FIVE STEPS TO SAVE THE SOCIAL SECURITY DISABILITY SYSTEM

1. Require that the claimant’s attorney develop the record

Claimants’ attorneys make $1.7 billion a year in fees and are not required to develop the record. Under regulations in effect for fifty years the judge is required to develop the record, whether the claimant is represented or not. (Claimants may also be represented by non-attorneys.)

2. Require claimant’s attorney to submit all relevant evidence

Unlike other judicial systems, an attorney only has to submit evidence favorable to a claimant.

3. Require claimant’s attorney to timely submit evidence and withdraw

It is the only judicial system where a claimant’s attorney may submit 100’s of pages of new evidence the day of the hearing, preventing adequate review by the judge and experts, or withdraw from the case the day of the hearing requiring the public to pay the additional cost of any experts retained.

4. Close the record after a disability hearing

An attorney may submit evidence with held at the hearing on appeal.

5. Appoint a representative to protect the Trust Fund and Public

With a combined nearly 19.5 million adults and children receiving benefits, the disability system is a $201 billion annual program.[[1]](#footnote-1) NPR recently reported this is more than is spent on food stamps and welfare combined. They also reported: “In the past three decades, the number of Americans who are on disability has skyrocketed.”[[2]](#footnote-2) Each SSA judge is expected at a minimum to annually award $75.6 million [[3]](#footnote-3) in present and future benefits without a second federal official in the hearing room to protect the trust fund and public. A recent Senate report cited an agency finding that 22% of favorable decisions had legal “errors or were insufficient”.[[4]](#footnote-4) The trust representative would be charged with insuring justice is done; the record is complete and worthy claimants are awarded benefits as early as possible; not with defending the agency decision below.[[5]](#footnote-5) This will go a long way towards preventing errors. A representative in the hearing room would also prevent judges from being abusive to claimants and from abusively awarding or denying benefits. HHS has abandoned “Pay and Chase,” after fifty years so should SSA. Errors should be prevented before a final decision is issued, not corrected after.

*[These cost-saving changes have been proposed in some form by former Commissioner Jo Anne Barnhart or the Social Security Advisory Board, or both. The present regulations would not change with regard to unrepresented claimants.]*

Judge Thomas W. Snook**,** LAR, AALJ, IFPTE, AFL-CIO, Miami, FL ODAR, SSA - (305) 773-1065, uscga67@gmail.com (September 23, 2012). (Updated April 7, 2013 as ACUS, ABA NCALJ Liaison)

1. FY2013 SSA Budget Overview 5 (Some adults receive both DI and SSI.) (<http://www.socialsecurity.gov/budget/2013BudgetOverview.pdf>) [↑](#footnote-ref-1)
2. <http://apps.npr.org/unfit-for-work/> (March 22-29, 2013) [↑](#footnote-ref-2)
3. Each disability case costs $300,000 according to a Wall Street Journal article (*Insolvency Looms as States Drain U.S. Disability Fund,* March 22, 2011). The agency has set a minimum goal of 500 dispositions for each judge. This would result in 252 favorable decisions assuming 80 dismissals and an award rate of 60%. [↑](#footnote-ref-3)
4. Minority Staff of Senate PSI, Social Security Disability Programs: Improving the Quality of Benefit Award Decisions 4 (September 13, 2012). <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/social-security-administrations-disability-programs> [↑](#footnote-ref-4)
5. This would overcome any due process objections voiced in *Salling* v. *Bowen*, 641 F. Supp. 1046 (W.D. Va. 1986). [↑](#footnote-ref-5)