

New York Lawyers' Practical Skills Series

Social Security Law and Practice

Charles E. Binder, Esq.*
Daniel S. Jones, Esq.

2013–2014

* This material was originally written by Charles E. Binder, Esq. Since 2011, Charles Binder and Daniel S. Jones, Esq., have worked together to revise and update the volume.

NEW YORK STATE BAR ASSOCIATION 

New York State Bar Association Continuing Legal Education publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: CLE Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207.

Copyright 2013
New York State Bar Association
All rights reserved
ISBN: 1-57969-401-2
Product Number: 422913

CONTENTS

I.	Introduction.....	1
II.	Statutes and Regulations.....	2
III.	Practice and Procedure.....	2
	A. The Client	2
	B. The Claim	4
	C. The Claim File	5
	D. Medical Reports	6
	E. The Earnings Record	8
	F. The Hearing	8
	G. Conduct of the Hearing.....	10
	H. The Appeals Council	11
	I. The District Court	12
	J. Limitations of Time	13
	K. Sequential Analysis of Disability	14
	1. Substantial Gainful Activity	14
	2. Severity.....	15
	3. Listing of Impairments	15
	4. Past Relevant Work	16
	5. Ability to Do Any Other Work.....	16
IV.	Substantive Guide	18
	A. Eligibility	18
	B. Retirement Benefits	18
	1. Full Retirement Age	18
	2. Early Retirement Age	18
	C. Survivors' Benefits	19
	D. Disability Insurance Benefits.....	20
	1. Disabled Surviving Spouse.....	20
	2. Disabled Adult Children.....	21
	3. Medical Improvement and Return to Work.....	21
	4. Medical Improvement and Cessations.....	21
	E. Overpayments and Underpayments	22
	F. Supplemental Security Income Benefits.....	22
	G. Medicare	23
	H. Attorney Fees	24
	1. Social Security Fees	24
	2. The Equal Access to Justice Act	25
	Bibliography	29
	Social Security Forms Index.....	33
	Table of Authorities	203
	About the Authors.....	207

INDEX OF FORMS*

Client Data Sheet to Help Organize Initial Interview	35
Request for Reconsideration (Form SSA-561-U2).....	37
Appointment of Representative (Form SSA-1696-U4)	41
Update 2013	51
Request for Client's Earnings and Benefits Estimate Statement (Form SSA-7004-SM)	53
Sample Fee Agreement.....	55
Authorization for Release of Health Information Pursuant to HIPAA	57
Medical Impairment Evaluation (for Physician's Use).....	59
Form Letter to Treating Doctor.....	63
Disability Determination and Transmittal (Form SSA-831-C-3/U3)	65
Earnings Record.....	67
Relevant Local Rules of Northern District of New York	69
Petition to Obtain Approval of a Fee for Representing a Claimant Before the Social Security Administration (Form SSA-1560-U4).....	71
Request for Hearing by Administrative Law Judge (Form HA-501-U5)	73
Request for Review of Hearing Decision/Order (Form HA-520-U5)	75
Application for Disability Insurance Benefits (Form SSA-16-BK).....	77
Disability Report—Adult (Form SSA-3368-BK)	85
Request for Waiver of Overpayment Recovery or Change in Repayment Rate (Form SSA-632-BK).....	99
Work History Report (Form SSA-3369-BK)	107
Consent for Release of Information (Form SSA-3288)	117
Request to be Selected as Payee (Form SSA-11-BK).....	119
Application for Wife's or Husband's Insurance Benefits (Form SSA-2-BK).....	129
Application for Child's Insurance Benefits (Form SSA-4-BK).....	137
Work Activity Report—Employee (Form SSA-821-BK).....	147
Disability Report—Appeal (Form SSA-3441-BK)	159
Workers' Compensation/Public Disability Benefit Questionnaire (Form SSA-546)	169
Marriage Certification (Form SSA-3).....	171
Application for Retirement Insurance Benefits (Form SSA-1-BK).....	173

* Many of the forms contained in this monograph are obtainable from the following government agencies: the United States Social Security Administration (1-800-772-1213; <www.ssa.gov>) and the New York State Unified Court System (1-800-268-7869; <www.nycourts.gov>).

Application for Widow's or Widower's Insurance Benefits (Form SSA-10-BK).....	181
Work Activity Report (Self-Employed Person) (Form SSA-820-BK)	189
Civil Complaint.....	197
Authorization to Disclose Information to the Social Security Administration (Form SSA-827).....	201

CHARLES E. BINDER, ESQ.

Mr. Binder, of the Law Offices of Harry J. Binder and Charles E. Binder, P.C., works almost exclusively on Social Security disability cases at both the administrative and federal court levels. A graduate of Georgetown University Law School, Mr. Binder was an officer and member of the Executive Committee of the National Organization of Social Security Claimants' Representatives (NOSSCR) for many years, as well as a past president of the New York Social Security Bar Association. He has regularly lectured on behalf of the New York State Bar Association for its Continuing Legal Education programs covering Social Security disability, as well as at many NOSSCR conventions, conferences on Social Security disability organized by the Practising Law Institute, before hospital staffs, vocational rehabilitation specialists and various foundations dealing with the problems of the elderly and disabled. He has twice lectured for the pro bono panel of the Eastern District of New York concerning Social Security disability cases from the plaintiff's perspective. He has also testified before the U.S. House of Representatives Committee on Ways and Means Social Security Subcommittee about the Social Security Disability Program.

DANIEL S. JONES, ESQ.

Daniel S. Jones is of counsel to the Law Offices of Harry J. Binder and Charles E. Binder, P.C. He is a graduate of New York Law School, class of 2010, where he was admitted as part of the John Marshall Harlan Scholars Program. He was admitted to the New Jersey bar in 2010 and the New York State bar in February 2011. He currently practices exclusively in the area of federal court appeals of Social Security disability claims. Prior to becoming a member of the bar, Mr. Jones spent eight years working as a non-attorney representative of claimants appearing before the Social Security Administration at all levels of the administrative process. He is a member in good standing of the Eastern and Southern District Courts of New York as well as the District Court of New Jersey and the Sixth Circuit Court of Appeals. He also is a member of the National Organization of Social Security Claims Representatives, the American Bar Association and the New York State Bar Association.