

To The Committee On Ways and Means:

My name is Scott Daniels and I am disability lawyer in the state of New York. The below piece is my response, in part, to some of the testimony provided in last week's hearing. I will note that it is published on my firm's blog at www.nydisabilityattorneyblog.com.

Last Wednesday, June 27th 2012, the Committee on Ways and Means held their 4th hearing on "Securing the Future of the Social Security Disability Insurance Program." The point of these hearings is to get a better understanding about the disability program, how it works, it's shortcomings and to get ideas on how to fix it's ongoing solvency problem.

Among others, speakers at this hearing included Michael Astrue, Commissioner of Social Security; Honorable Randall Frye, President of the Association of Administrative Law Judges; and Richard Pierce, Jr., law professor at George Washington.

Commissioner Astrue was questioned at length about his highly controversial policy to no longer inform attorneys or representatives about the Judges they will be appearing in front of. For the most part, Commissioner Astrue attempted to justify the policy by explaining that too many attorneys were manipulating the system by declining video conference hearings if they didn't like the Judge they were appearing in front of. This excuse went nowhere with the committee.

The reality is, while attorneys did (and still do) have the opportunity to decline a video conference hearing after they saw who the Judge was on the case, SSA still randomly selected a new Judge to perform the live hearing. Therefore, the attorney is not choosing their Judge, nor is he/she partaking in any forum shopping since SSA is still assigning the Judge.

My favorite part of the hearing came when Commissioner Astrue expressly stated, "some of this is our fault," while dodging questions from the committee on the legitimacy and logic his new "secret Judge" policy. Well Commissioner, you are absolutely right. SSA has created the rules whereby you allow claimants and their attorneys to decline a video conference hearing if they choose to do so. And since claimants have exercised this right, whether represented by an attorney or not, is it fair to cry foul and claim fraudulent practices by attorneys because they simply played by the rules you created?

Commissioner Astrue made it very clear that he wants to fix the integrity of the system - and I appreciate that. But the integrity of the system will not come by hiding who the Judge is for a disability hearing.

In what appeared to resemble a blatant smear campaign against disability lawyers, Richard Pierce, esteemed law professor at George Washington University, practically blasted the Administration's policy governing attorneys fees stating that lawyers have figured out ways to "game" the system and that one particular firm made 81 million dollars last year.

What Mr. Pierce failed to mention is that attorneys fees, for the most part, which are regulated by the federal government, allow for attorneys to earn 25% of a claimant's "back-pay" or a maximum of \$6,000, whichever number is less. Therefore, if an individual is entitled to "back-pay" from the government, the government is shelling out the same amount of money REGARDLESS of whether that claimant is represented by an attorney. If in fact, the person did receive representation, their total "back-pay" check is reduced by the attorneys fee. Mr. Pierce also failed to recognize that SSA takes an \$83 fee on every check they write to an attorney or licensed representative.

Here is a direct quote from Mr. Pierce's written testimony, which you can see by [CLICKING HERE](#):

"Lawyers and other professional advocates for disability applicants have devised systems for maximizing the probability of a decision granting benefits to their clients by soliciting and emphasizing medical evidence favorable to their clients while withholding medical evidence that is unfavorable to their clients."

Not only is this statement out of line, but Mr. Pierce outlandishly implies that all highly qualified disability lawyers actively misrepresent the court by withholding evidence that is unfavorable to a claimant's case. Funny how one story in the Wall Street Journal about Binder & Binder allegedly withholding medical evidence on certain cases can be translated to mean that the entire legal community partakes in this activity.

Coincidentally, the one firm that made \$81 million last year was Binder & Binder - information also extracted from another Wall Street Journal piece. I resent Mr. Pierce's negative statements and as a highly ethical disability attorney in the state of New York, I have never withheld evidence that might

have been unfavorable to my client. Mr. Pierce's arrogance and overall lack of awareness within the disability sphere is evident in his testimony.

As for Mr. Pierce's implication that lawyers have devised systems of maximizing the probability of a favorable decision, I'm pretty sure most people call that good lawyering. Isn't it the lawyers job to zealously represent their clients and make every effort within the scope of the law to successfully secure a favorable decision on behalf of their client? Of course lawyers "solicit and emphasize medical evidence" - how are else are we supposed to prove our client's case?

I hope that the federal government sees right through Mr. Pierce's utter disregard for the disability legal profession. We exist because the national denial rate of disability claims is hovering around 75%. Individuals seeking disability benefits are not in a position to take their cases lightly. More importantly, the alleged actions of one firm is not representative of an entire market.