
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**CLAIMANT REPRESENTATIVES
BARRED FROM PRACTICING
BEFORE THE SOCIAL
SECURITY ADMINISTRATION**

September 2007

A-12-07-17057

AUDIT REPORT



Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

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- **Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- **Promote economy, effectiveness, and efficiency within the agency.**
- **Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- **Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- **Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers the IG with:

- **Independence to determine what reviews to perform.**
- **Access to all information necessary for the reviews.**
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We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.



SOCIAL SECURITY

MEMORANDUM

Date: September 28, 2007

Refer To:

To: The Commissioner

From: Inspector General

Subject: Claimant Representatives Barred from Practicing before the Social Security Administration (A-12-07-17057)

OBJECTIVE

Our objective was to assess the Social Security Administration's (SSA) implementation of section 205 of Public Law 108-203, the *Social Security Protection Act of 2004* (SSPA), with respect to the recognition, disqualification, and reinstatement of claimant representatives.

BACKGROUND

The hearing process begins after an applicant for benefits has been denied at the initial and reconsideration levels. The next step in the appeals process is a hearing before an Administrative Law Judge (ALJ). At the hearing level, a claimant may appoint¹ a qualified attorney or non-attorney to represent them in pursuing his/her disability claim. Hearings are held by one of the Office of Disability Adjudication and Review's (ODAR) 140 hearing offices located nationally. In Fiscal Year (FY) 2006, ODAR processed 559,000 dispositions² where approximately 439,000 of the dispositions involved an attorney or non-attorney.³ All attorney and non-attorney representatives who practice

¹ The *Appointment of Representative Form* (SSA-1696) is completed by the claimant appointing a qualified attorney or non-attorney to represent the claimant in connection with his/her claim, and is also completed by the attorney or non-attorney accepting the appointment (see Appendix B for a copy of the form.)

² Dispositions do not always relate to a hearing. For example, the dismissal of a case is recorded as a disposition.

³ In FY 2006, approximately 26,000 attorneys and 5,000 non-attorneys represented claimants before ODAR. These numbers are estimates based on the names of representatives in ODAR's Case Processing and Management System (CPMS). The actual numbers may vary due to limitations when summarizing on the representatives' names. For example, the same representative may be listed several different ways (e.g., John Smith, John E. Smith, and John Smith, Esq.). In addition, three representatives with the exact same name may show up as only one representative when the information is summarized. Only unique identifiers per representative within CPMS, such as a Social Security number, would allow a more exact count.

before SSA must comply with SSA's *Rules of Conduct and Standards of Responsibility for Representatives*, which are affirmative duties SSA expects representatives⁴ to perform professionally as they assist claimants in obtaining and submitting evidence to further the efficient, fair, and orderly conduct of the Agency's decision process.⁵

In March 2004, the President signed into law the SSPA. Section 205 of the SSPA provides additional protections for claimants against attorney and non-attorney misconduct. The SSPA and SSA regulations authorize the Commissioner of SSA to disqualify a representative if the attorney or non-attorney has been disbarred, suspended, or disqualified from any court, bar, Federal program or Agency he or she was previously admitted to participate in or practice.⁶

Additionally, a representative who has been disqualified or suspended from appearing before SSA as a result of collecting or receiving a fee in excess of the amount authorized, shall be barred from appearing before SSA until full restitution is made to the claimant.⁷ We provide additional information on SSPA in Appendix C.

We reviewed SSA's procedures to screen attorneys and non-attorneys to preclude suspended/disbarred individuals from appointment before SSA. In addition, we also contacted Federal agencies with large ALJ cadres to discuss whether they screen and sanction representatives. Finally, we reviewed the availability of resources related to the suspension/disbarment of attorneys and non-attorneys. See Appendix D for our full scope and methodology.

RESULTS OF REVIEW

Prior to the passage of the SSPA, SSA established a screening process to identify representatives whom the Agency had suspended or disqualified. Since then, SSA revised the SSA-1696 form, requiring representatives to certify that they have not been barred by any Federal or State Court or Federal program. However, the Agency has not taken any additional steps to implement the new SSPA provision regarding

⁴ "Representative" denotes someone who meets the qualifications SSA prescribes for either an attorney or a non-attorney and whom the claimant appoints to act on his/her behalf in pursuing his/her claim before SSA. See SSA Program Operations Manual System (POMS), General Notices (GN) 03910.020 —Who is a Representative.

⁵ For instance, the *Rules of Conduct and Standards of Responsibility for Representatives* prohibit certain representative conduct, such as threatening or deceiving a claimant, or charging or collecting representational fees in violation of the law.

⁶ Prior to the amendment by § 205 of the SSPA, pursuant to § 206(a)(1) of the Social Security Act, 42 U.S.C. § 406(a)(1), SSA had to recognize an attorney who may have been disbarred in one jurisdiction, if licensed to practice law and in good standing in another jurisdiction.

⁷ For the claimant's protection, a representative cannot charge or collect a fee without first getting written approval from SSA, and a representative may accept money directly from a claimant in advance only as long as it is held in a trust or escrow account. The SSPA adds this additional protection for the claimant by mandating restitution of excess fees charged to the claimant before they can appear before SSA.

screening. We found that the current screening process does not proactively match representative data against outside information to detect barred individuals. We also found that SSA's existing screening process could be improved. For instance, we found two cases where Agency-sanctioned representatives were still serving current claimants. Moreover, we found that representatives initially screened by hearing office staff were not always the same individuals identified within the SSA's systems as the claimant's representatives. Our review of other Federal agencies that conduct administrative hearings found these agencies had minimal or non-existent screening processes. We also found that a more comprehensive screening process is possible by using publicly available information from States and other organizations. Our own review of representatives at one hearing office using publicly-available information found a disbarred attorney representing five SSA claimants in FY 2006. We believe SSA could collect additional State bar information from representatives to allow for greater verification in the future. Finally, we found the administrative hearing process for sanctioning representatives could be timelier to protect both claimants and representatives.

SCREENING OF CLAIMANT REPRESENTATIVES

Prior to the passage of the SSPA, SSA had established minimal formal screening procedures to validate whether prospective or appointed representatives had been barred by SSA. Information about who has been suspended or disqualified by SSA was posted on an SSA-maintained list: the *List of Sanctioned Representatives*. Since the passage of SSPA, SSA has (1) revised the SSA-1696 form, requiring representatives to certify that they have not been barred by any Federal or State Court or Federal program; and (2) developed a *List of Non-Attorneys Eligible for Direct Pay*. Beyond these procedures, hearing office staff did not use any other formal means to screen representatives to determine if those appointed had been barred by any State, Federal court or Federal program.

Both attorneys and non-attorneys⁸ seeking to represent claimants before SSA provide professional and personal information on a SSA-1696.⁹ Since the passage of SSPA, the SSA-1696 has also required the representative to answer a "yes" or "no" question as to whether they have been disbarred or suspended from a court or disqualified from appearing before a Federal program or agency. By signing the form, representatives certify under penalty of perjury that all information provided is correct. SSA staff also noted that the Agency also learns of possible representational misconduct through claimant complaints or Agency employees who detect it in the course of their official

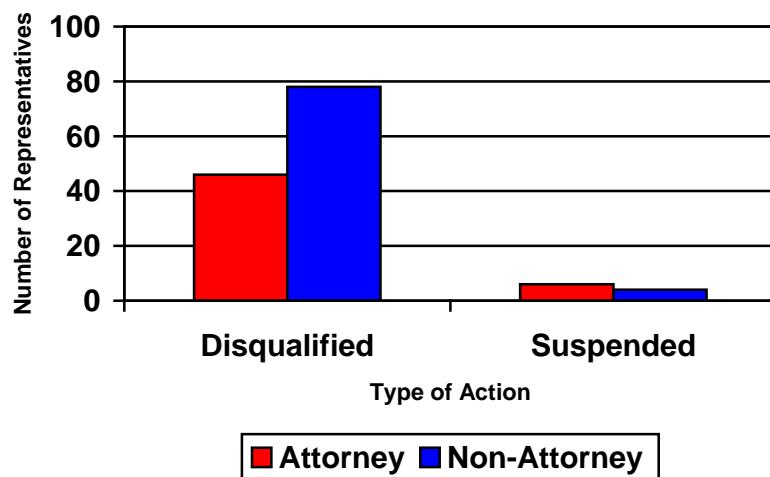
⁸ Many non-attorneys are family members who represent the claimant one time, while others work professionally as claimant representatives full-time. Claimants may appoint anyone who is not an attorney to be their representative in dealings with SSA if he or she is—(1) generally known to have a good character and reputation; (2) capable of giving valuable help in connection with the claim; (3) not disqualified or suspended from acting as a representative in dealing with SSA; and (4) not prohibited by any law from acting as a representative. See SSA POMS, GN 03910.020 —Who is a Representative.

⁹ See Appendix B for a copy of this form.

duties. In such cases, SSA staff develops evidence concerning the potential violations of the *Rules of Conduct and Standards of Responsibility for Representatives* and refer them to the Office of General Counsel's Office of General Law.

The representative's assertion is recorded within ODAR's CPMS¹⁰ with the rest of the representative's information from the SSA-1696. At the time hearing office staff copy the information to CPMS they are also required to validate if the representative seeking appointment is disqualified or suspended by matching the representative's name against SSA's *List of Sanctioned Representatives*. This master list of sanctioned representatives is maintained on a SSA webpage and linked to CPMS. As of May 2007, SSA had 134 disqualified or suspended representatives on this list (see Figure 1 below). After checking the list, hearing office staff note within CPMS either a 'yes' or 'no' to indicate whether the representative is on the sanctioned list. If the representative's name is found on this listing, the representative is notified that he/she cannot represent the claimant before SSA.

**Figure 1: Sanctioned Representatives at SSA
(As of May 2007)**



In addition to the *List of Sanctioned Representatives*, ODAR hearing office staff also checks the non-attorney information against the Agency's *List of Non-Attorneys Eligible for Direct Pay*. This non-attorney listing was established under SSPA as part of a 5-year nationwide demonstration project that extends to certain non-attorney representatives of claimants under Titles II and XVI the option to have approved representative's fees withheld and paid directly from the beneficiary's past due

¹⁰ CPMS is an automated system that tracks the claim as it progresses through the hearing process, and provides vital information about the claim in lieu of the claim folder (see Appendix E for copy of the input screen).

benefits.¹¹ Hearing office staff must ensure the non-attorney representative is on this list before authorizing them for direct payment within the CPMS system. While this list is not the same as a sanctioned list, non-attorneys approved under this program who fail to maintain certain standards, such as continuing liability insurance coverage, are annotated on the list as being ineligible. Once the representatives submit evidence that they have renewed their insurance policy, they again become eligible to participate.

ADEQUACY OF THE SCREENING PROCESS

We found sufficient evidence to support the accuracy of the information in the *List of Sanctioned Representatives*. Our comparison of claimant representatives to the sanctioned list found two representatives who were disqualified by SSA while representing claimants before SSA during the period of our review. We also found that the representative information in SSA's systems was not always consistent with the SSA-1696.

Sanctioned List Accuracy

We found adequate support for the disqualified/suspended representatives placed on SSA's *List of Sanctioned Representatives*.¹² Providing SSA employees with accurate and timely information concerning sanctioned representatives both facilitates the effective enforcement of SSA's decisions to suspend or disqualify representatives, and protects claimants and the claims process from individuals who have violated SSA's conduct rules or who are not qualified to be representatives.

To assess the accuracy of the listing, we reviewed a sample of eight attorneys and non-attorneys who had been disqualified/suspended by SSA and placed on the Agency's *List of Sanctioned Representatives*. We requested Office of General Counsel (OGC) litigation folders and compared the ALJ decisions and sanction dates imposed to information on the listing. Our sample showed that OGC posted information that accurately reflected both the ALJ decision and the correct date for imposition of the sanction.

¹¹ Non-attorney representatives who wish to participate in the demonstration project must meet the prerequisites specified in Section 303 of the SSPA. The prerequisites for participating in the project include securing professional liability or equivalent insurance and undergoing a criminal background check. The SSPA permits the Commissioner to establish additional prerequisites. The Commissioner added a minimum representational experience requirement. See SSA Office of the Inspector General (OIG), *Demonstration Project for Non-Attorney Representatives* (A-12-06-16013), June 2006.

¹² SSA's *Sanctioned Representative List* shows the effective dates of sanctioning or disqualifying representatives as early as 1980. Of the names on the list in May 2007, 50 representatives have been sanctioned since 2001, with a high of 15 in 2002. Representatives whose suspensions ended have been removed from the list.

Practicing Representatives

To assess the adequacy of the screening process, we compared the names of representatives who attended hearings before ODAR in FY 2006 to the May 2007 *List of Sanctioned Representatives*. We compared the last names of attorneys and non-attorneys who represented claimants in FY 2006 and compared them to the 134 names on the *List of Sanctioned Representatives*. We found two cases where it appeared sanctioned representatives were representing claimants before SSA after they were disqualified. An attorney was disqualified and placed on the *List of Sanctioned Representatives* by SSA in August 1997 and represented two claimants from April 2003 until May 2007. A non-attorney was disqualified in September 2001 and represented a claimant from March 2005 until July 2006. We referred this information to the appropriate hearing offices. In both cases, hearing office staff have confirmed our findings and agreed that these claimant representatives should not have practiced before SSA.

Management Information

We found the representative's name listed in CPMS did not always agree with the representative's name located on the SSA-1696. When this representative information is inconsistent, ODAR cannot ensure the representative(s) actually appointed has attested to statements regarding disbarment/suspension actions.¹³

We reviewed a sample of 50 claims folders to determine whether the SSA-1696, or other written statements in the claim folder, matched information in CPMS.¹⁴ We found four folders (8 percent) where the SSA-1696 and CPMS information did not match. In two cases information from the SSA-1696 showed a different representative than CPMS, and in the remaining two, there was no information in CPMS although the SSA-1696 was in the claims folder. When discrepancies exist between the SSA-1696 and CPMS, SSA cannot be certain the representatives have certified that they have not been disbarred, suspended or disqualified by other courts, nor is the information available for comparison to the *List of Sanctioned Representatives*.

OTHER FEDERAL AGENCIES

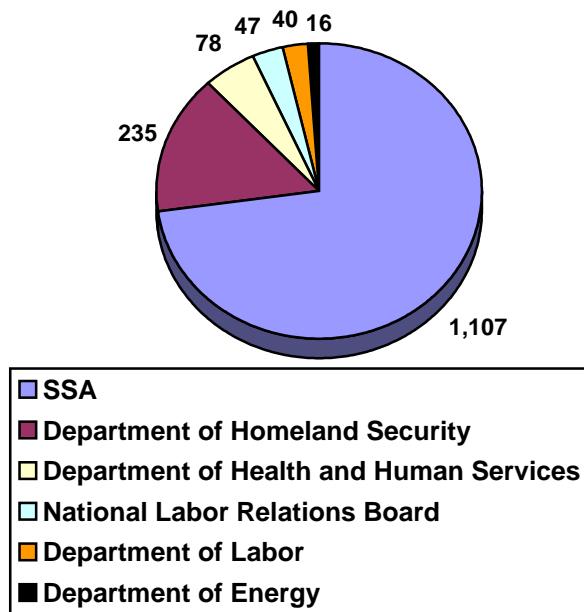
We found that other Federal agencies with claimant representatives have minimal or non-existent screening processes for representatives prior to their appointment. We

¹³ As noted earlier, the SSA-1696 is a notice to SSA that a claimant appointed a representative and the representative agrees to the appointment. If the representative serving the claimant is not named on the SSA-1696, the legal relationship between the two parties, as well as SSA's ability to protect the client, may be at risk.

¹⁴ The information in CPMS is updated by hearing office staff from the SSA-1696 filed in the claim folder. Updated information includes the representative's name, address, phone, fax, representative's firm and certification by the attorney or non-attorney as to whether he or she has been sanctioned.

contacted staff at five Federal entities with large ALJ contingents¹⁵ and asked them to outline the procedures used to screen the representatives appearing before them. We found that although each entity had legislation to sanction attorneys for misconduct or lack of qualifications, none could identify screening procedures for the representatives prior to their appointment or during their official duties as representatives (see Figure 2 below).

**Figure 2: Federal Agencies with Large ALJ Cadres
Interviewed for this Report
(ALJ Counts Provided by Each Agency)**



OTHER SCREENING RESOURCES

A number of resources are available to SSA if the Agency were to expand its screening to include outside resources. Many State disciplinary websites are available to check attorneys who are currently disbarred or suspended. In addition, the American Bar Association (ABA) plans to expand its current service to screen attorneys using a central data bank culled from state and federal courts and other regulatory agencies. However, SSA may need to capture additional information from attorneys to use such services to improve the effectiveness of future verifications.

¹⁵ We contacted staff at the Department of Energy, the Department of Health and Human Services, the Department of Homeland Security, the Department of Labor, and the National Labor Relations Board. SSA employs about 72 percent of all ALJs in the Federal Government.

Available State Data

SSA can verify the disbarred/suspended status of lawyers by using resources from individual State disciplinary agencies and commissions, bar associations or State court web-sites to prevent lawyers who have been disbarred or suspended elsewhere from appearing before SSA. These web-sites offer public information on disciplined attorneys to be responsive to the public and allow consumers to protect themselves from negligent, unscrupulous or incompetent attorneys.

To determine the usefulness of such State-based services, we reviewed the names of 371 attorneys who represented claimants at hearings in the Atlanta North Hearing Office in FY 2006. We found that 205 attorneys were listed with the State Bar of Georgia as members in good standing and one attorney had been disbarred by the Georgia Supreme Court in October 2005. A further review of hearing office records found that this disbarred attorney represented five claimants before SSA during FY 2006. For instance, one of his clients was denied benefits at a September 2006 hearing. We referred this attorney's name to the Atlanta North Hearing Office to determine if the hearing office was aware of the attorney's disbarment and, if so, took any action related to this case.

We were unable to determine the "good standing" of the remaining 165 attorneys since they were not listed on the State Bar of Georgia site. It is possible that these attorneys were members of other State bars.¹⁶ However, the SSA-1696s did not contain sufficient information to pursue this matter further. Attorneys would need to provide SSA with both the name of the State(s) where they are members of the bar as well as their State bar number(s) and/or other relevant State bar identifiers. If SSA collected this additional information, they would be able to verify the standing of the attorneys directly with State bars via telephone, mail or the Internet.

SSA recently initiated a new process to collect additional identifiers from attorneys, including taxpayer identification numbers, as well as the State(s) where the attorney has been admitted to practice law. This additional information is collected on the *Request for Appointed Representative's Direct Payment Information* (SSA-1699)¹⁷ and is maintained in a database for later retrieval. This form and database could also be used to collect and maintain information, such as an attorney's State bar number(s), so SSA could periodically verify the attorney's good standing with the relevant State bar(s).

¹⁶ In the case of Federal hearings, as is the case with ODAR hearings, an attorney is not required to be a member of the State bar in the State where the hearing takes place.

¹⁷ This form is used to secure the necessary information from the representative for direct payment of fees as well as for issuance of Form 1099-MISC. The representative is required to list business affiliations related to representation. Also, the representative can provide bank information and request that the fee be paid by direct deposit. See Appendix F for a copy of the electronic form.

Available National Data

Centralized fee-based data is also available to assist SSA with screening. The ABA's *National Lawyer Regulatory Data Bank* contains information from public records from each United States jurisdiction concerning sanctions against attorneys.¹⁸ A centralized repository of disbarred/suspended attorneys could eliminate the need to verify attorneys with Bar associations in the 50 States. While the current verification process entails sending a letter for each attorney being screened, ABA staff stated the Data Bank will be available as an on-line service in 2008. Such a service could allow SSA to periodically screen all attorneys.¹⁹

REPRESENTATIVE SANCTION HEARINGS

Our review of SSA's administrative hearing process for sanctioning claimant representatives found that it can take a year or more. SSA cannot protect claimants against unprofessional or unethical conduct, or protect representatives against unfounded complaints, if there are unnecessary delays in administering the sanction process. As part of due process, a representative is allowed to continue to practice before SSA until a decision is made to sustain the charges.

We reviewed a sample of OGC administrative sanction folders and found that once a case went from OGC to ODAR for a final decision, it took between 5 and 17 months for the designated hearing officer to hear the case.²⁰ OGC reviews referrals and determines if the representative may have committed a violation. If OGC decides to file charges, they must serve a notice containing a statement of charges on the representative. If a representative files an answer, and that answer satisfies the General Counsel that SSA should not sanction the representative, OGC will withdraw the charges. However, if OGC does not withdraw the charges, ODAR will designate an ALJ to hold a hearing on the charges. After the hearing, the ALJ determines whether to sustain the charges and issues a decision.²¹

For example, from 1992 through 1994 an attorney successfully represented four claimants before SSA, but was erroneously issued four duplicate checks from SSA, two

¹⁸ This service is not designed to assist with non-attorney screening.

¹⁹ The current cost is \$10 for each name searched, though it is possible that an on-line service combined with volume transactions might reduce this cost.

²⁰ We could not determine from our sample the time-line from issuance of a complaint to a decision for each case, because it could not be gleaned from documentation in the OGC files we reviewed.

²¹ Both parties have the right to request Appeals Council review, but in the absence of an appeal, the ALJ's decision becomes final and binding. If either or both parties appeal, the Appeals Council may deny or dismiss the Request for Review, modify or reverse the ALJ's decision, or remand the case for further proceedings. If the Agency issues a final decision suspending or disqualifying an attorney, it will send a copy of that decision to the relevant State bar(s).

payments in 1994, and two payments in 1995, totaling \$11,287.²² The attorney never responded to letters from SSA requesting refunds for the four payments. SSA attempted over the course of several years to have the money refunded. SSA did not serve notice of the charges until February 2001, and disqualified him in January 2002. We also learned that this same attorney was disbarred by the New York State bar in November 1994 for failing to account for assets worth \$837,129 and subsequently pled guilty to grand larceny. He received a prison sentence of 3 to 10 years in a New York correctional institution.²³

SSA recently streamlined the administrative hearings process for sanctioning claimant representatives. Since July 2007, OGC is filing requests for hearings in representative sanction cases with the Office of the Chief Administrative Law Judge (OCALJ) directly. Previously, cases went through the Deputy Commissioner for Disability and Income Security Programs²⁴ who approved holding a hearing, and then to the Associate Commissioner for Hearings and Appeals who designated an ALJ to hear the case. In addition, OCALJ has assembled a volunteer cadre of ALJs who are available to hold sanction hearings expeditiously.²⁵ As noted earlier, a more expeditious process should benefit both claimants and their representatives.

CONCLUSION AND RECOMMENDATIONS

While SSA has a screening process in place to match representatives against internal lists, a more comprehensive screening against lists maintained by other entities would offer greater assurance that representatives have not been disbarred or suspended from any court, bar, Federal program or Agency he or she was previously admitted to participate in or practice before. In addition, this enhanced screening may require the collection of additional information from the attorney, such as the State(s) he/she are admitted to practice law and his/her State bar number(s). SSA could also improve the integrity of the data it already collects to ensure claimants are properly protected and attorneys certify that they are not disbarred, suspended, or disqualified.

²² Attorney overpayments were reviewed in another SSA OIG audit, *Controls Over Multiple Payments to Attorneys* (A-12-06-20016), issued in September 2006.

²³ We do not have a historical listing to determine if this attorney was on the earlier *List of Sanctioned Representatives*, but it is unlikely since he was continuing to represent SSA claimants until his 2002 suspension. Either he was on the list and SSA did not notice, or he was not on the list and a more comprehensive review of State bar data could have detected his disbarment. The New York State Unified Court System web site lists this attorney as "Resigned from the bar - disciplinary reasons."

²⁴ ODAR (formerly the Office of Hearings and Appeals) was part of the Office of Disability Income and Security Programs before it became a separate component in April 2006.

²⁵ If OGC initiates sanction proceedings and charges are not withdrawn, OCALJ will designate an ALJ from a different geographic region than the one in which the representative primarily practices from the volunteer ALJ cadre and hold a hearing.

To improve the screening of representatives and ensure the integrity of representative data, we recommend SSA:

1. Require hearing offices to ensure the claimant representative's name in CPMS relates to the name on a completed SSA-1696.
2. Ensure staff compares the claimant representative's name to the *List of Sanctioned Representatives* each time a SSA-1696 is added to CPMS.
3. Collect additional claimant representative data that can assist with verification of their "good standing," such as their State(s) of admission and their State bar number(s) for attorneys.
4. Develop a pilot to verify whether claimant representatives have been disbarred, suspended, or disqualified against lists maintained by other entities to determine the costs and benefits of such controls. These entities could include State bars and/or other entities that collect and maintain similar disciplinary data.

AGENCY COMMENTS

SSA agreed with our recommendations and plans to take corrective action. The full text of the Agency's comments is included in Appendix G.



Patrick P. O'Carroll, Jr.

Appendices

[**APPENDIX A**](#) – Acronyms

[**APPENDIX B**](#) – Appointment of Representative Form

[**APPENDIX C**](#) – Intent of Claimant Representative Oversight

[**APPENDIX D**](#) – Scope and Methodology

[**APPENDIX E**](#) – Representative & Fee Query Screen

[**APPENDIX F**](#) – Request for Appointed Representative’s Direct Payment Information
(SSA-1699)

[**APPENDIX G**](#) – Agency Comments

[**APPENDIX H**](#) – OIG Contacts and Staff Acknowledgments

Appendix A

Acronyms

ABA	American Bar Association
ALJ	Administrative Law Judge
CPMS	Case Processing and Management System
FY	Fiscal Year
GN	General Notices
OCALJ	Office of Chief Administrative Law Judge
ODAR	Office of Disability Adjudication and Review
OGC	Office of General Counsel
OGL	Office of General Law
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SSA	Social Security Administration
SSPA	Social Security Protection Act of 2004

Appendix B

Appointment of Representative Form (SSA-1696)

INFORMATION FOR REPRESENTATIVES

Fees for Representation

An attorney or other person who wants to charge or collect a fee for providing services in connection with a claim before the Social Security Administration must first obtain our approval of the fee for representation. The only exceptions are if the fee is for services provided:

- o when a nonprofit organization or government agency will pay the fee and any expenses from government funds and the claimant incurs no liability, directly or indirectly, for the cost(s);
- o in an official capacity such as legal guardian, committee, or similar court-appointed office and the court has approved the fee in question; or
- o in representing the claimant before a court of law. A representative who has provided services in a claim before both the Social Security Administration and a court of law may seek a fee from either or both, but neither tribunal has the authority to set a fee for the other.

Obtaining Approval of a Fee

To charge a fee for services, you must use one of two, mutually exclusive fee approval processes. You must file either a fee petition or a fee agreement with us. In either case, you cannot charge more than the fee amount we approve.

Fee Petition Process

You may ask for approval of a fee by giving us a fee petition when you have completed your services to the claimant. This written request must describe in detail the amount of time you spent on each service provided and the amount of the fee you are requesting.

You must give the claimant a copy of the fee petition and each attachment. The claimant may disagree with the information shown by contacting a Social Security office within 20 days of receiving his or her copy of the fee petition. We will consider the reasonable value of the services provided, and send you notice of the amount of the fee you can charge.

Fee Agreement Process

If you and the claimant have a written fee agreement, either of you must give it to us before we decide the claim(s). We usually will approve the agreement if you both signed it; the fee you agreed on is no more than 25 percent of past-due benefits, or \$5,300 (or a higher amount we set and announce in the Federal Register), whichever is less; we approve the claim(s); and the claim results in past-due benefits. We will send you a copy of the notice we send the claimant telling him or her the amount of the fee you can charge based on the agreement.

If we do not approve the fee agreement, we will tell you in writing. We also will tell you and the claimant that you must file a fee petition if you wish to charge and collect a fee.

After we tell you the amount of the fee you can charge, you or the claimant may ask us in writing to review the approved fee. (If we approved a fee agreement, the person who decided the claim(s) also may ask us to lower the amount.) Someone who did not decide the amount of the fee the first time will review and finally decide the amount of the fee.

Form SSA-1696-U4 (1-2005) EF (1-2005)

Collecting a Fee

You may accept money in advance, as long as you hold it in a trust or escrow account. The claimant never owes you more than the fee we approve, except for:

- o any fee a Federal court allows for your services before it; and
- o out-of-pocket expenses you incur or expect to incur, for example, the cost of getting evidence. Our approval is not needed for such expenses.

If you are not an attorney and you are ineligible to receive direct payment, you must collect the approved fee from the claimant. If you are interested in becoming eligible to receive direct payment, you can find information on the procedures for becoming eligible for direct payment on our "Representing Claimants" website: <http://www.ssa.gov/representation/>.

If you are an attorney or a non-attorney whom SSA has found eligible to receive direct payment, we usually withhold 25 percent of any past-due benefits that result from a favorably decided retirement, survivors, disability insurance, or supplemental security income claim. Once we approve a fee, we pay you all or part of the fee from the funds withheld. We will also charge you the assessment required by section 206(d) and 1631(d)(2)(C) of the Social Security Act. You cannot charge or collect this expense from the claimant. You must collect from the claimant:

- o the rest he or she owes
 - if the amount of the fee is more than the amount of money we withheld and paid you for the claimant, and any amount you held for the claimant in a trust or escrow account.
- o all of the fee he or she owes
 - if we did not withhold past-due benefits, for example, because there are no past-due benefits, or the claimant discharged you, or you withdrew from representing the claimant; or
 - if we withheld, but later paid the money to the claimant because you did not either ask for our approval until after 60 days of the date of the notice of award or tell us on time that you planned to ask for a fee.

Conflict of Interest and Penalties

For improper acts, you can be suspended or disqualified from representing anyone before the Social Security Administration. You also can face criminal prosecution. Improper acts include:

- o If you are or were an officer or employee of the United States, providing services as a representative in certain claims against and other matters affecting the Federal government.
- o Knowingly and willingly furnishing false information.
- o Charging or collecting an unauthorized fee or too much for services provided in any claim, including services before a court that made a favorable decision.

References

- o 18 U.S.C. §§ 203, 205, and 207; and 42 U.S.C. §§ 406(a), 1320a-6, and 1383(d)(2)
- o 20 CFR §§ 404.1700 et. seq. and 416.1500 et. seq.
- o Social Security Rulings 88-10c, 85-3, 83-27, and 82-39

Appendix C

Intent of Claimant Representative Oversight

A goal of the Social Security Protection Act of 2004 (SSPA) was to provide better oversight of representatives and protect claimants. Prior to SSPA, attorneys disbarred in one jurisdiction, but licensed to practice in another jurisdiction, could be recognized as a claimant's representative. The SSPA provisions were intended to close this loophole to prevent any licensed attorney from being automatically authorized to represent a claimant if barred in any jurisdiction.

In the Senate Report 108-176, the Committee commented in its "Reason for Change" section that it remained concerned that SSA did not yet have a system in place to verify whether a person seeking appointment as a claimant representative was in fact an attorney, and further stated that SSA had no system to determine whether an attorney who sought appointment had been disbarred.

While these comments reflect the Committee's thoughts that specific proactive steps would need to be taken by SSA for the Commissioner's authority to be exercised, the ultimate language of the legislation did not require the Commissioner to take specific steps; it left the implementation to the discretion of the Commissioner.

Scope and Methodology

To accomplish our review, we:

- Reviewed Section 205 of the Social Security Protection Act of 2004 and relevant House and Senate Reports on the legislation.
- Met with Office of Disability Adjudication and Review (ODAR) staff and gained an understanding of how ODAR (1) recognizes the appointment of attorneys and non-attorneys to represent claimants before the Social Security Administration (SSA) and (2) screens attorneys barred by other Federal courts or programs and/or State courts to preclude them from appearing before SSA.
- Met with Office of General Counsel (OGC) staff and gained an understanding of the responsibilities, process and time it takes to sanction or disbar a representative once referred to the Office of General Law (OGL) within OGC.
- Reviewed a sample of eight OGC litigation folders from representatives with documents of the disciplinary proceedings for each case selected. To select our sample, we randomly selected one folder (individual) from each of the eight States¹ that had six or more sanctioned representatives. We compared the relevant documents within these eight cases against information on SSA's *List of Sanctioned Representatives* and tracked the time it takes once ODAR appointed a Hearing Officer until a decision was reached on a sanction case by an Administrative Law Judge.
- Reviewed 50 randomly selected *Appointment of Representative* (SSA-1696) forms and compared them to the representative data in the Case Processing and Management System (CPMS) from five hearing offices² in Region IV³ to determine whether attorney and non-attorney information were consistent.
- Reviewed the names of Representatives with dispositions in Fiscal Year (FY) 2006 obtained from CPMS and compared them to SSA's *List of Sanctioned Representatives*.

¹ The eight States were Alabama, California, Georgia, Louisiana, Mississippi, New York, Texas and West Virginia.

² The five hearing offices were: Atlanta (downtown), Georgia; Jacksonville, Florida; Fort Lauderdale, Florida; Mobile, Alabama; and Orlando, Florida.

³ Region IV consists of 31 hearing offices located in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.

- Determined which Federal agencies have the largest number of attorneys or non-attorneys appointed and interviewed managers at those agencies to determine how they screen, qualify and disbar attorneys or non-attorneys to identify useful information and best practices for SSA. We contacted staff at the Department of Energy, the Department of Health and Human Services, the Department of Homeland Security, the Department of Labor, and the National Labor Relations Board.
- Compared the names of 390 attorneys representing claimants in the Atlanta North Hearing Office, extracted from the FY 2006 CPMS dispositions file, to the State Bar of Georgia Member services internet data file to determine their discipline and bar status.
- Contacted the American Bar Association staff to discuss the availability of nationwide statistics on attorney disciplinary actions.

We performed limited data reliability tests on the claimant representative data for FYs 2005 and 2006 and found it was reliable for the purposes of this audit. We were unable to determine the precise number of attorney and non-attorneys due to data limitations within CPMS. The principal entities audited were ODAR under the Deputy Commissioner for Disability Adjudication and Review, and OGL under the Office of General Counsel. We performed our audit between October 2006 and May 2007 in Falls Church, Virginia. We conducted our audit in accordance with generally accepted government auditing standards.

Appendix E

Representative & Fee Query Screen

The Representative & Fee Query Screen is replicated below from the Case Processing Management System (CPMS). Hearing office staff input information from the *Appointment of Representative* form (Form SSA-1696) and use the information in CPMS to inform them of who is representing the claimant.

Representative & Fee - Query		Previous Menu Item Next Menu Item
Representative Information		
Appointment of representative filed:	Yes	
Name:	Eleanor Rose Berardi	
Attorney:	Yes	
Sanctioned:	No	
Firm:		
Address:	1234 Anywhere Anywhere, MD 21284 United States	
Phone:	410-222-2222	
Extension:		
Fax:		
Email:		
Dates of representation:	08/25/06 to Present	
Fee waived date:		
Direct payment waived date:		

Appendix F

Request for Appointed Representative's Direct Payment Information (SSA-1699)

About You		
Name:	ELEANOR ROSE BERARDI	
Social Security Number:	***-**-7807	
Tax Mailing Address: (We will send the 1099-MISC to this address.)	1234 Anywhere Anywhere, MD 21284 UNITED STATES	
Your Professional Information		
Registered to receive direct payments as:	Attorney	
Admitted to practice law and am in good standing at the following court:	U.S. District Court, District of Maryland, MD	
Business Affiliation(s) In Your Work as an Appointed Representative		
About this Affiliation	Correspondence and Contact	Payment Preference
ELEANOR ROSE BERARDI Sole Proprietor, Single-Member LLC/LLP	1234 Anywhere Anywhere, MD 21284 UNITED STATES Tel: 4102222222	Check to: 1234 Anywhere Anywhere, MD 21284
Signed via Electronic Signature, dated Fri Aug 25 12:32:02 EDT 2006		

Source: Sample input form taken from the Office of Disability Adjudication and Review's website.

Appendix G

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: September 24, 2007 **Refer To:** S1J-3

To: Patrick P. O'Carroll, Jr.
Inspector General

From: David V. Foster /s/
Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, "Claimant Representatives Barred from Practicing before the Social Security Administration" (A-12-07-17057)--
INFORMATION

We appreciate OIG's efforts in conducting this review. Our comments on the recommendations are attached.

Please let me know if we can be of further assistance. Staff inquiries may be directed to Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at 410 965-4636.

Attachment:
SSA Response

COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL (OIG) DRAFT REPORT, "CLAIMANT REPRESENTATIVES BARRED FROM PRACTICING BEFORE THE SOCIAL SECURITY ADMINISTRATION" (A-12-07-17057)

Thank you for the opportunity to review and provide comments on this draft report. Our responsibility to ensure claimants' representatives comply with our Rules of Conduct and Standards of Responsibility for Representatives and the authority provided to us in Section 205 of the Social Security Protection Act to disqualify a representative (attorney/non-attorney) based on a disbarment or suspension by a court or bar, or disqualification by a Federal agency or program are important aspects of SSA's stewardship responsibilities. We appreciate your review of this area and helpful recommendations.

Regarding the specific findings, we are pleased that this review found sufficient evidence for all the suspension cases reviewed thereby validating the accuracy of the information in the "List of Sanctioned Representatives" maintained by our Office of the General Counsel.

Regarding the adequacy of the screening process, we agree that more can be done. However, we need to carefully evaluate the workload and potential resource impact that any additional screening may place on our already scarce resources. Regarding the data mismatches, when comparing information contained on the SSA-1696 - Appointment of Representative Form and the data in our Case Processing Management System, there are a number of contributing factors that would result in name mismatches. For example, some representatives use a business name and signature; however, their legal names as reflected in our records are different, this can result in an erroneous mismatch. Finally, we appreciate your acknowledgement of our screening process efforts as compared to other Federal agencies and the reference to our expanded process to collect additional identifiers from attorneys to aid in the accuracy of the screening process.

Our responses to the specific recommendations are provided below.

Recommendation 1

SSA should require hearing offices to ensure the claimant representative's name in CPMS matches the name on a completed SSA-1696.

Comment

We agree. By March 31, 2008, we will issue an appropriate reminder to our regional and hearing office management teams asking that staff ensure that the representative's name in CPMS matches the name on the completed SSA-1696.

Recommendation 2

SSA should ensure that the staff compare the claimant's representative's name to the List of Sanctioned Representatives each time a SSA-1696 is added to CPMS.

Comment

We agree. Our current hearing office staff training reflects this practice. We will include language to reinforce this practice in a reminder to our regional and hearing office management teams which is scheduled to be issued by March 31, 2008.

Recommendation 3

SSA should collect additional claimant representative data that can assist with verification of their “good standing,” such as their State(s) of admission and their State bar number(s) for attorneys.

Comment

We agree. We are planning systems work in fiscal year (FY) 2008 to develop an electronic i1696 application to enhance the data collection process.

Recommendation 4

SSA should develop a pilot to verify whether claimant representatives have been disbarred, suspended, or disqualified against lists maintained by other entities to determine the costs and benefits of such controls. These entities could include State bars and/or other entities that collect and maintain similar disciplinary data.

Comment

We agree. We plan to develop a pilot in FY 2009. The pilot will be contingent on the FY 2008 systems work (including the availability of sufficient data) and adequate staff resources.

Appendix H

OIG Contacts and Staff Acknowledgments

OIG Contacts

Walter Bayer, Director, Philadelphia Audit Division, (215) 597-4080

Michael Maloney, Audit Manager, Philadelphia Audit Division, (703) 578-8844

Acknowledgments

In addition to those named above:

Mary Ann Braycich, Senior Program Analyst

Nick Milanek, Senior Auditor

Yaquelin Lara, Auditor

Brennan Kraje, Statistician

Annette DeRito, Writer-Editor

For additional copies of this report, please visit our web site at
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Social Security Advisory Board

Overview of the Office of the Inspector General

The Office of the Inspector General (OIG) is comprised of our Office of Investigations (OI), Office of Audit (OA), Office of the Chief Counsel to the Inspector General (OCCIG), and Office of Resource Management (ORM). To ensure compliance with policies and procedures, internal controls, and professional standards, we also have a comprehensive Professional Responsibility and Quality Assurance program.

Office of Audit

OA conducts and/or supervises financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management and program evaluations and projects on issues of concern to SSA, Congress, and the general public.

Office of Investigations

OI conducts and coordinates investigative activity related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as OIG liaison to the Department of Justice on all matters relating to the investigations of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

Office of the Chief Counsel to the Inspector General

OCCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Finally, OCCIG administers the Civil Monetary Penalty program.

Office of Resource Management

ORM supports OIG by providing information resource management and systems security. ORM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, ORM is the focal point for OIG's strategic planning function and the development and implementation of performance measures required by the Government Performance and Results Act of 1993.