

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

560 Sylvan Avenue • Englewood Cliffs, NJ 07632
Telephone: (201) 567-4228 • Fax: (201) 567-1542 • email: nosscr@nosscr.org

Executive Director
Barbara Silverstone

December 2016 Plenary Session Comments
Administrative Conference of the United States
1120 20th Street NW
Suite 706 South
Washington, DC 20036

December 6, 2016

RE: Special Procedural Rules for Social Security Litigation in District Court

Dear Assembly Members,

The National Organization of Social Security Claimants' Representatives (NOSSCR), a professional association of attorneys and other advocates, submits comments on the November 17, 2016 Proposed Recommendation for Council *Special Procedural Rules for Social Security Litigation in District Court*. NOSSCR thanks ACUS and the committee for the opportunity to submit comments.

NOSSCR members represent these claimants for Social Security benefits in legal proceedings before the Social Security Administration (SSA) and in federal court. NOSSCR has 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.

The federal courts handled over 18,000 Social Security disability cases last Fiscal Year¹ and are likely to experience a continued high volume of such matters. NOSSCR agrees with ACUS and the committee that it would be beneficial to improve the quality, fairness, and efficiency of such proceedings in federal court. However, there is also benefit to some amount of flexibility, as different courts process their caseloads in different ways and NOSSCR member attorneys report little difficulty learning and following local rules.

In addition to consulting with Congress as appropriate, NOSSCR encourages ACUS to recommend that the Judicial Conference incorporate feedback from attorneys who frequently litigate Social Security cases in federal court. Those who have experience in multiple districts and can provide information about best practices would be especially helpful. There should be

¹ https://www.ssa.gov/appeals/DataSets/08_National_New_Court_Cases_and_Remands.html (accessed 12/5/16)

representation from both the plaintiff's bar and the attorneys representing the Commissioner in the Office of General Counsel.

NOSSCR notes that the recommendation states that after a plaintiff files a complaint or notice of appeal, "there is no functional need at that stage for the government to file anything more than the record" (lines 39-40). In circumstances when the Commissioner of Social Security wishes to assert certain defenses, filing an answer may result in more efficient adjudication of claims and allow the plaintiff to better understand the Commissioner's litigation posture. Therefore, NOSSCR suggests that the recommendation be amended to say "there is not always a functional need at that stage for the government to file anything more than the record." This more closely matches lines 142-3, which advise the Judicial Conference to create "a rule requiring the agency to file a certified copy of the administrative record as the main component of its answer" (emphasis added).

NOSSCR agrees that "procedural localism raises the possibility that like cases will not be treated alike" (lines 81-2). While NOSSCR supports all claimants receiving decisions of equal quality, NOSSCR notes that there is substantial variety within the universe of Social Security cases. Some turn on a single issue while others have many issues; some are extremely fact-specific while others involve the need to interpret statute, regulations, or sub-regulatory guidance. A case file could be a few hundred pages long or several thousand. Most cases involve errors made in a single Administrative Law Judge (ALJ) hearing and affirmed by SSA's Appeals Council, but some claims have traveled between the agency and federal court on multiple occasions. Cases can involve the interaction of Social Security law and policy with complex immigration, family, and criminal issues. Furthermore, as the report accompanying this recommendation shows, federal court judges vary considerably in their knowledge about Social Security. Some may want more detailed briefs and arguments in order to be fully informed. The Judicial Conference should be cognizant that low page or word limits, particularly in cases involving multiple issues and/or voluminous records, may be inappropriate, especially in light of issue exhaustion requirements. Rules about deadlines and page or word limits should allow litigants to request, and judges to allow, flexibility when the circumstances demand it. In addition, although NOSSCR members are professional representatives, NOSSCR encourages ACUS to advise the Judicial Conference to take note of the special circumstances and needs of pro se litigants when developing procedural rules.

NOSSCR therefore urges ACUS to make the changes above to its recommendation. Thank you for considering our comments.

Sincerely,

Barbara Silverstone
Executive Director