

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

In re: Social Security Cases

Memorandum of Understanding  
Regarding Cases brought Under  
42 U.S.C. § 405(g)

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**Memorandum of Understanding**

Due to the COVID-19 pandemic, beginning in mid-March 2020, the Social Security Administration (“SSA or agency”), restricted physical access to its offices and maximized telework in order to protect not only the health and safety of its employees, but also the public that the agency serves and the community at large. Since that time, the agency’s Office of Appellate Operations (“OAO”) has kept its employees on maximum telework and has authorized only brief, limited, in-office work. Public health concerns and the agency’s transition to maximum telework prevented the agency from continuing to prepare certified administrative records (“CAR”) as required by 42 U.S.C § 405(g), resulting in an unprecedented backlog. After full implementation of extensive process changes to meet the challenges brought on by the pandemic, OAO began producing CARs above pre-pandemic levels. However, just as OAO’s efforts were positively impacting its backlog, the agency experienced a significant national increase in new federal court case filings, resulting in a current backlog of approximately 11,000 cases. Moreover, between 2019 through the first quarter of 2021, there has been a dramatic increase in the number of Social Security appeals filed in the Western District of New York. Unfortunately, the current unprecedented situation has necessitated multiple requests for extensions of time in Social Security cases due to the unavailability of the CAR. Additionally, the significant increase in court case filings, combined with the backlog in CARs will, in turn, lead to an extraordinarily high volume of briefing deadlines for approximately one year or more.

Unless steps are taken to address the current circumstances, the staggering number of CARs and briefs due on a monthly basis will create an untenable situation for the SSA, for plaintiffs, plaintiffs’ counsel, and the Court. The parties would spend considerable amounts of time requesting multiple extensions of time to file CARs and briefs, and the Court would expend significant resources addressing these requests, diverting efforts away from expeditiously processing cases. In this regard, Assistant United States Attorney Mary E. Fleming, on behalf of the agency, secured the consent of Kenneth R. Hiller, Esq., principal of the Law Offices of Kenneth Hiller PLLC, the firm that represents a majority of the plaintiffs in Social Security appeals filed in this District, regarding proposed measures to facilitate disposition of cases without the need for multiple extension requests. Ms. Fleming in turn communicated these measures to Chief Judge Frank P. Geraci’s Chambers, proposing to prevent multiple extension requests from unnecessarily consuming the Court’s time during this surge of cases.

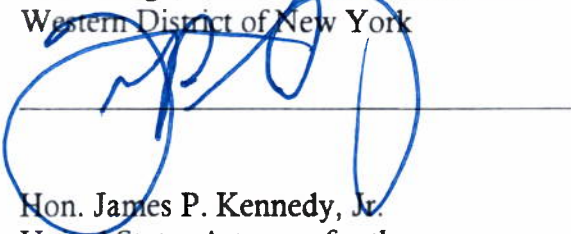
It was proposed that these appeals could be resolved more efficiently with an enlargement of the time periods for the filing of the CAR and both parties’ briefs, as presently stated in Local Rule 5.5. Extending these time periods for all currently pending Social Security

appeals and newly filed appeals would enable the parties to avoid the need for multiple requests for extensions of time for the filing of the CAR and/or for the parties' briefing.

Based upon that understanding, the United States Attorney and Mr. Hiller agree to the following:

1. With respect to all Social Security appeals that are brought pursuant to 42 U.S.C. § 405(g) to which they are both a party (including those pending as of the date of this Memorandum of Understanding, and those filed thereafter), the United States Attorney, on behalf of the Commissioner of Social Security, and Mr. Hiller, on behalf of his clients, agree to extend the time periods for the agency's filing of the CAR and the parties' briefing, as currently set forth in Local Rule 5.5, for a one-year period from the effective date of this MOU.
2. Defendant shall file the CAR within 180 days after service of the complaint.
3. For all pending cases for which the CAR is due and for which the 180<sup>th</sup> day falls within 30 days of the effective date of this MOU, the Defendant shall have an additional 30 days from the due date to file the CAR.
4. Plaintiff shall file a brief on the merits within 150 days of the date Defendant files the CAR.
5. Defendant shall file a brief on the merits within 150 days after the date Plaintiff files the brief.
6. Plaintiff shall file a reply brief, if any, within 42 days after Defendant files the brief.
7. Absent exceptional circumstances, the parties will not be granted further extensions of time.

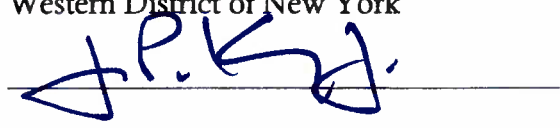
Hon. Frank P. Geraci, Jr.  
Chief Judge, United States District Court  
Western District of New York



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Date: 3/15/2021


Hon. James P. Kennedy, Jr.  
United States Attorney for the  
Western District of New York



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Date: 3/11/2021

Kenneth R. Hiller, Esq.  
Law Offices of Kenneth Hiller PLLC  
Counsel for Plaintiffs



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Date: 3-5-2021