September 28, 2012

Honorable Carl Levin
Chair, Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the American Bar Association and its nearly 400,000 members nationwide, I am writing with regard to your September 13, 2012 hearing on the quality of decision-making in cases involving the Social Security Administration’s disability programs and request that this letter be made part of the hearing record.

The ABA has worked actively for over two decades to protect the adjudicative independence of the administrative judiciary and promote increased efficiency and fairness in the system. We have been able to draw upon the considerable expertise of our diverse membership -- claimant representatives, administrative law judges, academicians and agency staff -- to develop a wide-ranging body of recommendations on the administrative adjudication process.

The adjudicative function performed by administrative law judges (ALJs) and the relationship they must maintain with their employing agencies distinguish ALJs from the rest of the federal workforce. Congress recognized their unique function when it passed the Administrative Procedure Act (APA), which established the adjudicative independence of the administrative judiciary. Federal regulations protect ALJ independence by explicitly prohibiting an agency from rating the performance of its administrative law judges or granting a monetary or honorary award for superior adjudicative performance. 5 C.F.R. §930.211 and §930.215(b).

While the ABA supports efforts to improve the performance and professional capabilities of administrative law judges as long as those efforts comply with these restrictions, we also are concerned with strengthening this nation’s commitment to impartial and fair decision-making within the administrative judiciary. These objectives are integrally related to each other and to improving the process.

The ABA believes that an excellent way to promote fairness and public trust in administrative adjudication proceedings is to make administrative law judges subject to,
and accountable under, appropriate standards for ethical conduct adapted from the ABA Model Code of Judicial Conduct. The Model Code establishes standards for the ethical conduct of judges that promote the independence, integrity and impartiality of the judiciary. It is comprised of four canons -- overarching principles of judicial conduct -- followed by enforceable black letter rules and comments that provide aspirational statements and guidance in interpreting and applying the rules. Requiring adherence to a rigorous code of conduct based on the ABA’s Model Code is fully compatible with, and advances the objectives of, the APA.

A fair and impartial administrative judiciary is indispensable to our system of justice. Vast numbers of Americans are involved in administrative adjudicative proceedings every day, and the decisions rendered by ALJs in these proceedings often affect their lives in profound ways. As the U.S. Supreme Court has stated on several occasions, ALJs are the “functional equivalent of district court judges;” they, too, should be held to the highest ethical standards of conduct in their professional and personal lives.

Thank you for the opportunity to express our views on this subject.

Sincerely,

Thomas M. Susman

Cc: Honorable Tom Coburn