

Disability Determination Process

Role of the Advocate

Disability Determination Process

- Both attorneys and non-attorneys can represent applicants for or recipients of Social Security or SSI at the administrative level.
- Beyond the administrative level – once the matter goes into court (if it does) only an attorney can provide representation to an applicant or recipient.

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- Both attorneys and non-attorneys who represent applicants for or recipients of Social Security or SSI before the SSA must comply with “Rules of conduct and standards of responsibility for representatives.”
- These rules are authorized by 42 United States Code §406(a)(1).

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- The “Rules of conduct and standards of responsibility for representatives” for Social Security cases are at 20 Code of Federal Regulations §404.1740, and for SSI, they are at 20 Code of Federal Regulations §416.1540.
- The rules are essentially the same, for both Social Security and SSI.

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- The “Rules of conduct and standards of responsibility for representatives” require that the representative “provide competent assistance to the claimant and recognize the authority of the Agency to lawfully administer the process.
- The rules apply to both administrative proceedings and to fee collections.

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- The rules require the representative to be “forthright” and to have “due regard” for the “nonadversarial nature of the proceedings.”

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- The rules require the representative to be reasonably prompt in providing information and evidence in support of the claimant.
- This includes assisting the claimant in bringing to SSA's attention *everything* that shows the claimant is disabled or blind.

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- The rules require the representative to assist the claimant in complying with SSA's requests for information or evidence.
- The rules require the representative to provide "competent representation."

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- The rules state that “competent representation” includes “knowing the significant issues in a claim and having a working knowledge of the applicable provisions of the Social Security Act, as amended, the regulations and the Rulings.”
- “Competent representation” also includes acting “with reasonable diligence and promptness in representing a claimant.”

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- The rules include a list of “prohibited actions.”
- The prohibited actions include deceiving claimants, charging fees in violation of law or regulation, making false or misleading representations about a material fact or law, causing unreasonable delay, bribery, repeated absence or tardiness at scheduled proceedings without good cause, disrupting proceedings, and intimidating SSA employees or witnesses.