



SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2013-0044]

20 CFR Parts 404 and 416

RIN 0960-AH63

Revisions to Rules of Conduct and Standards of Responsibility for Appointed Representatives

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise our rules of conduct and standards of responsibility for representatives. We also propose to update and clarify procedures we use when we bring charges against a representative for violating our rules of conduct and standards of responsibilities for representatives. These changes are necessary to better protect the integrity of our administrative process and further clarify representatives' currently existing responsibilities in their conduct with us. The changes to our rules are not meant to suggest that any specific

conduct is permissible under our existing rules; instead, we seek to ensure that our rules of conduct and standards of responsibility are clearer as a whole and directly address a broader range of inappropriate conduct.

DATES: To ensure that your comments are considered, we must receive them no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES:

You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2013-0044 so that we may associate your comments with the correct rule.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA-2013-0044. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Mail your comments to the Office of Regulations, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Maren Weight, Office of Appellate Operations, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605-7100. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

We may issue rules and regulations to administer the Social Security Act (Act). 42 U.S.C. 405(a), 406(a)(1), 902(a)(5), 1010(a), and 1383(d). We are revising our rules of conduct and standards of responsibility for representatives and other rules about the representation of parties in 20 CFR part 404 subpart R and part 416 subpart O.

Although the vast majority of representatives conduct business before us ethically, and conscientiously assist their clients, these changes are prompted by our concerns that some representatives are using our processes in a way that undermines the integrity of our programs. We seek to clarify that certain actions are prohibited and to provide additional means to address representative actions that affect the integrity of our programs and our ability to provide the best possible service to the public.

Clarification to Qualifications for Non-Attorney Representatives

Our current regulations specify in § 404.1705(b)(1) that a non-attorney must generally be known to have a good character and reputation to serve as a representative. In proposed § 404.1705(b)(4), we specify that certain convictions will preclude a non-attorney representative from demonstrating this requisite good character and reputation. We have noted in our existing policy that neither the Act nor our regulations define the terms “good character and reputation.” In these rules, we propose to clarify these terms by including a non-exclusive list of examples that show that a person lacks good character and reputation, and which, if present, will demonstrate to us that a non-attorney is unqualified to serve as a representative.

New Rules of Conduct for Representatives and Clarification of Existing Rules

We are revising our rules of conduct for representatives to clarify their existing responsibilities under our regulations and to ensure their compliance with procedures designed to provide fair and efficient claim adjudication. We propose these changes to save limited administrative resources, process claims more efficiently, and protect the integrity of our programs.

Current § 404.1740(b)(3)(i) states that competent representation requires the “knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” In proposed § 404.1740(b)(3)(i), we specify that, in addition to the other requirements already listed, competent representation also includes reasonable and adequate familiarity with the evidence in a case, as well as knowledge of the applicable provisions of the Act, our regulations, and Social Security Rulings.

Consistent with regulatory changes in our 2014 final rules to scheduling and appearing at hearings,¹ we propose adding an affirmative duty in § 404.1740(b)(3) requiring representatives to provide to us, on our request, a specified number of dates and times the representative is available for a hearing. We also propose specifying as an affirmative duty the requirement that representatives withdraw from representation at a time and in a manner that does not disrupt claim processing; and, in particular, not to withdraw once we have scheduled a hearing unless the representative can show that a withdrawal is necessary due to extraordinary circumstances, as we determine on a case-by-case basis. We also added a paragraph in proposed § 404.1740(b)(3)(v) clarifying that a representative has an obligation to maintain prompt and timely communication with the claimant. This proposed new paragraph is consistent with many of the principles found in American Bar Association (ABA) Model Rule of Professional Conduct 1.4.²

¹ In our 2014 final rules regarding changes to scheduling and appearing at hearings, we made changes to when a claimant may object to appearing at a hearing by video teleconferencing, or to the time and place of a hearing. 79 FR 39526 at 35931 (June 25, 2014).

² We acknowledge the ABA model rules apply only to attorneys, and our rules and regulations govern both attorney and non-attorney representatives. However, the ABA model rules are a helpful resource, as they address representation principles and practices relevant to our programs. The principles we cite in this proposed rule apply equally to attorney and non-attorney representatives.

In addition, for consistency with our 2015 final rules regarding submission of evidence in disability claims, we propose adding affirmative duties in proposed § 404.1740(b)(5) requiring that a representative, when he or she submits a medical or vocational opinion to us, disclose in writing whether the medical or vocational opinion is drafted, prepared, or issued by: an employee of the representative; an individual contracting with the representative for services; or an individual to whom the representative referred the claimant for suggested treatment.³ In doing so, we clarify that we do not find the behavior of referring a claimant to a medical or vocational provider in and of itself problematic, even in the particularly noted circumstances. By adding this requirement, we are merely indicating that, in the noted circumstances, a representative must disclose such a referral to us.

We also propose § 404.1740(b)(6) specifying that a representative must inform the agency if a claimant used the representative's services to commit fraud against us. This is

³ In our recent 2015 final rules regarding submission of evidence, we require a claimant to inform us about or submit all evidence that relates to whether or not he or she is blind or disabled, with certain exceptions for information subject to the attorney work product doctrine and communications subject to attorney-client privilege. Consistent with these recent rules regarding submission of evidence, the affirmative duty set forth in proposed § 404.1740(b)(5) will not require a representative to disclose attorney work product or communication subject to the attorney-client privilege as defined by § 404.1512(b)(2). In particular, the 2015 final rules provide that “if you tell your representative about the medical sources you have seen, your representative cannot refuse to disclose the identity of those medical sources to us based on the attorney-client privilege,” and “if your representative asks a medical source to complete an opinion form related to your impairment(s), symptoms, or limitations, your representative cannot withhold the completed opinion form from us based on the attorney work product doctrine.” 20 CFR 404.1512(b)(2)(iv). In the course of this rulemaking, we acknowledged that “state bar rules generally require client confidentiality and zealous representation,” but we stated that we did not believe that “state bar rules prevent an attorney from complying with our Federal rule, which requires a representative to help a claimant satisfy his or her disclosure obligation,” under our regulations. 80 FR 14828, 14832-33 (March 20, 2015); *see also* ABA Model Rule of Professional Conduct 1.6(b)(6) (attorney can reveal information relating to representation of a client “to comply with other law or a court order”).

consistent with requirements set forth by portions of ABA Model Rule 3.3 regarding the duty of candor toward the tribunal. We acknowledge that attorney representatives may be subject to state bar and ethics rules, which vary from state to state. However, all states recognize a version of the common law crime or fraud exception to privileged communications between an attorney and client. Furthermore, even if a state's rules conflicted with our rules, under the U.S. Constitution's Supremacy Clause, the federal rules take precedence when the representative is appearing in federal proceedings before us. Therefore, our rules would preempt any conflicting state bar and ethics rules.

In proposed § 404.1740(b)(7) and (8), we add affirmative duties that require a representative to disclose whether the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice. This includes instances in which a bar or court took administrative action to disbar or suspend the representative in lieu of disciplinary proceedings (e.g. acceptance of voluntary resignation pending disciplinary action); and also disclose whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency, again including instances in which the representative was disqualified in lieu of disciplinary proceedings. Our current regulations specify in § 404.1745(d) that such disbarments, suspensions, or disqualifications based upon misconduct constitute grounds for sanctions. While our current Appointment of Representative form (Form SSA-1696) requires a representative to disclose this information, our current policy does not require representatives to use this form, and, in some matters, a representative may be disbarred, suspended, or disqualified following appointment as a representative. Therefore, we proposed these new affirmative duties setting forth ongoing disclosure requirements. Similarly, in proposed § 404.1740(b)(9), we also require that a

representative disclose to us whether he or she has been removed or suspended from practice by a professional licensing authority.

Current § 404.1740(c)(10) addresses instances in which a representative may be working with employees or assistants to commit misconduct. The current rule prohibits a representative from suggesting, assisting, or directing another person to violate our rules or regulations. We have proposed adding an affirmative duty in proposed § 404.1740(b)(10) which requires a representative to ensure that all of the representative's employees, assistants, partners, contractors, or any other person assisting the representative will be compliant with our rules of conduct and standards of responsibility. We have also specified in proposed § 404.1740(c)(14) that, within the scope of employment, failure by a representative to properly oversee the representative's employees, assistants, partners, contractors, or any person assisting the representative, constitutes sanctionable behavior. This provision applies where the representative has managerial or supervisory authority over the individual(s) in question, the individual's conduct would be a violation of our rules, the representative has reason to believe that misconduct has occurred or may occur, and, when possible, the representative fails to take remedial action.⁴ Because many representatives associated with large organizations rely extensively on other employees and assistants when providing representational services to claimants, we believe that these new rules are necessary to ensure that claimants receive competent and effective representation and to protect the integrity of our administrative processes.

⁴ These proposed affirmative duties and prohibited actions are consistent with ABA Model Rule 5.1, which requires that a partner in a law firm, or others with comparable managerial authority, make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

In proposed § 404.1740(c)(1), we specify that misleading a claimant, prospective claimant, or beneficiary regarding benefits or other rights under the Act includes misleading the claimant, prospective claimant, or beneficiary about that representative's services and qualifications. Both the Act and our rules provide claimants with a right to a representative, and, therefore, misleading statements about the representative's services and qualifications are material to the claimant's rights under the Act. However, we clarify that in situations where a misleading statement about the representative's services and qualifications adversely affects claim processing, to the extent permitted by our other rules, we will not disadvantage a claimant, potential claimant, or beneficiary because of a representative's misconduct. In addition, in proposed § 404.1740(c)(2), we specify that knowingly charging, collecting, or retaining an improper fee also includes soliciting a gift or other item of value other than what is authorized by law.

We have also proposed revising our current rules regarding submission of false or misleading evidence. In current § 404.1740(c)(3), we prohibit a representative from knowingly making, presenting, or participating in the making or presenting of certain false or misleading statements, assertions, or representations. In our 1998 final rules,⁵ we stated that we based this rule in part on the criminal prohibitions in 18 U.S.C. 1001, which prohibit knowingly and willfully making materially false statements. The intent requirement set forth in the current rule is also consistent with ABA Model Rule 3.3(a)(1), which prohibits an attorney from knowingly making false statements of fact or law to a tribunal. As we emphasized in connection with the 2015 final rules on submission of evidence, the non-adversarial nature of the disability adjudication process requires that we maintain a high level of cooperation from claimants and,

⁵ 63 FR 41404 at 41416 (August 4, 1998).

by extension, their representatives, in order to ensure that the agency obtains the information needed to make accurate disability determinations.⁶ Therefore, in order to protect the integrity of our programs, we propose strengthening our current rule to prohibit the submission of false or misleading evidence in matters where the representative has or should have reason to believe that the evidence is false or misleading and to prohibit any written statements, assertions, or representations, which the representative has or should have reason to believe are false or misleading. Likewise, in proposed § 404.1740(c)(7)(ii)(B), we specify that providing misleading information or misrepresenting facts that affect how we process a claim may also be sanctionable where the representative has or should have reason to believe the information or facts would mislead the agency or constitute a misrepresentation.

Our regulations currently prohibit attempts to influence the outcome of a decision, determination, or other administrative action by offering or granting an item of value to a presiding official, agency employee, or witness who is or may reasonably be involved in the decision making process, with certain exemptions. In proposed § 404.1740(c)(6), we specify that in addition to the current prohibitions on offering or granting items of value to agency employees or witnesses, we also may sanction a representative who influences or attempts to influence such an agency employee or presiding official by any means prohibited by law.

Current § 404.1740(c)(7)(ii) and (iii) addresses disruptive, threatening, and obstructive behavior by representatives. In our proposed rules, we have renumbered and proposed revisions to these rules. Current § 404.1740(c)(7)(iii) prohibits “threatening or intimidating language, gestures, or actions directed at a presiding official, witness, or agency employee that result in a disruption of the orderly presentation and reception of evidence.” In our proposed rules, we have

⁶ See 80 FR 14828 at 14831 (March 20, 2015).

eliminated the requirement that such threats or intimidation result in a disruption of the orderly presentation and receipt of evidence, since such threats and intimidations are inherently prejudicial to the administrative proceedings. In proposed § 404.1740(c)(ii)(C), we add that a representative may not communicate with an agency employee or adjudicator outside the normal course of business or prescribed procedures in an attempt to influence the processing or outcome of a case.

Violations of our Requirements

Under our current rules, we may begin proceedings to suspend or disqualify a representative when we have evidence that the representative fails to meet our qualification requirements or has violated our rules of conduct. We propose revising § 404.1745 to clarify that we may disqualify a non-attorney representative who has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary.

Notice of Charges Against a Representative

In § 404.1750, we propose reducing the amount of time a representative has to respond to our notice of charges from 30 days to 14 days because it will help us timely adjudicate possible representative misconduct matters and provide efficient service to claimants, potential claimants, recipients, and beneficiaries. This 14-day timeframe provides the representative ample time to respond to the charges, which usually consist of simply affirming or denying a series of factual allegations. Additionally, there is public interest in resolving these matters as quickly as possible because representatives may continue to represent claimants during the time that charges are pending. Reducing this timeframe will allow us to better protect the public by allowing less time for a representative who is found to have violated our rules to continue to represent claimants

while charges are pending. Furthermore, quicker processing of these cases is also of particular interest to the person against whom we bring charges because it results in a more timely resolution of the matter. Finally, we note that irrespective of the reduced timeframe to respond to the charges, the representative will still have the opportunity to defend himself or herself before the hearing officer conducting the hearing, when a hearing is needed.

In regards to any fairness concerns, we expect that most individuals subject to this rule will easily be able to respond within the proposed timeframe, as it is not uncommon for us to seek disqualification based on a single charge involving legal or factual issues that are not complex, such as disbarment or improper retention of a fee. As we stated previously, charges usually consist of simply affirming or denying a series of factual allegations. However, because we propose reducing the standard time for a representative to respond to our notice of charges, we also propose retaining the rule to allow a representative to seek an extension of time for filing an answer upon a showing of good cause. Therefore, if a person against whom we brought charges indicates that he or she required additional time to respond, we would consider that information in determining whether to extend the period for filing an answer. Our current rules specify that the General Counsel or other delegated official may extend the period for filing an answer for good cause in accordance with § 404.911.

Hearing on the Charges

We propose clarifying in § 404.1765 that a hearing on the charges may be conducted at our discretion in person, by video teleconferencing, or by telephone. We add that we will not consider objections to the manner of appearance unless a party shows good cause why he or she cannot appear in the prescribed manner. We also propose to codify our existing policy by clarifying that a hearing officer may reopen the hearing for the receipt of additional evidence at

any time before mailing the notice of the decision, subject to our limitations on submitting an answer to the charges. In addition, we propose requiring a hearing officer to mail the notice of hearing to the parties no later than 14 days prior to the hearing, rather than 20 days, so that we can conduct sanction proceedings in a timely manner. We have also proposed to codify our existing policy regarding hearing notices by specifying that a hearing officer will include the requirements and instructions for filing motions, requesting witnesses, and entering exhibits.

In addition, we propose rules clarifying the standard upon which motions for decisions on the record may be granted. We use a similar standard to that stated in Federal Rule of Civil Procedure 56 for summary judgment, specifying that a hearing officer may grant a motion for decision on the record if there is no genuine dispute as to any material fact and the movant is entitled to a decision as a matter of law. We have specified that before granting a motion for decision on the record, the hearing officer must first provide both parties with the opportunity to submit evidence and briefs. We propose this rule because, in our experience, many cases can be decided based on the record, and a hearing will often be unnecessary and delay any final decision. These proposed rules are consistent with the requirements of Section 206 of the Act, which specifies that we may suspend or disqualify a representative “after due notice and opportunity for hearing.” Our proposed rules provide for an opportunity for a hearing, and the hearing officer may only grant a motion for decision on the record if a party demonstrates that there is no genuine dispute as to any material fact, such that any evidence or argument presented at the hearing would not alter the outcome of the case.

Requesting review of the hearing officer’s decision

We propose reducing the amount of time to request Appeals Council review of a hearing officer’s decision from 30 to 14 days in proposed § 404.1775. In our experience, representatives

will often decline to seek review of adverse sanctions decisions. However, our sanctions decision is not final until the time to seek review has expired. During this time, a representative may continue to represent claimants. We believe that reducing the amount of time to seek Appeals Council review from 30 to 14 days will enable us to better protect the claimants we serve while providing sufficient protections for representatives in our sanctions process. Federal Rule of Appellate Procedure 4(b) provides for a comparable 14-day period to file a notice of appeal in criminal matters, in which significant liberty interests are at stake. In addition, our rules provide for submission of briefs to the Appeals Council subsequent to the filing of the request for review, allowing a representative additional time to formulate his or her arguments on appeal.

Clarifications to the Appeals Council Review Process

We propose clarifying in § 404.1780 that in the event a party appeals the hearing officer's decision and requests to appear at an oral argument, the Appeals Council will determine whether the parties will appear at a requested oral argument in person, by video teleconferencing, or by telephone.

Furthermore, we propose revising the rules about presenting evidence at the Appeals Council level. Based on our experience, some individuals are confused about whether the Appeals Council will accept additional evidence that was not submitted to the hearing officer. We propose revising the language in § 404.1785 to clarify that the Appeals Council, at its discretion, may accept additional evidence it finds material to the issues that existed when an individual filed an answer to the charges. When it does so, the Appeals Council will give the opposing party the opportunity to comment on the evidence prior to admitting it into the record. We also added language in proposed § 404.1790 stating the Appeals Council will determine

whether additional material evidence warrants remand to a hearing officer for review or whether the Appeals Council will consider the evidence as part of its review of the case. In addition, we propose adding clarifying language in § 404.1790 that explains the Appeals Council will affirm the hearing officer's decision if the action, findings, and conclusions are supported by substantial evidence. We also propose adding that the Appeals Council may designate and publish final decisions as precedent for other actions brought against individuals charged with violating our rules.

Finally, we propose revising our rules in § 404.1799 about when and how a disqualified or suspended representative may seek the right to request reinstatement. Most individuals do not request reinstatement until they are in full compliance with our requirements. However, individuals who seek reinstatement prematurely waste valuable agency resources. Therefore, in addition to retaining our existing rule that a disqualified or suspended representative must wait at least one year from the effective date of the suspension or disqualification to request reinstatement, we propose revising our rules to state that a disqualified or sanctioned representative who has requested and been denied reinstatement by the Appeals Council must wait an additional three years before he or she can again request reinstatement. We are proposing this change because our experience shows that when the Appeals Council denies a request for reinstatement, the representative requesting reinstatement has usually not taken the appropriate actions to remedy the violation or does not understand the severity of the violation committed. Therefore, we are proposing this change to save valuable resources and ensure individuals take the necessary measures before submitting the initial or successive request for reinstatement. We also made a minor clarification in § 404.1799 that the Appeals Council uses the same procedures

outlined in § 404.1776 for assigning a reviewing panel and processing a request for reinstatement after a suspension or disqualification.

In addition to these proposed changes to 20 CFR part 404, we are proposing changes to the rules set forth in 20 CFR part 416 to conform to our changes in part 404.

Clarity of These Rules

Executive Order 12866 as supplemented by Executive Order 13563 requires each agency to write all rules in plain language. In addition to your substantive comments on this NPRM, we invite your comments on how to make rules easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g. grouping and order of sections, use of headings, paragraphing?

REGULATORY PROCEDURES

Executive Order 12866 as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563 and are subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These proposed rules contain reporting requirements in the regulation sections listed below. For some sections in these rules, we previously accounted for the public reporting burdens in the Information Collection Requests for the various forms the public uses to submit the information to SSA. Consequently, we are not reporting those sections below.

Further, these proposed rules contain information collection activities at 20 CFR 404.1750 ((c), (e)(1), and (e)(2)), 404.1765(g)(1), 404.1775(b), 404.1799(d)(2), 416.1750 ((c), (e)(1), and

(e)(2)), 416.1565(g)(1), 404.1575(b), and 416.1599(d)(2). However, 44 U.S.C. 3518(c)(1)(B)(ii) exempts these activities from the OMB clearance requirements under the Paperwork Reduction Act of 1995.

The sections below pose new public reporting burdens not covered by an existing OMB-approved form, and we provide burden estimates for them.

Regulation Section	Description of Public Reporting Requirement	Number of Respondents (annually)	Frequency of Response	Average Burden Per Response (minutes)	Estimated Annual Burden (hours)
404.1740(b)(5); 416.1540(b)(5)	Disclose in writing, at the time a medical or vocational opinion is submitted to us or as soon as the representative is aware of the submission to us, if: The representative's employee or any individual contracting with the representative drafted, prepared, or issued the medical or vocational opinion; or The representative referred or suggested that the claimant seek an examination from, treatment by, or the assistance of the individual providing opinion evidence.	43,600	1	5	3,633
404.1740(b)(6); 416.1540(b)(6)	Disclose to us in writing immediately if the representative discovers that his or	50	1	5	4

	her services are or were used by the claimant to commit fraud				
404.1740(b)(7); 416.1540(b)(7)	Disclose to us in writing whether the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice	50	1	5	4
404.1740(b)(8); 416.1540(b)(8)	Disclose to us in writing whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency	10	1	5	1
404.1740(b)(9); 416.1540(b)(9)	Disclose to us in writing whether the representative has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgement, reliability, or fitness to serve as a fiduciary	10	1	5	1
Totals		436,120			3,643

For those listed above, SSA submitted an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden

on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget

Attn: Desk Officer for SSA

Fax Number: 202-395-6974

E-mail address: OIRA_Submission@omb.eop.gov

Social Security Administration

Attn: Reports Clearance Officer

1333 Annex

6401 Security Blvd

Baltimore, MD 21235-0001

Fax Number: 410-965-6400

E-mail: OR.Reports.Clearance@ssa.gov

You can submit comments until [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], which is 60 days after the publication of this notice. However, your comments will be most useful if you send them to SSA by [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security – Disability Insurance; 96.002, Social Security – Retirement Insurance; 96.004, Social Security – Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits; Old-age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Carolyn W. Colvin,

Acting Commissioner of Social Security

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III parts 404 and part 416 as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

(1950-)

Subpart R – Representation of Parties

1. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a-6).

2. Revise § 404.1705(b) to read as follows:

§ 404.1705 Who may be your representative.

* * * * *

(b) You may appoint any person who is not an attorney to be your representative in dealings with us if the person –

- (1) Is capable of giving valuable help to you in connection with your claim;
- (2) Is not disqualified or suspended from acting as a representative in dealings with us;
- (3) Is not prohibited by any law from acting as a representative; and
- (4) Is generally known to have a good character and reputation. Persons lacking good character and reputation, include, but are not limited to, persons convicted of a felony (as defined by § 404.1506(c)), or any crime involving moral turpitude, dishonesty, false statements, misrepresentation, deceit, or theft.

* * * * *

3. Amend § 404.1740 by

- a. Revising paragraph (b)(3)(i);

- b. Adding paragraphs (b)(3)(iii) through (v) and (b)(5) through (10);
- c. Revising paragraphs (c)(1) through (3) and (6) and (7);
- d. Removing from the end of paragraph (c)(12) the word “or”;
- e. Removing from paragraph (c)(13) the final period and adding in its place “; or”; and
- f. Adding paragraph (c)(14).

The revisions and additions read as follows:

§ 404.1740 Rules of conduct and standards of responsibility for representatives.

* * * * *

(b) * * *

(3) Conduct his or her dealings in a manner that furthers the efficient, fair and orderly conduct of the administrative decision making process, including duties to:

(i) Provide competent representation to a claimant. Competent representation requires the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A representative must know the significant issue(s) in a claim, have reasonable and adequate familiarity with the evidence in the case, and have a working knowledge of the applicable provisions of the Social Security Act, as amended, the regulations, and Social Security Rulings.

* * * * *

(iii) When requested, provide us, in a manner we specify, potential dates and times that the representative will be available for a hearing. We will inform you how many potential dates and times we require to coordinate the hearing schedule.

(iv) Only withdraw representation at a time and in a manner that does not disrupt the processing or adjudication of a claim and provides the claimant adequate time to find

new representation, if desired. A representative should not withdraw after a hearing is scheduled unless the representative can show that a withdrawal is necessary due to extraordinary circumstances, as we determine on a case-by-case basis.

(v) Maintain prompt and timely communication with the claimant, which includes, but is not limited to, reasonably informing the claimant of all matters concerning the representation, consulting with the claimant on an ongoing basis during the entire representational period, and promptly responding to a claimant's reasonable requests for information.

* * * * *

(5) Disclose in writing, at the time a medical or vocational opinion is submitted to us or as soon as the representative is aware of the submission to us, if:

(i) The representative's employee or any individual contracting with the representative drafted, prepared, or issued the medical or vocational opinion; or

(ii) The representative referred or suggested that the claimant seek an examination from, treatment by, or the assistance of the individual providing opinion evidence.

(6) Disclose to us immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud against us.

(7) Disclose to us whether the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice, including instances in which a bar or court took administrative action to disbar or suspend the representative in lieu of disciplinary proceedings (e.g. acceptance of voluntary resignation pending disciplinary action). If the disbarment or suspension occurs after the appointment of the representative, the representative will immediately disclose the disbarment or suspension to us.

(8) Disclose to us whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency, including instances in which a Federal program or agency took administrative action to disqualify the representative in lieu of disciplinary proceedings (e.g. acceptance of voluntary resignation pending disciplinary action). If the disqualification occurs after the appointment of the representative, the representative will immediately disclose the disqualification to us.

(9) Disclose to us whether the representative has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary. If the removal or suspension occurs after the appointment of the representative, the representative will immediately disclose the removal or suspension to us.

(10) Ensure that all of the representative's employees, assistants, partners, contractors, or any person assisting the representative on claims for which the representative has been appointed, are compliant with these rules of conduct and standards of responsibility for representatives.

(c) * * *

(1) In any manner or by any means threaten, coerce, intimidate, deceive, or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Act. This prohibition includes misleading a claimant, or prospective claimant or beneficiary, about the representative's services and qualifications.

(2) Knowingly charge, collect, or retain, or make any arrangement to charge, collect, or retain, from any source, directly or indirectly, any fee for representational services in violation

of applicable law or regulation. This prohibition includes soliciting any gift or any other item of value, other than is what is authorized by law.

(3) Make or present, or participate in the making or presentation of, false or misleading oral or written statements, evidence, assertions, or representations about a material fact or law concerning a matter within our jurisdiction, in matters where the representative has or should have reason to believe that those statements, evidence, assertions or representations are false or misleading.

* * * * *

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination, or other administrative action by any means prohibited by law, or by offering or granting a loan, gift, entertainment, or anything of value to a presiding official, agency employee, or witness who is or may reasonably be expected to be involved in the administrative decision making process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence.

(7) Engage in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings, including but not limited to:

(i) Repeated absences from or persistent tardiness at scheduled proceedings without good cause (see § 404.911(b));

(ii) Behavior that has the effect of improperly disrupting proceedings or obstructing the adjudicative process, including but not limited to:

(A) Directing threatening or intimidating language, gestures, or actions at a presiding official, witness, contractor, or agency employee;

(B) Providing misleading information or misrepresenting facts that affect how we process a claim, including but not limited to information relating to the claimant’s work activity or the claimant’s place of residence or mailing address in matters where the representative has or should have reason to believe that the information was misleading and the facts would constitute a misrepresentation;

(C) Communicating with agency staff or adjudicators outside the normal course of business or other prescribed procedures in an attempt to inappropriately influence the processing or outcome of a claim(s);

* * * * *

(14) Fail to oversee the representative’s employees, assistants, partners, contractors, or any other person assisting the representative on claims for which the representative has been appointed, when the representative has managerial or supervisory authority over these individuals and:

(i) The individual’s conduct would be a violation of these rules of conduct and standards of responsibility;

(ii) The representative has reason to believe that a violation of our rules of conduct and standards of responsibility would occur; and

(iii) When possible, the representative fails to take remedial action.

4. Amend § 404.1745 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 404.1745 Violations of our requirements, rules, or standards.

* * * * *

- (d) Has been, by reason of misconduct, disbarred or suspended from any bar or court to which he or she was previously admitted to practice (see § 404.1770(a));
- (e) Has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or agency (see § 404.1770(a)); or
- (f) Who is a non-attorney, has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary.

5. Revise § 404.1750(c) through (f) to read as follows:

§ 404.1750 Notice of charges against a representative.

* * * * *

- (c) We will advise the representative to file an answer, within 14 days from the date of the notice, or from the date the notice was delivered personally, stating why he or she should not be suspended or disqualified from acting as a representative in dealings with us.
- (d) The General Counsel or other delegated official may extend the 14-day period for good cause in accordance with § 404.911.
- (e) The representative must—
- (1) Answer the notice in writing under oath (or affirmation); and
 - (2) File the answer with the Social Security Administration, at the address specified on the notice, within the 14-day time period.
- (f) If the representative does not file an answer within the 14-day time period, he or she does not have the right to present evidence, except as may be provided in § 404.1765(g).

6. Amend § 404.1765 by revising paragraphs (c), (d)(1) and (3), and (g) to read as follows:

§ 404.1765 Hearing on charges.

* * * * *

(c) Time and place of hearing. The hearing officer will mail the parties a written notice of the hearing at their last known addresses, at least 14 days before the date set for the hearing. The notice will inform the parties whether the appearance of the parties or any witnesses will be in person, by video teleconferencing, or by telephone. The notice will also include requirements and instructions for filing motions, requesting witnesses, and entering exhibits.

(d) * * * (1) The hearing officer may change the time and place for the hearing, either on his or her own initiative, or at the request of the representative or the other party to the hearing. The hearing officer will not consider objections to the manner of appearance of parties or witnesses, unless the party shows good cause not to appear in the prescribed manner.

* * * * *

(3) Subject to the limitations in paragraph (g)(2) of this section, the hearing officer may reopen the hearing for the receipt of additional evidence at any time before mailing notice of the decision.

* * * * *

(g) Conduct of the hearing. (1) The representative or the other party may file a motion for decision on the basis of the record prior to the hearing. The hearing officer will give the representative and the other party a reasonable amount of time to submit any evidence and to file briefs or other written statements as to fact and law prior to deciding the motion. If the hearing officer concludes that there is no genuine dispute as to any material fact and the

movant is entitled to a decision as a matter of law, the hearing officer may grant the motion and issue a decision in accordance with the provisions of § 404.1770.

(2) If the representative did not file an answer to the charges, he or she has no right to present evidence at the hearing. The hearing officer may make or recommend a decision on the basis of the record, or permit the representative to present a statement about the sufficiency of the evidence or the validity of the proceedings upon which the suspension or disqualification, if it occurred, would be based.

(3) The hearing officer will make the hearing open to the representative, to the other party, and to any persons the hearing officer or the parties consider necessary or proper. The hearing officer will inquire fully into the matters being considered, hear the testimony of witnesses, and accept any documents that are material.

(4) The hearing officer has the right to decide the order in which the evidence and the allegations will be presented and the conduct of the hearing.

* * * * *

7. Revise § 404.1775(b) to read as follows:

§ 404.1775 Requesting review of the hearing officer's decision.

* * * * *

(b) Time and place of filing request for review. The party requesting review will file the request for review in writing with the Appeals Council within 14 days from the date the hearing officer mailed the notice. The party requesting review will certify that a copy of the request for review and of any documents that are submitted have been mailed to the opposing party.

8. Revise § 404.1780(a) to read as follows:

§ 404.1780 Appeals Council's review of hearing officer's decision.

(a) Upon request, the Appeals Council will give the parties a reasonable time to file briefs or other written statements as to fact and law, and to request to appear before the Appeals Council to present oral argument. When oral argument is requested within the time designated by the Appeals Council, the Appeals Council will grant the request for oral argument and determine whether the parties will appear at the oral argument in person, by video teleconferencing, or by telephone. If oral argument is not requested within the time designated by the Appeals Council, the Appeals Council may deny the request.

* * * * *

9. Revise § 404.1785 to read as follows:

§ 404.1785 Evidence permitted on review.

(a) General. Generally, the Appeals Council will not consider evidence in addition to that introduced at the hearing. However, if the Appeals Council finds the evidence offered is material to an issue it is considering, it may consider that evidence as described in paragraph (b) of this section.

(b) Individual charged filed an answer. (1) When the Appeals Council finds that additional material evidence to the charges is available, and the individual charged filed an answer to the charges, the Appeals Council will allow the party with the information to submit the additional evidence.

(2) Before the additional evidence is admitted into the record, the Appeals Council will mail a notice to the parties, informing them that evidence about certain issues was submitted. The Appeals Council will give each party a reasonable opportunity to comment on the evidence and to present other evidence that is material to the issue it is considering.

(3) The Appeals Council will determine whether the additional evidence warrants a new review by a hearing officer or whether the Appeals Council will consider the additional evidence as part of its review of the case.

(c) Individual charged did not file an answer. If the representative did not file an answer to the charges, the representative may not introduce evidence that was not considered at the hearing.

10. Amend § 404.1790 by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 404.1790 Appeals Council's decision.

(a) The Appeals Council will base its decision upon the evidence in the hearing record and any other evidence it may permit on review. The Appeals Council will affirm the hearing officer's decision if the action, findings, and conclusions are supported by substantial evidence. If the hearing officer's decision is not supported by substantial evidence, the Appeals Council will either:

- (1) Reverse or modify the hearing officer's decision; or
- (2) Return the case to the hearing officer for further proceedings.

* * * * *

(f) The Appeals Council may designate and publish certain final decisions as precedent for other actions brought under our representative conduct provisions. Prior to making a decision public, we may remove or redact information from the decision.

11. Amend § 404.1799 by:

- a. Adding a sentence to the end of paragraph (a); and
- b. Revising paragraphs (d)(2) and (f).

The additions and revisions read as follows:

§ 404.1799 Reinstatement after suspension or disqualification – period of suspension not expired.

(a) * * * The Appeals Council will assign and process a request for reinstatement using the same general procedures described in § 404.1776.

* * * * *

(d) * * *

(2) If a person was disqualified because he or she had been disbarred, suspended, or removed from practice for the reasons described in § 404.1745(d) through (f), the Appeals Council will grant a request for reinstatement as a representative only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that he or she has been admitted (or readmitted) to and is in good standing with the court, bar, or other governmental or professional licensing authority from which he or she had been disbarred, suspended, or removed from practice.

* * * * *

(f) If the Appeals Council decides not to grant the request, it will not consider another request before the end of 3 years from the date of the notice of the previous denial.

PART 416 – SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart O—Representation of Parties

12. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1127 and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–6 and 1383(d)).

13. Revise § 416.1505(b) to read as follows:

§ 416.1505 Who may be your representative.

* * * * *

(b) You may appoint any person who is not an attorney to be your representative in dealings with us if the person –

- (1) Is capable of giving valuable help to you in connection with your claim;
- (2) Is not disqualified or suspended from acting as a representative in dealings with us;
- (3) Is not prohibited by any law from acting as a representative; and

(4) Is generally known to have a good character and reputation. Persons lacking good character and reputation, include, but are not limited to, persons convicted of a felony (as defined by § 404.1506(c)) of this chapter, or any crime involving moral turpitude, dishonesty, false statement, misrepresentations, deceit, or theft.

* * * * *

14. Amend § 416.1540 by:

- a. Revising paragraph (b)(3) introductory text and (b)(3)(i);
- b. Adding paragraphs (b)(3)(iii) through (v) and (b)(5) through (10);
- c. Revising paragraphs (c)(1) through (3), (c)(6), and (c)(7)(i) and (ii); and
- d. Adding paragraph (c)(14).

The revisions and additions read as follows:

§ 416.1540 Rules of conduct and standards of responsibility for representatives.

* * * * *

(b) * * *

(3) Conduct his or her dealings in a manner that furthers the efficient, fair and orderly conduct of the administrative decision making process, including duties to:

(i) Provide competent representation to a claimant. Competent representation requires the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A representative must know the significant issue(s) in a claim, have reasonable and adequate familiarity with the evidence in the case, and have a working knowledge of the applicable provisions of the Social Security Act, as amended, the regulations, and Social Security Rulings.

* * * * *

(iii) When requested, provide us, in a manner we specify, potential dates and times that the representative will be available for a hearing. We will inform you how many potential dates and times we require to coordinate the hearing schedule.

(iv) Only withdraw representation at a time and in a manner that does not disrupt the processing or adjudication of a claim and provides the claimant adequate time to find new representation, if desired. A representative should not withdraw after a hearing is scheduled unless the representative can show that a withdrawal is necessary due to extraordinary circumstances, as we determine on a case-by-case basis.

(v) Maintain prompt and timely communication with the claimant, which includes, but is not limited to, reasonably informing the claimant of all matters concerning the representation, consulting with the claimant on an ongoing basis during the entire representational period, and promptly responding to a claimant's reasonable requests for information.

* * * * *

(5) Disclose in writing, at the time a medical or vocational opinion is submitted to us or as soon as the representative is aware of the submission to us, if:

(i) The representative's employee or any individual contracting with the representative drafted, prepared, or issued the medical or vocational opinion; or

(ii) The representative referred or suggested that the claimant seek an examination from, treatment by, or the assistance of the individual providing opinion evidence.

(6) Disclose to us immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud against us.

(7) Disclose to us if the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice, including instances in which a bar or court took administrative action to disbar or suspend the representative in lieu of disciplinary proceedings (e.g. acceptance of voluntary resignation pending disciplinary action).

If the disbarment or suspension occurs after the appointment of the representative, the representative will immediately disclose the disbarment or suspension to us.

(8) Disclose to us whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency, including instances in which a Federal program or agency took administrative action to disqualify the representative in lieu of disciplinary proceedings (e.g. acceptance of voluntary resignation pending disciplinary action).

If the disbarment or suspension occurs after the appointment of the representative, the representative will immediately disclose the disqualification to us.

(9) Disclose to us whether the representative has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary. If the removal or suspension occurs after the appointment of the representative, the representative will immediately disclose the removal or suspension to us.

(10) Ensure that all of the representative's employees, assistants, partners, contractors, or any person assisting the representative on claims for which the representative has been appointed, are compliant with these rules of conduct and standards of responsibility for representatives.

(c) * * *

(1) In any manner or by any means threaten, coerce, intimidate, deceive, or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Act. This prohibition includes misleading a claimant, or prospective claimant or beneficiary, about the representative's services and qualifications.

(2) Knowingly charge, collect, or retain, or make any arrangement to charge, collect, or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation. This prohibition includes soliciting any gift or any other item of value, other than is what is authorized by law.

(3) Make or present, or participate in the making or presentation of, false or misleading oral or written statements, evidence, assertions, or representations about a material fact or law concerning a matter within our jurisdiction, in matters where the representative has or should have reason to believe that those statements, evidence, assertions or representations are false or misleading.

* * * * *

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination, or other administrative action by any means prohibited by law, or by offering or granting a loan, gift, entertainment, or anything of value to a presiding official, agency employee, or witness who is or may reasonably be expected to be involved in the administrative decision making process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence.

(7) * * *

(i) Repeated absences from or persistent tardiness at scheduled proceedings without good cause (see § 416.1411(b));

(ii) Behavior that has the effect of improperly disrupting proceedings or obstructing the adjudicative process, including but not limited to:

(A) Directing threatening or intimidating language, gestures, or actions at a presiding official, witness, contractor, or agency employee;

(B) Providing misleading information or misrepresenting facts that affect how we process a claim, including but not limited to information relating to the claimant's work activity or the claimant's place of residence or mailing address in matters where the representative has or should have reason to believe that the information was misleading and the facts would constitute a misrepresentation;

(C) Communicating with agency staff or adjudicators outside the normal course of business or other prescribed procedures in an attempt to inappropriately influence the processing or outcome of a claim(s);

* * * * *

(14) Fail to oversee the representative's employees, assistants, partners, contractors, or any other person assisting the representative on claims for which the representative has been appointed, when the representative has managerial or supervisory authority over these individuals and:

(i) The individual's conduct would be a violation of these rules of conduct and standards of responsibility;

(ii) The representative has reason to believe a violation of our rules of conduct and standards of responsibility would occur; and

(iii) When possible, the representative fails to take remedial action.

15. Amend § 416.1545 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 416.1545 Violations of our requirements, rules, or standards.

* * * * *

(d) Has been, by reason of misconduct, disbarred or suspended from any bar or court to which he or she was previously admitted to practice (see § 416.1570(a));

(e) Has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or agency (see § 416.1570(a)); or

(f) Who is a non-attorney, has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary.

16. Revise § 416.1550(c) through (f) to read as follows:

§ 416.1550 Notice of charges against a representative.

* * * * *

(c) We will advise the representative to file an answer, within 14 days from the date of the notice, or from the date the notice was delivered personally, stating why he or she should not be suspended or disqualified from acting as a representative in dealings with us.

(d) The General Counsel or other delegated official may extend the 14-day period for good cause in accordance with § 416.1411.

(e) The representative must—

(1) Answer the notice in writing under oath (or affirmation); and

(2) File the answer with the Social Security Administration, at the address specified on the notice, within the 14-day time period.

(f) If the representative does not file an answer within the 14-day time period, he or she does not have the right to present evidence, except as may be provided in § 416.1565(g).

17. Amend § 416.1565 by revising paragraphs (c), (d)(1) and (2), and (g) to read as follows:

§ 416.1565 Hearing on charges.

* * * * *

(c) Time and place of hearing. The hearing officer will mail the parties a written notice of the hearing at their last known addresses, at least 14 days before the date set for the hearing. The notice will inform the parties whether the appearance of the parties or any witnesses will be in person, by video teleconferencing, or by telephone. The notice will also include requirements and instructions for filing motions, requesting witnesses, and entering exhibits.

(d) * * * (1) The hearing officer may change the time and place for the hearing, either on his or her own initiative, or at the request of the representative or the other party to the hearing. The hearing officer will not consider objections to the manner of appearance of parties or witnesses, unless the party shows good cause not to appear in the prescribed manner.

* * * * *

(3) Subject to the limitations in paragraph (g)(2) of this section, the hearing officer may reopen the hearing for the receipt of additional evidence at any time before mailing notice of the decision.

* * * * *

(g) Conduct of the hearing. (1) The representative or the other party may file a motion for decision on the basis of the record prior to the hearing. The hearing officer will give the

representative and the other party a reasonable amount of time to submit any evidence and to file briefs or other written statements as to fact and law prior to deciding the motion. If the hearing officer concludes that there is no genuine dispute as to any material fact and the movant is entitled to a decision as a matter of law, the hearing officer may grant the motion and issue a decision in accordance with the provisions of § 416.1570.

(2) If the representative did not file an answer to the charges, he or she has no right to present evidence at the hearing. The hearing officer may make or recommend a decision on the basis of the record, or permit the representative to present a statement about the sufficiency of the evidence or the validity of the proceedings upon which the suspension or disqualification, if it occurred, would be based.

(3) The hearing officer will make the hearing open to the representative, to the other party, and to any persons the hearing officer or the parties consider necessary or proper. The hearing officer will inquire fully into the matters being considered, hear the testimony of witnesses, and accept any documents that are material.

(4) The hearing officer has the right to decide the order in which the evidence and the allegations will be presented and the conduct of the hearing.

* * * * *

18. Revise § 416.1575(b) to read as follows:

§ 416.1575 Requesting review of the hearing officer's decision.

* * * * *

(b) Time and place of filing request for review. The party requesting review will file the request for review in writing with the Appeals Council within 14 days from the date the

hearing officer mailed the notice. The party requesting review will certify that a copy of the request for review and of any documents that are submitted have been mailed to the opposing party.

19. Revise § 416.1580(a) to read as follows:

§ 416.1580 Appeals Council's review of hearing officer's decision.

(a) Upon request, the Appeals Council will give the parties a reasonable time to file briefs or other written statements as to fact and law, and to request to appear before the Appeals Council to present oral argument. When oral argument is requested within the time designated by the Appeals Council, the Appeals Council will grant the request for oral argument, and determine whether the parties will appear at the oral argument in person, by video teleconferencing, or by telephone. If oral argument is not requested within the time designated by the Appeals Council, the Appeals Council may deny the request.

* * * * *

20. Revise § 416.1585 to read as follows:

§ 416.1585 Evidence permitted on review.

(a) General. Generally, the Appeals Council will not consider evidence in addition to that introduced at the hearing. However, if the Appeals Council finds the evidence offered is material to an issue it is considering, it may consider that evidence as described in paragraph (b) of this section.

(b) Individual charged filed an answer. (1) When the Appeals Council finds that additional material evidence to the charges is available, and the individual charged filed an

answer to the charges, the Appeals Council will allow the party with the information to submit the additional evidence.

(2) Before the additional evidence is admitted into the record, the Appeals Council will mail a notice to the parties, informing them that evidence about certain issues was submitted. The Appeals Council will give each party a reasonable opportunity to comment on the evidence and to present other evidence that is material to the issue it is considering.

(3) The Appeals Council will determine whether the additional evidence warrants a new review by a hearing officer or whether the Appeals Council will consider the additional evidence as part of its review of the case.

(c) Individual charged did not file an answer. If the representative did not file an answer to the charges, the representative may not introduce evidence that was not considered at the hearing.

21. Amend § 416.1590 by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 416.1590 Appeals Council's decision.

(a) The Appeals Council will base its decision upon the evidence in the hearing record and any other evidence it may permit on review. The Appeals Council will affirm the hearing officer's decision if the action, findings, and conclusions are supported by substantial evidence. If the hearing officer's decision is not supported by substantial evidence, the Appeals Council will either:

- (1) Reverse or modify the hearing officer's decision; or
- (2) Return the case to the hearing officer for further proceedings.

* * * * *

(f) The Appeals Council may designate and publish certain final decisions as precedent for other actions brought under our representative conduct provisions. Prior to making a decision public, we may remove or redact information from the decision.

22. Amend § 416.1599 by:

- a. Adding a sentence to the end of paragraph (a); and
- b. Revising paragraphs (d)(2) and (f).

The additions and revisions read as follows:

§ 416.1599 Reinstatement after suspension or disqualification – period of suspension not expired.

(a) * * * The Appeals Council will assign and process a request for reinstatement using the same general procedures described in § 416.1576.

* * * * *

(d) * * *

(2) If a person was disqualified because he or she had been disbarred, suspended, or removed from practice for the reasons described in § 416.1545(d) through (f), the Appeals Council will grant a request for reinstatement as a representative only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that he or she has been admitted (or readmitted) to and is in good standing with the court, bar, or other governmental or professional licensing authority from which he or she had been disbarred, suspended, or removed from practice.

* * * * *

(f) If the Appeals Council decides not to grant the request, it will not consider another request before the end of 3 years from the date of the notice of the previous denial.

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