



MICHAEL P. JUDGE
PUBLIC DEFENDER

LAW OFFICES
LOS ANGELES COUNTY PUBLIC DEFENDER

CLARA SHORTRIDGE FOLTZ
CRIMINAL JUSTICE CENTER
210 W. TEMPLE STREET, SUITE 19-513
LOS ANGELES, CALIFORNIA 90012
(213) 974-2801 / FAX (213) 625-5031
TDD (800) 801-5551

EXECUTIVE OFFICE

February 1, 2006

Jo Anne B. Barnhart
Commissioner of Social Security
P.O. Box 17703
Baltimore, MD 21235-7703

Re: Nonpayment of Benefits to Fugitive Felons and Probation or Parole Violators
NPRM, 70 Fed. Reg 72411 (Dec. 5, 2005)

Dear Commissioner Barnhart:

My name is Michael Judge and I am the Chief Public Defender for Los Angeles County, the largest and oldest such law office in the United States. We represent hundreds of thousands of indigent adult and juvenile defendants charged with committing criminal offenses each year. In that capacity, my office has represented thousands of clients who receive either Social Security or Supplemental Security Income. In the past several years, we have been deluged with requests to assist primarily elderly and physically or mentally infirm clients from all over the United States whose benefit payments have ceased because of an outstanding felony warrant or an alleged violation of probation or parole.

Although we do not attempt to resolve the issues regarding suspension and/or resumption of payments, we do represent these clients in resolving the underlying criminal matter that led to the suspension of payments. Most typically, the warrant is many years (sometime decades), old. Frequently the underlying charged offense is for a property crime or possession of a small amount of a controlled substance. Usually, the client is of advanced age and/or suffers from a debilitating illness or mental disease that makes travel to Los Angeles impossible.

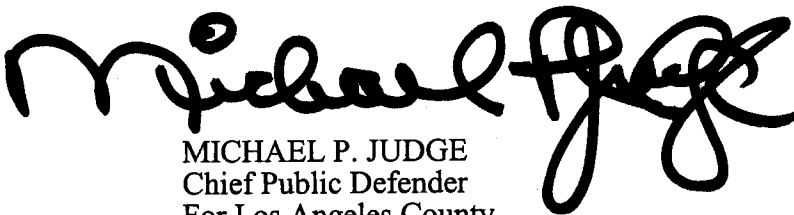
When we receive a request to assist on such a so-called "fugitive felon" matter, we must first ascertain the criminal case number and the location within the county wherein the matter was filed. Los Angeles is so diverse geographically, that there are ten major subdivisions, or Branches, other than the main criminal courthouse downtown and criminal cases are heard in 30 court locations. As might be expected, no court or prosecutor will act on a request to recall the warrant or dismiss the case unless they have access to the court documents. Locating the file can be a daunting task. Each year over 75,000 felony cases are filed and the court archives are comprised of literally millions of files, some of which are available only on "microfiche". In addition, many courts have requested the physical presence of the defendant before acting. If the person is incapable of travel, the courts require proof by medical certificate of that fact before acting. Notwithstanding all of these obstacles, it has been our experience that given sufficient time, we have been able to favorably resolve these matters in an extraordinarily high percentage of cases.

Your proposed regulations, establishing a 90 day time limit to show mandatory or discretionary good cause, would severely constrain our ability to effectively represent my clients. Mindful of the underlying spirit and intent of the legislation that enacted the Social Security Administration, it would seem unfair to needlessly deprive this particularly fragile and vulnerable class of citizens from assistance.

As I mentioned at the outset, my office does not get involved in the legal issues regarding payment or suspension of payments. However, I have reviewed the attached letter written by Mr. Gerald A. McIntyre and I have also read both your proposed regulations as well as the cases of Fowlkes v. Adamec, ___ F.3d. ___ 2nd Cir. 2005), 2005 WL 3292551 (Dec. 6, 2005). and Garnes v. Barnhard, 352 F. Supp. 2d 1059 (2004). Not only do I agree with his conclusion that the proposed regulations will run afoul of the direct holdings in those cases, thereby rendering the regulations unenforceable in the Districts served by those courts, but I agree with his opinions that the regulations are too narrow and will fail to implement the Commissioner's authority to do justice under those circumstances envisioned by the Social Security and Supplemental Security Income programs.

Thank you for allowing me to comment on these proposed regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Judge". The signature is fluid and cursive, with a large loop at the end.

MICHAEL P. JUDGE
Chief Public Defender
For Los Angeles County

MPJ:jv