.S.C. § 405(g)

- (a) Applicability of These Rules.** These rules govern an action under 42 U.S.C. § 405(g) for review on the record of a final decision of the Commissioner of Social Security that presents only an individual claim.
- (b) Federal Rules of Civil Procedure.** The Federal Rules of Civil Procedure also apply to a proceeding under these rules, except to the extent that they are inconsistent with these rules.

Rule 2. Complaint

- (a) Commencing Action.** An action for review under these rules is commenced by filing a complaint with the court.

- (b) Contents.**

- (1)** The complaint must:
 - (A)** state that the action is brought under § 405(g);
 - (B)** identify the final decision to be reviewed, including any identifying designation provided by the Commissioner with the final decision;
 - (C)** state the name and the county of residence of the person for whom benefits are claimed;
 - (D)** name the person on whose wage record benefits are claimed; and
 - (E)** state the type of benefits claimed.
- (2)** The complaint may include a short and plain statement of the grounds for relief.

Rule 3. Service

The court must notify the Commissioner of the commencement of the action by transmitting a Notice of Electronic Filing to the appropriate office within the Social Security Administration's Office of General Counsel and to the United States Attorney for the district where the action is filed. If the complaint was not filed electronically, the court must notify the plaintiff of the transmission. The plaintiff need not serve a summons and complaint under Civil Rule 4.

Rule 4. Answer; Motions; Time

- (a) **Serving the Answer.** An answer must be served on the plaintiff within 60 days after notice of the action is given under Rule 3.
- (b) **The Answer.** An answer may be limited to a certified copy of the administrative record, and to any affirmative defenses under Civil Rule 8(c). Civil Rule 8(b) does not apply.
- (c) **Motions Under Civil Rule 12.** A motion under Civil Rule 12 must be made within 60 days after notice of the action is given under Rule 3.
- (d) **Time to Answer After a Motion Under Rule 4(c).** Unless the court sets a different time, serving a motion under Rule 4(c) alters the time to answer as provided by Civil Rule 12(a)(4).

Rule 5. Presenting the Action for Decision

The action is presented for decision by the parties' briefs. A brief must support assertions of fact by citations to particular parts of the record.

Rule 6. Plaintiff's Brief

The plaintiff must file and serve on the Commissioner a brief for the requested relief within 30 days after the answer is filed or 30 days after entry of an order disposing of the last remaining motion filed under Rule 4(c), whichever is later.

Rule 7. Commissioner's Brief

The Commissioner must file a brief and serve it on the plaintiff within 30 days after service of the plaintiff's brief.

Rule 8. Reply Brief

The plaintiff may file a reply brief and serve it on the Commissioner within 14 days after service of the Commissioner's brief.