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## Federal Bar Association

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February 28, 2007

The Honorable Michael R. McNulty  
Chairman  
Subcommittee on Social Security  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Sam Johnson  
Ranking Minority Member  
Subcommittee on Social Security  
U.S. House of Representatives  
Washington, D.C. 20515

**Re: February 14 Hearing on Social Security Disability Backlogs**

Dear Chairman McNulty and Representative Johnson:

I write on behalf of the Social Security Section of the Federal Bar Association (FBA)\* to share our concerns about the Social Security disability backlogs and their relationship to the insufficient budget resources of the Social Security Administration. I request the inclusion of this correspondence in the official record of the Subcommittee's February 14 hearing on Social Security disability backlogs.

We believe the disability adjudication process of the Social Security Administration is significantly handicapped by inadequate budget resources. Many witnesses at your February 14, 2007 hearing testified to the insufficiency of current resources and the compelling need for greater funding. Our members – comprised of SSA employees and practitioners alike from coast to coast -- report ongoing and similar problems in the conduct and adjudication of disability appeals, due largely to dramatically insufficient financial resources. They confirm that there are shortages of staff, equipment and training. These shortages cause delays and backlogs. And these delays and backlogs have only worsened during the past several years.

This is a difficult time for disability adjudication at the Social Security Administration. The agency is attempting to establish a new electronic file system, while continuing to maintain the vast majority of its claimants' files in traditional hardcopy form. Training for the new system takes employees away from the old. Despite the retirement of experienced senior employees, a virtual freeze on hiring forecloses the

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\* The FBA is the foremost national association of 16,000 private and government lawyers engaged in practice before the federal courts and federal agencies. The FBA's Social Security Section is unlike other organizations of lawyers associated with Social Security disability applications and appeals. The membership of the FBA Social Security Section includes attorneys involved in all aspects of Social Security disability adjudication including attorney representatives of claimants, administrative law judges, Appeals Council judges, staff attorneys in the SSA Office of Disability and Review and Office of General Counsel, U.S. Attorneys and U.S. Magistrate Judges, District Court Judges and Circuit Court Judges. These comments are submitted on behalf of the Social Security Section of the FBA and do not necessarily represent the views of the national organization.

hiring of successor personnel. There is little money for overtime. And there are a growing number of claims at all levels of the administrative system as baby boomers age.

In June 2006, the Social Security Section of the Federal Bar Association advised this Subcommittee of our support for Commissioner Barnhart's new disability determination process. The new process is founded on the use of electronic files and the streamlining of the administrative decision-making process. We agree in principle that these procedural changes should enable the Social Security Administration to get to the correct decision sooner (and less expensively). As you know, these new rules have been applied to new applications filed in the New England area (Region I of the Social Security Administration) since August 1, 2006. Unfortunately, time spent training Administration personnel in using electronic files across the nation has taken those very employees away from handling pending cases. As a result, there have been longer delays in processing older claims. There has been an absolute decline in the number of employees of the Social Security Administration, yet the number of claims has only increased.

These changes have delayed the processing of claims – despite improved employee productivity. The waiting time for an administrative hearing has increased over the last several years. The average processing time for a hearing is about a year-and-a-half. Yet it often takes more than two years for many claimants to actually appear before an administrative law judge, particularly in many cities across the country. A written decision can take months longer. We understand from our members that in many hearing offices the administrative files cannot be promptly prepared for hearing because there is a shortage of clerks. We understand the Commissioner has recently hired a large number of decision writers to aid administrative law judges in preparing decisions, but there is not enough money to train them. While the new decision writers are working, they are not as effective or efficient they could be with proper training.

My own experience as a lawyer representing claimants before the Social Security Administration is especially instructive. I personally had a client who filed an application for supplemental security income in August 1992. After two bureaucratic snafus, she finally received a hearing before an administrative law judge in June 1997. Her claim was denied in September 1998, more than six years after she filed her application. Following her appeal to federal district court, the federal judge concluded that the administrative law judge had made various errors and remanded the case for a new hearing in March 2001. The case was not rescheduled for hearing until January 2007 – nearly 15 years after she first filed her appeal. Unfortunately, my client died in December 2006, a month before her hearing on her entitlement to benefits was to be heard. Fortunately, she had filed a new application in 2000, and she received supplemental security income for the last six years of her life. Nonetheless, for this woman, justice delayed was justice denied. It is difficult to understand why, in light of the federal district court's remand, the SSA could not have conducted a one-hour hearing before six years transpired after the court's remand.

The Social Security Administration is not a bloated, unresponsive bureaucracy. It

is an overworked, understaffed group of hardworking employees trying to help the public obtain their entitlements. On behalf of the public and the SSA employees, we urge the Congress to provide additional funds to assure sufficient personnel with adequate training and equipment to fulfill the SSA's mission. While we recognize that the Subcommittee does not possess the jurisdiction to itself provide for SSA funding, we call upon the Subcommittee to do whatever it can to urge the appropriate budget and appropriations committees of the Congress to provide for a significant increase in funding for the Social Security Administration -- to at least the amount proposed by the Commissioner.

The agency needs not only more administrative law judges, but also more support staff. It needs money for overtime. It needs more electronic equipment, better software and increased training. It needs more personnel to implement and enhance Commissioner Barnhart's disability service improvement initiatives. Simply stated, it needs more funding!

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Gary Flack". The signature is written in a cursive, flowing style.

Gary Flack  
Chairman, Social Security Section  
Federal Bar Association