

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

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Executive Director
Barbara Silverstone

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VIA EMAIL

RulesCommittee_Secretary@ao.uscourts.gov

Honorable David G. Campbell, Chair, and Members of Judicial Conference Committee on Rules of Practice and Procedure

Dear Judge Campbell and Committee Members,

The National Organization of Social Security Claimants' Representatives (NOSSCR) is a specialized bar association for attorneys and advocates who represent Social Security Disability Insurance and Supplemental Security Income claimants throughout the adjudicative process, including in federal court appeals.

Although we understand that the Committee on Rules of Practice and Procedure has closed its comment period on possible rule amendments that could ameliorate future national emergencies' effects on court operations, we wanted to share information about a situation that is ongoing in Social Security cases as a result of the Social Security Administration's (SSA's) response to the COVID pandemic. Social Security cases represent approximately 7% of the federal docket,¹ so this issue is important to overall judicial efficiency.

When SSA transitioned many of its employees to remote work in the middle of March, the agency apparently had severe challenges creating and submitting the Certified Administrative Record (CAR, sometimes informally called the "transcript") necessary for each federal district court case. This problem has not been resolved. We are uncertain why SSA has been unable to perform this work remotely, given that from Fiscal Year 2006 to 2012, the percentage of SSA's pending disability case files that were electronic rather than paper skyrocketed from less than 8% to more than 95%, and is likely even higher now.² SSA has informed NOSSCR staff that it has been working with its existing transcription contractor to remedy the issue, but the fact that SSA presumably already had a way of sharing documents with the off-site contractor only raises additional questions about why this problem has persisted for nearly three months. We are

¹ http://www.uscourts.gov/sites/default/files/2018-11_civil_rules_agenda_book_0.pdf#page=209

² https://www.ssa.gov/appeals/DataSets/Pending_Hearing_Requests_By_ElectronicFormat_Paper.html

concerned that other types of emergencies, such as natural disasters, could cause SSA similar problems if they do not develop a solution allowing for preparation of CARs when the agency's offices are inaccessible.

Attorneys representing the Commissioner of SSA have requested 90-day stays in many cases due to the agency's inability to provide the CAR. Although NOSSCR members obviously want SSA to provide the CAR in a timely manner (and NOSSCR has brought this topic to the attention of the executive and legislative branches), in situations where this is impossible, NOSSCR members generally prefer 30-day extensions to file the CAR and answer, which can be renewed as necessary, instead of stays. An extension is more efficient than a stay for courts as well, because there is no need to lift the stay when the answer and CAR are filed.

On average, nearly 1500 civil actions are filed against SSA every month.³ The agency's inability to provide CARs is creating a large backlog that harms the judicial system. It also harms claimants, whose claims have generally taken several years to reach the federal courts and who are often in desperate need of the monetary benefits and health insurance eligibility that a favorable decision would convey. Any efforts the Judicial Conference can make to uncover the roots of this problem, encourage SSA to provide CARs in a timely manner, and to recommend that judges grant extensions rather than stays, would be greatly appreciated.

Sincerely,

Barbara Silverstone
Executive Director

³ https://www.ssa.gov/appeals/court_process.html. SSA "received **17,192** new court cases during fiscal year 2019."