

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

ADMINISTRATIVE ORDER RE:)	
PROPOSED ADOPTION OF)	Administrative Order
LOCAL CIVIL RULE 54.2 GOVERNING)	No. <u>13-083</u>
APPLICATIONS FOR ATTORNEY'S)	
FEEES IN CERTAIN SOCIAL SECURITY)	
CASES)	
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Pursuant to 28 U.S.C. § 2071 and Rule 83 of the Federal Rules of Civil Procedure, the Court hereby gives notice of its consideration of amendments to Local Civil Rule 54, to adopt procedures governing attorney's fees in certain social security cases. The proposed rule would govern applications for fees under 42 U.S.C. § 406(b) (for social security cases) and 42 U.S.C. § 1383(d) (for SSI cases) for in-court work performed by counsel before remand. At present, neither the statutes nor the Rules of Court provide a clear deadline for the filing of such a motion or the details of procedures to be followed. To fill this gap, the Court proposes adoption of the attached rule, which is modeled on Local Rules adopted by other district courts, including the Eastern District of Michigan.

At a regular Judges' Meeting held on September 20, 2013, the Judges of this Court tentatively approved the attached rule amendment, subject to comments by counsel and other affected members of the public. NOW, THEREFORE:

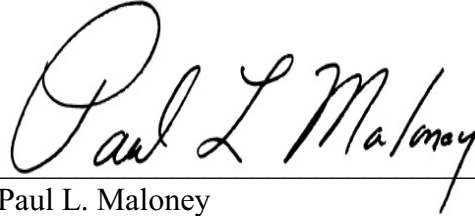
NOTICE IS HEREBY GIVEN to all members of the public of their opportunity to review and comment upon the attached proposed rule. A copy of this order will be available in each divisional office and on the Court's website. In addition, the Clerk shall send electronic notice to all attorneys registered to use the CM/ECF system. The Clerk shall provide a copy of the proposed amendment to the Federal Bar Association, West Michigan Chapter, the State Bar of Michigan Committee on United States Courts, and the *Michigan Lawyer's Weekly*.

All comments should be in writing and must be received by the Court no later than **November 1, 2013**. Comments should be addressed to:

Tracey Cordes, Clerk
United States District Court
399 Ford Federal Building
110 Michigan, N.W.
Grand Rapids, MI 49503

or submitted electronically to ecfhelp@miwd.uscourts.gov. The Court will consider all comments at its December 2013 meeting before promulgating a final version of the proposed rules.

FOR THE COURT:

A handwritten signature in black ink that reads "Paul L. Maloney". The signature is written in a cursive style with a large initial "P" and "M".

Dated: September 24, 2013

Paul L. Maloney
Chief United States District Judge

VII. JUDGMENT

Local Civil Rule 54. Costs and Attorney's Fees

54.1 Taxation of Costs. [Unchanged]

54.2 Attorney's Fees in Certain Social Security Cases.

- (a) Scope of Rule. The procedures set forth in this rule apply to motions for attorney's fees brought under 42 U.S.C. § 406(b)(1)(A) (Social Security Disability Claims) or 42 U.S.C. § 1383(d)(2)(A) (Supplemental Security Income Claims), which allow an attorney to obtain fees from the client's award of past-due benefits for work performed in the District Court. It is necessary to prescribe a special procedure for such cases, because the amount of past-due benefits is unknown at the time judgment for the claimant is entered in the District Court. This rule does not apply to motions for fees under the Equal Access to Justice Act (EAJA), which are governed by the procedures set forth in that Act. 28 U.S.C. § 2412(d).
- (b) Procedure.
 - (i) Commencement of Time Period. The time in which an attorney must file a motion for approval of fees under 42 U.S.C. §§ 406(b)(1)(A) or 1383(d)(2)(A) commences on the date shown on the face of the Notice of Award issued by the Social Security Administration. This time period does not commence until the Administration has issued all of the Notices of Award necessary to calculate the total amount of retroactive benefits payable. In the case of multiple or amended notices, the time period commences on the date shown on the face of the last notice.
 - (ii) Deadline for Filing Motion. The time to file a motion for fees expires 35 days after the commencement date calculated under subparagraph (i) above. Any motion filed after this 35-day deadline will be considered only by a specific showing of excusable neglect by plaintiff's attorney.
 - (iii) Requirements for Motion. The motion must be accompanied by a supporting brief and all necessary documentation. The motion must state the following:
 - (A) The past due benefits due the claimant.

- (B) The past due benefits due any dependents.
- (C) The total dollar amount withheld by the Commissioner out of these past due benefits.
- (D) The dollar amount (if any) of fees the attorney was awarded, has sought, or intends to seek pursuant to 42 U.S.C. § 406(a) for services performed at the administrative level of review.
- (E) Whether the attorney has knowledge of any other representative(s) who were awarded, sought, or will seek authorization for fees under 42 U.S.C. § 406(a).
- (F) The dollar amount of fees sought pursuant to 42 U.S.C. § 406(b).
- (G) The dollar amount of court costs, fees, and/or expenses sought or already awarded under the Equal Access to Justice Act (28 U.S.C. § 2412).
- (H) The dollar amount, if different from that provided in compliance with subsection (b)(iii)(C), that is currently being withheld by the Commissioner to cover a potential award of attorney's fees in this Court.
- (I) An itemization of the services provided in judicial proceedings, specifying the hours worked, the work performed, and the attorney's hourly billing rate.
- (J) An itemization of the services provided in administrative proceedings and, if the attorney maintains time records for administrative work, a specification of the hours worked and the billing rate. The itemization for administrative proceedings is an aid to the Court's assessment of the reasonableness of the fee yielded by the fee agreement.
- (K) Whether counsel has represented the client in any other matter that involved the impairments in the disability claim. If so, indicate:
 - (1) whether the attorney has or may obtain an attorney fee from that matter and the amount or means of calculation;

- (2) which medical evidence or reports prepared for or used in that matter were also used in the social security proceedings.
 - (L) An argument establishing that the fees sought are authorized under any applicable fee agreement, are reasonable, and do not exceed applicable statutory limits.
 - (M) In addition to complying with the requirements of W.D. Mich. LCivR 7.1, an affirmative statement that the attorney has discussed the matter of fees with the plaintiff and the plaintiff either has no objection to the amount of fees sought in the motion, or that the plaintiff and the attorney disagree as to the reasonableness of the fees sought.
- (iv) The fee motion must be accompanied by:
- (A) Legible copies of all of the Notices of Award showing the amount of past due benefits and the amount(s) withheld by the Commissioner under 42 U.S.C. §§ 406, 1383.
 - (B) A copy of any fee agreement entered into between the plaintiff and the attorney.
 - (C) A certificate of service that the attorney's fee motion and attachments have been served on the U.S. Attorney and on the plaintiff.
- (v) Response. Any response by the client or defendant must be filed within twenty-one (21) days after the motion for attorney's fees is served.
- (vi) Reply Brief. Because it is plaintiff's attorney's burden to establish entitlement to and the reasonableness of the attorney's fees requested, it should seldom be necessary to file a reply brief. Plaintiff's attorney may not file a reply brief absent leave of Court.