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October 29, 2008

An open letter to:

Hon. Michael J. Astrue  
Commissioner, Social Security Administration  
6401 Security Boulevard, Altmeyer Building  
Baltimore MD 21235

Dear Commissioner Astrue,

In the large volume of materials published by the Agency on its efforts to reduce the disability claims backlog, there has been no statement yet of any expectation regarding support staff levels. Of course we all understand that the Agency cannot publish any projection of staff levels without knowing what the budget will be. It would be unreasonable to expect any projection.

Nonetheless in most of those materials there are repeated reports that the administrative law judges have been asked to produce 500-700 decisions per year. Some of these have been quotations of you, Associate Commissioner deSoto or Chief Administrative Law Judge Cristaudo.

In recent reports the GAO and SSA's OIG have confirmed what we have all known for years: there is a clear relationship between the level of support staff in hearing offices and the productivity of the judges.

We believe it is misleading to repeatedly state that the judges are being asked to produce some fixed number of decisions without any projection of the level of support staff or any acknowledgement that judges' productivity is dependent upon the level of support staff and other resources. We are very concerned that readers of the Agency's materials, including members of Congress, may come away with the impression that the unqualified request being made of the judges is a reasonable one.

We are also concerned that reiterating the request to produce 500-700 decisions per year with no acknowledgement that the future level of support is an unknown, sets up the corps of judges for failure. If we do not produce still more decisions as requested we will be perceived to have failed, never mind that we will almost certainly have fewer actual support staff per judge than we had last year.

We therefore specifically request, whenever the Agency states that the judges are being asked to produce some given number of decisions, it acknowledges the relationship between judge productivity and adequate resources.

We told you when you first took office that the AALJ wants to do all we can to assist the Agency in meeting our common goals, providing full and fair hearings and issuing legally defensible decisions. We are still committed to that principle.

We would be irresponsible to ask the judges to commit to try to achieve any specific numerical goal without tying it to the level of quantity and quality of future support staff and other resources such as shortages of vocational experts and medical experts, judges not receiving enough worked case files to fill their schedules, trying to work with unorganized so called "streamlined cases", working with efiles which are still slower to review and shortages of decision writers.

Commissioner, we cannot tell you whether or not our judges will be able to achieve the Agency's goals. We can tell you they will do what they have always done; they will do their best.

Sincerely,

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

Ronald G. Bernoski  
President  
Association of Administrative Law Judges