

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

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Executive Director
Barbara Silverstone

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Administrative Conference of the United States
Committee on Judicial Review
1120 20th St NW, Suite 706 South
Washington, DC 20036
Kristen Hickman, Committee Chair

Dear Ms. Hickman,

Thank you for the opportunity to observe the proceedings for the committee's project on Agency Litigation Webpages. NOSSCR's thoughts on the draft recommendation are based on our members' experiences representing claimants in adjudications before the Social Security Administration (SSA) and in federal courts. We hope that these comments are helpful to the Committee and can be shared with the Assembly if the Committee places these recommendations on the agenda.

We note that Social Security claimants and beneficiaries bring well over 1000 federal district court actions a month against SSA.¹ When combined with other types of litigation (actions filed by SSA employees or contractors, Circuit court appeals, etc.) the agency has a very large caseload: Social Security cases represent approximately 7% of the federal docket.² Although SSA is likely engaged in more litigation than other agencies, it was not discussed in the report that accompanies the proposed regulation.

Creating a website for the thousands of cases in which SSA is a litigant each year would be a significant undertaking. If the Committee chooses to go forward with this recommendation, we encourage it to include a suggestion that agencies receive additional appropriations if they choose to create litigation websites, so it does not take away from other workloads.

Cases filed by Social Security claimants and beneficiaries against SSA are often highly fact-specific; briefs filed by the government and decisions rendered by the courts frequently discuss personal information, including the plaintiff's medical diagnoses, symptoms, and treatments; traumatic experiences; immigration status; living arrangement; activities of daily living; work

¹ https://www.ssa.gov/appeals/DataSets/08_National_New_Court_Cases_and_Remands.html

² http://www.uscourts.gov/sites/default/files/2018-11_civil_rules_agenda_book_0.pdf#page=209

and educational history; and family structure. The recommendation should encourage agencies to redact any information that would allow the public to identify the individual litigants in Social Security and other types of cases where an individual is seeking a benefit, such as Veterans Administration benefits or the Department of Labor's workers' compensation programs. Ideally, individual litigants would be identified with a non-identifying code rather than their name or even their initials in any documents and in the "party name" field in any database. The recommendations should state that no other personally identifiable information (PII), such as the litigant's Social Security Number or city of residence, should be included either.

The report indicates that litigation materials filed by private parties do not serve the same purpose as sharing documents written by an agency or by courts. We agree, and think the recommendation should explicitly advise that litigation materials filed by private parties (potentially other than amicus briefs) be excluded from agency websites for the reasons in the report, challenges with removing PII, and potential copyright issues.

In approximately 15% of Social Security disability cases in federal court, SSA's Office of the General Counsel (OGC) declines to defend the agency's actions and instead requests a voluntary remand.³ Based on the number of federal court claims filed in Fiscal Year 2019,⁴ we estimate there were over 2500 cases voluntarily remanded. It would be useful for the recommendation to encourage agencies to provide brief summaries of cases they voluntarily remand, or at least the motion for voluntary remand. This would help the public understand the issues or types of cases agencies choose not to defend, increasing government transparency and accountability.

Thank you for considering our comments and concerns. We would be happy to discuss them with you and the rest of the Committee if that would be helpful.
Sincerely,

Barbara Silverstone
Executive Director

³ <https://www.acus.gov/sites/default/files/documents/2016.07.28%20Report%20-%20A%20Study%20of%20Social%20Security%20Litigation%20in%20the%20Federal%20Courts.pdf#page=32>

⁴ https://www.ssa.gov/appeals/DataSets/AC04_NCC_Filed_Appealable.html