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June 9, 2014

The Honorable Kerry B. Harvey
U.S. Attorney for the Eastern District of Kentucky
260 W. Vine Street, Suite 300
Lexington, KY 40507-1612

Dear Mr. Harvey,

I am writing to request that the United States Attorney for the Eastern District of Kentucky conduct an independent evaluation of the evidence and claims alleging Administrative Law Judge David B. Daugherty and claimant representative Eric C. Conn engaged in a conspiracy to defraud the Social Security Disability Insurance program.

A *Wall Street Journal* article, Senate investigation and Inspector General investigation have all found substantial evidence of “inappropriate collusive efforts” involving Judge Daugherty and Mr. Conn.¹

According to the Senate staff report, Judge Daugherty improperly assigned Mr. Conn’s cases to himself and awarded benefits to 3,143 of Mr. Conn’s clients.² Between 2005 and 2011, Judge Daugherty never once denied benefits to a claimant represented by Mr. Conn.³ Mr. Conn allegedly procured physicians to provide false or poor quality medical opinions.⁴ On the basis of

¹ *Disability-Claim Judge Has Trouble Saying ‘No’*, Wall Street Journal (May 19, 2011) (online at <http://online.wsj.com/news/articles/SB10001424052748704681904576319163605918524>).

² Staff Report, U.S. Senate Committee on Homeland Security and Governmental Affairs, *How Some Legal, Medical, and Judicial Professionals Abused Social Security Disability Programs for the Country’s Most Vulnerable: A Case Study of the Conn Law Firm*, (Oct. 7, 2013) (online at www.hsgac.senate.gov/download/?id=0B4A6130-EC07-4D20-860B-88994B20E79A).

³ *Id.*

⁴ *Id.*

new medical testimony ordered by Mr. Conn, Judge Daugherty awarded benefits to an individual who had recently been denied benefits by another judge.⁵

Senate investigators also found that Mr. Conn collected over \$4.5 million from fees paid on claimants approved by Judge Daugherty. Judge Daugherty's bank accounts show unexplained cash deposits totaling \$69,800.⁶ Additionally, Senate investigators found that during a two-year period when few deposits were made to Judge Daugherty, cash deposits totaling \$26,200 were made to the account of Daugherty's daughter.⁷ At the time Daugherty's daughter was a candidate for Cabell County, West Virginia Magistrate and her records show that, on most occasions after receiving the cash deposit, she wrote a check to her campaign manager and treasurer.⁸ The Senate's investigation was unable to determine the origin of the cash deposits and Judge Daugherty refused to explain the origin or source of the cash deposits.

The Office of Inspector General (IG) has informed me that they have conducted over 130 interviews; examined bank and phone records; examined personnel records and management information related to Judge Daugherty's decisions; reviewed random disability decisions by Daugherty for cases submitted by Conn; conducted computer forensic analysis and collected thousands of documents pertaining to Mr. Conn and Judge Daugherty.⁹ The IG has also indicated that the Internal Revenue Service, Criminal Investigation has joined the IG's investigation.

Additionally, two whistleblowers working in the Huntington, WV hearing office filed a complaint under the federal False Claims Act against Mr. Conn and Judge Daugherty in the Eastern District of Kentucky.¹⁰ The complaint alleges that Daugherty sought out cases involving Conn's clients, conducted sham proceedings, and awarded those clients benefits they were not entitled to receive, while Conn collected attorney's fees for those claims.¹¹

But justice in this case appears to be long delayed. Judge Daugherty retired in 2011 and has not faced any legal or administrative consequences for his alleged conduct. Mr. Conn continues to represent disability claimants and collect attorney fees from the federal government.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Social Security Administration Office of the Inspector General, Fact Sheet: Huntington, West Virginia Hearing Office Investigation (Mar. 6, 2014).

¹⁰ *United States of America ex rel. Jennifer L. Griffith and Sarah Carver v. Eric C. Conn, et al.*, Civil No. 11-157-ART, United States District Court Eastern District of Kentucky (filed on Oct. 11, 2011).

¹¹ *Id.*

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Physicians involved in the fraud are still practicing and have not had their medical licenses revoked nor faced any criminal penalties. It is my understanding that agency administrative action against Daugherty and Conn was suspended pending a criminal investigation by the U.S. Attorney of the Southern District of West Virginia. But that inquiry has yielded no appreciable action.

In light of this information, I request that your office conduct an independent evaluation of the evidence against former Judge Daugherty and Mr. Conn to determine if any violations of criminal and civil laws have occurred. Investigation of this alleged conspiracy and related crimes belongs within the jurisdiction of the United States Attorney for the Eastern District of Kentucky because more than 93% of the cases of potential fraud involved residents of Kentucky; Mr. Conn himself is a resident of Kentucky; his law offices are located in Kentucky, and the Social Security Administration office where Mr. Conn's cases were heard by Judge Daugherty is also located in Kentucky.¹²

If you have any questions about this request, please contact Brian Quinn or Jaron Bourke of the Minority Staff at (202) 225-5051. Thank you for your consideration of this request.

Sincerely,



Jackie Speier
Ranking Member
Subcommittee on Energy Policy,
Health Care and Entitlements

¹² Information provided by the Social Security Administration to House Oversight and Government Reform Committee