

# **Social Security: Restructuring Disability Adjudication**

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the Social Security Administration,  
the United States Government or any  
of its Components.*

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# SOCIAL SECURITY: RESTRUCTURING DISABILITY ADJUDICATION



# RESTRUCTURING DISABILITY ADJUDICATION



## ➤ **Five Proposals Positively Affecting the Disability Hearings Process:**

1. **Inclusion of the Social Security Administration as a “Present Party” (“PreP”) in disability appeals.**
2. **Adoption of Formal Rules of Practice and Procedure**
3. **Restructuring the scope of Appeals Council review.**
4. **Replace “pay-for-delay” attorney-fees.**
5. **End representative travel reimbursements.**

# Proposal No. 1: SSA as a Formal “Present Party” or “PreP” to the Disability Hearing

- Inclusion of the Social Security Administration as a “Present Party” in disability appeals



By “Present Party” is meant a ‘live and in-person’ representative or attorney operating (ideally) under the aegis of the Office of General Counsel (OGC) and employed for the purpose of representing the agency in disability proceedings before Administrative Law Judges.

# Proposal No. 1: Role of the “present party”...

## The *PreP*

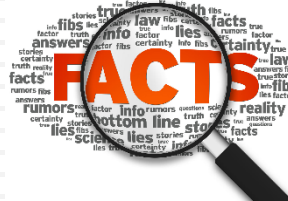
The *PreP*’s role is to promote administrative justice for all parties in a disability proceeding.





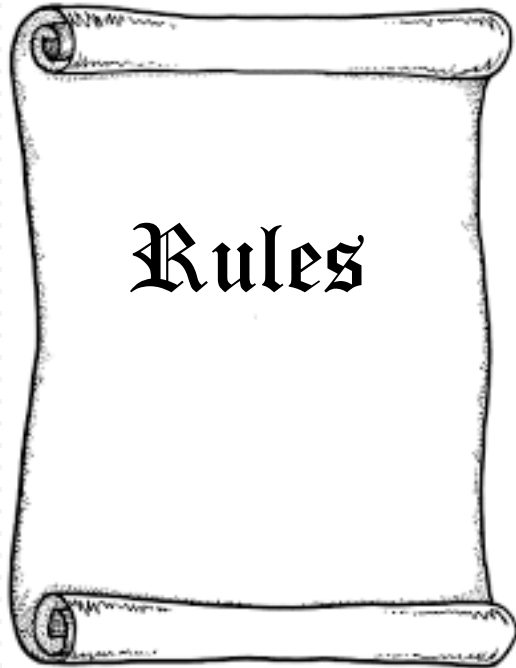
# The *PreP*

The *PreP* advocates for a correct and timely result, urging the grant of benefits – or, appealing a judge’s decision, as may be appropriate given the evidentiary record.



In any given appeal the claimant might find in the “present party” an ally or a skeptic; but one who is nevertheless bound to inquire, having inherited the duty of inquiry from the administrative law judge, and in exercising such duty, to ensure the correct result under the Social Security Act is accomplished.

# Proposal No. 2: Formal Rules of Procedure

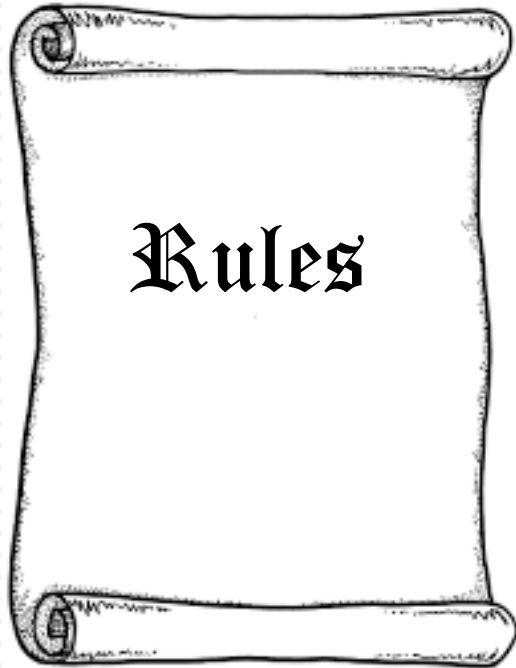


## Adopt Formal Rules of Procedure for Disability Hearings

Unlike the ***Federal Rules of Civil Procedure*** governing civil proceedings before the courts, no formal rules of procedure govern Social Security disability proceedings.

# Proposal No. 2: Formal Rules of Procedure

## Govern and Include –



- ❖ *Rules of Hearing Procedure and Evidentiary Standards*
- ❖ *Pre-Hearing Case Management*
- ❖ *Discovery and Case Development*
- ❖ *Early Agreed Resolution Before hearing*
- ❖ *Agreed-Resolution After Hearing*
- ❖ *Closing the Record after Hearing*

# Proposal No. 3: Appeals Council Reform

In 1987 the *Administrative Conference of the United States* (ACUS) recommended at 1 C.F.R. § 305.87-7 that:

The Appeals Council should significantly reduce its role in reviewing appeals from decisions by Administrative Law Judges.<sup>1</sup>

Why?

Disability appeals before the Appeals Council are not precedential. Significant delay arises from remands that do not implicate law, regulation or policy.

1. See, Title 1, Code of Federal Regulations, Part 305, Recommendations of the Administrative Conference of the United States, "A New Role for the Social Security Appeals Council," 52 FR 49143, Dec. 30, 1987.

# Proposal No. 3: Appeals Council Reform

## Standard on Appeal:

Appeal may be taken where there is a showing that the decision implicates significant public policy or statutory/regulatory and / or legal construction, affecting the disability program.

Appeals are no longer based on questions of fact.



# Proposal No. 4: Attorney Fees

WHY SHOULD SOCIAL  
SECURITY  
BE INVOLVED IN THE  
PAYMENT  
OF ATTORNEY FEES?



# Proposal No. 4: Replace Pay-for-Delay Attorney Fee

- **What Should Change?**
- The current fee system increases the attorney fee the longer the wait for a hearing, incentivizing delay.
- The current system places the interests of the attorney ahead of the claimant.



No, Bob, we "charge legal fees".  
We don't "plunder".

# Proposal No. 4: Replace Pay-for-Delay Attorney Fee

- **The Solution?**
- Reverse the incentive; so that a greater fee is awarded based upon how quickly an appeal is made ready.
- Alternately, establish a flat fee and give the ALJ limited discretion to increase the fee based on complexity and/or timely hearing.





# Proposal No. 5: End Private Travel Subsidies for Law firms, lawyers, representatives and disability advocates.

## The Question?

- Why does Social Security subsidize lawyers and disability advocates to travel around the country, when disability lawyers and representatives can be found in virtually every city and state in the United States?





Action  
Changes  
Things

Social Security has not altered its adjudicatory model for more than fifty years. Given the shortcomings of earlier ‘solutions,’ the persistent and growing hearings pending backlog augurs for change.

Change is  
needed –  
if not now  
when?

