

NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)
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December 21, 2011

Michael J. Astrue, Commissioner
Social Security Administration
Altmeyer Building
6401 Security Boulevard
Baltimore, Maryland 21235

Glenn E. Sklar, Deputy Commissioner
Office of Disability Adjudication and
Review
5107 Leesburg Pike
Falls Church, Virginia 22041

RE: ALJ Assignments

Dear Commissioner Astrue and Deputy Commissioner Sklar:

We are very distressed by reports from our members that ODAR has instituted a new policy in which the identity of the Administrative Law Judge assigned to a case is kept secret from the claimant and the claimant's representative until the hearing. We fail to see any desirable purpose of this policy change, but, as discussed below, we see negative impact on claimants and the ability of their representatives to represent them, as well as serious disruption to the day-to-day operation of the local ODAR offices.

Since we have not seen the instructions issued, we are submitting our concerns based what we have heard from our members and information that they have received: that ALJ assignment is being kept secret from claimants and their representatives. This unnecessary solution will cause greater problems than it solves, and will bring disrepute on the Social Security adjudicatory system.

Concealing the identity of the judge is almost unheard of in a judicial system in a democracy. The identity of the judge is always known in other systems. Keeping the judge's identity secret is unacceptable. The very important due process right of claimants to prepare to present evidence supporting their claim is eroded by maintaining secrecy of the judge to whom their case has been assigned. Each judge has personal strengths and needs, and knowing the judge helps the representative provide what the judge needs to accurately evaluate the claim. When cases are docketed in ODAR, as in any judicial system, the parties have a right to know the identity of the judge.

In addition, removal of the identity of the judge from the hearing notice impairs rights under SSA's regulations. *See, e.g.*, 20 C.F.R. §§ 404.936 and 416.1436 (right to object to time or place of hearing); 20 C.F.R. §§ 404.939 and 416.1439 (right to object to the issues); and 20 C.F.R. §§ 404.940 and 416.1440 (right to request disqualification of the ALJ).

The policy change also presents practical problems. How is the request for an on-the-record decision to be made? To whom should a request to issue a subpoena be made? How can an anonymous judge sign a subpoena?

Our members are alarmed about the effect of this new policy on the efficient operation of ODAR as well as members' ability to represent their clients. Some predict chaos in scheduling and the inefficiencies that will inevitably flow from that. They are most concerned that the resulting new inefficiencies will cause the backlog to grow.

Not knowing the identity of the judge until the hearing begins means that representatives cannot prepare the case to meet an individual judge's needs and preferences. Different judges have different strengths, both procedurally and substantively. As a result, knowing the judge's identity is critical to adequate preparation of the case before the hearing. For example, some judges take extensive testimony on work history; others do not. Some judges want to see results from specific psychological tests; others do not. It may be important to provide background information on a condition such as fibromyalgia for a new judge; it is superfluous for an experienced judge. Some judges require prescription drug records; others do not. Failing to provide the documentation that a particular judge requires will lead to delays, causing much post-hearing development and mandating many supplemental hearings. All of this contributes to a growing backlog.

Scheduling problems are bound to increase due to the policy change. Currently, if an attorney knows that a particular judge generally conducts two-hour hearings, or otherwise runs late, then that attorney will not be able to agree to schedule a hearing with another judge until after this two-hour block. If an attorney knows that a particular judge generally conducts one-hour hearings, then that attorney can agree to a hearing one-hour later with a different judge. And if the judge is the same for the first and second hearing, then the scheduling problem disappears. But without knowing who the judge assigned to each case is, how can the representative agree to any proposed scheduling? Scheduling will have to be based on the worst-case scenario, which often will make it impossible to agree to do more than one or two hearings in a day.

And finally, the policy change is an incredible disservice to claimants. They rely on their counsel to prepare them for hearings, at this extremely stressful time in their lives. They want to know how the hearing will proceed, who will question them, what areas the judge will explore, what the questions are likely to be. They deserve to know what information is important to the specific judge, so they are prepared to answer the judge's questions. With the new policy, their representatives cannot adequately prepare clients based on the needs of the judge assigned to the case.

We have been told that the motivation for this rule is an effort to avoid representatives declining a National Hearing Center video hearing in order to get a different judge, but we have also been told that declining a video hearing will result in the same NHC judge traveling to do an in-person hearing. Since the judge will not change, it seems this disruptive policy of secret judges is unnecessary. And it conflates two distinct issues: the identity of the judge and the type of hearing. There is no reason the two need be linked. We believe there are alternative options that address the Agency's concerns.

In light of the significant concerns we have about the new policy, we request a meeting to discuss the detrimental impact it will have on claimants, the functioning of the ODARs, and on the ability of our members to properly represent their clients.

We look forward to hearing from you and welcome the opportunity to more fully present our concerns and alternatives.

Very truly yours,

Handwritten signature of Charles L. Martin in black ink, with the initials "njs" written below the signature.

Charles L. Martin, Esq., President

Handwritten signature of Nancy G. Shor in black ink.

Nancy G. Shor, Esq., Executive Director

Handwritten signature of Ethel Zelenske in black ink, with the initials "njs" written below the signature.

Ethel Zelenske, Esq.

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