

[July 9, 2006]

Folks,

Attached is the second draft of the Social Security Court proposal, which includes as its first section a statement of the ABA's current policy regarding a Social Security Court and the arguments against and in favor of such a court at pages 1-17. (The weight of the arguments and supporting evidence now appears to be more strongly in favor of forming a Social Security Court, compared to 20 years ago, so the section reflects this.) The substantive proposal regarding what the court should look like now is the second section of the draft. Jeff and I had a productive discussion in June during which we worked out mutually agreeable changes to address his good suggestions and concerns, nearly all of which are in section II(C) at pages 34-42. Ann's good suggestion that the Chief Judge, Regional Chief Judge, or other judge who presides at sessions based upon precedence also should be authorized to designate another judge of the Court to preside in his or her stead has been added as the last sentence of the "precedence of judges" paragraph on page 24 in the proposal.

In a second e-mail right after this one, I will send for your reference a copy of the 1986 ABA House of Delegates floor discussion and report that underlie the ABA's adoption of its policy in opposition to a Social Security Court, which Jodi had provided to several of us last December.

As I mention in the proposal, regardless of whether the ABA's current policy in opposition to the formation of an Article I Social Security Court is continued or changed to support such a court, it now is essential to also adopt detailed recommendations for the necessary attributes of such a court to aid the ABA in addressing any forthcoming proposals or legislation. The potential for the formation of a Social Security Court has increased because both the Judicial Conference and SSAB support the formation of such a court and there now is (1) the SSA's imminent new administrative process that both eliminates the claimants' appeal of an ALJ's decision to the final administrative step and permits the claimants to appeal an ALJ's decision that is a final SSA decision directly to the district courts, which likely will increase the number of cases filed in the district courts, and (2) the generally increasing burden that the Social Security cases impose on the district courts. If the administration and Congress choose to create a Social Security Court, a decision by the ABA to just continue opposing the formation of a

Social Security Court without also adopting recommendations for the necessary attributes of a Social Security Court neither prepares the ABA to engage in a discussion of what such a court should be nor offer the policy makers the ABA's point of view of what such a court should be.

I take sole responsibility for the draft's content and any errors and omissions, including capturing all of Jeff's comments. I have continued my byline on it so that anyone who may see the draft will not get confused and think this is an ABA or Admin Law policy statement. It still is a work in progress.

I am not setting a deadline for comments because the meeting is 12 days away and I suspect that Eleanor imminently will be distributing the meeting materials to the Council, including the proposal. However, please send your comments on the first section of the draft, including any additional arguments and information pro and con the formation of a Social Security Court, and on the substantive changes that were made to the second section of the draft, as soon as you are able to me at bubobubo@att.net and robin.j.arzt@ssa.gov to aid the July 21 discussion and the preparation of the next draft for the October meeting.

Thank you, and I look forward to seeing many of you in D.C.!

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