



Special Procedural Rules for Social Security Litigation in District

Court

Commented [DS1]: This title is not finalized. We appreciate any suggestions you may have.

Committee on Judicial Review

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1 The Administrative Conference recommends that the Judicial Conference of the United
2 States develop special procedural rules for social security litigation in federal court. The Rules
3 Enabling Act¹ delegates authority to the United States Supreme Court (acting initially through the
4 Judicial Conference) to adopt procedural rules for the lower federal courts.² The Act does not
5 require that procedural rules be trans-substantive—that is, be the same for all types of cases—but
6 the Federal Rules of Civil Procedure have generally been so drafted. Rule 81 of the Federal Rules
7 exempts certain specialized proceedings from the Rules' general procedural governing scheme.³ In
8 the Conference's view, exceptions to the principle of trans-substantivity should not be readily
9 adopted, absent special circumstances. In the case of social security litigation in the federal courts,
10 the extraordinary volume of the litigation, the Federal Rules' failure to account for numerous
11 procedural issues that arise in such cases, and the costs imposed on parties by the various local
12 rules fashioned to fill those procedural gaps necessitate an exception.⁴

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15 The Social Security Administration (SSA) administers the Social Security Disability
16 Insurance program and the Supplemental Security Income program, two of the largest disability
17 programs in the United States.⁵ An individual who fails to obtain disability benefits under either
18 of these programs, after proceeding through SSA's extensive administrative adjudication system,

¹ 28 U.S.C. § 2072.

² *See id.* § 2072(a).

³ FED. R. CIV. P. 81(a).

⁴ The Rules Enabling Act prohibits the Supreme Court from creating rules that "abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b). If confined to the subject areas identified in this recommendation, a special set of procedural rules for social security litigation could not fairly be accused of abridging, enlarging, or modifying any substantive rights.

⁵ Office of Policy, *Trends in Social Security and Supplemental Security Income Disability Programs, Overview and Background*, SOC. SEC. ADMIN., https://www.ssa.gov/policy/docs/chartbooks/disability_trends/overview.html (last visited August 5, 2016).



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19 may appeal the agency's decision to a federal district court.⁶ In reviewing SSA's decision, the
20 district court's inquiry is based solely on the administrative record developed by the agency.⁷

21 District courts occupy a unique position in social security litigation. Although
22 institutionally oriented towards resolving cases of first impression, when reviewing disability
23 decisions the federal district courts act as courts of appeals. While this fact alone is unremarkable
24 (appeals of agency actions go to district courts unless a statute expressly provides for direct review
25 of an agency's actions by a court of appeals),⁸ social security appeals comprise approximately
26 seven percent of district courts' dockets, generating substantially more litigation for district courts
27 than any other type of appeal from a federal administrative agency.⁹ The high volume of social
28 security cases in federal court is in no small part a result of the enormous magnitude of the social
29 security disability program. The program, which is administered nationally, annually receives
30 millions of applications for benefits.¹⁰

31 The distinctive nature of social security litigation is at odds with the procedural regime
32 governing social security appeals in the federal district courts. The Federal Rules, which provide
33 a national, uniform set of procedural rules for civil litigation, apply to district court review of
34 disability appeals. But the Federal Rules were designed for cases litigated in the first instance, not
35 for those reviewing, on an appellate basis, agency adjudicative decisions.

36 The Federal Rules fail to account for numerous procedural issues that arise when a
37 disability case is appealed to district court. In some districts, for instance, the agency files the
38 certified transcript of administrative proceedings instead of an answer, whereas other districts
39 require the agency to file an answer.¹¹ In still other districts, claimants must file motions for

⁶ 42 U.S.C. § 405(g).

⁷ Frank S. Bloch, Jeffrey S. Lubbers, & Paul R. Verkuil, *Developing a Full and Fair Evidentiary Record in a Nonadversary Setting: Two Proposals for Improving Social Security Disability Adjudications*, 25 CARDOZO L. REV. 1, 35 (2003).

⁸ 5 U.S.C. § 703; see *Watts v. Sec. & Exch. Comm'n*, 482 F.3d 501, 505 (D.C. Cir. 2007).

⁹ JONAH GELBACH & DAVID MARCUS, A STUDY OF SOCIAL SECURITY LITIGATION IN THE FEDERAL COURTS 9-10 (July 28, 2016) (report to the Administrative Conference of the United States).

¹⁰ See OFFICE OF RESEARCH, EVALUATION, & STATISTICS, SOC. SEC. ADMIN., SSI ANNUAL STATISTICAL REPORT, 2014, Table 69, Oct. 2015, at 141. In 2015 alone, claimants filed 2.7 million benefits applications. SOC. SEC. ADMIN., FY 2017 BUDGET OVERVIEW 11 (Feb. 2016).

¹¹ GELBACH & MARCUS, *supra* note 9, at 129.



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40 summary judgment to have their case adjudicated on the merits,¹² while such motions are “not
41 appropriate” in others.¹³

42 Social security disability litigation is not the only type of specialized litigation district
43 courts regularly review on appeal. District courts entertain an equivalent number of habeas corpus
44 petitions,¹⁴ as well as numerous appeals from bankruptcy courts. But habeas and bankruptcy
45 appeals are governed by specially crafted, national rules that address those cases’ specific issues.¹⁵
46 No particularized set of rules, however, accounts for the procedural gaps left by the Federal Rules
47 in social security appeals.

48 When specialized litigation with unique procedural needs lacks a tailored set of national
49 procedural rules for its governance, districts and even individual judges tend to craft their own.¹⁶
50 This is precisely what has happened with social security litigation. The Federal Rules exempt
51 disability cases from the initial disclosure requirements of Rule 26,¹⁷ and limit electronic access
52 of nonparties to filings in social security cases,¹⁸ but, otherwise, they include no specialized
53 procedures. As a result, numerous local rules, district-wide orders, and individual case
54 management orders, addressing a multitude of issues at every stage in a social security case, have
55 proliferated.¹⁹ Whether the agency must answer a complaint, what sort of merits briefs the parties
56 are required to file, whether oral arguments are held, and the answers to a host of other questions
57 differ considerably from district to district and, sometimes, judge to judge.

58 This proliferation of procedures by individual districts and judges has in turn engendered
59 procedural localism. Localism in social security litigation generates inefficiencies and imposes

¹² See, e.g., Order Setting Schedule, *Donvan-Terris v. Colvin*, Civ. No. 14-5125 (E.D. Wash., April 8, 2015).

¹³ See, e.g., S.D. Iowa Local R. 56(i).

¹⁴ During the twelve months that ended on September 30, 2014, the district courts received 19,185 “general” habeas corpus petitions and 19,146 social security appeals. Table C-2A, U.S. District Courts—Civil Cases Commenced, by Nature of the Suit, During the 12-Month Periods Ending September 30, 2009 Through 2014, at 3-4.

¹⁵ See R. GOVERNING § 2254 CASES U.S. DIST. CTS. 1–12; FED. R. BANKR. P. 1001–9037. The Federal Rules merely provide a baseline of procedural governance in bankruptcy and habeas proceedings. FED. R. CIV. P. 81(a)(2) (bankruptcy proceedings); FED. R. CIV. P. 81(a)(4) (habeas proceedings).

¹⁶ See, e.g., Megan M. La Belle, *The Local Rules of Patent Procedure*, 47 ARIZ. ST. L. J. 63, 86-92 (2015) (discussing the proliferation of local and individual rules for patent litigation); see also Morton Denlow, *Substantial Evidence Review in Social Security Cases as an Issue of Fact*, 2 FED. CTS. L. REV. 99, 106-07 (2007) (providing examples of procedural divergences among districts in social security litigation).

¹⁷ FED. R. CIV. P. 26(a)(1)(B)(i).

¹⁸ FED. R. CIV. P. 5.2(c).

¹⁹ See Denlow, *supra* note 16, at 106-07.



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60 costs on claimants and the agency in a number of different ways. It makes it difficult for lawyers
61 to economize resources by, for instance, forcing them to refashion even successful arguments in
62 order to fit a court’s unique page-limits or formatting requirements. Further, localism raises the
63 possibility that like cases will not be treated alike. Burdensome procedures adopted by some
64 districts or judges, such as simultaneous briefing schedules or requirements that the agency file its
65 brief first, can increase delays and litigation costs for some claimants, while leaving other
66 similarly-situated claimants free from bearing those costs. Finally, localism is problematic because
67 courts and judges may generate procedural requirements without sufficient deliberation or
68 opportunities for public feedback. Proposed amendments to the Federal Rules must go through
69 several steps, each of which requires public input, whereas local rules need only satisfy a district’s
70 local rules committee.²⁰ So-called “general orders” and judge-specific orders can be issued by a
71 district or individual judge with little or no process.²¹

72 Procedural variation can thus impose a substantial burden on SSA as it attempts to
73 administer a national program, and can result in arbitrary delays and uneven costs for disability
74 claimants appealing benefit denials. SSA and claimants would benefit from a set of uniform rules
75 that recognize the appellate nature of disability cases. Indeed, several districts already treat
76 disability cases as appeals.²² Many of these districts provide, for example, for the use of merits
77 briefs instead of motions or for the filing of the certified administrative record in lieu of an answer.
78 A uniform set of rules tailored to the appellate nature of social security litigation would help ensure
79 a fair and expeditious process for the agency and claimants.

80 42 U.S.C. § 405(g), which authorizes district court review of disability cases, also
81 authorizes district court review of other SSA benefits decisions, most significantly retirement and
82 survivors’ benefits. Because non-disability appeals do not differ procedurally from disability cases

²⁰ Geoffrey Hazard, *Undemocratic Legislation*, 87 YALE L. J. 1284, 1286 (1978).

²¹ GELBACH & MARCUS, *supra* note 9, at 135-36.

²² See, e.g., Standing Order, *In re* Actions Seek. Rev. of the Comm’r of Soc. Sec.’s Final Decs. Denying Soc. Sec. Benefits (W.D. NY Sept. 5, 2013); General Order 05-15, *In re* Soc. Sec. Cases, Actions Seeking Rev. of the Comm’r of Soc. Sec.’s Final Dec. Denying an App. for Benefits (W.D. Wash. June 1, 2015); Standing Order for Disp. of Soc. Sec. App. (W.D. La. Sept. 2, 1994); E.D. Mo. L.R. 9.02; D. Ariz. LRCiv 16.1; N.D. Oh. LR 16.3.1.



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83 in any meaningful way,²³ it is the Conference's belief that this recommendation should apply to
84 all social security cases commenced in federal court pursuant to 42 U.S.C. § 405(g).

RECOMMENDATION

- 85 1. The Judicial Conference, in consultation with Congress, should develop [with further study by
86 the Federal Judicial Center] a uniform set of procedural rules for litigation commenced in the
87 federal district courts pursuant to 42 U.S.C. § 405(g).
- 88 2. [The Judicial Conference should seek legislation confirming the Supreme Court's power to
89 prescribe a uniform set of procedural rules for such cases.] Examples of rules that could be
90 promulgated pursuant to such enabling legislation include:
- 91 a. a rule requiring the claimant to file a notice of appeal instead of a complaint;
92 b. a rule requiring the agency to file the certified administrative record instead of an
93 answer;
94 c. a rule requiring the parties to exchange merits briefs instead of motions;
95 d. a rule setting appropriate deadlines and page limits; and
96 e. a rule creating a presumption against oral argument.
- 97 3. The Judicial Conference should refer to existing appellate procedural governing schemes when
98 developing special procedural rules for social security litigation.

²³ Further, they only constitute about four percent of total social security cases appealed to district courts annually. See Table C-2A, U.S. District Courts—Civil Cases Commenced, by Nature of the Suit, During the 12-Month Periods Ending September 30, 2009 Through 2014, at 4.