

**NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)**

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Executive Director
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December 2014 Plenary Session Comments
Administrative Conference of the United States
1120 20th Street NW
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Washington, DC 20036

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RE: Best Practices for Using Video Teleconferencing for Hearings and Related Proceedings

Dear Assembly Members,

These comments are submitted by the National Organization of Social Security Claimants' Representatives (NOSSCR), a professional association of attorneys and other advocates who represent individuals seeking Social Security disability or Supplemental Security Income ("SSI") benefits. NOSSCR members represent these individuals in legal proceedings before the Social Security Administration and in federal court. NOSSCR is a national organization, founded in 1979, with a current membership of more than 3,500 members from the private and public sectors, and is committed to the highest quality legal representation for claimants.

Thank you for the opportunity to submit comments on "Best Practices for Using Video Teleconferencing for Hearings and Related Proceedings," a report and recommendations that have been approved by ACUS' Adjudication Committee and are currently under your consideration for approval at the December 4-5, 2014 Plenary Session. Since the Social Security Administration (SSA) has conducted over a million video hearings and NOSSCR members have participated as claimants' representatives in many of these, we are particularly enthusiastic about recommendations that improve the quality and fairness of video hearings.

Although the draft report and recommendations provide a tremendous amount of useful guidance to agencies who wish to begin, expand, or improve the use of video hearings, we urge you to amend the report and recommendations with a directive that agencies must allow parties to refuse video hearings. This is consistent with ACUS Recommendation 2011-4, which included "Use VTC on a voluntary basis and allow a party to have an in-person hearing or proceeding if the party chooses to do so" on its list of best practices for video hearings.¹

¹ See 76 Fed. Reg. 48789, 48796 (Aug. 9, 2011).

The right to insist upon an in-person hearing helps ensure accessibility, due process, and satisfaction for parties involved in administrative hearings, and it is a right currently provided by SSA's regulations² and policy. Under the current SSA policy, claimants make the ultimate decision whether to accept a video hearing or opt for an in-person hearing. NOSSCR recently surveyed its membership to gather opinions on video hearings, and many of the 375 respondents noted that their clients generally accept video hearings when offered, primarily because they lead to faster scheduling. However, there are a number of reasons why an individual may decline a video hearing in favor of in-person adjudication. Many survey respondents reported problems with the physical space in which video hearings are conducted and the technological quality of video hearings, which could be ameliorated by the improvements to technology and training suggested in the report and recommendations.

Some claimants and their representatives, however, may have strong reasons to reject even video hearings that are free of technical difficulties. Claimants with severe mental illness may find it intolerable or traumatic to listen to an administrative law judge (ALJ) speaking to them through a screen; claimants with intellectual disabilities or brain injuries may not understand how video hearings work; claimants in certain parts of the country may need to travel further to a video hearing site than the location where in-person hearings are performed; certain impairments, such as subtle tremors or problems with personal hygiene, may not be obvious to an ALJ in a video hearing; and some claimants may simply not feel as if they had their "day in court" unless they were able to interact with the ALJ in the same room. Several of these contraindications to video hearing are mentioned on pp.68-9 of the draft report, but are not accompanied by an explicit recommendation that parties be able to elect in-person hearings if they have these or other reasons to oppose a video hearing.

In addition to the general statement that parties have a right to reject video hearings, we encourage the Conference to add the following topics to the recommendation and report:

A claimant's change of address should not limit his or her right to reject a video hearing.

SSA claimants often face precarious health and finances, which lead to frequent changes of address. Claimants may enter and leave hospitals, nursing homes, homeless shelters, and other living situations during the months and years their claims are pending. SSA's current policy allows ALJs to overrule claimants' objections to video hearings when claimants change their residences while they have pending requests for hearings.³ We disagree with this rule and encourage ACUS' report to recommend that changes of address—many of which are necessitated by agencies' own delays in processing claims—should not preclude claimants from refusing video hearings.

More guidance on the use of telephone witnesses and interpreters during video hearings is needed.

SSA frequently uses interpreters, vocational experts (VEs), and medical experts (MEs) during both in-person and video hearings. NOSSCR members note that it can be difficult to hear telephone participants, provide them with all the evidence they must view, and ensure that they are paying attention; these concerns are amplified when the judge is in a different location from

² 20 C.F.R. §§ 404.936 and 416.1436.

³ See 20 C.F.R. §405.317

the claimant and representative. In addition, witnesses participating by telephone cannot see or be seen by the claimant and representative. This provides less information than is available when everyone is in the same room or visible through videoconferencing, and is especially problematic when judges, claimants, or representatives are deaf or hard of hearing.

The ACUS report states: “While there is no question that telephone remote communications are heavily used in the practice of administrative law, for this study we are concentrating on the video conferencing side of these technologies.”⁴ However, it would be useful for the report to discuss best practices for hearings where some participants can see each other and some participants are communicating only by telephone. Some of the report’s suggestions, such as creating non-verbal signals to indicate when a participant wishes to speak,⁵ would not be as effective in mixed video/telephone hearings.

Conclusion

In its final rule on video hearings,⁶ SSA reiterated a strong commitment to the availability of in-person hearings for claimants who prefer them. We fully agree with this practice, and with SSA’s provision of good cause exemptions for individuals who miss the deadline to decline video hearings. We understand that parties to other types of administrative hearings may be corporations or other entities that have more familiarity with and access to legal processes than most SSA claimants. The ACUS report and recommendations could suggest that agencies provide simpler processes for requesting in-person hearings, and broader good cause exemptions when parties miss deadlines for making those requests, for nonadversarial hearings where parties are often unrepresented. The report could cite SSA hearings as a specific example of the type of matter where it is vital to have good cause exemptions to deadlines for refusing video hearings.

We generally support the use of video hearings so long as the right to a full and fair hearing is adequately protected; the quality of video hearings is assured; and the claimant retains the absolute right to have an in-person hearing. We urge ACUS to make the changes above to its report and recommendations. Thank you for considering our comments.

Sincerely,

Barbara Silverstone
Executive Director

⁴ P.41

⁵ ACUS Report at p.21.

⁶ 20 C.F.R. §§ 404.936 and 416.1436.